

# STATE OF NEW YORK

6982

2017-2018 Regular Sessions

## IN ASSEMBLY

March 28, 2017

Introduced by M. of A. TITONE, FINCH -- read once and referred to the Committee on Tourism, Parks, Arts and Sports Development

AN ACT to amend the general business law, in relation to auction requirements

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Legislative intent. The legislature declares that the  
2 following provisions of law are in addition to other provisions of law  
3 and regulations applicable to auctions.

4 § 2. The general business law is amended by adding a new section 29 to  
5 read as follows:

6 § 29. Requirements for auctions. 1. The auctioneer will be held  
7 responsible for the truth of any statement contained in any catalogue,  
8 advertisement, announcement, press release or other public statement  
9 made by the auctioneer relating to any auction.

10 2. a. No personal property may be auctioned except pursuant to a writ-  
11 ten contract between the consignor or his or her agent or authorized  
12 representative and the auctioneer, unless auctioned pursuant to an order  
13 of a court of competent jurisdiction.

14 b. Every contract required pursuant to paragraph a of this subdivision  
15 must contain the following provisions:

16 (i) All fees, commissions and charges to be paid by the consignor to  
17 the auctioneer or his or her agents, principals, employees, employers or  
18 assigns shall:

19 (1) to the extent practicable, be itemized and specified as to amount  
20 (which may be stated as a percentage of the reserve price or any final  
21 bid), and

22 (2) if such itemization and specification as to amount is not practi-  
23 cable, be described with sufficient particularity to inform the consig-  
24 nor of the nature of the services for which such fees, commissions and  
25 charges will be imposed.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1     (ii) That as of the date of the auction the consignor warrants that he  
2     or she has complete and lawful right, title and interest in the property  
3     auctioned, and that the consignor shall indemnify the auctioneer, his or  
4     her agents, principals, employees, employers or assigns in the event of  
5     any defect in title, and that an intended beneficiary of this warranty  
6     is the ultimate purchaser at auction.

7     c. Where articles are referred to by catalogue or advertisement as  
8     having been obtained from any specific person, place or source, such  
9     articles must be separately enumerated and identified.

10    d. If an auctioneer or auction house has any interest, direct or indi-  
11    rect, in an article, including a guaranteed minimum, other than the  
12    selling commission, the fact such interest exists must be disclosed in  
13    connection with any description of the article or articles in the cata-  
14    logue or any other printed material published or distributed in relation  
15    to the sale. Such notice may be denoted by a prominent symbol or letter  
16    which will refer the reader to an explanation of the nature of the  
17    interest the symbol or letter denotes. In addition, prior to the  
18    commencement of the auction, the auctioneer shall orally announce that  
19    those lots in which the auctioneer has an interest covered by this  
20    subdivision have been designated in the auction catalogue and the symbol  
21    used to denote such interest.

22    e. Where a consignor is to receive a rebate commission in whole or in  
23    part, or where he or she will be permitted to bid upon and to buy back  
24    his or her own article at the sale, disclosure of such a condition must  
25    be made in connection with any description of the item or items so  
26    affected in the catalogue or any other printed material published or  
27    distributed in relation to the sale. The existence of such a condition  
28    may be denoted by a symbol or letter which will refer the reader to an  
29    explanation of the nature of the interest the symbol or letter denotes.

30    f. (i) If the consignor has fixed a price below which an article will  
31    not be sold, the "reserve price", the fact that the lot is being sold  
32    subject to reserve must be disclosed in connection with the description  
33    of any lot so affected in the catalogue or any other printed material  
34    published or distributed in relation to the sale. The existence of a  
35    reserve price may be denoted by a symbol or letter which will refer the  
36    reader to an explanation of reserve price. For the purpose of this para-  
37    graph and paragraphs d and e of this subdivision, advertisements in  
38    newspapers or other periodicals shall not constitute printed material.  
39    Where no printed material is provided in connection with the auction an  
40    auctioneer shall have available during any advertised inspection period  
41    information as to whether a particular lot is to be sold subject to  
42    reserve and shall announce before he or she commences the auction that  
43    such information is available upon request.

44    (ii) When a lot is not subject to a reserve price, the auctioneer  
45    shall not indicate in any manner that the lot is subject to a reserve  
46    price.

47    g. In the event an auctioneer extends a loan to a purchaser, the  
48    auctioneer shall disclose in a general announcement at the commencement  
49    of the auction that bidders may be participating in the sale who have  
50    been offered a loan by the auctioneer. In addition, this disclosure must  
51    also be made on signs prominently displayed in the auction room and at  
52    the entrance thereto. Such signs shall include the following disclosure,  
53    or convey substantially the same message:

54    "Bidders may be participating in the sale who have been offered a loan  
55    by the auctioneer."

56    h. The auctioneer shall:

(i) Provide information as to the number of jewels, approximate number of carats, number of points (diamond), principal metal content, and manufacturer's name, if known, for all articles of jewelry, including watches. The information required by this paragraph shall be provided either in the catalogue descriptions of such items or by attaching to each such item a tag or marking containing the information.

(ii) Issue or cause to be issued to each purchaser an invoice which shall contain all the following information:

(1) The auctioneer's name, business address and license number;

(2) The name and address of the auctioneer's employer or principal;

(3) The date of sale;

(4) The lot number, description, quantity and selling price of each lot;

(5) The total amount of purchase with a separate statement of sales tax;

(6) All deposits made against the purchase price.

(iii) Advertise each auction sale at least once in the seven day period immediately preceding the auction.

(iv) Notify the person whose property is being auctioned (and any other person entitled to be notified according to law) as to the date, place and time of sale.

(v) Permit (prior to the start of the auction) prospective purchasers to inspect each and every article to be offered for sale.

(vi) Furnish to any buyer, consignor or owner of an article, upon request, information as to the whereabouts of that article that comes into his or her possession or that is sold or offered for sale by him or her.

(vii) Send checks for the net amount received on all sales to persons entitled to the proceeds thereof within fourteen days of date of sale (except as otherwise agreed in writing or otherwise provided by law) together with a complete detailed statement including lot number, quantity, description and selling price of each lot; total amount received on sale; and disbursements listing commission, cost of advertisement, labor, charges and allowances, and sundry expenses.

(viii) When an auctioneer has a number of the same kind of articles to be sold and intends to dispose of each of them at the amount at which the first is sold, he or she shall make an announcement to that effect prior to opening the sale of the first article.

i. If an auctioneer makes loans or advances money to consignors or prospective purchasers, this fact must be conspicuously disclosed in the auctioneer's catalogue or printed material. If the auctioneer does not provide any such printed material, he or she shall make the disclosure, either by conspicuously posting a sign, or in another similarly conspicuous manner, at the time of any advertised inspection periods prior to the auctions. For the purpose of this paragraph advertisements in newspapers or other periodicals shall not constitute printed material.

j. Except to implement a reserve price, and subject to the requirements of paragraph b of subdivision three of this section, no auctioneer, his or her consignor, employee, employer, assignee or agent for any of them may bid for his or her own account at any auction if any of them shall have access to information not otherwise available to the public regarding reserves, value or other material facts relating to the articles which are the subject of the auction, unless their status as a person with inside information and intended participation is disclosed in the auctioneer's catalogue and any printed material and on signs posted at the auction.

1 k. Wherever an estimate or estimated value of an item or lot is  
2 published in a catalogue or any other printed material published or  
3 distributed in relation to an auction sale, a general description of the  
4 estimate and its meaning and function must be included in such printed  
5 material. For the purpose of this paragraph, advertisements in newspa-  
6 pers or other periodicals shall not constitute printed material. Where  
7 no printed material is provided, and an estimate or estimated value is  
8 announced or disseminated in any manner, a general description of the  
9 estimate and its meaning and function must be available for distribution  
10 and its availability must be announced at the commencement of the  
11 auction.

12 1. In any advertisement indicating an auction sale due to a business'  
13 loss of lease or liquidation, the auctioneer must include the name of  
14 the consignor or business authorizing the auction. In any sale adver-  
15 tised as pursuant to a security agreement, the name of the debtor shall  
16 be indicated conspicuously.

17 3. a. If the reserve price is not bid, the auctioneer may withdraw a  
18 lot from sale. At the time of such withdrawal, and before bidding on  
19 another lot begins, the auctioneer shall announce that the withdrawn lot  
20 has been "passed", "withdrawn", "returned to owner" or "bought-in".

21 b. Before bidding on any lot has reached its reserve price no auctio-  
22 neer may make or place consecutive or successive bids, or place bids in  
23 response to bids from others, on behalf of the consignor, unless the  
24 fact that the auctioneer will or may bid in such a manner is clearly and  
25 conspicuously disclosed in any catalogue and any other printed material  
26 published or distributed in connection with the sale. For the purposes  
27 of this paragraph advertisements in newspapers or other periodicals  
28 shall not constitute printed material. This disclosure must also be made  
29 on signs prominently displayed in the auction room and at the entrance  
30 thereto, and must be announced by the auctioneer immediately prior to  
31 the commencement of any auction.

32 The sign required by this paragraph must be at least twelve inches by  
33 eighteen inches in dimension with letters at least one inch high, and  
34 must read as follows, or convey a substantially similar disclosure:

35 The auctioneer may open bidding on any lot by placing a bid on behalf  
36 of the seller. The auctioneer may further bid on behalf of the seller,  
37 up to the amount of the reserve, by placing successive or consecutive  
38 bids for a lot, or by placing bids in response to other bidders.

39 c. After bidding has reached the reserve price of a lot:

40 (i) the auctioneer may not bid on behalf of the consignor or the  
41 auction house; and

42 (ii) the auctioneer may only accept bids from persons other than the  
43 consignor or the auction house except absentee telephone, order or other  
44 agent's bids;

45 (iii) this paragraph shall not apply to auction sales conducted pursu-  
46 ant to an order of a court of competent jurisdiction, including an order  
47 of a bankruptcy judge or trustee, or a sale of secured property pursuant  
48 to the uniform commercial code, or the sale of property which is subject  
49 to a lien or assignment pursuant to the laws of the state of New York.

50 d. In no event shall the reserve price for any lot exceed the minimum  
51 estimated value of the lot as published in any catalogue or other print-  
52 ed material distributed by the auctioneer.

53 4. a. An auctioneer may not disclaim warranty of title of any item  
54 sold at auction. The auctioneer shall reimburse any purchaser in an  
55 amount equal to the successful bid at auction plus any buyer's commis-

1 sion paid in the event it is determined that the purchaser has not  
2 acquired transferable title to the item.

3 b. At the auction sale premises only exterior signs may be displayed  
4 advertising the auction sale but the same shall not be excessive in  
5 size.

6 c. An auctioneer may not:

7 (i) offer more than one article for sale at any one time unless the  
8 combining of articles or lots is so indicated prior to the initial bid.

9 (ii) represent an article to be guaranteed by the manufacturer or the  
10 owner unless a manufacturer's or owner's guarantee accompanies the arti-  
11 cle.

12 (iii) offer an article contained in a carton, package or other  
13 container commonly known as a blind article unless prior to the offer it  
14 is announced that the highest bidder may reject the article if not  
15 satisfactory to him or her. This provision does not refer to an auction  
16 of articles in bulk where a sample is displayed and balance of articles  
17 are represented to conform to the sample.

18 (iv) accept as payment or exchange any article previously knocked down  
19 or sold to a successful bidder. The article knocked down or sold must be  
20 delivered to the bidder or, if the auctioneer is willing and at the  
21 bidder's election, the purchase price refunded in full. No other article  
22 may be offered to said bidder as a substitute or replacement. Such  
23 refund shall take place within a reasonable time or may be applied as  
24 part payment or payment for any other article purchased at auction by  
25 the same bidder.

26 5. a. Upon any violation of this section, an application may be made  
27 by the attorney general in the name of the people of the state of New  
28 York to a court or justice having jurisdiction to issue an injunction,  
29 and upon notice to the defendant of not less than five days, to enjoin  
30 and restrain the continuance of the violation. If it shall appear to the  
31 satisfaction of the court or justice that the defendant has violated  
32 this section, an injunction may be issued by the court or justice,  
33 enjoining and restraining any further violation, without requiring proof  
34 that any person has, in fact, been injured or damaged thereby. In any  
35 such proceeding, the court may make allowances to the attorney general  
36 as provided in paragraph six of subdivision (a) of section eighty-three  
37 hundred three of the civil practice law and rules, and direct restitu-  
38 tion.

39 b. Whenever the court shall determine that a violation of the  
40 provisions of this section has occurred, it may impose a civil penalty  
41 of not more than one thousand dollars for each violation. In connection  
42 with an application made under this subdivision, the attorney general is  
43 authorized to take proof and to make a determination of the relevant  
44 facts and to issue subpoenas in accordance with the civil practice law  
45 and rules.

46 c. In addition to the right of action granted to the attorney general  
47 pursuant to paragraph a of this subdivision, any buyer injured by a  
48 violation of the provisions of this section may bring an action in his  
49 own name to enjoin such unlawful practice, an action to recover his  
50 actual damages or five hundred dollars, whichever is greater, or both  
51 such actions. The court in its discretion may increase the award of  
52 damages to an amount not to exceed three times the actual damages. The  
53 court may award costs and reasonable attorneys fees to a prevailing  
54 plaintiff.

55 6. The provisions of this section shall not be applicable to auctions  
56 held as part of a fundraising event by an entity created for charitable

1 purposes within the meaning of paragraph four of subdivision (a) of  
2 section eleven hundred sixteen of the tax law where the proceeds of such  
3 fundraising event benefit such organization.

4 7. Notwithstanding the foregoing, and unless otherwise required by  
5 law, in any county with a population of forty-five thousand or less, no  
6 written contract shall be required where the reasonably estimated value  
7 of the property to be auctioned is less than one hundred thousand  
8 dollars.

9 8. The provisions of this section shall not be applicable to:

10 a. motor vehicle auctions conducted under section twenty-three of this  
11 article and the vehicle and traffic law;

12 b. auctions of poultry and livestock;

13 c. auctions of farm supplies, farm equipment, and farm real estate; or

14 d. auction sales conducted pursuant to an order of a court of compe-  
15 tent jurisdiction, including an order of a bankruptcy judge or trustee,  
16 or a sale of secured property pursuant to the uniform commercial code,  
17 or the sale of property which is subject to a lien or assignment pursu-  
18 ant to the laws of the state of New York.

19 e. the provisions of subdivision one of this section, subparagraphs  
20 (i) and (ii) of paragraph f of subdivision two of this section and of  
21 paragraph a of subdivision three of this section shall not apply to  
22 auctions of thoroughbred horses, provided that the results of such  
23 auction, including whether or not a reserve price was met, are published  
24 within twenty-four hours.

25 f. the provisions of this section shall not apply to auctions of vehi-  
26 cles or highway tools, machinery or equipment conducted by or on behalf  
27 of the federal government, or the state, its agencies, bureaus, boards,  
28 commissions and authorities, or any political subdivision of the state,  
29 or the agencies and authorities of any such subdivision.

30 § 3. Subdivision 3 of section 23 of the general business law is  
31 amended by adding a new paragraph f to read as follows:

32 f. In the event an auctioneer, auction or affiliate offers floor plan  
33 financing or extends a loan to a purchaser, the auctioneer shall  
34 disclose in a general announcement at the commencement of the auction  
35 that bidders may be participating in the sale who have been offered  
36 floor plan financing or a loan by the auctioneer, auction or affiliate  
37 or words that convey substantially the same message.

38 § 4. This act shall take effect on the sixtieth day after it shall  
39 have become a law.