

**Comments to Texas Sunset Commission**

**For Review of**

**Texas Department of Licensing and Regulations**

**and Auctioneer License Specifically**  
as Presented by The Texas Auctioneers Association

The Texas Auctioneers Association(TAA) and the Texas Department of Licensing and Regulation(TDLR) have had a working relationship from the beginning. While challenging at first due to long history of short term leadership and poor enforcement. Now we are working partners for the profession's improvement starting with the hiring of William Kuntz and Brian Francis as Directors who were willing to put in the effort to make our relationships work for the betterment of the profession.

TAA maintains around 400 members, holds a yearly convention with three full days of professional education, fundraising for the Association and selected charities, as well as holding the Texas State Auctioneer championship contest. We also hold a national Auctioneer contest each fall with auctioneers from all over the country competing for a title and pay out which this year was \$10,000 plus funds for the Texas Scottish Rite Hospital. Texas Auctioneers Association is known across the country as the leader in member benefits, best state convention, and innovator of professional training and representation. The Association also provides the required continuing education in an online format for all auctioneers needing to meet TEXAS requirements.

Our 2020 convention will complete the first three year TEXAS Certified Auction Professional education program providing follow up education to both beginning and experienced auctioneers in business and auction related classes.

The Association also provides online CE education for all licensed auctioneers in Texas and public education on hiring a professional auctioneer thru online video and tips on the Association website. The Association members have also helped in determining education needs and test question reviews.

TAA for the past thirty years has worked with TDLR to regulate our profession with the passage of the Education and Recovery Fund, provided assistance in regulating persons acting as auctioneers without a license and those failing to make payment of funds to consignors of auctions by unscrupulous auctioneers as well as members providing evidence at hearings against illegal acts of State laws and rules.

Based on our history with TDLR and knowledge of all the licenses they oversee, we recommend that this Agency is as much needed now as ever before. We feel that this Agency has also been vindicated each Legislative session by the constant moving of license regulation from other State agencies to TDLR due their ability to efficiently regulate various professions successfully to the point of overseeing now 40 professions with over 800,000 licenses within 212 license types.

We would like to recommend an increase in funding for the agency to allow for more employees needed to accomplish the desired timeliness for processing licenses and complaints, which has been greatly improved over the years but with increased oversight of professions a budget increase would be beneficial.

### Specific Comments to the Auctioneer License

In 1975 the Legislature enacted a law governing the requirement for licensing of auctioneers operating within Texas to provide minimal professional requirements, provide one State license good for all jurisdictions within the State and to provide lawful penalties for those acting as auctioneers without a license and for those auctioneers failing to abide by the added law and accompanying rules.

The law and rules have been revised many times since then to keep up with the changing times but more are needed to keep up with technology and increased acceptance of the internet.

The current law and rules along with TDLR regulation has kept infractions under better control than they had in the past. Within the last two years there have been 49 Administrative Orders against auctioneers for acting without a license and failure to pay consignor sales in a timely manner. TDLR has been able to provide restitution to sellers from the Auctioneers Recovery fund with the perceived repayment by the auctioneer as well as penalties for the respondent auctioneers. These payments from the Recovery Fund makes all responsible licensed Auctioneers victims of theft buy unlawful auctioneers. The auctioneer law and rules has become the consumer protection place for auction sellers and buyers. TDLR has paid, in these past two years, sellers from the Recovery fund in excess of \$81,000 plus prorated payments to sellers for two auctioneers who failed to pay in excess of the limits covered by the Fund which could amount to more than \$60,000. TDLR also imposed fines to auctioneers in amount of \$63,000 since July of 2017.

Currently anyone desiring to conduct auctions, including those who have been penalized by TDLR, can design or use any web based format to conduct devious auctions with no fear of law infraction or responsibility to consignors or buyers by a State or Federal entity. This needs to be addressed by recommendation to the Legislators to revise current laws to provide greater penalties for infractions, provide for collection of fines and penalties, and to cover ever increasing usage of internet programs in the auction profession. These persons conducting illegal or online auctions

are also not collecting and remitting Texas sale taxes, which could be an enormous amount of loss for the State.

Auctioneers across America sell millions of dollars in merchandise with many individual items bring hundreds of thousands of dollars each and in real estate parcels could bring millions of dollars each.

Once licensed, auctioneer's have more fiduciary responsibility than any other profession under the Department's regulation. On any one day auctioneers could collect hundreds of thousands of dollars from clients with their expectations of being paid for their assets that were sold at auction. Out of the approximately 2,400 licensed auctioneers only 10 had administrative penalties in the past two years. Nearly all auctioneers take their fiduciary responsibility seriously! This indicates that the current law, rules and enforcement have been working in recent years, but there are no statistics about what is happening thru online auctions as they are not regulated in Texas leaving any victims to their own resources to recoup any damages.

The Federal Trade Commission in April 2003 stated "Auction fraud is the single largest category of Internet related complaints in the FTC's Consumer Sentinel database, which logged more than 51,000 auction complaints in 2002." These complaints thru the help of the National Association of Attorneys General resulted in 57 criminal actions for fraud.

TAA recently conducted a survey the purpose being to get input from members of current license law & rules, what area of the profession our members are working, what is their foreseen future of the profession and more. 67% of respondents feel that their license is required in order for them to make a living. 55% are satisfied with current law and rules but that anyone who receives funds from buyers for consignors sale of merchandise should have government oversight for both consumer protection and professional conduct. 87% agreed that the auction law should not be removed but brought into the 21st century and prepare for further advances in technology and internet usage.

There are currently 29 States with auction laws, 10 of which regulate internet only auctions, thereby providing both consumer protection and auctioneer professional regulation. The Sunset Commission should recommend that TDLR and the Auctioneer license be maintained for the foreseeable future as recommended, so Texas can remain a strong proponent of the auction method of marketing assets in these United States.

We, The Texas Auctioneers Association do recommend the following changes to bring the law and rules into the current commerce environment and prepare for the highly technological advances now prominent in the profession with more advances sure to become commonplace in the future:

1).We are recommending the Commission maintain the auctioneer law and rules for consumer protection, professional guide lines, and to keep the cost of the professional

license to the minimum. Removal of the law and rules would take the industry back to pre 1975 problems such as uncontrolled ease of deceiving the public, non-payment of consigned merchandise to the sellers with no government recourse, and added cost to real professionals with jurisdictional permits, licenses and fees to provide auction services.

2). We recommend the penalties for law and rule infractions be increased too actually be a deterrent to breaking the law and rules for the sake of greed. Removal of license, reimbursement of Recovery funds and penalty fines with misdemeanor conviction are not strong enough, as referenced by continuing basic law of requiring an auction license and paying consignor timely are not doing their job of deterrent. These infractions have been around since the law was enacted in 1975. There must be additional penalties such as jail time for those who continuously violate the law as well as make no restitution to the Recovery Fund and fail to pay penalties placed by TDLR.

3). The Auctioneer and Associate Auctioneer are possibly the State's simplest profession to get licensed in. With the application fees being \$50.00 and \$25.00 and renewals being the same, reduction of fees seem unnecessary and should be possibly increased to reflect the responsibility auctioneers.. We recommend that the State required test be replaced with the required pre-education course completion be accepted.

4). We also recommend the continuing use of and possible expansion of internet based applications for license, testing, payment of license, recovery fund and renewal fees thus making the auction profession accessible to those desiring to enter and remain in the profession.

5). Google of “online auctions in Texas” will return 22,300,000 results including State agencies holding their own surplus auctions! Some are licensed auctioneers but could be considered unlicensed as online auctions are not regulated. Some are based out of State but selling property located in Texas. Only the licensed auctioneers operating online only auctions are collecting TEXAS sale taxes as required. Online auctions are very prominent in the industry with anything from household goods to heavy equipment and real estate being sold every day with no Government oversight on a very easy method to deceive buyers and delay or fail to pay consignors.