

1 AMENDMENT TO HOUSE BILL 5803

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 5803, AS AMENDED,  
3 with reference to the page and line numbers of House  
4 amendment No. 2 as follows:

5 on page 1, by replacing line 6 with the following:  
6 "changing Section 10-1 and adding Section 10-27 as follows:";  
7 and

8 on page 2, by inserting below line 26 the following:  
9 "(d) Nothing in this Act, except Section 10-27, shall be  
10 construed to apply to a person that provides an Internet  
11 auction listing service as defined in Section 10-27."; and

12 on page 2, by inserting below line 27 the following:

13 "(225 ILCS 407/10-27 new)  
14 Sec. 10-27. Registration of Internet Auction Listing  
15 Service.

16 (a) For the purposes of this Section:  
17 (1) "Internet Auction Listing Service" means a  
18 website on the Internet, or other interactive computer  
19 service that is designed to allow or advertised as a  
20 means of allowing users to offer personal property or  
21 services for sale or lease to a prospective buyer or

1 lessee through an on-line bid submission process using  
2 that website or interactive computer service and that  
3 does not examine, set the price, or prepare the  
4 description of the personal property or service to be  
5 offered, or in any way utilize the services of a natural  
6 person as an auctioneer.

7 (2) "Interactive computer service" means any  
8 information service, system, or access software provider  
9 that provides or enables computer access by multiple  
10 users to a computer server, including specifically a  
11 service or system that provides access to the Internet.

12 (b) It is unlawful for any person, corporation, limited  
13 liability company, partnership, or other entity to provide an  
14 Internet auction listing service in the State of Illinois for  
15 compensation without being registered with the Office of  
16 Banks and Real Estate (OBRE) when:

17 (1) the person, corporation, limited liability  
18 company, partnership, or other entity providing the  
19 Internet auction listing service is located in the State  
20 of Illinois;

21 (2) the prospective seller or seller, prospective  
22 lessor or lessor, or prospective purchaser or purchaser  
23 is located in the State of Illinois and is required to  
24 agree to terms with the person, corporation, limited  
25 liability company, partnership, or other entity providing  
26 the Internet auction listing service, no matter where  
27 that person, corporation, limited liability company,  
28 partnership, or other entity is located; or

29 (3) the personal property offered for sale or lease  
30 is located in the State of Illinois.

31 (c) Any person, corporation, limited liability company,  
32 partnership, or other entity that provides an Internet  
33 auction listing service in the State of Illinois for  
34 compensation under any of the circumstances listed in

1 subsection (b) shall register with OBRE on forms provided by  
2 OBRE accompanied by the required fee as provided by rule.  
3 Such registration shall include information as required by  
4 OBRE and established by rule as OBRE deems necessary to  
5 enable users of the Internet auction listing service in  
6 Illinois to identify the entity providing the service and to  
7 seek redress or further information from such entity. The fee  
8 shall be sufficient to cover the reasonable costs of OBRE in  
9 administering and enforcing the provisions of this Section.  
10 The registrant shall be required to certify:

11 (1) that the registrant does not act as the agent  
12 of users who sell items on its website, and acts only as  
13 a venue for user transactions;

14 (2) that the registrant requires sellers and  
15 bidders to register with the website and provide their  
16 name, address, telephone number and e-mail address;

17 (3) that the registrant retains such information  
18 for a period of at least 2 years;

19 (4) that the registrant retains transactional  
20 information consisting of at least seller identification,  
21 high bidder identification, and item sold for at least 2  
22 years from the close of a transaction, and has a  
23 mechanism to identify all transactions involving a  
24 particular seller or buyer;

25 (5) that the registrant has a mechanism to receive  
26 complaints or inquiries from users;

27 (6) that the registrant adopts and reasonably  
28 implements a policy of suspending, in appropriate  
29 circumstances, the accounts of users who, based on the  
30 registrant's investigation, are proven to have engaged in  
31 a pattern of activity that appears to be deliberately  
32 designed to defraud consumers on the registrant's  
33 website; and

34 (7) that the registrant will comply with OBRE and

1 law enforcement requests for stored data in its  
2 possession, subject to the requirements of applicable  
3 law.

4 (d) OBRE may refuse to accept a registration which is  
5 incomplete or not accompanied by the required fee. OBRE may  
6 impose a civil penalty not to exceed \$10,000 upon any  
7 Internet auction listing service that intentionally fails to  
8 register as required by this Section, and may impose such  
9 penalty or revoke, suspend, or place on probation or  
10 administrative supervision the registration of any Internet  
11 auction listing service that:

12 (1) intentionally makes a false or fraudulent  
13 material representation or material misstatement or  
14 misrepresentation to OBRE in connection with its  
15 registration, including in the certification required  
16 under subsection (c);

17 (2) is convicted of any crime, an essential element  
18 of which is dishonesty, fraud, larceny, embezzlement, or  
19 obtaining money, property, or credit by false pretenses  
20 or by means of a confidence game; or is convicted in this  
21 or another state of a crime that is a felony under the  
22 laws of this State; or is convicted of a felony in a  
23 federal court;

24 (3) is adjudged to be a person under legal  
25 disability or subject to involuntary admission or to meet  
26 the standard for judicial admission as provided in the  
27 Mental Health and Developmental Disabilities Code;

28 (4) has been subject to discipline by another  
29 state, the District of Columbia, a territory of the  
30 United States, a foreign nation, a governmental agency,  
31 or any other entity authorized to impose discipline if at  
32 least one of the grounds for that discipline is the same  
33 as or equivalent to one of the grounds for discipline set  
34 forth in this Section or for failing to report to OBRE,

1 within 30 days, any adverse final action taken against  
2 the registrant by any other licensing or registering  
3 jurisdiction, government agency, law enforcement agency,  
4 or court, or liability for conduct that would constitute  
5 grounds for action as set forth in this Section;

6 (5) fails to make available to OBRE personnel  
7 during normal business hours all records and related  
8 documents maintained in connection with the activities  
9 subject to registration under this Section;

10 (6) makes or files false records or reports in  
11 connection with activities subject to registration,  
12 including but not limited to false records or reports  
13 filed with State agencies;

14 (7) fails to provide information within 30 days in  
15 response to a written request made by the OBRE to a  
16 person designated in the registration for receipt of such  
17 requests;

18 (8) offers or advertises real estate for sale or  
19 lease at auction without a valid broker or salesperson's  
20 license under the Real Estate License Act of 2000, or any  
21 successor Act, unless exempt from licensure under the  
22 terms of the Real Estate License Act of 2000, or any  
23 successor Act; or

24 (9) fails to perform any act or procedure described  
25 in subsection (c) of this Section.

26 (e) Registrations issued pursuant to this Section shall  
27 expire on September 30 of odd-numbered years. A registrant  
28 shall submit a renewal application to OBRE on forms provided  
29 by OBRE along with the required fee as established by rule.

30 (f) Operating an Internet auction listing service under  
31 any of the circumstances listed in subsection (b) without  
32 being currently registered under this Section is declared to  
33 be adverse to the public welfare, to constitute a public  
34 nuisance, and to cause irreparable harm to the public

1 welfare. The Commissioner of OBRE, the Attorney General of  
2 the State of Illinois, the State's Attorney of any county in  
3 the State, or any other person may maintain an action and  
4 apply for injunctive relief in any circuit court to enjoin  
5 the person or entity from engaging in such practice.

6 (g) The provisions of Sections 20-25, 20-30, 20-35,  
7 20-40, 20-45, 20-50, 20-55, 20-60 and 20-75 of this Act shall  
8 apply to any actions of OBRE exercising its authority under  
9 subsection (d) as if a person required to register under this  
10 Section were a person holding or claiming to hold a license  
11 under this Act.

12 (h) OBRE shall have the authority to adopt such rules as  
13 may be necessary to implement or interpret the provisions of  
14 this Section."