

WISCONSIN LEGISLATIVE COUNCIL STAFF

JUL 19 2000
LCRC
FORM 2

RULES CLEARINGHOUSE

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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 00-106

AN ORDER to amend the Note following RL 125.03 and 126.02 (13); and to create RL 121.025 and 126.03, relating to the regulation of auctioneers and auction companies.

Submitted by **DEPARTMENT OF REGULATION AND LICENSING**

06-12-00 RECEIVED BY LEGISLATIVE COUNCIL.

07-11-00 REPORT SENT TO AGENCY.

RNS:JLK:jal;rv

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

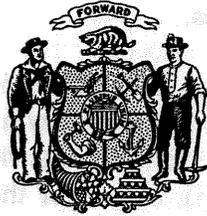
Comment Attached YES NO

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CLEARINGHOUSE RULE 00-106

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

1. Statutory Authority

Section 480.01 (4), Stats., defines "auctioneer," and s. 480.08 (1) (a), Stats., prohibits a person from acting as an auctioneer unless the person is registered. This means that a person may not engage in, or advertise or otherwise hold himself or herself out as being able to engage in, the calling for and the recognition and acceptance of offers for the purchase of goods or real estate at an auction unless the person is registered as an auctioneer.

Similarly, s. 480.01 (2), Stats., defines "auction company," and s. 480.08 (1) (b), Stats., prohibits a person from acting as an auction company unless the person is registered. This means that a person may not manage an auction or have primary responsibility for handling sales proceeds, downpayments, earnest money deposits or other trust funds received by an auctioneer, the person's principal or any other person at or as a result of an auction unless the person is registered as an auction company or auctioneer.

Nothing in ch. 480, Stats., gives the Department of Regulation and Licensing (DRL) authority to regulate other activities that a person may choose to engage in. For example, ch. 480 does not give DRL authority to regulate a person who simply works at an auction helping to set up merchandise displays before the auction or packing up after the auction because the person need not be registered. Because DRL does not have statutory authority to prohibit a person from doing something which any person could do without being registered, it appears that there is no statutory authority for portions of s. RL 126.03 (2) (e) which prohibit an auctioneer or auction company whose registration has been suspended or revoked from engaging

in certain activities. In particular, it appears that any person may engage in the activities specified in s. RL 126.03 (2) (e) 2. and 5. without being registered; therefore, it appears that DRL is without authority to prohibit even a person whose registration has been revoked or suspended from engaging in those activities.

Moreover, it appears that any person may engage in the activities in s. RL 126.03 (2) (e) 1. *for auctions under s. 480.02 (2) (a) to (h), Stats.*, without being registered because ch. 480, Stats., does not apply to the situations described in s. 480.02 (2) (a) to (h), Stats. (or to the activities described in s. 480.02 (i) and (j), Stats., for that matter). Therefore, it appears that DRL is without authority to prohibit even a person whose registration has been revoked or suspended from engaging in the activities in s. RL 126.03 (2) (e) 1. with respect to the auctions specified in s. 480.02 (2) (a) to (h), Stats.

2. Form, Style and Placement in Administrative Code

Section 480.06 (1), Stats., provides that before submitting the rule to the Legislative Council Rules Clearinghouse, DRL must submit the proposed rule to the Auctioneer Board. Neither the analysis nor transmittal materials indicate that this was done. The materials submitted to the Legislature should include a statement of compliance with this statutory requirement.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. The analysis indicates that a temporary registration certificate is valid for 60 days. In contrast, s. RL 121.025 indicates that a temporary registration certificate is valid for *no more than* 60 days after the date that the applicant filed the application. These statements are not consistent for two reasons. First, the analysis suggests that the 60 days run from the date the certificate is issued, but s. RL 121.025 indicates that the 60 days run from the date of application. Unless DRL always issues a certificate the same day an application is received, there is a distinction between the two statements which should be clarified. Second, "60 days" is not the equivalent of "no more than 60 days." If the intent is that the temporary registration certificate be valid for 60 days or until the examination results are received, whichever is earlier, this should be stated in the rule.

Also, it appears that the only distinction between a temporary certificate and a certificate is that the person has not passed the auctioneer examination. Section 480.10 (1), Stats., requires that DRL give the examination at least semiannually. Unless DRL gives it more frequently, it appears that, in most cases, a 60-day license will expire before the person is able to take the examination and get the results. Does DRL give the examination more frequently than every six months? If not, was the 60-day limit on the temporary certification intended or can the temporary certificate be renewed?

b. In s. RL 126.03 (2) (c), a quotation mark should be inserted before the phrase "auction sales staff."

c. In s. RL 126.03 (2) (e) 4., the meaning of "auctioneer-related professional" is unclear. In subd. 5., the second instance of "bid calling" should be hyphenated.

STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : DEPARTMENT OF REGULATION AND
DEPARTMENT OF REGULATION : LICENSING ADOPTING RULES
AND LICENSING : (CLEARINGHOUSE RULE 00-)

PROPOSED ORDER

An order of the Department of Regulation and Licensing to amend the Note following RL 125.03, and RL 126.02 (13); and to create RL 121.025 and 126.03, relating to the regulation of auctioneers and auction companies.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statutes authorizing promulgation: ss. 227.11 (2), 480.06 and 480.08 (7), Stats.

Statutes interpreted: ss. 480.08 (7), 480.20 and 480.24, Stats.

This proposed rule-making order of the Department of Regulation and Licensing amends rules relating to the regulation of auctioneers and auction companies. A new rule section is created in ch. RL 126, to describe the effect of a suspension or revocation.

The Note following s. RL 125.03 is amended to correct a citation.

Section RL 126.02 (13) is amended to correct an error. The term "buyer's fee or surcharge" is substituted for "buyer's premium or surcharge." The term "buyer's fee or surcharge" is defined in s. RL 120.02 (4).

The *Wisconsin Statutes* require in s. 480.08 (7), that a temporary registration certificate shall be valid for a period designated by the department, not to exceed one year. Section RL 121.025 is created to specify that a temporary registration certificate is valid for 60 days.

Section RL 126.03 is created to describe the auctioneer-related activities that may not be performed by a person whose registration as an auctioneer or auction company has been suspended or revoked. Under the rule, a suspended or revoked auctioneer or auction company must notify all persons with whom the auctioneer or auction company has a contract for auctioneer services of the suspension or revocation. The rule also describes specific activities that may not be performed by a suspended or revoked auctioneer or auction company.

TEXT OF RULE

SECTION 1. RL 121.025 is created to read:

RL 121.025 Temporary registration. A temporary registration certificate issued under s. 480.08 (7), Stats., shall be valid for no more than 60 days after the date that the applicant has filed an application for registration as an auctioneer with the department.

SECTION 2. The Note following s. RL 125.03 is amended to read:

Note: This provision applies only to registrants not required to maintain a trust account. Registrants for whom a trust account is required must use the trust account bookkeeping system described in s. RL ~~125.11~~ 125.12.

SECTION 3. RL 126.02 (13) is amended to read:

RL 126.02 (13) If a buyer's fee or surcharge is a condition of sale, failing to post written notice at the location where the auction is to be conducted, prior to the commencement of an auction, of the percentage or other amount of the buyer's ~~premium~~ fee or surcharge.

SECTION 4. RL 126.03 is created to read:

RL 126.03 Effect of suspension or revocation on registrant. (1) An auctioneer or auction company whose registration has been suspended or revoked shall notify all persons with whom the auctioneer or auction company has a contract for services to be performed during the period of suspension or following revocation. The notice shall be in writing, state that the registration of the auctioneer or auction company has been suspended or revoked, and describe the terms of the suspension or revocation.

(2) An auctioneer or auction company whose registration has been suspended or revoked by the board may not engage in the following activities during the term of the suspension or revocation:

(a) Call an auction by calling for, recognizing, or accepting offers for the purchase of goods or real estate at an auction.

(b) Advertise, represent or otherwise hold out as being available to call or manage an auction.

(c) Advertise, represent or otherwise hold out as being an auctioneer or auction company or use the title "auctioneer," "registered auctioneer," "certified auctioneer," "licensed auctioneer," "auction company," "auction sales staff," "auction team member" or any similar title.

(d) Solicit, negotiate or enter into any auction contract, auction listing, auction consignment, or related auction agreement, including assisting or aiding another registrant to perform auction-related duties.

(e) Perform, manage or supervise any of the following:

1. Call for bids at any type of auction, including auctions under s. 480.02 (2) (a) to (h), Stats.

2. Work as, or perform duties related to, an auction cashier, an auction clerk, or an auction ring person or grounds person, including bid-relaying or spotting, merchandise displaying, or assisting the auctioneer or auction staff before, during or after the conducting of an auction.

3. Oversee, in any manner, the conducting of any auction.

4. Accept any form of referral fee, finder's fee, commission, commission sharing or splitting, or related compensation from any auctioneer, auction company, or auctioneer-related professional.

5. Participate in any form of auctioneer-related bid-calling, bid-calling contests or competitions, either as a contestant, judge, master of ceremonies or in any other capacity.

6. Suggest or imply to the public, privately or through advertising, that he or she is able to perform any of the activities in subds. 1. to 5.

(3) An auctioneer or auction company may not employ, retain or otherwise utilize an auctioneer or auction company whose registration has been suspended or revoked to perform any auction-related activity described in sub. (2). This section does not prohibit an auctioneer or auction company from contracting to perform services that an auctioneer or auction company is unable to perform because of a registration suspension or revocation and which the auctioneer or auction company contracted to perform prior to the license suspension or revocation.

(END OF TEXT OF RULE)

The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register pursuant to s. 227.22 (2) (intro.), Stats.

Dated _____

Agency _____

Marlene A. Cummings, Secretary
Department of Regulation and Licensing

FISCAL ESTIMATE

1. The anticipated fiscal effect on the fiscal liability and revenues of any local unit of government of the proposed rule is: \$0.00.
2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is: \$0.00.
3. The projected net annualized fiscal impact on state funds of the proposed rule is: \$0.00.

INITIAL REGULATORY FLEXIBILITY ANALYSIS

These proposed rules will be reviewed by the department through its Small Business Review Advisory Committee to determine whether there will be an economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats.

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6/1/2000



Judith B. Robson
Wisconsin State Senator

October 4, 2000

Senator Robert Wirch
Chair, Committee on Economic Development, Housing and Government Operations
Room 310 South

Representative Lorraine Seratti
Chair, Committee on Small Business and Economic Development
Room 18 North

Re: Clearinghouse Rule 00-106 (relating to the regulation of auctioneers and auction companies)

Dear Senator Wirch and Representative Seratti:

I am writing in regards to the above captioned rule, which has been referred to your committees for review.

A portion of this rule appears to exceed the authority of the Department of Regulation and Licensing to write administrative rules. An explanation of how the rule exceeds its statutory authority is provided in the Legislative Council Rules Clearinghouse report on this rule. The Department's response to the Legislative Council comments, contained in the final version of the rule, does not address the issues originally raised by the Legislative Council.

Our state constitution gives the Legislature sole authority to write state law. We sometimes delegate that authority to agencies, giving them authority to write administrative rules. However, we retain oversight and control over the rules promulgated by agencies. We do this by ensuring that rules are actually based on statutes and that they properly interpret the statutes on which they are based. Rules failing to meet these criteria undermine the integrity of the legislature by allowing agencies, rather than the Legislature, to make law.

I therefore urge you to look carefully at Clearinghouse Rule 00-106, relating to the

regulation of auctioneers and auction companies, to see if the rule exceeds the statutory authority of the Department of Regulation and Licensing.

If you have any questions about this matter, please let me know.

Sincerely,

Senator Judith B. Robson
15th Senate District

JBR:da



Judith B. Robson
Wisconsin State Senator

October 4, 2000

Senator Robert Wirch
Chair, Committee on Economic Development, Housing and Government Operations
Room 310 South

Representative Lorraine Seratti
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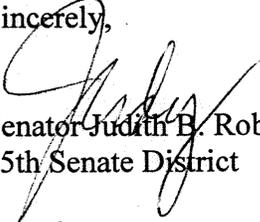
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I therefore urge you to look carefully at Clearinghouse Rule 00-106, relating to the

regulation of auctioneers and auction companies, to see if the rule exceeds the statutory authority of the Department of Regulation and Licensing.

If you have any questions about this matter, please let me know.

Sincerely,


Senator Judith E. Robson
15th Senate District

JBR:da

SEP 25 2000

**STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING**

**IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : DEPARTMENT OF REGULATION
DEPARTMENT OF REGULATION : AND LICENSING ADOPTING RULES
AND LICENSING : (CLEARINGHOUSE RULE 00-106**

TO: Senator Judy Robson, Senate Co-Chairperson
Joint Committee for the Review of Administrative Rules
Room 15 South, State Capitol
Madison, Wisconsin 53702

PLEASE TAKE NOTICE that the DEPARTMENT OF REGULATION AND LICENSING is submitting in final draft form rules relating to auctioneers and auction companies.

Please stamp or sign a copy of this letter to acknowledge receipt. If you have any questions concerning the final draft form or desire additional information, please contact Pamela Haack at 266-0495.

**STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING**

IN THE MATTER OF RULE-MAKING :	
PROCEEDINGS BEFORE THE :	REPORT TO THE LEGISLATURE
DEPARTMENT OF REGULATION :	ON CLEARINGHOUSE RULE 00-106
AND LICENSING :	(s. 227.19 (3), Stats.)

I. THE PROPOSED RULE:

The proposed rule, including the analysis and text, is attached.

II. REFERENCE TO APPLICABLE FORMS:

No new or revised forms are required by these rules.

III. FISCAL ESTIMATES:

These rules will have no significant impact upon state or local units of government.

IV. STATEMENT EXPLAINING NEED:

This rule-making proposes to significantly shorten the period for holding and practicing under a temporary registration to 30 days. The policy alternatives are to allow for the maximum length of time that is provided in the statutes or to shorten the time. The Auctioneer Board has recommended that the time be shortened because some companies abuse the temporary registration privilege and the consumer is not well protected.

This rule-making also proposes to list the auction-related activities that a person may or may not perform while under a suspension or revocation order. The policy alternatives are to request legal counsel to interpret the existing statutes and give guidance in specific situations or for the department to promulgate rules that more clearly state what is or is not permitted, that can more easily be understood by all, and that can more easily be enforced by the board.

V. NOTICE OF PUBLIC HEARING:

A public hearing was held on July 24, 2000. There were no appearances at the public hearing and no written comments were received.

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

The recommendations suggested by the Clearinghouse Report were adopted with the exception of modifications to proposed s. RL 126.03 (2) (e). The following comments

explain the extent of the changes that were made concerning statutory authority for proposed provisions in s. RL 126.03 (2) (e):

The department has removed subdivision (e) 2. from s. RL 126.03 (2) of the proposal as recommended. This subdivision had read: "Work as, or perform duties related to, an auction cashier, an auction clerk, or an auction ring person or grounds person, including bid-relaying or spotting, merchandise displaying, or assisting the auctioneer or auction staff before, during or after the conducting of an auction."

The department has amended the proposed subdivision (e) (5) from s. RL 126.03 (2), as follows:

~~"Participate in any form of auctioneer-related bid-calling, bid-calling contests or competitions, either as a contestant, judge, master of ceremonies or in any other capacity."~~

The department has concluded that sufficient attention must be given to the fact that an "auction company" includes a person who **manages** an auction. In addition, "auction company representative" includes an **individual**, not just a partnership, association or corporation. Therefore, the department does have the authority to prevent an individual whose registration has been suspended or revoked from performing activities that could be construed as "managing an auction."

The board has authority under s. 480.24 (2), Stats., to "limit" a credential and thereby to restrict the scope of a registrant's practice. Section 440.01 (1) (d), Stats. The restrictions imposed in proposed s. RL 126.03 (2) (e), are limitations which the board and department consider to be necessary in order to make disciplinary orders effective and to adequately protect the public who attend auctions and who contract with auctioneers. The department also notes that s. 480.02 (2) (a) to (g), Stats., states that Chapter 480 does not apply to certain types of auctions. This "applicability" section exempts auctions, not persons, from the registration requirements and specifically does not exempt registrants who have been disciplined by the board.

VII. FINAL REGULATORY FLEXIBILITY ANALYSIS:

See the comments of a member of the department's Small Business Review Advisory Committee and the department's response on page 4 of the rule-making order, under this same hearing.

STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : DEPARTMENT OF REGULATION AND
DEPARTMENT OF REGULATION : LICENSING ADOPTING RULES
AND LICENSING : (CLEARINGHOUSE RULE 00-106)

PROPOSED ORDER

An order of the Department of Regulation and Licensing to amend the Note following RL 125.03, and RL 126.02 (13); and to create RL 121.025 and 126.03, relating to the regulation of auctioneers and auction companies.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statutes authorizing promulgation: ss. 227.11 (2), 480.06 and 480.08 (7), Stats.

Statutes interpreted: ss. 480.08 (7), 480.20 and 480.24, Stats.

The proposed rules were submitted to the Auctioneer Board pursuant to s. 480.06 (1), Stats. This rule-making order of the Department of Regulation and Licensing amends rules relating to the regulation of auctioneers and auction companies. A new rule section is created in ch. RL 126, to describe the effect of a suspension or revocation.

The Note following s. RL 125.03 is amended to correct a citation.

Section RL 126.02 (13) is amended to correct an error. The term "buyer's fee or surcharge" is substituted for "buyer's premium or surcharge." The term "buyer's fee or surcharge" is defined in s. RL 120.02 (4).

The *Wisconsin Statutes* require in s. 480.08 (7), that a temporary registration certificate shall be valid for a period designated by the department, not to exceed one year. Section RL 121.025 is created to specify that a temporary registration certificate is valid for no more than 60 days after the date that the applicant filed the application. The department gives the auctioneer examination by computer every week by appointment.

Section RL 126.03 is created to describe the auctioneer-related activities that may not be performed by a person whose registration as an auctioneer or auction company has been suspended or revoked. Under the rule, a suspended or revoked auctioneer or auction company must notify all persons with whom the auctioneer or auction company has a contract for auctioneer services of the suspension or revocation. The rule also describes specific activities that may not be performed by a suspended or revoked auctioneer or auction company.

TEXT OF RULE

SECTION 1. RL 121.025 is created to read:

RL 121.025 Temporary registration. A temporary registration certificate issued under s. 480.08 (7), Stats., shall be valid for no more than 60 days after the date that the applicant has filed an application for registration as an auctioneer with the department.

SECTION 2. The Note following s. RL 125.03 is amended to read:

Note: This provision applies only to registrants not required to maintain a trust account. Registrants for whom a trust account is required must use the trust account bookkeeping system described in s. RL ~~125.11~~ 125.12.

SECTION 3. RL 126.02 (13) is amended to read:

RL 126.02 (13) If a buyer's fee or surcharge is a condition of sale, failing to post written notice at the location where the auction is to be conducted, prior to the commencement of an auction, of the percentage or other amount of the buyer's premium fee or surcharge.

SECTION 4. RL 126.03 is created to read:

RL 126.03 Effect of suspension or revocation on registrant. (1) An auctioneer or auction company whose registration has been suspended or revoked shall notify all persons with whom the auctioneer or auction company has a contract for services to be performed during the period of suspension or following revocation. The notice shall be in writing, state that the registration of the auctioneer or auction company has been suspended or revoked, and describe the terms of the suspension or revocation.

(2) An auctioneer or auction company whose registration has been suspended or revoked by the board may not engage in the following activities during the term of the suspension or revocation:

(a) Call an auction by calling for, recognizing, or accepting offers for the purchase of goods or real estate at an auction.

(b) Advertise, represent or otherwise hold out as being available to call or manage an auction.

(c) Advertise, represent or otherwise hold out as being an auctioneer or auction company or use the title "auctioneer," "registered auctioneer," "certified auctioneer," "licensed auctioneer," "auction company," "auction sales staff," "auction team member" or any similar title.

(d) Solicit, negotiate or enter into any auction contract, auction listing, auction consignment, or related auction agreement, including assisting or aiding another registrant to perform auction-related duties.

(e) Perform, manage or supervise any of the following:

1. Call for bids at any type of auction, including auctions under s. 480.02 (2) (a) to (h), Stats.
2. Oversee, in any manner, the conducting of any auction.
3. Accept any form of referral fee, finder's fee, commission, commission sharing or splitting, or related compensation from any auctioneer, auction company, or auctioneer-related professional.
4. Participate in any form of auctioneer-related bid-calling.
5. Suggest or imply to the public, privately or through advertising, that he or she is able to perform any of the activities in subsds. 1. to 4.

(3) An auctioneer or auction company may not employ, retain or otherwise utilize an auctioneer or auction company whose registration has been suspended or revoked to perform any auction-related activity described in sub. (2). This section does not prohibit an auctioneer or auction company from contracting to perform services that an auctioneer or auction company is unable to perform because of a registration suspension or revocation and which the auctioneer or auction company contracted to perform prior to the license suspension or revocation.

(END OF TEXT OF RULE)

The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register pursuant to s. 227.22 (2) (intro.), Stats.

Dated _____ Agency _____

Marlene A. Cummings, Secretary
Department of Regulation and Licensing

FISCAL ESTIMATE

1. The anticipated fiscal effect on the fiscal liability and revenues of any local unit of government of the proposed rule is: \$0.00.

2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is: \$0.00.

3. The projected net annualized fiscal impact on state funds of the proposed rule is: \$0.00.

FINAL REGULATORY FLEXIBILITY ANALYSIS

A member of the department's Small Business Review Advisory Committee had the following comment: "This rule will impact all auction companies and I assume these firms are all small businesses. I am concerned that the restriction resulting from the action of an auctioneer apply to the entire auction company. This could result in 'innocent' people employed by the auction company, but not involved with the infractions being impacted with loss of income and/or employment. Unless the auction company (small business) and the auctioneer are one and the same - I suggest 'company' and 'auctioneer' actions be separated."

The department offered the following response and made no additional changes. Section 480.01, Stats., and s. RL 121.02, "auctioneer" and "auction company" in such a way that an auctioneer is an **individual** who calls auctions or advertises his or her availability to do so. An auction company is an individual who does not have an auctioneer license and is not able to call auctions, but who does wish to manage auctions and contract with registered auctioneers to call an auction managed by the individual. In addition, an auction company is a corporation, a partnership or an association that wishes to manage auctions and contract with registered auctioneers to call an auction managed by the corporation, partnership or association. Thus, an auction company is able to contract with any auctioneer to call auctions managed by the auction company.

The rule says "an auctioneer or auction company whose registration has been suspended or revoked..." The rule is properly stated because the board may appropriately discipline one or the other, or both. A prosecutor will only include the auction company if the prosecutor believes that the company, based on the makeup of its ownership and the involvement of the owner or owners, should be disciplined.

These rules will have no significant adverse impact on small businesses, as defined in s. 227.114 (1) (a), Stats.