

## Clearinghouse Rule 25-030

### STATE OF WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

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IN THE MATTER OF RULEMAKING	:	PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE	:	DEPARTMENT OF SAFETY AND
DEPARTMENT OF SAFETY AND	:	PROFESSIONAL SERVICES
PROFESSIONAL SERVICES	:	ADOPTING RULES
	:	(CLEARINGHOUSE RULE )

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#### PROPOSED ORDER

An order of the Department of Safety and Professional Services to **amend** SPS 120.02 (1) (d), 121.02 (1), 124.02 (7), 125.08 (2) (Note) and (3) (Note), and 126.03 (2) (e) 5.; to **repeal and recreate** SPS 121.02 (2) (Note), 121.035 (Note), and 122.02 (Note); and to **create** SPS 120.02 (1m) relating to online auctions.

Analysis prepared by the Department of Safety and Professional Services.

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#### ANALYSIS

##### **Statutes interpreted:**

Section 480.01, Stats.

##### **Statutory authority:**

Sections 227.11 (2), 480.04 (1) and (2), 480.06, Stats.

##### **Explanation of agency authority:**

Section 227.11 (2) (a), Stats. provides “[e]ach agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute . . .”

Although as stated in section 480.04 (2), Stats. the Auctioneer Board does not have rule-making authority, pursuant section 480.04 (1), Stats., “the board shall advise the secretary on matters relating to auctioneers or auction companies or to the board.”

Section 480.06, Stats. details the relationship between the Department as the rule-making authority and the board as the subject matter experts when promulgating rules.

##### **Related statute or rule:**

None.

**Plain language analysis:**

The Department reviewed chapter SPS 120 to update the definition of “auction” in light of the increasing popularity of online auctions. Additionally, the Department conducted a comprehensive review of chapters SPS 120 to 126 to review necessary updates and remove obsolete or unnecessary references.

**Summary of, and comparison with, existing or proposed federal regulation:**

None

**Comparison with rules in adjacent states:****Illinois:**

Illinois requires any person who will conduct an auction or provide auction services to obtain a license as an auctioneer. The Auction License Act establishes definitions, licensing requirements, and general provisions of matters pertaining to auctions and auctioneers. In this Act, “auction” is defined as “the sale or lease of property, real or personal, by means of exchanges between an auctioneer and prospective purchasers or lessees, which consists of a series of invitations for offers made by the auctioneer and offers by prospective purchasers or lessees for the purpose of obtaining an acceptable offer for the sale or lease of the property, including the sale or lease of property via mail, telecommunications, or the Internet”. Additionally, Illinois has a definition for “internet listing service” as a “a website on the Internet, or other interactive computer service, that is designed to allow or advertise as a means of allowing users to offer personal property or services for sale or lease to a prospective buyer or lessee through an online bid submission process using that website or interactive computer service and that does not examine, set the price, prepare the description of the personal property or service to be offered, or in any way utilize the services of a natural person as an auctioneer.” [225 ILCS 407/5-10]

**Iowa:**

Iowa does not require auctioneers to be licensed statewide. However, some municipalities and counties may require permits. Iowa does not define nor regulate online auctions.

**Michigan:**

As of June 2014, Michigan does not require auctioneer licenses. Michigan does not define nor regulate online auctions.

**Minnesota:**

Minnesota Statutes authorizes each county to issue an auctioneer license. The requirements are specified in chapter 330 of the Minnesota Compiled Statutes. The Minnesota Department of Revenue under chapter 8130 defines “auction” as “is a method of selling

tangible personal property in a public forum through open and competitive bidding conducted by an auctioneer licensed under Minnesota Statutes, chapter 330.” [MCL 8130.5800 Subpart 8]. Minnesota does not define nor regulate online auctions.

**Summary of factual data and analytical methodologies:**

The Department, in collaboration with the Auctioneer Board, reviewed chs. SPS 120 to 126 to bring them up to current standards of practice.

**Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis:**

The proposed rules will be posted for a period of 14 days to solicit public comment on economic impact, including how the proposed rules may affect businesses, local government units, and individuals.

**Fiscal Estimate and Economic Impact Analysis:**

The Fiscal Estimate and Economic Impact Analysis are attached.

**Effect on small business:**

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department’s Regulatory Review Coordinator may be contacted by email at [Jennifer.Garrett@wisconsin.gov](mailto:Jennifer.Garrett@wisconsin.gov), or by calling (608) 266-2112.

**Agency contact person:**

Sofia Anderson, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, Wisconsin 53708; email at [DSPSAdminRules@wisconsin.gov](mailto:DSPSAdminRules@wisconsin.gov).

**Place where comments are to be submitted and deadline for submission:**

Comments may be submitted to Sofia Anderson, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, WI 53708-8366, or by email to [DSPSAdminRules@wisconsin.gov](mailto:DSPSAdminRules@wisconsin.gov). Comments must be received on or before April 8, 2025, to be included in the record of rule-making proceedings.

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TEXT OF RULE

SECTION 1. SPS 120.02 (1) (d) is amended to read:

**SPS 120.01 (1) (d)** The seller may not nullify the sale by bidding ~~himself or herself~~ themselves directly or through an agent.

SECTION 2. SPS 120.02 (1m) is created to read:

**SPS 120.02 (1m)** “Auction” has the meaning given in s. 480.01 (1), Stats. As permitted in s. 480.01 (1), Stats., this definition includes services provided through a website or interactive computer service if an individual ranks the bids or conducts the auction.

SECTION 3. SPS 121.02 (1) is amended to read:

**SPS 121.02 (1)** AUCTIONEER. The department may register as an auctioneer an applicant who satisfies the requirements in s. 480.08 (2) or (2m), Stats. The department shall consider s. 480.08 (2) (d), Stats., as having been satisfied, if the applicant has either received a seller's permit from the department of revenue under s. 77.52 (9), Stats., or the applicant has determined that ~~he or she is~~ they are not required to have a seller's permit and is, therefore, not eligible to obtain a permit.

SECTION 4. SPS 121.02 (2) (Note) is repealed and recreated to read:

**SPS 121.02 (2) Note:** Instructions for applications can be found on the department of safety and professional services' website at <http://dsps.wi.gov>.

SECTION 5. SPS 121.035 (Note) is repealed and recreated to read:

**SPS 121.035 Note:** Instructions for applications can be found on the department of safety and professional services' website at <http://dsps.wi.gov>.

SECTION 6. SPS 122.02 (Note) is repealed and recreated to read:

**SPS 122.02 Note:** Instructions for applications can be found on the department of safety and professional services' website at <http://dsps.wi.gov>.

SECTION 7. SPS 124.02 (7) is amended to read:

**SPS 124.02 (7)** A statement by the seller that ~~he or she~~ the seller has title and right to sell all property to be sold at auction free of encumbrances and liens; or, if some or all of the property to be sold is subject to encumbrances or liens, a specific itemization of such property.

SECTION 8. SPS 125.08 (2) (Note) and (3) (Note) are amended to read:

**SPS 125.08 (2) Note:** A Consent to Examine and Audit Auctioneer Trust Account form ~~may be obtained from the department located at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708~~ can be found on the department of safety and professional services' website at <http://dsps.wi.gov>.

**(3) Note:** Forms ~~may be obtained from the department at 1400 East Washington Avenue, P. O. Box 8935, Madison, Wisconsin 53708.~~ can be found on the department of safety and professional services' website at <http://dsps.wi.gov>.

SECTION 9. SPS 126.03 (2) (e) 5. is amended to read:

**SPS 126.03 (2) (e) 5.** Suggest or imply to the public, privately or through advertising, that ~~he or she~~ the auctioneer or auction company is able to perform any of the activities in subds. 1. to 4.

SECTION 10. EFFECTIVE DATE. 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.

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(END OF TEXT OF RULE)  
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