

**AUCTIONEER LICENSING AND TRADING ASSISTANT REGISTRATION ACT -
OMNIBUS AMENDMENTS**

Act of Jul. 20, 2016, P.L. 789, No. 88

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HB 325

AN ACT

Amending the act of December 22, 1983 (P.L.327, No.85), entitled, as amended, "An act imposing regulations and licensing requirements on auctioneers, apprentice auctioneers, auction houses, auction companies and trading assistants; imposing powers and duties on the State Board of Auctioneer Examiners; and making repeals," further providing for the title of the act, for definitions and for auctioneer and apprentice auctioneer licenses; providing for sales exempt from license requirements; further providing for status of existing licensees and for applications for initial and renewal licenses; providing for registration of trading assistants and trading assistant companies; further providing for special licensees to furnish bond and for authority to transact business not transferable; repealing provisions relating to auction house license, auction company license, trading assistant registration and nonresident licensees; further providing for reciprocity with other states; repealing provisions relating to licensee and registrant to furnish bond; further providing for no other license or registration required and for list of licensees and registrants; providing for contracts; further providing for records of sales; repealing provisions relating to contracts for conduct of transaction; and further providing for display of licenses, for investigations and enforcement actions, for escrow account, for hearing on charges, for administration and enforcement, for revocation or suspension of license or registration, for issuance of new license or registration pending investigation and decision, for issuance of new license or registration after revocation, for penalties, for actions by unlicensed persons prohibited and for the State Board of Auctioneer Examiners.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. The title and sections 2 and 3 of the act of December 22, 1983 (P.L.327, No.85), known as the Auctioneer Licensing and Trading Assistant Registration Act, amended October 8, 2008 (P.L.1080, No.89), are amended to read:

AN ACT

Imposing regulations and licensing requirements on auctioneers, apprentice auctioneers, auction [houses, auction] companies, **trading assistants** and trading [assistants] **assistant companies**; imposing powers and duties on the State Board of Auctioneer Examiners; and making repeals.

Section 2. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Apprentice auctioneer." [A person] **An individual** who is licensed under this act as an apprentice auctioneer.

"Auction" or "sale at auction."

(1) [The offer to sell property by an auctioneer or apprentice auctioneer to the members of an audience congregated for the purpose of making bids for the purchase of the property in an effort by the auctioneer or apprentice auctioneer to advance the amount of the bids to obtain the highest or most favorable offer.] **A method for the sale or lease of property, or any interest in property, by means of a verbal exchange, regular mail, telecommunications, the Internet, an electronic transmission or a physical gesture between an auctioneer, apprentice auctioneer or auction company and one or more potential purchasers or lessees through the solicitation of offers, in the form of bids, in an effort to advance the amount of the bids to obtain the highest or most favorable offer.**

(2) The term "auction" or "sale at auction" includes:

- (i) live auctions;
- (ii) online auctions;
- (iii) real-time auctions;
- (iv) extended auctions;
- (v) any similar such events as may be devised with the development of technology; and
- (vi) any combination of the foregoing.

(3) The term "auction" or "sale at auction" [excludes any sale conducted through an online Internet bidding platform.] **does not include a negotiated transaction. Nothing in this act is intended to deny an auctioneer, apprentice auctioneer or auction company a commission or other compensation earned for auction-related activities that result in or facilitate a negotiated transaction by the seller, or other agent of the seller, and a buyer.**

"Auction company." [A company which, as part of its business, arranges, manages, sponsors, advertises or carries out auctions.] **A legally recognized entity that sells or attempts to sell property at auction or performs, or offers to perform, any of the functions or activities requiring licensure as an auction company under section 3(a)(1). The term includes any legally recognized entity that holds itself out as engaged in the business of selling property at auction.**

"Auction house." An established place of business, including, but not limited to, an auction barn, a sale barn and a sale pavilion, **used primarily for conducting auctions**, where two or more auctions are held within any 12-month period and where representations are regularly made that property is sold at auction. The term does not include premises where isolated **or periodic** sales are conducted by an auctioneer or auctioneer apprentice and [which] **that** are used primarily for purposes other than auctions or sales at auction.

"Auctioneer." [A person] **An individual** who sells or offers or attempts to sell property at auction. The term includes [any person who holds] **an individual who:**

(1) **Engages in or offers the calling for and recognition of bids at auction.**

(2) **Engages in or offers any of the activities of an auction company.**

(3) **Performs, or offers to perform, any of the functions or activities requiring licensure under section 3(a)(1).**

(4) **Holds himself out as engaged in the business of selling property at auction.**

"Auctioneer-of-record." **The licensed auctioneer designated by an auction company as its auctioneer-of-record. The**

auctioneer-of-record is principally responsible for the conduct of the auctions of the auction company in accordance with this act.

"Board." The State Board of Auctioneer Examiners [in the Department of State].

"Commissioner." The Commissioner of Professional and Occupational Affairs in the Department of State.

"Department." The Department of State.

"Extended auction." An auction conducted in whole or in part online at which bids are received over an extended period of time identified by a starting time and ending time that may encompass multiple minutes, hours, days or other periods.

"Group A auction school." A provider, approved by the board, offering a course of study in auctioneering and the auction industry, as approved by the board, the completion of which requires not less than 20 credit hours, including two credit hours of practicum or cooperative practical experience.

"Group B auction school." A provider, approved by the board, offering a course of study in auctioneering and the auction industry, as approved by the board, the completion of which requires fewer than 20 credit hours.

"Legally recognized entity." A partnership, association, corporation, limited liability company or other entity recognized under the laws of this Commonwealth or any other state.

"Licensee." [A person licensed under this act including an auctioneer, apprentice auctioneer, holder of a special license and, in the case of an auction house or company, the person required to obtain the license.] **An individual licensed under this act as an auctioneer, apprentice auctioneer or holder of a special license and a legally recognized entity licensed under this act as an auction company.**

"Live auction." An auction or sale at auction at which one or more members of an audience are present in person, are communicating telephonically or by other digital or electronic means or are participating by absentee bid.

"Negotiated transaction." A transaction for the sale of property, involving offers and counteroffers, conducted through a process of negotiation between the prospective buyer and any of the following:

- (1) the seller;
- (2) the seller's agent; or
- (3) other interested party.

"Online auction." An auction or sale at auction conducted over the Internet or similar interactive communication media.

["Online Internet bidding platform." Hardware or software architecture that provides or enables computer access by multiple users to an interactive computer server for the purpose of allowing users to offer property for sale and that does not examine, set the price or prepare the description of the property to be offered.]

"Online trading assistant consignment transaction." A transaction pursuant to which a registrant or licensee describes and lists personal property of another for sale through the use of hardware or software that enables computer access by multiple users to an interactive computer server:

- (1) allowing individual sellers, and those acting on behalf of sellers, to list and offer the property for sale at a set price, or best offer, or through competitive and progressive offers that may include a buy-it-now feature; and

(2) allowing prospective buyers access to the hardware or software.

"On-site auction." An auction or sale at auction conducted at the seller's residential or business location where the property to be sold is located.

"Person." An individual[, partnership, association, corporation, limited liability company or other] or a legally recognized entity.

"Property." Real and personal property, including both tangible and intangible personal property. The term includes, but is not limited to, domestic animals and farm products.

"Qualified [auctioneer] sponsor." A currently licensed auctioneer residing in this Commonwealth.

"Real-time auction." An auction or sale at auction at which bids are solicited and received contemporaneously, in real time.

"Registrant." A person registered under this act as a trading assistant or a trading assistant company.

"Seller." The owner of property, or the legal representative or agent of the owner of property, who consigns or otherwise agrees to have the property sold at auction or by way of an online trading assistant consignment sale transaction.

"Special licensee." The holder of a special license issued pursuant to section 3.

"Temporary venue." A venue, including a rented hall, used primarily for other purposes, at which an auction or sale at auction is held by an auction company or an auctioneer, regardless of the frequency of the auctions or sales at auction.

"Trading assistant." An individual who, for a commission or fee, conducts or intends to conduct a business within this Commonwealth of [accepting personal property to sell on behalf of another through an online Internet bidding platform.] selling, or offering to sell, the personal property of another through an online trading assistant consignment sale transaction, or who performs, or offers to perform, any of the functions or activities requiring registration under section 5.1(a).

"Trading assistant company." A legally recognized entity that, for a commission or fee, conducts or intends to conduct a business within this Commonwealth of selling, or offering to sell, the personal property of another through an online trading assistant consignment sale, or that performs, or offers to perform, any of the functions or activities requiring registration under section 5.1(a).

Section 3. Auctioneer [and], apprentice auctioneer, auctioneer company and special licenses.

(a) Requirement for license.--[Notwithstanding section 10.1, it]

(1) It is unlawful for any person to engage in [or carry on] the business or profession of an auctioneer, apprentice auctioneer or an auction company to conduct [a sale at] an auction, to hold himself out as an auctioneer or as an apprentice auctioneer, to hold itself out as an auction company or to offer to conduct [sales at auction] auctions in this Commonwealth without first obtaining [from the board] a license from the board as an auctioneer [or apprentice auctioneer. Any member, officer or employee of a partnership, association or corporation who attempts to sell at auction or who is actively engaged in the auction profession must have a license as an auctioneer or apprentice auctioneer.], apprentice auctioneer, auction company or special licensee.

(2) (i) Regardless of whether the computer system or server utilized in connection with an online auction is physically located within this Commonwealth, a license shall be required for any person offering to conduct or agreeing to conduct an online auction, or conducting an online auction, if:

(A) the seller is situate in this Commonwealth at the time the offer is made, the agreement is made or the online auction is held;

(B) the online auction involves the sale of real property situate in this Commonwealth; or

(C) the online auction involves the sale of personal property situate in this Commonwealth at the time the offer is made, the agreement is made or the online auction is held.

(ii) Under this section, licensure is not required under circumstances in which the seller initiates contact with an auctioneer, auction company or other provider of auction services located outside of this Commonwealth to sell personal property at an online auction outside of this Commonwealth.

(3) Any owner, member, officer, employee or independent contractor retained by an auction company who calls bids or engages in other activities requiring licensure under this act must be licensed as an auctioneer or apprentice auctioneer. Notwithstanding the foregoing, a license is not required for an individual, acting as an agent or representative of a licensee under this act, to negotiate or execute contracts on behalf of the licensee.

(4) Licensees under this act shall be authorized to conduct auctions at any venue within this Commonwealth, including on-site auctions and auctions held at auction houses and temporary venues, and by any method of conducting the sale, including live auctions and online auctions and auctions that are conducted live and online contemporaneously, whether real-time auctions or extended auctions.

[(b) Issuance and supervision of licenses.--It is the duty of the board, upon payment of the license fees required and upon compliance with the requirements of this act, to issue a license as an auctioneer or apprentice auctioneer to individuals or as an auctioneer to partnerships, associations and corporations who qualify under and comply with this act. The board shall supervise and control all licenses issued under this act.]

(c) Qualifications in general for license.--[Licenses] **Auctioneer, apprentice auctioneer and special auctioneer licenses** shall be granted only to [persons] **individuals** who have a good reputation for honesty, truthfulness, integrity and competence to transact the business of **an** auctioneer or apprentice auctioneer in a manner as to safeguard the interest of the public and only after satisfactory proof of these qualifications has been presented to the board as required by **this act and regulation**.

(d) [Qualifications for apprentice] **Apprentice** auctioneer license.--To qualify for an apprentice auctioneer license, [a person] **an individual** must be sponsored and employed for compensation by a qualified [auctioneer] **sponsor** who employs no more than one other apprentice auctioneer. **As approved by the board, an apprentice auctioneer may transfer his apprenticeship to another qualified sponsor without forfeiting**

any qualifying auctions previously completed in accordance with subsection (e) (1).

(e) [Qualifications for auctioneer] **Auctioneer** license.--To qualify for an auctioneer license, [a person] **an individual** must have passed the prescribed examination after [having]:

(1) [served] **serving** an apprenticeship as a licensed apprentice auctioneer for a period of not less than two years in the employ of a qualified [auctioneer] **sponsor** and [participated] **participating** for compensation in no less than 30 auctions[;], **including auctions under the supervision of a substitute qualified sponsor, without limitation as to the method of conducting the auctions, which may include online auctions;** [or]

(2) successfully [completed] **completing** a prescribed course of study in auctioneering [of at least 20 credit hours at a school approved by the board.] **at a Group A auction school;**

(3) **successfully completing a prescribed course of study in auctioneering at a Group B auction school and serving an apprenticeship as a licensed apprentice auctioneer for a period of not less than one year in the employ of a qualified sponsor and participating for compensation in no less than 15 auctions, which may include auctions under the supervision of a substitute qualified sponsor, without limitation as to the format of the auctions, which may include online auctions;**

(4) **being licensed in good standing by another state to engage in auctioneering for at least two years. The board shall review applications under this paragraph to determine the qualifications of the applicant; or**

(5) **demonstrating that the individual has conducted auctioneering for at least two years in a state that does not require a license. The board shall review applications under this paragraph to determine the qualifications of the applicant.**

(e.1) **Auction company license.--**

(1) **Every legally recognized entity shall, before operating as an auction company, obtain an auction company license issued by the board.**

(2) **Every auction company shall designate an auctioneer-of-record. Each auction company licensed under this act shall designate an individual licensed as an auctioneer under this act to serve as the auction company's auctioneer-of-record. The designation of the auctioneer-of-record shall be made in the initial application for licensure as an auction company and in each application for renewal of an auction company license. The auctioneer-of-record may be an owner, shareholder, member, partner, employee, independent contractor or other agent of the auction company. The auctioneer-of-record is principally responsible for the conduct of the auctions of the auction company in accordance with this act. However, nothing in this act shall limit or restrict the ability of an auction company to utilize the services of one or more auctioneers in addition to the auctioneer identified as auctioneer-of-record, and it shall not be necessary for the auctioneer-of-record to be present at every auction conducted by the auction company, provided that a licensed auctioneer is present to conduct the activities required to be conducted by a licensed auctioneer under this act. An auction company license becomes invalid if the license of the auctioneer-of-record is not renewed or is suspended or**

revoked or if the auctioneer-of-record becomes deceased or otherwise ceases to be the auction company's auctioneer-of-record without substitution by a successor auctioneer-of-record.

(3) Within 30 calendar days after an auction company's auctioneer-of-record ceases to serve as auctioneer-of-record for the auction company, both the auction company and the auctioneer-of-record or the auctioneer-of-record's legal representative shall notify the board in writing of the termination of such status.

(f) [Qualifications for license reissued after long inactivity] **Reissuance of inactive license.**--Any [person] **individual** to whom an auctioneer [or apprentice auctioneer] license has been issued and [who has been inactive as an auctioneer or apprentice auctioneer for a period of seven years without renewing the license issued to him shall be required to submit to and pass an examination approved by the board prior to having a license reissued to him.] **whose license has been in an inactive or nonrenewed status for a period of seven or more years shall be required to submit to and pass an examination approved by the board prior to having a license reissued. Any individual to whom an apprentice auctioneer license has been issued and whose license has been in an inactive or nonrenewed status for a period of seven or more years shall be required to make a new application to the board.**

[(g) Designation of auctioneer-of-record.--If the applicant for a license is a partnership, association or corporation, then a member of the partnership or association or an officer of the corporation, who is licensed in this Commonwealth as an auctioneer, must be designated as the auctioneer-of-record. The auctioneer-of-record is principally responsible for the conduct of the auctions of the partnership, association or corporation in accordance with this act. A partnership, association or corporation auctioneer license becomes invalid if the license of the auctioneer-of-record is not renewed or is suspended or revoked.]

(g.1) **Special license to conduct auction.**--An auctioneer or auction company authorized to engage in auctioneering in another state shall, on application and payment of the license fee, be issued a special license for each specifically identified auction to be conducted in this Commonwealth. Applications must be made not less than 20 days in advance of the auction or sale at auction and must include the name and address of the seller or owner of all items to be sold. All applications are subject to approval by the board and shall include proof of authority to engage in auctioneering in the other state. This subsection does not prohibit an auctioneer or auction company licensed in another state from working or sharing compensation with a licensed Pennsylvania auctioneer or auction company in this Commonwealth with respect to an auction conducted pursuant to a contract between the seller or owner of the property and an auctioneer or auction company licensed in this Commonwealth and, under such circumstances, a special license shall not be required unless the out-of-State auctioneer will call bids or engage in any other conduct that requires a license under this act.

[(h) Sales exempt from license requirements.--The requirement to obtain a license under this act does not apply to sales at auction in the following circumstances:

(1) To a specified single sale per year conducted by the owner of property if the owner is not engaged in the

business of selling the property and if the property is owned by the person in an individual capacity.

(2) To a sale conducted by or on behalf of a charitable organization if the person conducting the sale receives no compensation therefor.

(3) To a sale conducted by or on behalf of a person appointed by judicial order or decree.

(4) To a sale conducted in the settlement of any decedent's estate.

(5) To a sale conducted by or under the direction of any public authority.

(6) To any sale required by law to be at auction.

(i) Special license to conduct auction.--An auctioneer authorized to engage in auctioneering in another state shall, upon application and payment of the license fee, be issued a special license for each auction conducted by him. Applications must be made 20 days in advance of the sale and must include the name and address of the consignor or owner of all items to be sold. All applications are subject to approval by the board and shall include proof of authority to engage in auctioneering in the other state.]

Section 2. The act is amended by adding a section to read:
Section 3.1. Sales exempt from license requirements.

The requirement to obtain a license under this act does not apply to sales at auction in the following circumstances:

(1) To a specified single sale per year conducted by the owner of property if the owner is not engaged in the business of selling the property and if the property is owned by the person in an individual capacity.

(2) To a sale conducted by or on behalf of a charitable organization if the person conducting the sale receives no compensation therefor.

(3) To a sale conducted by or on behalf of a person appointed by judicial order or decree.

(4) To a sale conducted in the settlement of any decedent's estate conducted by the executor or administrator of the estate.

(5) To a sale conducted by or under the direction of any public authority.

(6) To a sale required by law to be at auction.

Section 3. Section 4 of the act is amended by adding a subsection to read:

Section 4. Status of existing licensees.

* * *

(c) Licensed auction houses.--An auction house license issued under and pursuant to this act and existing on the effective date of this paragraph shall remain in full force and effect until the license shall expire and shall not be subject to renewal. Thereafter, auction house licenses will no longer be issued or renewed in this Commonwealth, and any holder of an expired auction house license who is not also the holder of an auction company license shall be required to obtain either an auction company license or an auctioneer license in order to continue in the business and profession of auctioneering in this Commonwealth.

Section 4. Section 5 of the act, amended October 8, 2008 (P.L.1080, No.89), is amended to read:

Section 5. Applications for initial and renewal licenses **and examination.**

(a) Application for auctioneer license.--Applications for license as an auctioneer shall be made to the board in writing [upon] **on** forms provided by the board which shall contain such

information as [to the individual or, if the applicant is a partnership, association or corporation, as to its members or officers, as] the board requires. If the applicant is an individual, the application shall be signed by that individual. If the applicant is a partnership or an association, the application shall be signed by a member. If the applicant is a corporation, the application shall be signed by an officer.

(a.1) Apprenticeship.--An application by a licensed apprentice auctioneer seeking to qualify on the basis of an apprenticeship shall contain or be accompanied by satisfactory evidence that the applicant [was] **meets one of the following:**

(1) Was in the employ of [a sponsor] one or more qualified sponsors for at least two years **total** and participated for compensation in not less than 30 auctions on the dates and at the locations provided by the applicant. [Upon the filing of an application, the board shall investigate the allegations contained in the application and if, upon investigation, it finds the allegations untrue, it]

(2) Was in the employ of one or more qualified sponsors for at least one year total and participated for compensation in not less than 15 auctions on the dates and at the locations provided by the applicant and successfully completed a course of study in auctioneering at a Group B auction school.

(a.2) Group A auction school attendance.--An application by an applicant seeking to qualify on the basis of having completed a course of study in auctioneering at a Group A auction school shall contain or be accompanied by satisfactory evidence that the applicant has completed such course of study.

(a.3) Affidavit.--Each application for licensure as an auctioneer shall include a self-affirming affidavit, in a form as prescribed by the board, attesting to the truth and accuracy of the statements contained in the application. If an applicant makes false or misleading statements in an application, the board may refuse to examine or license the applicant or may revoke any license issued to the applicant on the basis of materially untrue allegations contained in the application for a license. The board shall set forth in writing its findings and reasons for its refusal or revocation and furnish a copy to the applicant.

(b) Application for apprentice auctioneer license.--Applications for license as an apprentice auctioneer shall be made to the board in writing [upon] **on** forms provided by the board which shall contain such information as to the applicant as the board requires. For license renewals, the licensee shall set forth the period of time, if any, during which [he] **the apprentice auctioneer** was engaged in the auction profession, stating the name of [his present] **the apprentice auctioneer's current qualified** sponsor and any former **qualified** sponsor for the period of five years immediately preceding the date of the renewal. If it becomes necessary to change **qualified** sponsors, the apprentice auctioneer must notify the board by letter upon the termination of the sponsorship and submit a transfer form, provided by the board, when a new **qualified** sponsor is obtained. An apprentice auctioneer license is invalid when there is no sponsoring auctioneer and credit does not accrue during that time. A license will be [reissued] **reactivated** when the apprentice auctioneer submits a transfer form which informs the board that [he] **the apprentice auctioneer** has secured a new **qualified** sponsor.

(b.1) **Application for auction company license.--**Every legally recognized entity seeking an auction company license shall file with the board an application in writing on forms provided by the board which shall contain such information as to the applicant and as to the members or officers of the applicant, as the board shall require. Each application shall identify an auctioneer-of-record. On the filing of an application, the board may refuse to license the applicant to operate an auction company on the basis of materially untrue allegations in the application.

(c) [Examinations] **Auctioneer examinations.--**The board shall contract with a professional testing organization for the preparation and administration of the **auctioneer** examination, in accordance with section 812.1(a) of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929. [No person] **Except as otherwise provided under this act, no individual** may be issued an auctioneer license unless the [person] **individual** passes an examination approved by the board. The board shall hold examinations at locations, times and dates prescribed by regulation of the board.

(d) **Issuance of new license after revocation.--**In the event the license of an auctioneer or an apprentice auctioneer is revoked by the board subsequent to the effective date of this act, no new license may be issued to that person until he complies with all the provisions of this act.

(e) **Expiration and renewal of license.--**All licenses issued by the board shall be for a maximum term of two years and shall expire on the last day of February of each odd year. It is the duty of all persons licensed to practice as an auctioneer [or], apprentice auctioneer [or to operate as an auction house] or auction company to renew the license biennially with the board and to pay the license fee for each biennial license renewal. Applications for renewals of licenses issued under this act shall be made within 60 days prior to the expiration of the license [upon] **on** forms and in the manner provided by the board.

(f) [Internet sales.--An applicant or licensee renewing a license under this section must indicate to the board whether or not sales will be conducted via an online Internet bidding platform.] **Online trading assistant consignment sale transactions by licensees.--**Auctioneers, apprentice auctioneers and auction companies licensed under this act may conduct online trading assistant consignment sale transactions. Initial and renewal applications for auctioneers, apprentice auctioneers and auction companies shall request that the applicant or licensee renewing a license indicate in the space provided on the form whether the applicant or licensee will also engage in online trading assistant consignment sale transactions.

(g) **Self-affirming affidavit.--**An application for an initial or renewal license shall include a preprinted self-affirming affidavit, to be signed by the applicant under the penalty of perjury, attesting to the truth and accuracy of the allegations set forth in the application.

Section 5. The act is amended by adding a section to read:
Section 5.1. **Registration of trading assistants and trading assistant companies.**

(a) **Requirement for registration.--**It shall be unlawful for an individual to act as a trading assistant, or for any legally recognized entity to act as a trading assistant company, without either first registering with or obtaining licensure from the board. A legally recognized entity conducting business as a trading assistant must register as a trading assistant company

even though a member or officer is registered as a trading assistant. Registration is required on a biennial basis, and renewal shall be due on the last day of February of each odd-numbered year.

(b) **Application.**--Application for registration under this section shall include the following:

(1) The name of the applicant, the business and the physical location where the business will be conducted.

(2) The date the applicant will begin accepting goods for sale through an online trading assistant consignment sale transaction.

(3) The applicant's Pennsylvania tax identification number.

(4) The applicant's e-mail address.

(c) **Fee.**--A registration fee of \$100 shall be included with each application for registration or renewal. The fee may be established by the board by regulation.

(d) **Renewal.**--It is the duty of all registrants to renew the registration biennially with the board and to pay the fee for each biennial registration.

(e) **Self-affirming affidavit.**--An application for an initial or renewal registration shall include a preprinted self-affirming affidavit, to be signed by the applicant under the penalty of perjury, attesting to the truth and accuracy of the allegations set forth in the application.

Section 6. Sections 7 and 8 of the act are amended to read:
Section 7. [Special licensees] **Licensees and registrants** to furnish bond.

(a) **General rule.**--[A] **No license, including a special license, or registration shall be granted or issued to any person under this act until the applicant has filed with the board an approved bond payable to the Commonwealth** in the [penal sum] **amount** of \$5,000 [shall accompany every application for a special license]. The bond shall be executed by a surety company authorized by the laws of this Commonwealth to transact business in this Commonwealth, **and no licensee or registrant shall engage in the businesses regulated under this act without an active bond.** The bond shall be for the use of the Commonwealth and for any person or persons who may have a cause of action against a licensee [arising] **or registrant** under this act.

(b) **Conditions of bond.**--The [conditions] **condition** of the bond shall be that the licensee, **including a special licensee or registrant**, will comply with and abide by the provisions of this act and will pay to the Commonwealth, the board or any person or persons any and all money that may come due to the Commonwealth, the board or the person or persons from a licensee **or registrant** under and by virtue of this act.

(c) **Action on bond.**--If any person is aggrieved by the misconduct of any **licensee, including a special licensee or registrant** and recovers judgment against the licensee **or registrant** therefor, the person may on any execution issued under the judgment maintain an action upon the bond of the licensee **or registrant** in any court having jurisdiction of the amount claimed.

Section 8. Authority to transact business not transferable.

The authority to transact business as an auctioneer, apprentice auctioneer[, auction house] or auction company **licensed** under [a license issued by the board] **this act, or as a trading assistant or trading assistant company registered under this act**, is restricted to the person named in the license **or registration** and may not be transferred to the

benefit of any other person. [A partnership, association or corporation licensed under this act is only permitted to transact auction business through a member, officer or employee who is licensed under this act.]

Section 7. Sections 9, 10, 10.1 and 11 of the act are repealed:

[Section 9. Auction house license.

(a) Requirement for license.--Every person, except an individual who is licensed as an auctioneer, shall, before operating an auction house, obtain a license from the board to operate the auction house. Every partnership, association or corporation must obtain a license even though a member or officer is licensed as an auctioneer.

(b) Application for license.--Every person seeking a license to operate an auction house shall file with the board an application in writing upon forms provided by the board which shall contain such information as to the individual or, if the applicant is a partnership, association or corporation, as to the members or officers, as the board requires. A person must file a separate application for each auction house to be operated. The application shall be accompanied by the license fee and surety bond required by this act.

(c) Investigation and refusal of license.--Upon the filing of an application, the board shall investigate the allegations contained in the application and, if, upon investigation, it finds the allegations untrue, it may refuse to license the applicant to operate an auction house.

(d) Information from auctioneer.--A licensed auctioneer who also operates an auction house shall notify the board in writing of the address of each auction house operated by him and of the trade or business name by which each auction house is known. The auctioneer shall notify the board in writing if the operation of the auction house is sold or discontinued or if the name or location of the auction house is changed.

Section 10. Auction company license.

(a) Requirement for license.--Every person, except an individual who is licensed as an auctioneer or an individual who is licensed to operate an auction house, shall, before operating an auction company, obtain a license from the board to operate the auction company. Every partnership, association or corporation must obtain a license even though a member or officer is licensed as an auctioneer.

(b) Application for license.--Every person seeking a license to operate an auction company shall file with the board an application in writing upon forms provided by the board which shall contain such information as to the individual or, if the applicant is a partnership, association or corporation, as to the members or officers, as the board requires. Each application shall be accompanied by the license fee and surety bond required by this act.

(c) Investigation and refusal of license.--Upon the filing of an application, the board shall investigate the allegations contained in the application and, if, upon investigation, it finds the allegations untrue, it may refuse to license the applicant to operate an auction company.

(d) Information from auctioneer or auction house.--A licensed auctioneer or an individual licensed to operate an auction house, who also operates an auction company, shall notify the board in writing that he is operating an auction company and shall specify the trade or business name and the address of the principal place of business of each auction company which he operates. The individual who is licensed as

an auctioneer or to operate as an auction house shall notify the board in writing if the operation of the auction company is sold or discontinued or if the name or location of the auction company is changed.

Section 10.1. Trading assistant registration.

(a) Requirement for registration.--It shall be unlawful for any individual to act as a trading assistant for a sale conducted by competitive bidding without either first registering with or obtaining licensure from the board. Registration is required on a biennial basis.

(b) Application.--Application for registration under this section shall include the following:

(1) Name of the applicant, the business and the physical location where the business will be conducted.

(2) Date the applicant will begin accepting goods for sale through an online Internet bidding platform.

(3) Pennsylvania tax identification number.

(4) E-mail address.

(c) Fee.--A registration fee of \$100 shall be included with each application for registration.

Section 11. Nonresident licensees.

(a) General rule.--A nonresident of this Commonwealth may be licensed as an auctioneer or apprentice auctioneer or to operate an auction house or auction company upon complying with all the provisions and conditions of this act required of residents of this Commonwealth.

(b) Waiver of certain requirements.--The board may waive the requirement for serving an apprenticeship or completing a course of study in auctioneering if the nonresident was:

(1) licensed by another state for at least two years;

or

(2) established in the business of auctioneering for at least two years and, in the case of states that do not require a license, the board reviews the application to determine the qualifications of the applicant.

(c) Limitation on type of property sold.--The nonresident auctioneer or apprentice auctioneer is only permitted to sell at auction in this Commonwealth whatever property the laws of his state permit nonresident auctioneers and apprentice auctioneers to sell at auction.

(d) Ineligibility to sponsor apprentices.--A nonresident auctioneer is not a qualified auctioneer for the purpose of sponsoring or employing an apprentice auctioneer.]

Section 8. Section 12 of the act is amended to read:

Section 12. Reciprocity with other states.

(a) General rule.--[A nonresident of this Commonwealth who applies for a license as an auctioneer or apprentice auctioneer may be granted a license for which he applies if he is licensed as an auctioneer or apprentice auctioneer by the proper authority of the state of his domicile,] **A person who is licensed in good standing as an auctioneer, apprentice auctioneer or auction company in another state may, on application to the board, be granted licensure as an auctioneer, apprentice auctioneer or auction company in this Commonwealth upon the payment by the applicant of the proper [license] application fee and the filing with the board of a properly certified copy of the license issued to the applicant by the [state of his domicile, subject to the following limitations:**

(1) The auctioneer licensing laws of the nonresident state must extend to licensed auctioneers and apprentice auctioneers of this Commonwealth the same rights and privileges and the same authority to conduct auction sales

in that state as this act extends to nonresidents of this Commonwealth without the necessity of the licensed auctioneers and apprentice auctioneers of this Commonwealth to obtain additional or further licenses or authority from any political subdivision of that state to conduct an auction sale.

(2) The nonresident auctioneer or apprentice auctioneer is only permitted to sell at auction in this Commonwealth whatever property the laws of his state permit nonresident auctioneers and apprentice auctioneers to sell at auction.

(b) Bond.--The bond required by this act shall accompany the application.

(c) Change of nonresident status.--The movement from another state or jurisdiction to domicile in this Commonwealth eliminates the possibility of reciprocal licensing set forth in this section and the individual must qualify for a license under terms of this act which are applicable to residents of this Commonwealth.] **applicant's current licensing state, provided that:**

(1) the requirements for licensure in the applicant's current licensing state are, in the determination of the board, commensurate with the requirements for licensure in this Commonwealth;

(2) the licensing laws of the applicant's current licensing state extend to licensees of this Commonwealth the same reciprocal rights and privileges in that state without the necessity of the licensees in this Commonwealth to obtain additional or further licenses or authority from any political subdivision of that state; and

(3) the applicant satisfies all other requirements of licensees and applicants for licensure in this Commonwealth, including the requirement to furnish a bond.

(a.1) Review by board.--Each application for licensure by reciprocity shall be reviewed by the board and shall be determined by a vote of the board.

Section 9. Section 13 of the act is repealed:

[Section 13. Licensee and registrant to furnish bond.

(a) General rule.--An auctioneer, apprentice auctioneer, auction company or auction house license or trading assistant registration shall not be granted or issued to any person until the applicant has filed with the board an approved bond payable to the Commonwealth in the amount of \$5,000. The bond shall be executed by a surety company authorized by the laws of this Commonwealth to transact business in this Commonwealth. The bond shall be for the use of the Commonwealth and for any person or persons who may have a cause of action against a licensee or registrant under this act.

(b) Conditions of bond.--The condition of the bond shall be that the licensee or registrant will comply with and abide by the provisions of this act and will pay to the Commonwealth, the board or any person or persons any and all money that may come due the Commonwealth, the board or the person or persons from a licensee or registrant under and by virtue of this act.

(c) Action on bond.--If any person is aggrieved by the misconduct of any licensee or registrant and recovers judgment against the licensee or registrant therefor, the person may, on any execution issued under the judgment, maintain an action upon the bond of the licensee or registrant in any court having jurisdiction of the amount claimed.]

Section 10. Sections 14 and 15 of the act, amended October 8, 2008 (P.L.1080, No.89), are amended to read:
Section 14. No other license or registration required.

No political subdivision of this Commonwealth shall have the power or authority to levy or collect any license tax or fee which is either a regulatory or a revenue measure upon or from any [auctioneer or apprentice auctioneer or trading assistant licensed or registered] **licensee or registrant** under this act nor to require [any auctioneer or apprentice auctioneer] **the following:**

(1) **A licensee or registrant** to be licensed by the political subdivision in order to carry on the business of [auctioneer or to conduct a sale at auction] **the licensee or registrant.**

(2) **A licensee to be licensed by the political subdivision in order to conduct a sale at auction.**

(3) **A licensee or registrant to be licensed by the political subdivision in order to engage in online trading assistant consignment sale transactions.**

Section 15. List of licensees and registrants.

The board shall maintain a current list of [any person licensed by or registered with the board] **licensees and registrants under this act.** The list shall be posted on the department's Internet website and shall be subject to the act of February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law.

Section 11. The act is amended by adding a section to read:
Section 15.1. Contracts.

Prior to conducting a transaction, a licensee or registrant shall enter into a written contract, in duplicate, with the owner or consignor of the property to be sold, containing the terms and conditions upon which the licensee or registrant agrees to conduct the sale. Each contract shall include the license or registration number of the licensee or registrant conducting the transaction. The contract may be entered into electronically. The contracts shall be kept on file in the office of the licensee or registrant and shall be open to inspection as provided in this act.

Section 12. Section 16 of the act, amended October 8, 2008 (P.L.1080, No.89), is amended to read:
Section 16. Records of sales.

(a) General rule.--Every [auctioneer or trading assistant, whether acting in his own behalf or as the officer, agent or representative of another, after the receipt or acceptance by him of] **licensee and registrant under this act who receives or accepts** any property for sale at auction or sale through an online [Internet bidding platform,] **trading assistant consignment sale transaction** shall maintain a written record which shall contain the following information, **provided that, if the transaction is being conducted by an auction company or a trading assistant company, the records shall be maintained by the auction company or trading assistant company:**

(1) The name and address of the [person who employed him to conduct the transaction and of the owner, the owner's authorized agent or consignor] **seller** of the property to be sold.

(2) A copy of the written **or electronic** contract authorizing the transaction containing the terms and conditions of the transaction or a copy of the receiving invoice.

(3) A written record of the transaction.

(b) Inspection of records.--The records referred to in subsection (a) shall be open at all reasonable times for inspection by the board or any person who is authorized in

writing for that purpose by the board and who exhibits the written authorization to the [auctioneer or trading assistant] **licensee or registrant** before making an inspection.

(c) Retention of records.--The written records shall be kept on file in the office of the [auctioneer or trading assistant] **licensee or registrant** for a period of [at least] **not less than** two years and, if the [auctioneer or trading assistant] **licensee or registrant** is notified of a complaint against [him] **the licensee or registrant**, the records shall be maintained [by the auctioneer or trading assistant] until the complaint is finally resolved.

(d) Receipts.--Every [auctioneer or trading assistant] **licensee or registrant** must provide a written receipt for all transactions[. A] **conducted by the licensee or registrant, which** receipt may be provided electronically. [Receipts] **Copies of receipts** must be retained for [at least] **not less than** two years.

Section 13. Section 17 of the act is repealed:
[Section 17. Contracts for conduct of transaction.

(a) General rule.--Prior to conducting a transaction, an auctioneer or trading assistant shall enter into a written contract, in duplicate, with the owner or consignor of the property to be sold, containing the terms and conditions upon which the licensee or registrant agrees to conduct the sale.

The contract may be entered into electronically. The contracts shall be kept on file in the office of the auctioneer or trading assistant and shall be open to inspection as provided in this act. It is unlawful for a person to advertise an auction or sale at auction or a sale through an online Internet bidding platform without including in the advertisement or notice of sale the name and license number of the auctioneer, auction house or auction company or the registration number of the trading assistant conducting the transaction.

(b) Penalty.--A person who violates subsection (a) commits a summary offense and shall, upon conviction, be sentenced to pay a fine not less than \$50.]

Section 14. Sections 18 and 20 of the act are amended to read:

Section 18. Display of licenses **and registration certificates.**

(a) General rule.--Every [individual, partnership, association or corporation licensed as an auctioneer] **licensee and registrant** under this act shall prominently display the [license] certificate [in their] **of licensure or registration at the licensee's or registrant's** office, and the current [renewal] **wallet** card or any facsimile thereof **issued to the licensee or registrant** shall be shown on demand of any person at all **auctions or** sales at auction conducted by any licensee **or in connection with any transaction conducted by any registrant.**

(b) Apprentice auctioneers.--All auctioneers shall prominently display in their office the license certificate of any apprentice auctioneer employed by them and the current renewal card or any facsimile thereof of any apprentice auctioneer employed by them shall be available on demand at any sale in which an apprentice is employed. A license issued to an apprentice auctioneer shall designate his **qualified** sponsor by name. Prompt notice in writing within ten days shall be given to the board by the apprentice auctioneer of any change of **qualified** sponsor and of the name of the new **qualified** sponsor into whose service the apprentice auctioneer is about to enter or has entered. A new license shall be issued without charge

by the board to the apprentice auctioneer for the unexpired term of the original license. The new sponsor shall be a qualified [auctioneer] **sponsor**. The change of **qualified** sponsor or employment by any licensed apprentice auctioneer without notice to the board shall automatically cancel the license issued to him. It is the duty of the **qualified** sponsor named in the license to notify the board within ten days of any change in status of an apprentice licensed under him. It is unlawful for an apprentice auctioneer to pay compensation to an auctioneer for the sole purpose of listing the apprentice as an employee.

[(c) Suspension or revocation of license for violation.--The violation of this section by any licensee is sufficient cause for the suspension or revocation of his license at the discretion of the board after a hearing in accordance with this act.]

Section 20. [Investigations and enforcement] **Enforcement**
actions.

(a) General rule.--The board may[, upon its own motion, and shall, promptly upon the verified complaint in writing of any person setting forth specifically the wrongful act or acts complained of, investigate any action or business transaction of any person licensed by the board and may temporarily suspend or permanently revoke licenses issued by the board or impose a civil penalty not exceeding \$1,000 at any time when, after due proceedings provided in this act, it finds the licensee to have been guilty in the performance or attempt to perform any of the acts prohibited to others than licensees under this act, as follows:] **refuse, suspend or revoke licenses or registrations issued by the board or impose a civil penalty not exceeding \$10,000 when it finds the applicant, licensee or registrant to have been guilty in the performance or attempt to perform any of the following:**

- (1) Knowingly making any substantial misrepresentation.
- (2) Knowingly making any false promise of a character likely to influence, persuade or induce.
- (3) A continued or flagrant course of misrepresentation or making false promises through agents or apprentice auctioneers.
- (4) Within five years prior to the issuance of the license then in force, conviction in a court of competent jurisdiction in this or any other state or in Federal court of forgery, embezzlement, obtaining money under false pretenses, extortion, conspiracy to defraud or other like offense or offenses.
- (5) Any failure to account for or to pay over moneys belonging to others which have come into his or its possession arising out of a sales transaction within a reasonable time.
- (6) Any misleading or untruthful advertising.
- (7) Any act or conduct in connection with a sales transaction which demonstrates incompetency, bad faith or dishonesty.
- (8) Knowingly using false bidders, cappers or puffers.
- (9) Violating any of the provisions of this act.
- (10) Violating any regulation of the board.
- (11) Having his license to engage in the auction profession revoked or suspended or having other disciplinary action taken or his application for licensure refused, revoked or suspended by the proper licensing authority of another state.

(12) [Failing] **The failure of a licensee or registrant who receives moneys on account of others** to establish or maintain an escrow account **as required in section 21.**

(13) For any licensed auctioneer or apprentice auctioneer to bid and buy for himself at any auction he is conducting.

(14) For any [licensed auctioneer or apprentice auctioneer] **licensee or registrant** to pay any compensation in money or other valuable thing to any person other than a [licensed auctioneer or apprentice auctioneer] **licensee or registrant** for the rendering of any service or the doing of any of the acts by this act forbidden to be rendered or performed by other than licensees **or registrants.**

(15) **For a licensee or registrant to advertise an auction or a sale through an online trading assistant consignment sale without including in the advertisement or notice of sale the name and the license or registration number of the licensee or registrant conducting the transaction.**

(b) [Notice of charges.--Before refusing, suspending or revoking any license, the board shall, in writing, notify the applicant or licensee of the charges against him, accompanying the notice with a copy of the complaint filed, if any, and the board shall accord the applicant or licensee ample opportunity to be heard in person or by counsel.] **Procedure.--A disciplinary action of the board shall be taken subject to the right of notice, hearing and adjudication and the right of appeal, in accordance with 2 Pa.C.S. (relating to administrative law and procedure).**

Section 15. Section 21 of the act, amended October 8, 2008 (P.L.1080, No.89), is amended to read:

Section 21. Escrow account.

Every [auctioneer] **licensee** and registrant shall [immediately] **promptly** deposit moneys, received from the sale of property, belonging to others in a separate custodial or trust fund account maintained by the [auctioneer or trading assistant] **licensee or registrant** until the transaction involved is terminated, at which time the [auctioneer or trading assistant] **licensee or registrant** shall account for the full amount received. **Such moneys received by a licensee or registrant working for an auction company or trading assistant company shall be promptly turned over to such company for deposit and accounting.**

Section 16. Sections 22 and 23 of the act are amended to read:

Section 22. Hearing on charges.

(a) General rule.--If the applicant [or], licensee **or registrant** desires, the board shall grant a hearing upon the charges. The [said hearings] **hearing** may be held by the board or any member thereof or by any other person duly authorized by the board for such purpose in any particular case.

(b) Report of hearing officer.--If the hearing is held by a member of the board or by a person authorized by the board, a written report of the hearing shall be made to the board.

(c) Action on report of hearing officer.--The board may adopt the findings in the report or may, with or without additional testimony, either return the report for any further consideration the board deems necessary or make additional or other findings of fact on the basis of all the legally probative evidence in the record and enter its findings of fact and conclusions of law and order in accordance with the requirements

for the issuance of an adjudication under [Title 2 of the Pennsylvania Consolidated Statutes] **2 Pa.C.S.** (relating to administrative law and procedure).

Section 23. Administration and enforcement.

(a) **Administration and enforcement.**--The board shall administer and enforce this act.

(b) **Issuance and supervision of licenses.**--It is the duty of the board, on payment of the required fee and on compliance with the requirements of this act, to issue a license as an auctioneer, apprentice auctioneer or auction company and to issue registrations to trading assistants and to trading assistant companies. The board shall supervise and control all licenses and registrations issued under this act.

Section 17. Sections 26(c), 27, 28 and 29 of the act, amended October 8, 2008 (P.L.1080, No.89), are amended to read:
Section 26. Revocation or suspension of license or registration.

* * *

(c) **Revocation of license or registration of legally recognized entity** for violation by member or officer.--In the event of the revocation or suspension of the license **or registration** issued to any member of a partnership or to any officer of an association [or], corporation, **limited liability company or other entity**, the license **or registration** issued to the [partnership, association or corporation] **legally recognized entity** shall be revoked by the board unless, within a time fixed by the board, the connection of the member of the partnership is severed and his interest in the partnership and his share in its activities brought to an end or the officer of the association [or], corporation, **limited liability company or other entity** is discharged and has no further participation in its activities.

Section 27. Issuance of new license or registration pending investigation and decision.

Pending an investigation or proceeding before the board affecting any licensee or registrant and pending final decision upon any appeal taken by a licensee or registrant from the ruling of the board, no new registration may be issued or license may be issued to a licensee or to a partnership of which he is a member or employee or to an association [or], corporation, **limited liability company or other entity** of which he is an officer or employee except for the period of the investigation or proceeding and subject to the action of the board.

Section 28. Issuance of new license or registration after revocation.

(a) **General rule.**--After the revocation of any license or registration, no new license or registration may be **requested by or** issued to the same licensee or registrant within a period of at least [one year] **five years** from the date of the revocation nor, except in the sole discretion of the board and subject to the conditions of this act, at any time thereafter.

(b) **Criminal conduct.**--No license or registration shall be issued by the board to any person known by it to have been, within five years, convicted of forgery, embezzlement, obtaining money under false pretenses, extortion, criminal conspiracy to defraud or other like offense, or to any copartnership of which any person is a member or to any association [or], corporation, **limited liability company or other entity** of which any person is an officer or employee or in which as a stockholder any

person has or exercises a controlling interest either directly or indirectly.

Section 29. Penalties.

(a) Criminal penalties.--Any person who engages in or carries on the profession or acts in the capacity of [an auctioneer, apprentice auctioneer, auction house, auction company or trading assistant] **a licensee or registrant** in this Commonwealth without a current license or registration or who employs any [person] **individual** without a current license [as an apprentice auctioneer] **or registration**:

(1) For a first offense, commits a summary offense and shall, upon conviction, be sentenced to pay a fine not exceeding \$500 or to imprisonment not exceeding three months, or both.

(2) For a second or subsequent offense, commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of not less than \$2,000 but not more than \$5,000 or to imprisonment for not less than one year but not more than two years, or both.

(b) Civil penalty.--

(1) In addition to any other civil remedy or criminal penalty provided for in this act, the board, by a vote of the majority of the maximum number of the authorized membership of the board as provided by law or by a vote of the majority of the duly qualified and confirmed membership or a minimum of four members, whichever is greater, may levy a civil penalty of up to [\$1,000] **\$10,000** on any person:

(i) who engages in the **business or practice** of auctioneering without being properly licensed to do so under this act[.]; or

(ii) **who engages in business as a trading assistant or trading assistant company without being properly registered to do so under this act.**

(2) The board shall levy this penalty only after affording the accused party the opportunity for a hearing, as provided in [Title 2 of the Pennsylvania Consolidated Statutes] **2 Pa.C.S.** (relating to administrative law and procedure).

(c) Failure to register.--Any [individual] **person** who fails to register under section [10.1] **5.1** may be subject to a penalty of up to \$500 levied by the commissioner. The [individual] **person** may request a hearing before the board, which shall be conducted in accordance with 2 Pa.C.S.

Section 18. Section 30 of the act is amended to read:
Section 30. Actions by unlicensed **or unregistered** persons prohibited.

No action or proceeding may be instituted and no recovery may be had in any court of this Commonwealth by any [individual, partnership, association or corporation] **person** for compensation for any act done or services rendered the doing or rendering of which is prohibited under this act to other than persons licensed **or registered** by the board, unless the [individual, partnership, association or corporation] **person** was licensed **or registered** at the time of doing the act or rendering of service.

Section 19. Section 31(a) of the act, amended October 8, 2008 (P.L.1080, No.89), is amended to read:

Section 31. State Board of Auctioneer Examiners.

(a) Representation.--The State Board of Auctioneer Examiners shall consist of the Commissioner of Professional and Occupational Affairs, the Director of the Bureau of Consumer

Protection in the Office of Attorney General, or his designee, two members appointed by the Governor with the advice and consent of the Senate, who shall be persons representing the public at large, one member appointed by the Governor with the advice and consent of the Senate, who shall be a registered trading assistant, and four members appointed by the Governor with the advice and consent of the Senate, [who shall be licensed auctioneers, have served as licensed auctioneers for ten years or more and have conducted at least 50 auctions each year] **each of whom is a licensed auctioneer meaningfully engaged in the auction industry such that the person is aware of current and developing issues and practices, and each of whom shall have been licensed as an auctioneer for ten years or more.**

* * *

Section 20. This act shall take effect in 60 days.

APPROVED--The 20th day of July, A.D. 2016.

TOM WOLF