

2011 SENATE JUDICIARY

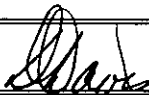
SB 2086

2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB2086
1/12/11
Job #12846

Conference Committee

Committee Clerk Signature 

Explanation or reason for introduction of bill/resolution:

Relating to definitions of auctioneer, clerk and internet auctions

Minutes:

There is attached written testimony

Senator Nething – Chairman

Ilona A Jeffcoat-Sacco – General Counsel-Public Service Commission
See written testimony

Senator Olafson – Asks for Jeffcoat-Sacco to explain the language on page two.

Jeffcoat-Sacco – Explains she was trying to fit the language to the way the statute was written to begin with. She explains the changes that were made. She said they do have an Attorney General's opinion that they have been operating under for many years.

Senator Olafson – Asks about cattle auctions that are done on the internet. He said he agrees with the commission's opinion. He said he has not heard of any problems with internet auctions.

Sue Richter – Director of Licensing Division – She gives examples of situations they have had to deal with. They refer people to the AG's opinion.

Senator Nelson – Asks about e-bay auctions.

Richter – Responds that e-bay auctions are considered to be a type of auction that is not regulated by them because it is a forum for selling.

Close the hearing on SB2086

Senator Olafson motions for a do pass
Senator Sitte seconds

Senate Judiciary Committee

SB2086

1/12/11

Page 2

Roll call vote

6 yes

0 no

Senator Sitte will carry

Date: 1/12/11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2086

Senate Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Senator Olafson Seconded By Senator Sitte

Senators	Yes	No	Senators	Yes	No
Dave Nething - Chairman	X		Carolyn Nelson	X	
Curtis Olafson - V. Chairman	X				
Stanley Lyson	X				
Margaret Sitte	X				
Ronald Sorvaag	X				

Total (Yes) 6 No 0

Absent _____

Floor Assignment Senator Sitte

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2086: Judiciary Committee (Sen. Nething, Chairman) recommends DO PASS
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2086 was placed on the
Eleventh order on the calendar.

2011 HOUSE JUDICIARY

SB 2086

2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

SB 2086
March 2, 2011
14822

Conference Committee

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will open the hearing on SB 2086.

Illona Jeffcoat-Sacco, General Counsel, Public Service Commission: Support, explained the bill (attached 1).

Chairman DeKrey: That's a pretty common practice now for an auction sale to accept bids over the internet. I know of Steffes out of West Fargo and Phifer and all those. Those would still be regulated because there is an actual physical sale going on within the state boundaries at the time then.

Illona Jeffcoat-Sacco: That is the intent, yes. It is only the solely internet auctions that we find impossible to administer the laws over.

Rep. Delmore: What happens to consumer protection on the sales over the internet, there isn't any regulation. The bottom line has to be the citizens of the state. I'm not sure if we aren't doing a disservice to them.

Illona Jeffcoat-Sacco: The consumer protection that a customer would have, let's use Ebay as an example. They don't hold a ND auctioneer's license and many people are buying and selling over Ebay. That is based on an Attorney General's opinion that we have been trying to apply for several years now; that would not be covered. The standard consumer protections would be the ones that are currently in existence for any other purchase that you make over the internet, for example how you pay. There wouldn't be any of ND protections, which mainly consist of the bond; I think the auctioneer bond and the auction clerk bond. If you try to play that scenario out a little bit, I think you can envision how we do have problems. If someone were to attempt to make a claim on the bond. I should tell you what happens when someone calls and asks if some process needs a license and we provide the Attorney General's opinion to them because there are many discretionary areas in there where you have to apply it to specific facts we don't have. Of course, then we never hear back from them, because they get the opinion and they interpret it the way that says they don't need a license. We don't really

know any more than that either because we aren't spending time investigating these for every question.

Chairman DeKrey: Has there been any talk in the office how you could possibly regulate this. When you think of Ebay and so many other auction sites on the internet right now; any tool, vehicle, anything is available on the internet and you can bid on it. I can't imagine how you could get your arms around this industry to try and regulate it.

Illona Jeffcoat-Sacco: That is exactly the talk. The licensing director, Sue Richter is here if you have specific questions, she's the one that would have the answers. But, that is what happens and then Sue tries to figure out the answer and then comes to legal, and the two of us can't get our arms around this matter.

Rep. Hogan: Could you get us a copy of the AG's opinion so that we know what you are referencing.

Illona Jeffcoat-Sacco: Yes, I can do that.

Rep. Klemin: This would also apply in the situation where the site of the auction is in ND, but it is being conducted exclusively over the internet.

Illona Jeffcoat-Sacco: I think the answer is yes, depending on what you mean by the site of the auction. I think if someone has inventory, sitting in a warehouse somewhere in ND and conducting a purely internet auction, yes. If someone has an auction site in ND where you could come in and bid or you could bid over the internet, then no, they would need a license. A ND resident with something to auction purely over the internet, then it would still apply.

Rep. Klemin: I'm just thinking of an example that I saw recently, was a place where I think the auction was exclusively over the internet coming from Wisconsin, selling someone's collection of memorabilia from some type of activity. That could happen anywhere, it could be some person who is a collector here in ND and has a large amount of memorabilia that would be sold exclusively by internet auction, then this would apply and you would not have to be licensed.

Illona Jeffcoat-Sacco: That's correct.

Rep. Koppelman: I'm looking at the structure of the bill, I don't have the rest of the chapter in front of me, but it looks like this is a definition section and as I look at the last portion, in subsection 3 at the end that you are adding, you are defining internet auction, but then subsection 5 seems like more of a substantive statement about what the chapter applies to. Is that placed in the proper place here?

Illona Jeffcoat-Sacco: Subsection 5 is just a minor rewrite of existing law. It was in the order where it belonged at the time, before we decided to do it this way. I did

rewrite it a little bit. I was hoping that I made it a little clearer and consistent with what we were trying to say as an exception. But again, I was trying not to change what I understood was the meaning of that. If you were starting from scratch, I recognize that that might not necessarily go in definitions. You could do that a different way, under the theory of statute writing. I left it in definitions because that is where it was; I tried to make it more clear for me, I have to implement the statute.

Rep. Koppelman: I was looking at subsection 3, and thinking why are we repealing that, because that is a different substance. Then I looked at the fact that you did rewrite it in subsection 5; however, now at the end of subsection 3 we're defining what an internet auction is, and then in subsection 5 we're saying something substantive about how internet auctions are excluded. It just looked a little strange to me.

Illona Jeffcoat-Sacco: Any help would be appreciated. I think there always that exception for the isolated transaction. We were trying to tie that with the exception for the purely internet auctions. There might be a better of doing it.

Rep. Koppelman: The other question that came to me when I first saw this is there also another internet bill.

Illona Jeffcoat-Sacco: I think you might be hearing about that shortly.

Ch. DeKrey: Thank you. Further testimony in support. Testimony in opposition.

Mickey Kvien, Owner of Truck & Auto Salvage, Valley City, ND: Opposed. I am the president of the ND Auto Recycler's Association for ND, representing 20-25 auto recyclers in the state of ND that are small business owners. We are opposed to this bill as written, because it allows for the public vehicle auctions to sell through the internet, vehicles not located in ND, to both in and out of state buyers and provides no requirements for licensing of the buyers, titling of the vehicles, reporting or transferring the vehicles as required by federal law. That is the main reason we are opposed to the bill. Right now, ND is one of the states with the loosest internet auction rules and regulations. With this bill, we would be making them even looser. We just disagree with the way it is worded. Right now, ND is losing out on tax money because of the way the internet auctions are handled. IAA, which is an auction service located in Fargo, ND, which is doing business properly, as ND law allows right now, but I don't know if members of the Committee are aware of what is happening at that site right now. They let the public in at this auction. Is that right or wrong; that could be disputed later? They'll come into this auction, they could stay at home and do it over the internet, buy a used vehicle, not be a licensed dealer, they can buy that vehicle and all that is required right now, by the state of ND, is that the auction has to fill in the title that they bought the vehicle. They don't collect the sales tax at that time. That person doesn't have a dealer's license, he doesn't have a tax permit number, and he could be anyone off the street buying this vehicle. It may never be rebuilt but he can take it home and put it in his backyard and sell the

parts off of it. Never pay the sales tax in the first place, because the auction never collected it, and the auction did not fill in the title what the sale price of the vehicle was. As a licensed dealer, anytime I sell a vehicle, I have to fill in that price. Then they are supposed to take it to the Motor Vehicle Dept. and pay the sales tax at that time. That's being circumvented all the time. Now you want to loosen up the law further, if anything, we should be tightening up the laws in ND. SD doesn't allow the public to go to and buy vehicles at an auction site and not on the internet; they cannot buy a motor vehicle for those reasons. The tax reason is #1 and for consumer protection reasons. Is this vehicle being rebuilt to the proper standards? As a salvage dealer in ND, I have to take care of all mercury switches, I have to handle batteries properly, I have to handle anti-freeze properly, all the oils, etc. By allowing people into these internet auctions, you're opening it up even more to bad business practices. We're concerned about that, as a group. There's also a national vehicle title reporting law. Any time that I buy a vehicle for parts, I have to report that title, what is happening with the vehicle; am I selling it for parts or reselling it. If I am selling it for parts and crushing it, I have to report to the federal government that the vehicle is being crushed and is no longer in service for theft part of the titles. There are many concerns with the way the bill is written right now.

Rep. Klemin: The auction service that you are referring to, IAA, what does that stand for?

Mickey Kvien: Insurance Auto Auctions, it's a corporation that is owned by Odessa Corporation, which I'm not sure when they came into ND, but they purchased Tri-State Auction in Fargo, ND quite a few years ago. They are a national company, and they're following ND laws as written; I called there this morning just to verify my information was correct and I talked with one of the title clerks. When I asked if when they sell to the retail public do they collect sales tax on that vehicle and I was told that they do not. I said that I was a licensed dealer and have a tax permit number for ND. I know that I don't have to pay tax, because I am doing it properly. They are letting all this tax money go right out the door.

Rep. Klemin: As I understood the testimony of Ms. Jeffcoat-Sacco, they would not be allowed to permit people to come in to their site to bid in person on any of these vehicles under this bill. They could only be exempted if it was exclusively done over the internet. So wouldn't this bill actually help in that respect?

Mickey Kvien: I guess I don't see that. I see that it is opening it up even worse. I think there are some issues there that obviously aren't going to be dealt with here today, on some of my other concerns, but I think we are opening it up even more, aren't we.

Rep. Klemin: I think you have two concerns. The first is that people can walk in to this place and bid in person, which they would not be able to do under this bill without that auctioneer being licensed. The other concern is the way that they are doing it to people who actually bid over the internet and they don't collect the tax and

the title and that sort of issue. It looks like one of those concerns would be solved under this bill, but I don't know about the other one.

Chairman DeKrey: When I go to an auction sale and buy a vehicle and I plan to use it for parts, because I have a vehicle that matches up, and buy the vehicle pretty cheaply. Well I never had any intentions of titling that vehicle; I am just taking it apart. The state isn't going to get any tax money out of that purchase, is it? The only time they are going to get any tax money when I buy a vehicle is when I would license it.

Mickey Kvien: But if you are buying a vehicle for parts and you are not a licensed dealer and/or hold a ND sales tax permit number, should they not be charging you tax.

Chairman DeKrey: They must not be worrying about it; because that is the way it is being done now and has been for years.

Mickey Kvien: You get a title with your name on it and you are supposed to go and register that title in your name. Now you own that vehicle, but nobody goes and registers that vehicle. They throw the title away, but I don't believe that is the intent. There lies the problem.

Chairman DeKrey: I'm trying to figure out if you are more worried about the competition to your parts business or if you are with ND getting their tax money. It sounds to me like what's really at stake here is that you are worried private people are going to buy vehicles over the internet and take them apart themselves and get their own parts out of it, instead of going through a dealer and then paying dealer prices for parts.

Mickey Kvien: I'm worried as a business owner that I have all these laws and regulations that I have to follow, yes. Then somebody can still buy a vehicle over the internet and skirt all of these rules and regulations and dispose of that car properly; if we're really concerned about the environment and the EPA that is forced on me, yes that is a concern.

Rep. Klemin: What about the situation where a ND resident buys a vehicle at an internet auction and brings it to ND. Then when that person goes to the Motor Vehicle Dept to get that licensed, that's when they have to pay the tax.

Mickey Kvien: Correct.

Rep. Klemin: So the tax would be collected in that situation.

Mickey Kvien: Yes, in that situation. If he's actually putting that vehicle back on the road.

Rep. Klemin: So in the situation where a person is actually buying a motor vehicle that's operating and they intend to use it as a motor vehicle and not for parts, then the problem you're talking about doesn't exist. It's only in the situation where it's being bought for parts.

Mickey Kvien: Correct.

Rep. Onstad: A lot of your concerns are between an authorized dealer and an unauthorized dealer.

Mickey Kvien: Yes.

Rep. Onstad: As authorized dealer, you have your regulations that you have to follow, whether it's a collection of tax.

Mickey Kvien: Yes.

Rep. Onstad: Your concern is for that unauthorized person that now comes to Minot, buys vehicles in Arkansas and sell them strictly on the internet located in Minot.

Mickey Kvien: Yes, the vehicles would not even have to be here.

Rep. Onstad: They would not have to be here.

Mickey Kvien: The way it is written now, no.

Rep. Onstad: Currently if a person comes to Minot, ND and brings in vehicles and sells them strictly over the internet, what do they have to follow currently?

Mickey Kvien: If he brings in vehicles...

Rep. Onstad: He is selling vehicles from all over the nation, but his location is in Minot, ND; if he sells them that way and someone from Montana goes on the internet and buys them, he'd have to pick up that vehicle in Minot or it would get shipped, whatever. Currently, what practice does that person have to follow now out of a location in ND?

Mickey Kvien: I believe that right now that you cannot conduct an internet auction, because he's not a licensed auctioneer. Right now, you would have to be a licensed auctioneer, I believe to conduct an internet auction and now they are trying to loosen that up even more. I think it is opening it up even more than it is already.

Rep. Onstad: Currently, for the person to be able to purchase these vehicles all over the United States, he would have to be licensed or not licensed.

Mickey Kvien: No, he does not have to be licensed.

Chairman DeKrey: Thank you. Further testimony in opposition.

Jorge Conforme, LKQ Corporation: We understand the Public Service Commission's concern with internet auctions. The internet is a vast world out there that frequently doesn't carry an established place of business. It is hard to regulate. At the same time, we must put forth the argument that buying a picture frame over the internet is very different from buying a motor vehicle over the internet. You don't need a title when you acquire a picture frame, you don't need a license to sell a picture frame over the internet. Motor vehicles are an issue of interstate commerce, they are an issue of property and there are fraud issues that come along with motor vehicles. With that said, as written, LKQ opposes the bill but we think we can work with it in a way that remedies not only the local recyclers' concerns but our concerns as well in the national arena. One of our concerns is titling. The way the bill is written up, an individual can set up an online auction from a bedroom in his house. The vehicles don't have to be located in ND, to be auctioned in ND. The vehicle can be anywhere in the United States. When that happens, we can't simply take the argument of buyer beware to heart. When a North Dakotan buys a vehicle over an internet auction, he might not be getting what he is bargaining for. The picture on that online auction might show a brand new vehicle, but we don't know what is wrong with the title of that vehicle. We don't know if that vehicle has flood damage, whether it's been declared a total loss vehicle, has been reshaped and sold off as a salvage vehicle. That's our number one issue. The second issue is for vehicles located outside of the state. If a state prohibits the sale of a salvage or total loss vehicle to an unlicensed individual in Montana, he buys a salvage vehicle from a ND auction; the ND auctioneer would be violating Montana's law. That's another issue with an online auction. In ND, online auctioneers can potentially sell vehicles that are only good for recycling, parts and dismantling them to individuals who don't have the required equipment or are unfit to take care of those parts, to process the fluids (Freon, oil) what is going to happen to those materials when unfit and unequipped individuals don't have the equipment to recycle those fluids and dispose of them. There is also an environmental concern to this bill. The PSD alluded to an opinion by the Attorney General and Ebay was mentioned. We have a letter from the National Automotive Recyclers Association's president, in which he states that the ARA is currently working with Ebay, to make sure that no states' laws are violated by abusing the internet auctions. How are they trying to remedy this? If I, myself, am buying a vehicle in Montana, through an online auction, and Montana has a restriction on purchasing of an unlicensed individual purchasing a salvage vehicle, but I know that ND doesn't prohibit that and there is an online auction based in ND that would allow me to buy a salvage vehicle, Ebay and the ARA are working together so that there is a pop-up putting that individual on notice, telling him that because he is a Montana resident, certain laws do apply to you and you may not purchase this vehicle if you are an unlicensed individual. So Ebay is aware of these problems. Buying a picture frame is very different than buying a motor vehicle over the internet. There is also the consumer protection aspect to this bill. As I

mentioned, when you are buying a vehicle over the internet you might not be getting what you're bargaining for. If you're buying perfume over the internet, you might not be getting that Versace that you are purchasing on line, might not be a Versace. It's very different for motor vehicles, because when you purchase that vehicle over the internet in an online auction in ND and you buy a vehicle located in Maine, the first place you're going to go is not the Maine Attorney General. It's going to be the ND authorities to see what remedy or relief you can obtain. There are also conflict of laws' issues there, where an individual might argue that you purchased that vehicle in Maine, the vehicle is located in Maine, you go ahead to Maine and see if the laws apply to you, ND laws won't apply to you. It's a conflict of laws issue. Some states will apply the law of the state where the property is located; other states will apply the place where the transaction is located. In this case, the transaction would take place in ND and there is also an unfair business competition. Yes, there is a business aspect to it. Some individuals will be licensed as dealers and will comply with all the requirements and regulations. What's to say that online auctioneers will comply with those dealer licensing requirements? Prior to this meeting, I visited with most of you a couple of weeks back and also met with the PSC and the DOT. We understand that this is an agency bill and due deference should be given to them. Again, we understand that it is very hard to regulate the internet. With that said, the amendment (see attached 2) that you have in your hands we believe will decrease our concerns because the way that motor vehicle statutes are written, an auction house is required to obtain a dealer's license. An auction house also has a physical established place of business requirement and a physical requirement. We believe that an online auction doesn't. An online auction exists in the World Wide Web, which can be run from your bedroom or simply carry it around with you on your laptop. The bill is a little vague as to whether or not an individual must comply with other licensing requirements, so that amendment that we passed around would simply, it's not a substantive amendment, the exemption for an auctioneer licenses for online auctions is still there, but the amendment proposes that if you are an online auction, even though you are exempted from getting an auctioneer's license, you're still required to get a dealer license as set forth in 39-22-23 NDCC.

Chairman DeKrey: When the word auction comes up, it's pretty much associated with buyer beware. I've gone to physical auctions and looked at things, and thought that something was just wonderful and paid for it and brought it home, and found out that it didn't work as expected. Just the very thought that it was an auction should make your feelers go up. Every auctioneer before every auction, they give the spiel that they are going to take your money today and that there are no guarantees. How is that really different from doing it over the internet, and wherever it's sitting you figure out how to get it home, and if you don't move it in 30 days, we're going to send you a bill.

Jorge Conforme: You stated yourself the difference, you've actually gone to the auction house, or a physical location of the auction. What you're saying is true, but we're arguing that an online auction house does not fall within the prevue of an

established auction house. So with the amendment we are trying to make sure that it's clarified that online auction falls within the prevue of NDCC 39-222-23.

Rep. Koppelman: I understand the amendment from your perspective and your client's perspective. I'm wondering about if there is an unintended consequence, would you have an objection to, instead of just saying an individual engaged in the auctioneering of motor vehicles, maybe engaged in the business of auctioning motor vehicles. The reason that I mention that, is that if you have a personal automobile that you decide to sell, rather than putting an ad in the newspaper, you do it over the internet, but it's not your practice, it's not your business, you do it one time, are you trying to require those people to become auto dealers also. Because that wouldn't be the case in a casual sale, a personal sale, now.

Jorge Conforme: That's right, that's not our intent. We're not trying to inhibit anyone's freedom in disposing (selling) their property through an online auction. I think we can all agree that the online world has facilitated many aspects of our daily lives. As for personal reasons, if you would like to sell your vehicle online, by all means do it. We're concerned about the individuals who make their living selling vehicles on line.

Rep. Koppelman: So with your amendment, if the amendment was amended to say "an individual engaged in the business of auctioning motor vehicles" that might clarify that point.

Jorge Conforme: Sure.

Rep. Klemin: Are you intending that this would apply only to those persons engaged in the internet auctions who are actually located in ND.

Jorge Conforme: We believe that this statute, as written, would apply just to those individuals engaged in online auctions located in ND, yes.

Rep. Klemin: So then when we have an online auction that's conducted from FL or CA, we're not going to require that auctioneer to be licensed as an auto auction dealer in ND, are we.

Jorge Conforme: No.

Rep. Klemin: So I think in your amendment that would have to be made clear here, because it's not clear to me now that it does only apply to them when they are physically located here and conducting the auto auction from here.

Jorge Conforme: Well, therein lies the problem. There is no established place of business. An individual, who resides in Fargo or in Bismarck, can purchase a vehicle from an online auction located in FL, but the ND legislature has no jurisdiction over what the FL legislature does, but that's the problem. You would be

allowing these online auctions for motor vehicles in ND and individuals might purchase vehicles located in FL through this ND auction, and brought into ND and what if that vehicle doesn't meet the requirements or criteria for title in ND. What's going to happen to that vehicle? Is that individual going to get his money back? There are many, many assurances that online auctions will give you; but they will not be visibly disclosed to the purchaser. Going back to your question, no, this amendment would not apply to online auctions located in FL.

Rep. Klemin: Only if the person who is doing the online auction is physically located in ND

Jorge Conforme: Yes.

Rep. Klemin: In that situation, they would have to be licensed as a motor vehicle dealer under this other statute that I'm looking at right now.

Jorge Conforme: Yes, 39-22-23.

Rep. Klemin: You used the word "individual" in your amendment, but I think you probably mean "person" because the word "individual" means a single solitary human being, whereas "person" is an all-inclusive term here that means individual, corporation, partnership, whatever. That is your intention.

Jorge Conforme: Sure.

Rep. Delmore: Is similar legislation being introduced in other states, is this something you're aware of on a nationwide basis.

Jorge Conforme: There are a number of states that do want to allow the sale of motor vehicles through online auctions. I believe LA is one. I can't speak; it's not within my assigned region as to LA. But yes there are some states. There are other states like MT and WY, in which individuals would have been allowed to sell 12 vehicles, per year period without an established place of business. That's equivalent to the internet. The WY DOT spoke out against that bill, simply because it's dangerous. That 12 car limit applies to one individual, but an individual family might run to 6 members. That would mean if all six sold 12 vehicles out of their house, not incurring any liability for any potential damage costs. That's another aspect of this bill; putting unsafe, unfit vehicles on the road. That's a potential safety issue for drivers and pedestrians in ND.

Rep. Delmore: Do you think what we have in statute is enough. Are we really enforcing it now? There's got to be a reason that the Public Service Commission has come before us with this legislation. If it's not being enforced now, then how is this change going to change it.

Jorge Conforme: Whether it's been enforced or not, I can't speak to that. I wouldn't want to encroach on other agencies. But what I could tell you is this will legitimize the practice. Legitimizing the practice would simply open the doors of ND to anyone who wants to establish an auction house in ND online and just sell vehicles that way from ND.

Rep. Guggisberg: If there's no regulation on me buying a car from FL, is there any federal legislation being proposed to deal with this issue, as far as the disposal of waste or sales tax issues, etc.

Jorge Conforme: Regarding the disposal of waste, I can tell you that there are federal requirements as to how you must dispose of Freon, oils; states with vast amounts of land tend to be concerned with that because those oils and Freon usually end up in creeks or rivers and create pollution for the states. As to other federal requirements, there are titling requirements, there's a requirement that whenever you sell a vehicle or transfer title, that title must be reported. It's a national database to keep track of where these vehicles are located. There are some federal regulations; it is in its infancy at the moment. That's why we believe that states should take the approach of setting stricter standards for these types of transactions.

Rep. Klemin: I have attempted to revise your amendment; let me run it past you. "Notwithstanding the exception under subsection 5, a person in this state, engaged in the wholesale or retail auto auction business, through the internet, must be licensed as a motor vehicle dealer as provided in Section 39-22-23 of the NDCC".

Jorge Conforme: Sounds excellent.

Chairman DeKrey: Are you okay with that Illona.

Illona Jeffcoat-Saffco: (Nods her head).

Chairman DeKrey: Thank you. Further testimony in opposition to SB 2086. We will close the hearing. Rep. Klemin has an amendment.

Rep. Klemin: The amendment that I am handing out now is the revision that J. Conforme provided to us on behalf of LKQ. He acknowledged during his testimony that this would be acceptable to his organization and I also briefly discussed with Illona Jeffcoat-Saffco and she thought that this would also be acceptable to the PSC, although she couldn't say that for sure without confirming it with the Commissioners. I told her that we didn't need their approval to do this.

Rep. Delmore: Second the motion.

Chairman DeKrey: Further discussion.

Rep. Koppelman: In the amendment, it says "engaged in the wholesale or retail auto auction business" and that is the verbiage that is used in 39-22-23. I'm just wondering if an alternative might be saying "engaged in the business of auctioning motor vehicles". The reason I'm saying that is because I'm not sure if we define what the wholesale or retail auto auction business through the internet is anywhere in Code, and that is what this phrase would now say. I'm not sure if people do hold wholesale auctions through the internet.

Rep. Klemin: The only reason that I used that language is because it is referring to section 39-22-23 and that's the exact same words that are used in that section. Now whether or not there are wholesale auto auctions done through the internet, I think that whether it's actually happening or not, it certainly is conceivable that it could be happening.

Rep. Koppelman: I understand why you did it that way; my point is, however, that I think that since we're essentially using a phrase that's not used anywhere else in law, even though that portion of it is. Since we added "through the internet", we're delving into a whole different area. If we just say "engaged in the business of auctioning motor vehicles through the internet", I think that's clearer and then referring back to that section further explains what kind of business we're talking about there. I think it would be cleaner because...

Chairman DeKrey: Do you want to just take out wholesale or retail.

Rep. Klemin: I think that just taking out wholesale or retail would do the same thing.

Rep. Delmore: What happens to the individual that is suing him? That's where I have a problem with taking that out. If I'm selling my automobile, I'm selling one on Ebay, or whatever. I don't need to follow this, but if you take out the wholesale or retail, does that then apply to me.

Rep. Koppelman: I think that's dealt with by the word "business" because the distinction is are you doing this to sell your personal car, which is what I was asking, or is this your business. Obviously we have definitions elsewhere in NDCC where they use the same kind of test to decide whether you need to be a licensed auto dealer. I think it has to do with the number of vehicles that you sell in a certain period of time, that kind of thing. As long as we have the word "business" which was what was missing from his original suggested amendment, and as long as we refer to that section of NDCC that licenses auto dealers, I think we're okay.

Rep. Klemin: I believe there is another section of the law that defines when you need to have a motor vehicle dealer license. I did encounter that once upon a time and it's like a certain number of vehicles within 30 days.

Chairman DeKrey: Your amendment to the amendment is to remove the words "wholesale or retail".

Rep. Koppelman: Correct.

Rep. Klemin: Second the amended motion.

Chairman DeKrey: We will take a voice vote. Motion carried. We now have the bill before as amended. What are the committee's wishes?

Rep. Koppelman: I move a Do Pass as amended.

Rep. Brabandt: Second the motion.

13 YES 0 NO 1 ABSENT

DO PASS AS AMENDED

CARRIER: Rep. Brabandt

March 3, 2011

VK
3/3/11

PROPOSED AMENDMENTS TO SENATE BILL NO. 2086

Page 1, line 2, after "of" insert "and exceptions to"

Page 1, line 6, after "Definitions" insert "- Exceptions"

Page 2, after line 6, insert:

"6. Notwithstanding subsection 5, a person in this state engaged in the auto auction business via the internet must be licensed as a motor vehicle dealer as provided for in section 39-22-23."

Renumber accordingly

Date: 3/2/11
 Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. 2086

House JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep. Koppelman Seconded By Rep. Brabandt

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Guggisberg	✓	
Rep. Beadie	✓		Rep. Hogan	✓	
Rep. Boehning			Rep. Onstad	✓	
Rep. Brabandt	✓				
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				
Rep. Maragos	✓				
Rep. Steiner	✓				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep. Brabandt

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2086: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2086 was placed on the Sixth order on the calendar.

Page 1, line 2, after "of" insert "and exceptions to"

Page 1, line 6, after "**Definitions**" insert "**- Exceptions**"

Page 2, after line 6, insert:

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Renumber accordingly

2011 TESTIMONY

SB 2086

S.B. 2086

Presented by: Illona A. Jeffcoat-Sacco
General Counsel
Public Service Commission

Before: Senate Judiciary Committee
Honorable Dave Nething, Chairman

Date: 12 January 2011

TESTIMONY

Mr. Chairman and committee members, my name is Illona A. Jeffcoat-Sacco. I am General Counsel for the Public Service Commission. The Commission asked me to appear here today to testify in support of Senate Bill 2086 introduced at our request.

The purpose of Senate Bill 2086 is to exempt Internet auctions from state auctioneer and clerk licensing requirements. The exemption will apply to auctioneers and clerks selling real or personal property exclusively via the Internet.

Internet auctions have become an increasingly popular way to sell items, and internet auction service providers do not fall neatly into the general auctioneer and clerk laws. The current laws were enacted prior to the advent of the Internet and were written for the purpose of regulating conventional or traditional auction sales. The Commission finds that it is very hard to determine whether a particular Internet auction should be regulated, and nearly impossible to enforce the auction laws for Internet auctions.

The licensing exemption would not apply to conventional or traditional auction sales that use the Internet as an advertising medium, a supplement to a traditional sale, or an alternative way to attend a sale. If an auctioneer uses the Internet as only part of the sale strategy or process, all auctioneer and clerk licensing laws will apply.

This completes my testimony. I will be happy to answer any questions you may have.

/

S.B. 2086

Presented by: Illona A. Jeffcoat-Sacco
General Counsel
Public Service Commission

Before: House Judiciary Committee
Honorable Duane DeKrey, Chairman

Date: 2 March 2011

TESTIMONY

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The licensing exemption would not apply to conventional or traditional auction sales that use the Internet as an advertising medium, a supplement to a traditional sale, or an alternative way to attend a sale. If an auctioneer uses the Internet as only part of the sale strategy or process, all auctioneer and clerk licensing laws will apply.

This completes my testimony. I will be happy to answer any questions you may have.

PROPOSED AMENDMENT TO SENATE BILL NO. 2086

Page 2, after line 6, insert:

6. Notwithstanding the exception under subsection 5, an individual engaged in the auctioning of motor vehicles through the internet must be licensed as provided by Section 39-22-23 of the North Dakota Century Code.



OEM Recycled - Aftermarket by Keystone

February 25, 2011

The Honorable Duane DeKrey
North Dakota State Legislature
4323 27th Street SE
Tappen, ND 58487-9398

LKQ Opposes North Dakota Senate Bill 2086 as Written

Dear Representative DeKrey:

As Vice President of Government Affairs for LKQ Corporation, I ask that you **OPPOSE SB 2086, as written**. The bill has been scheduled for a hearing in the House Judiciary Committee on Wednesday March 3, 2011. **SB 2086 would provide free rein to motor vehicle internet auction operators and their employees to conduct motor vehicle internet auctions without any licensing and regulation, ultimately placing consumers at great risk.**

SB 2086 as written presents significant dangers to our industry, its employees and North Dakota consumers. Specifically the bill:

- Allows for public motor vehicle auctions to sell, through the internet, vehicles not located in North Dakota to both in-state and out-of-state buyers and provides no requirements for licensing of buyers, titling of vehicles or reporting of transfers of vehicles as required by federal law.
- Makes no provision for auctioning of vehicles located in other states that prohibit or restrict the auctioning of motor vehicles to unlicensed individuals.
- Exempts motor vehicle internet auctions from regulations by which regular motor vehicle and non-internet-based auctions must abide.

LKQ Corporation, upon the acquisitions of Keystone Automotive Industries and Greenleaf Recyclers, LLC, is the nation's largest and leading provider of aftermarket, refurbished and recycled OEM parts. LKQ employs 10,500 people nationwide within a network of approximately 320 facilities in more than 43 states.

As Chairman of the House Judiciary Committee, I hope you will recognize the many detriments this bill poses to the recycling industry and to consumers in North Dakota. On behalf of LKQ Corporation, I ask you to **vote "NO" on SB 2086 as written.**

Please do not hesitate to contact me if you have any questions. I can be reached at (954) 492-9092.

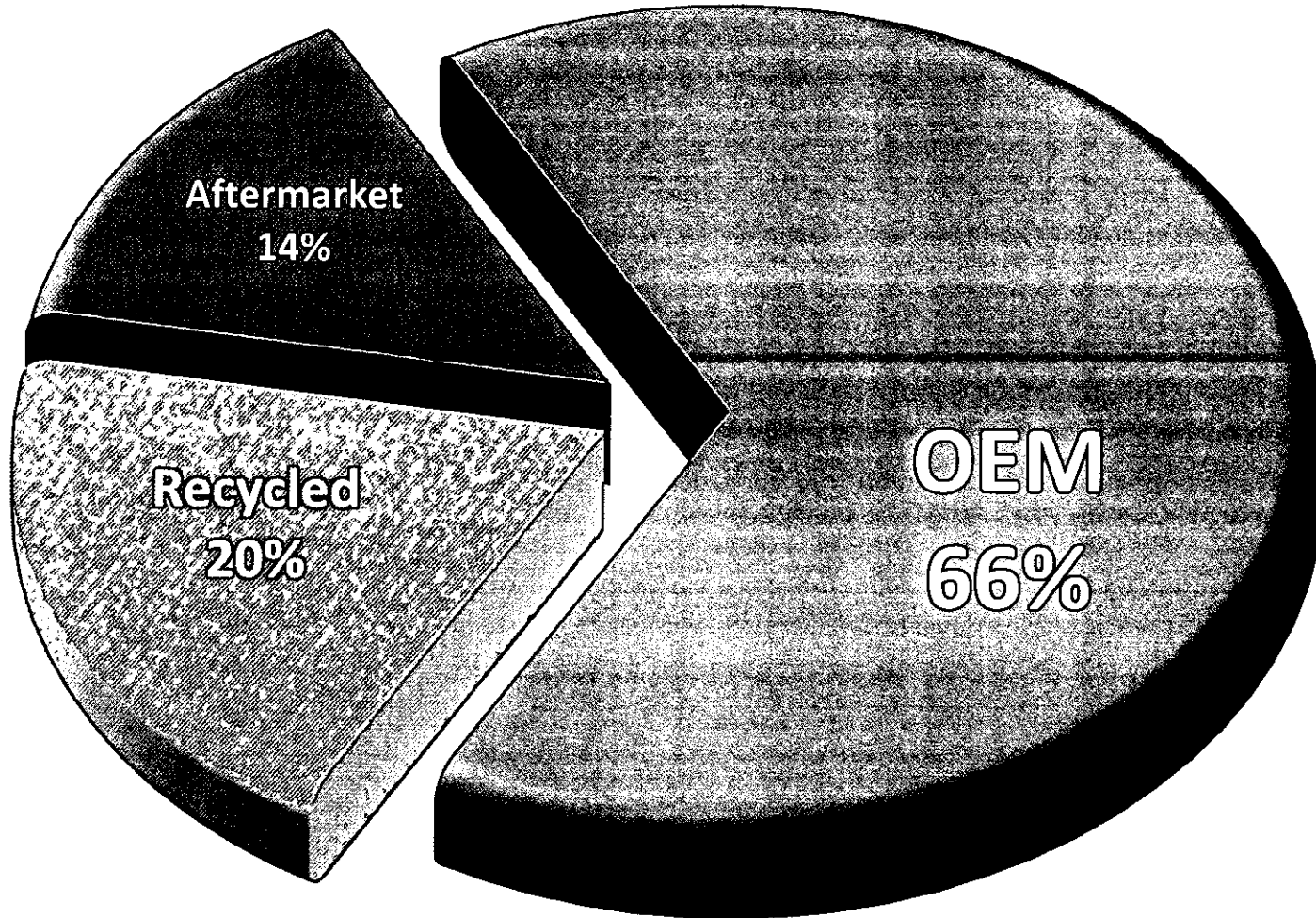
Respectfully,

A handwritten signature in black ink, appearing to read "E. Sottile". The signature is fluid and cursive, with the first letter of the first name being a large, stylized 'E'.

Eileen A. Sottile
Vice President, Government Affairs
LKQ Corporation

Market Share in **ish Part Industry**

■ Aftermarket ■ OEM ■ Recycled



Source: Mitchell Industry Trends Report Q4 2010



Who We Are

LKQ Corporation is the largest nationwide provider of aftermarket collision replacement products, recycled OEM products, and refurbished OEM collision replacement products such as wheels, bumper covers and lights to repair light vehicles.

Since our formation in 1998, we have grown through both internal development and acquisitions. Our acquisition strategy has been to target companies with strategic locations and significant market presence, strong management teams, a record of environmental compliance, and solid growth prospects. LKQ's acquisition in 2007 of Keystone Automotive Industries, founded in 1947 in Ontario, California by Virgil Benton, was the single most important event in the industry. At the time of acquisition, Keystone was the leading distributor of aftermarket collision replacement parts. Keystone also refurbished alloy wheels, which added to our existing wheel business.

LKQ Corporation, upon the acquisitions of Keystone Automotive Industries and Greenleaf Recyclers, LLC, is the nation's largest and leading provider of aftermarket, refurbished and recycled OEM parts. LKQ employs 10,500 people nationwide within a network of approximately 320 facilities in more than 43 states.

We have served our customers with aftermarket collision replacement products produced by parts manufacturers who, in some cases, also supply to the car companies. LKQ provides an important cost savings choice in a previously noncompetitive market. As a result of LKQ's quality and depth of product lines, which sell for between 26% - 50% less than comparable OEM parts, automotive insurers are better able to contain collision repair costs; which means more cars can be repaired rather than totaled. We serve tens of thousands of collision-repair businesses, mechanical service shops, and vehicle dealerships throughout the United States and Canada. To emphasize the high quality of LKQ aftermarket parts, Keystone instituted its "Platinum Plus" program in September of 2000. This program carries the highest quality parts, which are covered by a limited lifetime warranty. We believe that Platinum Plus is the first and only premium brand of independently produced collision replacement parts. Platinum Plus product categories include certain radiators, condensers, wheels, grilles, lights, hoods, fenders, and bumpers. In addition, all of our products and services are backed by the LKQ Parts Replacement Promise.

LKQ also operates a national network of recycling facilities where in 2009 we processed over 440,000 damaged, wrecked, or abandoned vehicles. We safely dismantle each vehicle according to strict guidelines in an environmentally responsible manner. Usable parts are sold to repair shops, parts reconditioning companies, and the general public through these recycling facilities. Our recycled automotive products provide an alternative to the manufacture of new products.

"We are expanding our markets by educating the collision, mechanical repair industries, insurance providers, and consumers on the value of quality alternative auto parts as well as continually raising standards for customer service, warranty support, and environmental compliance."

Joseph Holsten, CEO

Eileen A. Sottile - Vice President, Government Affairs

LKQ Government Affairs

2900 S. Port Royale Blvd • Ft Lauderdale, FL 33308 • (954) 492-9092 office • (954) 492-9602 fax • NASDAQ: LKQX

LKQ & ENVIRONMENTAL RESPONSIBILITY

At LKQ Corporation, we don't just create a better business environment for our customers in the automobile collision and mechanical repair industries – we are committed to helping make a better environment for the entire planet. That's why we lead the vehicle parts recycling industry in minimizing the impact of our activities by committing to:

- Meet or exceed all environmental regulatory requirements that apply to LKQ's activities
- Reduce and, where possible, eliminate waste by evaluating all operations and following the waste hierarchy of Reduce, Reuse and Recycle
- Minimize the release of harmful substances into the environment through the selection and use of appropriate production materials and equipment, and maintenance of our motor vehicle fleet
- Actively promote recycling both within LKQ and among our customers and suppliers
- Reduce greenhouse gas emissions and the environmental footprint of LKQ in general
- Promote a product range that minimizes the environmental impact of production and distribution
- Raise employee awareness of environmental issues and encourage their enthusiastic support of LKQ environmental initiatives
- Regularly evaluate our overall corporate environmental performance

“With the very nature of our business being recycling, we are naturally focused on doing everything possible to minimize the impact of our operations on the environment.”

Joseph M. Holsten *President & CEO LKQ Corporation*

Shop and Product Showcase

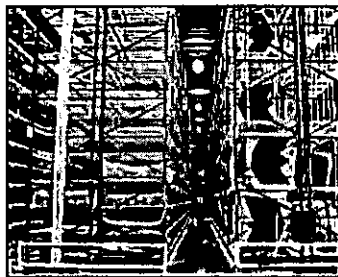
with Ed Attanasio

Ed Attanasio is an automotive journalist based in San Francisco, California. He can be reached at era39@aol.com.

LKQ Knows 'It's Not Cheap or Easy Being Green' But Sees Quick Cost Benefits

Many companies talk a big game when it comes to being lean and green, but LKQ says it is 100% dedicated to saving fuel, electricity and recycling everything that the enormous company can possibly touch, use, or produce. It's not easy being lean and green because it involves a considerable investment in time, money and personnel to achieve sustainability and a high level of true greenness. But LKQ is dedicated to making the investment and leading the way among companies its size to being a trendsetter in taking the green approach to a whole new level.

LKQ operates from 290 facilities na-

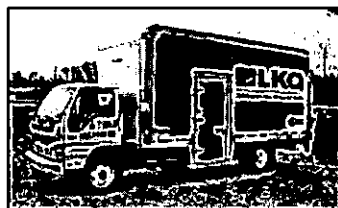


Lights and skylights used together to provide a brighter warehouse using considerably less energy.

wide and passed \$2 billion for revenue in 2009. "In 2010, we're headed to hit that number again and higher," Steven Jones, Vice-President of LKQ's West-Northwest Regions said. Jones has been one of the prime movers behind the company's transition to becoming greener nationwide.

Jones attended a recent conference sponsored by the Environmental Protection Agency (EPA) and the Department of Energy, in which most of the country's Fortune 500 companies was represented. The subject of the conference was on newly constructed building sustainably, Jones explained.

"The experts told us that when we build new facilities, let's try to educate ourselves on



The majority of LKQ's trucks have idle shut down systems to keep them from idling too long. It's another fuel-saving move by the corporation.

how to build them so that they're sustainable," he said. "By using re-used materials and incorporating things that require less energy, we can become a better, productive and more responsible company. During this three-

day conference, I learned that some of the most simple things you can do while constructing new buildings can help you to save more power and be forward-thinking in every aspect of reusing and saving."

The conference made a huge impression on Jones, who took the information back to LKQ for implementation. "It was a real eye-opener on many levels. Getting green isn't easy, but in the end you win, because you save money and you save energy. One is good for the company and the other is good for everyone. We'll be building approximately 50 brand new facilities from the ground up this year—warehouses, self-service and full-service salvage yards and distribution centers—throughout the country, to support our product."

A big part of this efficiency-focused reform involved changing LKQ's lighting systems in new and existing facilities. "One prime example where we can save tons of money and energy is by embracing the newest lighting in our buildings. Most of our warehouses have 30-ft. tall ceilings. We want them high and tight to save space, because land is expensive and building new facilities is very costly.

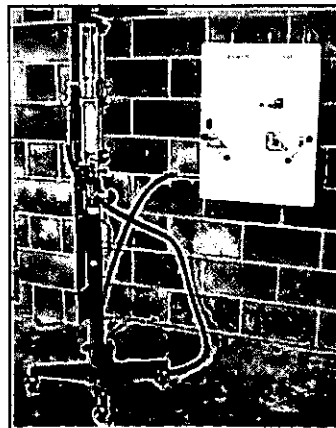
In the past, we used metal halide and sodium vapor lights—if you go to most average warehouses, these are the lights you'll find there. They use a ton of energy and they don't put off that much light. A T5HO is a high output light designed for these tall warehouses, and it uses roughly 25% of the energy that the standard lights we used to have. To take it even further, we've equipped these lighting systems with motion sensors on every light. It's now a law in California to incorporate them in every newly constructed building because it makes sense and saves a lot of energy."

Saving energy is a priority across the board, Jones said, which also includes the offices within every LKQ facility. "Each of our new offices now has two light switches, one for half-light and another for full light. So if there's a sunny day outside, maybe you only need to have half of the light running. All these little things added up can make a big difference in our consumption of energy, so we've embraced all of these policies in all of the construction of our buildings from the ground up."

The savings derived from the company's new lighting was apparent almost instantly, Jones said. "It's a huge effort. For example, we installed T5HO lighting in a 100,000-square-foot warehouse in Santa Fe Springs, CA, and we haven't had a light bill exceeding \$2,000 monthly since we opened it, although it is operating 18 hours per day. There are 70 people working out of that facility and the building's energy consumption is consid-

erably less than many of our older facilities. It's just remarkable how much money we can save by designing these new facilities using the latest technology in energy-saving innovation. Of course it's not cheap installing these types of systems in our new facilities, but they will pay for themselves if you do it right. For instance, those T5HO lights will get your money back within the range of 1-2 years, I would estimate. But, it does take that initial investment."

Tapping into natural light is another method of saving money and energy. "We're also requiring that skylights be built into the warehouses, depending on the local codes in each city. It will run between 4-10% of the light derived from sky lighting a facility. And of course, that's the most sustainable energy



A fuel extraction device removes fuel safely from every vehicle that comes into the LKQ recycling system.

you can find and it's free. Skylights aren't cheap either, but in the end it's not all about the cost. It's about taking the environmental high road versus just the economics. You're making a commitment that says 'hey, we have to make a decision.' You know we have to make a difference—that's what we're doing. We've decided that being green does matter and [as a company we want to do] something that is the right thing to do that's sustainable."

LKQ is going green in every room, even in several of their bathrooms in some facilities.

"We've invested in Dyson hand dryers in the West region, a new device that allows us to eliminate the use of paper towels in all of our bathrooms. At \$1,400 installed, these units aren't inexpensive, but they'll dry your hands in ten seconds, so it saves energy and paper, of course. We made a decision that we don't want to create a bunch of trash in our daily lives. Why cut down a bunch of trees to use paper towels when you can use a Dyson

hand dryer and save. We've installed 15 of these devices in our buildings and the response has been outstanding. They'll pay for themselves in roughly 16 months."

LKQ has always focused on recycling and reusing everything, but now they're even more adept at keeping car parts in circulation. "Reusing something that somebody already used and rebuilding it to get it back into a vehicle is as green as you can get. This way, we keep them out of the landfill and make them usable once again, the way it should be designed. We're also stocking re-manufactured products more than ever, including engines, transmissions, rear ends, steering gears, steering pumps, rack & pinions. We're stocking all of these things, so that our end users don't have to buy new ones. An entirely new transmission costs a ton to make, but our re-manufactured transmissions are just as good. Rebuilding one will use one-half of the overall energy it takes to manufacture a new transmission."

Manufacturers buy cores from LKQ to rebuild their engines and transmissions, for example. "When a manufacturer wants a core, they call us. This way, we make sure that these products ultimately get back into the main stream of commerce, so that they don't have to build a new one."

Saving energy, reusing, reconditioning, recycling and doing their part to help preserve the environment is LKQ's ongoing commitment. "Being green never ends. It's not a momentary thing or something we do to because it's popular today. We're in for the long-term and committed and that will never change."

According to the company's Web site, "LKQ is a leader in recycled auto parts and environmentally friendly business practices and recycled 492,000 vehicles last year. That is equivalent to recycling about 540,000 tons of steel, 47,000 tons of aluminum, and 13,000 tons of copper. Through its operations, LKQ helped to reduce greenhouse gas emissions by over 890,000 tons, which is about the same as the annual emissions of a city of 82,200 people.

"In addition, LKQ recently partnered with the Arbor Day Foundation to give its customers and anyone else interested in helping the environment an additional way to be green in our LKQ Get Green promotion. Anyone who visits www.LKQGetGreen.com between April 22 and June 30, 2010 and enters a valid email address will receive 1 tree planted in their honor. Customers can also print a savings coupon to use with their next LKQ recycled purchase. Those who use the coupon will receive \$25 off their purchase or can choose to have 25 trees planted in their honor. Together with its customers, LKQ anticipates planting a forest at the conclusion of the program."

LKQ is Fueling Smarter to Expand its "State of Greenness"

LKQ operates from nearly 300 facilities nationwide and surpassed \$2 billion revenue in 2009. It's an enormous company that could potentially burn many unnecessary thousands of dollars on fuel and electricity every month. But, by staying ahead of the game in its pursuit of ultimate greenness and sustainability in parts recycling, LKQ has quickly become a leader in re-using, remanufacturing and recycling everything it can while using fewer of the world's natural resources in the process.

LKQ is a recognized leader in recycled auto parts and uses environmentally friendly business practices



LKQ's enormous warehouse in Houston, Texas has received multiple accolades as a mega-green facility

while recycling 492,000 vehicles last year. That is equivalent to recycling about 540,000 tons of steel, 47,000 tons of aluminum, and 13,000 tons of copper, according to the company's web site. Through its operations, LKQ helped to reduce greenhouse gas emissions by over 890,000 tons, which is about the same as the annual emissions of a city of about 82,200 people.

"In addition, LKQ recently partnered with the Arbor Day Foundation to give its customers and anyone else interested in helping the environment an additional way to be green in the company's LKQ Get Green promotion, which ran from April 22 to June 30 of this year. Together with its customers, LKQ was able to plant a forest at the conclusion of the program."

Paul Shaw is LKQ's Central Region Vice-President, overseeing Colorado, South Dakota, Nebraska, Western Iowa, Western and Southern Missouri, Kansas, Oklahoma, Texas, Northern and Western Louisiana.

Autobody News recently talked with him about the latest developments in his region. One of his responsibilities is to see LKQ and

Keystone become greener, as part of an ongoing, proactive journey for the world's number one auto parts recycler.

Shaw's job is a huge undertaking as he oversees 34 LKQ and Keystone recycling salvage yard locations, two wheel plants and six bumper recycling facilities. More than \$300 million in annual sales comes out of his region, making it a significant part of the overall LKQ picture, which consists of nearly 300 facilities nationwide.

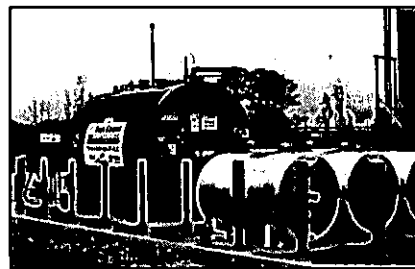
In the newest facility in Houston, Shaw oversees a mega-warehouse that acts as an LKQ aftermarket facility, a bumper manufacturing facility and a full recycling facility all under one roof.

A B N : Fuel conservation is an obvious step to improve

greenness. What are you doing to make your trucks more fuel-efficient overall?

Shaw: The first thing we do is update our fleet regularly. A majority of our newer trucks are equipped with idle shutdowns, depending on each state's requirements.

For example, in Texas we have laws that only allow 10-15 minutes of idle time. Cutting down on idle time can save a good deal of fuel while



Storing recycled fuels extracted from salvaged vehicles for re-use is an integral part of the whole green plan at LKQ

benefiting the environment. Texas is starting to implement many of the laws that have been in effect in California for years, so that helps us to stay on top of things and keep things

in perspective. We also mandate our employees, even in areas where we do not have those laws, that they shut up their vehicles. We started implementing that several years ago when fuel went up to \$3-4 per gallon. That can really start to sting when you consider how much fuel we use as a company.

One way we are trying to be more fuel-efficient is by re-using fuel on the Keystone side. We re-use all of the fuel that we pull from recycled vehicles and use it at many of our locations.

This has been very cost effective for us and in some cases has provided enough recycled fuel to supply the entire fleet in certain markets. We feel that if we can run on free (recycled fuel), we will obviously go that route because it not only benefits our company, but also the environment.

ABN: What other methods are you using with your vehicles to save fuel?

Shaw: We changed all of our forklifts to electric, and all of the new forklifts we put into our newest facilities are all-electric. We also buy gas-powered forklifts where we can, so that we can re-use our recycled gas in those forklifts while saving propane. We're also always updating our older vehicles to get better mileage. A lot of our old box trucks didn't have the proper wind deflectors on the front, so we added those to many of the old trucks. Then, we started analyzing gear ratios on many of our semis and the drive trains they use. You can change out the ratio of a semi and save \$20,000-30,000 annually in fuel just by altering the ratio of a tractor trailer.

ABN: Have you altered your distribution strategies over the years to save more fuel that way?

Shaw: We are constantly looking at our truck routes to save on fuel and to cut back on our trucks crossing

paths. We started doing this several years back when fuel prices were sky high. It made us stop and take a long look at our truck routes. We put a GPS system on each truck for a week at a



LKQ makes being green a priority, by leading the way in re-using, remanufacturing and recycling 492,000 vehicles annually

time to map out each route. We then compiled the data to show the most cost effective routes and to ensure that our trucks were not crossing paths when they did not need to. The next step we took was to combine LKQ and Keystone routes where it made sense. With the information from the GPS and the combination of LKQ and Keystone routes, we were able to change 60% of our routes to be more cost effective and fuel efficient in Dallas alone. Our ultimate goal is to not have more than one truck going to the same location.

ABN: Adaptability and constant change seems to be the norm in pursuing the newest technologies to achieve complete greenness.

Shaw: Absolutely. Technology is a rapidly evolving industry. What we did last year is already outdated today. My regional managers meet often to discuss the changes in technology and ways to make our region more green. By staying on top of the newest technology advances, we can use that to our advantage to benefit our company and the environment as a whole. One of our most recent advances is the opening of our first green warehouse in Wichita, Kansas. Some of our cost effective areas of that warehouse include the heating system, skylights, motion sensor T5 lights, and the ventilation system. The energy costs associated with this warehouse are exceptional.

Prepared for: House Judiciary Committee

Prepared by: Jessica Braun, Legislative Intern, House Judiciary Committee

PROPOSED AMENDMENT TO SENATE BILL 2086

Page 2, after line 6, insert:

"6. Notwithstanding the exception under subsection 5, a person in this state engaged in the ~~wholesale or retail~~ auto auction business through the internet must be licensed as a motor vehicle dealer as provided for in section 39-22-23.

Renumber accordingly



Public Service Commission

State of North Dakota

COMMISSIONERS

Kevin Cramer
Tony Clark
Brian P. Kalk

Executive Secretary
Darrell Nitschke

600 E. Boulevard Ave. Dept 408
Bismarck, North Dakota 58505-0480
Web: www.nd.gov/psc
E-mail: ndpsc@nd.gov
Phone 701-328-2400
Toll Free 1-877-245-6685
Fax 701-328-2410
TDD 800-366-6888 or 711

2 March 2011

Honorable Duane DeKrey, Chairman
Judiciary Committee
North Dakota House of Representatives
600 East Boulevard Avenue
Bismarck, ND 58505

Re: Senate Bill 2086

Dear Chairman DeKrey:

As requested at this morning's hearing on Senate Bill 2086, enclosed is a copy of the Attorney General's Letter Opinion 2005-L-40, dated November 4, 2005, regarding the need for an auctioneer's or auction clerk's license to sell items through an Internet auction service.

If you have any questions, please do not hesitate to call or e-mail. Thank you for your attention to Senate Bill 2086.

Best regards,

Illona A. Jeffcoat-Sacco
General Counsel

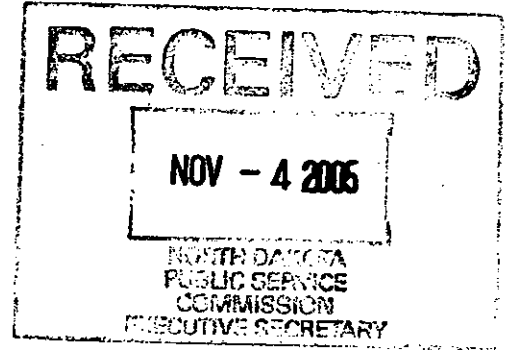
- c w/encl:
- Rep. Lawrence R. Klemin, Vice Chairman
 - Rep. Thomas R. Beadle
 - Rep. Randy Boehning
 - Rep. Roger Brabandt
 - Rep. Lois Delmore
 - Rep. Ron Guggisberg
 - Rep. Kathy Hogan
 - Rep. Joyce M. Kingsbury
 - Rep. Kim Koppelman
 - Rep. William E. Kretschmar
 - Rep. Andrew Maragos
 - Rep. Kenton Onstad
 - Rep. Vicky Steiner



Wayne Stenehjem
ATTORNEY GENERAL

STATE OF NORTH DAKOTA
OFFICE OF ATTORNEY GENERAL

STATE CAPITOL
600 E BOULEVARD AVE DEPT 125
BISMARCK, ND 58505-0040
(701) 328-2210 FAX (701) 328-2226



**LETTER OPINION
2005-L-40**

November 4, 2005

Tony Clark, President
Susan Wefald, Commissioner
Kevin Cramer, Commissioner
Public Service Commission
600 E Boulevard Ave Dept 408
Bismarck, ND 58505-0480

Dear Commissioners:

Thank you for requesting my opinion regarding the need for an auctioneer's or auction clerk's license to sell items through an Internet auction service. It is my opinion that sales similar to those conducted by eBay are not auctions within the contemplation of the statute. Because eBay does not conduct actual auctions, it is not an auctioneer, so eBay does not need an auctioneer's license, regardless of its domicile. Likewise, persons or businesses that assist sellers in placing items for sale on eBay are not conducting an auction or acting as auctioneers. Further, because the statute anticipates that an auction clerk works in conjunction with an auctioneer at a public auction, persons or businesses that assist sellers in placing items for sale on eBay are not required to obtain a clerk's license. There are various other businesses that offer items for sale via the Internet in a manner that more closely resembles traditional or conventional auctions. Whether those entities are required to obtain an auctioneer's or clerk's license depends on the facts of each case.

ANALYSIS

You first ask whether an Internet auction service domiciled either inside or outside of North Dakota is required to obtain an auctioneer's license in North Dakota. Chapter 51-05.1, N.D.C.C., regulates licensure for auctioneers. Section 51-05.1-04(1), N.D.C.C., defines an auctioneer as "a person, who for a compensation or valuable consideration, sells or offers for sale either real or personal property at public auction as a whole or partial vocation."

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There are a number of different types of "Internet auction" services. Certainly the most widely known service is that offered by the Internet company "eBay, Inc." ("eBay"), which provides a site where sellers can list their items, and potential buyers can bid on those items or otherwise offer to purchase them from the sellers. Other Internet sites transmit live audio-video feeds of auctions, and allow potential bidders to place real-time bids online during the course of those auctions.¹ While the vast number of different types of these services prevents me from opining on all of them, I can specifically address the eBay model, and I will provide guidance for addressing other models.

Based on the statutory definition of "auctioneer," it is necessary to determine if a service is: 1) a person; 2) who, for compensation; 3) sells or offers for sale real or personal property; 4) at public auction; 5) as a whole or partial vocation.² Chapter 51-05.1, N.D.C.C., does not define "person." Section 1-01-49(8), N.D.C.C., contains a definition of "person" that is to be used unless the context requires otherwise. Under that definition, "person" includes an "organization."³ An "organization" includes "a foreign or domestic association, business trust, corporation, enterprise, estate, joint venture, limited liability company, limited liability partnership, limited partnership, partnership, trust, or any legal or commercial entity."⁴

The context in which "person" is used in N.D.C.C. ch. 51-05.1, however, indicates that the Legislative Assembly intended a different meaning. The definition of "auctioneer" uses the single term "person," while the definition of "clerk" in the same section expands the list of eligible entities beyond "person" to include "any person, firm, partnership, copartnership, association, corporation, or limited liability company." The inclusion of other non-individual entities to the definition of "clerk" while excluding them from the definition of "auctioneer" indicates the Legislative Assembly did not intend those additional entities that are not individuals to come within the definition of "auctioneer."

In addition, whether a person is an "auctioneer" depends on whether the person's "whole or partial vocation" is being an auctioneer.⁵ The North Dakota Century Code does not define "vocation," and so we must use the plain meaning of that word.⁶ A dictionary definition of "vocation" is a "regular occupation or profession, esp. one for which a person

¹ For example, see the Ritchie Bros. Auctioneers website:
<http://www.rbauktion.com/index.jsp>.

² N.D.C.C. § 54-05.1-04(1).

³ N.D.C.C. § 1-01-49(8).

⁴ N.D.C.C. § 1-01-49(5).

⁵ N.D.C.C. § 54-05.1-04(1).

⁶ N.D.C.C. § 1-02-02.

is specially suited or qualified.”⁷ Whether being an auctioneer is a person’s “whole or partial vocation”⁸ is fact-specific and to be determined on a case-by-case basis.

But the fact that auctioneering must be a “vocation” appears to preclude the licensure of businesses as auctioneers. Businesses do not have “vocations,” but rather provide services or sell goods. Employees of businesses, including online auction services, may have auctioneering vocations, and may therefore be required to obtain an auctioneer license, but the businesses themselves do not. Accordingly, as used in N.D.C.C. § 54-05.1-04, “person” only means a single individual, rather than the broader definition of “person” in N.D.C.C. § 1-01-49(8). Applying that definition, eBay does not meet the definition of a “person” because it is a corporation rather than an individual.⁹ Whether that conclusion would apply to other auction sites depends on the facts of each situation.

Recognizing the changing landscape produced by the advent of the Internet, the Legislature enacted specific legislation to regulate one type of Internet auction business. Chapter 36-05.1, N.D.C.C., prohibits “internet livestock auctions” from transacting business in North Dakota unless licensed under chapter 36-05.1. “‘Internet livestock auction’ means a place or establishment conducted or operated for compensation or profit as a public market where livestock located in this state is sold or offered for sale at a facility or web site within or outside the state through the use of the internet.”¹⁰ Thus, although business entities cannot be licensed under N.D.C.C. ch. 51-05.1, an internet livestock auction is required to be licensed under N.D.C.C. ch. 36-05.1. Whether other types of businesses that offer similar Internet sales ought to be regulated is an issue the Legislature may need to address.

The second test is whether compensation is paid.¹¹ eBay offers its services to members only. There is no fee to become a member, but a registration process is required.¹² While eBay does not charge its members to buy an item through the eBay system, eBay does charge those members who place items for sale on eBay. The seller is required to pay an “insertion fee” for placing the item for sale and, if the item is sold, the seller is required to pay a “final value fee.” The insertion fee is a flat, nonrefundable fee based on the seller’s

⁷ The American Heritage Dictionary 1353 (2d coll. ed. 1991).

⁸ N.D.C.C. § 54-05.1-04(1).

⁹ See Earth Flag Ltd. v. Alamo Flag Co., 153 F.Supp.2d 349, 351 (S.D.N.Y.,2001). (“eBay is a Delaware corporation, with its principal place of business in San Jose, California.”).

¹⁰ N.D.C.C. § 36-05.1-01(2).

¹¹ N.D.C.C. § 54-05.1-04(1).

¹² eBay Registration Form (2005), available at:

https://scgi.ebay.com/ws/eBayISAPI.dll?RegisterEnterInfo&siteid=0&co_partnerid=2&usag e=0&ru=default&raflid=0&encRaflid=default.

initial offering price and ranges from \$0.25 to \$4.80.¹³ The "final value fee" is a percentage of the selling price.¹⁴ Because eBay receives compensation, it meets the second prong of the statute. Again, whether another entity receives compensation is fact-specific.

The third prong requires that the person "sells or offers for sale real or personal property."¹⁵ eBay's "User Agreement" states, in part:

3.1 eBay is not an Auctioneer. Although we are commonly referred to as an online auction web site, it is important to realize that we are not a traditional "auctioneer." Instead, the Site acts as a venue to allow anyone to offer, sell, and buy just about anything, at anytime, from anywhere, in a variety of pricing formats, including a fixed price format and an auction-style format commonly referred to as "online auctions" or "auctions." We are not involved in the actual transaction between buyers and sellers. As a result, we have no control over the quality, safety or legality of the items advertised, the truth or accuracy of the listings, the ability of sellers to sell items or the ability of buyers to pay for items. We cannot ensure that a buyer or seller will actually complete a transaction.¹⁶

The United States District Court for the Southern District of California has summarized the eBay process as follows:

eBay provides an Internet website service where over 25 million buyers and sellers of consumer goods and services have come together to buy and sell items through either an auction or a fixed-price format. Pursuant to their agreement with eBay, users set up user IDs or "screen names" to conduct business on eBay's website in a semi-anonymous fashion. Buyers and sellers reveal their real identities to each other in private communications to complete sales transactions.

eBay's website allows sellers to post "listings" (or advertisements) containing descriptions of items they wish to offer for sale; and it allows buyers to bid for items they wish to buy. People looking to buy items can either browse through eBay's 4,700 categories of goods and services or search for items

¹³ eBay.com fees (2005), available at <http://pages.ebay.com/help/sell/fees.html>.

¹⁴ *Id.*

¹⁵ N.D.C.C. § 54-05.1-04(1).

¹⁶ eBay User Agreement (2005), available at:

https://scgi.ebay.com/ws/eBayISAPI.dll?RegisterEnterInfo&siteid=0&co_partnerid=2&usag e=0&ru=http%3A%2F%2Fpages.ebay.com%2Fhelp%2Fpolicies%2Fuser%2520agreeme nt.html%3FssPageName%3Df%3Af%3AUS&raflid=0&encRaflid=default.

by typing words into eBay's search engine. Every day, eBay users place on average over one million new listings on eBay's website. At any given time, there are over six million listings on the website.¹⁷

eBay's User Agreement and the court's summary clearly show that eBay itself is not offering to "sell" anything;¹⁸ the offer for sale is made by the member who places the goods for sale. Because eBay does not "sell or offer for sale real or personal property," the third prong of the test also fails and eBay cannot be considered an "auctioneer" as defined in North Dakota law. It is therefore my opinion that since eBay is not an auctioneer it does not need an auctioneer's license, regardless of its domicile. Whether another entity is actually selling real or personal property depends on the circumstances of each case.

The fourth prong is whether the sale is at "public auction."¹⁹ "Cases interpreting [the phrase 'pubic auction'] generally, and as used in the Uniform Commercial Code, have held that several conditions, such as publicity, competitive bidding and invitation to the public must be met before a sale can be classified as a public sale."²⁰ This is, of course, a fact-specific determination to be made in each case.

You also ask whether an auctioneer or clerk's license is required for what you call an "Internet auction trader/listing service provider" ("listing service provider"). You indicate that listing service providers act as agents for individuals who would like to sell merchandise through Internet auction services. They may take consignments of merchandise, arrange to have that merchandise offered for sale through Internet auction services, deliver the merchandise and collect and disperse the proceeds from any sale.

Whether a listing service provider is an "auctioneer" depends on the resolution of several factual issues as applied to the five criteria provided in N.D.C.C. § 51-05.1-04(1). But at least as far as a listing service provider who assists a seller in selling items on eBay is concerned, for the reasons mentioned, such a provider is not an auctioneer.

¹⁷ Hendrickson v. eBay, Inc., 165 F.Supp.2d 1082, 1084 (C.D. Cal. 2001) (footnotes omitted).

¹⁸ See also 86 Ops. Cal. Atty. Gen. 48, Opin. No. 02-111 (Apr. 10, 2003) ("We have little doubt that eBay does not sell or offer to sell or buy or offer to buy, on behalf of another or others"); Gentry v. eBay, 99 Cal. App. 4th 816, 827 (2002) ("eBay is not in the business of selling or offering to sell the collectables at issue; rather, it is the individual defendants who sold the items to plaintiff, using eBay as a venue.")

¹⁹ N.D.C.C. § 54-05.1-04(1).

²⁰ Liberty National Bank of Fremont v. Greiner, 405 N.E.2d 317, 321 (Ohio 1978).

A "clerk," on the other hand, is

any person, firm, partnership, copartnership, association, corporation, or limited liability company, who for a compensation or valuable consideration, is employed either directly or indirectly by an owner while the sale is in progress to record each item offered for sale, its selling price, the buyer's name or number, to collect all proceeds of said sale, to pay all expenses connected with the sale, to prepare a full closing statement of all receipts and disbursements, and make settlement thereon to parties properly entitled thereto within a reasonable length of time.²¹

Whether an entity is a "clerk" also depends on the facts of each case, so I cannot issue a general opinion on the question. One thing to note when considering the question is that when the term "clerk" is used within the chapter as a whole, it is always used in the context of an "auction."²² The rules of interpretation state that "[t]he entire statute is intended to be effective"²³ and that "a just and reasonable result is intended."²⁴ Therefore, the term "clerk" cannot be looked at in isolation, but must be viewed in context with the entire chapter, including the term's association with an "auction."

State law does not define the term "auction," but the plain meaning,²⁵ dictionary definition of "auction" is a "sale of property to the highest bidder."²⁶

In the eBay case, the sale does not always go to the highest bidder. If an item is offered for sale in a fixed price format, then the first member willing to pay that price will acquire that item, even if another member is willing to pay a higher price. If an item is offered in an auction format, the item still may not go to the member willing to pay the highest price, but rather to the member who offers the highest price within the time limit set by the seller. Once the time limit has expired, the item is sold even if other members are willing to pay a higher price.

Therefore, if an auction is defined as a sale of property "to the highest bidder," an Internet auction service like eBay would not meet the definition of "auction." It follows that if the Internet auction service's activities do not meet the definition of an auction, then the actions of a listing service provider are not that of a traditional "auction clerk" and no clerk's

²¹ N.D.C.C. § 54-05.1-03.1(2). Notably, unlike an auctioneer a clerk may be a business or an individual.

²² See e.g., N.D.C.C. §§ 51-05.1-01.1(1), 51-05.1-03(1)(b), (c), (f), (g).

²³ N.D.C.C. § 1-02-38(3).

²⁴ N.D.C.C. § 1-02-38(4).

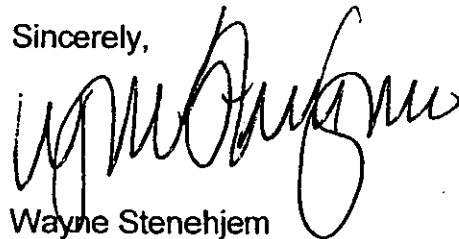
²⁵ N.D.C.C. § 1-02-02.

²⁶ Blacks Law Dictionary 125 (7th ed. 1999).

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license is required. Correspondingly, if a listing service provider is providing services at an actual "auction," as is the case in some Internet sales websites, that listing service provider may need to obtain a clerk's license in order to provide that service in North Dakota if its activities fall within the statutory definition of "clerk."

Sincerely,



Wayne Stenehjem
Attorney General

njl/sam/vkk

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts. See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).