

1 HB495  
2 197406-4  
3 By Representative Isbell  
4 RFD: Boards, Agencies and Commissions  
5 First Read: 23-APR-19



1 of the board and a quorum; and to repeal Section 34-4-22, Code  
2 of Alabama 1975, relating to the register of applicants.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Sections 34-4-21, 34-4-23, 34-4-25,  
5 34-4-27, 34-4-28, 34-4-29, 34-4-30, 34-4-31, 34-4-33, 34-4-50,  
6 and 34-4-52 of the Code of Alabama 1975, are amended to read  
7 as follows:

8 "§34-4-21.

9 "(a) Any person desiring to enter into the auction  
10 business and obtain a license as an auctioneer or apprentice  
11 auctioneer shall make written application for a license to the  
12 board. Each application shall be accompanied by an examination  
13 fee of an amount not to exceed one hundred fifty dollars  
14 ~~(\$100)~~ (\$150), as set by rule of the board, which shall be  
15 collected from each applicant to defray the expenses of the  
16 examination. The application shall be submitted on forms  
17 prepared and furnished by the board.

18 "(b) (1) Each applicant for a license as an  
19 auctioneer shall be 19 years of age or over, and each  
20 applicant for a license as an apprentice auctioneer shall be  
21 18 years of age or over and shall be a citizen of the United  
22 States or legally present in this state. Each applicant for an  
23 auctioneer's license shall:

24 ~~"(1) have completed a prescribed course of study at  
25 an accredited auctioneering school approved by the board; a.  
26 Have successfully graduated from an accredited public high~~

1 ~~school, an accredited private high school, or a home school~~  
2 ~~instruction program or obtained a general equivalency diploma.~~

3 ~~"(2) have~~ b. Have served one year as an apprentice  
4 auctioneer under the supervision of a licensed auctioneer in  
5 this state; ~~(3) have been the principal auctioneer in at least~~  
6 ~~five auctions of either real or personal property during this~~  
7 ~~period of time; and (4) furnish satisfactory proof of these~~  
8 ~~requirements to the board~~ and have successfully completed a  
9 course of study consisting of not less than 85 hours of  
10 classroom instruction in the fundamentals of auctioneering  
11 that satisfies the requirements of the board.

12 "(2) An application shall also be accompanied by a  
13 recommendation of an employing auctioneer. If an applicant has  
14 not sucessfully completed ~~a~~ an approved course of study ~~at an~~  
15 ~~accredited auctioneering school~~ that satisfies the  
16 requirements of the board, then in lieu thereof, he or she  
17 shall be required to serve two years as an apprentice under  
18 the supervision of a licensed auctioneer, ~~and shall have been~~  
19 ~~the principal auctioneer in at least 10 auctions of real or~~  
20 ~~personal property~~ in this state.

21 "(c) (1) Any person who files ~~an~~ a complete  
22 application with the board in the proper manner shall be  
23 entitled to take an ~~oral and written~~ examination to determine  
24 his or her qualifications. The board ~~shall~~ may require  
25 applicants to take and pass ~~a written and oral~~ an examination  
26 establishing, in a manner satisfactory to the board, that the  
27 applicant has a general knowledge of ethics, reading, writing,

1 spelling, elementary arithmetic, ~~elementary principles of land~~  
2 ~~economics~~, and a ~~general knowledge of~~ the statutes of this  
3 state relating to ~~the bulk sales~~, auctions, ~~brokerage~~, and  
4 this chapter. The examination for an auctioneer's license  
5 shall be of a more exacting nature and scope than the  
6 examination for an apprentice auctioneer.

7       "(2) The board ~~shall~~, through application and  
8 examination, shall determine whether the applicant is of good  
9 repute, trustworthy, honest, and competent to transact the  
10 business of an auctioneer, or of an apprentice auctioneer, in  
11 a manner that safeguards the interest of the public.

12       "(3) The board shall require, and it shall be the  
13 responsibility of any applicant for an initial, renewal, or  
14 reciprocal license to disclose any prior ~~felony~~ conviction,  
15 ~~any prior misdemeanor conviction involving moral turpitude~~,  
16 any pending criminal arrest of any nature except misdemeanor  
17 traffic violations, and any prior or pending disciplinary  
18 proceedings against the applicant before a board of  
19 auctioneers or real estate commission in this or any other  
20 state. Where an applicant has been convicted of a crime in a  
21 court of competent jurisdiction of this or any other district,  
22 state, or territory of the United States or of a foreign  
23 country, the untrustworthiness of the applicant and the  
24 conviction, in itself, may be sufficient grounds for refusal  
25 of a license.

26       "(4) All auctioneers, apprentice auctioneers, and  
27 auction ~~firms~~ companies are under a continuing duty to report

1 to the board any and all ~~such~~ criminal arrests, charges,  
2 convictions, or disciplinary proceedings which they may incur,  
3 as well as any civil suits involving them. The board ~~must~~  
4 shall receive notice of any ~~such~~ arrest, charge, criminal  
5 conviction, or commencement of disciplinary proceedings within  
6 30 days of its occurrence. Notice of the commencement of any  
7 civil suit ~~must~~ shall be received by the board within 30 days  
8 after service of the complaint upon the defendant in the  
9 action.

10 "(d) The board may grant a single auction license  
11 once per calendar year to any nonresident individual, who is  
12 duly licensed in good standing as an auctioneer, or to an  
13 auction company in another state, who makes written  
14 application to the board and provides satisfactory proof of  
15 all of the following:

16 "(1) The applicant satisfies the age, reputation,  
17 and other qualifications to be licensed as an auctioneer.

18 "(2) The applicant has paid a fee as established by  
19 rule of the board.

20 "(3) The applicant has not applied for or previously  
21 obtained a license under this chapter.

22 "(4) The applicant is not the subject of a  
23 disciplinary action in any state; has not had a professional  
24 license or business license for any company in which he or she  
25 is a principal in this, or any other licensing jurisdiction,  
26 disciplined, suspended, revoked, or denied; has not been

1 convicted of a criminal offense; and has no criminal charges  
2 pending in any jurisdiction.

3 "(5) The applicant has provided proof of financial  
4 responsibility in the form of either an irrevocable letter of  
5 credit, or a cash bond or surety bond in the amount of ten  
6 thousand dollars (\$10,000). If the applicant gives a surety  
7 bond, the bond shall be executed by a surety company  
8 authorized to do business in this state. A bond shall be made  
9 payable to the board and shall be conditioned on compliance by  
10 the applicant with this chapter and the rules adopted by the  
11 board. All bonds shall be in a form approved by the board.

12 "~~(d)~~(e) The license fee for each auctioneer or  
13 auction company shall be an amount to be determined by the  
14 board, not to exceed two hundred fifty dollars (\$250), and the  
15 license fee for each apprentice auctioneer shall be an amount  
16 to be determined by the board, not to exceed one hundred fifty  
17 dollars ~~(\$100)~~ (\$150). The license fees ~~for an auctioneer~~  
18 shall not be increased more than twenty-five dollars (\$25) in  
19 any given year.

20 "~~(e)~~(f) All licenses shall expire on September 30 of  
21 each year following issuance thereof and may be renewed upon  
22 payment of the appropriate license fee as required by this  
23 chapter. Renewal of a license may be effected at any time  
24 during the months preceding the date of expiration. No  
25 examination shall be required for the renewal of any license,  
26 unless the license has been revoked or suspended. If a  
27 licensee fails to renew his or her license by the deadline of

1 each year, he or she may ~~have~~ renew his or her license ~~renewed~~  
2 within 60 days after the expiration date, upon payment of the  
3 required fee and a late fee of twenty-five dollars (\$25) for  
4 apprentices and fifty dollars (\$50) for auctioneers and  
5 auction companies. If a licensee elects not to pay the penalty  
6 and renew his or her license, he or she shall be required to  
7 submit an application, pay the examination fee, and take the  
8 examination required for new licensees.

9 "~~(f)~~ (g) The board, by rule, shall adopt a program of  
10 continuing education for its licensees. No licensee shall have  
11 his or her license renewed unless, in addition to any other  
12 requirements of this chapter, the minimum annual continuing  
13 education requirements are met. The continuing education  
14 program shall not include testing or examination of the  
15 licensees in any manner. Any licensee 65 years of age or older  
16 shall be exempt from the continuing education requirement.

17 "~~(g)~~ (h) The board shall prepare and deliver to each  
18 licensee a license certificate and pocket card. The  
19 certificate shall be displayed openly at all times in the  
20 office of the licensee. The certificate and the pocket card of  
21 the apprentice auctioneer shall contain his or her name as  
22 well as that of the auctioneer under whose supervision he or  
23 she is employed.

24 "~~(h)~~ (i) When any auctioneer discharges an  
25 apprentice, or terminates his or her employment with the  
26 auctioneer for any reason, the auctioneer shall deliver or  
27 mail by registered or certified mail to the board the license

1 of the discharged apprentice auctioneer. It shall be unlawful  
2 for any apprentice auctioneer to perform any of the acts  
3 contemplated by this chapter, either directly or indirectly  
4 under authority of his or her license, until the apprentice  
5 auctioneer receives a new license bearing the name and address  
6 of his or her new employer. No more than one license shall be  
7 issued to any apprentice auctioneer for the same period of  
8 time.

9 "(i)(j) Written notice shall be given immediately to  
10 the board by each licensee of any change in his or her mailing  
11 address and the board shall issue a new license for the  
12 unexpired period. A change of mailing address without  
13 notification to the board shall automatically cancel the  
14 license previously issued. For changing a mailing address and  
15 issuance of a new license, the board shall collect a fee ~~of~~  
16 ~~five dollars (\$5)~~ in an amount determined by rule of the  
17 board. Each prior license shall be returned or accounted for  
18 to the board and be canceled before the issuance of the new  
19 license. The board may require other proof considered  
20 desirable with due regard to the paramount interest of the  
21 public in the issuance of the license.

22 "(k) (1) An auctioneer who is in good standing with  
23 the board may request inactive status by submitting to the  
24 board a written application, his or her current license  
25 certificate and pocket card, and a fee. The auctioneer shall  
26 certify on the application that he or she will not perform any  
27 business of auctioneering while on inactive status. An

1 auctioneer who has a disciplinary or suspension hearing  
2 pending against him or her may only be granted inactive status  
3 upon approval of the board. Inactive status may be renewed  
4 annually upon written application and payment of a fee. The  
5 board, by rule, shall determine the amount of the initial  
6 application fee and the annual renewal fee.

7 "(2) An auctioneer on inactive status may be  
8 restored to active status by submitting to the board a written  
9 application requesting reactivation and providing proof of  
10 satisfying all continuing education requirements for the most  
11 recent licensure period during which the license was inactive.

12 "~~(j)~~(l) Pursuant to Sections 41-22-1 to 41-22-27,  
13 inclusive, the Alabama Administrative Procedure Act, the board  
14 may make and enforce any necessary and reasonable rules ~~and~~  
15 ~~regulations~~ pursuant to the application for any license.

16 "(m) The board, by rule, may establish and charge  
17 reasonable fees relating to the administration and enforcement  
18 of this chapter for application or other processing costs;  
19 online service; continuing education provider services; copy,  
20 mailing, and filing services; and other fees as necessary to  
21 offset licensing and processing costs.

22 "§34-4-23.

23 "The issuance of a license by the board shall be  
24 evidence that the person, ~~partnership, association, or~~  
25 ~~corporation~~ or business entity named therein is entitled to  
26 all the rights and privileges of an auctioneer or apprentice  
27 auctioneer while the license remains unrevoked or unexpired.

1           "§34-4-25.

2           "(a) A nonresident of this state, or a resident of  
3 this state who is licensed by another state, may become an  
4 auctioneer or apprentice auctioneer in this state by  
5 conforming to this chapter, or in the case of a nonresident  
6 from a nonlicensing state, such person may be licensed  
7 provided an examination is given and passed and the person has  
8 at least five years' experience in the auction business.  
9 Provided further, that if a nonresident auctioneer or  
10 apprentice auctioneer, or a resident who is licensed as an  
11 auctioneer or apprentice auctioneer in another state, has a  
12 lawsuit or other legal action filed and pending against him or  
13 her in this or any other state, the board ~~shall~~ may not issue  
14 a license to him or her until final disposition of the action,  
15 and then only at the discretion of the board. The terms  
16 "auctioneer" and "apprentice auctioneer" shall include any  
17 individual, firm, company, partnership, association, or  
18 corporation by whom the "auctioneer" or "apprentice  
19 auctioneer" is employed.

20           "(b) The board may recognize a license issued by any  
21 other state to a resident of this state or a nonresident  
22 auctioneer ~~or apprentice auctioneer~~ if the other state  
23 reciprocates with Alabama in like manner and if the licensing  
24 requirements of the state include the passing of an  
25 examination of equal or higher standards than those required  
26 by this state. The nonresident licensee, or resident licensee  
27 of another state, shall, however, be required to secure a

1 license from the board which shall be issued upon application  
2 therefor, accompanied by payment of the license fee required  
3 by this chapter and the filing of a certified copy of the  
4 license of the applicant issued by the other state.

5 "(c) The board ~~shall have the authority to~~ may  
6 impose any fee or licensing requirements on applicants for  
7 licenses from a reciprocal state that the reciprocal state  
8 imposes on Alabama licensees by rule, regulation, policy, or  
9 law.

10 "(d) Every applicant shall file an irrevocable  
11 consent that actions may be commenced against the applicant in  
12 the proper court in the county in this state in which a cause  
13 of action may arise, in which the plaintiff may reside, by  
14 service of any process or pleadings authorized by laws of this  
15 state on the board, or a deputy to be designated by the board,  
16 the consent stipulating and agreeing that service of process  
17 or pleading shall be begun and held in all courts to be as  
18 valid and binding as if due service had been made upon the  
19 applicant in this state. The consent shall be duly  
20 acknowledged and, if made by a corporation, shall be  
21 authenticated by the seal of the corporation. In case of any  
22 process or pleadings mentioned in this chapter being served  
23 upon the board or upon a deputy to be designated by the board,  
24 duplicated copies shall be made, one of which shall be filed  
25 in the office of the secretary of the board, and the other  
26 immediately forwarded by registered or certified mail to the  
27 main office of the applicant against which process or

1 pleadings are directed. No default in the proceedings or  
2 action shall be taken unless it shall be made to appear by  
3 affidavit of a member of the board, or a deputy designated by  
4 the board, that a copy of the process or pleadings was mailed  
5 to the defendant as herein required. Judgment by default shall  
6 be taken in any action or proceedings within 20 days after the  
7 date of the mailing of process or pleadings to the defendant.

8 "§34-4-27.

9 "Each auctioneer shall annually pay one state  
10 license in an amount not to exceed two hundred fifty dollars  
11 (\$250). Each auctioneer shall also annually pay a county  
12 license fee of twenty-five dollars (\$25) in each county where  
13 he or she sells by auction. No privilege license shall be  
14 required for any apprentice auctioneer when he or she is  
15 listed as the principal auctioneer. No license shall be  
16 required for any auctioneer who conducts an auction, without  
17 compensation for himself or herself, where all proceeds from  
18 the auction go to the benefit of any charitable organization.  
19 The term "auctioneer" shall include any person selling real  
20 estate, goods, wares, merchandise, automobiles, livestock, or  
21 other things of value by or at public outcry auction. Sales at  
22 public ~~outcry~~ auction involving any of the following may be  
23 ~~made conducted~~ for compensation without a license involving  
24 ~~any of the following~~:

25 "(1) Sales at auction conducted by the owner of any  
26 part of the goods or real estate being offered, or an attorney

1 representing the owner, unless the owner acquired the goods to  
2 resell.

3 "~~(1)~~(2) Sales for the estate of a decedent by an  
4 administrator, executor, or any person acting under order of  
5 any court or the attorney of an administrator, executor, or  
6 any person acting under order of any court.

7 "~~(2)~~(3) Sales of property conveyed by deed of trust,  
8 mortgage, judgment, or ordered to be sold according to the  
9 mortgage, judgment, ~~or~~ order, or decree.

10 "~~(3)~~(4) All sales under legal process.

11 "§34-4-28.

12 "(a) Authority to transact business as an auctioneer  
13 under any license issued by the board shall be restricted to  
14 the person named in ~~such~~ the license and ~~shall~~ may not inure  
15 to the benefit of any other person.

16 "(b) Where an auctioneer's license shall be issued  
17 to ~~a corporation or association~~ an auction company that is  
18 duly qualified and registered to conduct business in this  
19 state, authority to transact business thereunder shall be  
20 limited to one officer ~~of such corporation or association,~~  
21 member, copartner, or owner of the company, to be designated  
22 in the application and named in the license. Each other  
23 officer ~~of such association or corporation,~~ member, copartner,  
24 or owner of the company desiring to act as an auctioneer in  
25 connection with the business of the ~~association or corporation~~  
26 company, or otherwise, shall be required to make application  
27 for and take out a separate license in his or her own name

1 individually. ~~Where the licensee is a copartnership, the~~  
2 ~~license issued to such copartnership shall confer authority to~~  
3 ~~act as auctioneer upon one member of such copartnership only,~~  
4 ~~who shall be designated in the application and named in the~~  
5 ~~license. All the other members of the copartnership desiring~~  
6 ~~to act as auctioneers in connection with the business of the~~  
7 ~~partnership or otherwise shall be required to apply for and~~  
8 ~~take out individual licenses in their own names.~~

9 "(c) No licensed auction company may hire an  
10 unlicensed auctioneer to conduct any auction business, nor  
11 shall any licensed auctioneer conduct an auction for an  
12 unlicensed auction company in this state.

13 "(d) Every licensee authorized to transact business  
14 pursuant to this chapter shall do all of the following:

15 "(1) Maintain a segregated escrow or trust account  
16 in a bank insured by the Federal Deposit Insurance  
17 Corporation, in which funds belonging to sellers or consignors  
18 received in the course of business transacted shall be kept  
19 separate from the funds of the licensee. All funds received  
20 from sales by an apprentice shall be maintained in the escrow  
21 or trust account of the sponsor.

22 "(2) Enter into a written contract with the owner or  
23 consignor of any property to be offered for sale before the  
24 auction. All contracts shall clearly contain the terms and  
25 conditions upon which the licensee received the property for  
26 auction including, but not limited to, whether the auction  
27 will be conducted as absolute or with reserve, and the date

1 the proceeds due the owner or consignor shall be remitted to  
2 the seller or consignor.

3 "(3) Provide a copy to the seller or consignor of  
4 all written instruments prepared by the licensee at the time  
5 of execution. Consignment agreements shall contain the name  
6 and signature of the licensee responsible for the auction.

7 "(4) Provide a closing statement to the seller or  
8 consignor giving a full accounting of all proceeds received  
9 and disbursements made relative to the auction. A closing  
10 statement shall contain the date and location of the auction  
11 and the name, license number, and signature of the licensee  
12 responsible for the auction. A closing statement shall be  
13 provided within 30 days after the auction. A properly prepared  
14 HUD-1 statement, or equivalent, satisfies the requirements of  
15 this section for the sale of real property.

16 "(5) Display the name and license number of the  
17 auctioneer in all advertising for the auction. In the case of  
18 an apprentice auctioneer, all advertising shall also contain  
19 the name and license number of the sponsor. An auction company  
20 shall display the name and license number of the auctioneer  
21 named in the license in any and all advertisements.

22 "(6) Ensure that all advertising is accurate and  
23 truthful.

24 "(7) Maintain complete and accurate documents,  
25 books, and records of all transactions concerning every  
26 auction for a period of five years after the date on which the  
27 seller or consignor contracted with the auctioneer or the

1 auction was conducted, whichever is later. The documents,  
2 books, and records shall be made available for inspection by  
3 the board, or its authorized personnel or representatives,  
4 upon request. Failure to produce the requested documents,  
5 books, records, or copies thereof within 30 days after request  
6 of the board shall be grounds for disciplinary action by the  
7 board.

8 "(8) Assume responsibility, as the sponsoring  
9 auctioneer, for the acts of any apprentice in the conduct of  
10 auction business and be present at every auction to directly  
11 supervise the apprentice.

12 "§34-4-29.

13 ~~"(a) The board may revoke or suspend licenses as~~  
14 ~~provided in this section.~~

15 ~~"(b)~~ (a) The board may, upon its own motion, and  
16 shall, upon the verified complaint in writing of any person  
17 containing evidence, documentary or otherwise, that makes out  
18 a prima facie case, investigate the actions of any auctioneer,  
19 apprentice auctioneer, or any person who assumes to act in  
20 either capacity, and hold a hearing on the complaint.

21 ~~"(c)~~ (b) The board may ~~suspend or revoke any license~~  
22 ~~which has been issued based on false or fraudulent~~  
23 ~~representations. The board may also suspend or revoke the~~  
24 ~~license of any licensee for~~ invoke disciplinary action  
25 whenever it shall be established to the satisfaction of the  
26 board, after a hearing as hereinafter provided, that any  
27 licensee is guilty of any of the following acts:

1           "(1) Making any substantial misrepresentation.

2           "(2) Pursuing a continued and flagrant course of  
3 misrepresentation or making false promises through agents,  
4 advertising, or otherwise.

5           "(3) Accepting valuable consideration as an  
6 apprentice auctioneer for the performance of any of the acts  
7 specified in this chapter from any person other than his or  
8 her employer auctioneer.

9           "(4) Failing to account for or remit, within a  
10 ~~reasonable time~~ 30 days, any money belonging to others that  
11 comes into his or her possession, commingling funds of others  
12 with his or her own, or failing to keep funds of others in an  
13 escrow or trustee account.

14           "(5) Paying valuable consideration to any person for  
15 services performed in violation of this chapter.

16           "(6) Being convicted in a court of competent  
17 jurisdiction of this or any other state of a criminal offense  
18 involving moral turpitude or a felony.

19           "(7) ~~Violation of~~ Violating any rule ~~or regulation~~  
20 ~~promulgated~~ adopted by the board.

21           "(8) ~~Failure~~ Failing to furnish voluntarily at the  
22 time of execution copies of all written instruments prepared  
23 by the ~~auctioneer or apprentice auctioneer~~ licensee.

24           "(9) ~~Any conduct of any auctioneer which~~  
25 ~~demonstrates~~ Demonstrating bad faith, dishonesty,  
26 incompetency, or untruthfulness.

1           "~~(10) Any conduct of any auctioneer which~~  
2 ~~demonstrates~~ Demonstrating improper, fraudulent, or dishonest  
3 dealings.

4           "(11) Having had any license to practice a business  
5 or profession in this or any other state or jurisdiction  
6 revoked, suspended, annulled, sanctioned, or otherwise having  
7 any disciplinary action taken against him or her by any other  
8 licensing authority in this or any other state.

9           "~~(11)~~ (12) Failing prior to before the sale at public  
10 auction, to enter into a written contract with the owner or  
11 cosignee of ~~any~~ the property to be sold containing the terms  
12 and conditions upon which the licensee received the property  
13 for sale.

14           "~~(12) Failure by the auctioneer conducting an~~  
15 ~~auction to show~~ (13) Failing to display his or her name and  
16 state license number in ~~the~~ all advertising ~~of the~~ for an  
17 auction the licensee is conducting.

18           "~~(13)~~ (14) Presenting a worthless check to the board.

19           "(15) Filing frivolous, unfounded complaints with  
20 the board.

21           "(16) Knowingly making any misleading, false, or  
22 deceptive statement on any application for a license.

23           "(17) Aiding or abetting an unlicensed person in the  
24 performance of acts that require a license under this chapter.

25           "(18) Violating any other provision of this chapter.

26           "(c) When the board finds any licensee guilty of any  
27 of the grounds set forth in subsection (b), the board may

1 enter an order imposing one or more of the following  
2 penalties:

3 "(1) A letter of reprimand.

4 "(2) Probation for a period of time and subject to  
5 any condition prescribed by the board.

6 "(3) Denial of an application for an initial or  
7 renewal license.

8 "(4) Suspension of a license for a period of time  
9 established by the board, with or without automatic  
10 reinstatement.

11 "(5) Revocation of a license.

12 "(6) Imposing continuing education requirements in  
13 the area or areas in which the licensee has been found  
14 deficient.

15 "(7) Assessment of the costs of any disciplinary  
16 proceedings on the licensee.

17 "(d) Before denying an application for license or  
18 suspending or revoking any license, the board shall hold a  
19 hearing and shall, at least 21 days ~~prior to~~ before the date  
20 set for the hearing, notify in writing the accused licensee of  
21 the charges made or the question to be determined, including  
22 notice of the time and place of the hearing, and afford the  
23 licensee an opportunity to be present, be heard in person or  
24 by counsel, and to offer evidence orally, or by affidavit or  
25 deposition. Written notice may be served by delivery of the  
26 notice personally to the applicant or licensee or by mailing  
27 the notice by registered or certified mail to the last known

1 mailing address of the applicant or licensee. If the applicant  
2 or licensee is an apprentice auctioneer, the board shall also  
3 notify the auctioneer employing him or her, or whose employ he  
4 or she is about to enter, by mailing notice by registered or  
5 certified mail to the auctioneer's last known address. The  
6 hearing shall be held at a time and place prescribed by the  
7 board and shall proceed in accordance with the Alabama  
8 Administrative Procedure Act. The board may deny any applicant  
9 for an apprentice auctioneer or auctioneer license the right  
10 to take an examination for a period of up to one year if the  
11 applicant is found by the board to have conducted auction  
12 business within this state as an apprentice auctioneer or  
13 auctioneer without first having been properly licensed.

14 "(e) In addition to the disciplinary powers granted  
15 in this section, the board may levy and collect administrative  
16 fines from any person for ~~serious~~ violations of this chapter  
17 or the rules ~~and regulations~~ of the board of not less than two  
18 hundred dollars (\$200) ~~\$200 five hundred dollars (\$500)~~ or  
19 more than ~~\$500 two~~ one thousand five hundred dollars (\$2,500)  
20 (\$1,500) for each violation.

21 "(f) The board may seek an injunction against any  
22 person in violation of this chapter in addition to the  
23 penalties and disciplinary powers otherwise conferred upon the  
24 board herein. In an action for an injunction, the board may  
25 demand and recover a civil penalty of fifty dollars (\$50) per  
26 day for each violation, reasonable attorney fees, and court  
27 costs.

1           "(g) Failure to comply with any final order of the  
2 board is cause for suspension or revocation of a license. The  
3 board may also suspend or revoke any license that has been  
4 issued based on false or fraudulent representations.

5           "§34-4-30.

6           "(a) The board may administer oaths and prescribe  
7 all necessary and reasonable rules for the conduct of a  
8 hearing. The board may take testimony of any person by  
9 deposition, with the same fees and mileage and in the same  
10 manner as prescribed by law in judicial procedure of courts of  
11 this state in civil cases. The fees and mileage shall be paid  
12 by the party at whose request the witness is subpoenaed.

13           "~~(b) If the board determines that the licensee is~~  
14 ~~guilty under this chapter, his or her license may be suspended~~  
15 ~~or revoked.~~

16           "~~(c)~~ (b) The affirmative vote of a majority of the  
17 members of the board shall be necessary to revoke or suspend a  
18 license required before any disciplinary action may be taken  
19 against a licensee in accordance with this chapter.

20           "~~(d)~~ (c) The board is declared to be a quasi judicial  
21 body, and the members or the employees of the board are  
22 granted immunity from civil liability and shall not be liable  
23 for damages therefrom when acting in the performance of their  
24 duties as described in this chapter.

25           "§34-4-31.

26           "~~Whenever any person, partnership, association or~~  
27 ~~corporation~~ claiming to have been injured or damaged by the

1 gross negligence, incompetency, fraud, dishonesty, or  
2 misconduct on the part of any licensee ~~following the calling~~  
3 ~~or~~ engaging in the auction business, as herein described,  
4 shall file an action upon such claim against such licensee in  
5 any court of record in this state and shall recover judgment  
6 thereon, such court may as part of its judgment in such case,  
7 if it deems it a proper case in which to do so, revoke the  
8 defendant's license, which shall not be reissued to such  
9 licensee except upon unanimous vote of all members of the  
10 board in favor of such reissuance and only then after the  
11 lapse of a period of 90 days from the date of such revocation.

12 "§34-4-33.

13 "(a) Findings of the board with regard to the  
14 denial, suspension, or revocation of a license or the  
15 imposition of ~~an~~ any penalty or administrative fine shall be  
16 final unless within 30 days after the date of the final order  
17 of the board, the applicant, ~~or otherwise known as the~~  
18 ~~accused, whether an individual or a corporation registered in~~  
19 ~~Alabama,~~ licensee files a notice of appeal ~~in~~ with the board  
20 to the Circuit Court of Montgomery County. A party The person  
21 appealing a the decision shall post a two hundred dollar  
22 (\$200) ~~appeal~~ cost bond with the ~~clerk of the circuit court.~~  
23 ~~The circuit clerk shall notify the board of the appeal after~~  
24 ~~the clerk has approved the appellant's bond~~ board to cover the  
25 reasonable costs of preparing the transcript of the proceeding  
26 under review, unless waived by the board or the court on a  
27 showing of substantial hardship. The appeal shall be conducted

1 in accordance with the Administrative Procedure Act, and with  
2 all the attendant rights and duties thereof.

3 ~~"(b) An appeal does not act as supersedeas, but the~~  
4 ~~decision of the board may be stayed by the court pending the~~  
5 ~~appeal.~~

6 ~~"(c) The board shall within 30 days of service of~~  
7 ~~the notice of appeal, or within the additional time as the~~  
8 ~~court may allow, file the record in the case with the circuit~~  
9 ~~clerk. A complaint setting forth with particularity the issues~~  
10 ~~raised on appeal shall be filed with the court and served on~~  
11 ~~the board by the appealing party within 30 days after the~~  
12 ~~notice of appeal is filed. The action shall be conducted in~~  
13 ~~accordance with the Alabama Rules of Civil Procedure.~~

14 ~~"(d) The appeal shall be conducted by the court~~  
15 ~~without a jury and shall be confined to the record made before~~  
16 ~~the board. The decision of the board shall be taken as prima~~  
17 ~~facie just and reasonable and the court shall not substitute~~  
18 ~~its judgment for that of the board as to the weight of the~~  
19 ~~evidence on questions of fact. The court shall affirm or~~  
20 ~~reverse, in part or in whole, or modify the decision of the~~  
21 ~~board. The court may remand the case to the board for further~~  
22 ~~proceedings.~~

23 ~~"(e)~~ (b) If the decision of the board is affirmed in  
24 whole or in part, the cost of the appeal shall be taxed  
25 against the party taking the appeal. If the decision of the  
26 board is not affirmed, the court shall tax the costs of appeal  
27 against the board.

1           "§34-4-50.

2           "(a) The Governor shall appoint a State Board of  
3 Auctioneers to be comprised of seven auctioneer members and  
4 one consumer member. ~~Except as otherwise provided by Act~~  
5 ~~98-271, all~~ All appointments ~~and subsequent appointments by~~  
6 ~~the Governor~~ shall be for a term of five years, with each  
7 auctioneer member appointed being a resident of a different  
8 congressional district and the consumer member being a  
9 resident of and appointed from the state at-large. ~~Within 60~~  
10 ~~days after July 1, 1998, the Governor shall appoint one~~  
11 ~~additional auctioneer member provided for herein for a term of~~  
12 ~~two years and the other additional auctioneer member provided~~  
13 ~~for in Act 98-271 shall be appointed by the Governor for a~~  
14 ~~term of four years. Thereafter, subsequent appointments shall~~  
15 ~~be for a term of five years.~~ Appointments shall end on the  
16 anniversary date of the original appointments, except  
17 appointments to fill a vacancy which shall be for the  
18 unexpired term only. No member shall serve more than two  
19 consecutive terms of office. Each member of the board and his  
20 or her successor shall have been a resident and citizen of  
21 this state for at least five years prior to his or her  
22 appointment. Each auctioneer member of the board and his or  
23 her successor shall have been a licensed auctioneer in this  
24 state for at least five years. In the event a district has no  
25 qualified candidate for appointment, the appointment may come  
26 from the state at-large. Each member shall hold office until  
27 his or her successor is appointed by the Governor. The

1 membership of the board shall be inclusive and reflect the  
2 racial, gender, geographic, urban/rural, and economic  
3 diversity of the state.

4 "(b) Each auctioneer member of the board shall be of  
5 good moral character and shall have been licensed by the board  
6 and actively engaged in the auction business for at least five  
7 years prior to the appointment.

8 "(c) On the appointment of a new auctioneer board  
9 member, the board shall, at its next meeting, elect one of its  
10 members as chair, one member as vice-chair, one member as  
11 secretary, and any other officers deemed necessary. The board  
12 may do all things necessary and convenient for carrying into  
13 effect this chapter. The board may make bylaws, rules, and  
14 regulations not inconsistent with this chapter or other  
15 general laws of the state.

16 "(d) Except as otherwise provided in Section  
17 34-4-53, members of the board, board staff, and board  
18 attorneys shall receive the same per diem and travel allowance  
19 paid to state employees for each day they meet to conduct the  
20 official business of the board.

21 "(e) The board may employ an administrator who shall  
22 be exempt from the classified service of the state, and other  
23 staff members necessary to discharge board duties and  
24 administer this chapter. The administrator shall be employed  
25 on the basis of his or her education, experience, and skills  
26 in administration and management. The board shall determine

1 the duties and fix the compensation of the administrator and  
2 other staff members, subject to the general laws of the state.

3 "(f) The board shall provide by rule for the  
4 investigation of any auction activity that is being promoted,  
5 managed, or supervised by unlicensed individuals in violation  
6 of this chapter and may employ an investigator to assist the  
7 board in enforcement of the laws, rules, and policies adopted  
8 thereunder. The investigator shall be employed on the basis of  
9 his or her education, experience, and skills in law  
10 enforcement. The board shall determine the duties and fix the  
11 compensation of the investigator, subject to the general laws  
12 of the state.

13 "~~(f)~~(g) The board shall adopt a seal by which the  
14 board shall authenticate records and documents. On the seal  
15 shall be the words State Board of Auctioneers. Copies of all  
16 records and documents in the office of the board that are duly  
17 certified and authenticated by the seal of the board shall be  
18 received in evidence in all courts equally and with the same  
19 effect as the original. All public records kept in the office  
20 of the board shall be open to public inspection during  
21 reasonable hours.

22 "(h) Each board member shall be accountable to the  
23 Governor for the proper performance of his or her duties as a  
24 member of the board. The Governor shall investigate any  
25 complaints or unfavorable reports concerning the actions of  
26 the board and take appropriate action thereon, including  
27 removal of any board member for misfeasance, malfeasance,

1 neglect of duty, commission of a felony, incompetence, or  
2 permanent inability to perform official duties. A board member  
3 may be removed at the request of the board for failing to  
4 attend four consecutive, properly noticed meetings.

5 "§34-4-52.

6 "The board shall meet ~~at least four times each year,~~  
7 ~~in January, April, July, and October,~~ quarterly for the  
8 purpose of transacting business as may properly come before  
9 the board. Special meetings of the board shall be held at such  
10 times as the board may provide in the bylaws the board may  
11 adopt. ~~Four~~ A majority of the then appointed board members  
12 shall constitute a quorum at a board meeting. A majority vote  
13 of a quorum of the board eligible to vote on a matter shall be  
14 required for any action taken by the board. Due notice of each  
15 meeting and the time and place thereof shall be given each  
16 member in such manner as the bylaws and applicable law may  
17 provide."

18 Section 2. Section 34-4-22, Code of Alabama 1975,  
19 requiring the board to keep a register of applicants, is  
20 repealed.

21 Section 3. This act shall become effective on the  
22 first day of the third month following its passage and  
23 approval by the Governor, or its otherwise becoming law.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18

House of Representatives

Read for the first time and re-  
ferred to the House of Representa-  
tives committee on Boards, Agencies  
and Commissions..... 23-APR-19

Read for the second time and placed  
on the calendar 1 amendment ..... 08-MAY-19

Read for the third time and passed  
as amended..... 23-MAY-19

Yeas 80, Nays 7, Abstains 5

Jeff Woodard  
Clerk