

1 HB500  
2 135504-2  
3 By Representative Buttram  
4 RFD: Boards, Agencies and Commissions  
5 First Read: 08-MAR-12

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7  
8 SYNOPSIS: Under existing law, an auctioneer may be an  
9 individual or a business entity and is subject to  
10 purchasing a state license annually. There are no  
11 specific provisions governing terms of license  
12 reciprocity and permitting an inactive status  
13 license. Additionally, certain exemptions are  
14 permitted from the licensing requirements.

15 Under existing law, the State Board of  
16 Auctioneers, on its own motion, may investigate a  
17 complaint and hold a hearing or, upon receiving a  
18 verified complaint, is required to investigate and  
19 hold a hearing. The board may suspend or revoke a  
20 license for certain actions and circumstances.

21 Under existing law, the board is comprised  
22 of seven members who are engaged in the auction  
23 business and are from the seven congressional  
24 districts, as well as one consumer member.

25 This bill would provide further for  
26 licensing, would allow a state license to be  
27 purchased every two years, would provide further

1 for reciprocity, and would establish an inactive  
2 license status.

3 This bill would further empower the board to  
4 investigate actions of an auctioneer, issue a  
5 complaint, and hold a hearing. This bill would also  
6 allow the board to suspend or revoke a license for  
7 frivolous or unfounded complaints by a licensed  
8 auctioneer.

9  
10 A BILL

11 TO BE ENTITLED

12 AN ACT

13  
14 To amend Sections 34-4-2, 34-4-20, 34-4-21, 34-4-23,  
15 34-4-25, 34-4-27, 34-4-28, 34-4-29, 34-4-30, 34-4-31, 34-4-33,  
16 34-4-50, 34-4-52, and 34-4-54, Code of Alabama 1975, relating  
17 to the State Board of Auctioneers and the licensing of  
18 auctioneers; to redefine the term auctioneer; to change the  
19 licensing period from one year to two years; to establish an  
20 inactive license status; to provide further for reciprocity;  
21 to allow the board to suspend or revoke a license for a  
22 pattern of frivolous, unfounded complaints; to provide further  
23 for conducting investigations and hearings on complaints; to  
24 provide for quorums; and to repeal Section 34-4-22, Code of  
25 Alabama 1975, relating to the register of applicants.

26 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1                   Section 1. Sections 34-4-2, 34-4-20, 34-4-21,  
2                   34-4-23, 34-4-25, 34-4-27, 34-4-28, 34-4-29, 34-4-30, 34-4-31,  
3                   34-4-33, 34-4-50, 34-4-52, and 34-4-54, Code of Alabama 1975,  
4                   are amended to read as follows:

5                   "§34-4-2.

6                   "For the purposes of this chapter, the following  
7                   words and phrases shall have the following meanings  
8                   respectively ~~ascribed by this section~~:

9                   "(1) ABSOLUTE AUCTION. An auction in which property  
10                  put up for sale is sold to the highest bidder; where no  
11                  minimum price limits the bid; where the seller may not  
12                  withdraw the property from the auction after the auctioneer  
13                  calls for bids, unless no bid is made within a reasonable  
14                  time; where the seller may not reject any bid or all bids; and  
15                  where the seller may not nullify the sale by bidding himself  
16                  or herself or through an agent. Auction Without Reserve is  
17                  equivalent to the term Absolute Auction.

18                  "~~(3)~~ (2) APPRENTICE AUCTIONEER. Any person who for  
19                  compensation or valuable consideration or otherwise is  
20                  employed, directly or indirectly, by an auctioneer to deal or  
21                  engage in any activity listed in subdivision ~~(1)~~ (4) of this  
22                  section.

23                  "(3) AUCTION. The sale of goods or real estate by  
24                  means of gestures, oral, written, or electronic exchanges  
25                  between an auctioneer and members of the audience, the  
26                  exchanges consisting of a series of invitations for bids made  
27                  by the auctioneer and bids to purchase by members of the

1 audience, culminating in the acceptance by the auctioneer of  
2 the highest or most favorable bid made by a member of the  
3 participating audience.

4 ~~"(6)(4) AUCTION BUSINESS or BUSINESS OF~~  
5 ~~AUCTIONEERING. The performing of any of the acts of an~~  
6 ~~auctioneer or apprentice auctioneer as defined in this~~  
7 ~~section. The sale, either directly or through agents, of real~~  
8 ~~or personal property at auction or the arranging, sponsoring,~~  
9 ~~managing, promoting, conducting, or advertising of auctions.~~  
10 ~~This definition also includes persons who, in their regular~~  
11 ~~course of business, use or allow the use of their facilities~~  
12 ~~for auctions.~~

13 ~~"(5) AUCTION COMPANY. Any legal business entity that~~  
14 ~~engages in the business of auctioneering, as defined in this~~  
15 ~~chapter.~~

16 ~~"(6) AUCTION MEDIATION COMPANY. Any person who~~  
17 ~~provides a forum through the Internet to sell another person's~~  
18 ~~real or personal property via the submission of silent bids,~~  
19 ~~using a computer or other electronic device. The term does not~~  
20 ~~include a person who does not take possession or ownership of~~  
21 ~~the property offered for sale.~~

22 ~~"(1)(7) AUCTIONEER. Any person who has graduated~~  
23 ~~from an accredited auction school and has one year's~~  
24 ~~experience as an apprentice auctioneer or has two years'~~  
25 ~~experience as an apprentice auctioneer in bid calling, for a~~  
26 ~~fee, commission or any other valuable consideration, or with~~  
27 ~~the intention or expectation of receiving the same, by the~~

1 ~~means of or process of an auction or sale at auction, offers,~~  
2 ~~negotiates, or attempts to negotiate a listing contract, sale,~~  
3 ~~purchase, or exchange of goods, chattels, merchandise, real or~~  
4 ~~personal property or of any other commodity which may lawfully~~  
5 ~~be kept or offered for sale by or at public auction met the~~  
6 ~~requirements prescribed under Section 34-4-21, who engages in,~~  
7 ~~or who by advertising or otherwise holds himself or herself~~  
8 ~~out as being able to engage in, the business of auctioneering,~~  
9 ~~as defined in this chapter.~~

10 ~~"(2)(8) BOARD. The State Board of Auctioneers.~~

11 ~~"(4)(9) GOODS/PROPERTY. Any chattels, goods,~~  
12 ~~merchandise, real or personal property or commodities of any~~  
13 ~~form or type which may lawfully be kept or offered for sale.~~

14 ~~"(5)(10) PERSONS. Individuals, associations,~~  
15 ~~partnerships, and corporations, and the PERSON. An individual,~~  
16 ~~association, partnership, corporation, limited liability~~  
17 ~~company, sole proprietorship, or future legal business entity.~~  
18 ~~The word "persons" shall also include the officers, directors,~~  
19 ~~and employees term includes any officer, director, or employee~~  
20 ~~of a corporation, association, sole proprietorship, or future~~  
21 ~~business entity, as well as any member of a limited liability~~  
22 ~~company, and any partner in a partnership.~~

23 ~~"§34-4-20.~~

24 ~~"(a) It shall be unlawful for any person,~~  
25 ~~partnership, association, or corporation in any county of this~~  
26 ~~state to act as an auctioneer or apprentice auctioneer, or~~  
27 ~~directly or indirectly to engage or assume to engage in the~~

1 auction business and act as either without first obtaining a  
2 license issued by the State Board of Auctioneers, under the  
3 provisions of this chapter.

4 "(b) It shall be unlawful for any person not  
5 licensed under the provisions of this chapter to advertise  
6 that he or she is in the auction business or to do anything to  
7 leave any impression upon the public that he or she is an  
8 auctioneer or is so engaged.

9 "(c) It shall be unlawful for any licensed  
10 auctioneer or apprentice auctioneer to act in such capacity in  
11 the sale of real property unless such auctioneer or apprentice  
12 auctioneer shall also be licensed as a real estate broker,  
13 associate broker, or salesperson under Chapter 27 of this  
14 title.

15 "(d) It shall be unlawful for an auction mediation  
16 company to conduct auction business without first obtaining an  
17 auctioneer license issued by the State Board of Auctioneers,  
18 regardless of whether the auction mediation company actually  
19 advertises or otherwise holds itself out as a auctioneer, as  
20 defined in this chapter, or uses the word auction in its name  
21 and otherwise holds itself out to be an auction company.

22 "(e) It shall be unlawful for a licensed auctioneer  
23 to cry bids for an unlicensed auction company.

24 "§34-4-21.

25 "(a) Any person desiring to enter into the auction  
26 business and obtain a license as an auctioneer or apprentice  
27 auctioneer shall make written application for a license to the

1 board. Each application shall be accompanied by an examination  
2 fee of an amount ~~not to exceed one hundred dollars (\$100)~~ set  
3 by the board, which shall be collected from each applicant to  
4 defray the expenses of ~~the~~ any required written examination. ~~A~~  
5 ~~fee of an amount not to exceed one hundred fifty dollars~~  
6 ~~(\$150) shall also be collected from each nonresident~~  
7 ~~applicant, or resident licensee of another state, who seeks~~  
8 ~~licensing by reciprocity.~~ The application shall be submitted  
9 on forms prepared and furnished by the board.

10 "(b) Each applicant for a license as an auctioneer  
11 shall be 19 years of age or over, and each applicant for a  
12 license as an apprentice auctioneer shall be 18 years of age  
13 or over ~~and shall be a citizen of the United States or legally~~  
14 ~~present in this state.~~ Each applicant for an auctioneer's  
15 license shall:

16 "(1) ~~have completed a prescribed course of study at~~  
17 ~~an accredited auctioneering school approved by the board;~~ Have  
18 successfully graduated from an accredited high school or  
19 obtained a general equivalency diploma (GED).

20 "(2) ~~have~~ Have served one year as an apprentice  
21 auctioneer under the supervision of a licensed auctioneer in  
22 this state and have successfully completed a course of study  
23 consisting of not less than 85 hours of classroom instruction  
24 in the fundamentals of auctioneering that meets the  
25 requirements of the board.; ~~(3) have been the principal~~  
26 ~~auctioneer in at least five auctions of either real or~~  
27 ~~personal property during this period of time; and (4) furnish~~



1 ~~satisfactory proof of these requirements to the board.~~ An  
2 application shall also be accompanied by a recommendation of  
3 an employing auctioneer. If an applicant has not successfully  
4 completed ~~a~~ an approved course of study ~~at an accredited~~  
5 ~~auctioneering school~~ that meets the requirements of the board,  
6 then he or she shall be required to serve two years as an  
7 apprentice under the supervision of a licensed auctioneer, ~~and~~  
8 ~~shall have been the principal auctioneer in at least 10~~  
9 ~~auctions of real or personal property~~ in this state.

10 "(c) (1) Any person who files ~~an~~ a complete  
11 application with the board in the proper manner shall be  
12 entitled to take an ~~oral and written~~ examination to determine  
13 his or her qualifications. The board ~~shall~~ may require  
14 applicants to take and pass ~~a written and oral~~ an examination  
15 establishing in a manner satisfactory to the board that the  
16 applicant has a general knowledge of ethics, reading, writing,  
17 spelling, elementary arithmetic, ~~elementary principles of land~~  
18 ~~economics,~~ and a general knowledge of the statutes of this  
19 state relating to ~~the bulk sales,~~ auctions, ~~brokerage,~~ and  
20 this chapter. The examination for an auctioneer's license  
21 shall be of a more exacting nature and scope than the  
22 examination for an apprentice auctioneer.

23 "(2) The board ~~shall,~~ through application and  
24 examination, shall determine whether the applicant is of good  
25 repute, trustworthy, honest, and competent to transact the  
26 business of an auctioneer, or of an apprentice auctioneer, in  
27 a manner that safeguards the interest of the public.

1           "(3) The board may deny any applicant for an  
2           apprentice auctioneer or auctioneer license the right to take  
3           an examination for a period up to two years if the applicant  
4           is found by the board to have conducted auction business  
5           within this state as an apprentice auctioneer or auctioneer  
6           without first having been properly licensed.

7           "(4)a. The board shall require, and it shall be the  
8           responsibility of any applicant for an initial, renewal, or  
9           reciprocal license to disclose any prior felony conviction,  
10          any prior misdemeanor conviction involving moral turpitude,  
11          any pending criminal arrest of any nature except misdemeanor  
12          traffic violations, and any prior or pending disciplinary  
13          proceedings against the applicant before a board of  
14          auctioneers or real estate commission in this or any other  
15          state.

16          "b. Where an applicant has been convicted of  
17          forgery, embezzlement, obtaining money under false pretenses,  
18          larceny, extortion, conspiracy to defraud, or other like  
19          offense or offenses, or has been convicted of any other crime  
20          in a court of competent jurisdiction of this or any other  
21          district, state, or territory of the United States or of a  
22          foreign country, such untrustworthiness of the applicant and  
23          the conviction, in itself, may be a sufficient ground for  
24          refusal of a license.

25          "(5) All auctioneers, apprentice auctioneers, and  
26          auction ~~firms~~ companies are under a continuing duty to report  
27          to the board any and all such criminal arrests, charges,

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

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

14 "(1) The applicant meets the age, reputation, and  
15 qualifications requirements of an Alabama auctioneer.

16 "(2) The applicant has paid a fee as determined by  
17 the board.

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

20 "(4) The applicant is not the subject of a  
21 disciplinary action in any state, has not had any professional  
22 license or business license for any company in which the  
23 applicant is a principal, in this or any other licensing  
24 jurisdiction, disciplined, suspended, revoked, or denied, has  
25 not been convicted of a criminal offense, and has no criminal  
26 charges pending in any jurisdiction.

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

11           "~~(d)~~(e) The license fee for each auctioneer shall be  
12           an amount to be determined by the board, not to exceed ~~two~~  
13           ~~hundred fifty dollars (\$250)~~ five hundred dollars (\$500) for a  
14           licensing period, and the license fee for each apprentice  
15           auctioneer shall be an amount to be determined by the board,  
16           not to exceed ~~one hundred dollars (\$100)~~ two hundred dollars  
17           (\$200) for a licensing period. The license fees ~~for an~~  
18           ~~auctioneer~~ shall not be increased more than ~~twenty-five~~  
19           ~~dollars (\$25)~~ in fifty dollars (\$50) for any given year  
20           licensing period.

21           "~~(e)~~(f) All licenses shall expire on ~~September 30~~  
22           October 31 of ~~each~~ the second year following issuance thereof  
23           and may be renewed upon payment of the appropriate license fee  
24           as required by this chapter. Renewal of a license may be  
25           effected at any time during the months indicated preceding the  
26           date of expiration. No examination shall be required for the  
27           renewal of any license, unless the license has been revoked or

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

11 ~~"(f) (g)~~ The board shall adopt provide by rule for a  
12 program of continuing education for its licensees. No licensee  
13 shall have his or her license renewed unless, in addition to  
14 any other requirements of this chapter, the minimum ~~annual~~  
15 continuing education requirements are met. The continuing  
16 education program shall not include testing or examination of  
17 the licensees in any manner. Any licensee 65 years of age or  
18 older shall be exempt from the continuing education  
19 requirement. The board shall be authorized to waive the  
20 continuing education requirements in cases of hardship,  
21 disability, or illness, or other such circumstances as the  
22 board deems appropriate.

23 ~~"(g) (h)~~ The board shall prepare and deliver to each  
24 licensee a license certificate and pocket card. The  
25 certificate shall be displayed openly at all times in the  
26 office of the licensee. The certificate and the pocket card of  
27 the apprentice auctioneer shall contain his or her name as

1 well as that of the auctioneer under whose supervision he or  
2 she is employed.

3 ~~"(h)(i)~~ When any auctioneer discharges an  
4 apprentice, or terminates his or her employment with the  
5 auctioneer for any reason, the auctioneer shall deliver or  
6 mail by registered or certified mail to the board the license  
7 of the discharged apprentice auctioneer. It shall be unlawful  
8 for any apprentice auctioneer to perform any of the acts  
9 contemplated by this chapter, either directly or indirectly  
10 under authority of his or her license, until the apprentice  
11 auctioneer receives a new license bearing the name and address  
12 of his or her new employer. No more than one license shall be  
13 issued to any apprentice auctioneer for the same period of  
14 time.

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

1           "(k) An auctioneer may request that his or her  
2           license be placed on inactive status by making a request in  
3           writing and paying a fee to be determined by the board. The  
4           written request must be accompanied by the licensee's current  
5           license certificate and pocket card. The request for inactive  
6           status shall be renewed every two years and the fee paid. Only  
7           licenses that are current and are in good standing with the  
8           board may be placed on inactive status. Auctioneers whose  
9           licenses are on inactive status are precluded from conducting  
10           the activities of an auctioneer. Before a license may be  
11           restored to active status, a licensee shall meet the  
12           continuing education requirements for the most recent  
13           licensure period during which the license became inactive and  
14           include verification thereof to the board with the request for  
15           reactivation.

16           "(j)(1) Pursuant to Sections 41-22-1 to 41-22-27,  
17           inclusive (the Alabama Administrative Procedure Act), the  
18           board may make and enforce any necessary and reasonable rules  
19           and regulations pursuant to the application for any license.

20           "(m) The board may establish and charge reasonable  
21           fees relating to the administration and enforcement of this  
22           chapter for application or other processing costs, on-line  
23           service, continuing education provider services, copy, mailing  
24           and filing services, or other fees as necessary to offset the  
25           licensing and processing costs.

26           "(n) A majority vote of a quorum of the board  
27           eligible to vote on a matter shall be required for any action

1 taken by the board. Notwithstanding the foregoing, an  
2 affirmative vote of a majority of the members of the board is  
3 required for any disciplinary action against a licensee in  
4 accordance with this chapter.

5 "§34-4-23.

6 "The issuance of a license by the board shall be  
7 evidence that the person, ~~partnership, association, or~~  
8 ~~corporation~~ named therein is entitled to all the rights and  
9 privileges of an auctioneer or apprentice auctioneer while the  
10 license remains unrevoked or unexpired.

11 "§34-4-25.

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



1 ~~corporation by whom the "auctioneer" or "apprentice~~  
2 ~~auctioneer" is employed.~~

3       "(b) The board may recognize a license issued by any  
4 other state to a resident of this state or a nonresident  
5 auctioneer ~~or apprentice auctioneer~~ if the other state  
6 reciprocates with Alabama in like manner and if the licensing  
7 requirements of the state include the passing of an  
8 examination of equal or higher standards than those required  
9 by this state. The nonresident licensee, or resident licensee  
10 of another state, shall, however, be required to secure a  
11 license from the board which shall be issued upon application  
12 therefor, accompanied by payment of the license fee required  
13 by this chapter and the filing of a certified copy of the  
14 license of the applicant issued by the other state.

15       "(c) The board shall have the authority to impose  
16 any fee or licensing requirements on applicants for licenses  
17 from a reciprocal state that the reciprocal state imposes on  
18 Alabama licensees by rule, regulation, policy, or law.

19       "(d) Every applicant shall file an irrevocable  
20 consent that actions may be commenced against the applicant in  
21 the proper court in the county in this state in which a cause  
22 of action may arise, in which the plaintiff may reside, by  
23 service of any process or pleadings authorized by laws of this  
24 state on the board, or a deputy to be designated by the board,  
25 the consent stipulating and agreeing that service of process  
26 or pleading shall be begun and held in all courts to be as  
27 valid and binding as if due service had been made upon the

1 applicant in this state. The consent shall be duly  
2 acknowledged and, if made by a corporation, shall be  
3 authenticated by the seal of the corporation. In case of any  
4 process or pleadings mentioned in this chapter being served  
5 upon the board or upon a deputy to be designated by the board,  
6 duplicated copies shall be made, one of which shall be filed  
7 in the office of the secretary of the board, and the other  
8 immediately forwarded by registered or certified mail to the  
9 main office of the applicant against which process or  
10 pleadings are directed. No default in the proceedings or  
11 action shall be taken unless it shall be made to appear by  
12 affidavit of a member of the board, or a deputy designated by  
13 the board, that a copy of the process or pleadings was mailed  
14 to the defendant as herein required. Judgment by default shall  
15 be taken in any action or proceedings within 20 days after the  
16 date of the mailing of process or pleadings to the defendant.

17 "§34-4-27.

18 ~~"Each auctioneer shall annually pay one state~~  
19 ~~license in an amount not to exceed two hundred fifty dollars~~  
20 ~~(\$250). Each In addition to payment of the required state~~  
21 ~~license fee, each auctioneer shall also annually pay a county~~  
22 ~~license fee of twenty-five dollars (\$25) in each county where~~  
23 ~~he or she sells by auction. No privilege license shall be~~  
24 ~~required for any apprentice auctioneer when he or she is~~  
25 ~~listed as the principal auctioneer. No license shall be~~  
26 ~~required for any auctioneer who conducts an auction, without~~  
27 ~~compensation for himself or herself, where all proceeds from~~

1 the auction go to the benefit of any charitable organization.  
2 ~~The term "auctioneer" shall include any person selling real~~  
3 ~~estate, goods, wares, merchandise, automobiles, livestock, or~~  
4 ~~other things of value at public outcry. Sales at public outcry~~  
5 An auction involving any of the following may be made  
6 conducted for compensation without a license involving any of  
7 the following:

8 "(1) Sales at auction conducted by the owner of any  
9 part of the goods or real estate being offered, or an attorney  
10 representing the owner, unless the owner acquired the goods to  
11 resell.

12 "(1)(2) Sales for the estate of a decedent by an  
13 administrator, executor, or any such person acting under order  
14 of any court or the attorney of such administrator, executor,  
15 or any such person acting under order of any court.

16 "(2)(3) Sales of property conveyed by deed of trust,  
17 mortgage, judgment, or ordered to be sold according to the  
18 mortgage, judgment, or order, or decree.

19 "(3)(4) All sales under legal process, including  
20 receivership, bankruptcy, guardianship, and a trustee acting  
21 under a trust agreement, deed of trust, or will, and the  
22 attorney therefor.

23 "(5) Sales conducted by or under the direction of  
24 any public authority.

25 "§34-4-28.

26 "(a) Authority to transact business as an auctioneer  
27 under any license issued by the board shall be restricted to

1 the person named in such license and shall not inure to the  
2 benefit of any other person.

3 Where an auctioneer's license shall be issued to a  
4 ~~corporation or association~~ an auction company that is duly  
5 qualified and registered to conduct business in the State of  
6 Alabama, authority to transact business thereunder shall be  
7 limited to one officer, member, copartner, or owner of such  
8 ~~corporation or association~~ company, to be designated in the  
9 application and named in the license. Each other officer,   
10 member, copartner, or owner of such ~~association or corporation~~  
11 company desiring to act as an auctioneer in connection with  
12 the business of the ~~association or corporation~~ company, or  
13 otherwise, shall be required to make application for and take  
14 out a separate license in his or her own name individually.  
15 ~~Where the licensee is a copartnership, the license issued to~~  
16 ~~such copartnership shall confer authority to act as auctioneer~~  
17 ~~upon one member of such copartnership only, who shall be~~  
18 ~~designated in the application and named in the license. All~~  
19 ~~the other members of the copartnership desiring to act as~~  
20 ~~auctioneers in connection with the business of the partnership~~  
21 ~~or otherwise shall be required to apply for and take out~~  
22 ~~individual licenses in their own names.~~

23 "(b) No licensed auction company may hire an  
24 unlicensed auctioneer to conduct any auction business, nor  
25 shall any licensed auctioneer conduct an auction for an  
26 unlicensed auction company in this state.

1           "(c) Every licensee authorized to transact business  
2 pursuant to this chapter shall be required, in addition to the  
3 further provisions of this chapter, to:

4           "(1) Maintain a segregated escrow or trust account  
5 in a bank insured by the Federal Deposit Insurance  
6 Corporation, in which funds belonging to sellers or consignors  
7 received in the course of business transacted as permitted  
8 under this chapter shall be kept separate from the licensee's  
9 own funds. Any and all funds received from sales by  
10 apprentices shall be maintained in the sponsor's escrow or  
11 trust account.

12           "(2) Enter into a written contract with the owner or  
13 consignor of any property to be offered for sale at public  
14 auction prior to the auction. All such contracts shall clearly  
15 contain the terms and conditions upon which the licensee  
16 received the property for auction, including, but not limited  
17 to, whether the auction will be conducted as absolute or with  
18 reserve, and the date the proceeds due the owner or consignor  
19 shall be remitted to the seller or consignor.

20           "(3) Provide a copy to the seller or consignor of  
21 all written instruments prepared by the licensee at the time  
22 of execution. Consignment agreements shall contain the name,  
23 license number, and signature of the licensee responsible for  
24 the auction.

25           "(4) Provide a closing statement to the seller or  
26 consignor giving a full accounting of all proceeds received  
27 and disbursements made relative to the auction. Closing

1 statements shall contain the date and location of the auction  
2 and the name, license number, and signature of the licensee  
3 responsible for the auction. Closing statements shall be  
4 provided within 30 days of the conclusion of the auction. A  
5 properly prepared HUD-1 statement or equivalent will satisfy  
6 the requirements of this section for the sale of real  
7 property.

8 "(5) Display the name and license number of the  
9 auctioneer in all advertising for the auction. In the case of  
10 an apprentice auctioneer, all advertising shall also contain  
11 the sponsor's name and license number. Auction companies shall  
12 display the name and license number of the auctioneer named in  
13 the license in any and all advertisements.

14 "(6) Ensure that all advertising is accurate and  
15 truthful.

16 "(7) Maintain a current cash or surety bond as  
17 required by this chapter.

18 "(8) Maintain complete and accurate documents,  
19 books, and records of all transactions concerning every  
20 auction for a period of five years following the date on which  
21 the seller or consignor contracted with the auctioneer or the  
22 auction was conducted, whichever is later. The documents,  
23 books, and records shall be made available for inspection by  
24 the board or its authorized personnel or representatives upon  
25 request. Failure to produce the requested documents, books,  
26 records, or copies thereof within 30 days of the board's  
27 request will be grounds for disciplinary action by the board.

1                   "(9) Assume responsibility as the sponsoring  
2                   auctioneer for the acts of any apprentice in the conduct of  
3                   auction business and be present at every auction to directly  
4                   supervise the apprentice.

5                   "§34-4-29.

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

8                   "~~(b)~~ (a) The board ~~may~~, upon its own motion, may, and  
9                   ~~shall~~, upon the verified complaint in writing of any person  
10                  containing evidence, documentary or otherwise, that makes out  
11                  a prima facie case, shall, investigate the actions of any  
12                  auctioneer, apprentice auctioneer, or any person who assumes  
13                  to act in ~~either~~ any such capacity, and hold a hearing on the  
14                  complaint.

15                  "~~(c)~~ (b) The board may ~~suspend or revoke any license~~  
16                  ~~which has been issued based on false or fraudulent~~  
17                  ~~representations. The board may also suspend or revoke the~~  
18                  ~~license of any licensee for~~ invoke disciplinary action as  
19                  outlined in subsection (c) whenever it shall be established to  
20                  the satisfaction of the board, after a hearing as hereinafter  
21                  provided, that any person has been guilty of any of the  
22                  following acts:

23                  "(1) Making any substantial misrepresentation.

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

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

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

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

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

15           "(7) Violation of any rule or regulation promulgated  
16 by the board.

17           "(8) Failure to furnish voluntarily at the time of  
18 execution copies of all written instruments prepared by the  
19 ~~auctioneer or apprentice auctioneer~~ licensee.

20           "(9) Any conduct of any ~~auctioneer~~ licensee which  
21 demonstrates bad faith, dishonesty, incompetency, or  
22 untruthfulness.

23           "(10) Any conduct of any ~~auctioneer~~ licensee which  
24 demonstrates improper, fraudulent, or dishonest dealings.

25           "(11) Having had any license to practice a business  
26 or profession in this or any other state or jurisdiction  
27 revoked, suspended, annulled, or sanctioned, or otherwise



1 having had any disciplinary action taken against the licensee  
2 by any other licensing authority in this or any other state.

3 "(11)(12) Failing prior to the sale at public  
4 auction to enter into a written contract, before an auction,  
5 to enter into a written contract, containing the terms and  
6 conditions upon which the licensee received the property to be  
7 sold, with the owner or cosignee consignor of any the property  
8 to be sold containing the terms and conditions upon which the  
9 licensee received the property for sale.

10 "(12)(13) Failure by the auctioneer licensee  
11 conducting an auction to show his or her display the  
12 licensee's name and state license number in the all  
13 advertising of for the auction.

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

15 "(15) Any pattern of frivolous unfounded complaints  
16 filed with the board by a licensee.

17 "(16) Knowingly making any misleading, false, or  
18 deceptive statement on any application for a license under  
19 this chapter.

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

22 "(18) Violation of any other provision of this  
23 chapter.

24 "(c) When the board finds any person guilty of any  
25 of the grounds set forth in subsection (b), it may enter an  
26 order imposing one or more of the following penalties:

27 "(1) A letter of reprimand.

1           "(2) Imposition of probation for a period of time  
2 and subject to such conditions as may be prescribed by the  
3 board.

4           "(3) Denial of an application for an initial or  
5 renewal license.

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

9           "(5) Revocation of a license.

10          "(6) Payment of restitution to each consumer  
11 negatively affected by the prohibited act. Proof of such  
12 restitution shall be a signed and notarized release executed  
13 by the consumer or the consumer's estate.

14          "(7) Imposition of continuing education requirements  
15 in the area or areas in which he or she has been found  
16 deficient or requiring the person to retake the licensing  
17 exam, or both.

18          "(8) Assessment of the costs of the disciplinary  
19 proceedings.

20          "Failure to comply with any final order of the board  
21 is cause for suspension or revocation of a license. The board  
22 may also suspend or revoke any license which has been issued  
23 based on false or fraudulent representations.

24          "(d) Before denying an application for license or  
25 suspending or revoking any license, the board shall hold a  
26 hearing and shall, at least 21 days prior to the date set for  
27 the hearing, notify in writing the accused licensee of the

1 charges made or the question to be determined, including  
2 notice of the time and place of the hearing, and afford the  
3 licensee an opportunity to be present, be heard in person or  
4 by counsel, and to offer evidence orally, or by affidavit or  
5 deposition. Written notice may be served by delivery of the  
6 notice personally to the applicant or licensee or by mailing  
7 the notice by registered or certified mail to the last known  
8 mailing address of the applicant or licensee. If the applicant  
9 or licensee is an apprentice auctioneer, the board shall also  
10 notify the auctioneer employing him or her, or whose employ he  
11 or she is about to enter, by mailing notice by registered or  
12 certified mail to the auctioneer's last known address. The  
13 hearing shall be held at a time and place prescribed by the  
14 board and shall proceed in accordance with the provisions of  
15 the Alabama Administrative Procedure Act.

16 "(e) In addition to the disciplinary powers granted  
17 in this section, the board may levy and collect administrative  
18 fines for ~~serious~~ violations of this chapter or the rules and  
19 regulations of the board of not less than ~~\$200~~ five hundred  
20 dollars (\$500) or more than ~~\$500~~ five thousand dollars  
21 (\$5,000) for each violation.

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

1 day for each violation, reasonable attorney fees, and court  
2 costs.

3 "§34-4-30.

4 "(a) The board may administer oaths and prescribe  
5 all necessary and reasonable rules for the conduct of a  
6 hearing. In all matters pending before it, the board shall  
7 have the power to issue subpoenas and compel the attendance of  
8 witnesses and the production of all necessary papers, books,  
9 records, documentary evidence, and materials. Any person  
10 failing or refusing to appear to testify regarding any matter  
11 about which he or she may lawfully be questioned or to produce  
12 any papers, books, records, documentary evidence, or materials  
13 in the matter to be heard, after having been required by order  
14 of the board or by a subpoena of the board to do so, upon  
15 application by the board to any circuit judge of the State of  
16 Alabama, may be ordered to comply therewith. The chair and  
17 vice chair of the board shall have the authority to issue  
18 subpoenas to be served upon any person named therein, anywhere  
19 within the State of Alabama, with the same fees and mileage  
20 and in the same manner as prescribed by law in judicial  
21 procedure of courts of this state in civil cases, the fees and  
22 mileage and other costs to be paid as the board directs.

23 "(b) The board may take testimony of any person by  
24 deposition, with the same fees and mileage and in the same  
25 manner as prescribed by law in judicial procedure of courts of  
26 this state in civil cases. The fees and mileage shall be paid  
27 by the party at whose request the witness is subpoenaed.

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

4           "(c) The affirmative vote of a majority of the  
5 members of the board shall be necessary to revoke or suspend a  
6 license required in order to take any disciplinary action  
7 against any licensee in accordance with this chapter.

8           "(d) The board is declared to be a quasi judicial  
9 body, and the members or the employees of the board are  
10 granted immunity from civil liability and shall not be liable  
11 for damages therefrom when acting in the performance of their  
12 duties as described in this chapter.

13           "§34-4-31.

14           ~~"Whenever any person, partnership, association or~~  
15 ~~corporation claiming to have been injured or damaged by the~~  
16 ~~gross negligence, incompetency, fraud, dishonesty, or~~  
17 ~~misconduct on the part of any licensee following the calling~~  
18 ~~or engaging in the auction business, as herein described,~~  
19 shall file an action upon such claim against such licensee in  
20 any court of record in this state and shall recover judgment  
21 thereon, such court may as part of its judgment in such case,  
22 if it deems it a proper case in which to do so, revoke the  
23 defendant's license, which shall not be reissued to such  
24 licensee except upon unanimous vote of all members of the  
25 board ~~in favor of such reissuance,~~ and only then after the  
26 lapse of a period of 90 days from the date of such revocation.

27           "§34-4-33.

1           "(a) Findings of the board with regard to the  
2     ~~denial,~~ suspension, or revocation of a license or the  
3     imposition of ~~an~~ a penalty or administrative fine as  
4     authorized in this section, shall be final unless within 30  
5     days after the date of the final order of the board, the  
6     applicant, ~~or otherwise known as the accused,~~ whether an  
7     ~~individual or a corporation registered in Alabama,~~ licensee  
8     files a notice of appeal ~~in~~ with the board to the Circuit  
9     Court of Montgomery County. ~~A party~~ The person appealing ~~a~~ the  
10    decision shall post a two hundred dollar (\$200) ~~appeal~~ cost  
11    bond with the ~~clerk of the circuit court.~~ The circuit clerk  
12    ~~shall notify the board of the appeal after the clerk has~~  
13    ~~approved the appellant's bond~~ board to cover the reasonable  
14    costs of preparing the transcript of the proceeding under  
15    review, unless waived by the board or the court on a showing  
16    of substantial hardship. The appeal shall be conducted in  
17    accordance with the provisions of the Administrative Procedure  
18    Act, with all the attendant rights and duties thereof.

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

22           ~~"(c) The board shall within 30 days of service of~~  
23    ~~the notice of appeal, or within the additional time as the~~  
24    ~~court may allow, file the record in the case with the circuit~~  
25    ~~clerk. A complaint setting forth with particularity the issues~~  
26    ~~raised on appeal shall be filed with the court and served on~~  
27    ~~the board by the appealing party within 30 days after the~~

1 notice of appeal is filed. The action shall be conducted in  
2 accordance with the Alabama Rules of Civil Procedure.

3 ~~"(d) The appeal shall be conducted by the court  
4 without a jury and shall be confined to the record made before  
5 the board. The decision of the board shall be taken as prima  
6 facie just and reasonable and the court shall not substitute  
7 its judgment for that of the board as to the weight of the  
8 evidence on questions of fact. The court shall affirm or  
9 reverse, in part or in whole, or modify the decision of the  
10 board. The court may remand the case to the board for further  
11 proceedings.~~

12 ~~"(e) (b) If the decision of the board is affirmed in  
13 whole or in part, the cost of the appeal shall be taxed  
14 against the party taking the appeal. If the decision of the  
15 board is not affirmed, the court shall tax the costs of appeal  
16 against the board.~~

17 ~~"§34-4-50.~~

18 ~~"(a) The Governor shall appoint a State Board of  
19 Auctioneers to be comprised of seven auctioneer members and  
20 one consumer member. Except as otherwise provided by Act  
21 98-271, all All appointments and subsequent appointments by  
22 the Governor shall be for a term of five years, with each  
23 auctioneer member appointed being a resident of a different  
24 congressional district and the consumer member being a  
25 resident of and appointed from the state at-large. Within 60  
26 days after July 1, 1998, the Governor shall appoint one  
27 additional auctioneer member provided for herein for a term of~~

1 ~~two years and the other additional auctioneer member provided~~  
2 ~~for in Act 98-271 shall be appointed by the Governor for a~~  
3 ~~term of four years. Thereafter, subsequent appointments shall~~  
4 ~~be for a term of five years.~~ Appointments shall end on the  
5 anniversary date of the original appointments, except  
6 appointments to fill a vacancy which shall be for the  
7 unexpired term only. No member shall serve more than two  
8 consecutive terms of office. Each member of the board and his  
9 or her successor shall have been a resident and citizen of  
10 this state for at least five years prior to his or her  
11 appointment. Each auctioneer member of the board and his or  
12 her successor shall have been a licensed auctioneer in this  
13 state for at least five years. In the event a district has no  
14 qualified candidate for appointment, the appointment may come  
15 from the state at-large. Each member shall hold office until  
16 his or her successor is appointed by the Governor. The board  
17 shall reflect the racial and gender composition of licensed  
18 auctioneers in the state.

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

23 "(c) On the appointment of a new auctioneer board  
24 member, the board shall, at its next meeting, elect one of its  
25 members as chair, one member as vice-chair, one member as  
26 secretary, and any other officers deemed necessary. The board  
27 may do all things necessary and convenient for carrying into



1 effect this chapter. The board may make bylaws, rules, and  
2 regulations not inconsistent with this chapter or other  
3 general laws of the state.

4 "(d) Except as otherwise provided in Section  
5 34-4-53, members of the board, board staff, and board  
6 attorneys shall receive the same per diem and travel allowance  
7 paid to state employees for each day they meet to conduct the  
8 official business of the board.

9 "(e) The board may employ an administrator who shall  
10 be exempt from the classified service of the state, and other  
11 staff members necessary to discharge board duties and  
12 administer this chapter. The administrator shall be employed  
13 on the basis of his or her education, experience, and skills  
14 in administration and management. The board shall determine  
15 the duties and fix the compensation of the administrator and  
16 other staff members, subject to the general laws of the state.

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

26 "(g) Each board member shall be accountable to the  
27 Governor for the proper performance of his or her duties as a

1 member of the board. The Governor shall investigate any  
2 complaints or unfavorable reports concerning the actions of  
3 the board and take appropriate action thereon, including  
4 removal of any board member for misfeasance, malfeasance,  
5 neglect of duty, commission of a felony, incompetence, or  
6 permanent inability to perform official duties. A board member  
7 may be removed at the request of the board for failing to  
8 attend three consecutive properly noticed meetings.

9 "§34-4-52.

10 "The board shall meet ~~at least four times each year,~~  
11 ~~in January, April, July, and October,~~ quarterly for the  
12 purpose of transacting business as may properly come before  
13 the board. Special meetings of the board shall be held at such  
14 times as the board may provide in the bylaws the board may  
15 adopt. ~~Four~~ A majority of the currently appointed board  
16 members shall constitute a quorum at a board meeting. Due  
17 notice of each meeting and the time and place thereof shall be  
18 given each member in such manner as the bylaws and applicable  
19 law may provide.

20 "§34-4-54.

21 "The ~~secretary~~ executive director of the board shall  
22 keep a record of the proceedings of the board. ~~Within 60 days~~  
23 ~~after September 5, 1973, it shall be the duty of the board to~~  
24 ~~select a depository in the same manner and form as now~~  
25 ~~provided by law and deposit all funds received by the board,~~  
26 ~~and all funds thereafter collected shall be so deposited and~~  
27 ~~maintained, and disbursements shall be so made on checks~~

1 ~~signed by the secretary and countersigned by the chairman.~~  
2 ~~Within 60 days following April 4, 1988, and thereafter, the~~  
3 The board shall deposit all the funds of received and credited  
4 by the board into the General Fund of the State Treasury into  
5 an account hereby established and to be known as the "Alabama  
6 State Board of Auctioneers Account Fund." All money derived  
7 under this chapter shall be deposited into this fund and used  
8 only to carry out this chapter. Such fund shall be paid out  
9 only by warrant of the Comptroller upon the State Treasury,  
10 upon itemized vouchers approved by the executive director of  
11 the board or an authorized designee."

12 Section 2. The State Board of Auctioneers is subject  
13 to the provisions of the Alabama Sunset Law of 1981. The board  
14 shall automatically terminate on October 1, 2015, and every  
15 four years thereafter, unless a bill is passed that it be  
16 continued, modified, or reestablished.

17 Section 3. Section 34-4-22, Code of Alabama 1975, is  
18 repealed.

19 Section 4. This act shall become effective  
20 immediately following its passage and approval by the  
21 Governor, or its otherwise becoming law.