

1 HB672
2 129685-1
3 By Representative Boothe
4 RFD: Boards, Agencies and Commissions
5 First Read: 24-MAY-11

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

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

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

This bill would provide further for licensing, would allow a state license to be 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 for a
23 firm license; to provide further for conducting investigations
24 and hearings on complaints; to provide for quorums; and to
25 repeal Section 34-4-22, Code of Alabama 1975, relating to the
26 register of applicants.

27 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 ~~"(11) SEALED BID AUCTION. An auction involving the~~
24 ~~submission of bids in writing, where the bids received by the~~
25 ~~submission deadline are opened at an advertised, predetermined~~
26 ~~time and place, and, after a review of all such bids, with no~~
27 ~~subsequent effort to further advance the bidding, the goods~~

1 are either sold to the highest qualified and most responsive
2 bidder or withdrawn and not sold.

3 "§34-4-20.

4 "(a) It shall be unlawful for any person,
5 ~~partnership, association, or corporation~~ in any county of this
6 state to act as an auctioneer or apprentice auctioneer, or
7 directly or indirectly to engage or assume to engage in the
8 auction business and act as either without first obtaining a
9 license issued by the State Board of Auctioneers, under the
10 provisions of this chapter.

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

16 "(c) It shall be unlawful for any licensed
17 auctioneer or apprentice auctioneer to act in such capacity in
18 the sale of real property unless such auctioneer or apprentice
19 auctioneer shall also be licensed as a real estate broker,
20 associate broker, or salesperson under Chapter 27 of this
21 title.

22 "(d) It shall be unlawful for an auction mediation
23 company to conduct auction business without first obtaining an
24 auctioneer license issued by the State Board of Auctioneers,
25 regardless of whether the auction mediation company actually
26 advertises or otherwise holds itself out as a auctioneer, as

1 defined in this chapter, or uses the word auction in its name
2 and otherwise holds itself out to be an auction company.

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

5 "§34-4-21.

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

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

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

1 "(2) ~~have~~ Have served one year as an apprentice
2 auctioneer under the supervision of a licensed auctioneer in
3 this state and have successfully completed a course of study
4 consisting of not less than 85 hours of classroom instruction
5 in the fundamentals of auctioneering that meets the
6 requirements of the board.; ~~(3) have been the principal~~
7 ~~auctioneer in at least five auctions of either real or~~
8 ~~personal property during this period of time; and (4) furnish~~
9 ~~satisfactory proof of these requirements to the board. An~~
10 application shall also be accompanied by a recommendation of
11 an employing auctioneer. If an applicant has not successfully
12 completed ~~a~~ an approved course of study ~~at an accredited~~
13 ~~auctioneering school~~ that meets the requirements of the board,
14 then he or she shall be required to serve two years as an
15 apprentice under the supervision of a licensed auctioneer, ~~and~~
16 ~~shall have been the principal auctioneer in at least 10~~
17 ~~auctions of real or personal property~~ in this state.

18 "(c) (1) Any person who files ~~an~~ a complete
19 application with the board in the proper manner shall be
20 entitled to take an ~~oral and written~~ examination to determine
21 his or her qualifications. The board ~~shall~~ may require
22 applicants to take and pass ~~a written and oral~~ an examination
23 establishing in a manner satisfactory to the board that the
24 applicant has a general knowledge of ethics, reading, writing,
25 spelling, elementary arithmetic, ~~elementary principles of land~~
26 ~~economics,~~ and a general knowledge of the statutes of this
27 state relating to ~~the bulk sales,~~ auctions, ~~brokerage,~~ and

1 this chapter. The examination for an auctioneer's license
2 shall be of a more exacting nature and scope than the
3 examination for an apprentice auctioneer.

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

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

15 "(4)a. The board shall require, and it shall be the
16 responsibility of any applicant for an initial, renewal, or
17 reciprocal license to disclose any prior felony conviction,
18 any prior misdemeanor conviction involving moral turpitude,
19 any pending criminal arrest of any nature except misdemeanor
20 traffic violations, and any prior or pending disciplinary
21 proceedings against the applicant before a board of
22 auctioneers or real estate commission in this or any other
23 state.

24 "b. Where an applicant has been convicted of
25 forgery, embezzlement, obtaining money under false pretenses,
26 larceny, extortion, conspiracy to defraud, or other like
27 offense or offenses, or has been convicted of any other crime

1 in a court of competent jurisdiction of this or any other
2 district, state, or territory of the United States or of a
3 foreign country, such untrustworthiness of the applicant and
4 the conviction, in itself, may be a sufficient ground for
5 refusal of a license.

6 "(5) All auctioneers, apprentice auctioneers, and
7 auction ~~firms~~ companies are under a continuing duty to report
8 to the board any and all such criminal arrests, charges,
9 convictions, or disciplinary proceedings which they may incur,
10 as well as any civil suits involving them. The board must
11 receive notice of any such arrest, charge, criminal
12 conviction, or commencement of disciplinary proceedings within
13 30 days of its occurrence. Notice of the commencement of any
14 civil suit must be received by the board within 30 days after
15 service of the complaint upon the defendant in the action.

16 "(d) The board may grant a one-auction license once
17 per calendar year to any nonresident individual who is duly
18 licensed in good standing as an auctioneer or an auction
19 company in a reciprocating state and who makes written
20 application to the board and provides satisfactory proof of
21 the following:

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

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

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

1 "(4) The applicant is not the subject of a
2 disciplinary action in any state, has not had any professional
3 license or business license for any company in which the
4 applicant is a principal, in this or any other licensing
5 jurisdiction, disciplined, suspended, revoked, or denied, has
6 not been convicted of a criminal offense, and has no criminal
7 charges pending in any jurisdiction.

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

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

1 "~~(e)~~ (f) All licenses shall expire on ~~September 30~~
2 October 31 of ~~each~~ the second year following issuance thereof
3 and may be renewed upon payment of the appropriate license fee
4 as required by this chapter. Renewal of a license may be
5 effected at any time during the months indicated preceding the
6 date of expiration. No examination shall be required for the
7 renewal of any license, unless the license has been revoked or
8 suspended. If a licensee fails to renew his or her license by
9 the deadline ~~of each year~~ for the licensing period, he or she
10 may ~~have~~ renew his or her license ~~renewed~~ within 60 days after
11 the expiration date, upon payment of the required fee and a
12 late fee of twenty-five dollars (\$25) for apprentices and
13 fifty dollars (\$50) for auctioneers. If a licensee elects not
14 to pay the penalty and renew his or her license, he or she
15 shall be required to submit an application, pay the
16 examination fee, and take the examination required for new
17 licensees.

18 "~~(f)~~ (g) The board shall ~~adopt~~ provide by rule for a
19 program of continuing education for its licensees. No licensee
20 shall have his or her license renewed unless, in addition to
21 any other requirements of this chapter, the minimum ~~annual~~
22 continuing education requirements are met. The continuing
23 education program shall not include testing or examination of
24 the licensees in any manner. Any licensee 65 years of age or
25 older shall be exempt from the continuing education
26 requirement. The board shall be authorized to waive the
27 continuing education requirements in cases of hardship,

1 disability, or illness, or other such circumstances as the
2 board deems appropriate.

3 "~~(g)~~ (h) The board shall prepare and deliver to each
4 licensee a license certificate and pocket card. The
5 certificate shall be displayed openly at all times in the
6 office of the licensee. The certificate and the pocket card of
7 the apprentice auctioneer shall contain his or her name as
8 well as that of the auctioneer under whose supervision he or
9 she is employed.

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

22 "~~(i)~~ (j) Written notice shall be given immediately to
23 the board by each licensee of any change in his or her mailing
24 address and the board shall issue a new license for the
25 unexpired period. A change of mailing address without
26 notification to the board shall automatically cancel the
27 license previously issued. For changing a mailing address and

1 issuance of a new license, the board shall collect a fee of
2 ~~five dollars (\$5)~~ to be determined by the board. Each prior
3 license shall be returned or accounted for to the board and be
4 canceled before the issuance of the new license. The board may
5 require other proof considered desirable with due regard to
6 the paramount interest of the public in the issuance of the
7 license.

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

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

1 "(m) The board may establish and charge reasonable
2 fees relating to the administration and enforcement of this
3 chapter for application or other processing costs, on-line
4 service, continuing education provider services, copy, mailing
5 and filing services, or other fees as necessary to offset the
6 licensing and processing costs.

7 "(n) A majority vote of a quorum of the board
8 eligible to vote on a matter shall be required for any action
9 taken by the board. Notwithstanding the foregoing, an
10 affirmative vote of a majority of the members of the board is
11 required for any disciplinary action against a licensee in
12 accordance with this chapter.

13 "§34-4-23.

14 "The issuance of a license by the board shall be
15 evidence that the person, ~~partnership, association, or~~
16 ~~corporation~~ named therein is entitled to all the rights and
17 privileges of an auctioneer or apprentice auctioneer while the
18 license remains unrevoked or unexpired.

19 "§34-4-25.

20 "(a) A nonresident of this state, or a resident of
21 this state who is licensed by another state, may become an
22 auctioneer or apprentice auctioneer in this state by
23 conforming to this chapter, or in the case of a nonresident
24 from a nonlicensing state, such person may be licensed
25 provided an examination is given and passed and the person has
26 at least five years' experience in the auction business.
27 Provided further, that if a nonresident auctioneer or

1 apprentice auctioneer, or a resident who is licensed as an
2 auctioneer or apprentice auctioneer in another state, has a
3 lawsuit or other legal action filed and pending against him or
4 her in this or any other state, the board ~~shall~~ may not issue
5 a license to him or her until final disposition of the action,
6 and then only at the discretion of the board. ~~The terms~~
7 ~~"auctioneer" and "apprentice auctioneer" shall include any~~
8 ~~individual, firm, company, partnership, association, or~~
9 ~~corporation by whom the "auctioneer" or "apprentice~~
10 ~~auctioneer" is employed.~~

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

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

1 "(d) Every applicant shall file an irrevocable
2 consent that actions may be commenced against the applicant in
3 the proper court in the county in this state in which a cause
4 of action may arise, in which the plaintiff may reside, by
5 service of any process or pleadings authorized by laws of this
6 state on the board, or a deputy to be designated by the board,
7 the consent stipulating and agreeing that service of process
8 or pleading shall be begun and held in all courts to be as
9 valid and binding as if due service had been made upon the
10 applicant in this state. The consent shall be duly
11 acknowledged and, if made by a corporation, shall be
12 authenticated by the seal of the corporation. In case of any
13 process or pleadings mentioned in this chapter being served
14 upon the board or upon a deputy to be designated by the board,
15 duplicated copies shall be made, one of which shall be filed
16 in the office of the secretary of the board, and the other
17 immediately forwarded by registered or certified mail to the
18 main office of the applicant against which process or
19 pleadings are directed. No default in the proceedings or
20 action shall be taken unless it shall be made to appear by
21 affidavit of a member of the board, or a deputy designated by
22 the board, that a copy of the process or pleadings was mailed
23 to the defendant as herein required. Judgment by default shall
24 be taken in any action or proceedings within 20 days after the
25 date of the mailing of process or pleadings to the defendant.

26 "§34-4-27.

1 "Each auctioneer shall ~~annually~~ pay one state
2 license fee every two years in an amount not to exceed ~~two~~
3 ~~hundred fifty dollars (\$250)~~ five hundred dollars (\$500). Each
4 auctioneer shall also annually pay a county license fee of
5 twenty-five dollars (\$25) in each county where he or she sells
6 by auction. No privilege license shall be required for any
7 apprentice auctioneer when he or she is listed as the
8 principal auctioneer. No license shall be required for any
9 auctioneer who conducts an auction, without compensation for
10 himself or herself, where all proceeds from the auction go to
11 the benefit of any charitable organization. The term
12 "auctioneer" shall include any person selling real estate,
13 goods, wares, merchandise, automobiles, livestock, or other
14 things of value at public outcry. Sales at public outcry may
15 be made for compensation without license involving any of the
16 following:

17 "(1) Sales at auction conducted by the owner of any
18 part of the goods or real estate being offered, or an attorney
19 representing the owner, unless the owner acquired the goods to
20 resell.

21 "(1)(2) Sales for the estate of a decedent by an
22 administrator, executor, or any such person acting under order
23 of any court or the attorney of such administrator, executor,
24 or any such person acting under order of any court.

25 "(2)(3) Sales of property conveyed by deed of trust,
26 mortgage, judgment, or ordered to be sold according to the
27 mortgage, judgment, ~~or~~ order, or decree.

1 "~~(3)~~(4) All sales under legal process, including
2 receivership, bankruptcy, guardianship, and a trustee acting
3 under a trust agreement, deed of trust, or will, and the
4 attorney therefor.

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

7 "§34-4-28.

8 "(a) Authority to transact business as an auctioneer
9 under any license issued by the board shall be restricted to
10 the person named in such license and shall not inure to the
11 benefit of any other person.

12 Where an auctioneer's license shall be issued to ~~a~~
13 ~~corporation or association~~ an auction company that is duly
14 qualified and registered to conduct business in the State of
15 Alabama, authority to transact business thereunder shall be
16 limited to one officer, member, or copartner of such
17 ~~corporation or association~~ company, to be designated in the
18 application and named in the license. Each other officer,
19 member, or copartner of such ~~association or corporation~~
20 company desiring to act as an auctioneer in connection with
21 the business of the ~~association or corporation~~ company, or
22 otherwise, shall be required to make application for and take
23 out a separate license in his or her own name individually.
24 ~~Where the licensee is a copartnership, the license issued to~~
25 ~~such copartnership shall confer authority to act as auctioneer~~
26 ~~upon one member of such copartnership only, who shall be~~
27 ~~designated in the application and named in the license. All~~

1 ~~the other members of the copartnership desiring to act as~~
2 ~~auctioneers in connection with the business of the partnership~~
3 ~~or otherwise shall be required to apply for and take out~~
4 ~~individual licenses in their own names.~~

5 "(b) No licensed auction company may hire an
6 unlicensed auctioneer to conduct any auction business, nor
7 shall any licensed auctioneer conduct an auction for an
8 unlicensed auction company in this state.

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

12 "(1) Maintain a segregated escrow or trust account
13 in a bank insured by the Federal Deposit Insurance
14 Corporation, in which funds belonging to sellers or consignors
15 received in the course of business transacted as permitted
16 under this chapter shall be kept separate from the licensee's
17 own funds. Any and all funds received from sales by
18 apprentices shall be maintained in the sponsor's escrow or
19 trust account.

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

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

6 "(4) Provide a closing statement to the seller or
7 consignor giving a full accounting of all proceeds received
8 and disbursements made relative to the auction. Closing
9 statements shall contain the date and location of the auction
10 and the name, license number, and signature of the licensee
11 responsible for the auction. Closing statements shall be
12 provided within 30 days of the conclusion of the auction. A
13 properly prepared HUD-1 statement or equivalent will satisfy
14 the requirements of this section for the sale of real
15 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 sponsor's name and license number. Auction companies shall
20 display the name and license number of the auctioneer named in
21 the license in any and all advertisements.

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

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

26 "(8) Maintain complete and accurate documents,
27 books, and records of all transactions concerning every

1 auction for a period of five years following the date on which
2 the seller or consignor contracted with the auctioneer or the
3 auction was conducted, whichever is later. The documents,
4 books, and records shall be made available for inspection by
5 the board or its authorized personnel or representatives upon
6 request. Failure to produce the requested documents, books,
7 records, or copies thereof within 30 days of the board's
8 request will be grounds for disciplinary action by the board.

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

13 "§34-4-29.

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

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

23 ~~"(c) (b) The board may suspend or revoke any license~~
24 ~~which has been issued based on false or fraudulent~~
25 ~~representations. The board may also suspend or revoke the~~
26 ~~license of any licensee for invoke disciplinary action as~~
27 ~~outlined in subsection (c) whenever it shall be established to~~

1 the satisfaction of the board, after a hearing as hereinafter
2 provided, that any person has been guilty of any of the
3 following acts:

4 "(1) Making any substantial misrepresentation.

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

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

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

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

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

22 "(7) Violation of any rule or regulation promulgated
23 by the board.

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

1 "(9) Any conduct of any ~~auctioneer~~ licensee which
2 demonstrates bad faith, dishonesty, incompetency, or
3 untruthfulness.

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

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

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

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

20 "~~(13)~~(14) Presenting a worthless check to the board.

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

23 "(16) Knowingly making any misleading, false, or
24 deceptive statement on any application for a license under
25 this chapter.

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

1 "(18) Violation of any other provision of this
2 chapter.

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

6 "(1) A letter of reprimand.

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

10 "(3) Denial of an application for an initial or
11 renewal license.

12 "(4) Suspension of a license for a period of time
13 established by the board, with or without automatic
14 reinstatement.

15 "(5) Revocation of a license.

16 "(6) Payment of restitution to each consumer
17 negatively affected by the prohibited act. Proof of such
18 restitution shall be a signed and notarized release executed
19 by the consumer or the consumer's estate.

20 "(7) Imposition of continuing education requirements
21 in the area or areas in which he or she has been found
22 deficient or requiring the person to retake the licensing
23 exam, or both.

24 "(8) Assessment of the costs of the disciplinary
25 proceedings.

26 "Failure to comply with any final order of the board
27 is cause for suspension or revocation of a license. The board

1 may also suspend or revoke any license which has been issued
2 based on false or fraudulent representations.

3 "(d) Before denying an application for license or
4 suspending or revoking any license, the board shall hold a
5 hearing and shall, at least 21 days prior to the date set for
6 the hearing, notify in writing the accused licensee of the
7 charges made or the question to be determined, including
8 notice of the time and place of the hearing, and afford the
9 licensee an opportunity to be present, be heard in person or
10 by counsel, and to offer evidence orally, or by affidavit or
11 deposition. Written notice may be served by delivery of the
12 notice personally to the applicant or licensee or by mailing
13 the notice by registered or certified mail to the last known
14 mailing address of the applicant or licensee. If the applicant
15 or licensee is an apprentice auctioneer, the board shall also
16 notify the auctioneer employing him or her, or whose employ he
17 or she is about to enter, by mailing notice by registered or
18 certified mail to the auctioneer's last known address. The
19 hearing shall be held at a time and place prescribed by the
20 board and shall proceed in accordance with the provisions of
21 the Alabama Administrative Procedure Act.

22 "(e) In addition to the disciplinary powers granted
23 in this section, the board may levy and collect administrative
24 fines for ~~serious~~ violations of this chapter or the rules and
25 regulations of the board of not less than ~~\$200~~ five hundred
26 dollars (\$500) or more than ~~\$500~~ five thousand dollars
27 (\$5,000) for each violation.

1 "(f) The board may seek an injunction against any
2 person in violation of this chapter in addition to the
3 penalties and disciplinary powers otherwise conferred upon the
4 board herein. In an action for an injunction, the board may
5 demand and recover a civil penalty of fifty dollars (\$50) per
6 day for each violation, reasonable attorney fees, and court
7 costs.

8 "\$34-4-30.

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

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

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

9 "(c) The affirmative vote of a majority of the
10 ~~members of the board shall be necessary to revoke or suspend a~~
11 ~~license required in order to take any disciplinary action~~
12 ~~against any licensee in accordance with this chapter.~~

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

18 "§34-4-31.

19 "~~Whenever any person, partnership, association or~~
20 ~~corporation~~ claiming to have been injured or damaged by the
21 gross negligence, incompetency, fraud, dishonesty, or
22 misconduct on the part of any licensee ~~following the calling~~
23 ~~or~~ engaging in the auction business, as herein described,
24 shall file an action upon such claim against such licensee in
25 any court of record in this state and shall recover judgment
26 thereon, such court may as part of its judgment in such case,
27 if it deems it a proper case in which to do so, revoke the

1 defendant's license, which shall not be reissued to such
2 licensee except upon unanimous vote of all members of the
3 board ~~in favor of such reissuance,~~ and only then after the
4 lapse of a period of 90 days from the date of such revocation.

5 "§34-4-33.

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

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

26 "~~(c) The board shall within 30 days of service of~~
27 ~~the notice of appeal, or within the additional time as the~~

1 ~~court may allow, file the record in the case with the circuit~~
2 ~~clerk. A complaint setting forth with particularity the issues~~
3 ~~raised on appeal shall be filed with the court and served on~~
4 ~~the board by the appealing party within 30 days after the~~
5 ~~notice of appeal is filed. The action shall be conducted in~~
6 ~~accordance with the Alabama Rules of Civil Procedure.~~

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

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

21 "§34-4-50.

22 "(a) The Governor shall appoint a State Board of
23 Auctioneers to be comprised of seven auctioneer members and
24 one consumer member. ~~Except as otherwise provided by Act~~
25 ~~98-271, all~~ All appointments and subsequent appointments by
26 the Governor shall be for a term of five years, with each
27 auctioneer member appointed being a resident of a different

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

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

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

9 "(d) Except as otherwise provided in Section
10 34-4-53, members of the board, board staff, and board
11 attorneys shall receive the same per diem and travel allowance
12 paid to state employees for each day they meet to conduct the
13 official business of the board.

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

22 "(f) The board shall adopt a seal by which the board
23 shall authenticate records and documents. On the seal shall be
24 the words "State Board of Auctioneers." Copies of all records
25 and documents in the office of the board that are duly
26 certified and authenticated by the seal of the board shall be
27 received in evidence in all courts equally and with the same

1 effect as the original. All public records kept in the office
2 of the board shall be open to public inspection during
3 reasonable hours.

4 "(g) Each board member shall be accountable to the
5 Governor for the proper performance of his or her duties as a
6 member of the board. The Governor shall investigate any
7 complaints or unfavorable reports concerning the actions of
8 the board and take appropriate action thereon, including
9 removal of any board member for misfeasance, malfeasance,
10 neglect of duty, commission of a felony, incompetence, or
11 permanent inability to perform official duties. A board member
12 may be removed at the request of the board for failing to
13 attend three consecutive properly noticed meetings.

14 "§34-4-52.

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

25 "§34-4-54.

26 "The ~~secretary~~ executive director of the board shall
27 keep a record of the proceedings of the board. ~~Within 60 days~~

1 ~~after September 5, 1973, it shall be the duty of the board to~~
2 ~~select a depository in the same manner and form as now~~
3 ~~provided by law and deposit all funds received by the board,~~
4 ~~and all funds thereafter collected shall be so deposited and~~
5 ~~maintained, and disbursements shall be so made on checks~~
6 ~~signed by the secretary and countersigned by the chairman.~~
7 ~~Within 60 days following April 4, 1988, and thereafter, the~~
8 The board shall deposit all the funds of received and credited
9 by the board into the General Fund of the State Treasury into
10 an account hereby established and to be known as the "Alabama
11 State Board of Auctioneers Account Fund." All money derived
12 under this chapter shall be deposited into this fund and used
13 only to carry out this chapter. Such fund shall be paid out
14 only by warrant of the Comptroller upon the State Treasury,
15 upon itemized vouchers approved by the executive director of
16 the board or an authorized designee."

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

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

24 Section 4. This act shall become effective
25 immediately following its passage and approval by the
26 Governor, or its otherwise becoming law.