

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

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 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:

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

"§34-4-2.

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

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

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

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

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

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

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

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

"(1) (7) AUCTIONEER. Any person who has graduated from an accredited auction school and has one year's experience as an apprentice auctioneer or has two years' experience as an apprentice auctioneer in bid calling, for a fee, commission or any other valuable consideration, or with 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).

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

"(c) (1) Any person who files ~~an~~ a complete application with the board in the proper manner shall be entitled to take an ~~oral and written~~ examination to determine his or her qualifications. The board ~~shall~~ may require applicants to take and pass ~~a written and oral~~ an examination establishing in a manner satisfactory to the board that the applicant has a general knowledge of ethics, reading, writing, spelling, elementary arithmetic, ~~elementary principles of land economics,~~ and a general knowledge of the statutes of this 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.

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

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

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

"~~(2)~~(3) Sales of property conveyed by deed of trust, mortgage, judgment, or ordered to be sold according to the 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 guilty under this chapter, his or her license may be suspended or revoked.~~

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

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

16                         "§34-4-31.

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

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 ~~at~~ to 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) 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.

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

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

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

"(f) The board shall adopt a seal by which the board shall authenticate records and documents. On the seal shall be the words "State Board of Auctioneers." Copies of all records and documents in the office of the board that are duly certified and authenticated by the seal of the board shall be 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.