

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 533
Second Edition Engrossed 5/5/89

Short Title: Correct Auctioneer Recovery Fund.

(Public)

Sponsors: Senator Ezzell.

Referred to: Small Business.

March 20, 1989

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE PROTECTION OF THE AUCTIONEER RECOVERY
FUND TO PERSONS INJURED BY ACTS OF AUCTIONEER BUSINESSES AS
RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 85B-4(g) reads as rewritten:

"(g) A sole proprietorship, partnership, or corporation which in the regular course of business promotes auctions, employs auctioneers to conduct auctions in its facilities, or uses or allows the use of its facilities for auctions, must be licensed as an auctioneer business even though no owner or officer of that business acts as an auctioneer. To be licensed as an auctioneer business the sole proprietorship, partnership or corporation must ~~file an approved bond as required for a licensed auctioneer by subsection (f)~~ make the contribution to the Auctioneer Recovery Fund as required by G.S. 85B-4.1 and must pay the proper fees as set out in G.S. 85B-6, but is not otherwise required to meet qualifications for an auctioneer license. Licensed auctioneer businesses shall be covered by the provisions of G.S. 85B-8."

Sec. 2. G.S. 85B-4.1 reads as rewritten:

"§ 85B-4.1. Auctioneer Recovery Fund.

(a) In addition to the license fees provided for ~~above, elsewhere in this Chapter,~~ upon the application for a license ~~and or~~ upon renewal of every license, or both, and every regular renewal date thereafter, the Commission ~~shall~~ may charge each and every licensee or each and every applicant, or both, an amount not to exceed fifty dollars (\$50.00) per year to be included in the Auctioneer Recovery Fund (hereinafter the Fund)

1 , provided that nothing contained herein shall be construed to require the Commission to
2 charge a Recovery Fund fee to an apprentice auctioneer upon such person's application
3 for an auctioneer license.

4 (b) The purposes of the Fund shall be as follows:

5 (1) When an ~~auctioneer or apprentice auctioneer~~ apprentice
6 auctioneer, or auctioneer business has been found guilty of violating
7 any of the provisions of G.S. 85B or the rules promulgated thereunder,
8 and upon the entry of a final agency decision by the Commission or if
9 appealed, a court order, the Commission is authorized to pay the
10 aggrieved party or parties an aggregate amount not to exceed ten
11 thousand dollars (\$10,000) against any one ~~auctioneer or apprentice~~
12 ~~auctioneer, auctioneer, apprentice auctioneer, or auctioneer business,~~
13 provided that the ~~auctioneer or apprentice auctioneer~~ apprentice,
14 apprentice auctioneer, or auctioneer business has refused to pay such
15 claim within a period of 20 days of entry of the final agency decision
16 or court order and provided further that the amount or amounts of
17 money in question are certain and liquidated.

18 (2) The Commission shall maintain a minimum level of one hundred
19 thousand dollars (\$100,000) for recovery and guaranty purposes.
20 These funds may be invested and reinvested by the State Treasurer in
21 interest bearing accounts, such interest accrued being added to the
22 Fund. Sufficient liquidity will be maintained so that there will be
23 money available to satisfy any and all claims which may be processed
24 through the Board. The Fund may be disbursed by a warrant drawn
25 against the State Treasurer or other method at the discretion of the
26 State Treasurer.

27 (3) The Commission, in its discretion, may use any and all funds in excess
28 of one hundred thousand dollars (\$100,000) for the following
29 purposes:

30 a. To carry out the advancement of education and research in the
31 auctioneering profession for the benefit of those licensed under
32 the provisions of this Chapter and the improvement of and
33 making even more efficient the industry as such;

34 b. To underwrite educational seminars, training centers, and other
35 forms of educational projects for the use and benefit generally
36 of licensees;

37 c. To sponsor, contract for and to underwrite any and all other
38 educational and research projects of a similar nature having to
39 do with the advancement of the auctioneer profession in North
40 Carolina; and

41 d. To cooperate with associations of auctioneers and any and all
42 other groups for the enlightenment and advancement of the
43 auctioneer profession of North Carolina."

44 Sec. 3. G.S. 85B-4.2(a) reads as rewritten:

1 "(a) In the event that an ~~auctioneer or apprentice auctioneer~~ auctioneer, apprentice
2 auctioneer, or auctioneer business is found guilty of violating any of the provisions of
3 G.S. 85B or the rules promulgated thereunder, and if the amount of money lost by the
4 aggrieved party or parties is in dispute or cannot be determined accurately, then the
5 amount of damages shall be determined by the superior court in the county where the
6 alleged violation took place, provided that the Board has previously determined that a
7 violation of the license laws or rules and regulations has occurred and a final agency
8 decision has been entered."

9 Sec. 4. G.S. 85B-5 reads as rewritten:

10 "**§ 85B-5. Licensing of nonresidents.**

11 Any person who holds a valid auctioneer license in another state may apply for and
12 be granted a North Carolina license if the state in which he is licensed has standards
13 which are acceptable to the Commission but are not more lenient than those required by
14 this Chapter. An applicant under this section shall not be required to take the
15 examination required under G.S. 85B-4 but shall pay the appropriate fee under G.S.
16 85B-6 and shall file with the Commission an irrevocable consent that service on the
17 secretary of the Commission shall be sufficient service of process for actions against the
18 applicant by a resident of this State arising out of his auctioneering activities.

19 An applicant under this section shall ~~file the bond~~ make the contribution to the
20 Auctioneer Recovery Fund as required by ~~G.S. 85B-4~~ G.S. 85B-4.1. Any license issued
21 under this section shall be marked to indicate that its holder is a nonresident."

22 Sec. 5. G.S. 85B-8(e) reads as rewritten:

23 "(e) The Commission may upon its own motion or upon the complaint in writing
24 of any person, provided the complaint and any evidence presented with it establishes a
25 prima facie case, hold a hearing and investigate the actions of any auctioneer or
26 apprentice auctioneer or any person who holds himself out as an auctioneer or
27 apprentice auctioneer, and shall have the power to suspend or revoke any license issued
28 under the provisions of this Chapter. In all proceedings for the suspension or revocation
29 of licenses, the provisions of Chapter ~~150A~~ 150B of the General Statutes shall be
30 applicable."

31 Sec. 6. This act is effective upon ratification.