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Short Title: Auctions/Auctioneers Act.

(Public)

Sponsors:

Referred to:

April 1, 1991

A BILL TO BE ENTITLED

AN ACT MAKING VARIOUS AMENDMENTS TO CHAPTER 85B AND
CHAPTER 20 OF THE GENERAL STATUTES RELATING TO AUCTIONS
AND AUCTIONEERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 85B-1 reads as rewritten:

"§ 85B-1. Definitions.

For the purposes of this Chapter the following definitions shall apply:

- (1) 'Auction' means the sale of goods or real estate by means of exchanges between an auctioneer and members of ~~his-an~~ audience, the exchanges consisting of a series of invitations for offers made by the auctioneer, offers by members of the audience, and the acceptance by the auctioneer of the highest or most favorable offer.
- (2) 'Auctioneer' means any person who conducts or offers ~~his-service-to~~ conduct auctions and includes apprentice auctioneers except as stricter standards are specified by this Chapter for apprentice auctioneers.
- (3) 'Owner' means the bona fide owner of the property being offered for sale; in the case of partnerships, 'owner' means a general partner in a partnership that owns the property being offered for sale, provided that in the case of a limited partnership it has filed a certificate of limited partnership as required by Chapter 59 of the General Statutes; in the case of corporations, 'owner' means an officer or director of a

1 corporation that owns the property being offered for sale ~~and that is~~
2 ~~qualified~~ provided that the corporation is registered to do business in
3 the ~~State of North Carolina.~~ State.

4 (4) 'Absolute Auction' means the sale of real or personal property at
5 auction in which the item offered for auction is sold to the highest
6 bidder without reserve, without the requirement of any minimum bid,
7 and without competing bids of any type by the owner, or agent of the
8 owner, of the property.

9 (5) 'Estate Sale' means the liquidation by sale at auction of real or personal
10 property of a specified person.

11 (6) 'Auction Firm' means a sole proprietorship of which the owner is not a
12 licensed auctioneer, or any partnership, association, or corporation, not
13 otherwise exempt from this Chapter, that sells either directly or
14 through agents, real or personal property at auction, or that arranges,
15 sponsors, manages, conducts or advertises auctions, or that in the
16 regular course of business uses or allows the use of its facilities for
17 auctions. This definition applies whether or not an owner or officer of
18 the business acts as an auctioneer.

19 (7) 'Fund' means Auctioneer Recovery Fund."

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

21 **"§ 85B-2. Activities governed by Chapter.**

22 (a) This Chapter shall apply to all auctions held in this State except the
23 following:

24 (1) Sales at auction conducted by the owner of all of the goods or real
25 estate being offered, or an attorney representing the owner, unless the
26 owner's regular course of business includes engaging in the sale of
27 goods or real estate by means of auction or unless the owner originally
28 acquired the goods for the purposes of resale at auction;

29 (2) Sales at auction conducted by or under the direction of any public
30 authority;

31 (3) ~~Sales at auction pursuant to a judicial order or in the settlement of a~~
32 ~~decedent's estate;~~ Sales conducted by a receiver, trustee, guardian,
33 administrator or executor or any similarly appointed person under
34 order of any court or any person conducting a sale pursuant to an order
35 of a United States Bankruptcy Court;

36 (4) Any sale required by law to be at auction;

37 (5) Sale of livestock at a public livestock market authorized and regulated
38 by the Commissioner of Agriculture;

39 (6) Leaf tobacco sales conducted in accordance with the provisions of
40 Chapter 106 of the General Statutes;

41 (7) Sale at auction of automobiles conducted under the provisions of G.S.
42 20-77, or sale at auction of motor vehicles by a motor vehicle dealer
43 licensed under Article 12, Chapter 20 of the General Statutes;

- 1 (8) Sale at auction of a particular ~~brand~~-breed of livestock conducted by an
 2 auctioneer who specializes in the sale of that ~~brand~~-breed when such
 3 sale is conducted under the auspices of a livestock trade association;
 4 provided that the sale is regulated by the Packers and Stockyards Act
 5 and the auctioneer is required to be bonded by the United States
 6 Department of Agriculture;
- 7 (9) Sales conducted by and on behalf of any charitable or religious
 8 organization; ~~organization if the person conducting the sale receives no~~
 9 ~~compensation therefor;~~
- 10 (9a) Sales conducted by and on behalf of a civic club, not exceeding one
 11 sale per year;
- 12 (10) Sales conducted by a trustee pursuant to a power of sale contained in a
 13 deed of trust on real property;
- 14 (11) Sales of collateral, sales conducted to enforce carriers' or
 15 warehousemen's liens, bulk sales, sales of goods by a presenting bank
 16 following dishonor of a documentary draft, resales of rightfully
 17 rejected goods, resales of goods by an aggrieved seller, or other
 18 resales conducted pursuant to authority in Articles 2, 4, 6, 7 and 9 of
 19 Chapter 25 of the General Statutes (the Uniform Commercial Code).

20 (b) The exceptions provided in subdivisions (2), (4), (9), (9a) and (11) of
 21 subsection (a) of this section shall not apply to any person or entity engaged in the
 22 business of organizing, arranging, or conducting auction sales for compensation."

23 Sec. 3. G.S. 85B-3 reads as rewritten:

24 "**§ 85B-3. Auctioneers Commission.**

25 (a) There shall be a five-member North Carolina Auctioneers Commission
 26 having the powers and responsibilities set out in this Chapter. The Governor shall
 27 appoint the members of the Commission, at least three of whom, and their successors,
 28 shall be from nominations submitted by the Auctioneers Association of North Carolina.
 29 The Auctioneers Association shall submit, within 45 days of when the vacancy occurs,
 30 at least three names for each position for which it is entitled to make a nomination. Of
 31 the initial five members of the Commission one shall be appointed for a one-year term,
 32 two shall be appointed for two-year terms and two for three-year terms; thereafter, each
 33 new member shall be appointed for a term of three years. Any vacancy shall be filled
 34 for the remainder of the unexpired term only. Each member shall continue in office until
 35 his successor is appointed and qualified. No member shall serve more than two
 36 complete consecutive terms.

37 (b) At least three members of the Commission shall be experienced auctioneers
 38 who are licensed under this Chapter. One member shall be a person who shall represent
 39 the public at large and shall not be licensed under this Chapter. ~~The Governor shall~~
 40 ~~appoint a public member to fill the first vacancy on the Commission after July 1, 1983.~~

41 (c) The Commission shall employ ~~a secretary-treasurer~~ an executive director and
 42 ~~such~~ other employees as needed to carry out the duties of this Chapter. All employees
 43 shall serve at the pleasure of the Commission.

1 (d) Any action that may be taken by the Commission may be taken by vote of
2 any three of its members.

3 (e) The members of the Commission shall elect from among themselves a
4 chairman to serve a one-year term. No person shall serve more than two consecutive
5 terms as chairman.

6 (f) The Commission shall receive and act upon applications for auctioneer
7 licenses, issue and suspend and revoke licenses, adopt rules and regulations for
8 auctioneers and ~~auctions~~, auctions that are consistent with the provisions of this Chapter
9 and the General Statutes, and issue declaratory rulings. and take such other actions as may
10 be necessary to see that the provisions of this Chapter are carried out. The Commission may
11 make and enforce reasonable rules and take other actions necessary to administer and
12 enforce the provisions of this Chapter.

13 (g) Members of the Commission shall receive the compensation set for members
14 of occupational licensing boards by G.S. 93B-5."

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

16 "**§ 85B-4. Licenses required.**

17 (a) No person who is not exempt under G.S. 85B-2, shall sell, or offer his services
18 to sell, goods or real estate at auction in this State or perform any act for which an
19 auction firm license is required unless he the person holds a currently valid auctioneer or
20 apprentice auctioneer license. license issued under this Chapter.

21 (b) No person shall be licensed as an apprentice ~~auctioneer or as an auctioneer if he:~~
22 auctioneer, auctioneer, or receive an auction firm license if the person:

23 (1) Is under 18 years of age;

24 (2) Repealed by Session Laws 1983, c. 751, s. 6, effective August 1, 1983.

25 (3) Has within the preceding five years pleaded guilty ~~to to~~, entered a plea
26 of **nolo contendere** or been convicted of any felony; or felony, or
27 committed or been convicted of any act involving fraud or moral
28 turpitude;

29 (4) Has had an auctioneer or apprentice auctioneer or auction firm license
30 revoked. revoked; or

31 (5) Has, within the preceding five years, committed any act which
32 constitutes grounds for license suspension or revocation under this
33 Chapter or a Commission rule.

34 (c) Each applicant for an apprentice auctioneer license shall submit a written
35 application in a form approved by the Commission and containing at least two
36 statements by residents of ~~North Carolina~~ the community in which the applicant resides
37 attesting to the applicant's good moral character.

38 (c1) Each apprentice auctioneer application and license shall name a licensed
39 auctioneer to serve as the supervisor of the apprentice. No apprentice auctioneer may
40 enter into an agreement to conduct an auction, or conduct an auction, without the
41 express approval of his supervisor. The supervisor shall review all contracts before
42 approving them and shall regularly review the records his apprentice is required to
43 maintain under G.S. 85B-7 and to see that they are accurate and current. current, and
44 shall perform such other supervisory duties as may be required by the Commission.

1 (c2) No person may be licensed as an apprentice auctioneer without first taking a
2 written examination, approved by the Commission, and demonstrating to the
3 satisfaction of the Commission a thorough understanding of the law relating to
4 auctioneers and other matters the Commission deems appropriate. Provided, however,
5 that any person who, on the effective date of this Chapter, is duly licensed as an
6 apprentice auctioneer in good standing shall not be required to take or to pass an
7 examination in order to maintain or to renew an apprentice auctioneer license if the
8 person is not otherwise ineligible to have such license renewed and the license has not
9 otherwise lapsed, or been suspended or revoked by the Commission.

10 (d) No person shall be licensed as an auctioneer unless ~~he~~ the person has held an
11 apprentice auctioneer license and served as an apprentice auctioneer for the two
12 preceding years, accumulated sufficient knowledge and experience in such areas of the
13 auctioneer profession as the Commission may deem appropriate, and has taken an
14 examination approved by the Commission and performed on it to the satisfaction of the
15 Commission. The examination shall test the applicant's understanding of the law
16 relating to auctioneers and auctions, ethical practices for auctioneers, the mathematics
17 applicable to the auctioneer business, and such other matters relating to auctions as the
18 Commission considers appropriate. The examination shall be given at least twice each
19 year in Raleigh, and at ~~such~~ other times and places as the Commission designates, but no
20 person shall be allowed to take the examination within six months after having failed it
21 a second time.

22 Any person who has been in the auctioneer business in this State for at least two
23 years prior to the effective date of this act, and who makes proper application to the
24 Commission within one year after July 1, 1973, may be licensed as an auctioneer
25 without holding an apprentice license and serving as an apprentice of two years, and
26 without taking the examination required by this subsection. Any person who has
27 successfully completed the equivalent of at least 80 hours of classroom instruction in a
28 course in auctioneering at an institution approved by the Commission may be licensed
29 as an auctioneer without holding an apprentice license and serving as an apprentice for
30 two years, but must take the examination required by this subsection and perform on it
31 to the satisfaction of the Commission.

32 Each applicant for an auctioneer license shall submit a written application in a form
33 approved by the Commission. If the applicant has been previously licensed as an
34 apprentice auctioneer, the application shall contain an evaluation by the applicant's
35 supervisor of ~~his~~ the applicant's performance as an apprentice auctioneer ~~and~~
36 the applicant's performance in specific areas as required by the Commission. If the
37 applicant is exempted from apprenticeship ~~because he has completed the~~ after completion
38 of the equivalent of at least 80 hours of classroom instruction in auctioneering, the
39 application shall contain a transcript of ~~his~~ the applicant's course work in auctioneering.
40 Each application shall be accompanied by statements of at least two residents of ~~North~~
41 ~~Carolina~~ the community in which the applicant resides attesting to the applicant's good
42 moral character. The Commission may require verification of any information included
43 in an application for an auctioneer ~~license~~ license and may request other information or

1 verification of information provided to determine whether the applicant possesses the
2 good moral character or other qualifications for licensure.

3 (e) Each license issued under this Chapter shall be valid from July 1 of the year
4 issued, or from the date issued, whichever is later, to the following June 30 of the
5 succeeding year and may be unless sooner revoked or suspended pursuant to this Chapter
6 or a rule of the Commission. A license may be renewed for one year at a time, except
7 an apprentice auctioneer license may not be renewed for more than three times. No
8 examination shall be required for renewal of an auctioneer license if the application for
9 renewal is made within ~~12~~ 24 months of the expiration of the previous license.

10 (f) No person shall be issued an auctioneer or apprentice auctioneer license until
11 ~~he the person~~ has made the contribution to the ~~Auctioneer Recovery~~ Fund as required by
12 G.S. 85B-4.1.

13 (g) ~~A sole proprietorship, partnership, or corporation which in the regular course~~
14 ~~of business promotes auctions, employs auctioneers to conduct auctions in its facilities,~~
15 ~~or uses or allows the use of its facilities for auctions,~~ An auction firm must be licensed
16 as an auctioneer business even though no owner or officer of that business acts as an
17 auctioneer. To be licensed as ~~an auctioneer business the sole proprietorship, partnership~~
18 ~~or corporation~~ an auction firm must make the contribution to the ~~Auctioneer Recovery~~
19 Fund as required by G.S. 85B-4.1 and must pay the proper fees as set out in ~~G.S. 85B-6,~~
20 ~~but is not otherwise required to meet qualifications for an auctioneer license.~~ G.S. 85B-
21 6. ~~Licensed auctioneer businesses shall be~~ Auction firms are covered by the provisions
22 of G.S. 85B-8.

23 An auction firm license issued by the Commission is restricted to the persons named
24 in the license and does not inure to the benefit of any other person. Where a license is
25 issued to an auction firm, authority to transact business under the license is limited to
26 the person or persons designated in the application and named in the license.

27 The designated person or persons, prior to being licensed, shall be required to take a
28 written examination, approved by the Commission, and demonstrate to the satisfaction
29 of the Commission a thorough understanding of the law relating to the conduct of the
30 auction business and other matters the Commission deems appropriate. An individual
31 who is licensed as an auctioneer and who is the designated person applying for an
32 auction firm license is not required to take the auction firm examination. Licensed real
33 estate brokers and real estate firms may be exempt from the auction firm examination
34 provided they employ or associate themselves with a licensed auctioneer to handle those
35 aspects of the transactions peculiar to the auctioneer profession. Any person or entity,
36 on the effective date of this Chapter, duly licensed as an auction firm in good standing is
37 not required to take any examination in order to maintain or to renew auction firm
38 license provided that the license does not otherwise expire or lapse and is not suspended
39 or revoked by the Commission.

40 (h) The Commission shall publish at least once a year a list of names and
41 addresses of all persons, sole proprietorships, partnerships and corporations holding
42 valid apprentice auctioneer ~~or auctioneer licenses or designated as licensed auctioneer~~
43 ~~partnerships or corporations~~ auctioneer, auctioneer, or auction firm licenses.

1 (i) The Commission may investigate as it deems necessary the ethical
2 background of any applicant for licensure under this Chapter."

3 Sec. 5. G.S. 85B-4.1 reads as rewritten:

4 "**§ 85B-4.1. Auctioneer Recovery Fund.**

5 (a) ~~In addition to the license fees provided for elsewhere in this Chapter, upon~~
6 ~~the application for a license or the renewal of a license, or both, the Commission may~~
7 ~~charge the applicant or licensee an amount not to exceed fifty dollars (\$50.00) per year~~
8 ~~to be included in the Auctioneer Recovery Fund (hereinafter the Fund).~~

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

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

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

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

34 a. ~~To carry out the advancement of education and research in the~~
35 ~~auctioneering profession for the benefit of those licensed under~~
36 ~~the provisions of this Chapter and the improvement of and~~
37 ~~making even more efficient the industry as such;~~

38 b. ~~To underwrite educational seminars, training centers, and other~~
39 ~~forms of educational projects for the use and benefit generally~~
40 ~~of licensees;~~

41 e. ~~To sponsor, contract for and to underwrite any and all other~~
42 ~~educational and research projects of a similar nature having to~~
43 ~~do with the advancement of the auctioneer profession in North~~
44 ~~Carolina; and~~

1 ~~d. To cooperate with associations of auctioneers and any and all~~
2 ~~other groups for the enlightenment and advancement of the~~
3 ~~auctioneer profession of North Carolina.~~

4 (a) In addition to license fees, upon application for a license or renewal of a
5 license, the Commission may charge the applicant or licensee up to fifty dollars
6 (\$50.00) per year to be included in the Fund.

7 (b) The Commission shall maintain at least one hundred thousand dollars
8 (\$100,000) in the Fund for use as provided in this Chapter. The Fund may be invested
9 by the State Treasurer in interest bearing accounts, and any interest accrued shall be
10 added to the Fund. Sufficient liquidity shall be maintained to insure that funds will be
11 available to satisfy claims processed through the Board. The Fund may be disbursed by
12 a warrant drawn against the State Treasurer or by other method at the discretion of the
13 State Treasurer.

14 (c) The Commission, in its discretion, may use contents of the Fund in excess of
15 one hundred thousand dollars (\$100,000) for the following purposes:

16 (1) To promote education and research in the auctioneer profession, in
17 order to benefit persons licensed under this Chapter and to improve the
18 efficiency of the profession;

19 (2) To underwrite educational seminars, training centers, and other forms
20 of educational projects for the use and benefit of licensees;

21 (3) To sponsor, contract for, or underwrite education and research projects
22 in order to advance the auctioneer profession in North Carolina; and

23 (4) To cooperate with associations of auctioneers, or other groups, in order
24 to promote the enlightenment and advancement of the auctioneer
25 profession in North Carolina."

26 Sec. 6. G.S. 85B-4.2 reads as rewritten:

27 **"§ 85B-4.2. Special provisions—Grounds for payment; notice and application to**
28 **Commission.**

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

36 ~~(b) If such final agency decision has been entered and the rights of the licensee~~
37 ~~have been finally adjudicated, then the superior court shall make a finding as to the~~
38 ~~monetary damages growing out of the aforesaid violation or violations.~~

39 An aggrieved person who has suffered a monetary loss as a direct result of the
40 conversion of funds or property or other fraudulent act or conduct by a licensed
41 auctioneer, apprentice auctioneer, or auction firm shall be eligible to seek compensation
42 from the Fund subject to the limitations of this Chapter and the amount of loss which is
43 otherwise unrecoverable provided that:

- 1 (1) The aggrieved person has sued the licensee in a court of competent
2 jurisdiction and has filed with the Commission written notice of such
3 lawsuit within 60 days after its commencement unless the total loss
4 claimed excluding attorneys' fees is less than two thousand five
5 hundred dollars (\$2,500), in which case the notice may be filed within
6 90 days after the termination of all judicial proceedings, including
7 appeals;
8 (2) The aggrieved person has obtained final judgment in a court of
9 competent jurisdiction against the licensee based upon conversion or
10 other fraudulent conduct arising out of a transaction which occurred
11 when the licensee was licensed by the Commission and was acting in a
12 capacity for which a North Carolina license is required, which
13 judgment shall show the amount owed the aggrieved person;
14 (3) The aggrieved person was not engaged in any act or conduct for which
15 an auctioneer license is required and was not acting in violation of any
16 of the laws of the State of North Carolina or of the United States; and
17 (4) Execution on the judgment has been issued and has been returned
18 unsatisfied in whole or in part.

19 Upon the termination of all judicial proceedings including appeals, and for a period of
20 one year thereafter, a person eligible for recovery may file a verified application with
21 the Commission for payment out of the Fund of the amount remaining unpaid upon the
22 judgment which represents the actual and direct loss sustained by reason of conversion
23 or other fraudulent conduct. A certified copy of the judgment and return of execution
24 shall be attached to the application and filed with the Commission. The applicant shall
25 serve upon the judgment debtor a copy of the application and shall file with the
26 Commission an affidavit or certificate of service, in accordance with the procedures
27 specified by rule by the Commission."

28 Sec. 7. Chapter 85B of the General Statutes is amended by adding a new
29 section to read:

30 **"§ 85B-4.3. Hearing; required showing.**

31 Upon application by an aggrieved person, the Commission shall conduct a hearing
32 and the aggrieved person shall be required to show that:

- 33 (1) The person is not a spouse of the judgment debtor or a person
34 representing such spouse;
35 (2) The person gave notice of the lawsuit as required by G.S. 85B-4.2;
36 (3) The person is making application not more than one year after
37 termination of all judicial proceedings, including appeals, in
38 connection with the judgment;
39 (4) The person has complied with all requirements of this Article;
40 (5) The person has obtained a judgment as described in G.S. 85B-4.2;
41 (6) The person has made all reasonable searches and inquiries to ascertain
42 whether the judgment debtor is possessed of real or personal property
43 or other assets subject to be sold or applied in satisfaction of the
44 judgment;

- 1 (7) That by a search the person has discovered no real or personal property
2 or other assets subject to be sold or applied, or has discovered certain
3 of them, describing them, but that the amount realized was insufficient
4 to satisfy the judgment, stating the amount realized and the balance
5 remaining due on the judgment after application of the amount
6 realized; and
- 7 (8) The person has diligently pursued available remedies including
8 attempted execution on the judgment against all the judgment debtors
9 and the execution has been returned unsatisfied. In addition to that,
10 the person knows of no assets of the judgment debtor and has
11 attempted collection from all other persons who may be liable in the
12 transaction for which payment is sought from the Fund if there are any
13 other persons."

14 Sec. 8. Chapter 85B of the General Statutes is amended by adding a new
15 section to read:

16 **"§ 85B-4.4. Response and defense by Commission and judgment debtor; proof of**
17 **conversion or other fraudulent act.**

18 (a) When the Commission proceeds upon an application as set forth in this
19 Article, counsel for the Commission may defend action on behalf of the Fund and shall
20 have recourse to all appropriate means of defense, including the examination of
21 witnesses. The judgment debtor may personally defend the action and shall have
22 recourse to all appropriate means of defense, including the examination of witnesses.
23 Within 30 days after service of the application, counsel for the Commission and the
24 judgment debtor may file responses setting forth answers and defenses. Responses shall
25 be filed with the Commission and copies shall be served upon every party by the filing
26 party. If at any time it appears there are no triable issues of fact and the application for
27 payment from the Fund is without merit, the Commission shall dismiss the application.
28 A motion to dismiss may be supported by affidavit of any person having knowledge of
29 the facts and may be made on the basis that the application or the judgment referred to
30 does not form a basis for meritorious recovery under G.S. 85B-4.2, that the applicant
31 has not complied with the provisions of this Article, or that the liability of the Fund with
32 regard to the particular licensee or transaction has been exhausted; provided, however,
33 notice of such motion shall be given at least 10 days prior to the time fixed for hearing.

34 (b) Whenever the judgment obtained by an applicant is by default, stipulation, or
35 consent, or whenever the action against the licensee was defended by a trustee in
36 bankruptcy, the applicant, for purposes of this Article, shall have the burden of proving
37 the cause of action for conversion of funds or property or other fraudulent conduct.
38 Otherwise, the judgment shall create a rebuttable presumption of conversion or other
39 fraudulent conduct."

40 Sec. 9. Chapter 85B of the General Statutes is amended by adding a new
41 section to read:

42 **"§ 85B-4.5. Determination of certain small claims without a prior judicial**
43 **determination.**

1 Notwithstanding any other provisions of this Chapter, the Commission may, in its
2 discretion, order that payment be made from the Fund, without requiring a prior judicial
3 determination in any case where:

- 4 (1) The total loss claimed by the claimant is two thousand five hundred
5 dollars (\$2,500) or less;
- 6 (2) The amount of alleged loss is readily ascertainable rather than
7 speculative in nature;
- 8 (3) The alleged loss is one that is otherwise compensable under this
9 Chapter;
- 10 (4) The claimant filed a properly notarized complaint with the
11 Commission not more than one year following the date of the alleged
12 wrongful act or conduct of the licensee; and
- 13 (5) The Commission, in its discretion, determines that, based upon the
14 evidence presented, justice would be better served by allowing
15 compensation to be paid without first requiring the aggrieved party to
16 obtain a judgment from a court of competent jurisdiction."

17 Sec. 10. Chapter 85B of the General Statutes is amended by adding a new
18 section to read:

19 **"§ 85B-4.6. Order directing payment out of Fund; compromise of claims.**

20 (a) Applications for payment from the Fund shall be heard and decided by a
21 majority of the members of the Commission. If, after a hearing, the Commission finds
22 that the claim should be paid from the Fund, the Commission shall enter an order
23 requiring payment from the Fund of whatever sum the Commission shall find to be
24 payable upon the claim in accordance with the limitations contained in this Article.

25 (b) Subject to Commission approval, a claim based upon the application of an
26 aggrieved person may be compromised; however, the Commission shall not be bound in
27 any way by any compromise or stipulation of the judgment debtor."

28 Sec. 11. Chapter 85B of the General Statutes is amended by adding a new
29 section to read:

30 **"§ 85B-4.7. Limitations; pro rata distribution; attorneys' fees.**

31 (a) Payments from the Fund shall be subject to the following limitations:

- 32 (1) The right to recovery under this Article shall be forever barred unless
33 timely notice is given as required by G.S. 85B-4.2(a)(1) and
34 application is made within one year after termination of all
35 proceedings, including appeals, in connection with the judgment.
- 36 (2) The Fund shall not be liable for more than ten thousand dollars
37 (\$10,000) per transaction regardless of the number of persons
38 aggrieved.
- 39 (3) The liability of the Fund shall not exceed in the aggregate ten thousand
40 dollars (\$10,000) for any one licensee within a single calendar year,
41 and in no event shall it exceed in the aggregate twenty thousand
42 dollars (\$20,000) for any one licensee.
- 43 (4) The Fund shall not be liable for payment of any judgment awards of
44 consequential damages, multiple or punitive damages, civil penalties,

1 incidental damages, special damages, interest, costs of court or action,
2 or other similar awards.

3 (b) If the maximum of the Fund is insufficient to pay in full the valid claims of
4 all aggrieved persons whose claims relate to the same transaction or to the same
5 licensee, the amount for which the Fund is liable shall be distributed among the
6 claimants in a ratio that their respective claims bear to the total of such valid claims or
7 in a manner the Commission deems equitable. Upon petition of the Commission, the
8 Commission may require all claimants and prospective claimants to be joined in one
9 proceeding so that the respective rights of all claimants to the Fund may be equitably
10 resolved."

11 Sec. 12. Chapter 85B of the General Statutes is amended by adding a new
12 section to read:

13 **"§ 85B-4.8. Repayment to Fund; automatic suspension of license.**

14 Should the Commission pay from the Fund any amount in settlement of a claim or
15 toward satisfaction of a judgment against a licensee, the license of the licensee shall be
16 automatically suspended upon the effective date of the order authorizing payment from
17 the Fund. The licensee shall not be eligible for consideration for reinstatement until
18 repayment in full, plus interest at the legal rate as provided for in G.S. 24-1, the amount
19 paid from the Fund."

20 Sec. 13. Chapter 85B of the General Statutes is amended by adding a new
21 section to read:

22 **"§ 85B-4.9. Subrogation of rights.**

23 When the Commission has paid from the Fund any sum to the judgment creditor, the
24 Commission shall be subrogated to all of the rights of the judgment creditor to the
25 extent of the amount paid and the judgment creditor shall assign all his right, title, and
26 interest in the judgment to the extent of the amount paid to the Commission and any
27 amount and interest recovered by the Commission on the judgment shall be deposited in
28 the Fund."

29 Sec. 14. Chapter 85B of the General Statutes is amended by adding a new
30 section to read:

31 **"§ 85B-4.10. Waiver of rights.**

32 The failure of an aggrieved person to comply with this Chapter shall constitute a
33 waiver of any rights hereunder."

34 Sec. 15. Chapter 85B of the General Statutes is amended by adding a new
35 section to read:

36 **"§ 85B-4.11. Persons ineligible to recover from Fund.**

37 No licensee who suffers the loss of any commission from any transaction in which
38 the licensee was acting in the capacity of an auctioneer, apprentice auctioneer, or
39 auction firm shall be entitled to make application for payment from the Fund for the
40 loss. Likewise, any person who suffers any monetary loss as a result of a joint business
41 venture of any sort with a licensee shall not be entitled to be compensated from the
42 Fund for the loss."

43 Sec. 16. Chapter 85B of the General Statutes is amended by adding a new
44 section to read:

1 **"§ 85B-4.12. Disciplinary action against licensee.**

2 Nothing contained in this Article shall limit the authority of the Commission to take
3 disciplinary action against any licensee under this Chapter, nor shall the repayment in
4 full of all obligations to the Fund by any licensee nullify or modify the effect of any
5 other disciplinary proceeding brought under this Chapter."

6 Sec. 17. G.S. 85B-5 reads as rewritten:

7 **"§ 85B-5. Licensing of nonresidents.**

8 (a) Any person who holds a valid auctioneer license in another state may apply
9 for and be granted a reciprocal North Carolina license if the resident state in which he
10 the person is licensed has minimum training or experience standards which are
11 acceptable to the Commission but are not more lenient than those required by this
12 Chapter. Chapter, if the resident state extends similar reciprocal privileges to auctioneers
13 who are residents of and licensed by the State of North Carolina.

14 (b) An applicant under this section shall submit an application and other
15 documentation and proof of eligibility for licensure as may be required by the
16 Commission, but shall not be required to take the examination required under G.S. 85B-4
17 but G.S. 85B-4. Applicants shall pay the appropriate fee under G.S. 85B-6 and shall file
18 with the Commission an irrevocable consent that service on the secretary-Executive
19 Director of the Commission shall be sufficient service of process for actions against the
20 applicant by a resident of this State arising out of his auctioneering activities.

21 (c) An applicant under this section shall make the contribution to the Auctioneer
22 Recovery-Fund as required by G.S. 85B-4.1. Any license issued under this section shall
23 be marked to indicate that its holder is a nonresident-nonresident reciprocal licensee.

24 (d) A license issued pursuant to this section shall be valid from the date of
25 issuance to the following June 30 and may be renewed from year to year unless
26 suspended or revoked pursuant to the provisions of this Chapter or rule of the
27 Commission, provided that the licensee continues to be a resident of and duly licensed
28 in good standing in the licensee's resident state.

29 (e) Any person licensed under this section shall notify the Commission of the
30 lapse, surrender, suspension, revocation, or any other act amounting to a loss of license
31 in the person's resident state. The notice must be sent to the Commission, by certified
32 mail, return receipt requested, within 10 days of the occurrence.

33 (f) Any person licensed under this section shall provide the Commission with
34 written notice of any change of business address or residence within 10 days of the
35 occurrence.

36 (g) Any license issued under this section shall be immediately suspended or
37 revoked based upon the occurrence of any of the events set out in subsection (e) of this
38 section or based upon a change of principal state residence of the reciprocal licensee.

39 (h) Any person whose license is terminated as a result of a change of principal
40 state residence may reapply for reciprocal status provided the person is otherwise
41 eligible for a license based upon the new state residence, and submits with the
42 application the fees required by the Commission.

43 (i) Notwithstanding any other provision of this section, a reciprocal licensee who
44 subsequently becomes a domiciliary of the State of North Carolina may request, by

1 application, that the reciprocal license be converted to that of an in-State licensee
2 without having to take the State exam required by G.S. 85B-4. The Commission may,
3 however, require an applicant to pay processing and application fees it deems
4 appropriate."

5 Sec. 18. G.S. 85B-6 reads as rewritten:

6 **"§ 85B-6. Fees; local governments not to charge fees or require licenses.**

7 (a) The Commission shall collect and remit to the State Treasurer fees in an
8 amount not to exceed the following: fifty dollars (\$50.00) for application for apprentice
9 auctioneer license; twenty-five dollars (\$25.00) for apprentice auctioneer license for one
10 year; twenty-five dollars (\$25.00) for application for auctioneer license and for
11 examination; one hundred dollars (\$100.00) for auctioneer license for one year; seventy-
12 five dollars (\$75.00) for designation as licensed auctioneer business.

13 (b) No local government or agency of local government may charge any fees or
14 require any licenses for auctioneers, apprentice auctioneers, or auctioneer businesses in
15 addition to those set out in this Chapter."

16 Sec. 19. G.S. 85B-7 reads as rewritten:

17 **"§ 85B-7. Conduct of ~~auetion-~~ auetion; records.**

18 (a) No ~~person~~-licensee shall conduct an auction in this State without first having a
19 written agreement with the owner of any property to be sold. The agreement must
20 contain the terms and conditions upon which the auctioneer received the goods for sale.
21 The ~~auetioneer~~-licensee shall provide the owner with ~~one~~-a signed copy of the agreement
22 and shall keep at least one copy for his own records for two years from the date of the
23 agreement. ~~A written agreement shall not be required for a sale at auction if the sale is made at~~
24 ~~an auction house or similar place where members of the public are generally offered the~~
25 ~~opportunity to present goods for sale, there has been no prior negotiation between the owner~~
26 ~~and the auctioneer, and the goods are not sold for more than five hundred dollars (\$500.00).~~
27 Copies of all contracts shall be made available to the Commission or its designated
28 agent upon request.

29 (b) Each ~~auetioneer~~-licensee shall maintain a ~~record book~~-accounting records and
30 enter in ~~it, them,~~ upon receipt of goods for auction and before their sale, the name and
31 address of the person who employed ~~him~~-the licensee to sell the goods at auction and the
32 name and address of the owner of the goods to be sold. ~~It shall not be necessary to enter in~~
33 ~~the record book any record of sales made at an auction house or similar place where members~~
34 ~~of the public are generally offered the opportunity to present goods for sale, there has been no~~
35 ~~prior negotiation between the owner and the auctioneer, and the goods are not sold for more~~
36 ~~than five hundred dollars (\$500.00).~~ The ~~record book~~-accounting records shall be open for
37 inspection by the Commission or its designated agent at reasonable times.

38 (c) ~~Each auetioneer~~-All licensees shall have ~~his license~~-their licenses available at
39 each auction ~~he conducts~~-they conduct.

40 (d) Each licensee shall maintain records which identify the purchaser of all goods
41 sold by name, address, and when possible, telephone number. The sales records shall
42 contain an adequate description of the items sold and must be sufficient to positively
43 identify the owner of the property. Sales records shall be maintained for a period of not
44 less than two years from the date of sale. Sales records shall be open for inspection by
45 the Commission or its designated agent at reasonable times."

1 Sec. 20. Chapter 85B of the General Statutes is amended by adding a new
2 section to read:

3 **"§ 85B-7.1. Handling clients' funds.**

4 (a) Each licensee shall maintain a trust or escrow account and shall deposit in the
5 account all funds received for the benefit of another person. The funds shall be
6 deposited with an insured bank or savings and loan association located in North
7 Carolina.

8 (b) Each licensee shall maintain, for not less than five years, complete records
9 showing the deposit, maintenance, and withdrawal of trust or escrow funds. The
10 Commission or its designated agent may inspect these records periodically, without
11 prior notice and may also inspect these records whenever the Commission determines
12 that they are pertinent to an investigation of any specific complaint against a licensee."

13 Sec. 21. Chapter 85B-8 reads as rewritten:

14 **"§ 85B-8. Prohibited acts; ~~denial, suspension-suspension,~~ or revocation of license.**

15 (a) The following shall be grounds for denial, ~~suspension-suspension,~~ or
16 revocation of an ~~auctioneer or apprentice auctioneer~~ license: ~~auctioneer, auctioneer~~
17 apprentice, or auction firm license:

- 18 (1) Any violation of this Chapter or any violation of a rule or regulation
19 duly adopted by the Commission;
- 20 (2) A continued and flagrant course of misrepresentation or making false
21 promises, either by the ~~auctioneer~~-licensee, an employee of the
22 licensee, or by someone acting in his-on behalf of and with his-the
23 licensee's consent;
- 24 (3) Any failure to account for or to pay over within a reasonable time, not
25 to exceed 30 days, ~~money-funds~~ belonging to another which has-have
26 come into the ~~auctioneer's~~-licensee's possession through an auction sale;
- 27 (4) Any ~~false, misleading-misleading,~~ or untruthful advertising;
- 28 (5) Any act of conduct in connection with a sales transaction which
29 demonstrates bad faith or dishonesty;
- 30 (6) Knowingly using false bidders, cappers or pullers, or knowingly
31 making a material false statement ~~for license; or representation;~~
- 32 (7) Commingling the ~~money-funds~~ or property of a client with ~~his-the~~
33 licensee's own or failing to maintain and deposit in a trust or escrow
34 account in an insured bank or savings and loan association located in
35 North Carolina ~~money-funds~~ received for another person through sale
36 at ~~auction-auction;~~
- 37 (8) Failure to make the required contribution to the ~~Auctioneer Recovery~~
38 Fund-Fund;
- 39 (9) The commission or conviction of a crime that is punishable as a felony
40 offense under the laws of North Carolina or the laws of the jurisdiction
41 where committed or convicted, or the commission of any act involving
42 fraud or moral turpitude;
- 43 (10) Failure to properly make any disclosures or to provide documents or
44 information required by this Chapter or by the Commission;

1 (11) A demonstrated lack of financial responsibility; or

2 (12) A history of intemperate habits, violent temper, or other character trait
3 which would impair the applicant's or licensee's ability to deal with
4 clients or the general public in a professional manner.

5 (b) to (d) Repealed by Session Laws 1973, c. 1195, s. 5.

6 (e) The Commission may upon its own motion or upon the complaint in writing
7 of any person, provided the complaint and any evidence presented with it establishes a
8 **prima facie** case, hold a hearing and investigate the actions of any ~~auctioneer or~~
9 ~~apprentice auctioneer~~ auctioneer, apprentice auctioneer, or auction firm, or any person
10 who holds himself or herself out as an auctioneer or apprentice auctioneer, and shall
11 have the power to suspend or revoke any license issued under the provisions of this
12 ~~Chapter.~~ Chapter, or to reprimand or censure any licensee. In all proceedings for the
13 denial, suspension ~~suspension~~, or revocation of licenses, the provisions of Chapter 150B
14 of the General Statutes including provisions relating to summary suspension shall be
15 applicable. Any person who desires to appeal the denial of an application for any
16 license authorized to be issued under this Chapter shall file a written appeal with the
17 Commission not later than 30 days following notice of denial.

18 (f) A person whose license has been denied, suspended, or revoked may not
19 apply in that person's name or in any other manner within the period during which the
20 order of denial, suspension, or revocation is in effect, and no firm, partnership, or
21 corporation in which any person has a substantial interest or exercises management
22 responsibility or control may be licensed during the period."

23 Sec. 22. G.S. 85B-9(b) reads as rewritten:

24 "(b) The Commission may in its own name seek injunctive relief in the General
25 Court of Justice to restrain any violation or anticipated violation of the provisions of
26 ~~G.S. 85B-4(a).~~ G.S. 85B-4(a) or any violation of this Chapter."

27 Sec. 23. G.S. 20-286(11) reads as rewritten:

28 "(11) Motor vehicle dealer or dealer. – A person who does any of the
29 following:

30 a. For commission, money, or other thing of value, buys,
31 sells, or exchanges, whether outright or on conditional
32 sale, bailment lease, chattel mortgage, or otherwise, five
33 or more motor vehicles within any 12 consecutive
34 months, regardless of who owns the motor vehicles.

35 b. On behalf of another and for commission, money, or
36 other thing of value, arranges, offers, attempts to solicit,
37 or attempts to negotiate the sale, purchase, or exchange
38 of an interest in five or more motor vehicles within any
39 12 consecutive months, regardless of who owns the
40 motor vehicles.

41 c. Engages, wholly or in part, in the business of selling new
42 motor vehicles or new or used motor vehicles, or used
43 motor vehicles only, whether or not the motor vehicles

1 are owned by that person, and sells five or more motor
2 vehicles within any 12 consecutive months.

3 d. Offers to sell, displays, or permits the display for sale for
4 any form of compensation five or more motor vehicles
5 within any 12 consecutive months.

6 e. Primarily engages in the leasing or renting of motor
7 vehicles to others and sells or offers to sell those vehicles
8 at retail.

9 The term 'motor vehicle dealer' or 'dealer' does not include any of
10 the following:

11 a. Receivers, trustees, administrators, executors,
12 guardians, or other persons appointed by or acting under the
13 judgment or order of any court.

14 b. Public officers while performing their official duties.

15 c. Persons disposing of motor vehicles acquired
16 for their own use or the use of a family member, and
17 actually so used, when the vehicles have been acquired and
18 used in good faith and not for the purpose of avoiding the
19 provisions of this Article.

20 d. Persons who sell motor vehicles as an incident to
21 their principal business but who are not engaged primarily in
22 the selling of motor vehicles. This category includes
23 financial institutions who sell repossessed motor vehicles
24 and insurance companies who sell motor vehicles to which
25 they have taken title as an incident of payments made under
26 policies of insurance, and auctioneers who sell motor
27 vehicles for the owners or the heirs of the owners of those
28 vehicles as part of an auction of other personal or real
29 property or for the purpose of settling an estate or closing a
30 business or who sell motor vehicles on behalf of a
31 governmental entity, and who do not maintain a used car lot
32 or building with one or more employed motor vehicle sales
33 representatives.

34 e. Persons manufacturing, distributing or selling trailers
35 and semitrailers weighing not more than 750 pounds and
36 carrying not more than a 1,500 pound load.

37 f. A licensed real estate broker or salesman who sells a
38 mobile home for the owner as an incident to the sale of land
39 upon which the mobile home is located.

40 g. An employee of an organization arranging for the
41 purchase or lease by the organization of vehicles for use
42 in the organization's business.

43 h. Any publication, broadcast, or other communications
44 media when engaged in the business of advertising, but

- 1 not otherwise arranging for the sale of motor vehicles
2 owned by others.
- 3 i. Any person dealing solely in the sale or lease of vehicles
4 designed exclusively for off-road use.
 - 5 j. Any real property owner who leases any interest in
6 property for use by a dealer.
 - 7 k. Any person acquiring any interest in a motor vehicle for
8 a family member."

9 Sec. 24. This act becomes effective January 1, 1993.