

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 301
Committee Substitute Favorable 4/12/99

Short Title: Auctioneer Amendments.

(Public)

Sponsors:

Referred to:

March 4, 1999

A BILL TO BE ENTITLED

1 AN ACT TO AMEND THE EDUCATIONAL REQUIREMENTS FOR
2 AUCTIONEERS, APPRENTICE AUCTIONEERS, AND PRINCIPALS IN AN
3 AUCTION FIRM, TO ALLOW THE AUCTIONEERS COMMISSION TO ASSESS
4 A CIVIL PENALTY IN CERTAIN CIRCUMSTANCES, TO INCREASE FEES,
5 AND TO AUTHORIZE CRIMINAL HISTORY CHECKS FOR APPLICANTS FOR
6 AN AUCTIONEER'S LICENSE.
7

8 The General Assembly of North Carolina enacts:

9 Section 1. G.S. 85B-3 reads as rewritten:

10 **"§ 85B-3. Auctioneers Commission.**

11 (a) There shall be a five-member North Carolina Auctioneers Commission having
12 the powers and responsibilities set out in this Chapter. The Governor shall appoint the
13 members of the Commission, at least three of whom, and their successors, shall be from
14 nominations submitted by the Auctioneers Association of North Carolina. The
15 Auctioneers Association shall submit, within 45 days of when the vacancy occurs, at least
16 three names for each position for which it is entitled to make a nomination. Of the initial
17 five members of the Commission one shall be appointed for a one-year term, two shall be
18 appointed for two-year terms and two for three-year terms; thereafter, each new member
19 shall be appointed for a term of three years. Any vacancy shall be filled for the remainder

1 of the unexpired term only. Each member shall continue in office until his successor is
2 appointed and qualified. No member shall serve more than two complete consecutive
3 terms.

4 (b) At least three members of the Commission shall be experienced auctioneers
5 who are licensed under this Chapter. One member shall be a person who shall represent
6 the public at large and shall not be licensed under this Chapter.

7 (c) The Commission shall employ an executive director and other employees as
8 needed to carry out the duties of this Chapter. All employees shall serve at the pleasure of
9 the Commission.

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

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

15 ~~(f) The Commission shall receive and act upon applications for auctioneer
16 licenses, issue and suspend and revoke licenses, adopt rules and regulations for
17 auctioneers and auctions that are consistent with the provisions of this Chapter and the
18 General Statutes, and issue declaratory rulings. The Commission may make and enforce
19 reasonable rules and take other actions necessary to administer and enforce the provisions
20 of this Chapter.~~

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

23 Section 2. Chapter 85B of the General Statutes is amended by adding a new
24 section to read:

25 "**§ 85B-3.1. Auctioneers Commission; powers and duties.**

26 (a) The Commission shall have the following powers and duties:

27 (1) To receive and act upon applications for licenses.

28 (2) To issue licenses.

29 (3) To deny, suspend, and revoke licenses pursuant to G.S. 85B-8.

30 (3) To adopt rules for auctioneers and auctions that are consistent with the
31 provisions of this Chapter and the General Statutes.

32 (4) To issue declaratory rulings.

33 (b) The Commission may assess a civil penalty not in excess of two thousand
34 dollars (\$2,000) for acts prohibited in G.S. 85B-8. All civil penalties collected by the
35 Commission shall be remitted to the school fund of the county in which the violation
36 occurred. Before imposing and assessing a civil penalty and fixing the amount thereof,
37 the Commission shall, as a part of its deliberations, take into consideration the following
38 factors:

39 (1) The nature, gravity, and persistence of the particular violation.

40 (2) The appropriateness of the imposition of a civil penalty when
41 considered alone or in combination with other punishment.

42 (3) Whether the violation was willful.

1 (4) Any other factors that would tend to mitigate or aggravate the violations
2 found to exist."

3 Section 3. Chapter 85B of the General Statutes is amended by adding a new
4 section to read:

5 **"§ 85B-3.2. Criminal history record checks of applicants for licensure.**

6 (a) Definitions. – The following definitions shall apply in this section:

7 (1) Applicant – An applicant for initial licensure as an auctioneer.

8 (2) Criminal history – A State or federal history of conviction of a crime,
9 whether a misdemeanor or felony, that bears upon an applicant's fitness
10 to be licensed as an auctioneer.

11 (b) The Commission shall ensure that the State criminal history of an applicant is
12 checked. National criminal history checks are authorized for an applicant who has not
13 resided in the State of North Carolina during the past five years. The Commission shall
14 provide to the North Carolina Department of Justice the fingerprints of the applicant to be
15 checked, a form signed by the applicant to be checked consenting to the check of the
16 criminal history and to the use of fingerprints and other identifying information required
17 by the State or National Repositories, and any additional information required by the
18 Department of Justice.

19 (c) All releases of criminal history information to the Commission shall be subject
20 to, and in compliance with, rules governing the dissemination of criminal history record
21 checks as adopted by the North Carolina Division of Criminal Information. All of the
22 information the Commission receives through the checking of the criminal history is for
23 the exclusive use of the Commission and shall be kept confidential.

24 (d) If the applicant's verified criminal history record check reveals one or more
25 convictions of a crime that is punishable as a felony offense, or the conviction of any
26 crime involving fraud or moral turpitude, the Commission may deny the applicant's
27 license. However, the conviction shall not automatically prohibit licensure, and the
28 following factors shall be considered by the Commission in determining whether
29 licensure shall be denied:

30 (1) The level and seriousness of the crime.

31 (2) The date of the crime.

32 (3) The age of the person at the time of the crime.

33 (4) The circumstances surrounding the commission of the crime, if known.

34 (5) The nexus between the criminal conduct of the applicant and the
35 applicant's duties as an auctioneer.

36 (6) The prison, jail, probation, parole, rehabilitation, and employment
37 records of the applicant since the date the crime was committed.

38 (7) The subsequent commission by the person of a crime.

39 (e) The Commission may deny licensure to an applicant who refuses to consent to
40 a criminal history record check or use of fingerprints or other identifying information
41 required by the State or National Repositories of Criminal Histories.

1 (f) The Commission shall notify the applicant of the applicant's right to review the
2 criminal history information, the procedure for challenging the accuracy of the criminal
3 history, and the applicant's right to contest the Commission's denial of licensure."

4 Section 4. G.S. 85B-4 reads as rewritten:

5 **"§ 85B-4. Licenses required.**

6 (a) No person who is not exempt under G.S. 85B-2, shall sell, or offer to sell,
7 goods or real estate at auction in this State or perform any act for which an auction firm
8 license is required unless the person holds a currently valid license issued under this
9 Chapter.

10 (b) No person shall be licensed as an apprentice auctioneer, auctioneer, or receive
11 an auction firm license if the person:

12 (1) Is under 18 years of ~~age~~; age.

13 (1a) Is not a high school graduate or the equivalent. However, a person
14 licensed under this Chapter prior to July 1, 1999, does not need to meet
15 this requirement.

16 (2) Repealed by Session Laws 1983, c. 751, s. 6.

17 (3) Has within the preceding five years pleaded guilty to, entered a plea of
18 nolo contendere or been convicted of any felony, or committed or been
19 convicted of any act involving fraud or moral ~~turpitude~~; turpitude.

20 (4) Has had an auctioneer or apprentice auctioneer or auction firm license
21 ~~revoked~~; or revoked.

22 (5) Has, within the preceding five years, committed any act ~~which~~ that
23 constitutes grounds for license suspension or revocation under this
24 Chapter or a Commission rule.

25 (c) Each applicant for an apprentice auctioneer license shall submit a written
26 application in a form approved by the Commission and containing at least two statements
27 by residents of the community in which the applicant resides attesting to the applicant's
28 good moral character.

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

36 (d) No person shall be licensed as an auctioneer unless the person has held an
37 apprentice auctioneer license and served as an apprentice auctioneer for the two
38 preceding years, accumulated sufficient knowledge and experience in such areas of the
39 auctioneer profession as the Commission may deem appropriate, and has taken an
40 examination approved by the Commission and performed on it to the satisfaction of the
41 Commission. The examination shall test the applicant's understanding of the law relating
42 to auctioneers and auctions, ethical practices for auctioneers, the mathematics applicable
43 to the auctioneer business, and such other matters relating to auctions as the Commission

1 considers appropriate. The examination shall be given at least twice each year in Raleigh,
2 and at other times and places the Commission designates, but no person shall be allowed
3 to take the examination within six months after having failed it a second time.

4 ~~Any person who has been in the auctioneer business in this State for at least two years~~
5 ~~prior to the effective date of this act [July 1, 1973], and who makes proper application to~~
6 ~~the Commission within one year after July 1, 1973, may be licensed as an auctioneer~~
7 ~~without holding an apprentice license and serving as an apprentice of two years, and~~
8 ~~without taking the examination required by this subsection.—~~Any person who has
9 successfully completed the equivalent of at least 80 hours of classroom instruction in a
10 course in auctioneering at an institution approved by the Commission whose curriculum
11 and instructors meet the qualifications approved or established by the Commission may
12 be licensed as an auctioneer without holding an apprentice license and serving as an
13 apprentice for two years, but ~~must~~ shall take the examination required by this subsection
14 and perform on it to the satisfaction of the Commission.

15 Each applicant for an auctioneer license shall submit a written application in a form
16 approved by the ~~Commission.~~ Commission, pay all applicable fees, and consent in writing
17 to a criminal history check as required by G.S. 85B-3.2. If the applicant has been
18 previously licensed as an apprentice auctioneer, the application shall contain an
19 evaluation by the applicant's supervisor of the applicant's performance as an apprentice
20 auctioneer and the applicant's performance in specific areas as required by the
21 Commission. If the applicant is exempted from apprenticeship after completion of the
22 equivalent of at least 80 hours of classroom instruction in auctioneering, the application
23 shall contain a transcript of the applicant's course work in auctioneering. Each application
24 shall be accompanied by statements of at least two residents of the community in which
25 the applicant resides attesting to the applicant's good moral character. The Commission
26 may require verification of any information included in an application for an auctioneer
27 license and may request other information or verification of information provided to
28 determine whether the applicant possesses the good moral character or other
29 qualifications for licensure.

30 (e) Each license issued under this Chapter shall be valid from July 1 of the year
31 issued, or from the date issued, whichever is later, to the following June 30 unless sooner
32 revoked or suspended pursuant to this Chapter or a rule of the Commission. A license
33 may be renewed for one year at a time, except an apprentice auctioneer license may not
34 be renewed for more than three times. No examination shall be required for renewal of an
35 auctioneer license if the application for renewal is made within 24 months of the
36 expiration of the previous license.

37 (e1) The Commission may require licensees to complete annually not more than six
38 hours of Commission-approved continuing education courses prior to license renewal.
39 The Commission may impose different continuing education requirements, including no
40 such requirements, upon the classes of licensees under this Chapter. The Commission
41 may waive any or all continuing education requirements in cases of hardship, disability,
42 or illness, or under other circumstances as the Commission deems appropriate.

1 (f) No person shall be issued an auctioneer or apprentice auctioneer license until
2 the person has made the contribution to the Fund as required by G.S. 85B-4.1.

3 (g) An auction firm must be licensed by the Board even though no owner or
4 officer of the firm acts as an auctioneer. To be licensed an auction firm must make the
5 contribution to the Fund as required by G.S. 85B-4.1 and must pay the proper fees as set
6 out in G.S. 85B-6. Auction firms are covered by the provisions of G.S. 85B-8.

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

11 The designated person or persons, prior to being licensed, shall be required to take a
12 written examination, approved by the Commission, and demonstrate to the satisfaction of
13 the Commission a thorough understanding of the law relating to the conduct of the
14 auction business and other matters the Commission deems appropriate. An individual
15 who is licensed as an auctioneer and who is the designated person applying for an auction
16 firm license is not required to take the auction firm examination. Licensed real estate
17 brokers and real estate firms may be exempt from the auction firm examination provided
18 they employ or associate themselves with a licensed auctioneer to handle those aspects of
19 the transactions peculiar to the auctioneer profession. Any person or entity, on the
20 effective date of this Chapter, duly licensed as an auction firm in good standing is not
21 required to take any examination in order to maintain or to renew an auction firm license
22 provided that the license does not otherwise expire or lapse and is not suspended or
23 revoked by the Commission.

24 (h) The Commission shall publish at least once a year a list of names and
25 addresses of all persons, sole proprietorships, partnerships and corporations holding valid
26 apprentice auctioneer, auctioneer, or auction firm licenses.

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

29 Section 5. G.S. 85B-4.1 reads as rewritten:

30 **"§ 85B-4.1. Auctioneer Recovery Fund.**

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

34 (b) The Commission shall maintain at least ~~one~~ two hundred thousand dollars
35 ~~(\$100,000)~~ (\$200,000) in the Fund for use as provided in this Chapter. The Fund may be
36 invested by the State Treasurer in interest bearing accounts, and any interest accrued shall
37 be added to the Fund. Sufficient liquidity shall be maintained to insure that funds will be
38 available to satisfy claims processed through the Board. The Fund may be disbursed by a
39 warrant drawn against the State Treasurer or by other method at the discretion of the
40 State Treasurer.

41 (c) The Commission, in its discretion, may use contents of the Fund in excess of
42 ~~one~~ two hundred thousand dollars ~~(\$100,000)~~ (\$200,000) for the following purposes:

- 1 (1) To promote education and research in the auctioneer profession, in order
- 2 to benefit persons licensed under this Chapter and to improve the
- 3 efficiency of the ~~profession;~~ profession.
- 4 (2) To underwrite educational seminars, training centers, and other forms of
- 5 educational projects for the use and benefit of ~~licensees;~~ licensees.
- 6 (3) To sponsor, contract for, or underwrite education and research projects
- 7 in order to advance the auctioneer profession in ~~North Carolina;~~ and
- 8 North Carolina.
- 9 (4) To cooperate with associations of auctioneers, or other groups, in order
- 10 to promote the enlightenment and advancement of the auctioneer
- 11 profession in North Carolina."

12 Section 6. G.S. 85B-6(a) reads as rewritten:

13 "**§ 85B-6. Fees; local governments not to charge fees or require licenses.**

14 (a) The Commission shall collect and remit to the State Treasurer fees in an

15 amount not to exceed the following:

16 <u>Item</u>	<u>Maximum Fee</u>	
17 Apprentice Auctioneers:		
18 Application for license	\$50.00	<u>\$125.00</u>
19 Issuance or renewal of license	50.00	<u>125.00</u>
20 Auctioneers:		
21 Application for license	50.00	<u>125.00</u>
22 Examination	25.00	<u>75.00</u>
23 Issuance or renewal of license	100.00	<u>250.00</u>
24 Auction Firms:		
25 Application for license	50.00	<u>125.00</u>
26 Examination	25.00	<u>75.00</u>
27 Issuance or renewal of license	100.00	<u>250.00</u>
28 Reinstatement of License	25.00.	<u>75.00.</u>

29 An application fee for a license and an examination fee are nonrefundable. The

30 amount payable by a nonresident under G.S. 85B-5 to obtain a nonresident reciprocal

31 auctioneer license is the greater of the amount set in the above table for an examination

32 for and the issuance of an auctioneer's license and the amount the nonresident's state

33 would charge a resident auctioneer of this State to obtain a comparable license from that

34 state.

35 A reinstatement fee is payable when a person applies for renewal of a license after the

36 license has lapsed for failure to renew it before it expired. The reinstatement of a lapsed

37 license is not retroactive in effect and does not limit the authority of the courts or of the

38 Commission to take disciplinary action against a person who engages in the auctioneer

39 profession with a lapsed license."

40 Section 7. G.S. 85B-8 reads as rewritten:

41 "**§ 85B-8. Prohibited acts; assessment of civil penalty; denial, suspension, or**

42 **revocation of license.**

1 (a) The following shall be grounds for the assessment of a civil penalty in
2 accordance with G.S. 85B-3.1(b) or the denial, suspension, or revocation of an
3 auctioneer, auctioneer apprentice, or auction firm license:

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

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

31 (e) The Commission may upon its own motion or upon the complaint in writing of
32 any person, provided the complaint and any evidence presented with it establishes a
33 prima facie case, hold a hearing and investigate the actions of any auctioneer, apprentice
34 auctioneer, or auction firm, or any person who holds himself or herself out as an
35 auctioneer or apprentice auctioneer, and shall have the power to impose a civil penalty on
36 any licensee, suspend or revoke any license issued under the provisions of this Chapter,
37 or to reprimand or censure any licensee. In all proceedings for the imposition of a civil
38 penalty or the denial, suspension, or revocation of licenses, the provisions of Chapter
39 150B of the General Statutes including provisions relating to summary suspension shall
40 be applicable. Any person who desires to appeal the denial of an application for any
41 license authorized to be issued under this Chapter shall file a written appeal with the
42 Commission not later than 30 days following notice of denial.

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

6 Section 8. G.S. 85B-9(a) reads as rewritten:

7 "(a) Any person, corporation or association of persons violating the provisions of
8 G.S. 85B-4(a) shall be guilty of a Class 1 misdemeanor. The Attorney General of North
9 Carolina, or the Attorney General's designee, shall have concurrent jurisdiction with the
10 district attorneys of this State to prosecute violations of this Chapter."

11 Section 9. Article 4 of Chapter 114 of the General Statutes is amended by
12 adding a new section to read:

13 **"§ 114-19.8. Criminal record checks of applicants for auctioneer license.**

14 The Department of Justice may provide to the North Carolina Auctioneers
15 Commission from the State and National Repositories of Criminal Histories the criminal
16 history of any applicant for an auctioneer's license under Chapter 85B of the General
17 Statutes. Along with the request, the Commission shall provide to the Department of
18 Justice the fingerprints of the applicant, a form signed by the applicant consenting to the
19 criminal record check and the use of fingerprints and other identifying information
20 required by the State or National Repositories, and any additional information required
21 by the Department of Justice. The applicant's fingerprints shall be forwarded to the State
22 Bureau of Investigation for a check of the State's criminal history record file, and the
23 State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of
24 Investigation for a national criminal history record check. The Commission shall keep all
25 information obtained pursuant to this section confidential. The Department of Justice
26 may charge a fee to offset the cost incurred by it to conduct a criminal record check under
27 this section. The fee shall not exceed the actual cost of locating, editing, researching, and
28 retrieving the information."

29 Section 10. Sections 3, 4, 6, and 9 of this act become effective July 1, 1999.
30 Sections 1, 2, and 7 of this act become effective October 1, 1999. The remainder of this
31 act is effective when it becomes law.