

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 301

Short Title: Auctioneer Education Requirements.

(Public)

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Sponsors: Representative Culpepper.

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Referred to: Finance.

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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.  
4

5 The General Assembly of North Carolina enacts:

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

7 **"§ 85B-3. Auctioneers Commission.**

8 (a) There shall be a five-member North Carolina Auctioneers Commission having  
9 the powers and responsibilities set out in this Chapter. The Governor shall appoint the  
10 members of the Commission, at least three of whom, and their successors, shall be from  
11 nominations submitted by the Auctioneers Association of North Carolina. The  
12 Auctioneers Association shall submit, within 45 days of when the vacancy occurs, at least  
13 three names for each position for which it is entitled to make a nomination. Of the initial  
14 five members of the Commission one shall be appointed for a one-year term, two shall be  
15 appointed for two-year terms and two for three-year terms; thereafter, each new member  
16 shall be appointed for a term of three years. Any vacancy shall be filled for the remainder  
17 of the unexpired term only. Each member shall continue in office until his successor is  
18 appointed and qualified. No member shall serve more than two complete consecutive  
19 terms.

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

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

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

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

12 (f) The Commission shall (i) receive and act upon applications for auctioneer  
13 licenses, issue and suspend licenses; (ii) issue, suspend, and revoke licenses, licenses; (iii)  
14 set reasonable fines for violating the provisions of this Chapter; (iv) adopt rules and  
15 regulations for auctioneers and auctions that are consistent with the provisions of this  
16 Chapter and the General Statutes, Statutes; and (v) issue declaratory rulings. The  
17 Commission may make and enforce reasonable rules and take other actions necessary to  
18 administer and enforce the provisions of this Chapter.

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

21 Section 2. G.S. 85B-4 reads as rewritten:

22 "**§ 85B-4. Licenses required.**

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

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

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

30 (1a) Is not a high school graduate or the equivalent.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

42 Section 3. G.S. 85B-4.1 reads as rewritten:

43 "**§ 85B-4.1. Auctioneer Recovery Fund.**

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

4 (b) The Commission shall maintain at least ~~one~~ two hundred thousand dollars  
 5 ~~(\$100,000)~~ (\$200,000) in the Fund for use as provided in this Chapter. The Fund may be  
 6 invested by the State Treasurer in interest bearing accounts, and any interest accrued shall  
 7 be added to the Fund. Sufficient liquidity shall be maintained to insure that funds will be  
 8 available to satisfy claims processed through the Board. The Fund may be disbursed by a  
 9 warrant drawn against the State Treasurer or by other method at the discretion of the  
 10 State Treasurer.

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

- 13 (1) To promote education and research in the auctioneer profession, in order  
 14 to benefit persons licensed under this Chapter and to improve the  
 15 efficiency of the ~~profession;~~ profession.
- 16 (2) To underwrite educational seminars, training centers, and other forms of  
 17 educational projects for the use and benefit of ~~licensees;~~ licensees.
- 18 (3) To sponsor, contract for, or underwrite education and research projects  
 19 in order to advance the auctioneer profession in ~~North Carolina;~~ and  
 20 North Carolina.
- 21 (4) To cooperate with associations of auctioneers, or other groups, in order  
 22 to promote the enlightenment and advancement of the auctioneer  
 23 profession in North Carolina."

24 Section 4. G.S. 85B-6(a) reads as rewritten:

25 "**§ 85B-6. Fees; local governments not to charge fees or require licenses.**

26 (a) The Commission shall collect and remit to the State Treasurer fees in an  
 27 amount not to exceed the following:

28 <u>Item</u>	<u>Maximum Fee</u>	
29 Apprentice Auctioneers:		
30 Application for license	<del>\$50.00</del>	<u>\$125.00</u>
31 Issuance or renewal of license	<del>50.00</del>	<u>125.00</u>
32 Auctioneers:		
33 Application for license	<del>50.00</del>	<u>125.00</u>
34 Examination	<del>25.00</del>	<u>75.00</u>
35 Issuance or renewal of license	<del>100.00</del>	<u>250.00</u>
36 Auction Firms:		
37 Application for license	<del>50.00</del>	<u>125.00</u>
38 Examination	<del>25.00</del>	<u>75.00</u>
39 Issuance or renewal of license	<del>100.00</del>	<u>250.00</u>
40 Reinstatement of License	<del>25.00.</del>	<u>75.00.</u>

41 An application fee for a license and an examination fee are nonrefundable. The  
 42 amount payable by a nonresident under G.S. 85B-5 to obtain a nonresident reciprocal  
 43 auctioneer license is the greater of the amount set in the above table for an examination

1 for and the issuance of an auctioneer's license and the amount the nonresident's state  
2 would charge a resident auctioneer of this State to obtain a comparable license from that  
3 state.

4 A reinstatement fee is payable when a person applies for renewal of a license after the  
5 license has lapsed for failure to renew it before it expired. The reinstatement of a lapsed  
6 license is not retroactive in effect and does not limit the authority of the courts or of the  
7 Commission to take disciplinary action against a person who engages in the auctioneer  
8 profession with a lapsed license."

9 Section 5. G.S. 85B-8 reads as rewritten:

10 **"§ 85B-8. Prohibited acts; imposition of fine; denial, suspension, or revocation of**  
11 **license.**

12 (a) The following shall be grounds for the imposition of a fine or the denial,  
13 suspension, or revocation of an auctioneer, auctioneer apprentice, or auction firm license:

14 (1) Any violation of this Chapter or any violation of a rule or regulation  
15 duly adopted by the ~~Commission;~~ Commission.

16 (2) A continued and flagrant course of misrepresentation or making false  
17 promises, either by the licensee, an employee of the licensee, or by  
18 someone acting on behalf of and with the licensee's ~~consent;~~ consent.

19 (3) Any failure to account for or to pay over within a reasonable time, not to  
20 exceed 30 days, funds belonging to another which have come into the  
21 licensee's possession through an auction ~~sale;~~ sale.

22 (4) Any false, misleading, or untruthful ~~advertising;~~ advertising.

23 (5) Any act of conduct in connection with a sales transaction which  
24 demonstrates bad faith or ~~dishonesty;~~ dishonesty.

25 (6) Knowingly using false bidders, ~~cappers-cappers,~~ or pullers, or knowingly  
26 making a material false statement or ~~representation;~~ representation.

27 (7) Commingling the funds or property of a client with the licensee's own or  
28 failing to maintain and deposit in a trust or escrow account in an insured  
29 bank or savings and loan association located in North Carolina funds  
30 received for another person through sale at ~~auction;~~ auction.

31 (8) Failure to make the required contribution to the ~~Fund;~~ Fund.

32 (9) The commission or conviction of a crime that is punishable as a felony  
33 offense under the laws of North Carolina or the laws of the jurisdiction  
34 where committed or convicted, or the commission of any act involving  
35 fraud or moral ~~turpitude;~~ turpitude.

36 (10) Failure to properly make any disclosures or to provide documents or  
37 information required by this Chapter or by the ~~Commission;~~  
38 Commission.

39 (11) A demonstrated lack of financial responsibility.

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

41 (e) The Commission may upon its own motion or upon the complaint in writing of  
42 any person, provided the complaint and any evidence presented with it establishes a  
43 prima facie case, hold a hearing and investigate the actions of any auctioneer, apprentice

1 auctioneer, or auction firm, or any person who holds himself or herself out as an  
2 auctioneer or apprentice auctioneer, and shall have the power to impose a fine on any  
3 licensee, suspend or revoke any license issued under the provisions of this Chapter, or to  
4 reprimand or censure any licensee. In all proceedings for the imposition of a fine or the  
5 denial, suspension, or revocation of licenses, the provisions of Chapter 150B of the  
6 General Statutes including provisions relating to summary suspension shall be applicable.  
7 Any person who desires to appeal the denial of an application for any license authorized  
8 to be issued under this Chapter shall file a written appeal with the Commission not later  
9 than 30 days following notice of denial.

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

15 Section 6. G.S. 85B-9 reads as rewritten:

16 "**§ 85B-9. Penalties and enforcement.**

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

21 (b) The Commission may in its own name seek injunctive relief in the General  
22 Court of Justice to restrain any violation or anticipated violation of the provisions of G.S.  
23 85B-4(a) or any violation of this Chapter.

24 (c) The Commission shall be entitled to the services of the Attorney General of  
25 North Carolina in enforcing the provisions of this Chapter or may employ an attorney to  
26 assist and represent it in enforcement of specific matters."

27 Section 7. Article 4 of Chapter 114 of the General Statutes is amended by  
28 adding a new section to read:

29 "**§ 114-19.8. Criminal record checks of applicants for auctioneer license.**

30 The Department of Justice may provide to the North Carolina Auctioneers  
31 Commission from the State and National Repositories of Criminal Histories the criminal  
32 history of any applicant for an auctioneer's license under Chapter 85B of the General  
33 Statutes. Along with the request, the Commission shall provide to the Department of  
34 Justice the fingerprints of the applicant, a form signed by the applicant consenting to the  
35 criminal record check and the use of fingerprints and other identifying information  
36 required by the State or National Repositories, and any additional information required  
37 by the Department of Justice. The applicant's fingerprints shall be forwarded to the State  
38 Bureau of Investigation for a check of the State's criminal history record file, and the  
39 State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of  
40 Investigation for a national criminal history record check. The Commission shall keep all  
41 information obtained pursuant to this section privileged. The Department of Justice shall  
42 charge a reasonable fee for conducting the check of the national criminal history records  
43 authorized by this section."

1           Section 8. This act is effective when it becomes law.