

State of Arkansas

77th General Assembly

Regular Session, 1989

A Bill

HOUSE BILL

1104

By: Representative Mills

For An Act To Be Entitled

"AN ACT TO DEFINE AND REGULATE THE PROFESSION OF AUCTIONEERS;
CREATE AN AUCTIONEER'S LICENSING BOARD; TO PRESCRIBE ITS
DUTIES; TO PRESCRIBE THE QUALIFICATIONS OF THE MEMBERSHIP
THEREOF, THEIR TERM OF OFFICE, THEIR COMPENSATION, AND
PROVIDING FOR THE GIVING OF BOND BY THE TREASURER THEREOF FOR
THE FAITHFUL PERFORMANCE OF HIS DUTIES; PRESCRIBE THE
AUTHORITY OF SUCH BOARD; THE COLLECTION OF FEES; DISBURSING
OF ITS FUNDS; AND PROVIDING FOR THE VIOLATION OF THIS ACT;
AND FOR OTHER PURPOSES."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. It is hereby found and determined by the General Assembly of the State of Arkansas that the current law pertaining to auctioneers is out of date and is not being enforced; that there is no administrative agency to enforce the laws pertaining to auctioneers; that Arkansas does not have the ability, without legislation, to enter into reciprocal agreements with other states to allow the persons licensed as auctioneers in Arkansas to engage in the business of auctioneering in other states; that auctioneers are not required to establish an escrow account to handle money belonging to others; and that without legislation the level of professionalism desired by auctioneers cannot be attained. Therefore, it is the purpose of this act to establish a board to license and regulate auctioneers, other than Livestock Auction Barn Auctioneers and auctioneers conducting certain kinds of auctions.

SECTION 2. This act shall be known and cited as the "Auctioneer's Licensing Act."

SECTION 3. As used in this act, unless the context otherwise requires:

(1) "Auctioneer" means any person who, for a fee, commission or any other valuable consideration, or with the intention or expectation of receiving the same, by the means of, or process of, an auction or sale at auction, offers, negotiates or attempts to negotiate, a listing contract, sale, purchase or exchange of goods, chattels, merchandise or personal property, or of any other commodity which may lawfully be kept or offered for sale by or at public auction;

(2) "Board" means the Auctioneer's Licensing Board;

(3) "Goods" means any chattels, goods, merchandise or personal property, or commodities of any form or type which may be lawfully kept or offered for sale;

(4) "Persons" include individuals, associations, partnerships and corporations, and the word "persons" shall also include the officers, directors and employees of a corporation;

(5) "Livestock Auction Barn" means a place where livestock are sold on a regular basis to the public;

(6) "Livestock Auction Barn Auctioneer" means an auctioneer who is solely engaged in the selling of livestock on a regular basis at one or more locations.

SECTION 4. On and after July 1, 1989, it shall be unlawful for any person to act as an auctioneer or to advertise or to assume to act as either within this state without a license issued by the Auctioneer's Licensing Board, except this act shall not apply to:

(a) Sales at auction conducted by or under the direction of any public authority or pursuant to any judicial order or decree, or to any sale by law required to be at auction;

(b) Any auction conducted by or for a non-profit organization;

(c) Any individual who offers his own goods for auction;

(d) An auctioneer may work for an auction company who is licensed in the State of Arkansas, in an emergency situation for a period of ninety (90) days but shall, after that time, meet all of the provisions of this act and shall make application and pay fees for the next testing date during the ninety (90) day period;

(e) A Livestock Auction Barn Auctioneer or any auction held on the premises of a Livestock Auction Barn.

SECTION 5. The provisions herein requiring an applicant to pass a written examination shall not apply to any auctioneer who makes application to the board by July 31, 1989, furnishing satisfactory proof to the board that he actively engaged in the auction business for a period of at least one (1) year prior to the effective date of this act, or that he has been the principal auctioneer in at least five (5) auctions of personal property during this period of time. The application and proof shall be accompanied by a bond and license fee in accordance with the provisions of this act, and the board will, after review and approval, issue a license to said auctioneer.

SECTION 6. (a) There is hereby created the Auctioneer's Licensing Board. The Governor shall, upon the effective date of this act, appoint a board consisting of seven (7) members, four (4) of which are licensed auctioneers and three (3) from the public at large, each of whom immediately prior to the date of his appointment has been a resident of the State of Arkansas for five (5) years. The four (4) members which are auctioneers shall have been an auctioneer for at least five (5) years. Two members of the board shall be appointed for terms of one (1) year; two members shall be appointed for terms of two (2) years; two members shall be appointed for terms of three (3) years; and one member shall be appointed for a term of four (4) years. Each member shall serve until his successor is appointed and qualified. All successor members shall serve terms of four years and until their successors are elected and qualified. Vacancies shall be filled by appointment of the Governor for the unexpired term. A quorum of the board shall be four (4) members.

(b) The board immediately upon qualification of the member appointed in each year, shall organize by selecting from its members a chairman.

(c) Each member of the board shall receive the sum of twenty-five dollars (\$25.00) per day as full compensation for each day actually spent on the work of the board and his actual and necessary expenses incurred in the performance of duties pertaining to his office.

(d) The board shall have full authority to employ, and discharge, a secretary who shall also be the treasurer, and such other personnel as may be necessary to administer and enforce the provisions of this act. The board shall obtain office space, furniture, stationery, and other proper supplies and conveniences reasonably necessary to carry out the provisions of this act.

(e) All fees and charges collected by the board under the provisions of this act shall be paid to the secretary-treasurer who shall be the custodian of all funds, and shall deposit the same in a bank or banks to be designated by the board. The secretary-treasurer shall execute a bond in an amount determined by the State Risk Manager pursuant to the blanket bond program as authorized in Arkansas Code 21-2-601 et seq. The secretary-treasurer shall pay funds of the board only on vouchers signed by himself and countersigned by the chairman. The total expenses for all purposes and obligations of the board shall not exceed the total fees, charges and other funds paid to the board under the provisions of this act. The board shall be financially self-sustaining, and if funds permit, it may underwrite, within its financial limitations, educational programs for the enlightenment and benefit of the public and all auctioneers licensed under this act. The secretary-treasurer shall make semi-annual financial reports in detail to the board not later than January 30 and July 30 of each year, which financial reports will be kept on permanent file by the board.

(f) The board shall annually publish a list of the names and addresses of all auctioneers licensed by it pursuant to this act. This list shall contain the names of all persons whose licenses have been suspended or revoked within the preceding year, as well as any other information relative to the enforcement of the provisions of this act that the board may deem of interest to the public.

(g) The Auctioneer's Licensing Board shall have the authority to promulgate such rules and regulations as may be necessary to implement this act and may establish by regulation such forms as may be necessary to administer this act.

SECTION 7. (a) Auctioneer licenses shall be granted only to persons who are found to be of good reputation, trustworthy and competent to transact the business of an auctioneer, in such a manner as to safeguard the interest of the public.

(b) The board is authorized to require information from every applicant to determine the applicant's honesty and truthfulness.

(c) In addition to proof of honesty, truthfulness and good reputation, an examination, conducted by the board or its authorized representatives shall be held four (4) times each year, and an examination fee of fifty dollars

(\$50.00) shall be collected from each applicant to defray the expenses of the examination. The examination shall include questions on ethics, reading, writing, spelling, elementary arithmetic, and a general knowledge of the laws of Arkansas and the Arkansas Code, including but not limited to, on contracts of sale, agency, leases, auctions brokerage and the provisions of the Uniform Commercial Code.

(d) In addition to the other qualifications provided for by this act, every applicant for an auctioneer's license shall be at least eighteen (18) years of age and be a citizen of the United States. Every application for a license shall be submitted on forms prepared by the board.

SECTION 8. (a) No examination shall be required for the renewal of any present or future license, unless such license has been revoked. In this case, the applicant shall take and pass the written examination offered by the board before a new license may be issued. Licensed auctioneers have a ninety (90) day grace period beyond a renewal date to renew a license. Penalty for late renewals will be two (2) times the sum of a normal license renewal fee.

(b) The issuance fee for each auctioneer's license shall be fifty dollars (\$50.00) and the annual renewal fee for each license shall be fifty dollars (\$50.00). All licenses shall expire on June thirtieth of each year. In the absence of any reason or condition which might warrant the refusal of the renewing of the license, and upon receipt of the written request of the applicant and the annual fee thereof, the board shall issue a new license for each ensuing year.

(c) The board shall prepare and deliver to each licensee a license certificate and pocket card.

(d) Notice in writing shall be given to the board by each licensee of any change of business location within thirty (30) days after any change in location, whereupon the board shall issue a new license for the unexpired period. A change of business location shall automatically cancel the license previously issued. Changing a business location and issuance of a new license shall entitle the board to collect five dollars (\$5.00).

SECTION 9. Every application for an auctioneer's license shall be accompanied by a bond in the amount of two thousand dollars (\$2,000.00). The bond shall be a cash bond or a surety bond and, if the latter, shall be

executed by a surety company authorized to do business in this state, and shall be made payable to the board. The bond shall be conditioned that the applicant shall conduct his business in accordance with the provisions of this act and the laws of the State of Arkansas. The bond shall be in a form approved by the board. No license may be issued until such a bond has been filed with the board.

SECTION 10. (a) A nonresident of this state may become a licensed auctioneer in this state by registering with the board and confirming in writing that his actions will be regulated by this act and other applicable laws of this state as stated in this section.

(b) In every instance the nonresident must pay the issuance fee, the annual renewal fee and file the bond required by this act.

(c) (1) A person holding a license to engage in auctions issued to him by a proper authority of a state, territory, or possession of the United States of America or the District of Columbia having licensing requirements comparable to Arkansas and who in the opinion of the board otherwise meets the requirements of this act may upon application be licensed without further examination.

(2) Nothing in this section shall prevent the conduct of any auction in this state by any nonresident auctioneer from another state if such auctioneer is duly licensed by such other state and the other state through reciprocity permits a resident of this state who is an auctioneer duly licensed to conduct auctions in this state to conduct auctions in such other state without being required to obtain a license in such other state. The license fee applicable to a nonresident auctioneer from another state which does not permit an auctioneer who is a resident of this state and who is duly licensed in this state to conduct auctions in the other state without being required to obtain a license in such other state shall be of the same amount that such other state charges auctioneers who are residents of this state and who are duly licensed in this state to obtain a license to conduct an auction in such other state.

(3) Notwithstanding any other provision of law to the contrary, no person duly licensed as an auctioneer in any other state and temporarily present in this state shall conduct an auction in this state unless he acts in association with an auctioneer duly licensed in this state if the state in

which the nonresident auctioneer is licensed requires such an association with an auctioneer licensed in that state before an auctioneer duly licensed in Arkansas may conduct an auction in that state.

(d) In addition, every nonresident applicant shall file an irrevocable consent that actions may be commenced against the applicant in any court of competent jurisdiction in the State of Arkansas, by the service of any summons, process or pleading authorized by the law on the secretary of the board. The consent shall stipulate and agree that the service of such process, summons or pleading on the secretary shall be taken and held in all courts to be as valid and binding as if actual service had been made upon the applicant in Arkansas. In case any summons, process or pleadings are served upon the secretary of the board, it shall be by duplicate copies, one of which shall be retained in the office of the board, and the other immediately forwarded by registered mail to the last known business address of the applicant against which the summons, process or pleading may be directed.

SECTION 11. The board may suspend or revoke the license of an auctioneer for any of the following causes:

- (a) Obtaining a license through false or fraudulent representation;
- (b) Pursuing a continued and flagrant course of misrepresentation or making false promises through agents or advertising or otherwise;
- (c) Failing to account for or remit, within a reasonable time, any money belonging to others that comes into his possession; commingling funds of others with his own, or failing to keep such funds of others in an escrow or trustee account;
- (d) Paying valuable consideration to any person for services performed in violation of this act;
- (e) Being convicted in a court of competent jurisdiction of this or any other state of a criminal offense involving moral turpitude or a felony;
- (f) Wilful violation of a rule or regulation promulgated by the board;
- (g) Failure to furnish voluntarily to the signing party at the time of execution, copies of all written instruments prepared by the auctioneer, and signed by the other party;
- (h) Any conduct of an auctioneer which demonstrates bad faith, dishonesty, incompetency or untruthfulness;
- (i) Any other conduct that constitutes improper, fraudulent or dishonest

dealings.

SECTION 12. The board may upon its own motion, and shall upon the verified written complaint of any person, investigate the actions of any auctioneer or any person who assumes to act in that capacity, if the complaint, or complaint together with other evidence presented in connection with it if true, would be a violation of this act.

SECTION 13. The Auctioneers Licensing Board shall be subject to the Arkansas Administrative Procedure Act, Arkansas Code 25-15-201 et seq.

SECTION 14. The board shall adopt a seal by which it shall authenticate its proceedings. Copies of all records and papers in the office of the board, duly certified and authenticated by the seal of the board, shall be received in evidence in all courts equally and with like effect as the original. All records kept in the office of the board under the authority of this act shall be open to public inspection under such rules and regulations as shall be prescribed by the board.

SECTION 15. No person, engaged in the business of or acting in the capacity of an auctioneer shall bring or maintain any action in the courts of the State of Arkansas for the collection of compensation for any services permitted as an auctioneer without first alleging and proving that he was operating legally under the provisions of this act and was a duly licensed auctioneer at the time the alleged cause of action arose.

SECTION 16. If an auction owner is one other than the principal auctioneer, the auction owner shall apply for a license and meet all the provisions of this act. When the owner of an auction company or the designated person of a corporation and the auctioneer are the one and same, only one license shall be required.

SECTION 17. Each and every advertisement by an auctioneer or consignment auction house shall include the number of the license issued to such auctioneer or auction company by the board.

SECTION 18. No person following for a livelihood the profession of an auctioneer shall be taxed or made liable to pay any municipal or other corporation tax or license fee for the privilege of the following or carrying on the profession by a municipality unless that person maintains a business office within that municipality.

SECTION 19. Any person who violates Section 4 of this act shall be punished by a fine of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00), or by imprisonment for a term not to exceed ninety (90) days, or both.

SECTION 20. The following laws are hereby repealed: (a) Arkansas Code 17-15-101 and 17-15-102;

- (b) Arkansas Code 17-15-103 and 17-15-105 through 17-15-111;
- (c) Arkansas Code 17-15-201 through 17-15-205 (Act 182 of 1943);
- (d) All other laws and parts of laws in conflict with this Act.

SECTION 21. Nothing in this Act shall repeal Arkansas Code 17-15-104, the same being Section 1 of Act 477 of 1985.

SECTION 22. All provisions of this act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 23. EMERGENCY. It is hereby found and determined by the General Assembly of the State of Arkansas that there is a definite and critical shortage of qualified auctioneers in the State of Arkansas, that there is presently no law protecting the public in the listing and selling of property through auctioneers, and that the best interest of the people of the State of Arkansas can be served by the creation and operation of an Auctioneer's Licensing Board. Therefore, an an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval.