

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

1 State of Arkansas  
2 82nd General Assembly  
3 Regular Session, 1999  
4

*As Engrossed: H1/20/99 S2/9/99*

# A Bill

HOUSE BILL 1059

5 By: Representative Pappas  
6  
7

## For An Act To Be Entitled

9 "AN ACT TO REQUIRE THE AUCTIONEER'S LICENSING BOARD TO  
10 MAINTAIN A TRUST FUND TO PAY CLAIMS AGAINST LICENSED  
11 AUCTIONEERS BY COLLECTING A FEE FROM EACH LICENSEE AND  
12 APPLICANT IN LIEU OF THE BOND CURRENTLY REQUIRED; AND  
13 FOR OTHER PURPOSES. "  
14

## Subtitle

15 "AN ACT TO REQUIRE THE AUCTIONEER'S  
16 LICENSING BOARD TO MAINTAIN A TRUST FUND  
17 TO PAY CLAIMS AGAINST LICENSED  
18 AUCTIONEERS BY COLLECTING A FEE FROM  
19 EACH LICENSEE AND APPLICANT IN LIEU OF  
20 THE BOND CURRENTLY REQUIRED. "  
21  
22  
23

24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
25

26 SECTION 1. Arkansas Code 17-17-303 is repealed.

27 ~~17-17-303. Bond.~~

28 ~~(a) Every application for an auctioneer's license shall be accompanied~~  
29 ~~by a bond in the amount of two thousand dollars (\$2,000).~~

30 ~~(b) The bond shall be a cash bond or a surety bond and, if the latter,~~  
31 ~~shall be executed by a surety company authorized to do business in this state,~~  
32 ~~and shall be made payable to the board.~~

33 ~~(c) The bond shall be conditioned that the applicant shall conduct his~~  
34 ~~business in accordance with the provisions of this chapter and the laws of the~~  
35 ~~State of Arkansas.~~

36 ~~(d) The bond shall be in a form approved by the board.~~

\*SJH337\*

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1 ~~(e) No license may be issued until such a bond has been filed with the~~  
2 ~~board.~~

3  
4 SECTION 2. Arkansas Code 17-17-304(b)(1) pertaining to nonresident  
5 auctioneer licensing is amended to read as follows:

6 "(b)(1) In every instance the nonresident must pay the issuance fee,  
7 ~~and the annual renewal fee and file the bond required by this chapter the~~  
8 Auctioneer Recovery Fund fee."

9  
10 SECTION 3. Arkansas Code Title 17, Chapter 17 is amended to add the  
11 following language:

12 "17-17-401. Auctioneer Education and Recovery Fund.

13 (a) The Auctioneer's Licensing Board shall establish a separate high  
14 interest bearing account in a bank located in this state. The account shall  
15 be referred to as the 'Auctioneer Education and Recovery Fund' and shall only  
16 be used for education and recovery purposes as detailed in this chapter.

17 (b) The fees collected under 17-17-404 shall be deposited into the  
18 Auctioneer Education and Recovery Fund.

19  
20 17-17-402. Applicability.

21 The provisions of this subchapter shall apply only to:

22 (1) Auctioneers who were licensed at the time of the occurrence of the  
23 acts or violations complained of; and

24 (2) Acts or violations which occur after December 31, 1999.

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26 17-17-403. Construction.

27 Nothing in this subchapter shall be construed to limit or restrict in  
28 any manner other civil or criminal remedies which may be available to any  
29 person.

30  
31 17-17-404. Additional fee.

32 (a) Except as provided in subsection (b), each auctioneer shall pay to  
33 the board at the time of initial licensure and at each annual renewal a fee as  
34 the board may require, not to exceed one hundred dollars (\$100.00). This fee  
35 shall be in addition to the other fees provided for in this chapter.

36 (b) When the balance in the fund reaches one hundred eighty thousand

1 dollars (\$180,000) the fee shall be suspended until the fund balance falls to  
2 one hundred thousand dollars (\$100,000) at which time the collection of the  
3 fee shall resume until the fund balance reaches one hundred eighty thousand  
4 dollars (\$180,000).

5  
6 17-17-405. Disciplinary hearing – Recovery Procedure.

7 (a)(1) In any disciplinary hearing before the board which involves any  
8 licensee who has allegedly violated any provision of this chapter, the board  
9 shall first determine whether a violation has occurred.

10 (2) If so, the board shall then determine the amount of damages,  
11 if any, suffered by the aggrieved party or parties. However, damages shall be  
12 limited to actual damages in accordance with 17-17-407.

13 (3) The board shall then direct the licensee to pay that amount  
14 to the aggrieved party or parties.

15 (4) If that amount has not been paid within thirty (30) calendar  
16 days following entry of the board's final order in the matter and the order  
17 has not been appealed to the circuit court, then the board shall, upon  
18 request, pay from the fund to the aggrieved party or parties the amount  
19 specified. However, the board shall not:

20 (A) Pay in excess of five thousand dollars (\$5,000) for any  
21 one (1) violation or continuing series of violations, against the same  
22 claimant, regardless of the number of licensees who participated in the  
23 violation or continuing series of violations; or

24 (B) Pay an amount in excess of the fund balance.

25 (b) The question of whether certain violations constitute a continuing  
26 series of violations shall be a matter solely within the discretion and  
27 judgment of the board.

28 (c) Nothing within this subchapter shall obligate the fund for any  
29 amount in excess of a total of five thousand dollars (\$5,000) with respect to:

30 (1) Any one (1) claimant; or

31 (2) Any group of related claims.

32 (d) Whether a claim is one (1) of a group of related claims shall be a  
33 matter solely within the discretion and judgment of the board.

34 (e) When unsatisfied or pending claims are such that they exceed the  
35 limits payable under subsection (c) of this section, the board shall be the  
36 sole determinant of how the available funds shall be allocated among such

1 claims.

2  
3 17-17-406. Education.

4 The Board, in its discretion, may use any funds in the Auctioneer's  
5 Education and Recovery Fund in excess of one hundred eighty thousand dollars  
6 (\$180,000) level, regardless of whether it is from the Auctioneer's Education  
7 and Recovery Fund fees or accrued interest thereon for any or all of the  
8 following purposes:

9 (1) To carry out the advancement of education in the auction field for  
10 the benefit of those licensed under the provisions of this chapter;

11 (2) To assist in the improvement and efficiency of the auctioneering  
12 profession; and

13 (3) To underwrite educational seminars and other forms of educational  
14 projects for the use and benefit of auctioneer licensees.

15  
16 17-17-407. Jurisdiction.

17 (a) The board's jurisdiction and authority to award damages to an  
18 aggrieved party pursuant to 17-17-405 is limited to actual, compensatory  
19 damages. The board shall not award punitive or exemplary damages, nor shall  
20 it award interest on damages.

21 (b) The appellate jurisdiction of the circuit court is limited to the  
22 awarding of actual, compensatory damages.

23 (c) The circuit court shall have no authority or jurisdiction to assess  
24 punitive or exemplary damages under this subchapter.

25 (d) The circuit court's jurisdiction over the fund shall be limited to  
26 appeals from the board's orders.

27 (e) The circuit court shall have no jurisdiction or authority to order  
28 payments from the fund in any amount in excess of either:

29 (1) The amount determined by the board; or

30 (2) The limits set forth in 17-17-405.

31  
32 17-17-408. Appeal.

33 (a) An appeal may be taken to the circuit court from a final order of  
34 the board in accordance with the Arkansas Administrative Procedure Act,  
35 beginning at 25-15-201.

36 (b) An appeal shall automatically stay that portion of the board's

1 order which directs the payment of damages, and neither the licensee nor the  
2 board shall be obligated to pay the damages to the aggrieved party or parties  
3 until such time as the appeal is finally decided, whether in the circuit court  
4 or in the Arkansas Supreme Court.

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6 17-17-409. Subrogation - Suspension of License.

7 Upon the payment by the board of any amount of money under 17-17-405:

8 (1) The recipients of the payment, to the extent of the payment, shall  
9 assign to the board all rights and claims that they may have against the  
10 licensee involved;

11 (2) The board shall be subrogated to all of the rights of the  
12 recipients of the payment, to the extent of the payment; and

13 (3) In addition to any other disciplinary action taken against the  
14 licensee on the merits of the hearing, his or her license shall be immediately  
15 suspended until he or she has completely reimbursed the board for the payment,  
16 plus interest at a rate to be determined by the board."

17  
18 SECTION 4. All provisions of this Act of a general and permanent nature  
19 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code  
20 Revision Commission shall incorporate the same in the Code.

21  
22 SECTION 5. If any provision of this Act or the application thereof to  
23 any person or circumstance is held invalid, such invalidity shall not affect  
24 other provisions or applications of the Act which can be given effect without  
25 the invalid provision or application, and to this end the provisions of this  
26 Act are declared to be severable.

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28 SECTION 6. All laws and parts of laws in conflict with this Act are  
29 hereby repealed.

30 /s/ Pappas

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