

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: H3/8/99
A Bill

HOUSE BILL 1560

5 By: Representative Hunt
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7

8 **For An Act To Be Entitled**

9 "AN ACT TO AMEND ARKANSAS CODE 17-17-101; TO PROVIDE
10 THAT WRITTEN CONTRACTS ARE REQUIRED; TO PROVIDE FOR
11 INJUNCTIVE RELIEF; TO ENABLE THE AUCTIONEER'S
12 LICENSING BOARD TO ASSESS PENALTIES; TO ENABLE THE
13 AUCTIONEER'S LICENSING BOARD TO INSPECT THE PREMISES
14 OF AN AUCTION OR AUCTION HOUSE FOR THE PRESENCE OF A
15 LICENSE; TO PROVIDE THE AUCTIONEER'S LICENSING BOARD
16 WITH THE AUTHORITY TO ORDER UNLICENSED AUCTIONEERS OR
17 AUCTION HOUSES TO CEASE AND DESIST; AND FOR OTHER
18 PURPOSES. "
19

20 **Subtitle**

21 "AMEND VARIOUS SECTIONS OF THE
22 AUCTIONEER'S LICENSING ACT. "
23
24

25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
26

27 SECTION 1. Title 17, Chapter 17, Subchapter 1 of the Arkansas Code is
28 amended by inserting the following additional section to be appropriately
29 numbered by the Arkansas Code Revision Commission:

30 "Written contract.

31 (a) An auctioneer may not sell the property of another at auction
32 without a prior written contract with the seller which sets forth the terms
33 and conditions upon which the auctioneer will sell the property. The licensee
34 must retain a copy of each contract for at least three (3) years after the
35 auction.

36 (b) The board is authorized to prescribe by regulations the minimum

1 requirements which must be included in a written contract."
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3 SECTION 2. Title 17, Chapter 17, Subchapter 1 of the Arkansas Code is
4 amended by inserting the following additional section to be appropriately
5 numbered by the Arkansas Code Revision Commission:

6 "Injunction.

7 (a) Whenever there is reason to believe that any person, licensed or
8 unlicensed, has violated any provision of this chapter, or any order, license,
9 decision, demand, or requirement issued or made pursuant to this chapter, the
10 board or its authorized representative may bring an action in the chancery
11 court of any county in which the person resides or does business to enjoin
12 such person from continuing such violation or engaging therein or doing any
13 act or acts in furtherance thereof.

14 (b) Whenever there is any action brought pursuant to this section, the
15 chancery court shall have jurisdiction and authority to enter such preliminary
16 or final injunction or such other relief as may be appropriate."
17

18 SECTION 3. Title 17, Chapter 17, Subchapter 1 of the Arkansas Code is
19 amended by inserting the following additional section to be appropriately
20 numbered by the Arkansas Code Revision Commission:

21 "Penalty in lieu of suspension or revocation.

22 (a)(1) Whenever the Auctioneer's Licensing Board finds that the holder
23 of a license issued by the board is guilty of a violation of the rules of the
24 Auctioneer's Licensing Board or the laws of the State of Arkansas pertaining
25 to any occupation, profession, or business licensed or regulated by the board,
26 it shall have the power and authority to impose a penalty on the licensee in
27 lieu of suspension or revocation of the license.

28 (2) Upon imposition of a penalty in lieu of suspension or
29 revocation of license, the board shall have the power and authority to require
30 that the licensee pay a penalty to the board with regard to the violation with
31 the sanction that the license may be suspended until the penalty is paid.

32 (3) Prior to the imposition of any penalty, the board shall hold
33 an investigation and hearing after notice to a licensee or his attorney. The
34 penalty may be imposed in lieu of revocation or suspension of a license only
35 if the board formally finds that the public health, safety, welfare, and
36 morals would not be impaired thereby, and that the payment of the penalty will

1 achieve the desired disciplinary result.

2 (b) No penalty imposed by the board in lieu of revocation or suspension
3 of a license may exceed a total of one thousand dollars (\$1,000). The power
4 and authority of the board to impose these penalties shall not be affected by
5 any other civil or criminal proceeding concerning the same violation.

6 (c) If any person upon whom the board has levied a civil penalty fails
7 to pay the civil penalty within sixty (60) days of the board's decision to
8 impose the penalty, the amount of the fine shall be considered to be a debt
9 owed the Auctioneer's Licensing Board and may be collected by civil action by
10 the board.

11 (d) Any person penalized by the board under this chapter may appeal any
12 order of the board in the manner now provided by law.

13 (e) In addition to any other sanctions authorized by this chapter, the
14 board may impose a civil penalty as provided above against any unlicensed
15 person, firm, or corporation practicing or offering to practice any actions
16 requiring licensure pursuant to the provisions of this chapter.

17 (f) The board is authorized to promulgate regulations to implement the
18 provisions of this chapter."

19
20 SECTION 4. Title 17, Chapter 17, Subchapter 1 of the Arkansas Code is
21 amended by inserting the following additional section to be appropriately
22 numbered by the Arkansas Code Revision Commission:

23 "Inspection - cease and desist.

24 (a) The board or its authorized representative, may subsequent to five
25 (5) days after proof of receipt of certified mail of any alleged violation(s)
26 to the alleged offending auctioneer or auction house, enter the premises of
27 any auction or auction house for the purpose of examining the license of an
28 auctioneer and/or auction house.

29 (b) Should the board or its authorized representative find that an
30 unlicensed auctioneer and/or auction house is practicing or offering to
31 practice any actions requiring a license pursuant to the provisions of this
32 chapter, the board or its authorized representative has the authority to
33 demand that such unlicensed activity cease and desist immediately.

34 (c) Any auctioneer and/or auction house refusing to allow the board or
35 its authorized representative to inspect the premises of an auction or auction
36 house for the purpose of examining the license of the auctioneer and/or

1 auction house may be subject to a civil penalty.

2 (d) Any unlicensed auctioneer and/or auction house found to be
3 practicing or offering to practice any actions requiring a license pursuant to
4 the provisions of this chapter who refuses to cease and desist such unlicensed
5 activity upon the request of the board or its authorized representative will
6 be subject to criminal and/or civil penalties."

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8 SECTION 5. Arkansas Code 17-17-204(a) is amended to read as follows:

9 "(a) All fees, ~~and~~ charges and penalties collected by the board under
10 the provisions of this chapter shall be paid to the secretary-treasurer who
11 shall be the custodian of all funds, and shall deposit the same in a bank or
12 banks to be designated by the board."

13
14 SECTION 6. Arkansas Code 17-17-204(c) is amended to read as follows:

15 "(c) The secretary-treasurer shall pay funds of the board only on
16 vouchers signed by himself and countersigned by the chairman. The total
17 expenses for all purposes and obligations of the board shall not exceed the
18 total fees, charges, penalties and other funds paid to the board under the
19 provisions of this chapter."

20
21 SECTION 7. Arkansas Code 17-17-308 is amended to read as follows:

22 "17-17-308. Suspension or revocation.

23 The board may impose a civil penalty or suspend or revoke the license of
24 an auctioneer for any of the following causes:

25 (1) Obtaining a license through false or fraudulent representation;

26 (2) Pursuing a continued and flagrant course of misrepresentation or
27 making false promises through agents or advertising or otherwise;

28 (3) Failing to account for or remit, within a reasonable time, any
29 money belonging to others that comes into his possession;

30 (4) Commingling funds of others with his own, or failing to keep such
31 funds of others in an escrow or trustee account;

32 (5) Paying valuable consideration to any person for services performed
33 in violation of this chapter;

34 (6) Being convicted in a court of competent jurisdiction of this or any
35 other state of a criminal offense involving moral turpitude or a felony;

36 (7) Willful violation of a rule or regulation promulgated by the board;

1 (8) ~~Failure~~ Failing to enter into a written contract with the seller,
2 and furnish voluntarily to the signing party seller at the time of execution
3 copies of all written instruments prepared by the auctioneer, and signed by
4 the other party including the contract;

5 (9) Any conduct of an auctioneer which demonstrates bad faith,
6 dishonesty, incompetency, or untruthfulness; or

7 (10) Any other conduct that constitutes improper, fraudulent, or
8 dishonest dealings to include falsely accusing any auctioneer or auction
9 house."

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11 SECTION 8. All provisions of this act of a general and permanent nature
12 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
13 Revision Commission shall incorporate the same in the Code.

14
15 SECTION 9. If any provision of this act or the application thereof to
16 any person or circumstance is held invalid, such invalidity shall not affect
17 other provisions or applications of the act which can be given effect without
18 the invalid provision or application, and to this end the provisions of this
19 act are declared to be severable.

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21 SECTION 10. All laws and parts of laws in conflict with this act are
22 hereby repealed.

23 /s/ Hunt