

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

State of Arkansas  
84th General Assembly  
Regular Session, 2003

*As Engrossed: H3/26/03*

# A Bill

HOUSE BILL 2205

By: Representative Oglesby

## For An Act To Be Entitled

AN ACT TO REVISE THE AUCTIONEER'S LICENSING ACT;  
AND FOR OTHER PURPOSES.

## Subtitle

AN ACT TO REVISE THE AUCTIONEER'S  
LICENSING ACT.

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

SECTION 1. Arkansas Code § 17-17-104 is amended to read as follows:  
17-17-104. Applicability - Exception.

(a) This chapter shall not apply to:

(1) 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;

(2) Any auction conducted by or for a nonprofit organization;

(3) Any individual who offers his or her own goods for auction;

or

(4) A livestock auction barn auctioneer ~~or any auction held on the premises of a livestock auction barn.~~

(b)(1) An auctioneer may work for an auction ~~company~~ house who is licensed in the State of Arkansas in an emergency situation for a period of no more than ninety (90) days ~~but shall, after that time, meet if the emergency auctioneer has met~~ all of the provisions of this chapter and ~~shall make has made~~ application and ~~pay paid~~ fees for the next testing ~~date during the ninety day period~~ date.

(2) If the emergency auctioneer fails to comply with subdivision



(b)(1) of this section, he or she shall forfeit the fees paid for the testing and must wait for at least two (2) years before:

(A) Reapplying to sit for the examination; and

(B) Working for an auction house in another emergency situation.

SECTION 2. Arkansas Code § 17-17-114 is amended to read as follows:

~~17-17-114. Penalty in lieu of suspension or revocation~~ Civil penalty.

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

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

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

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

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

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

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

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

SECTION 3. Arkansas Code § 17-17-301(c)(1), concerning the qualifications for an auctioneer license, is amended to read as follows:

(c)(1) 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)~~ one hundred dollars (\$100) shall be collected from each applicant to defray the expenses of the examination.

SECTION 3. Arkansas Code § 17-17-302(b), concerning the issuance of an auctioneer license, is amended to read as follows:

(b)(1)(A) The issuance fee for each auctioneer's license shall be ~~fifty dollars (\$50.00)~~ one hundred dollars (\$100).

(B) The annual renewal fee for each license shall be ~~fifty dollars (\$50.00)~~ one hundred dollars (\$100).

(C) All licenses shall expire on June 30 of each year.

(2) 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.

SECTION 4. Arkansas Code § 17-17-308 is amended to read as follows:

17-17-308. Suspension or revocation.

The Auctioneer's Licensing Board may impose a civil penalty or suspend or revoke the license of an auctioneer for any of the following causes:

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

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

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

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

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

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

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

(8) Failing to enter into a written contract with the seller and to furnish voluntarily to the seller at the time of execution copies of all written instruments prepared by the auctioneer, including the contract;

(9) Any conduct of an auctioneer which demonstrates bad faith, dishonesty, incompetency, ~~or untruthfulness~~, or deceptive practices;

(10) Any other conduct that constitutes improper, fraudulent, or dishonest dealings, to include falsely accusing any auctioneer or auction house;

(11) Failing to complete or submit the continuing education requirements as specified by this chapter and the rules and regulations adopted by the board; or

(12) Failing to disclose the buyer's premium in all advertising associated with an auction.

SECTION 5. Arkansas Code Title 17, Chapter 17, Subchapter 3 is amended to add an additional section to read as follows:

17-17-312. Fees.

(a) The board may access fees for the following purposes:

(1) Application for examination;

(2) Initial licensing;

(3) Renewal of license; and

(4) Late penalties.

(b) Before a person is issued a license under this chapter, he or she shall pay an initial license fee in addition to any application, examination, or other fee.

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2 SECTION 6. Arkansas Code § 17-17-403 is amended to read as follows:

3 17-17-403. Construction.

4 (a) Nothing in this subchapter shall be construed to limit or restrict  
5 in any manner other civil or criminal remedies which may be available to any  
6 person.

7 (b) No fee collected under this subchapter and deposited into the  
8 Auctioneer Education and Recovery Fund may be awarded to an aggrieved party,  
9 according to the provisions in this subchapter, for uncollectible checks,  
10 unless the aggrieved party has exhausted all civil and criminal remedies to  
11 collect on the check.

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13 SECTION 7. Arkansas Code § 17-17-405 is amended to read as follows:

14 17-17-405. Disciplinary hearing - Recovery procedure.

15 (a)(1) In any disciplinary hearing before the Auctioneer's Licensing  
16 Board which involves any licensee who has allegedly violated any provision of  
17 this chapter, the board shall first determine whether a violation has  
18 occurred.

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

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

24 (4)(A) If that amount has not been paid within thirty (30)  
25 calendar days following entry of the board's final order in the matter and  
26 the order has not been appealed to the circuit court, then upon request the  
27 board shall pay from the Auctioneer Education and Recovery Fund to the  
28 aggrieved party or parties the amount specified.

29 (B) However, the board shall not:

30 (i) Pay in excess of five thousand dollars (\$5,000)  
31 for any one (1) violation or continuing series of violations regardless of  
32 the number of licensees who participated in the violation or continuing  
33 series of violations; or

34 (ii) Pay an amount in excess of the fund balance.

35 (b) The question of whether certain violations constitute a continuing  
36 series of violations shall be a matter solely within the discretion and

1 judgment of the board.

2 ~~(e) Nothing within this subchapter shall obligate the fund for any~~  
3 ~~amount in excess of a total of five thousand dollars (\$5,000) with respect~~  
4 ~~to:~~

5 ~~(1) The acts of any one (1) licensee; or~~

6 ~~(2) Any group of related claims.~~

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

9 ~~(e)(d)~~ When ~~unsatisfied or pending~~ claims are such that they exceed  
10 the limits payable under ~~subsection (e)~~ subdivision (a)(4)(B) of this  
11 section, the board shall be the sole determinant of how the available funds  
12 shall be allocated among such claims.

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14 /s/ Oglesby  
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