

1 SB27
2 204156-5
3 By Senator Price
4 RFD: Governmental Affairs
5 First Read: 02-FEB-21
6 PFD: 12/16/2020

1 SB27

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3
4 ENROLLED, An Act,

5 To amend Sections 34-4-21, 34-4-23, 34-4-25,
6 34-4-27, 34-4-28, 34-4-29, 34-4-30, 34-4-31, 34-4-33, 34-4-50,
7 and 34-4-52, Code of Alabama 1975, relating to the State Board
8 of Auctioneers and the licensing of auctioneers; to provide
9 further for the qualifications for licensure and grounds for
10 denying a license; to provide for the issuance of a single use
11 auction license; to establish inactive status and provide for
12 the restoration of an inactive license; to remove all
13 residency requirements for licensure; to provide further for
14 the conduct of auctions without a license, specify certain
15 conditions regarding auction companies, and provide further
16 for the actions required of auctioneers in the conduct of
17 auctions; to provide further for instances in which
18 disciplinary actions are warranted; to authorize the board to
19 employ an investigator to investigate actions of licensees,
20 issue a complaint, and hold hearings pursuant to the Alabama
21 Administrative Procedure Act; to provide further for the
22 appeal of a final decision of the board; to provide further
23 for the membership of the board and to make each board member
24 accountable to the Governor; to provide further for meetings

1 of the board and a quorum; and to repeal Section 34-4-22, Code
2 of Alabama 1975, relating to the register of applicants.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Sections 34-4-21, 34-4-23, 34-4-25,
5 34-4-27, 34-4-28, 34-4-29, 34-4-30, 34-4-31, 34-4-33, 34-4-50,
6 and 34-4-52 of the Code of Alabama 1975, are amended to read
7 as follows:

8 "§34-4-21.

9 "(a) Any person desiring to enter into the auction
10 business and obtain a license as an auctioneer or apprentice
11 auctioneer shall make written application for a license to the
12 board. Each application shall be accompanied by an examination
13 fee of an amount not to exceed one hundred fifty dollars
14 ~~(\$100)~~ (\$150), as set by rule of the board, which shall be
15 collected from each applicant to defray the expenses of the
16 examination. The application shall be submitted on forms
17 prepared and furnished by the board.

18 "(b) (1) Each applicant for a license as an
19 auctioneer shall be 19 years of age or over, and each
20 applicant for a license as an apprentice auctioneer shall be
21 18 years of age or over ~~and shall be a citizen of the United~~
22 ~~States or legally present in this state.~~ Each applicant for an
23 auctioneer's license shall:

24 ~~"(1) have completed a prescribed course of study at~~
25 ~~an accredited auctioneering school approved by the board;~~

1 "~~(2)~~ have served one year as an apprentice
2 auctioneer under the supervision of a licensed auctioneer in
3 this state; ~~(3) have been the principal auctioneer in at least~~
4 ~~five auctions of either real or personal property during this~~
5 ~~period of time; and (4) furnish satisfactory proof of these~~
6 ~~requirements to the board~~ and have successfully completed a
7 course of study consisting of not less than 85 hours of
8 classroom instruction in the fundamentals of auctioneering
9 that satisfies the requirements of the board.

10 "(2) An application shall also be accompanied by a
11 recommendation of an employing auctioneer. If an applicant has
12 not successfully completed a an approved course of study ~~at an~~
13 ~~accredited auctioneering school, then~~ that satisfies the
14 requirements of the board, in lieu thereof, he or she shall be
15 required to serve two years as an apprentice under the
16 supervision of a licensed auctioneer, ~~and shall have been the~~
17 ~~principal auctioneer in at least 10 auctions of real or~~
18 ~~personal property~~ in this state.

19 "(c) (1) Any person who files ~~an~~ a complete
20 application with the board in the proper manner shall be
21 entitled to take an ~~oral and written~~ examination to determine
22 his or her qualifications. The board ~~shall~~ may require
23 applicants to take and pass ~~a written and oral~~ an examination
24 establishing, in a manner satisfactory to the board, that the
25 applicant has a general knowledge of ethics, reading, writing,

1 spelling, elementary arithmetic, ~~elementary principles of land~~
2 ~~economics~~, and a ~~general knowledge of~~ the statutes of this
3 state relating to ~~the bulk sales~~, auctions, ~~brokerage~~, and
4 this chapter. The examination for an auctioneer's license
5 shall be of a more exacting nature and scope than the
6 examination for an apprentice auctioneer.

7 "(2) The board ~~shall~~, through application and
8 examination, shall determine whether the applicant is of good
9 repute, trustworthy, honest, and competent to transact the
10 business of an auctioneer, or of an apprentice auctioneer, in
11 a manner that safeguards the interest of the public.

12 "(3) The board shall require, and it shall be the
13 responsibility of any applicant for an initial, renewal, or
14 reciprocal license to disclose any prior ~~felony~~ conviction,
15 ~~any prior misdemeanor conviction involving moral turpitude~~,
16 any pending criminal arrest of any nature except misdemeanor
17 traffic violations, and any prior or pending disciplinary
18 proceedings against the applicant before a board of
19 auctioneers or real estate commission in this or any other
20 state. Where an applicant has been convicted of a crime in a
21 court of competent jurisdiction of this or any other district,
22 state, or territory of the United States or of a foreign
23 country, the untrustworthiness of the applicant and the
24 conviction, in itself, may be sufficient grounds for refusal
25 of a license.

1 "4) All auctioneers, apprentice auctioneers, and
2 auction ~~firms~~ companies are under a continuing duty to report
3 to the board any and all ~~such~~ criminal arrests, charges,
4 convictions, or disciplinary proceedings which they may incur,
5 as well as any civil suits involving them. The board ~~must~~
6 shall receive notice of any ~~such~~ arrest, charge, criminal
7 conviction, or commencement of disciplinary proceedings within
8 30 days of its occurrence. Notice of the commencement of any
9 civil suit ~~must~~ shall be received by the board within 30 days
10 after service of the complaint upon the defendant in the
11 action.

12 "d) The board may grant a single auction license
13 once per calendar year to any nonresident individual, who is
14 duly licensed in good standing as an auctioneer, or to an
15 auction company in another state, who makes written
16 application to the board and provides satisfactory proof of
17 all of the following:

18 "1) The applicant satisfies the age, reputation,
19 and other qualifications to be licensed as an auctioneer.

20 "2) The applicant has paid a fee as established by
21 rule of the board.

22 "3) The applicant has not applied for or previously
23 obtained a license under this chapter.

24 "4) The applicant is not the subject of a
25 disciplinary action in any state; has not had a professional

1 license or business license for any company in which he or she
2 is a principal in this, or any other licensing jurisdiction,
3 disciplined, suspended, revoked, or denied; has not been
4 convicted of a criminal offense; and has no criminal charges
5 pending in any jurisdiction.

6 "(5) The applicant has provided proof of financial
7 responsibility in the form of either an irrevocable letter of
8 credit, or a cash bond or surety bond in the amount of ten
9 thousand dollars (\$10,000). If the applicant gives a surety
10 bond, the bond shall be executed by a surety company
11 authorized to do business in this state. A bond shall be made
12 payable to the board and shall be conditioned on compliance by
13 the applicant with this chapter and the rules adopted by the
14 board. All bonds shall be in a form approved by the board.

15 "~~(d)~~(e) The license fee for each auctioneer or
16 auction company shall be an amount to be determined by the
17 board, not to exceed two hundred fifty dollars (\$250), and the
18 license fee for each apprentice auctioneer shall be an amount
19 to be determined by the board, not to exceed one hundred fifty
20 dollars ~~(\$100)~~ (\$150). The license fees ~~for an auctioneer~~
21 shall not be increased more than twenty-five dollars (\$25) in
22 any given year.

23 "~~(e)~~(f) All licenses shall expire on September 30 of
24 each year following issuance thereof and may be renewed upon
25 payment of the appropriate license fee as required by this

1 chapter. Renewal of a license may be effected at any time
2 during the months preceding the date of expiration. No
3 examination shall be required for the renewal of any license,
4 unless the license has been revoked or suspended. If a
5 licensee fails to renew his or her license by the deadline of
6 each year, he or she may ~~have~~ renew his or her license ~~renewed~~
7 within 60 days after the expiration date, upon payment of the
8 required fee and a late fee of twenty-five dollars (\$25) for
9 apprentices and fifty dollars (\$50) for auctioneers and
10 auction companies. If a licensee elects not to pay the penalty
11 and renew his or her license, he or she shall be required to
12 submit an application, pay the examination fee, and take the
13 examination required for new licensees.

14 "~~(f)~~ (g) The board, by rule, shall adopt a program of
15 continuing education for its licensees. No licensee shall have
16 his or her license renewed unless, in addition to any other
17 requirements of this chapter, the minimum annual continuing
18 education requirements are met. The continuing education
19 program shall not include testing or examination of the
20 licensees in any manner. Any licensee 65 years of age or older
21 shall be exempt from the continuing education requirement.

22 "~~(g)~~ (h) The board shall prepare and deliver to each
23 licensee a license certificate and pocket card. The
24 certificate shall be displayed openly at all times in the
25 office of the licensee. The certificate and the pocket card of

1 the apprentice auctioneer shall contain his or her name as
2 well as that of the auctioneer under whose supervision he or
3 she is employed.

4 "~~(h)~~(i) When any auctioneer discharges an
5 apprentice, or terminates his or her employment with the
6 auctioneer for any reason, the auctioneer shall deliver or
7 mail by registered or certified mail to the board the license
8 of the discharged apprentice auctioneer. It shall be unlawful
9 for any apprentice auctioneer to perform any of the acts
10 contemplated by this chapter, either directly or indirectly
11 under authority of his or her license, until the apprentice
12 auctioneer receives a new license bearing the name and address
13 of his or her new employer. No more than one license shall be
14 issued to any apprentice auctioneer for the same period of
15 time.

16 "~~(i)~~(j) Written notice shall be given immediately to
17 the board by each licensee of any change in his or her mailing
18 address and the board shall issue a new license for the
19 unexpired period. A change of mailing address without
20 notification to the board shall automatically cancel the
21 license previously issued. For changing a mailing address and
22 issuance of a new license, the board shall collect a fee ~~of~~
23 ~~five dollars (\$5)~~ in an amount determined by rule of the
24 board. Each prior license shall be returned or accounted for
25 to the board and be canceled before the issuance of the new

1 license. The board may require other proof considered
2 desirable with due regard to the paramount interest of the
3 public in the issuance of the license.

4 "(k) (1) An auctioneer who is in good standing with
5 the board may request inactive status by submitting to the
6 board a written application, his or her current license
7 certificate and pocket card, and a fee. The auctioneer shall
8 certify on the application that he or she will not perform any
9 business of auctioneering while on inactive status. An
10 auctioneer who has a disciplinary or suspension hearing
11 pending against him or her may only be granted inactive status
12 upon approval of the board. Inactive status may be renewed
13 annually upon written application and payment of a fee. The
14 board, by rule, shall determine the amount of the initial
15 application fee and the annual renewal fee.

16 "(2) An auctioneer on inactive status may be
17 restored to active status by submitting to the board a written
18 application requesting reactivation and providing proof of
19 satisfying all continuing education requirements for the most
20 recent licensure period during which the license was inactive.

21 ~~(j)~~(1) Pursuant to Sections 41-22-1 to 41-22-27,
22 inclusive, the Alabama Administrative Procedure Act, the board
23 may make and enforce any necessary and reasonable rules ~~and~~
24 ~~regulations~~ pursuant to the application for any license.

1 "(m) The board, by rule, may establish and charge
2 reasonable fees relating to the administration and enforcement
3 of this chapter for application or other processing costs;
4 online service; continuing education provider services; copy,
5 mailing, and filing services; and other fees as necessary to
6 offset licensing and processing costs.

7 "§34-4-23.

8 "The issuance of a license by the board shall be
9 evidence that the person, ~~partnership, association, or~~
10 ~~corporation~~ or business entity named therein is entitled to
11 all the rights and privileges of an auctioneer or apprentice
12 auctioneer while the license remains unrevoked or unexpired.

13 "§34-4-25.

14 "(a) An individual ~~A nonresident of this state, or a~~
15 ~~resident of this state who is licensed by another state,~~ may
16 become an auctioneer or apprentice auctioneer in this state by
17 conforming to this chapter, ~~or in the case of a nonresident~~
18 ~~from a nonlicensing state, such person may be licensed~~
19 ~~provided an examination is given and passed and the person has~~
20 ~~at least five years' experience in the auction business.~~
21 ~~Provided further, that if a nonresident.~~ If an auctioneer or
22 apprentice auctioneer, ~~or a resident who is licensed as an~~
23 ~~auctioneer or apprentice auctioneer in another state,~~ has a
24 lawsuit or other legal action filed and pending against him or
25 her in this or any other state, the board ~~shall~~ may not issue

1 a license to him or her until final disposition of the action,
2 and then only at the discretion of the board. The terms
3 "auctioneer" and "apprentice auctioneer" shall include any
4 individual, firm, company, partnership, association, or
5 corporation by whom the "auctioneer" or "apprentice
6 auctioneer" is employed. ~~The board may recognize a license
7 issued by any other state to a resident of this state or a
8 nonresident auctioneer or apprentice auctioneer if the other
9 state reciprocates with Alabama in like manner and if the
10 licensing requirements of the state include the passing of an
11 examination of equal or higher standards than those required
12 by this state. The nonresident licensee, or resident licensee
13 of another state, shall, however, be required to secure a
14 license from the board which shall be issued upon application
15 therefor, accompanied by payment of the license fee required
16 by this chapter and the filing of a certified copy of the
17 license of the applicant issued by the other state. The board
18 shall have the authority to impose any fee or licensing
19 requirements on applicants for licenses from a reciprocal
20 state that the reciprocal state imposes on Alabama licensees
21 by rule, regulation, policy, or law.~~

22 "(b) Every applicant shall file an irrevocable
23 consent that actions may be commenced against the applicant in
24 the proper court in the county in this state in which a cause
25 of action may arise, in which the plaintiff may reside, by

1 service of any process or pleadings authorized by laws of this
2 state on the board, or a deputy to be designated by the board,
3 the consent stipulating and agreeing that service of process
4 or pleading shall be begun and held in all courts to be as
5 valid and binding as if due service had been made upon the
6 applicant in this state. The consent shall be duly
7 acknowledged and, if made by a corporation, shall be
8 authenticated by the seal of the corporation. In case of any
9 process or pleadings mentioned in this chapter being served
10 upon the board or upon a deputy to be designated by the board,
11 duplicated copies shall be made, one of which shall be filed
12 in the office of the secretary of the board, and the other
13 immediately forwarded by registered or certified mail to the
14 main office of the applicant against which process or
15 pleadings are directed. No default in the proceedings or
16 action shall be taken unless it shall be made to appear by
17 affidavit of a member of the board, or a deputy designated by
18 the board, that a copy of the process or pleadings was mailed
19 to the defendant as herein required. Judgment by default shall
20 be taken in any action or proceedings within 20 days after the
21 date of the mailing of process or pleadings to the defendant.

22 "§34-4-27.

23 "Each auctioneer shall annually pay one state
24 license in an amount not to exceed two hundred fifty dollars
25 (\$250). Each auctioneer shall also annually pay a county

1 license fee of twenty-five dollars (\$25) in each county where
 2 he or she sells by auction. No privilege license shall be
 3 required for any apprentice auctioneer when he or she is
 4 listed as the principal auctioneer. No license shall be
 5 required for any auctioneer who conducts an auction, without
 6 compensation for himself or herself, where all proceeds from
 7 the auction go to the benefit of any charitable organization.
 8 The term "auctioneer" shall include any person selling real
 9 estate, goods, wares, merchandise, automobiles, livestock, or
 10 other things of value by or at public outcry auction. Sales at
 11 public ~~outcry~~ auction involving any of the following may be
 12 ~~made conducted~~ for compensation without a license involving
 13 ~~any of the following~~:

14 "(1) Sales at auction conducted by the owner of any
 15 part of the goods or real estate being offered, or an attorney
 16 representing the owner, unless the owner acquired the goods to
 17 resell.

18 "~~(1)~~(2) Sales for the estate of a decedent by an
 19 administrator, executor, or any person acting under order of
 20 any court or the attorney of an administrator, executor, or
 21 any person acting under order of any court.

22 "~~(2)~~(3) Sales of property conveyed by deed of trust,
 23 mortgage, judgment, or ordered to be sold according to the
 24 mortgage, judgment, ~~or~~ order, or decree.

25 "~~(3)~~(4) All sales under legal process.

1 "§34-4-28.

2 "(a) Authority to transact business as an auctioneer
3 under any license issued by the board shall be restricted to
4 the person named in ~~such~~ the license and ~~shall~~ may not inure
5 to the benefit of any other person.

6 "(b) Where an auctioneer's license shall be issued
7 to ~~a corporation or association~~ an auction company that is
8 duly qualified and registered to conduct business in this
9 state, authority to transact business thereunder shall be
10 limited to one officer ~~of such corporation or association,~~
11 member, copartner, or owner of the company, to be designated
12 in the application and named in the license. Each other
13 officer ~~of such association or corporation,~~ member, copartner,
14 or owner of the company desiring to act as an auctioneer in
15 connection with the business of the ~~association or corporation~~
16 company, or otherwise, shall be required to make application
17 for and take out a separate license in his or her own name
18 individually. ~~Where the licensee is a copartnership, the~~
19 ~~license issued to such copartnership shall confer authority to~~
20 ~~act as auctioneer upon one member of such copartnership only,~~
21 ~~who shall be designated in the application and named in the~~
22 ~~license. All the other members of the copartnership desiring~~
23 ~~to act as auctioneers in connection with the business of the~~
24 ~~partnership or otherwise shall be required to apply for and~~
25 ~~take out individual licenses in their own names.~~

1 "(c) No licensed auction company may hire an
2 unlicensed auctioneer to conduct any auction business, nor
3 shall any licensed auctioneer conduct an auction for an
4 unlicensed auction company in this state.

5 "(d) Every licensee authorized to transact business
6 pursuant to this chapter shall do all of the following:

7 "(1) Maintain a segregated escrow or trust account
8 in a bank insured by the Federal Deposit Insurance
9 Corporation, in which funds belonging to sellers or consignors
10 received in the course of business transacted shall be kept
11 separate from the funds of the licensee. All funds received
12 from sales by an apprentice shall be maintained in the escrow
13 or trust account of the sponsor.

14 "(2) Enter into a written contract with the owner or
15 consignor of any property to be offered for sale before the
16 auction. All contracts shall clearly contain the terms and
17 conditions upon which the licensee received the property for
18 auction including, but not limited to, whether the auction
19 will be conducted as absolute or with reserve, and the date
20 the proceeds due the owner or consignor shall be remitted to
21 the seller or consignor.

22 "(3) Provide a copy to the seller or consignor of
23 all written instruments prepared by the licensee at the time
24 of execution. Consignment agreements shall contain the name
25 and signature of the licensee responsible for the auction.

1 "(4) Provide a closing statement to the seller or
2 consignor giving a full accounting of all proceeds received
3 and disbursements made relative to the auction. A closing
4 statement shall contain the date and location of the auction
5 and the name, license number, and signature of the licensee
6 responsible for the auction. A closing statement shall be
7 provided within 30 days after the auction. A properly prepared
8 HUD-1 statement, or equivalent, satisfies the requirements of
9 this section for the sale of real property.

10 "(5) Display the name and license number of the
11 auctioneer in all advertising for the auction. In the case of
12 an apprentice auctioneer, all advertising shall also contain
13 the name and license number of the sponsor. An auction company
14 shall display the name and license number of the auctioneer
15 named in the license in any and all advertisements.

16 "(6) Ensure that all advertising is accurate and
17 truthful.

18 "(7) Maintain complete and accurate documents,
19 books, and records of all transactions concerning every
20 auction for a period of five years after the date on which the
21 seller or consignor contracted with the auctioneer or the
22 auction was conducted, whichever is later. The documents,
23 books, and records shall be made available for inspection by
24 the board, or its authorized personnel or representatives,
25 upon request. Failure to produce the requested documents,

1 books, records, or copies thereof within 30 days after request
2 of the board shall be grounds for disciplinary action by the
3 board.

4 "(8) Assume responsibility, as the sponsoring
5 auctioneer, for the acts of any apprentice in the conduct of
6 auction business and be present at every auction to directly
7 supervise the apprentice.

8 "§34-4-29.

9 ~~"(a) The board may revoke or suspend licenses as~~
10 ~~provided in this section.~~

11 ~~"(b) (a)~~ The board may, upon its own motion, and
12 shall, upon the verified complaint in writing of any person
13 containing evidence, documentary or otherwise, that makes out
14 a prima facie case, investigate the actions of any auctioneer,
15 apprentice auctioneer, or any person who assumes to act in
16 either capacity, and hold a hearing on the complaint.

17 ~~"(c) (b)~~ The board may ~~suspend or revoke any license~~
18 ~~which has been issued based on false or fraudulent~~
19 ~~representations. The board may also suspend or revoke the~~
20 ~~license of any licensee for invoke disciplinary action~~
21 ~~whenever it shall be established to the satisfaction of the~~
22 ~~board, after a hearing as hereinafter provided, that any~~
23 ~~licensee is guilty of~~ any of the following acts:

24 "(1) Making any substantial misrepresentation.

1 "(2) Pursuing a continued and flagrant course of
2 misrepresentation or making false promises through agents,
3 advertising, or otherwise.

4 "(3) Accepting valuable consideration as an
5 apprentice auctioneer for the performance of any of the acts
6 specified in this chapter from any person other than his or
7 her employer auctioneer.

8 "(4) Failing to account for or remit, within ~~a~~
9 ~~reasonable time~~ 30 days, any money belonging to others that
10 comes into his or her possession, commingling funds of others
11 with his or her own, or failing to keep funds of others in an
12 escrow or trustee account.

13 "(5) Paying valuable consideration to any person for
14 services performed in violation of this chapter.

15 "(6) Being convicted in a court of competent
16 jurisdiction of this or any other state of a criminal offense
17 involving moral turpitude or a felony.

18 "(7) ~~Violation of~~ Violating any rule ~~or regulation~~
19 ~~promulgated~~ adopted by the board.

20 "(8) ~~Failure~~ Failing to furnish voluntarily at the
21 time of execution copies of all written instruments prepared
22 by the ~~auctioneer or apprentice auctioneer~~ licensee.

23 "(9) ~~Any conduct of any auctioneer which~~
24 ~~demonstrates~~ Demonstrating bad faith, dishonesty,
25 incompetency, or untruthfulness.

1 "~~(10) Any conduct of any auctioneer which~~
2 ~~demonstrates~~ Demonstrating improper, fraudulent, or dishonest
3 dealings.

4 "(11) Having had any license to practice a business
5 or profession in this or any other state or jurisdiction
6 revoked, suspended, annulled, sanctioned, or otherwise having
7 any disciplinary action taken against him or her by any other
8 licensing authority in this or any other state.

9 "~~(11)~~ (12) Failing prior to before the sale at public
10 auction, to enter into a written contract with the owner or
11 cosignee of ~~any~~ the property to be sold containing the terms
12 and conditions upon which the licensee received the property
13 for sale.

14 "~~(12) Failure by the auctioneer conducting an~~
15 ~~auction to show~~ (13) Failing to display his or her name and
16 state license number in ~~the~~ all advertising ~~of the~~ for an
17 auction the licensee is conducting.

18 "~~(13)~~ (14) Presenting a worthless check to the board.

19 "(15) Filing frivolous, unfounded complaints with
20 the board.

21 "(16) Knowingly making any misleading, false, or
22 deceptive statement on any application for a license.

23 "(17) Aiding or abetting an unlicensed person in the
24 performance of acts that require a license under this chapter.

25 "(18) Violating any other provision of this chapter.

1 "(c) When the board finds any licensee guilty of any
2 of the grounds set forth in subsection (b), the board may
3 enter an order imposing one or more of the following
4 penalties:

5 "(1) A letter of reprimand.

6 "(2) Probation for a period of time and subject to
7 any condition prescribed by the board.

8 "(3) Denial of an application for an initial or
9 renewal license.

10 "(4) Suspension of a license for a period of time
11 established by the board, with or without automatic
12 reinstatement.

13 "(5) Revocation of a license.

14 "(6) Imposing continuing education requirements in
15 the area or areas in which the licensee has been found
16 deficient.

17 "(7) Assessment of the costs of any disciplinary
18 proceedings on the licensee.

19 "(d) Before denying an application for license or
20 suspending or revoking any license, the board shall hold a
21 hearing and ~~shall~~, at least 21 days ~~prior to~~ before the date
22 set for the hearing, shall notify in writing the accused
23 licensee of the charges made or the question to be determined,
24 including notice of the time and place of the hearing, and
25 afford the licensee an opportunity to be present, be heard in

1 person or by counsel, and to offer evidence orally, or by
2 affidavit or deposition. Written notice may be served by
3 delivery of the notice personally to the applicant or licensee
4 or by mailing the notice by registered or certified mail to
5 the last known mailing address of the applicant or licensee.
6 If the applicant or licensee is an apprentice auctioneer, the
7 board shall also notify the auctioneer employing him or her,
8 or whose employ he or she is about to enter, by mailing notice
9 by registered or certified mail to the auctioneer's last known
10 address. The hearing shall be held at a time and place
11 prescribed by the board and shall proceed in accordance with
12 the Alabama Administrative Procedure Act. The board may deny
13 any applicant for an apprentice auctioneer or auctioneer
14 license the right to take an examination for a period of up to
15 one year if the applicant is found by the board to have
16 conducted auction business within this state as an apprentice
17 auctioneer or auctioneer without first having been properly
18 licensed.

19 "(e) In addition to the disciplinary powers granted
20 in this section, the board may levy and collect administrative
21 fines from any person for ~~serious~~ violations of this chapter
22 or the rules ~~and regulations~~ of the board of not less than
23 ~~\$200~~ two hundred dollars (\$200) or more than ~~\$500~~ one thousand
24 five hundred dollars (\$1,500) for each violation.

1 "(f) The board may seek an injunction against any
2 person in violation of this chapter in addition to the
3 penalties and disciplinary powers otherwise conferred upon the
4 board herein. In an action for an injunction, the board may
5 demand and recover a civil penalty of fifty dollars (\$50) per
6 day for each violation, reasonable attorney fees, and court
7 costs.

8 "(g) Failure to comply with any final order of the
9 board is cause for suspension or revocation of a license. The
10 board may also suspend or revoke any license that has been
11 issued based on false or fraudulent representations.

12 "§34-4-30.

13 "(a) The board may administer oaths and prescribe
14 all necessary and reasonable rules for the conduct of a
15 hearing. The board may take testimony of any person by
16 deposition, with the same fees and mileage and in the same
17 manner as prescribed by law in judicial procedure of courts of
18 this state in civil cases. The fees and mileage shall be paid
19 by the party at whose request the witness is subpoenaed.

20 ~~"(b) If the board determines that the licensee is~~
21 ~~guilty under this chapter, his or her license may be suspended~~
22 ~~or revoked.~~

23 ~~"(c) (b)~~ The affirmative vote of a majority of the
24 ~~members of the board shall be necessary to revoke or suspend a~~

1 ~~license~~ required before any disciplinary action may be taken
2 against a licensee in accordance with this chapter.

3 "~~(d)~~(c) The board is declared to be a quasi judicial
4 body, and the members or the employees of the board are
5 granted immunity from civil liability and shall not be liable
6 for damages therefrom when acting in the performance of their
7 duties as described in this chapter.

8 "§34-4-31.

9 "Whenever any person, ~~partnership, association or~~
10 ~~corporation~~ claiming to have been injured or damaged by the
11 gross negligence, incompetency, fraud, dishonesty, or
12 misconduct on the part of any licensee ~~following the calling~~
13 ~~or~~ engaging in the auction business, as herein described,
14 shall file an action upon such claim against such licensee in
15 any court of record in this state and shall recover judgment
16 thereon, such court may as part of its judgment in such case,
17 if it deems it a proper case in which to do so, revoke the
18 defendant's license, which shall not be reissued to such
19 licensee except upon unanimous vote of all members of the
20 board in favor of such reissuance and only then after the
21 lapse of a period of 90 days from the date of such revocation.

22 "§34-4-33.

23 "(a) Findings of the board with regard to the
24 denial, suspension, or revocation of a license or the
25 imposition of ~~an~~ any penalty or administrative fine shall be

1 final unless within 30 days after the date of the final order
2 of the board, the applicant, ~~or otherwise known as the~~
3 ~~accused, whether an individual or a corporation registered in~~
4 ~~Alabama,~~ licensee files a notice of appeal in with the board
5 to the Circuit Court of Montgomery County. ~~A party~~ The person
6 appealing ~~a~~ the decision shall post a two hundred dollar
7 (\$200) ~~appeal~~ cost bond with the ~~clerk of the circuit court.~~
8 ~~The circuit clerk shall notify the board of the appeal after~~
9 ~~the clerk has approved the appellant's bond~~ board to cover the
10 reasonable costs of preparing the transcript of the proceeding
11 under review, unless waived by the board or the court on a
12 showing of substantial hardship. The appeal shall be conducted
13 in accordance with the Administrative Procedure Act, and with
14 all the attendant rights and duties thereof.

15 ~~"(b) An appeal does not act as supersedeas, but the~~
16 ~~decision of the board may be stayed by the court pending the~~
17 ~~appeal.~~

18 ~~"(c) The board shall within 30 days of service of~~
19 ~~the notice of appeal, or within the additional time as the~~
20 ~~court may allow, file the record in the case with the circuit~~
21 ~~clerk. A complaint setting forth with particularity the issues~~
22 ~~raised on appeal shall be filed with the court and served on~~
23 ~~the board by the appealing party within 30 days after the~~
24 ~~notice of appeal is filed. The action shall be conducted in~~
25 ~~accordance with the Alabama Rules of Civil Procedure.~~

1 ~~"(d) The appeal shall be conducted by the court~~
2 ~~without a jury and shall be confined to the record made before~~
3 ~~the board. The decision of the board shall be taken as prima~~
4 ~~facie just and reasonable and the court shall not substitute~~
5 ~~its judgment for that of the board as to the weight of the~~
6 ~~evidence on questions of fact. The court shall affirm or~~
7 ~~reverse, in part or in whole, or modify the decision of the~~
8 ~~board. The court may remand the case to the board for further~~
9 ~~proceedings.~~

10 ~~"(e) (b)~~ If the decision of the board is affirmed in
11 whole or in part, the cost of the appeal shall be taxed
12 against the party taking the appeal. If the decision of the
13 board is not affirmed, the court shall tax the costs of appeal
14 against the board.

15 "§34-4-50.

16 "(a) The Governor shall appoint a State Board of
17 Auctioneers to be comprised of seven auctioneer members and
18 one consumer member. ~~Except as otherwise provided by Act~~
19 ~~98-271, all All appointments and subsequent appointments by~~
20 ~~the Governor~~ shall be for a term of five years, with each
21 auctioneer member appointed being a resident of a different
22 congressional district and the consumer member being a
23 resident of and appointed from the state at-large. ~~Within 60~~
24 ~~days after July 1, 1998, the Governor shall appoint one~~
25 ~~additional auctioneer member provided for herein for a term of~~

1 ~~two years and the other additional auctioneer member provided~~
2 ~~for in Act 98-271 shall be appointed by the Governor for a~~
3 ~~term of four years. Thereafter, subsequent appointments shall~~
4 ~~be for a term of five years.~~ Appointments shall end on the
5 anniversary date of the original appointments, except
6 appointments to fill a vacancy which shall be for the
7 unexpired term only. No member shall serve more than two
8 consecutive terms of office. Each member of the board and his
9 or her successor shall have been a resident ~~and citizen~~ of
10 this state for at least five years prior to his or her
11 appointment. Each auctioneer member of the board and his or
12 her successor shall have been a licensed auctioneer in this
13 state for at least five years. In the event a district has no
14 qualified candidate for appointment, the appointment may come
15 from the state at-large. Each member shall hold office until
16 his or her successor is appointed by the Governor. The
17 Governor shall coordinate his or her appointments so that
18 diversity of gender, race, and geographical area is reflective
19 of the makeup of this state.

20 "(b) Each auctioneer member of the board shall be of
21 good moral character and shall have been licensed by the board
22 and actively engaged in the auction business for at least five
23 years prior to the appointment.

24 "(c) On the appointment of a new auctioneer board
25 member, the board ~~shall~~, at its next meeting, shall elect one

1 of its members as chair, one member as vice-chair, one member
2 as secretary, and any other officers deemed necessary. The
3 board may do all things necessary and convenient for carrying
4 into effect this chapter. The board may ~~make bylaws,~~ adopt
5 ~~rules, and regulations~~ not inconsistent with this chapter or
6 other general laws of the state.

7 "(d) Except as otherwise provided in Section
8 34-4-53, members of the board, board staff, and board
9 attorneys shall receive the same per diem and travel allowance
10 paid to state employees for each day they meet to conduct the
11 official business of the board.

12 "(e) The board may employ an administrator who shall
13 be exempt from the classified service of the state, and other
14 staff members necessary to discharge board duties and
15 administer this chapter. The administrator shall be employed
16 on the basis of his or her education, experience, and skills
17 in administration and management. The board shall determine
18 the duties and fix the compensation of the administrator and
19 other staff members, subject to the general laws of the state.

20 "(f) The board shall provide by rule for the
21 investigation of any auction activity that is being promoted,
22 managed, or supervised by unlicensed individuals in violation
23 of this chapter and may employ an investigator to assist the
24 board in enforcement of the laws, rules, and policies adopted
25 thereunder. The investigator shall be employed on the basis of

1 his or her education, experience, and skills in law
2 enforcement. The board shall determine the duties and fix the
3 compensation of the investigator, subject to the general laws
4 of the state.

5 "(f)(g) The board shall adopt a seal by which the
6 board shall authenticate records and documents. On the seal
7 shall be the words State Board of Auctioneers. Copies of all
8 records and documents in the office of the board that are duly
9 certified and authenticated by the seal of the board shall be
10 received in evidence in all courts equally and with the same
11 effect as the original. All public records kept in the office
12 of the board shall be open to public inspection during
13 reasonable hours.

14 "(h) Each board member shall be accountable to the
15 Governor for the proper performance of his or her duties as a
16 member of the board. The Governor shall investigate any
17 complaints or unfavorable reports concerning the actions of
18 the board and take appropriate action thereon, including
19 removal of any board member for misfeasance, malfeasance,
20 neglect of duty, commission of a felony, incompetence, or
21 permanent inability to perform official duties. A board member
22 may be removed at the request of the board for failing to
23 attend four consecutive, properly noticed meetings.

24 "§34-4-52.

1 "The board shall meet ~~at least four times each year,~~
2 ~~in January, April, July, and October,~~ quarterly for the
3 purpose of transacting business as may properly come before
4 the board. Special meetings of the board shall be held at such
5 times as the board may provide in the bylaws the board may
6 adopt. ~~Four~~ A majority of the then appointed board members
7 shall constitute a quorum at a board meeting. A majority vote
8 of a quorum of the board eligible to vote on a matter shall be
9 required for any action taken by the board. Due notice of each
10 meeting and the time and place thereof shall be given each
11 member in such manner as the bylaws and applicable law may
12 provide."

13 Section 2. Section 34-4-22, Code of Alabama 1975,
14 requiring the board to keep a register of applicants, is
15 repealed.

16 Section 3. This act shall become effective on the
17 first day of the third month following its passage and
18 approval by the Governor, or its otherwise becoming law.

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB27

Senate 11-FEB-21

I hereby certify that the within Act originated in and passed the Senate, as amended.

Patrick Harris,
Secretary.

House of Representatives
Passed: 29-APR-21

By: Senator Price