

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 530

Short Title: Auctions/Auctioneers Act.

(Public)

Sponsors: Representatives DeVane; and Buchanan.

Referred to: Judiciary II.

April 1, 1991

1 A BILL TO BE ENTITLED
2 AN ACT MAKING VARIOUS AMENDMENTS TO CHAPTER 85B OF THE
3 GENERAL STATUTES RELATING TO AUCTIONS AND AUCTIONEERS.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 85B-1 reads as rewritten:

6 "**§ 85B-1. Definitions.**

7 For the purposes of this Chapter the following definitions shall apply:

8 (1) 'Auction' means the sale of goods or real estate by means of exchanges
9 between an auctioneer and members of his audience, the exchanges
10 consisting of a series of invitations for offers made by the auctioneer,
11 offers by members of the audience, and the acceptance by the
12 auctioneer of the highest or most favorable offer.

13 (2) 'Auctioneer' means any person who conducts or offers his service to
14 conduct auctions and includes apprentice auctioneers except as stricter
15 standards are specified by this Chapter for apprentice auctioneers.

16 (3) 'Owner' means the bona fide owner of the property being offered for
17 sale; in the case of partnerships or corporations, 'owner' means a
18 partner in a partnership or an officer or director of a corporation that
19 owns the property being offered for sale and that is qualified provided
20 that the corporation or partnership is registered or licensed to do
21 business in the State of North Carolina. ~~State.~~

22 (4) 'Absolute Auction' means the sale of real or personal property at
23 auction whereby the item offered for auction will be sold to the highest
24 bidder without reserve, without the requirement of any minimum bid.

1 and without competing bids of any type by the owner, or agent of the
2 owner, of the property.

3 (5) 'Estate Sale' means the liquidation by sale at auction of real or personal
4 property of a specified person."

5 Sec. 2. G.S. 85B-2 reads as rewritten:

6 **"§ 85B-2. Activities governed by Chapter.**

7 (a) This Chapter shall apply to all auctions held in this State except the
8 following:

9 (1) Sales at auction conducted by the owner of all of the goods or real
10 estate being offered, or an attorney representing the owner, unless the
11 owner's regular course of business includes engaging in the sale of
12 goods or real estate by means of auction or unless the owner originally
13 acquired the goods for the purposes of resale at auction;

14 (2) Sales at auction conducted by or under the direction of any public
15 authority;

16 (3) ~~Sales at auction pursuant to a judicial order or in the settlement of a~~
17 ~~decedent's estate;~~ Sales conducted by a receiver, trustee, guardian,
18 administrator or executor or any similarly appointed person under
19 order of any court or any person conducting a sale pursuant to an order
20 of a United States Bankruptcy Court;

21 (4) Any sale required by law to be at auction;

22 (5) Sale of livestock at a public livestock market authorized and regulated
23 by the Commissioner of Agriculture;

24 (6) Leaf tobacco sales conducted in accordance with the provisions of
25 Chapter 106 of the General Statutes;

26 (7) Sale at auction of automobiles conducted under the provisions of G.S.
27 20-77, or sale at auction of motor vehicles by a motor vehicle dealer
28 licensed under Article 12, Chapter 20 of the General Statutes;

29 (8) Sale at auction of a particular ~~brand-breed~~ of livestock conducted by an
30 auctioneer who specializes in the sale of that ~~brand-breed~~ when such
31 sale is conducted under the auspices of a livestock trade association;
32 provided that the sale is regulated by the Packers and Stockyards Act
33 and the auctioneer is required to be bonded by the United States
34 Department of Agriculture;

35 (9) Sales conducted by and on behalf of any charitable or religious
36 organization; ~~organization if the person conducting the sale receives no~~
37 ~~compensation therefor;~~

38 (9a) Sales conducted by and on behalf of a civic club, not exceeding one
39 sale per year;

40 (10) Sales conducted by a trustee pursuant to a power of sale contained in a
41 deed of trust on real property;

42 (11) Sales of collateral, sales conducted to enforce carriers' or
43 warehousemen's liens, bulk sales, sales of goods by a presenting bank
44 following dishonor of a documentary draft, resales of rightfully

1 rejected goods, resales of goods by an aggrieved seller, or other
2 resales conducted pursuant to authority in Articles 2, 4, 6, 7 and 9 of
3 Chapter 25 of the General Statutes (the Uniform Commercial Code).

4 (b) Except as provided in subsection (a) of this section, any person or entity who
5 is engaged in the business of organizing, arranging or conducting auction sales for
6 compensation must be licensed in accordance with the provisions of this Chapter."

7 Sec. 3. G.S. 85B-3 reads as rewritten:

8 **"§ 85B-3. Auctioneers Commission.**

9 (a) There shall be a five-member North Carolina Auctioneers Commission
10 having the powers and responsibilities set out in this Chapter. The Governor shall
11 appoint the members of the Commission, at least three of whom, and their successors,
12 shall be from nominations submitted by the Auctioneers Association of North Carolina.
13 The Auctioneers Association shall submit, within 45 days of when the vacancy occurs,
14 at least three names for each position for which it is entitled to make a nomination. Of
15 the initial five members of the Commission one shall be appointed for a one-year term,
16 two shall be appointed for two-year terms and two for three-year terms; thereafter, each
17 new member shall be appointed for a term of three years. Any vacancy shall be filled
18 for the remainder of the unexpired term only. Each member shall continue in office until
19 his successor is appointed and qualified. No member shall serve more than two
20 complete consecutive terms.

21 (b) At least three members of the Commission shall be experienced auctioneers
22 who are licensed under this Chapter. One member shall be a person who shall represent
23 the public at large and shall not be licensed under this Chapter. ~~The Governor shall~~
24 ~~appoint a public member to fill the first vacancy on the Commission after July 1, 1983.~~

25 (c) The Commission shall employ ~~a secretary-treasurer~~ an executive director and
26 such other employees as needed to carry out the duties of this Chapter. All employees
27 shall serve at the pleasure of the Commission.

28 (d) Any action that may be taken by the Commission may be taken by vote of
29 any three of its members.

30 (e) The members of the Commission shall elect from among themselves a
31 chairman to serve a one-year term. No person shall serve more than two consecutive
32 terms as chairman.

33 (f) The Commission shall receive and act upon applications for auctioneer
34 licenses, issue and suspend and revoke licenses, adopt rules and regulations for
35 auctioneers and ~~auctions~~, auctions that are consistent with the provisions of this Chapter
36 and the General Statutes, and issue declaratory rulings. and take such other actions as may
37 ~~be necessary to see that the provisions of this Chapter are carried out.~~ The Commission may
38 make and enforce reasonable rules and regulations and take other action as deemed
39 necessary to administer and enforce the provisions of this Chapter.

40 (g) Members of the Commission shall receive the compensation set for members
41 of occupational licensing boards by G.S. 93B-5."

42 Sec. 4. G.S. 85B-4 reads as rewritten:

43 **"§ 85B-4. Licenses required.**

1 (a) No person who is not exempt under G.S. 85B-2, shall sell, or offer his
2 services to sell, goods or real estate at auction in this State or perform any act for which
3 an auction firm license is required unless he holds a currently valid ~~auctioneer or~~
4 apprentice auctioneer license- license issued under this Chapter.

5 (b) No person shall be licensed as an apprentice ~~auctioneer or as an auctioneer if he:~~
6 auctioneer, auctioneer, or receive an auction firm license if the person:

7 (1) Is under 18 years of age;

8 (2) Repealed by Session Laws 1983, c. 751, s. 6, effective August 1, 1983.

9 (3) Has within the preceding five years pleaded guilty ~~to~~, entered a plea
10 of **nolo contendere** or been convicted of any felony; or felony, or
11 committed or been convicted of any act involving fraud or moral
12 turpitude;

13 (4) Has had an auctioneer or apprentice auctioneer or auction firm license
14 revoked- revoked; or

15 (5) Has, within the preceding five years, committed any act which
16 constitutes grounds for license suspension or revocation under this
17 Chapter or a duly adopted Commission rule.

18 (c) Each applicant for an apprentice auctioneer license shall submit a written
19 application in a form approved by the Commission and containing at least two
20 statements by residents of ~~North Carolina~~ the community in which the applicant resides
21 attesting to the applicant's good moral character.

22 (c1) Each apprentice auctioneer application and license shall name a licensed
23 auctioneer to serve as the supervisor of the apprentice. No apprentice auctioneer may
24 enter into an agreement to conduct an auction, or conduct an auction, without the
25 express approval of his supervisor. The supervisor shall review all contracts before
26 approving them and shall regularly review the records his apprentice is required to
27 maintain under G.S. 85B-7 and to see that they are accurate and ~~current- current, and~~
28 shall perform such other supervisory duties as may be required by the Commission.

29 (c2) No person may be licensed as an apprentice auctioneer unless he first takes a
30 written examination, approved by the Commission, and demonstrates to the satisfaction
31 of the Commission, a thorough understanding of the law relating to auctioneers and
32 such other matters as the Commission may deem appropriate. Provided, however, that
33 any person who, on the effective date of this Chapter, is duly licensed as an apprentice
34 auctioneer in good standing shall not be required to take or to pass an examination in
35 order to maintain or to renew his apprentice auctioneer license provided that he is not
36 otherwise ineligible to have such license renewed and such license is not otherwise
37 lapsed, suspended or revoked by the Commission.

38 (d) No person shall be licensed as an auctioneer unless he has held an apprentice
39 auctioneer license and served as an apprentice auctioneer for the two preceding years,
40 accumulated sufficient knowledge and experience in such areas of the auctioneer
41 profession as the Commission may deem appropriate, and has taken an examination
42 approved by the Commission and performed on it to the satisfaction of the Commission.
43 The examination shall test the applicant's understanding of the law relating to
44 auctioneers and auctions, ethical practices for auctioneers, the mathematics applicable to

1 the auctioneer business, and such other matters relating to auctions as the Commission
2 considers appropriate. The examination shall be given at least twice each year in
3 Raleigh, and at such other times and places as the Commission designates, but no
4 person shall be allowed to take the examination within six months after having failed it
5 a second time.

6 Any person who has been in the auctioneer business in this State for at least two
7 years prior to the effective date of this act, and who makes proper application to the
8 Commission within one year after July 1, 1973, may be licensed as an auctioneer
9 without holding an apprentice license and serving as an apprentice of two years, and
10 without taking the examination required by this subsection. Any person who has
11 successfully completed the equivalent of at least 80 hours of classroom instruction in a
12 course in auctioneering at an institution approved by the Commission within 24 months
13 of the date of application may be licensed as an auctioneer without holding an
14 apprentice license and serving as an apprentice for two years, but must take the
15 examination required by this subsection and perform on it to the satisfaction of the
16 Commission.

17 Each applicant for an auctioneer license shall submit a written application in a form
18 approved by the Commission. If the applicant has been previously licensed as an
19 apprentice auctioneer, the application shall contain an evaluation by the applicant's
20 supervisor of his overall performance as an apprentice auctioneer ~~and his~~
21 performance in specific areas as requested by the Commission. If the applicant is
22 exempted from apprenticeship because he has completed the equivalent of at least 80
23 hours of classroom instruction in auctioneering, the application shall contain a transcript
24 of his course work in auctioneering. Each application shall be accompanied by
25 statements of at least two residents of ~~North Carolina~~ the community in which the
26 applicant resides attesting to the applicant's good moral character. The Commission may
27 require verification of any information included in an application for an auctioneer
28 ~~license~~ license and may request such other information or verification of information
29 provided as it may deem necessary to determine whether the applicant possesses the
30 good moral character or other qualifications for licensure.

31 (e) Each license issued under this Chapter shall be valid from July 1 of the year
32 issued, or from the date issued, whichever is later, to the following June 30 of the
33 ~~succeeding year and may be unless sooner revoked or suspended pursuant to this Chapter~~
34 or a rule of the Commission. A license may be renewed for one year at a time, except
35 an apprentice auctioneer license may not be renewed for more than three times. No
36 examination shall be required for renewal of an auctioneer license if the application for
37 renewal is made within ~~12~~ 24 months of the expiration of the previous license.

38 (f) No person shall be issued an auctioneer or apprentice auctioneer license until
39 he has made the contribution to the Auctioneer Recovery Fund as required by G.S. 85B-
40 4.1.

41 (g) ~~A sole proprietorship, partnership, or corporation which in the regular course~~
42 ~~of business promotes auctions, employs auctioneers to conduct auctions in its facilities,~~
43 ~~or uses or allows the use of its facilities for auctions, An auction firm~~ must be licensed
44 as an auctioneer business even though no owner or officer of that business acts as an

1 auctioneer. To be licensed as an ~~auctioneer business the sole proprietorship, partnership~~
2 ~~or corporation~~ an auction firm must make the contribution to the Auctioneer Recovery
3 Fund as required by G.S. 85B-4.1 and must pay the proper fees as set out in ~~G.S. 85B-6,~~
4 ~~but is not otherwise required to meet qualifications for an auctioneer license. G.S. 85B-~~
5 ~~6. Licensed auctioneer businesses shall be~~ Auction firms are covered by the provisions
6 of G.S. 85B-8.

7 An auction firm license issued by the Commission is restricted to the person named
8 in the license and does not inure to the benefit of any other person. Where a license is
9 issued to an auction firm, authority to transact business under the license is limited to
10 the person designated in the application and named in the license.

11 The designated person, prior to being licensed, shall be required to take a written
12 examination, approved by the Commission, and to demonstrate to the satisfaction of the
13 Commission, a thorough understanding of the law relating to the conduct of the auction
14 business and such other matters as the Commission may deem appropriate. An
15 individual who is licensed as an auctioneer and who is the designated person applying
16 for an auction firm license is not required to take the auction firm examination.
17 Licensed real estate brokers and real estate firms may be exempt from the auction firm
18 examination provided they employ or associate themselves with a licensed auctioneer to
19 handle those aspects of the transactions peculiar to the auctioneer profession. Provided
20 further, that any person who, or entity that, on the effective date of this Chapter, is duly
21 licensed as an auctioneer firm in good standing is not required to take any examination
22 in order to maintain or to renew such auction firm license provided that such license
23 does not otherwise expire or lapse and is not suspended or revoked by the Commission.

24 (h) ~~The Commission shall publish at least once a year a list of names and~~
25 ~~addresses of all persons, partnerships and corporations holding valid apprentice~~
26 ~~auctioneer or auctioneer licenses or designated as licensed auctioneer partnerships or~~
27 ~~corporations.~~ auctioneer, auctioneer, or auction firm licenses.

28 (i) The Commission may make such investigation as it deems necessary into the
29 ethical background of any applicant for licensure under this Chapter."

30 Sec. 5. G.S. 85B-4.1 reads as rewritten:

31 **"§ 85B-4.1. Auctioneer Recovery Fund.**

32 (a) In addition to the license fees provided for elsewhere in this Chapter, upon
33 the application for a license or the renewal of a license, or both, the Commission may
34 charge the applicant or licensee an amount not to exceed fifty dollars (\$50.00) per year
35 to be included in the Auctioneer Recovery Fund (hereinafter the Fund).

36 (b) ~~The purposes of the Fund shall be as follows:~~

37 (1) ~~When an auctioneer, apprentice auctioneer, or auctioneer business has~~
38 ~~been found guilty of violating any of the provisions of G.S. 85B or the~~
39 ~~rules promulgated thereunder, and upon the entry of a final agency~~
40 ~~decision by the Commission or if appealed, a court order, the~~
41 ~~Commission is authorized to pay the aggrieved party or parties an~~
42 ~~aggregate amount not to exceed ten thousand dollars (\$10,000) against~~
43 ~~any one auctioneer, apprentice auctioneer, or auctioneer business,~~
44 ~~provided that the auctioneer, apprentice auctioneer, or auctioneer~~

1 business has refused to pay such claim within a period of 20 days of
 2 entry of the final agency decision or court order and provided further
 3 that the amount or amounts of money in question are certain and
 4 liquidated.

5 (2) The Commission shall maintain a minimum level of one hundred
 6 thousand dollars (\$100,000) for recovery and guaranty purposes.
 7 These funds may be invested and reinvested by the State Treasurer in
 8 interest bearing accounts, such interest accrued being added to the
 9 Fund. Sufficient liquidity will be maintained so that there will be
 10 money available to satisfy any and all claims which may be processed
 11 through the Board. The Fund may be disbursed by a warrant drawn
 12 against the State Treasurer or other method at the discretion of the
 13 State Treasurer.

14 (3) The Commission, in its discretion, may use any and all funds in excess
 15 of one hundred thousand dollars (\$100,000) for the following
 16 purposes:

- 17 a. To carry out the advancement of education and research in the
 18 auctioneering profession for the benefit of those licensed under
 19 the provisions of this Chapter and the improvement of and
 20 making even more efficient the ~~industry~~ profession as such;
- 21 b. To underwrite educational seminars, training centers, and other
 22 forms of educational projects for the use and benefit generally
 23 of licensees;
- 24 c. To sponsor, contract for and to underwrite ~~any and all other~~
 25 educational and research projects of a similar nature having to
 26 do with the advancement of the auctioneer profession in North
 27 Carolina; ~~and~~
- 28 d. To cooperate with associations of auctioneers and any and all
 29 other groups for the enlightenment and advancement of the
 30 auctioneer profession of North ~~Carolina~~ Carolina; ~~and~~
- 31 e. To obtain investigative and related services as may, in the
 32 opinion of the Board, be necessary to investigate allegations of
 33 statutory or rule violations or other allegations of wrongdoing
 34 by licensees or applicants, or complaints otherwise related to
 35 the auctioneer profession."

36 Sec. 6. G.S. 85B-4.2 reads as rewritten:

37 "**§ 85B-4.2. ~~Special provisions.~~ Grounds for payment; notice and application to**
 38 **Commission.**

39 (a) ~~In the event that an auctioneer, apprentice auctioneer, or auctioneer business~~
 40 ~~is found guilty of violating any of the provisions of G.S. 85B or the rules promulgated~~
 41 ~~thereunder, and if the amount of money lost by the aggrieved party or parties is in~~
 42 ~~dispute or cannot be determined accurately, then the amount of damages shall be~~
 43 ~~determined by the superior court in the county where the alleged violation took place,~~

1 provided that the Board has previously determined that a violation of the license laws or
2 rules and regulations has occurred and a final agency decision has been entered.

3 (b) If such final agency decision has been entered and the rights of the licensee
4 have been finally adjudicated, then the superior court shall make a finding as to the
5 monetary damages growing out of the aforesaid violation or violations.

6 An aggrieved person who has suffered a monetary loss as a direct result of the
7 conversion of funds or property or other fraudulent act or conduct by a licensed
8 auctioneer, apprentice auctioneer or auction firm shall be eligible to seek compensation
9 from the Recovery Fund subject to the limitations of this Chapter and the amount of loss
10 which is otherwise unrecoverable provided that:

11 (1) The aggrieved person has sued the licensee in a court of competent
12 jurisdiction and has filed with the Commission written notice of such
13 lawsuit within 60 days after its commencement unless the total loss
14 claimed (excluding attorneys' fees) is less than two thousand five
15 hundred dollars (\$2,500), in which case the notice may be filed within
16 90 days after the termination of all judicial proceedings, including
17 appeals;

18 (2) The aggrieved person has obtained final judgment in a court of
19 competent jurisdiction against the licensee based upon conversion or
20 other fraudulent conduct arising out of a transaction which occurred
21 when such licensee was licensed by the Commission and was acting in
22 a capacity for which a North Carolina license is required;

23 (3) The aggrieved person was not himself engaged in any act or conduct
24 for which an auctioneer license is required and was not acting in
25 violation of any of the laws of the State of North Carolina or of the
26 United States; and

27 (4) Execution on the judgment has been issued and has been returned
28 unsatisfied in whole or in part.

29 Upon the termination of all judicial proceedings including appeals, and for a period of
30 one year thereafter, a person eligible for recovery may file a verified application with
31 the Commission for payment out of the Recovery Fund of the amount remaining unpaid
32 upon the judgment which represents the actual and direct loss sustained by reason of
33 conversion or other fraudulent conduct. A certified copy of the judgment and return of
34 execution shall be attached to the application and filed with the Commission. The
35 applicant shall serve upon the judgment debtor a copy of the application and shall file
36 with the Commission an affidavit or certificate of such service."

37 Sec. 7. Chapter 85B is amended by adding a new section to read:

38 "**§ 85B-4.3. Hearing; required showing.**

39 Upon such application by an aggrieved person, the Commission shall conduct a
40 hearing and the aggrieved person shall be required to show:

41 (1) He is not a spouse of the judgment debtor or a person representing
42 such spouse;

43 (2) He gave timely written notice of his lawsuit as required by G.S. 85B-
44 4.2;

- 1 (3) He is making application not more than one year after termination of
2 all judicial proceedings, including appeals, in connection with the
3 judgment;
4 (4) He has complied with all requirements of this Article;
5 (5) He has obtained a judgment as described in G.S. 85B-4.2 stating the
6 amount owing thereon at the date of application;
7 (6) He has made all reasonable searches and inquiries to ascertain whether
8 the judgment debtor is possessed of real or personal property or other
9 assets subject to be sold or applied in satisfaction of the judgment;
10 (7) That by such search he has discovered no real or personal property or
11 other assets subject to be sold or applied, or that he has discovered
12 certain of them, describing them, but that the amount so realized was
13 insufficient to satisfy the judgment, stating the amount realized and the
14 balance remaining due on the judgment after application of the amount
15 realized; and
16 (8) He has diligently pursued his remedies including attempted execution
17 on the judgment against all the judgment debtors which execution has
18 been returned unsatisfied. In addition to that, he knows of no assets of
19 the judgment debtor and that he has attempted collection from all other
20 persons who may be liable to him in the transaction for which he seeks
21 payment from the Recovery Fund if there be any such other persons."

22 Sec. 8. Chapter 85B is amended by adding a new section to read:

23 **"§ 85B-4.4. Response and defense by Commission and judgment debtor; proof of**
24 **conversion or other fraudulent act.**

25 (a) Whenever the Commission proceeds upon an application as set forth in this
26 Article, counsel for the Commission may defend such action on behalf of the Fund and
27 shall have recourse to all appropriate means of defense, including the examination of
28 witnesses. The judgment debtor may defend such action on his own behalf and shall
29 have recourse to all appropriate means of defense, including the examination of
30 witnesses. Within 30 days after service of the application, counsel for the Commission
31 and the judgment debtor may file responses thereto setting forth answers and defenses.
32 Responses shall be filed with the Commission and copies shall be served upon every
33 party by the filing party. If at any time it appears there are no triable issues of fact and
34 the application for payment from the Fund is without merit, the Commission shall
35 dismiss the application. A motion to dismiss may be supported by affidavit of any
36 person having knowledge of the facts and may be made on the basis that the application
37 or the judgment referred to therein do not form a basis for meritorious recovery within
38 the purview of G.S. 85B-4.2, that the applicant has not complied with the provisions of
39 this Article, or that the liability of the Fund with regard to the particular licensee or
40 transaction has been exhausted; provided, however, notice of such motion shall be given
41 at least 10 days prior to the time fixed for hearing.

42 (b) Whenever the judgment obtained by an applicant is by default, stipulation, or
43 consent, or whenever the action against the licensee was defended by a trustee in
44 bankruptcy, the applicant, for purposes of this Article, shall have the burden of proving

1 his cause of action for conversion of funds or property or other fraudulent conduct.
2 Otherwise, the judgment shall create a rebuttable presumption of conversion or other
3 fraudulent conduct. This presumption is a presumption affecting the burden of
4 producing evidence."

5 Sec. 9. Chapter 85B is amended by adding a new section to read:

6 **"§ 85B-4.5. Determination of certain small claims without a prior judicial**
7 **determination.**

8 Notwithstanding any other provisions of this Chapter, the Commission may, in its
9 discretion, order that payment be made from the Recovery Fund, without requiring a
10 prior judicial determination in any case where:

- 11 (1) The total loss claimed by the claimant is two thousand five hundred
12 dollars (\$2,500) or less;
- 13 (2) The amount of alleged loss is readily ascertainable rather than
14 speculative in nature;
- 15 (3) The alleged loss is one that is otherwise compensable under this
16 Chapter;
- 17 (4) The claimant filed a properly notarized complaint with the
18 Commission not more than one year following the date of the alleged
19 wrongful act or conduct of the licensee; and
- 20 (5) The Commission, in its discretion, determines that, based upon the
21 evidence presented, justice would be better served by allowing
22 compensation to be paid without first requiring the aggrieved party to
23 obtain a judgment from a court of competent jurisdiction."

24 Sec. 10. Chapter 85B is amended by adding a new section to read:

25 **"§ 85B-4.6. Order directing payment out of Fund; compromise of claims.**

26 (a) Applications for payment from the Recovery Fund shall be heard and decided
27 by a majority of the members of the Commission. If, after a hearing, the Commission
28 finds that the claim should be paid from the Fund, the Commission shall enter an order
29 requiring payment from the Fund of whatever sum the Commission shall find to be
30 payable upon the claim in accordance with the limitations contained in this Article.

31 (b) Subject to Commission approval, a claim based upon the application of an
32 aggrieved person may be compromised; however, the Commission shall not be bound in
33 any way by any compromise or stipulation of the judgment debtor."

34 Sec. 11. Chapter 85B is amended by adding a new section to read:

35 **"§ 85B-4.7. Limitations; pro rata distribution; attorney fees.**

36 (a) Payments from the Recovery Fund shall be subject to the following
37 limitations:

- 38 (1) The right to recovery under this Article shall be forever barred unless
39 timely notice is given as required by G.S. 85B-4.2(a)(1) and
40 application is made within one year after termination of all
41 proceedings including appeals, in connection with the judgment.
- 42 (2) The Fund shall not be liable for more than ten thousand dollars
43 (\$10,000) per transaction regardless of the number of persons
44 aggrieved.

1 (3) The liability of the Fund shall not exceed in the aggregate ten thousand
2 dollars (\$10,000) for any one licensee within a single calendar year,
3 and in no event shall it exceed in the aggregate twenty thousand
4 dollars (\$20,000) for any one licensee.

5 (4) The Fund shall not be liable for payment of any judgment awards of
6 consequential damages, multiple or punitive damages, civil penalties,
7 incidental damages, special damages, interest, costs of court or action
8 or other similar awards.

9 (b) If the maximum of the Fund is insufficient to pay in full the valid claims of
10 all aggrieved persons whose claims relate to the same transaction or to the same
11 licensee, the amount for which the Fund is liable shall be distributed among the
12 claimants in a ratio that their respective claims bear to the total of such valid claims or
13 in such manner as the Commission deems equitable. Upon petition of the Commission,
14 the Commission may require all claimants and prospective claimants to be joined in one
15 proceeding to the end that the respective rights of all such claimants to the Recovery
16 Fund may be equitably resolved."

17 Sec. 12. Chapter 85B is amended by adding a new section to read:

18 **§ 85B-4.8. Repayment to Fund; automatic suspension of license.**

19 Should the Commission pay from the Recovery Fund any amount in settlement of a
20 claim or toward satisfaction of a judgment against a licensee, the license of such
21 licensee shall be automatically suspended upon the effective date of the order
22 authorizing payment from the Fund. Such licensee shall not be eligible for
23 consideration for reinstatement until he has repaid in full, plus interest at the legal rate
24 as provided for in G.S. 24-1, the amount paid from the Recovery Fund."

25 Sec. 13. Chapter 85B is amended by adding a new section to read:

26 **§ 85B-4.9. Subrogation of rights.**

27 When the Commission has paid from the Recovery Fund any sum to the judgment
28 creditor, the Commission shall be subrogated to all of the rights of the judgment creditor
29 to the extent of the amount so paid and the judgment creditor shall assign all his right,
30 title, and interest in the judgment to the extent of the amount so paid to the Commission
31 and any amount and interest so recovered by the Commission on the judgment shall be
32 deposited in the Recovery Fund."

33 Sec. 14. Chapter 85B is amended by adding a new section to read:

34 **§ 85B-4.10. Waiver of rights.**

35 The failure of an aggrieved person to comply with this Chapter shall constitute a
36 waiver of any rights hereunder."

37 Sec. 15. Chapter 85B is amended by adding a new section to read:

38 **§ 85B-4.11. Persons ineligible to recover from Fund.**

39 No licensee who suffers the loss of any commission from any transaction in which
40 he was acting in the capacity of an auctioneer, apprentice auctioneer or auction firm
41 shall be entitled to make application for payment from the Recovery Fund for such loss.
42 Likewise, any person who suffers any monetary loss as a result of a joint business
43 venture of any sort with a licensee shall not be entitled to be compensated from the
44 Recovery Fund for such loss."

1 Sec. 16. Chapter 85B is amended by adding a new section to read:

2 "**§ 85B-4.12. Disciplinary action against licensee.**

3 Nothing contained in this Article shall limit the authority of the Commission to take
4 disciplinary action against any licensee under this Chapter, nor shall the repayment in
5 full of all obligations to the Fund by any licensee nullify or modify the effect of any
6 other disciplinary proceeding brought under this Chapter."

7 Sec. 17. G.S. 85B-5 reads as rewritten:

8 "**§ 85B-5. Licensing of nonresidents.**

9 (a) Any person who holds a valid auctioneer license in another state may apply
10 for and be granted a reciprocal North Carolina license if the resident state in which he is
11 licensed has minimum training and/or experience standards which are acceptable to the
12 Commission but are not more lenient than those required by this ~~Chapter.~~ Chapter,
13 provided further that such resident state extends similar reciprocal privileges to
14 auctioneers who are resident of and licensed by the State of North Carolina.

15 (b) An applicant under this section shall submit an application and such other
16 documentation and proof of eligibility for licensure as may be required by the
17 Commission, but shall not be required to take the examination required under G.S. 85B-4
18 ~~but~~ G.S. 85B-4. Such applicants shall pay the appropriate fee under G.S. 85B-6 and
19 shall file with the Commission an irrevocable consent that service on the ~~secretary~~
20 Executive Director of the Commission shall be sufficient service of process for actions
21 against the applicant by a resident of this State arising out of his auctioneering activities.

22 (c) An applicant under this section shall make the contribution to the Auctioneer
23 Recovery Fund as required by G.S. 85B-4.1. Any license issued under this section shall
24 be marked to indicate that its holder is a ~~nonresident.~~ nonresident reciprocal licensee.

25 (d) A license issued pursuant to this section shall be valid from the date of
26 issuance to the following June 30 and may be renewed from year to year unless
27 suspended or revoked pursuant to the provisions of this Chapter or rule of the
28 Commission, provided that the licensee continues to be a resident of and duly licensed
29 in good standing in his resident state.

30 (e) Any person licensed under this section shall notify the Commission of the
31 lapse, surrender, suspension, revocation or any other act amounting to a loss of license
32 in his resident state. Such a notice must be sent to the Commission, by certified mail,
33 return receipt requested, within 10 days of such occurrence.

34 (f) Any person licensed under this section shall provide the Commission with
35 written notice of any change of business address or residence within 10 days of such
36 occurrence.

37 (g) Any license issued under this section shall be immediately suspended or
38 revoked based upon the occurrence of any of the events set out in subsection (e) of this
39 section or based upon a change of principal state residence of the reciprocal licensee.

40 (h) Any person whose license is terminated as a result of his change of principal
41 state residence may reapply for reciprocal status provided he is otherwise eligible for
42 such license based upon his new state residence, and submits with his application such
43 fees as may be required by the Commission.

1 (i) Notwithstanding any other provision of this section, a reciprocal licensee who
2 subsequently becomes a domiciliary of the State of North Carolina may request, by
3 application, that his reciprocal license be converted to that of an in-State licensee
4 without having to take the State exam required by G.S. 85B-4. The Commission may,
5 however, require such applicant to pay such processing and application fees as it may
6 deem appropriate."

7 Sec. 18. G.S. 85B-6 reads as rewritten:

8 **"§ 85B-6. Fees; local governments not to charge fees or require licenses.**

9 (a) The Commission shall collect and remit to the State Treasurer fees in an
10 amount not to exceed the following: fifty dollars (\$50.00) ~~for nonrefundable~~ application
11 ~~fee~~ for apprentice auctioneer license; twenty-five dollars (\$25.00) nonrefundable
12 examination fee; ~~twenty-five dollars (\$25.00) fifty dollars (\$50.00)~~ for apprentice
13 auctioneer license for one year; ~~twenty-five dollars (\$25.00) for fifty dollars (\$50.00)~~
14 nonrefundable application fee for auctioneer license and twenty-five dollars (\$25.00)
15 nonrefundable fee for auctioneer examination; one hundred dollars (\$100.00) for
16 auctioneer license for one year; fifty dollars (\$50.00) nonrefundable application fee for
17 auction firm license; twenty-five dollars (\$25.00) nonrefundable auction firm
18 examination fee, and one hundred dollars (\$100.00) for auction firm license for one
19 year. ~~seventy-five dollars (\$75.00) for designation as licensed auctioneer business.~~

20 (b) The Commission shall charge a fee for reciprocal licenses issued pursuant to
21 G.S. 85B-5 commensurate with the fees set out for an auctioneer license in subsection
22 (a) of this section, or such fees as are levied upon North Carolina licensees by the
23 applicant's resident state, whichever is greater.

24 (c) No local government or agency of local government may charge any fees or
25 require any licenses for auctioneers, apprentice auctioneers, or auctioneer businesses in
26 addition to those set out in this ~~Chapter. Chapter,~~ nor place any unreasonable local
27 restrictions or prohibitions on the conduct of auctions.

28 (d) Notwithstanding any other provision herein, the Commission may impose an
29 additional reinstatement fee of not more than twenty-five dollars (\$25.00) for licensees
30 who apply for a renewal of their license after the license has expired. The renewal of a
31 lapsed license shall not be retroactive in effect and shall not limit the authority of the
32 courts or the Commission to take disciplinary action against any licensee who engages
33 in the auction profession while his license is lapsed."

34 Sec. 19. G.S. 85B-7 reads as rewritten:

35 **"§ 85B-7. Conduct of auction.**

36 (a) No ~~person~~-licensee shall conduct an auction in this State without first having a
37 written agreement with the owner of any property to be sold. The agreement must
38 contain the terms and conditions upon which the auctioneer received the goods for sale.
39 The ~~auctioneer~~-licensee shall provide the owner with ~~one~~ a signed copy of the agreement
40 and shall keep at least one copy for his own records for two years from the date of the
41 agreement. ~~A written agreement shall not be required for a sale at auction if the sale is made at~~
42 ~~an auction house or similar place where members of the public are generally offered the~~
43 ~~opportunity to present goods for sale, there has been no prior negotiation between the owner~~
44 ~~and the auctioneer, and the goods are not sold for more than five hundred dollars (\$500.00).~~

1 Copies of all contracts shall be made available to the Commission or its designated
2 agent upon request.

3 (b) ~~Each auctioneer-licensee shall maintain a record book and enter in it, upon~~
4 ~~receipt of goods for auction and before their sale, the name and address of the person~~
5 ~~who employed him to sell the goods at auction and the name and address of the owner~~
6 ~~of the goods to be sold. It shall not be necessary to enter in the record book any record of~~
7 ~~sales made at an auction house or similar place where members of the public are generally~~
8 ~~offered the opportunity to present goods for sale, there has been no prior negotiation between~~
9 ~~the owner and the auctioneer, and the goods are not sold for more than five hundred dollars~~
10 ~~(\$500.00). The record book shall be open for inspection by the Commission or its~~
11 ~~designated agent at reasonable times.~~

12 (c) ~~Each auctioneer-licensee shall have his license available at each auction he~~
13 ~~conducts.~~

14 (d) Each licensee shall maintain a sales record book or ledger which identifies the
15 purchaser of all goods sold by name, address and, when possible, telephone number.
16 The sales record shall contain an adequate description of the items sold and must be
17 sufficient to positively identify the owner of the property. The sales record shall be
18 maintained for a period of not less than two years from the date of sale. Sales records
19 shall be open for inspection by the Commission or its designated agent at reasonable
20 times."

21 Sec. 20. Chapter 85B is amended by adding a new section to read:

22 "**§ 85B-7.1. Handling clients' funds.**

23 (a) Each licensee shall maintain a trust or escrow account and shall deposit in
24 such account all monies received for the benefit of another person. Such funds shall be
25 deposited with an insured bank or savings and loan association located in North
26 Carolina.

27 (b) Each licensee shall maintain, for not less than five years, complete records
28 showing the deposit, maintenance and withdrawal of trust or escrow funds. The
29 Commission or its designated agent may inspect these records periodically, without
30 prior notice and may also inspect these records whenever the Commission determines
31 that they are pertinent to an investigation of any specific complaint against a licensee."

32 Sec. 21. Chapter 85B-8 reads as rewritten:

33 "**§ 85B-8. Prohibited acts; suspension or revocation of license.**

34 (a) The following shall be grounds for denial, suspension or revocation of an
35 auctioneer or apprentice auctioneer license: auctioneer, auctioneer apprentice, or auction
36 firm license:

- 37 (1) Any violation of this Chapter or any violation of a rule or regulation
38 duly adopted by the Commission;
- 39 (2) A continued and flagrant course of misrepresentation or making false
40 promises, either by the ~~auctioneer-licensee~~, an employee of the
41 licensee, or by someone acting in his behalf and with his consent;
- 42 (3) Any failure to account for or to pay over within a reasonable time, not
43 to exceed 30 days, money belonging to another which has come into
44 the ~~auctioneer's~~ licensee's possession through an auction sale;

- 1 (4) Any false, misleading or untruthful advertising;
- 2 (5) Any act of conduct in connection with a sales transaction which
- 3 demonstrates bad faith or dishonesty;
- 4 (6) Knowingly using false bidders, cappers or pullers, or knowingly
- 5 making a material false statement for license; or representation;
- 6 (7) Commingling the money or property of a client with his own or failing
- 7 to maintain and deposit in a trust or escrow account in an insured bank
- 8 or savings and loan association located in North Carolina money
- 9 received for another person through sale at auction.
- 10 (8) Failure to make the required contribution to the Auctioneer Recovery
- 11 Fund.
- 12 (9) The commission or conviction of a crime that is punishable as a felony
- 13 offense under the laws of North Carolina or the laws of the jurisdiction
- 14 where committed or convicted, or the commission of any act involving
- 15 fraud or moral turpitude;
- 16 (10) Giving a check to the Board in payment of required fees which is
- 17 returned unpaid;
- 18 (11) Allowing an unlicensed bid caller (auctioneer) to call a bid at an
- 19 auction;
- 20 (12) Calling a bid at an unlicensed auction firm sale;
- 21 (13) Failure to properly, completely and fully complete an application or
- 22 making any false statement or giving any false information in
- 23 connection with an application for a license, renewal or reinstatement
- 24 of a license or any investigation by the Board or the Board's designee;
- 25 (14) Being adjudicated mentally incompetent by a court;
- 26 (15) Violation of any federal or state statute or rule which relates to the
- 27 auctioneering profession;
- 28 (16) Practicing the profession for which the holder has a license while the
- 29 holder's ability to practice was impaired by alcohol or other drugs or
- 30 physical or mental disability or disease;
- 31 (17) Being incompetent in practice. A licensee has been incompetent in
- 32 practice if the licensee engaged in conduct which evidences a lack of
- 33 ability, fitness or knowledge to apply principles or skills of the
- 34 auctioneering profession;
- 35 (18) Engaging in unprofessional conduct. For purposes of this subdivision
- 36 'unprofessional conduct' means the violation of any standard of
- 37 professional behavior which through professional experience has
- 38 become established in the auctioneering profession;
- 39 (19) Obtaining or attempting to obtain compensation by fraud or deceit;
- 40 (20) Violation of any order of the Auctioneer Licensing Commission;
- 41 (21) Failure to possess truth, honesty, and integrity sufficient to be entitled
- 42 to the high regard and confidence of the public;
- 43 (22) Failure to properly make any disclosures or to provide documents or
- 44 information required by this Chapter or by the Commission;

1 (23) A demonstrated lack of financial responsibility; or

2 (24) A history of intemperate habits, violent temper or other character trait
3 which would impair the applicant's or licensee's ability to deal with
4 clients and/or the general public in a professional manner.

5 (b) to (d) Repealed by Session Laws 1973, c. 1195, s. 5.

6 (e) The Commission may upon its own motion or upon the complaint in writing
7 of any person, provided the complaint and any evidence presented with it establishes a
8 **prima facie** case, hold a hearing and investigate the actions of any ~~auctioneer or~~
9 ~~apprentice auctioneer~~ auctioneer, apprentice auctioneer, or auction firm, or any person
10 who holds himself out as an auctioneer or apprentice auctioneer, and shall have the
11 power to suspend or revoke any license issued under the provisions of this Chapter.
12 Chapter, or to reprimand or censure any licensee. In all proceedings for the denial,
13 suspension or revocation of licenses, the provisions of Chapter 150B of the General
14 Statutes including provisions relating to summary suspension shall be applicable. Any
15 person who desires to appeal the denial of an application for any license authorized to
16 be issued under this Chapter shall file a written appeal with the Commission not later
17 than 30 days following notice of denial.

18 (f) A person whose license has been denied, suspended or revoked may not
19 apply in his own name or in any other manner within the period during which the order
20 of denial, suspension or revocation is in effect, and no firm, partnership or corporation
21 in which any such person has a substantial interest or exercises management
22 responsibility or control may be licensed during such period. No auctioneer or firm
23 shall employ any person who has been denied a license, or has had his license
24 suspended or revoked until after the expiration of any specified period of denial,
25 suspension or revocation of license."

26 Sec. 22. G.S. 85B-9(b) reads as rewritten:

27 "(b) The Commission may in its own name seek injunctive relief in the General
28 Court of Justice to restrain any violation or anticipated violation of the provisions of
29 ~~G.S. 85B-4(a).~~ G.S. 85B-4(a) or any violation of this Chapter."

30 Sec. 23. This act is effective upon ratification.