

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 530  
Committee Substitute Favorable 4/24/91

Short Title: Auctions/Auctioneers Act.

(Public)

Sponsors:

Referred to:

April 1, 1991

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

The General Assembly of North Carolina enacts:

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

**§ 85B-1. Definitions.**

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

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

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

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

(4) 'Absolute Auction' means the sale of real or personal property at auction whereby the item offered for auction will be sold to the highest

1 bidder without reserve, without the requirement of any minimum bid,  
2 and without competing bids of any type by the owner, or agent of the  
3 owner, of the property.

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

6 (6) 'Auction Firm' means a sole proprietorship of which the owner is not a  
7 licensed auctioneer, or any partnership, association, or corporation, not  
8 otherwise exempt from this Chapter, that sells either directly or  
9 through agents, real or personal property at auction, or that arranges,  
10 sponsors, manages, conducts or advertises auctions, or that in the  
11 regular course of business uses or allows the use of its facilities for  
12 auctions. This definition applies whether or not an owner or officer of  
13 the business acts as an auctioneer."

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

15 **"§ 85B-2. Activities governed by Chapter.**

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

18 (1) Sales at auction conducted by the owner of all of the goods or real  
19 estate being offered, or an attorney representing the owner, unless the  
20 owner's regular course of business includes engaging in the sale of  
21 goods or real estate by means of auction or unless the owner originally  
22 acquired the goods for the purposes of resale at auction;

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

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

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

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

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

35 (7) Sale at auction of automobiles conducted under the provisions of G.S.  
36 20-77, or sale at auction of motor vehicles by a motor vehicle dealer  
37 licensed under Article 12, Chapter 20 of the General Statutes;

38 (8) Sale at auction of a particular ~~brand-breed~~ of livestock conducted by an  
39 auctioneer who specializes in the sale of that ~~brand-breed~~ when such  
40 sale is conducted under the auspices of a livestock trade association;  
41 provided that the sale is regulated by the Packers and Stockyards Act  
42 and the auctioneer is required to be bonded by the United States  
43 Department of Agriculture;

- 1 (9) Sales conducted by and on behalf of any charitable or religious  
2 organization; organization if the person conducting the sale receives no  
3 compensation therefor;  
4 (9a) Sales conducted by and on behalf of a civic club, not exceeding one  
5 sale per year;  
6 (10) Sales conducted by a trustee pursuant to a power of sale contained in a  
7 deed of trust on real property;  
8 (11) Sales of collateral, sales conducted to enforce carriers' or  
9 warehousemen's liens, bulk sales, sales of goods by a presenting bank  
10 following dishonor of a documentary draft, resales of rightfully  
11 rejected goods, resales of goods by an aggrieved seller, or other  
12 resales conducted pursuant to authority in Articles 2, 4, 6, 7 and 9 of  
13 Chapter 25 of the General Statutes (the Uniform Commercial Code).

14 (b) Notwithstanding any other provision of subdivisions (2), (4), (9), (9a) and  
15 (11) of this section, any person or entity who is engaged in the business of organizing,  
16 arranging or conducting auction sales for compensation must be licensed in accordance  
17 with the provisions of this Chapter."

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

19 **"§ 85B-3. Auctioneers Commission.**

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

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

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

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

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

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

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

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

11 "**§ 85B-4. Licenses required.**

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

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

- 18 (1) Is under 18 years of age;
- 19 (2) Repealed by Session Laws 1983, c. 751, s. 6, effective August 1, 1983.
- 20 (3) Has within the preceding five years pleaded guilty ~~to~~ to, entered a plea  
21 of **nolo contendere** or been convicted of any felony; or felony, or  
22 committed or been convicted of any act involving fraud or moral  
23 turpitude;
- 24 (4) Has had an auctioneer or apprentice auctioneer or auction firm license  
25 revoked. ~~revoked;~~ or
- 26 (5) Has, within the preceding five years, committed any act which  
27 constitutes grounds for license suspension or revocation under this  
28 Chapter or a duly adopted Commission rule.

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

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

40 (c2) No person may be licensed as an apprentice auctioneer unless he first takes a  
41 written examination, approved by the Commission, and demonstrates to the satisfaction  
42 of the Commission, a thorough understanding of the law relating to auctioneers and  
43 such other matters as the Commission may deem appropriate. Provided, however, that  
44 any person who, on the effective date of this Chapter, is duly licensed as an apprentice

1 auctioneer in good standing shall not be required to take or to pass an examination in  
2 order to maintain or to renew his apprentice auctioneer license provided that he is not  
3 otherwise ineligible to have such license renewed and such license is not otherwise  
4 lapsed, suspended or revoked by the Commission.

5 (d) No person shall be licensed as an auctioneer unless he has held an apprentice  
6 auctioneer license and served as an apprentice auctioneer for the two preceding years,  
7 accumulated sufficient knowledge and experience in such areas of the auctioneer  
8 profession as the Commission may deem appropriate, and has taken an examination  
9 approved by the Commission and performed on it to the satisfaction of the Commission.  
10 The examination shall test the applicant's understanding of the law relating to  
11 auctioneers and auctions, ethical practices for auctioneers, the mathematics applicable to  
12 the auctioneer business, and such other matters relating to auctions as the Commission  
13 considers appropriate. The examination shall be given at least twice each year in  
14 Raleigh, and at such other times and places as the Commission designates, but no  
15 person shall be allowed to take the examination within six months after having failed it  
16 a second time.

17 Any person who has been in the auctioneer business in this State for at least two  
18 years prior to the effective date of this act, and who makes proper application to the  
19 Commission within one year after July 1, 1973, may be licensed as an auctioneer  
20 without holding an apprentice license and serving as an apprentice of two years, and  
21 without taking the examination required by this subsection. Any person who has  
22 successfully completed the equivalent of at least 80 hours of classroom instruction in a  
23 course in auctioneering at an institution approved by the Commission may be licensed  
24 as an auctioneer without holding an apprentice license and serving as an apprentice for  
25 two years, but must take the examination required by this subsection and perform on it  
26 to the satisfaction of the Commission.

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

41 (e) Each license issued under this Chapter shall be valid from July 1 of the year  
42 issued, or from the date issued, whichever is later, to the following June 30 of the  
43 ~~succeeding year and may be unless sooner revoked or suspended pursuant to this Chapter~~  
44 or a rule of the Commission. A license may be renewed for one year at a time, except

1 an apprentice auctioneer license may not be renewed for more than three times. No  
2 examination shall be required for renewal of an auctioneer license if the application for  
3 renewal is made within ~~12~~24 months of the expiration of the previous license.

4 (f) No person shall be issued an auctioneer or apprentice auctioneer license until  
5 he has made the contribution to the Auctioneer Recovery Fund as required by G.S. 85B-  
6 4.1.

7 (g) ~~A sole proprietorship, partnership, or corporation which in the regular course~~  
8 ~~of business promotes auctions, employs auctioneers to conduct auctions in its facilities,~~  
9 ~~or uses or allows the use of its facilities for auctions, An auction firm must be licensed~~  
10 as an auctioneer business even though no owner or officer of that business acts as an  
11 auctioneer. To be licensed as ~~an auctioneer business the sole proprietorship, partnership~~  
12 ~~or corporation an auction firm~~ must make the contribution to the Auctioneer Recovery  
13 Fund as required by G.S. 85B-4.1 and must pay the proper fees as set out in ~~G.S. 85B-6,~~  
14 ~~but is not otherwise required to meet qualifications for an auctioneer license. G.S. 85B-~~  
15 ~~6. Licensed auctioneer businesses shall be Auction firms are~~ covered by the provisions  
16 of G.S. 85B-8.

17 An auction firm license issued by the Commission is restricted to the persons named  
18 in the license and does not inure to the benefit of any other person. Where a license is  
19 issued to an auction firm, authority to transact business under the license is limited to  
20 the person or persons designated in the application and named in the license.

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

35 (h) The Commission shall publish at least once a year a list of names and  
36 addresses of all persons ~~sole proprietorships, partnerships and corporations holding~~  
37 ~~valid apprentice auctioneer or auctioneer licenses or designated as licensed auctioneer~~  
38 ~~partnerships or corporations. auctioneer, auctioneer, or auction firm licenses.~~

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

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

42 "**§ 85B-4.1. Auctioneer Recovery Fund.**

43 (a) In addition to the license fees provided for elsewhere in this Chapter, upon  
44 the application for a license or the renewal of a license, or both, the Commission may

1 charge the applicant or licensee an amount not to exceed fifty dollars (\$50.00) per year  
2 to be included in the Auctioneer Recovery Fund (hereinafter the Fund).

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

4 (1) ~~When an auctioneer, apprentice auctioneer, or auctioneer business has~~  
5 ~~been found guilty of violating any of the provisions of G.S. 85B or the~~  
6 ~~rules promulgated thereunder, and upon the entry of a final agency~~  
7 ~~decision by the Commission or if appealed, a court order, the~~  
8 ~~Commission is authorized to pay the aggrieved party or parties an~~  
9 ~~aggregate amount not to exceed ten thousand dollars (\$10,000) against~~  
10 ~~any one auctioneer, apprentice auctioneer, or auctioneer business,~~  
11 ~~provided that the auctioneer, apprentice auctioneer, or auctioneer~~  
12 ~~business has refused to pay such claim within a period of 20 days of~~  
13 ~~entry of the final agency decision or court order and provided further~~  
14 ~~that the amount or amounts of money in question are certain and~~  
15 ~~liquidated.~~

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

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

- 28 a. To carry out the advancement of education and research in the  
29 auctioneering profession for the benefit of those licensed under  
30 the provisions of this Chapter and the improvement of and  
31 making even more efficient the ~~industry~~ profession as such;
- 32 b. To underwrite educational seminars, training centers, and other  
33 forms of educational projects for the use and benefit generally  
34 of licensees;
- 35 c. To sponsor, contract for and to underwrite ~~any and all other~~  
36 educational and research projects of a similar nature having to  
37 do with the advancement of the auctioneer profession in North  
38 Carolina; ~~and~~
- 39 d. To cooperate with associations of auctioneers and any and all  
40 other groups for the enlightenment and advancement of the  
41 auctioneer profession of North ~~Carolina~~ Carolina."

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

43 "**§ 85B-4.2. Special provisions. Grounds for payment; notice and application to**  
44 **Commission.**"

1 (a) ~~In the event that an auctioneer, apprentice auctioneer, or auctioneer business~~  
2 ~~is found guilty of violating any of the provisions of G.S. 85B or the rules promulgated~~  
3 ~~thereunder, and if the amount of money lost by the aggrieved party or parties is in~~  
4 ~~dispute or cannot be determined accurately, then the amount of damages shall be~~  
5 ~~determined by the superior court in the county where the alleged violation took place,~~  
6 ~~provided that the Board has previously determined that a violation of the license laws or~~  
7 ~~rules and regulations has occurred and a final agency decision has been entered.~~

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

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

16 (1) The aggrieved person has sued the licensee in a court of competent  
17 jurisdiction and has filed with the Commission written notice of such  
18 lawsuit within 60 days after its commencement unless the total loss  
19 claimed (excluding attorneys' fees) is less than two thousand five  
20 hundred dollars (\$2,500), in which case the notice may be filed within  
21 90 days after the termination of all judicial proceedings, including  
22 appeals;

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

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

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

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

42 Sec. 7. Chapter 85B of the General Statutes is amended by adding a new  
43 section to read:

44 **"§ 85B-4.3. Hearing; required showing.**



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

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

28 Sec. 8. Chapter 85B of the General Statutes is amended by adding a new  
29 section to read:

30 **"§ 85B-4.4. Response and defense by Commission and judgment debtor; proof of**  
31 **conversion or other fraudulent act.**

32 (a) Whenever the Commission proceeds upon an application as set forth in this  
33 Article, counsel for the Commission may defend such action on behalf of the Fund and  
34 shall have recourse to all appropriate means of defense, including the examination of  
35 witnesses. The judgment debtor may defend such action on his own behalf and shall  
36 have recourse to all appropriate means of defense, including the examination of  
37 witnesses. Within 30 days after service of the application, counsel for the Commission  
38 and the judgment debtor may file responses thereto setting forth answers and defenses.  
39 Responses shall be filed with the Commission and copies shall be served upon every  
40 party by the filing party. If at any time it appears there are no triable issues of fact and  
41 the application for payment from the Fund is without merit, the Commission shall  
42 dismiss the application. A motion to dismiss may be supported by affidavit of any  
43 person having knowledge of the facts and may be made on the basis that the application  
44 or the judgment referred to therein do not form a basis for meritorious recovery within

1 the purview of G.S. 85B-4.2, that the applicant has not complied with the provisions of  
2 this Article, or that the liability of the Fund with regard to the particular licensee or  
3 transaction has been exhausted; provided, however, notice of such motion shall be given  
4 at least 10 days prior to the time fixed for hearing.

5 (b) Whenever the judgment obtained by an applicant is by default, stipulation, or  
6 consent, or whenever the action against the licensee was defended by a trustee in  
7 bankruptcy, the applicant, for purposes of this Article, shall have the burden of proving  
8 his cause of action for conversion of funds or property or other fraudulent conduct.  
9 Otherwise, the judgment shall create a rebuttable presumption of conversion or other  
10 fraudulent conduct. This presumption is a presumption affecting the burden of  
11 producing evidence."

12 Sec. 9. Chapter 85B of the General Statutes is amended by adding a new  
13 section to read:

14 **"§ 85B-4.5. Determination of certain small claims without a prior judicial**  
15 **determination.**

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

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

32 Sec. 10. Chapter 85B of the General Statutes is amended by adding a new  
33 section to read:

34 **"§ 85B-4.6. Order directing payment out of Fund; compromise of claims.**

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

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

43 Sec. 11. Chapter 85B of the General Statutes is amended by adding a new  
44 section to read:

1 **"§ 85B-4.7. Limitations; pro rata distribution; attorneys' fees.**

2 (a) Payments from the Recovery Fund shall be subject to the following  
3 limitations:

- 4 (1) The right to recovery under this Article shall be forever barred unless  
5 timely notice is given as required by G.S. 85B-4.2(a)(1) and  
6 application is made within one year after termination of all  
7 proceedings including appeals, in connection with the judgment.
- 8 (2) The Fund shall not be liable for more than ten thousand dollars  
9 (\$10,000) per transaction regardless of the number of persons  
10 aggrieved.
- 11 (3) The liability of the Fund shall not exceed in the aggregate ten thousand  
12 dollars (\$10,000) for any one licensee within a single calendar year,  
13 and in no event shall it exceed in the aggregate twenty thousand  
14 dollars (\$20,000) for any one licensee.
- 15 (4) The Fund shall not be liable for payment of any judgment awards of  
16 consequential damages, multiple or punitive damages, civil penalties,  
17 incidental damages, special damages, interest, costs of court or action  
18 or other similar awards.

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

27 Sec. 12. Chapter 85B of the General Statutes is amended by adding a new  
28 section to read:

29 **"§ 85B-4.8. Repayment to Fund; automatic suspension of license.**

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

36 Sec. 13. Chapter 85B of the General Statutes is amended by adding a new  
37 section to read:

38 **"§ 85B-4.9. Subrogation of rights.**

39 When the Commission has paid from the Recovery Fund any sum to the judgment  
40 creditor, the Commission shall be subrogated to all of the rights of the judgment creditor  
41 to the extent of the amount so paid and the judgment creditor shall assign all his right,  
42 title, and interest in the judgment to the extent of the amount so paid to the Commission  
43 and any amount and interest so recovered by the Commission on the judgment shall be  
44 deposited in the Recovery Fund."

1           Sec. 14. Chapter 85B of the General Statutes is amended by adding a new  
2 section to read:

3 **"§ 85B-4.10. Waiver of rights.**

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

6           Sec. 15. Chapter 85B of the General Statutes is amended by adding a new  
7 section to read:

8 **"§ 85B-4.11. Persons ineligible to recover from Fund.**

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

15           Sec. 16. Chapter 85B of the General Statutes is amended by adding a new  
16 section to read:

17 **"§ 85B-4.12. Disciplinary action against licensee.**

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

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

23 **"§ 85B-5. Licensing of nonresidents.**

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

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

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

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

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

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

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

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

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

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

22 "**§ 85B-6. Fees; local governments not to charge fees or require licenses.**

23 (a) The Commission shall collect and remit to the State Treasurer fees in an  
24 amount not to exceed the following: fifty dollars (\$50.00) for application for apprentice  
25 auctioneer license; twenty-five dollars (\$25.00) for apprentice auctioneer license for one  
26 year; twenty-five dollars (\$25.00) for application for auctioneer license and for  
27 examination; one hundred dollars (\$100.00) for auctioneer license for one year; seventy-  
28 five dollars (\$75.00) for designation as licensed auctioneer business.

29 (b) No local government or agency of local government may charge any fees or  
30 require any licenses for auctioneers, apprentice auctioneers, or auctioneer businesses in  
31 addition to those set out in this ~~Chapter.~~ Chapter, nor place any local restrictions or  
32 prohibitions on the conduct of auctions."

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

34 "**§ 85B-7. Conduct of ~~auetion.~~ auetion; records.**

35 (a) ~~No person-licensee shall conduct an auction in this State without first having a~~  
36 ~~written agreement with the owner of any property to be sold. The agreement must~~  
37 ~~contain the terms and conditions upon which the auctioneer received the goods for sale.~~  
38 ~~The ~~auetioneer~~-licensee shall provide the owner with ~~one~~ a signed copy of the agreement~~  
39 ~~and shall keep at least one copy for his own records for two years from the date of the~~  
40 ~~agreement. A written agreement shall not be required for a sale at auction if the sale is made at~~  
41 ~~an auction house or similar place where members of the public are generally offered the~~  
42 ~~opportunity to present goods for sale, there has been no prior negotiation between the owner~~  
43 ~~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~~ accounting records and  
4 enter in it, ~~them,~~ upon receipt of goods for auction and before their sale, the name and  
5 address of the person who employed him to sell the goods at auction and the name and  
6 address of the owner of the goods to be sold. ~~It shall not be necessary to enter in the record~~  
7 book ~~any record of sales made at an auction house or similar place where members of the~~  
8 public are generally offered the opportunity to present goods for sale, there has been no prior  
9 negotiation between the owner and the auctioneer, and the goods are not sold for more than five  
10 hundred dollars (\$500.00). ~~The record book~~ accounting records shall be open for  
11 inspection by the Commission or its 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 records which identify the purchaser of all goods  
15 sold by name, address, and when possible, telephone number. The sales records shall  
16 contain an adequate description of the items sold and must be sufficient to positively  
17 identify the owner of the property. Sales records shall be maintained for a period of not  
18 less than two years from the date of sale. Sales records shall be open for inspection by  
19 the Commission or its designated agent at reasonable times."

20 Sec. 20. Chapter 85B of the General Statutes is amended by adding a new  
21 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; ~~denial, suspension~~ suspension, or revocation of license.**

34 (a) The following shall be grounds for denial, ~~suspension~~ suspension, or  
35 revocation of an ~~auctioneer or apprentice auctioneer~~ license: auctioneer, auctioneer  
36 apprentice, or auction 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~~ 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~~ auCTION;
- 10 (8) Failure to make the required contribution to the Auctioneer Recovery
- 11 ~~Fund~~ 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) Failure to properly make any disclosures or to provide documents or
- 17 information required by this Chapter or by the Commission;
- 18 (11) A demonstrated lack of financial responsibility; or
- 19 (12) A history of intemperate habits, violent temper, or other character trait
- 20 which would impair the applicant's or licensee's ability to deal with
- 21 clients and/or the general public in a professional manner.

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

23 (e) The Commission may upon its own motion or upon the complaint in writing

24 of any person, provided the complaint and any evidence presented with it establishes a

25 **prima facie** case, hold a hearing and investigate the actions of any ~~auCTIONEER~~ or

26 ~~apprentice auCTIONEER~~ apprentice auctioneer, or auction firm, or any person

27 who holds himself out as an auctioneer or apprentice auctioneer, and shall have the

28 power to suspend or revoke any license issued under the provisions of this ~~Chapter~~

29 Chapter, or to reprimand or censure any licensee. In all proceedings for the denial,

30 suspension ~~suspension~~, or revocation of licenses, the provisions of Chapter 150B of the

31 General Statutes including provisions relating to summary suspension shall be

32 applicable. Any person who desires to appeal the denial of an application for any

33 license authorized to be issued under this Chapter shall file a written appeal with the

34 Commission not later than 30 days following notice of denial.

35 (f) A person whose license has been denied, suspended, or revoked may not

36 apply in his own name or in any other manner within the period during which the order

37 of denial, suspension, or revocation is in effect, and no firm, partnership, or corporation

38 in which any such person has a substantial interest or exercises management

39 responsibility or control may be licensed during such period."

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

41 "(b) The Commission may in its own name seek injunctive relief in the General

42 Court of Justice to restrain any violation or anticipated violation of the provisions of

43 ~~G.S. 85B-4(a)~~ G.S. 85B-4(a) or any violation of this Chapter."

44 Sec. 23. This act becomes effective January 1, 1992.