

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

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HOUSE BILL 1271

Short Title: Amend Auctioneer Licensing Laws.

(Public)

Sponsors: Representative Culpepper.

Referred to: Judiciary IV.

April 19, 2005

1 A BILL TO BE ENTITLED  
2 AN ACT TO AMEND CERTAIN LAWS PERTAINING TO AUCTIONS AND  
3 AUCTIONEERS.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 85B-1 is amended by adding the following new  
6 subdivisions to read:

7 "§ 85B-1. Definitions.

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

9 ...

10 (8) 'Auctioneering', 'Conduct of Auction', or 'Conduct of Business' means,  
11 in addition to the actual calling of bids, any of the following:

12 a. Contracting for auction.

13 b. Accepting consignments of items for sale at auction.

14 c. Advertising an auction.

15 d. Offering items for sale at auction.

16 e. Accepting payment or disbursing monies for items sold at  
17 auction.

18 f. Otherwise soliciting, arranging, sponsoring, or managing an  
19 auction or holding oneself out as an auctioneer or auction firm.

20 (9) 'Consignment' means, unless otherwise modified by written agreement,  
21 the act of delivering or transferring goods or real estate in fact or  
22 constructively to an auctioneer or the auctioneer's agent in trust for the  
23 purpose of resale at auction whereby title does not pass to the buyer  
24 until there is an action indicating a sale. For purposes of this section,  
25 consignment may also mean a bailment for sale.

26 (10) 'Designated person' means any person approved by the Board to have  
27 the authority to transact business for a licensed auction firm."

28 SECTION 2. G.S. 85B-2(b) reads as rewritten:

1       "(b) The exceptions provided in subdivisions (2), (4), (9), (9a) and (11) of  
2 subsection (a) of this section shall not apply to any person or entity engaged in the  
3 business of organizing, arranging, or conducting auction sales for  
4 compensation or any person who or entity that accepts consignments to  
5 be sold at auction."

6           **SECTION 3.** G.S. 85B-2 is amended by adding the following new  
7 subsection to read:

8       "(c) The exceptions provided in subdivision (7) of subsection (a) of this section  
9 shall not apply to any auctioneer licensed pursuant to this Chapter employed to be an  
10 auctioneer of motor vehicles for a licensed motor vehicle dealer, while conducting an  
11 auction for that dealer."

12           **SECTION 4.** G.S. 85B-4(d) reads as rewritten:

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

25       Any person who has successfully completed the equivalent of at least 80 hours of  
26 classroom instruction in a course in auctioneering at an institution whose curriculum  
27 and instructors meet the qualifications approved or established by the Commission may  
28 be licensed as an auctioneer without holding an apprentice license and serving as an  
29 apprentice for two years, but shall take the examination required by this subsection and  
30 perform on it to the satisfaction of the Commission.

31       Each applicant for an auctioneer license shall submit a written application in a form  
32 approved by the Commission, pay all applicable fees, and consent in writing to a  
33 criminal history check as required by G.S. 85B-3.2. If the applicant has been previously  
34 licensed as an apprentice auctioneer, the application shall contain an evaluation by the  
35 applicant's supervisor of the applicant's performance as an apprentice auctioneer and the  
36 applicant's performance in specific areas as required by the Commission. If the  
37 applicant is exempted from apprenticeship after completion of the equivalent of at least  
38 80 hours of classroom instruction in auctioneering, the application shall contain a  
39 transcript of the applicant's course work in auctioneering. Each application shall be  
40 accompanied by statements of at least two residents of the community in which the  
41 applicant resides attesting to the applicant's good moral character. The Commission may  
42 require verification of any information included in an application for an auctioneer  
43 license and may request other information or verification of information provided to

1 determine whether the applicant possesses the good moral character or other  
2 qualifications for licensure."

3 **SECTION 5.** G.S. 85B-7 reads as rewritten:

4 "**§ 85B-7. Conduct of auction; records.**

5 (a) No licensee shall conduct an auction in this State without first having a  
6 written agreement with the owner of any property to be sold. The agreement must  
7 contain the terms and conditions upon which the auctioneer received the goods for sale.  
8 The licensee shall provide the owner with a signed copy of the agreement and shall keep  
9 at least one copy for his own records for two years from the date of the agreement.  
10 Copies of all contracts shall be made available to the Commission or its designated  
11 agent upon request.

12 (b) Each licensee shall maintain ~~accounting~~ consignment records and enter in  
13 them, upon receipt of goods for auction and before ~~their~~ sale, the name and address of  
14 the person who employed the licensee to sell the goods at auction and the name and  
15 address of the owner of the goods to be sold. The consignment record shall contain an  
16 adequate description of the goods to be sold and shall be sufficient to positively identify  
17 each item. ~~The accounting~~ Consignment records shall be open for inspection by the  
18 Commission or its designated agent at reasonable times.

19 (c) All licensees shall have their licenses available at each auction they conduct.

20 (d) Each licensee shall maintain ~~records~~ sales records, which identify the  
21 purchaser of all goods sold by name, address, and when possible, telephone number.  
22 The sales records shall contain an adequate description of the items sold and must be  
23 sufficient to positively identify the owner of the property. Sales records shall be  
24 maintained for a period of not less than two years from the date of sale. Sales records  
25 shall be open for inspection by the Commission or its designated agent at reasonable  
26 times."

27 **SECTION 6.** G.S. 85B-7.1(a) reads as rewritten:

28 "(a) Each licensee who does not disburse all funds to the seller on auction day  
29 shall maintain a trust or escrow account and shall deposit in the account all funds that  
30 are received for the benefit of another person and are not disbursed to the seller on  
31 auction day. The licensee shall deposit funds that are not disbursed on auction day with  
32 an insured bank or savings and loan association located in North Carolina. ~~A licensee~~  
33 ~~who disburses funds on auction day shall prepare a receipt or settlement statement for~~  
34 ~~the disbursed funds that contains the name and address of the person receiving the~~  
35 ~~disbursement and the amount of the disbursement. The receipt or statement shall be~~  
36 ~~signed by the licensee and the person receiving the disbursement.~~ At or before the time  
37 of all final settlements, the auctioneer shall provide the seller or consignor with a  
38 settlement statement, which includes a description of all goods sold, the selling price of  
39 the goods sold, the net proceeds due to the seller or consignor, the name and address of  
40 the person receiving the disbursement, and the amount of the disbursement. All  
41 settlement statements shall be signed by the licensee or the licensee's agent and by the  
42 person receiving the disbursement."

43 **SECTION 7.** G.S. 85B-8(e) reads as rewritten:

1       "(e) The Commission may investigate complaints and conduct hearings as  
2 follows:

- 3           (1) The Commission may upon its own motion or upon the complaint in  
4 writing of any person, provided the complaint and any evidence  
5 presented with it establishes a prima facie case, hold a hearing and  
6 investigate the actions of any auctioneer, apprentice auctioneer, or  
7 auction firm, or any person who holds himself or herself out as an  
8 auctioneer or apprentice auctioneer, and shall have the power to  
9 impose a civil penalty on any licensee, suspend or revoke any license  
10 issued under the provisions of this Chapter, or to reprimand or censure  
11 any licensee. In all proceedings for the imposition of a civil penalty or  
12 the denial, suspension, or revocation of licenses, the provisions of  
13 Chapter 150B of the General Statutes including provisions relating to  
14 summary suspension shall be applicable. Any person who desires to  
15 appeal the denial of an application for any license authorized to be  
16 issued under this Chapter shall file a written appeal with the  
17 Commission not later than 30 days following notice of denial.
- 18           (2) The Commission may, upon its own motion, summarily suspend a  
19 license when the health, safety, or welfare of the public is at risk, such  
20 as in the event of a potential loss of consigned items or potential loss  
21 of funds."

22       **SECTION 8.** This act is effective when it becomes law.