

1 SB389
2 197406-1
3 By Senator Gudger
4 RFD: Governmental Affairs
5 First Read: 07-MAY-19

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8 SYNOPSIS: Under existing law, the State Board of
9 Auctioneers is responsible for the licensing and
10 regulation of auctioneers and apprentice
11 auctioneers.

12 This bill would provide further for the
13 qualifications for licensure and grounds for
14 denying a license.

15 This bill would provide for the issuance of
16 a single use auction license annually.

17 This bill would establish inactive status
18 for a licensee and for the restoration of an
19 inactive license.

20 This bill would prohibit the reciprocal
21 licensing of an apprentice auctioneer.

22 This bill would provide further for the
23 conduct of auctions without a license, would
24 specify certain conditions regarding auction
25 companies, and would provide further for the
26 actions required of auctioneers in the conduct of
27 auctions.

1 This bill would provide further for
2 instances in which disciplinary actions are
3 warranted, and would authorize the board to employ
4 an investigator to investigate actions of
5 licensees, issue complaints, and hold hearings
6 pursuant to the Alabama Administrative Procedure
7 Act.

8 This bill would provide further for the
9 appeal of a final decision of the board.

10 This bill would also provide further for the
11 membership of the board, would make each board
12 member accountable to the Governor, and would
13 provide further for meetings and a quorum.

14
15 A BILL
16 TO BE ENTITLED
17 AN ACT

18
19 To amend Sections 34-4-21, 34-4-23, 34-4-25,
20 34-4-27, 34-4-28, 34-4-29, 34-4-30, 34-4-31, 34-4-33, 34-4-50,
21 and 34-4-52, Code of Alabama 1975, relating to the State Board
22 of Auctioneers and the licensing of auctioneers; to provide
23 further for the qualifications for licensure and grounds for
24 denying a license; to provide for the issuance of a single use
25 auction license; to establish inactive status and provide for
26 the restoration of an inactive license; to prohibit the
27 reciprocal licensing of an apprentice auctioneer; to provide

1 further for the conduct of auctions without a license, specify
2 certain conditions regarding auction companies, and provide
3 further for the actions required of auctioneers in the conduct
4 of auctions; to provide further for instances in which
5 disciplinary actions are warranted; to authorize the board to
6 employ an investigator to investigate actions of licensees,
7 issue a complaint, and hold hearings pursuant to the Alabama
8 Administrative Procedure Act; to provide further for the
9 appeal of a final decision of the board; to provide further
10 for the membership of the board and to make each board member
11 accountable to the Governor; to provide further for meetings
12 of the board and a quorum; and to repeal Section 34-4-22, Code
13 of Alabama 1975, relating to the register of applicants.

14 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

15 Section 1. Sections 34-4-21, 34-4-23, 34-4-25,
16 34-4-27, 34-4-28, 34-4-29, 34-4-30, 34-4-31, 34-4-33, 34-4-50,
17 and 34-4-52 of the Code of Alabama 1975, are amended to read
18 as follows:

19 "§34-4-21.

20 "(a) Any person desiring to enter into the auction
21 business and obtain a license as an auctioneer or apprentice
22 auctioneer shall make written application for a license to the
23 board. Each application shall be accompanied by an examination
24 fee of an amount not to exceed one hundred fifty dollars
25 ~~(\$100)~~ (\$150), as set by rule of the board, which shall be
26 collected from each applicant to defray the expenses of the

1 examination. The application shall be submitted on forms
2 prepared and furnished by the board.

3 "(b) (1) Each applicant for a license as an
4 auctioneer shall be 19 years of age or over, and each
5 applicant for a license as an apprentice auctioneer shall be
6 18 years of age or over and shall be a citizen of the United
7 States or legally present in this state. Each applicant for an
8 auctioneer's license shall:

9 ~~"(1) have completed a prescribed course of study at~~
10 ~~an accredited auctioneering school approved by the board; a.~~
11 Have successfully graduated from an accredited public high
12 school, an accredited private high school, or a home school
13 instruction program or obtained a general equivalency diploma.

14 ~~"(2) have b. Have served one year as an apprentice~~
15 ~~auctioneer under the supervision of a licensed auctioneer in~~
16 ~~this state; (3) have been the principal auctioneer in at least~~
17 ~~five auctions of either real or personal property during this~~
18 ~~period of time; and (4) furnish satisfactory proof of these~~
19 ~~requirements to the board and have successfully completed a~~
20 course of study consisting of not less than 85 hours of
21 classroom instruction in the fundamentals of auctioneering
22 that satisfies the requirements of the board.

23 "(2) An application shall also be accompanied by a
24 recommendation of an employing auctioneer. If an applicant has
25 not sucessfully completed ~~a~~ an approved course of study ~~at an~~
26 ~~accredited auctioneering school~~ that satisfies the
27 requirements of the board, then he or she shall be required to

1 serve two years as an apprentice under the supervision of a
2 licensed auctioneer, ~~and shall have been the principal~~
3 ~~auctioneer in at least 10 auctions of real or personal~~
4 property in this state.

5 "(c) (1) Any person who files ~~an~~ a complete
6 application with the board in the proper manner shall be
7 entitled to take an ~~oral and written~~ examination to determine
8 his or her qualifications. The board ~~shall~~ may require
9 applicants to take and pass ~~a written and oral~~ an examination
10 establishing, in a manner satisfactory to the board, that the
11 applicant has a general knowledge of ethics, reading, writing,
12 spelling, elementary arithmetic, ~~elementary principles of land~~
13 ~~economics,~~ and ~~a general knowledge of the statutes of this~~
14 state relating to ~~the bulk sales,~~ auctions, ~~brokerage,~~ and
15 this chapter. The examination for an auctioneer's license
16 shall be of a more exacting nature and scope than the
17 examination for an apprentice auctioneer.

18 "(2) The board ~~shall,~~ through application and
19 examination, shall determine whether the applicant is of good
20 repute, trustworthy, honest, and competent to transact the
21 business of an auctioneer, or of an apprentice auctioneer, in
22 a manner that safeguards the interest of the public.

23 "(3) The board shall require, and it shall be the
24 responsibility of any applicant for an initial, renewal, or
25 reciprocal license to disclose any prior ~~felony~~ conviction,
26 ~~any prior misdemeanor conviction involving moral turpitude,~~
27 any pending criminal arrest of any nature except misdemeanor

1 traffic violations, and any prior or pending disciplinary
2 proceedings against the applicant before a board of
3 auctioneers or real estate commission in this or any other
4 state. Where an applicant has been convicted of a crime in a
5 court of competent jurisdiction of this or any other district,
6 state, or territory of the United States or of a foreign
7 country, the untrustworthiness of the applicant and the
8 conviction, in itself, may be sufficient grounds for refusal
9 of a license.

10 "(4) All auctioneers, apprentice auctioneers, and
11 auction ~~firms~~ companies are under a continuing duty to report
12 to the board any and all ~~such~~ criminal arrests, charges,
13 convictions, or disciplinary proceedings which they may incur,
14 as well as any civil suits involving them. The board ~~must~~
15 shall receive notice of any ~~such~~ arrest, charge, criminal
16 conviction, or commencement of disciplinary proceedings within
17 30 days of its occurrence. Notice of the commencement of any
18 civil suit ~~must~~ shall be received by the board within 30 days
19 after service of the complaint upon the defendant in the
20 action.

21 "(d) The board may grant a single auction license
22 once per calendar year to any nonresident individual, who is
23 duly licensed in good standing as an auctioneer, or to an
24 auction company in another state, who makes written
25 application to the board and provides satisfactory proof of
26 all of the following:

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

3 "(2) The applicant has paid a fee as established by
4 rule of the board.

5 "(3) The applicant has not applied for or previously
6 obtained a license under this chapter.

7 "(4) The applicant is not the subject of a
8 disciplinary action in any state; has not had a professional
9 license or business license for any company in which he or she
10 is a principal in this, or any other licensing jurisdiction,
11 disciplined, suspended, revoked, or denied; has not been
12 convicted of a criminal offense; and has no criminal charges
13 pending in any jurisdiction.

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

23 ~~(d)~~(e) The license fee for each auctioneer or
24 auction company shall be an amount to be determined by the
25 board, not to exceed two hundred fifty dollars (\$250), and the
26 license fee for each apprentice auctioneer shall be an amount
27 to be determined by the board, not to exceed one hundred fifty

1 dollars ~~(\$100)~~ (\$150). The license fees ~~for an auctioneer~~
2 shall not be increased more than twenty-five dollars (\$25) in
3 any given year.

4 "~~(e)~~ (f) All licenses shall expire on September 30 of
5 each year following issuance thereof and may be renewed upon
6 payment of the appropriate license fee as required by this
7 chapter. Renewal of a license may be effected at any time
8 during the months preceding the date of expiration. No
9 examination shall be required for the renewal of any license,
10 unless the license has been revoked or suspended. If a
11 licensee fails to renew his or her license by the deadline of
12 each year, he or she may ~~have~~ renew his or her license ~~renewed~~
13 within 60 days after the expiration date, upon payment of the
14 required fee and a late fee of twenty-five dollars (\$25) for
15 apprentices and fifty dollars (\$50) for auctioneers and
16 auction companies. If a licensee elects not to pay the penalty
17 and renew his or her license, he or she shall be required to
18 submit an application, pay the examination fee, and take the
19 examination required for new licensees.

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

1 "~~(g)~~ (h) The board shall prepare and deliver to each
2 licensee a license certificate and pocket card. The
3 certificate shall be displayed openly at all times in the
4 office of the licensee. The certificate and the pocket card of
5 the apprentice auctioneer shall contain his or her name as
6 well as that of the auctioneer under whose supervision he or
7 she is employed.

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

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

1 board. Each prior license shall be returned or accounted for
2 to the board and be canceled before the issuance of the new
3 license. The board may require other proof considered
4 desirable with due regard to the paramount interest of the
5 public in the issuance of the license.

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

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

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

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

7 "§34-4-23.

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

13 "§34-4-25.

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

1 "auctioneer" and "apprentice auctioneer" shall include any
2 individual, firm, company, partnership, association, or
3 corporation by whom the "auctioneer" or "apprentice
4 auctioneer" is employed.

5 "(b) The board may recognize a license issued by any
6 other state to a resident of this state or a nonresident
7 auctioneer ~~or apprentice auctioneer~~ if the other state
8 reciprocates with Alabama in like manner and if the licensing
9 requirements of the state include the passing of an
10 examination of equal or higher standards than those required
11 by this state. The nonresident licensee, or resident licensee
12 of another state, shall, however, be required to secure a
13 license from the board which shall be issued upon application
14 therefor, accompanied by payment of the license fee required
15 by this chapter and the filing of a certified copy of the
16 license of the applicant issued by the other state.

17 "(c) The board ~~shall have the authority to~~ may
18 impose any fee or licensing requirements on applicants for
19 licenses from a reciprocal state that the reciprocal state
20 imposes on Alabama licensees by rule, regulation, policy, or
21 law.

22 "(d) Every applicant shall file an irrevocable
23 consent that actions may be commenced against the applicant in
24 the proper court in the county in this state in which a cause
25 of action may arise, in which the plaintiff may reside, by
26 service of any process or pleadings authorized by laws of this
27 state on the board, or a deputy to be designated by the board,

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

20 "§34-4-27.

21 "Each auctioneer shall annually pay one state
22 license in an amount not to exceed two hundred fifty dollars
23 (\$250). Each auctioneer shall also annually pay a county
24 license fee of twenty-five dollars (\$25) in each county where
25 he or she sells by auction. No privilege license shall be
26 required for any apprentice auctioneer when he or she is
27 listed as the principal auctioneer. No license shall be

1 required for any auctioneer who conducts an auction, without
2 compensation for himself or herself, where all proceeds from
3 the auction go to the benefit of any charitable organization.
4 The term "auctioneer" shall include any person selling real
5 estate, goods, wares, merchandise, automobiles, livestock, or
6 other things of value by or at public outcry auction. Sales at
7 public ~~outcry~~ auction involving any of the following may be
8 ~~made conducted~~ for compensation without a license involving
9 ~~any of the following~~:

10 "(1) Sales at auction conducted by the owner of any
11 part of the goods or real estate being offered, or an attorney
12 representing the owner, unless the owner acquired the goods to
13 resell.

14 ~~"(1)~~ (2) Sales for the estate of a decedent by an
15 administrator, executor, or any person acting under order of
16 any court or the attorney of an administrator, executor, or
17 any person acting under order of any court.

18 ~~"(2)~~ (3) Sales of property conveyed by deed of trust,
19 mortgage, judgment, or ordered to be sold according to the
20 mortgage, judgment, ~~or~~ order, or decree.

21 ~~"(3)~~ (4) All sales under legal process.

22 "§34-4-28.

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

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

21 "(c) No licensed auction company may hire an
22 unlicensed auctioneer to conduct any auction business, nor
23 shall any licensed auctioneer conduct an auction for an
24 unlicensed auction company in this state.

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

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

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

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

20 "(4) Provide a closing statement to the seller or
21 consignor giving a full accounting of all proceeds received
22 and disbursements made relative to the auction. A closing
23 statement shall contain the date and location of the auction
24 and the name, license number, and signature of the licensee
25 responsible for the auction. A closing statement shall be
26 provided within 30 days after the auction. A properly prepared

1 HUD-1 statement, or equivalent, satisfies the requirements of
2 this section for the sale of real property.

3 "(5) Display the name and license number of the
4 auctioneer in all advertising for the auction. In the case of
5 an apprentice auctioneer, all advertising shall also contain
6 the name and license number of the sponsor. An auction company
7 shall display the name and license number of the auctioneer
8 named in the license in any and all advertisements.

9 "(6) Ensure that all advertising is accurate and
10 truthful.

11 "(7) Maintain complete and accurate documents,
12 books, and records of all transactions concerning every
13 auction for a period of five years after the date on which the
14 seller or consignor contracted with the auctioneer or the
15 auction was conducted, whichever is later. The documents,
16 books, and records shall be made available for inspection by
17 the board, or its authorized personnel or representatives,
18 upon request. Failure to produce the requested documents,
19 books, records, or copies thereof within 30 days after request
20 of the board shall be grounds for disciplinary action by the
21 board.

22 "(8) Assume responsibility, as the sponsoring
23 auctioneer, for the acts of any apprentice in the conduct of
24 auction business and be present at every auction to directly
25 supervise the apprentice.

26 "§34-4-29.

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

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

9 ~~"(c)~~ (b) The board may ~~suspend or revoke any license~~
10 ~~which has been issued based on false or fraudulent~~
11 ~~representations. The board may also suspend or revoke the~~
12 ~~license of any licensee for~~ invoke disciplinary action
13 whenever it shall be established to the satisfaction of the
14 board, after a hearing as hereinafter provided, that any
15 licensee is guilty of any of the following acts:

16 (1) Making any substantial misrepresentation.

17 (2) Pursuing a continued and flagrant course of
18 misrepresentation or making false promises through agents,
19 advertising, or otherwise.

20 (3) Accepting valuable consideration as an
21 apprentice auctioneer for the performance of any of the acts
22 specified in this chapter from any person other than his or
23 her employer auctioneer.

24 (4) Failing to account for or remit, within ~~a~~
25 ~~reasonable time~~ 30 days, any money belonging to others that
26 comes into his or her possession, commingling funds of others

1 with his or her own, or failing to keep funds of others in an
2 escrow or trustee account.

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

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

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

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

13 "(9) ~~Any conduct of any auctioneer which~~
14 ~~demonstrates~~ Demonstrating bad faith, dishonesty,
15 incompetency, or untruthfulness.

16 "(10) ~~Any conduct of any auctioneer which~~
17 ~~demonstrates~~ Demonstrating improper, fraudulent, or dishonest
18 dealings.

19 "(11) Having had any license to practice a business
20 or profession in this or any other state or jurisdiction
21 revoked, suspended, annulled, sanctioned, or otherwise having
22 any disciplinary action taken against him or her by any other
23 licensing authority in this or any other state.

24 "~~(11)~~ (12) Failing ~~prior to~~ before the sale at public
25 auction, to enter into a written contract with the owner or
26 cosignee of ~~any~~ the property to be sold containing the terms

1 and conditions upon which the licensee received the property
2 for sale.

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

7 ~~"(13)~~ (14) Presenting a worthless check to the board.

8 "(15) Filing frivolous, unfounded complaints with
9 the board.

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

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

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

15 "(c) When the board finds any licensee guilty of any
16 of the grounds set forth in subsection (b), the board may
17 enter an order imposing one or more of the following
18 penalties:

19 "(1) A letter of reprimand.

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

22 "(3) Denial of an application for an initial or
23 renewal license.

24 "(4) Suspension of a license for a period of time
25 established by the board, with or without automatic
26 reinstatement.

27 "(5) Revocation of a license.

1 "(6) Imposing continuing education requirements in
2 the area or areas in which the licensee has been found
3 deficient.

4 "(7) Assessment of the costs of any disciplinary
5 proceedings on the licensee.

6 "(d) Before denying an application for license or
7 suspending or revoking any license, the board shall hold a
8 hearing and shall, at least 21 days ~~prior to~~ before the date
9 set for the hearing, notify in writing the accused licensee of
10 the charges made or the question to be determined, including
11 notice of the time and place of the hearing, and afford the
12 licensee an opportunity to be present, be heard in person or
13 by counsel, and to offer evidence orally, or by affidavit or
14 deposition. Written notice may be served by delivery of the
15 notice personally to the applicant or licensee or by mailing
16 the notice by registered or certified mail to the last known
17 mailing address of the applicant or licensee. If the applicant
18 or licensee is an apprentice auctioneer, the board shall also
19 notify the auctioneer employing him or her, or whose employ he
20 or she is about to enter, by mailing notice by registered or
21 certified mail to the auctioneer's last known address. The
22 hearing shall be held at a time and place prescribed by the
23 board and shall proceed in accordance with the Alabama
24 Administrative Procedure Act. The board may deny any applicant
25 for an apprentice auctioneer or auctioneer license the right
26 to take an examination for a period of up to one year if the
27 applicant is found by the board to have conducted auction

1 business within this state as an apprentice auctioneer or
2 auctioneer without first having been properly licensed.

3 "(e) In addition to the disciplinary powers granted
4 in this section, the board may levy and collect administrative
5 fines from any person for ~~serious~~ violations of this chapter
6 or the rules ~~and regulations~~ of the board of not less than
7 ~~\$200~~ five hundred dollars (\$500) or more than ~~\$500~~ two
8 thousand five hundred dollars (\$2,500) for each violation.

9 "(f) The board may seek an injunction against any
10 person in violation of this chapter in addition to the
11 penalties and disciplinary powers otherwise conferred upon the
12 board herein. In an action for an injunction, the board may
13 demand and recover a civil penalty of fifty dollars (\$50) per
14 day for each violation, reasonable attorney fees, and court
15 costs.

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

20 "§34-4-30.

21 "(a) The board may administer oaths and prescribe
22 all necessary and reasonable rules for the conduct of a
23 hearing. The board may take testimony of any person by
24 deposition, with the same fees and mileage and in the same
25 manner as prescribed by law in judicial procedure of courts of
26 this state in civil cases. The fees and mileage shall be paid
27 by the party at whose request the witness is subpoenaed.

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

4 ~~"(c)(b) The affirmative vote of a majority of the~~
5 ~~members of the board shall be necessary to revoke or suspend a~~
6 ~~license~~ required before any disciplinary action may be taken
7 against a licensee in accordance with this chapter.

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

13 "§34-4-31.

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

27 "§34-4-33.

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

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

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

1 ~~notice of appeal is filed. The action shall be conducted in~~
2 ~~accordance with the Alabama Rules of Civil Procedure.~~

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

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

17 ~~"§34-4-50.~~

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

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

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

24 "(c) On the appointment of a new auctioneer board
25 member, the board shall, at its next meeting, elect one of its
26 members as chair, one member as vice-chair, one member as
27 secretary, and any other officers deemed necessary. The board

1 may do all things necessary and convenient for carrying into
2 effect this chapter. The board may make bylaws, rules, and
3 regulations not inconsistent with this chapter or other
4 general laws of the state.

5 "(d) Except as otherwise provided in Section
6 34-4-53, members of the board, board staff, and board
7 attorneys shall receive the same per diem and travel allowance
8 paid to state employees for each day they meet to conduct the
9 official business of the board.

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

18 "(f) The board shall provide by rule for the
19 investigation of any auction activity that is being promoted,
20 managed, or supervised by unlicensed individuals in violation
21 of this chapter and may employ an investigator to assist the
22 board in enforcement of the laws, rules, and policies adopted
23 thereunder. The investigator shall be employed on the basis of
24 his or her education, experience, and skills in law
25 enforcement. The board shall determine the duties and fix the
26 compensation of the investigator, subject to the general laws
27 of the state.

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

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

20 "§34-4-52.

21 "~~The board shall meet at least four times each year,~~
22 ~~in January, April, July, and October,~~ quarterly for the
23 purpose of transacting business as may properly come before
24 the board. Special meetings of the board shall be held at such
25 times as the board may provide in the bylaws the board may
26 adopt. ~~Four~~ A majority of the then appointed board members
27 shall constitute a quorum at a board meeting. A majority vote

1 of a quorum of the board eligible to vote on a matter shall be
2 required for any action taken by the board. Due notice of each
3 meeting and the time and place thereof shall be given each
4 member in such manner as the bylaws and applicable law may
5 provide."

6 Section 2. Section 34-4-22, Code of Alabama 1975,
7 requiring the board to keep a register of applicants, is
8 repealed.

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