

NORTH CAROLINA GENERAL ASSEMBLY
1973 SESSION

CHAPTER 552
HOUSE BILL 1107

AN ACT TO ESTABLISH A COMMISSION TO LICENSE AND REGULATE
AUCTIONEERS.

The General Assembly of North Carolina enacts:

Section 1. Definitions. For the purposes of this act the following definitions shall apply:

(a) "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.

(b) "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 act for apprentice auctioneers.

Sec. 2. Activities governed by act. This act shall apply to all auctions held in this State except the following:

(a) sales at auction conducted by the owner of all or any part of the goods being offered, or his attorney, unless the owner originally acquired the goods for the purpose of resale at auction;

(b) sales at auction conducted by or under the direction of any public authority;

(c) sales at auction pursuant to a judicial order or in the settlement of a decedent's estate;

(d) any sale required by law to be at auction;

(e) sale of livestock at a public livestock market authorized by the Commissioner of Agriculture;

(f) leaf tobacco sales conducted in accordance with the provisions of Chapter 106 of the General Statutes;

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

(h) sale at auction of a particular brand of livestock conducted by an auctioneer who specializes in the sale of that brand when such sale is conducted under the auspices of a livestock trade association;

(i) sales conducted by and on behalf of any charitable or religious organization if the person conducting the sale receives no compensation therefor;

(j) sales conducted by a trustee pursuant to a power of sale contained in a deed of trust on real property;

(k) sales of collateral, sales conducted to enforce carriers' or warehousemen's liens, bulk sales, sales of goods by a presenting bank following dishonor of a documentary draft, resales of rightfully rejected goods, resales of goods by an aggrieved seller, or other resales conducted pursuant to authority in Articles 2, 4, 6, 7 and 9 of Chapter 25 of the General Statutes (the Uniform Commercial Code).

Sec. 3. Auctioneers Commission, (a) There shall be a five member North Carolina Auctioneers Commission having the powers and responsibilities set out in this act. The Governor shall appoint the members of the Commission, at least three of whom, and their successors, shall be from nominations submitted by the Auctioneers Association of North Carolina. The Auctioneers Association shall submit, within 45 days of when the vacancy occurs, at least three names for each position for which it is entitled to make a nomination. Of the initial five members of the Commission one shall be appointed for a one-year term, two shall be appointed for two-year terms and two for three-year terms; thereafter, each new member shall be appointed for a term of three years. Any vacancy shall be filled for the remainder of the unexpired term only. Each member shall continue in office until his successor is appointed and qualified.

(b) At least three of the first five members of the Commission shall be experienced auctioneers. Beginning July 1, 1975, at least three members of the Commission must be licensed auctioneers.

(c) The Commission shall employ a secretary-treasurer and such other employees as needed to carry out the duties of this act. All employees shall serve at the pleasure of the Commission.

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

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

(f) The Commission shall receive and act upon applications for auctioneer licenses, issue and suspend and revoke licenses, adopt rules and regulations for auctioneers and auctions, and take such other actions as may be necessary to see that the provisions of this act are carried out.

(g) Members of the Commission shall be entitled to the per diem and travel expense allowances of G.S. 138-5 when working on Commission business.

Sec. 4. License required. (a) No person shall sell, or offer his services to sell, goods or real estate at auction in this State unless he holds a currently valid auctioneer or apprentice auctioneer license.

(b) No person shall be licensed as an apprentice auctioneer or as an auctioneer if he:

- (1) is under 18 years of age;
- (2) is not a resident of North Carolina;
- (3) has within the preceding five years pleaded guilty to or been convicted of any felony; or
- (4) has had an auctioneer or apprentice auctioneer license revoked.

(c) Each applicant for an apprentice auctioneer license shall submit a written application in a form approved by the Commission and containing at least two statements by residents of North Carolina attesting to the applicant's good moral character. To receive a license, the applicant must take an examination approved by the Commission and perform on it to the satisfaction of the Commission. The examination shall test the applicant's understanding of the law relating to auctioneers and auctions, ethical practices for auctioneers, and the mathematics applicable to the auctioneer business. The examination shall be given at least twice each year in Raleigh, and at such other times and places as the Commission designates, but no person shall be allowed to take the examination within six months after having failed it a second time.

Each apprentice auctioneer application and license shall name a licensed auctioneer to serve as the supervisor of the apprentice. No apprentice auctioneer may enter into an agreement to conduct an auction, or conduct an auction, without the express approval of his supervisor. The supervisor shall regularly review the records his apprentice is required to maintain under Section 7 of this act and see that they are accurate and current.

(d) No person shall be licensed as an auctioneer unless he has held an apprentice auctioneer license and served as an apprentice auctioneer for the two preceding years, except that any person who has been in the auctioneer business in this State for at least two years prior to the effective date of this act, and who makes proper application to the Commission within one year after the effective date of this act, may be licensed as an auctioneer without holding an apprentice license for two years.

Each applicant for an auctioneer license shall submit a written application in a form approved by the Commission. If the applicant has been previously licensed as an apprentice auctioneer, the application shall contain an evaluation by the applicant's supervisor of his performance as an apprentice auctioneer. If the applicant is exempted from the requirement of having been an apprentice auctioneer, the application shall give in detail his experience as an auctioneer.

Each application shall be accompanied by statements of at least two residents of North Carolina attesting to the applicant's good moral character. The Commission may require verification of any information included in an application for an auctioneer license.

(e) Each apprentice auctioneer and auctioneer license shall be valid for one year and may be renewed for one year at a time except that an apprentice auctioneer license may not be renewed more than three times. No examination shall be required for renewal of an apprentice auctioneer license if the application for renewal is made within 90 days of the expiration of the previous license.

(f) No person shall be issued an auctioneer license until he has filed with the Commission an approved bond with the applicant as principal, payable to the State of North Carolina, in the amount of five thousand dollars (\$5,000). No person shall be issued an apprentice auctioneer license until he has filed with the Commission an approved bond with the applicant as principal, payable to the State of North Carolina, in the amount of one thousand dollars (\$1,000). In each case, the bond shall have as surety a surety company authorized to do business in this State. The bond shall be conditioned for the faithful performance of all contracts relating to sale at auction, and shall be made available for the benefit of any person contracting with the named principal for the holding of sale at auction for damages suffered by reason of the misconduct of the principal in failing to hold or holding the sale. Claim shall be made to the Commission on its form and payment must be made by the surety company on order of the Commission.

(g) A partnership or corporation upon application in a form approved by the Commission, may be designated a "licensed auctioneer partnership" or a "licensed auctioneer corporation" if one or more partners or officers, respectively, is licensed as an auctioneer. Any promotional material of the partnership or corporation which refers to its designation as a licensed auctioneer business must also give the name of each person associated with that business who is a licensed apprentice auctioneer or auctioneer.

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

Sec. 5. Licensing of nonresidents. Any person who holds a valid auctioneer license in another state may apply for and be granted a North Carolina license if the state in which he is licensed provides similar recognition to a license granted by this state. An applicant under this Section shall not be required to take the examination required under Section 4 but shall pay the appropriate fee under Section 6 and shall file with the Commission an irrevocable consent that service on the secretary of the Commission shall be sufficient service of process for actions against the applicant by a resident of this State arising out of his auctioneering activities.

An applicant under this section shall not be required to file the bond required under Section 4 if he is currently bonded as an auctioneer or apprentice auctioneer in his home state. Any license issued under this section shall be marked to indicate that its holder is a nonresident.

An auctioneer who is a resident of Virginia or South Carolina and who has conducted at least five auctions in this State in the preceding two years may be licensed under this section notwithstanding the fact that his state does not have an auctioneering licensing requirement. This exception to the requirement of holding a license in the auctioneer's home state shall be inapplicable if and when an auctioneer licensing law becomes effective in the applicant's home state.

Sec. 6. Fees. The Commission shall collect and remit to the State Treasurer the following fees: fifty dollars (\$50.00) for application for apprentice auctioneer license and for examination; twenty-five dollars (\$25.00) for apprentice auctioneer license for one year; twenty-five dollars (\$25.00) for application for auctioneer license; one hundred dollars (\$100.00) for auctioneer license for one year; seventy-five dollars (\$75.00) for designation as licensed auctioneer partnership or corporation.

No local government or agency of local government may charge any auctioneer fees or require any auctioneer licenses in addition to those set out in this act.

Sec. 7. Conduct of auction, (a) No person shall conduct an auction in this State without first having a written agreement with the owner of any property to be sold. The agreement must contain the terms and conditions upon which the auctioneer received the goods for sale. The auctioneer shall provide the owner with one copy of the agreement and shall keep at least one copy for his own records for two years from the date of the agreement. A written agreement shall not be required for a sale at auction if the sale is made at an auction house or similar place where members of the public are generally offered the opportunity to present goods for sale, there has been no prior negotiation between the owner and the auctioneer, and the goods are not sold for more than five hundred dollars (\$500.00).

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

(c) Each auctioneer shall have his license available at each auction he conducts.

Sec. 8. Prohibited acts; revocation of license. (a) The following shall be grounds for suspension or revocation of an auctioneer or apprentice auctioneer license:

- (1) any violation of this act;
- (2) a continued and flagrant course of misrepresentation or making false promises, either by the auctioneer or by someone acting in his behalf and with his consent;
- (3) any failure to account for or to pay over within a reasonable time, not to exceed 30 days, money belonging to another which has come into the auctioneer's possession through an auction sale;
- (4) any misleading or untruthful advertising;
- (5) any act of conduct in connection with a sales transaction which demonstrates bad faith or dishonesty;
- (6) knowingly using false bidders, cappers or pullers, or making a material false statement for license.

(b) The Commission may suspend or revoke a license following a hearing. The hearing shall be held in the county in which the auctioneer under investigation resides, unless the Commission determines that another location would be more convenient to all parties involved, because of its proximity to the location of the events that led to the investigation or some other good reason. The person who is being investigated shall be given,

at least 25 days prior to the hearing, written notice of the hearing and copies of all documents the Commission has relating to the matter. He shall be entitled to have counsel present, to examine all witnesses and to present evidence in his own behalf. The Commission must make its decision within 10 days of the conclusion of the hearing. The provisions of Article 33A of Chapter 143 of the General Statutes shall apply to all hearings held pursuant to this act.

(c) Any person whose license is suspended or revoked may appeal the Commission's decision pursuant to the provisions of Article 33 of Chapter 143 of the General Statutes.

(d) The Commission or its authorized representatives may subpoena witnesses and documents for any hearing and may administer oaths to such witnesses.

Sec. 9. Chapter 85 of the General Statutes, all local acts, city and county ordinances and all other laws and clauses of laws in conflict with this act are repealed.

Sec. 10. This act shall become effective on and after July 1, 1973.

In the General Assembly read three times and ratified, this the 17th day of May, 1973.