

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

S

1

SENATE BILL 533

Short Title: Correct Auctioneer Recovery Fund.

(Public)

---

Sponsors: Senator Ezzell.

---

Referred to: Small Business.

---

March 20, 1989

A BILL TO BE ENTITLED

1 AN ACT TO EXTEND THE PROTECTION OF THE AUCTIONEER RECOVERY  
2 FUND TO PERSONS INJURED BY ACTS OF AUCTIONEER BUSINESSES AS  
3 RECOMMENDED BY THE GENERAL STATUTES COMMISSION.  
4

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 85B-4(g) reads as rewritten:

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

17 Sec. 2. G.S. 85B-4.1 reads as rewritten:

18 "**§ 85B-4.1. Auctioneer Recovery Fund.**

19 (a) In addition to the license fees provided for ~~above~~, elsewhere in this Chapter,  
20 upon the application for a license and upon renewal of every license and every regular  
21 renewal date thereafter, the Commission shall charge each and every licensee an amount  
22 not to exceed fifty dollars (\$50.00) per year to be included in the Auctioneer Recovery  
23 Fund (hereinafter the Fund).

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

- 1           (1)    When an ~~auctioneer or apprentice auctioneer~~ auctioneer, apprentice  
2           auctioneer, or auctioneer business has been found guilty of violating  
3           any of the provisions of G.S. 85B or the rules promulgated thereunder,  
4           and upon the entry of a final agency decision by the Commission or if  
5           appealed, a court order, the Commission is authorized to pay the  
6           aggrieved party or parties an aggregate amount not to exceed ten  
7           thousand dollars (\$10,000) against any one ~~auctioneer or apprentice~~  
8           ~~auctioneer, auctioneer, apprentice auctioneer, or auctioneer business,~~  
9           provided that the ~~auctioneer or apprentice auctioneer~~ auctioneer,  
10          apprentice auctioneer, or auctioneer business has refused to pay such  
11          claim within a period of 20 days of entry of the final agency decision  
12          or court order and provided further that the amount or amounts of  
13          money in question are certain and liquidated.
- 14          (2)    The Commission shall maintain a minimum level of one hundred  
15          thousand dollars (\$100,000) for recovery and guaranty purposes.  
16          These funds may be invested and reinvested by the State Treasurer in  
17          interest bearing accounts, such interest accrued being added to the  
18          Fund. Sufficient liquidity will be maintained so that there will be  
19          money available to satisfy any and all claims which may be processed  
20          through the Board. The Fund may be disbursed by a warrant drawn  
21          against the State Treasurer or other method at the discretion of the  
22          State Treasurer.
- 23          (3)    The Commission, in its discretion, may use any and all funds in excess  
24          of one hundred thousand dollars (\$100,000) for the following  
25          purposes:
- 26               a.    To carry out the advancement of education and research in the  
27                      auctioneering profession for the benefit of those licensed under  
28                      the provisions of this Chapter and the improvement of and  
29                      making even more efficient the industry as such;
- 30               b.    To underwrite educational seminars, training centers, and other  
31                      forms of educational projects for the use and benefit generally  
32                      of licensees;
- 33               c.    To sponsor, contract for and to underwrite any and all other  
34                      educational and research projects of a similar nature having to  
35                      do with the advancement of the auctioneer profession in North  
36                      Carolina; and
- 37               d.    To cooperate with associations of auctioneers and any and all  
38                      other groups for the enlightenment and advancement of the  
39                      auctioneer profession of North Carolina."

40          Sec. 3. G.S. 85B-4.2(a) reads as rewritten:

41          "(a)    In the event that an ~~auctioneer or apprentice auctioneer~~ auctioneer, apprentice  
42          auctioneer, or auctioneer business is found guilty of violating any of the provisions of  
43          G.S. 85B or the rules promulgated thereunder, and if the amount of money lost by the  
44          aggrieved party or parties is in dispute or cannot be determined accurately, then the

1 amount of damages shall be determined by the superior court in the county where the  
2 alleged violation took place, provided that the Board has previously determined that a  
3 violation of the license laws or rules and regulations has occurred and a final agency  
4 decision has been entered."

5           Sec. 4. G.S. 85B-5 reads as rewritten:

6 **"§ 85B-5. Licensing of nonresidents.**

7           Any person who holds a valid auctioneer license in another state may apply for and  
8 be granted a North Carolina license if the state in which he is licensed has standards  
9 which are acceptable to the Commission but are not more lenient than those required by  
10 this Chapter. An applicant under this section shall not be required to take the  
11 examination required under G.S. 85B-4 but shall pay the appropriate fee under G.S.  
12 85B-6 and shall file with the Commission an irrevocable consent that service on the  
13 secretary of the Commission shall be sufficient service of process for actions against the  
14 applicant by a resident of this State arising out of his auctioneering activities.

15           An applicant under this section shall ~~file the bond~~ make the contribution to the  
16 Auctioneer Recovery Fund as required by ~~G.S. 85B-4.~~ G.S. 85B-4.1. Any license issued  
17 under this section shall be marked to indicate that its holder is a nonresident."

18           Sec. 5. G.S. 85B-8(e) reads as rewritten:

19           "(e) The Commission may upon its own motion or upon the complaint in writing  
20 of any person, provided the complaint and any evidence presented with it establishes a  
21 prima facie case, hold a hearing and investigate the actions of any auctioneer or  
22 apprentice auctioneer or any person who holds himself out as an auctioneer or  
23 apprentice auctioneer, and shall have the power to suspend or revoke any license issued  
24 under the provisions of this Chapter. In all proceedings for the suspension or revocation  
25 of licenses, the provisions of Chapter ~~150A-150B~~ of the General Statutes shall be  
26 applicable."

27           Sec. 6. This act is effective upon ratification.