

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 987 Session of
1989

INTRODUCED BY HOLL AND STAPLETON, MAY 31, 1989

AS REPORTED FROM COMMITTEE ON PROFESSIONAL LICENSURE, HOUSE OF
REPRESENTATIVES, AS AMENDED, JUNE 26, 1990

AN ACT

1 ~~Establishing the Auctioneer Recovery Fund; and making a repeal.~~ <—
2 AMENDING THE ACT OF DECEMBER 22, 1983 (P.L.327, NO.85), ENTITLED <—
3 "AN ACT IMPOSING REGULATIONS AND LICENSING REQUIREMENTS ON
4 AUCTIONEERS, APPRENTICE AUCTIONEERS, AUCTION HOUSES AND
5 AUCTION COMPANIES; IMPOSING POWERS AND DUTIES ON THE STATE
6 BOARD OF AUCTIONEER EXAMINERS; AND MAKING REPEALS,"
7 ESTABLISHING THE AUCTIONEER RECOVERY FUND; FURTHER PROVIDING
8 FOR THE DISPOSITION OF FEES; DELETING CERTAIN BONDING
9 REQUIREMENTS; AND MAKING REPEALS.

10 The General Assembly of the Commonwealth of Pennsylvania
11 hereby enacts as follows:

12 ~~Section 1. Short title.~~ <—

13 ~~This act shall be known and may be cited as the Auctioneer~~
14 ~~Recovery Fund Act.~~

15 ~~Section 2. Establishment of fund.~~

16 ~~There is hereby established the Auctioneer Recovery Fund for~~
17 ~~the purposes hereinafter set forth in this act.~~

18 ~~Section 3. Funding.~~

19 ~~An auctioneer, apprentice auctioneer, auction company or~~
20 ~~auction house licensee entitled to renew his license on or after~~

1 ~~February 1, 1991, shall, when so renewing his license, pay in~~
2 ~~addition to the applicable license fee a further fee of \$50~~
3 ~~which shall be paid and credited to the Auctioneer Recovery~~
4 ~~Fund. Thereafter, any person, upon receiving his initial~~
5 ~~auctioneer's license, shall, in addition to all fees, pay into~~
6 ~~the Auctioneer Recovery Fund a sum of \$50. If, at the~~
7 ~~commencement of any biennial renewal period beginning in 1989~~
8 ~~and thereafter, the balance of the fund is less than \$100,000,~~
9 ~~the State Board of Auctioneer Examiners may assess an additional~~
10 ~~fee, in addition to the renewal fee, against each licensee in an~~
11 ~~amount, not to exceed \$25, which will yield revenues sufficient~~
12 ~~to bring the balance of the fund to \$100,000. All said fees~~
13 ~~shall be paid into the State Treasury and credited to the~~
14 ~~Auctioneer Recovery Fund, and said deposits shall be allocated~~
15 ~~solely for the purposes of the fund as provided in this act. The~~
16 ~~fund shall be invested, and interest and dividends shall accrue~~
17 ~~to the fund. The bonding requirements of section 13 of the act~~
18 ~~of December 22, 1983 (P.L.327, No.85), known as the Auctioneer~~
19 ~~and Auction Licensing Act, shall not apply to a licensee who has~~
20 ~~paid the required fee into the Auctioneer Recovery Fund.~~

21 ~~Section 4. Application for recovery from fund.~~

22 ~~(a) Procedure following judgment. When any aggrieved person~~
23 ~~obtains a final judgment in any court of competent jurisdiction~~
24 ~~against any person licensed under the act of December 22, 1983~~
25 ~~(P.L.327, No.85), known as the Auctioneer and Auction Licensing~~
26 ~~Act, upon grounds of fraud, misrepresentation or deceit with~~
27 ~~reference to any transaction for which a license is required~~
28 ~~under the Auctioneer and Auction Licensing Act and the cause of~~
29 ~~action occurred on or after the effective date of this act, the~~
30 ~~aggrieved person may, upon termination of all proceedings,~~

1 ~~including reviews and appeals, file an application in the court~~
2 ~~in which the judgment was entered for an order directing payment~~
3 ~~out of the Auctioneer Recovery Fund of the amount unpaid upon~~
4 ~~the judgment.~~

5 ~~(b) Application requirements. The aggrieved person shall be~~
6 ~~required to show:~~

7 ~~(1) That he is not a spouse of the debtor or the~~
8 ~~personal representative of said spouse.~~

9 ~~(2) That he has obtained a final judgment as set out in~~
10 ~~this section.~~

11 ~~(3) That all reasonable personal acts, rights of~~
12 ~~discovery and such other remedies at law and in equity as~~
13 ~~exist have been exhausted in the collection thereof.~~

14 ~~(4) That he is making said application no more than one~~
15 ~~year after the termination of the proceedings, including~~
16 ~~reviews and appeals in connection with the judgment.~~

17 ~~(c) Payments from fund. When there is an order of the court~~
18 ~~to make payment or a claim is otherwise to be levied against the~~
19 ~~fund, such amount shall be paid to the claimant in accordance~~
20 ~~with the limitations contained in this section. Notwithstanding~~
21 ~~any other provisions of this section, the liability of that~~
22 ~~portion of the fund allocated for the purpose of this act shall~~
23 ~~not exceed \$20,000 for any one claim and shall not exceed~~
24 ~~\$100,000 per licensee. If the \$100,000 liability of the~~
25 ~~Auctioneer Recovery Fund as provided herein, is insufficient to~~
26 ~~pay in full claims adjudicated valid of all aggrieved persons~~
27 ~~against any one licensee, such \$100,000 shall be distributed~~
28 ~~among them in such ratio that the respective claims of the~~
29 ~~aggrieved applicants bear to the aggregate of such claims held~~
30 ~~valid. If, at any time, the money deposited in the Auctioneer~~

~~1 Recovery Fund is insufficient to satisfy any duly authorized
2 claim or portion thereof, the State Board of Auctioneer
3 Examiners shall, when sufficient money has been deposited in the
4 fund, satisfy such unpaid claims or portions thereof in the
5 order that such claims or portions thereof were originally
6 filed, plus accumulated interest at the rate of 6% a year.~~

~~7 (d) Joinder. Upon petition of the State Board of Auctioneer
8 Examiners, the court may require all claimants and prospective
9 claimants against one licensee to be joined in one action, to
10 the end that the respective rights of all such claimants to the
11 Auctioneer Recovery Fund may be equitably adjudicated and
12 settled.~~

~~13 (e) License suspension and reimbursement of fund. Should
14 the State Board of Auctioneer Examiners pay from the Auctioneer
15 Recovery Fund any amount in settlement of a claim as provided
16 for in this act against a licensee, the license of that person
17 shall automatically suspend upon the effective date of the
18 payment thereof by the State Board of Auctioneer Examiners. No
19 licensee shall be granted reinstatement until he has paid in
20 full, plus interest at the rate of 10% a year, the amount paid
21 from the Auctioneer Recovery Fund. The State Board of Auctioneer
22 Examiners may use any remedy available to it at law or in equity
23 against a licensee or the assets of a licensee in order to
24 reimburse the Auctioneer Recovery Fund for any amount paid from
25 the fund in settlement of a claim against the licensee.~~

~~26 (f) Permitted requests. In order to promote the public
27 safety and welfare and reduce the incidence of transactions
28 leading to claims against the Auctioneer Recovery Fund, the
29 State Board of Auctioneer Examiners may include in its annual
30 budget request, funds for the following purposes:~~

~~(1) To carry out the advancement of education and research in the auctioneering profession for the purpose of improving the practice of auctioneering in this Commonwealth.~~

~~(2) To underwrite educational seminars, training centers and other forms of educational projects for the use of licensees for the purpose of improving the practice of auctioneering in this Commonwealth.~~

~~(3) To sponsor, contract for and underwrite any and all other educational and research projects of a similar nature for the purpose of improving the practice of auctioneering in this Commonwealth.~~

~~(4) To cooperate with associations of auctioneers and any and all other groups for the enlightenment and advancement of the auctioneer profession in this Commonwealth.~~

~~Section 5. Repeal.~~

~~Section 13 of the act of December 22, 1983 (P.L.327, No.85), known as the Auctioneer and Auction Licensing Act, is repealed insofar as it is inconsistent with this act.~~

~~Section 6. Effective date.~~

~~This act shall take effect January 31, 1991.~~

SECTION 1. THE ACT OF DECEMBER 22, 1983 (P.L.327, NO.85),
KNOWN AS THE AUCTIONEER AND AUCTION LICENSING ACT, IS AMENDED BY
ADDING A SECTION TO READ:

SECTION 6.1. AUCTIONEER RECOVERY FUND.

(A) ESTABLISHMENT.--AN AUCTIONEER, APPRENTICE AUCTIONEER, AUCTION COMPANY OR AUCTION HOUSE LICENSEE ENTITLED TO RENEW HIS LICENSE ON OR AFTER MARCH 1, 1991, SHALL, WHEN SO RENEWING HIS LICENSE PAY IN ADDITION TO THE APPLICABLE LICENSE FEE A FURTHER FEE OF \$50, WHICH SHALL BE PAID AND CREDITED TO THE AUCTIONEER

1 RECOVERY FUND, WHICH IS HEREBY ESTABLISHED. THEREAFTER, ANY
2 PERSON UPON RECEIVING HIS INITIAL LICENSE, SHALL, IN ADDITION TO
3 ALL FEES, PAY INTO THE FUND A SUM OF \$50. IF AT THE COMMENCEMENT
4 OF ANY BIENNIAL RENEWAL PERIOD BEGINNING IN 1993 AND THEREAFTER,
5 THE BALANCE OF THE FUND IS LESS THAN \$100,000, THE BOARD MAY
6 ASSESS AN ADDITIONAL FEE, IN ADDITION TO THE RENEWAL FEE,
7 AGAINST EACH LICENSEE IN AN AMOUNT NOT TO EXCEED \$25 WHICH WILL
8 YIELD REVENUES SUFFICIENT TO BRING THE BALANCE OF THE FUND TO
9 \$100,000. ALL FEES SHALL BE PAID INTO THE STATE TREASURY AND
10 CREDITED TO THE FUND, AND THE DEPOSITS SHALL BE ALLOCATED SOLELY
11 FOR THE PURPOSES OF THE FUND AS PROVIDED IN THIS ACT. THE FUND
12 SHALL BE INVESTED AND INTEREST AND DIVIDENDS SHALL ACCRUE TO THE
13 FUND.

14 (B) APPLICATION FOR RECOVERY FROM FUND.--WHEN ANY AGGRIEVED
15 PERSON OBTAINS A FINAL JUDGMENT IN ANY COURT OF COMPETENT
16 JURISDICTION AGAINST ANY PERSON LICENSED UNDER THIS ACT, UPON
17 GROUND OF FRAUD, MISREPRESENTATION OR DECEIT WITH REFERENCE TO
18 ANY TRANSACTION FOR WHICH A LICENSE IS REQUIRED UNDER THIS ACT
19 AND WHICH CAUSE OF ACTION OCCURRED ON OR AFTER THE EFFECTIVE
20 DATE OF THIS SECTION, THE AGGRIEVED PERSON MAY, UPON TERMINATION
21 OF ALL PROCEEDINGS, INCLUDING REVIEWS AND APPEALS, FILE AN
22 APPLICATION IN THE COURT IN WHICH THE JUDGMENT WAS ENTERED FOR
23 AN ORDER DIRECTING PAYMENT OUT OF THE AUCTIONEER RECOVERY FUND
24 OF THE AMOUNT UNPAID UPON THE JUDGMENT.

25 (C) REQUIREMENTS FOR RECOVERY.--THE AGGRIEVED PERSON SHALL
26 BE REQUIRED TO SHOW:

27 (1) THAT HE IS NOT A SPOUSE OF THE DEBTOR, OR THE
28 PERSONAL REPRESENTATIVE OF THE SPOUSE.

29 (2) THAT HE HAS OBTAINED A FINAL JUDGMENT AS SET OUT IN
30 THIS SECTION.

1 (3) THAT ALL REASONABLE PERSONAL ACTS, RIGHTS OF
2 DISCOVERY AND SUCH OTHER REMEDIES AT LAW AND IN EQUITY AS
3 EXIST HAVE BEEN EXHAUSTED IN THE COLLECTION THEREOF.

4 (4) THAT HE IS MAKING SAID APPLICATION NO MORE THAN ONE
5 YEAR AFTER THE TERMINATION OF THE PROCEEDINGS, INCLUDING
6 REVIEWS AND APPEALS IN CONNECTION WITH THE JUDGMENT.

7 (D) RIGHTS OF BOARD.--THE BOARD SHALL HAVE THE RIGHT TO
8 ANSWER ACTIONS PROVIDED FOR UNDER THIS SECTION, AND SUBJECT TO
9 COURT APPROVAL, IT MAY COMPROMISE A CLAIM BASED UPON THE
10 APPLICATION OF THE AGGRIEVED PARTY.

11 (E) PAYMENTS FROM FUND.--WHEN THERE IS AN ORDER OF THE COURT
12 TO MAKE PAYMENT OR A CLAIM IS OTHERWISE TO BE LEVIED AGAINST THE
13 FUND, SUCH AMOUNT SHALL BE PAID TO THE CLAIMANT IN ACCORDANCE
14 WITH THE LIMITATIONS COMBINED IN THIS SECTION. NOTWITHSTANDING
15 ANY OTHER PROVISIONS OF THIS SECTION, THE LIABILITY OF THAT
16 PORTION OF THE FUND ALLOCATED FOR THE PURPOSE OF THIS ACT SHALL
17 NOT EXCEED \$20,000 FOR ANY ONE CLAIM AND SHALL NOT EXCEED
18 \$100,000 PER LICENSEE. IF THE \$100,000 LIABILITY OF THE FUND AS
19 PROVIDED HEREIN IS INSUFFICIENT TO PAY IN FULL CLAIMS
20 ADJUDICATED VALID OF ALL AGGRIEVED PERSONS AGAINST ANY ONE
21 LICENSEE OR REGISTRANT, SUCH \$100,000 SHALL BE DISTRIBUTED AMONG
22 THEM IN SUCH RATIO THAT THE RESPECTIVE CLAIMS OF THE AGGRIEVED
23 APPLICANTS BEAR TO THE AGGREGATE OF SUCH CLAIMS HELD VALID. IF,
24 AT ANY TIME, THE MONEY DEPOSITED IN THE FUND IS INSUFFICIENT TO
25 SATISFY ANY DULY AUTHORIZED CLAIM OR PORTION THEREOF, THE BOARD
26 SHALL, WHEN SUFFICIENT MONEY HAS BEEN DEPOSITED IN THE FUND,
27 SATISFY SUCH UNPAID CLAIMS OR PORTIONS THEREOF, IN THE ORDER
28 THAT SUCH CLAIMS OR PORTIONS THEREOF WERE ORIGINALLY FILED, PLUS
29 ACCUMULATED INTEREST AT THE RATE OF 6% A YEAR.

30 (F) JOINDER.--UPON PETITION OF THE BOARD THE COURT MAY

1 REQUIRE ALL CLAIMANTS AND PROSPECTIVE CLAIMANTS AGAINST ONE
2 LICENSEE OR REGISTRANT TO BE JOINED IN ONE ACTION, TO THE END
3 THAT THE RESPECTIVE RIGHTS OF ALL SUCH CLAIMANTS TO THE FUND MAY
4 BE EQUITABLY ADJUDICATED AND SETTLED.

5 (G) LICENSE SUSPENSION AND REIMBURSEMENT OF FUND.--SHOULD
6 THE BOARD PAY FROM THE FUND ANY AMOUNT IN SETTLEMENT OF A CLAIM
7 AS PROVIDED FOR IN THIS SECTION AGAINST A LICENSEE, THE LICENSE
8 OF THAT PERSON SHALL AUTOMATICALLY SUSPEND UPON THE EFFECTIVE
9 DATE OF THE PAYMENT THEREOF BY THE BOARD. NO SUCH LICENSEE SHALL
10 BE GRANTED REINSTATEMENT UNTIL HE HAS REPAID IN FULL PLUS
11 INTEREST AT THE RATE OF 10% A YEAR, THE AMOUNT PAID FROM THE
12 FUND.

13 SECTION 2. SECTION 13 OF THE ACT IS REPEALED.

14 SECTION 3. SECTION 33(B) OF THE ACT IS AMENDED TO READ:

15 SECTION 33. FEES AND FINES.

16 * * *

17 (B) DISPOSITION.--ALL FEES PAID TO THE BOARD AND ALL FINES
18 COLLECTED FOR VIOLATIONS OF THIS ACT SHALL BE PAID INTO THE
19 [STATE TREASURY FOR THE USE OF THE BOARD TO AID IN THE
20 ADMINISTRATION AND ENFORCEMENT OF THIS ACT] PROFESSIONAL
21 LICENSURE AUGMENTATION ACCOUNT FOR USE BY THE BOARD IN
22 ACCORDANCE WITH THE PROVISIONS OF CHAPTER 3 OF THE ACT OF JULY
23 1, 1978 (P.L.700, NO.124), KNOWN AS THE BUREAU OF PROFESSIONAL
24 AND OCCUPATIONAL AFFAIRS FEE ACT.

25 SECTION 4. SECTION 304 OF THE ACT OF JULY 1, 1978 (P.L.700,
26 NO.124), KNOWN AS THE BUREAU OF PROFESSIONAL AND OCCUPATIONAL
27 AFFAIRS FEE ACT, IS REPEALED INsofar AS IT IS INCONSISTENT WITH
28 THIS ACT.

29 SECTION 5. THIS ACT SHALL TAKE EFFECT AS FOLLOWS:

30 (1) SECTION 1 OF THIS ACT SHALL TAKE EFFECT IN 180 DAYS.

1 (2) THE REMAINDER OF THIS ACT SHALL TAKE EFFECT JULY 1,
2 1990.