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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**SENATE BILL**

**No. 763**

Session of  
1983

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INTRODUCED BY STAUFFER, STAPLETON, HOLL AND LINCOLN, MAY 25,  
1983

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SENATE AMENDMENTS TO HOUSE AMENDMENTS, DECEMBER 13, 1983

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AN ACT

1 Imposing regulations and licensing requirements on auctioneers,  
2 apprentice auctioneers, auction houses and auction companies;  
3 imposing powers and duties on the State Board of Auctioneer  
4 Examiners; and making repeals.

5 TABLE OF CONTENTS

- 6 Section 1. Short title.
- 7 Section 2. Definitions.
- 8 Section 3. Auctioneer and apprentice auctioneer licenses.
- 9 Section 4. Status of existing licensees.
- 10 Section 5. Applications for initial and renewal licenses.
- 11 Section 6. License, examination and other fees.
- 12 Section 7. Special licensees to furnish bond.
- 13 Section 8. Authority to transact business not transferable.
- 14 Section 9. Auction house license.
- 15 Section 10. Auction company license.
- 16 Section 11. Nonresident licensees.
- 17 Section 12. Reciprocity with other states.

- 1 Section 13. Licensee to furnish bond.
- 2 Section 14. No other license required.
- 3 Section 15. List of licensees.
- 4 Section 16. Records of sales.
- 5 Section 17. Contracts for conduct of sale.
- 6 Section 18. Display of licenses.
- 7 Section 19. Revocation or suspension of license for violation
- 8                   by employee.
- 9 Section 20. Investigations and enforcement actions.
- 10 Section 21. Escrow account.
- 11 Section 22. Hearing on charges.
- 12 Section 23. Administration and enforcement.
- 13 Section 24. Injunctive relief.
- 14 Section 25. Records of courts to be evidence before board.
- 15 Section 26. Revocation or suspension of license.
- 16 Section 27. Issuance of new license pending investigation
- 17                   and decision.
- 18 Section 28. Issuance of new license after revocation.
- 19 Section 29. Penalties.
- 20 Section 30. Actions by unlicensed persons prohibited.
- 21 Section 31. State Board of Auctioneer Examiners.
- 22 Section 32. Rules and regulations.
- 23 Section 33. Disposition of fees and fines.
- 24 Section 34. Reestablishment of agency.
- 25 Section 35. Repeals.
- 26 Section 36. Effective date.

27       The General Assembly of the Commonwealth of Pennsylvania  
28 hereby enacts as follows:

29 Section 1. Short title.

30       This act shall be known and may be cited as the Auctioneer

1 and Auction Licensing Act.

2 Section 2. Definitions.

3 The following words and phrases when used in this act shall  
4 have the meanings given to them in this section unless the  
5 context clearly indicates otherwise:

6 "Apprentice auctioneer." A person who is licensed under this  
7 act as an apprentice auctioneer.

8 "Auction" or "sale at auction." The offer to sell property  
9 by an auctioneer or apprentice auctioneer to the members of an  
10 audience congregated for the purpose of making bids for the  
11 purchase of the property in an effort by the auctioneer or  
12 apprentice auctioneer to advance the amount of the bids to  
13 obtain the highest or most favorable offer.

14 "Auction company." A company which, as part of its business,  
15 arranges, manages, sponsors, advertises or carries out auctions.

16 "Auction house." An established place of business, including  
17 but not limited to an auction barn, a sale barn and a sale  
18 pavilion, where two or more auctions are held within any 12-  
19 month period and where representations are regularly made that  
20 property is sold at auction. The term does not include premises  
21 where isolated sales are conducted by an auctioneer or  
22 auctioneer apprentice and which are used primarily for purposes  
23 other than auctions or sales at auction.

24 "Auctioneer." A person who sells or offers or attempts to  
25 sell property at auction. The term includes any person who holds  
26 himself out as engaged in the business of selling property at  
27 auction.

28 "Board." The State Board of Auctioneer Examiners in the  
29 Department of State.

30 "Commissioner." The Commissioner of Professional and

1 Occupational Affairs in the Department of State.

2 "Department." The Department of State.

3 "Licensee." A person licensed under this act including an  
4 auctioneer, apprentice auctioneer, holder of a special license  
5 and, in the case of an auction house or company, the person  
6 required to obtain the license.

7 "Person." An individual, partnership, association or  
8 corporation.

9 "Property." Real and personal property. The term includes,  
10 but is not limited to domestic animals and farm products.

11 "Qualified auctioneer." A currently licensed auctioneer.

12 Section 3. Auctioneer and apprentice auctioneer licenses.

13 (a) Requirement for license.--It is unlawful for any person  
14 to engage in or carry on the profession of auctioneer, to  
15 conduct a sale at auction, to hold himself out as an auctioneer  
16 or as an apprentice auctioneer or to offer to conduct sales at  
17 auction in this Commonwealth without first obtaining from the  
18 board a license as an auctioneer or apprentice auctioneer. Any  
19 member, officer or employee of a partnership, association or  
20 corporation who attempts to sell at auction or who is actively  
21 engaged in the auction profession must have a license as an  
22 auctioneer or apprentice auctioneer.

23 (b) Issuance and supervision of licenses.--It is the duty of  
24 the board, upon payment of the license fees required and upon  
25 compliance with the requirements of this act, to issue a license  
26 as an auctioneer or apprentice auctioneer to individuals or as  
27 an auctioneer to partnerships, associations and corporations who  
28 qualify under and comply with this act. The board shall  
29 supervise and control all licenses issued under this act.

30 (c) Qualifications in general for license.--Licenses shall

1 be granted only to persons who have a good reputation for  
2 honesty, truthfulness, integrity and competence to transact the  
3 business of auctioneer or apprentice auctioneer in a manner as  
4 to safeguard the interest of the public and only after  
5 satisfactory proof of these qualifications has been presented to  
6 the board as required by regulation.

7 (d) Qualifications for apprentice auctioneer license.--To  
8 qualify for an apprentice auctioneer license, a person must be  
9 sponsored and employed for compensation by a qualified  
10 auctioneer who employs no more than one other apprentice  
11 auctioneer.

12 (e) Qualifications for auctioneer license.--To qualify for  
13 an auctioneer license, a person must have passed the prescribed  
14 examination after having:

15 (1) served an apprenticeship as a licensed apprentice  
16 auctioneer for a period of not less than two years in the  
17 employ of a qualified auctioneer and participated for  
18 compensation in no less than 30 auctions; or

19 (2) successfully completed a prescribed course of study  
20 in auctioneering of at least 20 credit hours at a school  
21 approved by the board.

22 (f) Qualifications for license reissued after long  
23 inactivity.--Any person to whom an auctioneer or apprentice  
24 auctioneer license has been issued and who has been inactive as  
25 an auctioneer or apprentice auctioneer for a period of seven  
26 years without renewing the license issued to him shall be  
27 required to submit to and pass an examination approved by the  
28 board prior to having a license reissued to him.

29 (g) Designation of auctioneer-of-record.--If the applicant  
30 for a license is a partnership, association or corporation, then

1 a member of the partnership or association or an officer of the  
2 corporation, who is licensed in this Commonwealth as an  
3 auctioneer, must be designated as the auctioneer-of-record. The  
4 auctioneer-of-record is principally responsible for the conduct  
5 of the auctions of the partnership, association or corporation  
6 in accordance with this act. A partnership, association or  
7 corporation auctioneer license becomes invalid if the license of  
8 the auctioneer-of-record is not renewed or is suspended or  
9 revoked.

10 (h) Sales exempt from license requirements.--The requirement  
11 to obtain a license under this act does not apply to sales at  
12 auction in the following circumstances:

13 (1) To a specified single sale per year conducted by the  
14 owner of property if the owner is not engaged in the business  
15 of selling the property and if the property is owned by the  
16 person in an individual capacity.

17 (2) To a sale conducted by or on behalf of a charitable  
18 organization if the person conducting the sale receives no  
19 compensation therefor.

20 (3) To a sale conducted by or on behalf of a person  
21 appointed by judicial order or decree.

22 (4) To a sale conducted in the settlement of any  
23 decedent's estate.

24 (5) To a sale conducted by or under the direction of any  
25 public authority.

26 (6) To any sale required by law to be at auction.

27 ~~(7) To a sale conducted by brokers or salespersons~~ <—  
28 ~~licensed under the act of February 19, 1980 (P.L.15, No.9),~~  
29 ~~known as the Real Estate Licensing and Registration Act.~~

30 (i) Special license to conduct auction.--An auctioneer

1 authorized to engage in auctioneering in another state shall,  
2 upon application and payment of the license fee, be issued a  
3 special license for each auction conducted by him. Applications  
4 must be made 20 days in advance of the sale and must include the  
5 name and address of the consignor or owner of all items to be  
6 sold. All applications are subject to approval by the board and  
7 shall include proof of authority to engage in auctioneering in  
8 the other state.

9 Section 4. Status of existing licensees.

10 (a) Apprentice auctioneers.--An individual licensed as an  
11 apprentice auctioneer on the effective date of this act shall  
12 thereafter possess the same rights and privileges and be subject  
13 to the same requirements pertaining to licensure as individuals  
14 to whom licenses as an apprentice auctioneer are issued under  
15 this act.

16 (b) Auctioneers.--A person licensed as an auctioneer on the  
17 effective date of this act shall thereafter possess the same  
18 rights and privileges as persons to whom licenses as an  
19 auctioneer are issued under this act.

20 Section 5. Applications for initial and renewal licenses.

21 (a) Application for auctioneer license.--Applications for  
22 license as an auctioneer shall be made to the board in writing  
23 upon forms provided by the board which shall contain such  
24 information as to the individual or, if the applicant is a  
25 partnership, association or corporation, as to its members or  
26 officers as the board requires. If the applicant is an  
27 individual, the application shall be signed by that individual.  
28 If the applicant is a partnership or an association, the  
29 application shall be signed by a member. If the applicant is a  
30 corporation, the application shall be signed by an officer. An

1 application by a licensed apprentice auctioneer seeking to  
2 qualify on the basis of an apprenticeship shall contain or be  
3 accompanied by satisfactory evidence that the applicant was in  
4 the employ of a sponsor for at least two years and participated  
5 for compensation in not less than 30 auctions on the dates and  
6 at the locations provided by the applicant. Upon the filing of  
7 an application, the board shall investigate the allegations  
8 contained in the application and if, upon investigation, it  
9 finds the allegations untrue, it may refuse to examine or  
10 license the applicant or may revoke any license issued to the  
11 applicant on the basis of materially untrue allegations  
12 contained in the application for a license. The board shall set  
13 forth in writing its findings and reasons for its refusal or  
14 revocation and furnish a copy to the applicant.

15 (b) Application for apprentice auctioneer license.--  
16 Applications for license as an apprentice auctioneer shall be  
17 made to the board in writing upon forms provided by the board  
18 which shall contain such information as to the applicant as the  
19 board requires. For license renewals, the licensee shall set  
20 forth the period of time, if any, during which he was engaged in  
21 the auction profession, stating the name of his present sponsor  
22 and any former sponsor for the period of five years immediately  
23 preceding the date of the renewal. If it becomes necessary to  
24 change sponsors, the apprentice auctioneer must notify the board  
25 by letter upon the termination of the sponsorship and submit a  
26 transfer form, provided by the board, when a new sponsor is  
27 obtained. An apprentice auctioneer license is invalid when there  
28 is no sponsoring auctioneer and credit does not accrue during  
29 that time. A license will be reissued when the apprentice  
30 auctioneer submits a transfer form which informs the board that



1 he has secured a new sponsor.

2 (c) Examinations.--The board shall contract with a  
3 professional testing organization for the preparation and  
4 administration of the examination, in accordance with section  
5 812.1(a) of the act of April 9, 1929 (P.L.177, No.175), known as  
6 The Administrative Code of 1929. No person may be issued an  
7 auctioneer license unless the person passes an examination  
8 approved by the board. The board shall hold examinations at  
9 locations, times and dates prescribed by regulation of the  
10 board.

11 (d) Issuance of new license after revocation.--In the event  
12 the license of an auctioneer or an apprentice auctioneer is  
13 revoked by the board subsequent to the effective date of this  
14 act, no new license may be issued to that person until he  
15 complies with all the provisions of this act.

16 (e) Expiration and renewal of license.--All licenses issued  
17 by the board shall be for a maximum term of two years and shall  
18 expire on the last day of February of each odd year. It is the  
19 duty of all persons licensed to practice as an auctioneer or  
20 apprentice auctioneer or to operate as an auction house or  
21 auction company to renew the license biennially with the board  
22 and to pay the license fee for each biennial license renewal.  
23 Applications for renewals of licenses issued under this act  
24 shall be made within 60 days prior to the expiration of the  
25 license upon forms and in the manner provided by the board.

26 Section 6. License, examination and other fees.

27 (a) Setting of fees.--The license and examination fees and  
28 all other fees imposed under the provisions of this act shall be  
29 fixed by the board by regulation and shall be subject to review  
30 in accordance with the act of June 25, 1982 (P.L.633, No.181),

1 known as the Regulatory Review Act. If the revenues generated by  
2 fees, fines and civil penalties imposed in accordance with the  
3 provisions of this act are not sufficient to match expenditures  
4 over a two-year period, the board shall increase those fees by  
5 regulation, subject to review in accordance with the Regulatory  
6 Review Act, such that the projected revenues will meet or exceed  
7 projected expenditures.

8 (b) Changing fees.--If the Bureau of Professional and  
9 Occupational Affairs determines that the fees established by the  
10 board are inadequate to meet the minimum enforcement efforts  
11 required, then the bureau, after consultation with the board,  
12 shall increase the fees by regulation, subject to review in  
13 accordance with the Regulatory Review Act, such that adequate  
14 revenues are raised to meet the required enforcement effort.

15 Section 7. Special licensees to furnish bond.

16 (a) General rule.--A bond in the penal sum of \$5,000 shall  
17 accompany every application for a special license. The bond  
18 shall be executed by a surety company authorized by the laws of  
19 this Commonwealth to transact business in this Commonwealth. The  
20 bond shall be for the use of the Commonwealth and for any person  
21 or persons who may have a cause of action against a licensee  
22 arising under this act.

23 (b) Conditions of bond.--The conditions of the bond shall be  
24 that the licensee will comply with and abide by the provisions  
25 of this act and will pay to the Commonwealth, the board or any  
26 person or persons any and all money that may come due to the  
27 Commonwealth, the board or the person or persons from a licensee  
28 under and by virtue of this act.

29 (c) Action on bond.--If any person is aggrieved by the  
30 misconduct of any special licensee and recovers judgment against

1 the licensee therefor, the person may on any execution issued  
2 under the judgment maintain an action upon the bond of the  
3 licensee in any court having jurisdiction of the amount claimed.

4 Section 8. Authority to transact business not transferable.

5 The authority to transact business as an auctioneer,  
6 apprentice auctioneer, auction house or auction company under a  
7 license issued by the board is restricted to the person named in  
8 the license and may not be transferred to the benefit of any  
9 other person. A partnership, association or corporation licensed  
10 under this act is only permitted to transact auction business  
11 through a member, officer or employee who is licensed under this  
12 act.

13 Section 9. Auction house license.

14 (a) Requirement for license.--Every person, except an  
15 individual who is licensed as an auctioneer, shall before  
16 operating an auction house obtain a license from the board to  
17 operate the auction house. Every partnership, association or  
18 corporation must obtain a license even though a member or  
19 officer is licensed as an auctioneer.

20 (b) Application for license.--Every person seeking a license  
21 to operate an auction house shall file with the board an  
22 application in writing upon forms provided by the board which  
23 shall contain such information as to the individual or, if the  
24 applicant is a partnership, association or corporation, as to  
25 the members or officers as the board requires. A person must  
26 file a separate application for each auction house to be  
27 operated. The application shall be accompanied by the license  
28 fee and surety bond required by this act.

29 (c) Investigation and refusal of license.--Upon the filing  
30 of an application, the board shall investigate the allegations

1 contained in the application and, if upon investigation it finds  
2 the allegations untrue, it may refuse to license the applicant  
3 to operate an auction house.

4 (d) Information from auctioneer.--A licensed auctioneer, who  
5 also operates an auction house, shall notify the board in  
6 writing of the address of each auction house operated by him and  
7 of the trade or business name by which each auction house is  
8 known. The auctioneer shall notify the board in writing if the  
9 operation of the auction house is sold or discontinued or if the  
10 name or location of the auction house is changed.

11 Section 10. Auction company license.

12 (a) Requirement for license.--Every person, except an  
13 individual who is licensed as an auctioneer or an individual who  
14 is licensed to operate an auction house, shall before operating  
15 an auction company obtain a license from the board to operate  
16 the auction company. Every partnership, association or  
17 corporation must obtain a license even though a member or  
18 officer is licensed as an auctioneer.

19 (b) Application for license.--Every person seeking a license  
20 to operate an auction company shall file with the board an  
21 application in writing upon forms provided by the board which  
22 shall contain such information as to the individual or, if the  
23 applicant is a partnership, association or corporation, as to  
24 the members or officers as the board requires. Each application  
25 shall be accompanied by the license fee and surety bond required  
26 by this act.

27 (c) Investigation and refusal of license.--Upon the filing  
28 of an application, the board shall investigate the allegations  
29 contained in the application and, if upon investigation it finds  
30 the allegations untrue, it may refuse to license the applicant

1 to operate an auction company.

2 (d) Information from auctioneer or auction house.--A  
3 licensed auctioneer or an individual licensed to operate an  
4 auction house, who also operates an auction company, shall  
5 notify the board in writing that he is operating an auction  
6 company and shall specify the trade or business name and the  
7 address of the principal place of business of each auction  
8 company which he operates. The individual who is licensed as an  
9 auctioneer or to operate as an auction house shall notify the  
10 board in writing if the operation of the auction company is sold  
11 or discontinued or if the name or location of the auction  
12 company is changed.

13 Section 11. Nonresident licensees.

14 (a) General rule.--A nonresident of this Commonwealth may be  
15 licensed as an auctioneer or apprentice auctioneer or to operate  
16 an auction house or auction company upon complying with all the  
17 provisions and conditions of this act required of residents of  
18 this Commonwealth.

19 (b) Waiver of certain requirements.--The board may waive the  
20 requirement for serving an apprenticeship or completing a course  
21 of study in auctioneering if the nonresident was:

22 (1) licensed by another state for at least two years; or

23 (2) established in the business of auctioneering for at  
24 least two years and, in the case of states that do not  
25 require a license, the board reviews the application to  
26 determine the qualifications of the applicant.

27 (c) Limitation on type of property sold.--The nonresident  
28 auctioneer or apprentice auctioneer is only permitted to sell at  
29 auction in this Commonwealth whatever property the laws of his  
30 state permit nonresident auctioneers and apprentice auctioneers

1 to sell at auction.

2 (d) Ineligibility to sponsor apprentices.--A nonresident  
3 auctioneer is not a qualified auctioneer for the purpose of  
4 sponsoring or employing an apprentice auctioneer.

5 Section 12. Reciprocity with other states.

6 (a) General rule.--A nonresident of this Commonwealth who  
7 applies for a license as an auctioneer or apprentice auctioneer  
8 may be granted a license for which he applies if he is licensed  
9 as an auctioneer or apprentice auctioneer by the proper  
10 authority of the state of his domicile upon the payment by the  
11 applicant of the proper license fee and the filing with the  
12 board of a properly certified copy of the license issued to the  
13 applicant by the state of his domicile subject to the following  
14 limitations:

15 (1) The auctioneer licensing laws of the nonresident  
16 state must extend to licensed auctioneers and apprentice  
17 auctioneers of this Commonwealth the same rights and  
18 privileges and the same authority to conduct auction sales in  
19 that state as this act extends to nonresidents of this  
20 Commonwealth without the necessity of the licensed  
21 auctioneers and apprentice auctioneers of this Commonwealth  
22 to obtain additional or further licenses or authority from  
23 any political subdivision of that state to conduct an auction  
24 sale.

25 (2) The nonresident auctioneer or apprentice auctioneer  
26 is only permitted to sell at auction in this Commonwealth  
27 whatever property the laws of his state permit nonresident  
28 auctioneers and apprentice auctioneers to sell at auction.

29 (b) Bond.--The bond required by this act shall accompany the  
30 application.

1 (c) Change of nonresident status.--The movement from another  
2 state or jurisdiction to domicile in this Commonwealth  
3 eliminates the possibility of reciprocal licensing set forth in  
4 this section and the individual must qualify for a license under  
5 terms of this act which are applicable to residents of this  
6 Commonwealth.

7 Section 13. Licensee to furnish bond.

8 (a) General rule.--An auctioneer, apprentice auctioneer,  
9 auction company or auction house license shall not be granted or  
10 issued to any individual, partnership, association or  
11 corporation until the applicant has filed with the board an  
12 approved bond payable to the Commonwealth in the amount of  
13 \$5,000. The bond shall be executed by a surety company  
14 authorized by the laws of this Commonwealth to transact business  
15 in this Commonwealth. The bond shall be for the use of the  
16 Commonwealth and for any person or persons who may have a cause  
17 of action against a licensee under this act.

18 (b) Conditions of bond.--The condition of the bond shall be  
19 that the licensee will comply with and abide by the provisions  
20 of this act and will pay to the Commonwealth, the board or any  
21 person or persons any and all money that may come due the  
22 Commonwealth, the board or the person or persons from a licensee  
23 under and by virtue of this act.

24 (c) Action on bond.--If any person is aggrieved by the  
25 misconduct of any licensee and recovers judgment against the  
26 licensee therefor, the person may on any execution issued under  
27 the judgment maintain an action upon the bond of the licensee in  
28 any court having jurisdiction of the amount claimed.

29 Section 14. No other license required.

30 No political subdivision of this Commonwealth shall have the

1 power or authority to levy or collect any license tax or fee  
2 which is either a regulatory or a revenue measure upon or from  
3 any auctioneer or apprentice auctioneer licensed under this act  
4 nor to require any auctioneer or apprentice auctioneer to be  
5 licensed by the political subdivision in order to carry on the  
6 business of auctioneer or to conduct a sale at auction.

7 Section 15. List of licensees.

8 The board shall maintain a current list of the individuals,  
9 partnerships, associations and corporations licensed by the  
10 board. The list shall be open to public inspection during the  
11 business hours of the department. Copies of the list are to be  
12 available to the public at cost.

13 Section 16. Records of sales.

14 (a) General rule.--Every auctioneer, whether acting in his  
15 own behalf or as the officer, agent or representative of  
16 another, after the receipt or acceptance by him of any property  
17 for sale at auction, shall maintain a written record which shall  
18 contain the following information:

19 (1) The name and address of the person who employed him  
20 to conduct the sale at auction and of the owner, the owner's  
21 authorized agent or consignor of the property to be sold at  
22 auction.

23 (2) A copy of the written contract authorizing the sale  
24 at auction containing the terms and conditions of the  
25 auctioneer's employment or a copy of the receiving invoice.

26 (3) A written record of the sale at auction.

27 (b) Inspection of records.--The records referred to in  
28 subsection (a) shall be open at all reasonable times for  
29 inspection by the board or any person who is authorized in  
30 writing for that purpose by the board and who exhibits the



1 written authorization to the auctioneer before making an  
2 inspection.

3 (c) Retention of records.--The written records shall be kept  
4 on file in the office of the auctioneer for a period of at least  
5 two years and, if the auctioneer is notified of a complaint  
6 against him, the records shall be maintained by the auctioneer  
7 until the complaint is finally resolved.

8 Section 17. Contracts for conduct of sale.

9 (a) General rule.--Prior to conducting an auction sale, an  
10 auctioneer shall enter into a written contract in duplicate with  
11 the owner or consignor of the property to be sold, containing  
12 the terms and conditions upon which the licensee agrees to  
13 conduct the auction sale. The contracts shall be kept on file in  
14 the office of the auctioneer and shall be open to inspection as  
15 provided in this act. It is unlawful for a person to advertise  
16 an auction or sale at auction without including in the  
17 advertisement or notice of sale the name and license number of  
18 the auctioneer, auction house or auction company conducting the  
19 sale.

20 (b) Penalty.--A person who violates subsection (a) commits a  
21 summary offense and shall, upon conviction, be sentenced to pay  
22 a fine not less than \$50.

23 Section 18. Display of licenses.

24 (a) General rule.--Every individual, partnership,  
25 association or corporation licensed as an auctioneer under this  
26 act shall prominently display the license certificate in their  
27 office and the current renewal card or any facsimile thereof  
28 shall be shown on demand of any person at all sales at auction  
29 conducted by any licensee.

30 (b) Apprentice auctioneers.--All auctioneers shall

1 prominently display in their office the license certificate of  
2 any apprentice auctioneer employed by them and the current  
3 renewal card or any facsimile thereof of any apprentice  
4 auctioneer employed by them shall be available on demand at any  
5 sale in which an apprentice is employed. A license issued to an  
6 apprentice auctioneer shall designate his sponsor by name.  
7 Prompt notice in writing within ten days shall be given to the  
8 board by the apprentice auctioneer of any change of sponsor and  
9 of the name of the new sponsor into whose service the apprentice  
10 auctioneer is about to enter or has entered. A new license shall  
11 be issued without charge by the board to the apprentice  
12 auctioneer for the unexpired term of the original license. The  
13 new sponsor shall be a qualified auctioneer. The change of  
14 sponsor or employment by any licensed apprentice auctioneer  
15 without notice to the board shall automatically cancel the  
16 license issued to him. It is the duty of the sponsor named in  
17 the license to notify the board within ten days of any change in  
18 status of an apprentice licensed under him. It is unlawful for  
19 an apprentice auctioneer to pay compensation to an auctioneer  
20 for the sole purpose of listing the apprentice as an employee.

21 (c) Suspension or revocation of license for violation.--The  
22 violation of this section by any licensee is sufficient cause  
23 for the suspension or revocation of his license at the  
24 discretion of the board after a hearing in accordance with this  
25 act.

26 Section 19. Revocation or suspension of license for violation  
27 by employee.

28 A violation of this act by an apprentice auctioneer or other  
29 employee of a licensed auctioneer shall not be grounds for the  
30 revocation or suspension of the license of the sponsor of the

1 apprentice auctioneer or employee unless it appears at the  
2 hearing that the sponsor had knowledge of the violation. A  
3 course of dealing shown to have been consistently followed by an  
4 apprentice auctioneer or employee constitutes prima facie  
5 evidence of knowledge upon the part of the sponsor.

6 Section 20. Investigations and enforcement actions.

7 (a) General rule.--The board may, upon its own motion, and  
8 shall, promptly upon the verified complaint in writing of any  
9 person setting forth specifically the wrongful act or acts  
10 complained of, investigate any action or business transaction of  
11 any person licensed by the board and may temporarily suspend or  
12 permanently revoke licenses issued by the board or impose a  
13 civil penalty not exceeding \$1,000 at any time when, after due  
14 proceedings provided in this act, it finds the licensee to have  
15 been guilty in the performance or attempt to perform any of the  
16 acts prohibited to others than licensees under this act as  
17 follows:

18 (1) Knowingly making any substantial misrepresentation.

19 (2) Knowingly making any false promise of a character  
20 likely to influence, persuade or induce.

21 (3) A continued or flagrant course of misrepresentation  
22 or making false promises through agents or apprentice  
23 auctioneers.

24 (4) Within five years prior to the issuance of the  
25 license then in force, conviction in a court of competent  
26 jurisdiction in this or any other state or in Federal court  
27 of forgery, embezzlement, obtaining money under false  
28 pretenses, extortion, conspiracy to defraud or other like  
29 offense or offenses.

30 (5) Any failure to account for or to pay over moneys

1 belonging to others which have come into his or its  
2 possession arising out of a sales transaction within a  
3 reasonable time.

4 (6) Any misleading or untruthful advertising.

5 (7) Any act or conduct in connection with a sales  
6 transaction which demonstrates incompetency, bad faith or  
7 dishonesty.

8 (8) Knowingly using false bidders, cappers or puffers.

9 (9) Violating any of the provisions of this act.

10 (10) Violating any regulation of the board.

11 (11) Having his license to engage in the auction  
12 profession revoked or suspended or having other disciplinary  
13 action taken or his application for licensure refused,  
14 revoked or suspended by the proper licensing authority of  
15 another state.

16 (12) Failing to establish or maintain an escrow account.

17 (13) For any licensed auctioneer or apprentice  
18 auctioneer to bid and buy for himself at any auction he is  
19 conducting.

20 (14) For any licensed auctioneer or apprentice  
21 auctioneer to pay any compensation in money or other valuable  
22 thing to any person other than a licensed auctioneer or  
23 apprentice auctioneer for the rendering of any service or the  
24 doing of any of the acts by this act forbidden to be rendered  
25 or performed by other than licensees.

26 (b) Notice of charges.--Before refusing, suspending or  
27 revoking any license, the board shall, in writing, notify the  
28 applicant or licensee of the charges against him, accompanying  
29 the notice with a copy of the complaint filed, if any, and the  
30 board shall accord the applicant or licensee ample opportunity

1 to be heard in person or by counsel.

2 Section 21. Escrow account.

3 Every auctioneer shall immediately deposit moneys, received  
4 from the sale of property, belonging to others, in a separate  
5 custodial or trust fund account maintained by the auctioneer  
6 until the transaction involved is terminated, at which time the  
7 auctioneer shall account for the full amount received.

8 Section 22. Hearing on charges.

9 (a) General rule.--If the applicant or licensee desires, the  
10 board shall grant a hearing upon the charges. The said hearings  
11 may be held by the board or any member thereof or by any other  
12 person duly authorized by the board for such purpose in any  
13 particular case.

14 (b) Report of hearing officer.--If the hearing is held by a  
15 member of the board or by a person authorized by the board, a  
16 written report of the hearing shall be made to the board.

17 (c) Action on report of hearing officer.--The board may  
18 adopt the findings in the report or may, with or without  
19 additional testimony, either return the report for any further  
20 consideration the board deems necessary or make additional or  
21 other findings of fact on the basis of all the legally probative  
22 evidence in the record and enter its findings of fact and  
23 conclusions of law and order in accordance with the requirements  
24 for the issuance of an adjudication under Title 2 of the  
25 Pennsylvania Consolidated Statutes (relating to administrative  
26 law and procedure).

27 Section 23. Administration and enforcement.

28 The board shall administer and enforce this act.

29 Section 24. Injunctive relief.

30 The board may authorize its agents to make application to the

1 appropriate court for an order enjoining the acts or practices  
2 which constitute or will constitute a violation of this act.

3 Section 25. Records of courts to be evidence before board.

4 In proceedings before the board and in all proceedings upon  
5 appeal from any of its decisions, the record, or a duly  
6 certified or exemplified copy, in any proceedings at law or in  
7 equity in any court of competent jurisdiction in this or any  
8 other state in which the applicant or licensee charged or under  
9 investigation was a party shall be admissible where the issue of  
10 fact involved in the proceedings are pertinent to the inquiry  
11 before the board. The verdict of the jury or judgment of the  
12 court in any action at law or the decree of the court in any  
13 proceeding in equity shall be prima facie as to the facts at  
14 issue in the proceedings and necessarily adjudicated therein.  
15 The verdict in any criminal prosecution in a court of record in  
16 this or any other state in which the applicant or licensee  
17 charged was the defendant shall be conclusive as to the facts  
18 charged and at issue in the prosecution.

19 Section 26. Revocation or suspension of license.

20 (a) Revocation or suspension of license for committing  
21 crime.--Where, during the term of any license issued by the  
22 board, the licensee is convicted in a court of competent  
23 jurisdiction in this or any other state of forgery,  
24 embezzlement, obtaining money under false pretenses, extortion,  
25 criminal conspiracy to defraud or other like offense and a duly  
26 certified or exemplified copy of the record in the proceeding is  
27 filed with the board, the board shall revoke or suspend the  
28 license issued to the licensee.

29 (b) Suspension of license pending trial of crime.--In the  
30 event any licensee is indicted in this or any other state of

1 forgery, embezzlement, obtaining money under false pretenses,  
2 extortion, criminal conspiracy to defraud or other offense or  
3 offenses and a certified copy of the indictment is filed with  
4 the board or other proper evidence is given to it, the board  
5 may, in its discretion, suspend the license issued to the  
6 licensee pending trial of the charges.

7 (c) Revocation of license of entity for violation by member  
8 or officer.--In the event of the revocation or suspension of the  
9 license issued to any member of a partnership or to any officer  
10 of an association or corporation, the license issued to the  
11 partnership, association or corporation shall be revoked by the  
12 board unless, within a time fixed by the board, the connection  
13 of the member of the partnership is severed and his interest in  
14 the partnership and his share in its activities brought to an  
15 end or the officer of the association or corporation is  
16 discharged and has no further participation in its activities.  
17 Section 27. Issuance of new license pending investigation and  
18 decision.

19 Pending an investigation or proceeding before the board  
20 affecting any licensee and pending final decision upon any  
21 appeal taken by a licensee from the ruling of the board, no new  
22 license may be issued to a licensee or to a partnership of which  
23 he is a member or employee or to an association or corporation  
24 of which he is an officer or employee except for the period of  
25 the investigation or proceeding and subject to the action of the  
26 board.

27 Section 28. Issuance of new license after revocation.

28 (a) General rule.--After the revocation of any license, no  
29 new license may be issued to the same licensee within a period  
30 of at least one year from the date of the revocation nor, except

1 in the sole discretion of the board and subject to the  
2 conditions of this act, at any time thereafter.

3 (b) Criminal conduct.--No license shall be issued by the  
4 board to any person known by it to have been within five years  
5 convicted of forgery, embezzlement, obtaining money under false  
6 pretenses, extortion, criminal conspiracy to defraud or other  
7 like offense, or to any copartnership of which any person is a  
8 member or to any association or corporation of which any person  
9 is an officer or employee or in which as a stockholder any  
10 person has or exercises a controlling interest either directly  
11 or indirectly.

12 Section 29. Penalties.

13 (a) Criminal penalties.--Any individual, partnership,  
14 association or corporation who engages in or carries on the  
15 profession or acts in the capacity of an auctioneer, apprentice  
16 auctioneer, auction house or auction company in this  
17 Commonwealth without a current license or who employs any person  
18 without a current license as an apprentice auctioneer:

19 (1) For a first offense, commits a summary offense and  
20 shall, upon conviction, be sentenced to pay a fine not  
21 exceeding \$500 or to imprisonment not exceeding three months,  
22 or both.

23 (2) For a second or subsequent offense, commits a  
24 misdemeanor of the third degree and shall, upon conviction,  
25 be sentenced to pay a fine of not less than \$2,000 but not  
26 more than \$5,000 or to imprisonment for not less than one  
27 year but not more than two years, or both.

28 (b) Civil penalty.--In addition to any other civil remedy or  
29 criminal penalty provided for in this act, the board, by a vote  
30 of the majority of the maximum number of the authorized



1 membership of the board as provided by law, or by a vote of the  
2 majority of the duly qualified and confirmed membership or a  
3 minimum of four members, whichever is greater, may levy a civil  
4 penalty of up to \$1,000 on any person who engages in the  
5 practice of auctioneering without being properly licensed to do  
6 so under this act. The board shall levy this penalty only after  
7 affording the accused party the opportunity for a hearing, as  
8 provided in Title 2 of the Pennsylvania Consolidated Statutes  
9 (relating to administrative law and procedure).

10 Section 30. Actions by unlicensed persons prohibited.

11 No action or proceeding may be instituted and no recovery may  
12 be had in any court of this Commonwealth by any individual,  
13 partnership, association or corporation for compensation for any  
14 act done or services rendered the doing or rendering of which is  
15 prohibited under this act to other than persons licensed by the  
16 board unless the individual, partnership, association or  
17 corporation was licensed at the time of doing the act or  
18 rendering of service.

19 Section 31. State Board of Auctioneer Examiners.

20 (a) Representation.--The State Board of Auctioneer Examiners  
21 shall consist of the Commissioner of Professional and  
22 Occupational Affairs, the Director of the Bureau of Consumer  
23 Protection in the Office of Attorney General, or his designee,  
24 two members appointed by the Governor with the advice and  
25 consent of the Senate who shall be persons representing the  
26 public at large, and five members appointed by the Governor with  
27 the advice and consent of the Senate who shall be licensed  
28 auctioneers, have served as licensed auctioneers for ten years  
29 or more and have conducted at least 50 auctions each year.

30 (b) Terms.--Each member of the board on ~~the effective date~~ <—

1 ~~of this act~~ DECEMBER 31, 1983 shall continue in office until his ←  
2 term expires, or until his successor has been appointed and  
3 qualified, but no longer than six months beyond the expiration  
4 of his term. Thereafter the term of office of each of said  
5 members shall be three years from his appointment, or until his  
6 successor has been appointed and qualified, but no longer than  
7 six months beyond the three-year period. In the event that any  
8 of said members shall die or resign during his term of office,  
9 his successor shall be appointed in the same way and with the  
10 same qualifications as above set forth and shall hold office for  
11 the unexpired term.

12 (c) Quorum.--Five members of the board shall constitute a  
13 quorum.

14 (d) Chairman and secretary.--The board shall select a  
15 chairman and secretary from among its members.

16 (e) Per diem.--The members of the board, other than the  
17 Commissioner of Professional and Occupational Affairs and the  
18 Director of the Bureau of Consumer Protection in the Office of  
19 Attorney General, or his designee, shall receive \$60 per diem,  
20 when actually engaged in the transaction of official business.  
21 Members shall receive, in addition, the amount of ~~actual~~ ←  
22 REASONABLE travel, hotel and other necessary expenses incurred ←  
23 in performing their duties for the board.

24 (f) Sunset.--The board is subject to evaluation, review and  
25 termination within the time and in the manner provided in the  
26 act of December 22, 1981 (P.L.508, No.142), known as the Sunset  
27 Act.

28 (g) Attendance.--A member of the board who fails to attend  
29 three consecutive meetings shall forfeit his seat unless the  
30 Commissioner of Professional and Occupational Affairs, upon

1 written request from the member, finds that the member should be  
2 excused from a meeting because of illness or the death of an  
3 immediate family member.

4 (h) Excuse from attendance.--A board member shall be excused  
5 from meetings due to illness or death of an immediate family  
6 member.

7 (i) Reports.--

8 (1) The board shall submit annually a report to the  
9 Professional Licensure Committee of the House of  
10 Representatives and to the Consumer Protection and  
11 Professional Licensure Committee of the Senate a description  
12 of the types of complaints received, status of cases, board  
13 action which has been taken and length of time from the  
14 initial complaint to final board resolution.

15 (2) The board shall also submit annually to the House of  
16 Representatives and the Senate Appropriation Committees, 15  
17 days after the Governor has submitted his budget to the  
18 General Assembly, a copy of the budget request for the  
19 upcoming fiscal year which the board previously submitted to  
20 the commissioner.

21 Section 32. Rules and regulations.

22 The board may adopt rules and regulations necessary for the  
23 proper administration and enforcement of this act. EACH RULE AND <—  
24 REGULATION OF THE BOARD IN EFFECT ON DECEMBER 31, 1983, SHALL  
25 REMAIN IN EFFECT AFTER SUCH DATE UNTIL REPEALED OR AMENDED BY  
26 THE BOARD.

27 Section 33. ~~Disposition of fees~~ FEES and fines. <—

28 ~~All~~ (A) EXISTING FEES.--ALL FEES FIXED PURSUANT TO SECTION <—  
29 203 OF THE ACT OF JULY 1, 1978 (P.L.700, NO.124), KNOWN AS THE  
30 BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS FEE ACT, SHALL

1 CONTINUE IN FULL FORCE AND EFFECT UNTIL CHANGED BY THE BOARD.

2 (B) DISPOSITION.--ALL fees paid to the board and all fines  
3 collected for violations of this act shall be paid into the  
4 State Treasury for the use of the board to aid in the  
5 administration and enforcement of this act.

6 Section 34. Reestablishment of agency.

7 This act, with respect to the State Board of Auctioneer  
8 Examiners, shall constitute the legislation required to  
9 reestablish an agency under the act of December 22, 1981  
10 (P.L.508, No.142), known as the Sunset Act.

11 Section 35. Repeals.

12 (a) Absolute repeals.--The following acts and parts of acts  
13 are repealed:

14 Section 476 of the act of April 9, 1929 (P.L.177, No.175),  
15 known as the Administrative Code of 1929.

16 Act of September 29, 1961 (P.L.1745, No.708), known as The  
17 Auctioneers' License Act.

18 (b) Inconsistent repeals.--The following act or part of an  
19 act is repealed insofar as it is inconsistent with this act:

20 Act of July 1, 1978 (P.L.700, No.124), known as the Bureau of  
21 Professional and Occupational Affairs Fee Act.

22 (c) General repeal.--All other acts or parts of acts are  
23 repealed insofar as they are inconsistent with this act.

24 Section 36. Effective date.

25 This act shall take effect January 1, 1984.