

MAINE STATE LEGISLATURE

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ONE HUNDRED AND THIRD LEGISLATURE

Legislative Document

No. 1509

H. P. 1021

House of Representatives, March 8, 1967

Referred to Committee on State Government. Sent up for concurrence and ordered printed.

BERTHA W. JOHNSON, Clerk

Presented by Mr. Burnham of Naples by request.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-SEVEN

AN ACT Creating the Maine Board of Auctioneers.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. R. S., T. 32, c. 6, additional. Title 32 of the Revised Statutes is amended by adding a new chapter 6, to read as follows:

CHAPTER 6

MAINE BOARD OF AUCTIONEERS

SUBCHAPTER I

GENERAL PROVISIONS

§ 271. Action against and service on nonresident licensee

If a civil action is brought against any nonresident auctioneer by any resident of the State aggrieved by acts of such auctioneer, service of any legal process may be made upon the Secretary of State, as agent for such auctioneer to the same effect as if said auctioneer were a resident of the State. Upon service of any process upon the Secretary of State, he shall forthwith forward a certified copy thereof to such auctioneer, by registered mail, to his last known address, which shall constitute service on the auctioneer. Such action may be brought in the county in which the plaintiff resides.

§ 272. Exceptions

This chapter shall not apply to sales at auctions held for charitable, educational, religious or other nonprofit organizations; nor to sales made by sheriffs or their deputies, constables, tax collectors, executors, administrators or any other officers authorized to sell property by order of any court.

§ 273. Disposition of fees

All fees charged and collected by the board shall be deposited by it in the State Treasury to the credit of the board. All such moneys are appropriated to be used by the board in carrying out this chapter. The expenditures of the board may be paid only from such moneys.

§ 274. Penalty for violation

It shall be unlawful for any person, partnership, association or corporation not licensed or exempt therefrom as provided in this chapter to designate himself in this State by the word "auctioneer" or by any other term which implies that he is a state licensed auctioneer, or to conduct any auction sale in this State, and upon conviction thereof or upon conviction of the violation of any other provisions of this chapter shall be punished by a fine of not less than \$100 nor more than \$500.

§ 275. Liability of auctioneers for conversion limited

The common law liability of auctioneers for acts of conversion relative to the property sold at auction is abolished where a licensed auctioneer obtains from the seller a sworn statement containing a general description of the goods to be sold with a warranty of title or other authority to sell the same, provided that such document be posted in a conspicuous place at and during the sale.

SUBCHAPTER II**BOARD OF REGISTRATION****§ 276. Membership; term; compensation**

A Board of Examiners for Auctioneers is created, whose duty shall be to administer this chapter and which shall hereinafter in this chapter be called the "board." The board shall be composed of 3 licensed auctioneers and shall be appointed by the Governor for initial terms of one, 2 and 3 years respectively, the latter to be chairman of the board. At the expiration of each of the terms new appointments shall be made for 3-year terms. Any member of said board may be removed from office for cause by the Governor. Each member of the board shall receive as full compensation for each day actually spent on the work of said board the sum of \$15, plus a travel allowance of 7c per mile, and be reimbursed for his actual and necessary expenses incurred in the performance of duties pertaining to his office.

§ 277. Meetings; organization; duties and powers

The board shall hold at least one meeting each year for the purpose of conducting examinations of candidates who desire to be licensed by the board and such other meetings as the board shall deem necessary. They shall elect each year one of their members as secretary and treasurer. The treasurer shall receive all fees charged and assessments payable to the board, and account for and pay over the same according to the law. The board shall cause a seal of suitable inscription to be procured and to be affixed to such papers as may require such seal, shall keep a correct record of all of its proceedings and shall have power to make such rules and regulations not inconsistent with law as

it may deem necessary for the enforcement of its authority and the performance of its duties, and may employ such assistants as it may deem necessary to discharge such duties, subject to the Personnel Law. The chairman and secretary shall be empowered to administer oaths in matters connected with the duties of the board. The records of the board shall include, among other things, a record of all moneys advanced and disbursed by said board, a list of all applicants for licenses, and the fact shall be recorded whether or not the applicant was granted a license. Such records, or duplicates thereof, shall always be prima facie evidence of all matters contained therein.

§ 278. Board to make annual report to Governor

The board shall annually, or or before the 15th day of December in each year, make a report to the Governor containing a full and complete account of all its activities during the preceding year and a statement of its receipts and disbursements and such comments or suggestions as it may deem advisable.

SUBCHAPTER III

REGULATION OF AUCTIONEERS

§ 279. Resident auctioneers; examinations; fees; grandfather clause

No person, including members of partnerships, associations and corporations, resident of this State shall hold himself out as or act as an auctioneer without a license granted by the board. The board shall issue such licenses on the application within one year of the effective date of this Act to all auctioneers who have held a state license and have conducted at least one auction during any one of the 2 years preceding the enactment of this chapter without examination upon payment of an initial license fee of \$25 and \$15 for each subsequent renewal. All other persons resident of this State, whether acting as individuals or members of firms or corporations, before obtaining licenses are required to pass a written or oral examination conducted by the board. The examination shall test the applicant's knowledge of the laws of this State pertinent to auctions and sales, the ethics and practices of auctioneers, and such other related subjects as it may select. An application shall be filed with the secretary of the board at least 30 days before the date of the examination together with an examination fee of \$35 which will not be refunded. Each applicant shall satisfy the board that he:

1. Age. Is at least 21 years of age;
2. Character. Is of good moral character;
3. Residence. Is a legal resident of this State;
4. Education. Possesses reasonably adequate educational background.

Applicants failing to pass the examination on first attempt shall be entitled to one retake examination without additional charge. Further examinations may be given at the discretion of the board for which an examination fee shall be charged.

The examination fees shall be in addition to license fees which shall be \$25 for an initial license and \$15 for each subsequent renewal. All licenses shall

be for a term of one year from the date of issuance. The board shall issue a renewal license in the absence of any reason or condition which might warrant the refusal of the granting of a license or the suspension of a license upon the receipt of the written request of the applicant and the annual fee therefor, if received within the calendar year in which the license to be renewed has expired.

§ 280. Nonresident auctioneers; requirements

Every nonresident person, firm or corporation desiring to do business as an auctioneer or conduct an auction in this State must obtain a nonresident auctioneer's license. The board may issue a license to any nonresident auctioneer duly licensed as an auctioneer in the state in which he resides without an examination, provided such other state permits an auctioneer's license to be issued to licensed resident auctioneers of this State without examination, upon compliance with the following requirements:

1. Proof. The applicant shall furnish proof to the board that he is licensed to conduct auctions in the state in which he resides;

2. Bond. The applicant shall file with the board an approved surety company bond conditioned upon satisfying any judgment for damages sustained by any person, corporation or municipality arising out of the auction to be conducted by him. The penal sum of such bond shall be at least \$10,000 and in no case shall be less than double the amount of the fair market value of the property to be auctioned;

3. Fee. The applicant shall pay an initial license fee of \$50 and \$25 for each renewal;

4. Legal representative. The applicant shall in writing designate the Secretary of State as his legal representative upon whom service of any legal process against him may be made;

5. Other information. The applicant under oath shall state his full name, age, residence, postal addresses and telephone numbers, and such other information as the board shall deem necessary.

Any other nonresident may be issued a nonresident license by the board upon compliance with subsections 2 to 5 and passing an examination as provided for in section 279 and payment of the same examination fee.

§ 281. Local license may be required; provisions.

All licenses issued under this chapter shall give the holder thereof the right to conduct auctions in any municipality or unorganized territory in the State. Any municipality may require a local license to hold auctions therein of more than 3 days duration and the payment of a \$10 local license fee to the use of the municipality.

§ 282. Corporation license; licensee may have assistants; provisions

Licenses issued under this chapter shall not be transferable nor give authority to more than one person, firm or corporation to conduct an auction sale, but each licensee may have the assistance of one or more persons in conducting any auc-

tion sale, who may aid that principal but shall not act for or without the principal. When a license is granted to any partnership, association or corporation it shall entitle the partnership, association or corporation to designate one of its members or officers, who upon compliance with the terms of this chapter shall, without payment of any further fee, upon issuance of said license be entitled to act as an auctioneer for and on behalf of such partnership, association or corporation. If the person so designated shall be refused a license by the board, or ceases to be associated with the principal, the principal shall have the right to designate another person who shall comply with the terms of this chapter. All other persons, including members, officers and employees, who actively act as auctioneers for and in behalf of such a partnership, association or corporation shall hold a license.

§ 283. Procedure when license refused

The board, after an application in proper form has been filed, shall before refusing to issue a license, grant the applicant a hearing as provided.

§ 284. Board may suspend licenses

Upon complaint, notice and hearing the board may revoke or suspend any license after proof that the holder has:

1. False representation. Obtained a license by a false or fraudulent representation; or
2. Crime. Been convicted of a crime involving moral turpitude; or
3. Account for moneys. Has failed, within a reasonable time to account for or to remit any moneys coming into his possession which belong to others; or
4. Other acts. Committed any other act which constitutes or demonstrates incompetency or untrustworthiness, or dishonest or fraudulent dealings.

§ 285. Hearing; procedure; appeal

The board, at least 15 days prior to the date set for a hearing, shall notify the applicant or licensee in writing by registered or certified mail addressed to his last known business address, which notice shall contain a statement of the matter or charges to be heard together with the date and place of the hearing. The applicant or licensee shall have the opportunity to be heard in person or by counsel at all such hearings.

In the preparation and conduct of such hearing the board shall have the power to require by subpoena the attendance and testimony of witnesses and the production of papers.

If the board shall determine that any applicant is not qualified to receive a license, a license shall not be granted to such applicant, and if the board shall determine that any licensee is guilty of a violation of any of the provisions of this chapter, the license shall be either suspended or revoked as ordered by the board. Upon application after one year from the date of revocation, the board may in its discretion grant reinstatement with such conditions as it may deem necessary to protect the public.

The findings of fact made by the board acting within its powers shall be conclusive, but the Supreme Judicial Court shall have the power to review questions of law involved in any final decision or determination of the board, provided that an appeal is taken by the aggrieved party within 30 days after receipt of such decision or determination by a complaint setting forth the grounds for appeal, a copy of which shall be filed with the board within said period, and said court may make such further order in respect thereto as justice may require.

Sec. 2. R. S., T. 5, § 151, amended. The first sentence of section 151 of Title 5 of the Revised Statutes is amended to read as follows:

All money received by the Treasurer of State from **the Board of Examiners for Auctioneers**, the Board of Registration in Medicine, the Board of Examiners in Physical Therapy, the Board of Examiners of Psychologists, the State Board of Nursing, the Board of Examiners of Applicants for Admission to the Bar, the Board of Accountancy, the Board of Veterinary Examiners, the Board of Osteopathic Examination and Registration, the Board of Examiners of Funeral Directors and Embalmers, the State Board of Registration and Examination in Optometry, the Board of Dental Examiners, the State Board of Registration for Professional Engineers, the State Board of Architects, the Electricians' Examining Board, the Oil Burner Men's Licensing Board, the State Board of Barbers, State Board of Hairdressers, the Examiners of Podiatrists, the Board of Chiropractic Examination and Registration and the Board of Commissioners of the Profession of Pharmacy shall constitute a fund, which shall be a continuous carrying account for the payment of the compensation and expenses of the members, the expenses of the board and for executing the law relating to each board respectively, and so much thereof as may be required is appropriated for said purposes.

Sec. 3. Outstanding licenses; saving clause. All present outstanding auctioneers' licenses issued under the Revised Statutes, Title 32, chapter 5, are to be held valid until the date of their expiration.

Sec. 4. R. S., T. 32, c. 5, repealed. Chapter 5 of Title 32 of the Revised Statutes, as amended, is repealed.