

MAINE STATE LEGISLATURE

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ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 1118

H. P. 905

House of Representatives, March 17, 1977

On motion of Ms. Clark of Freeport, referred to the Committee on Business Legislation. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Norris of Brewer.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SEVEN

AN ACT Relating to the Licensing of Auctioneers.

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

Sec. 1. 5 MRSA § 151, 1st sentence, as last amended by PL 1975, c. 705, § 1, is further amended to read:

All money received by the Treasurer of State from the **State Board of 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 State Board of Funeral Service, 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 Certification for Geologists and Soil Scientists, the State Board of Licensure of Administrators of Medical Care Facilities other than Hospitals, the State Board of Architects, the Electricians' Examining Board, the Oil Burner Men's Licensing Board, the Penobscot Bay and River Pilotage Commission, the State Board of Barbers, State Board of Cosmetology, State Board of Registration for Land Surveyors, State Board of Social Worker Registration, the Examiners of Podiatrists, the Board of Chiropractic Examination and Registration, the Board of Examiners on Speech Pathology and Audiology 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Sec. 2. 32 MRSA c. 5, as amended, is repealed.

Sec. 3. 32 MRSA c. 5-A is enacted to read:

**CHAPTER 5-A
AUCTIONEERS**

§ 271. Definitions

As used in this chapter, unless the context indicates otherwise, the following words shall have the following meanings.

1. Auctioneer. "Auctioneer" means a person who engages in this State in the business of selling for another real, personal or mixed property by auction.

2. Auctioneering. "Auctioneering" means the business or act of selling for another real, personal or mixed property by auction.

3. Board. "Board" means the State Board of Auctioneers.

4. Resident. "Resident" means any person who has resided within the State for 6 months next preceding the day of filing an application.

§ 272. State Board of Auctioneers

There is established a State Board of Auctioneers, the purpose of which shall be to advise and make recommendations to the Secretary of State on matters pertaining to the administration of this chapter and to perform such other duties and functions as are prescribed herein. The board shall consist of 3 members who shall be residents of this State and who shall be auctioneers licensed under this chapter. Members shall be appointed by the Governor. Members first appointed shall be appointed for terms of one, 2 and 3 years respectively. One member shall be appointed each year thereafter for a term of 3 years. Terms shall expire on March 1st. The board shall elect one of its members as chairman and one as secretary. Members shall serve without compensation.

§ 273. Rules

The board, with the approval of the Secretary of State, shall prescribe and enforce rules governing auctioneers, auctioneering and auctions.

§ 274. Auctioneering without a license prohibited

No person shall in this State engage himself in the business of auctioneer, hold himself out as an auctioneer, engage in auctioneering or advertise that he will sell the real, personal or mixed property of another by auction unless he has been approved by the State Board of Auctioneers and issued and holds a valid auctioneer's license from the Secretary of State under this chapter. A licensed auctioneer may employ unlicensed qualified or apprentice auctioneers to assist him.

§ 275. Qualifications

Subject to other requirements of this chapter, auctioneers' licenses shall be granted to applicants who are residents of this State, are trustworthy and competent to auction real, personal or mixed property of others in such a manner as to safeguard the interests of the public after proof thereof has been presented to the State Board of Auctioneers in any form they deem advisable.

§ 276. Nonresidents; reciprocity

A nonresident may be granted such license only if the state of his residence extends identical licensing privileges to residents of this State and if he otherwise conforms to all the provisions of this chapter. Such nonresident shall also, before obtaining a license, file with the Secretary of State, in writing, his irrevocable consent that suits and actions arising against him in this State out of his acts as an auctioneer may be commenced upon him by service of process upon the Secretary of State.

§ 277. Application

An application for license shall be in writing and shall be obtained from the Secretary of State. Such application shall be in such form as prescribed and approved by the State Board of Auctioneers. It shall contain a showing as to the applicant's ability to judge the value of real, personal and mixed property and such other information as the Secretary of State and the State Board of Auctioneers require to determine the qualifications of the applicant and compliance with this chapter. If the applicant is an individual, he shall verify the same. If the applicant is a firm or corporation, it shall be verified by at least 2 members or officers. The application shall be accompanied by the required fee and affidavits of at least 2 disinterested persons who are reputable freeholders in the area where the applicant resides, and at least one of which is a resident licensed auctioneer under this chapter, certifying that the applicant is trustworthy and competent to auction real, personal and mixed property in such a manner as to safeguard the interest of the public. Each such affidavit shall, among other things, set forth the name, age, address and occupation of the affiant, the extent of his acquaintanceship with the applicant, his familiarity with past business experience and dealings of the applicant and such other knowledge of the applicant and his background upon which the affidavit is founded. Applications for renewal licenses need not be accompanied by such affidavits.

§ 278. Local regulation

This chapter shall not be deemed to nullify nor prevent a municipal corporation from collecting an additional fee from auctioneers licensed under this chapter.

§ 279. Expiration of license; fee

The annual fee for a license shall be \$50 for resident auctioneers and \$75 for out-of-state auctioneers. The license shall expire on May 30th following its issuance.

§ 280. Denial; suspension; revocation

A license may be suspended or revoked for a maximum of one year, and an application for a renewal license may be denied only after the board shall so determine in the manner and for one of the reasons provided in this section. A license may be suspended or revoked and an application for a renewal license may be denied for one or more of the following reasons:

1. Failure to meet qualifications. Failure to meet the qualifications set forth in section 275;
2. Felony. Conviction of a felony;
3. Violation of this chapter. Willful violation of this chapter;
4. Bad faith or misrepresentation. Acts of bad faith or misrepresentations resulting in conviction in a court of law;
5. Unethical conduct. Unethical conduct which in the judgment of the board is reprehensible and against public welfare and protection;
6. Conducting auction without notice. Conducting an auction sale for another without notice having been published or posted thereof and stating in such notice the name of the auctioneer conducting the sale; or
7. Notice. No license shall be denied, suspended nor revoked until after 5 days' notice, in writing, to the licensee or applicant stating the ground of the proposed action and a public hearing at which he shall have opportunity to be heard, present testimony in his behalf and be confronted by witnesses against him. The board, in its discretion, may grant the accused a temporary permit to auction pending such hearing and determination. Determinations shall be made and the licensee or applicant notified thereof within 5 days after hearing. Any auctioneer notified of a suspension may request a rehearing within 20 days from the date of notification upon a rehearing and continued denial, suspension or revocation of license, or upon a refusal for rehearing, the party shall be entitled to appeal his case before any Superior Court in the State.

§ 281. Penalties

Any person violating this chapter shall be guilty of a Class E crime.

§ 282. Exceptions

1. Court or government auctions. This chapter shall not apply to any auctions held by order or judgment of any court of the State or the United States or by any officer of a municipality, county, state of the United States, foreclosure sales by mortgagees, lienholders or holders of any other kinds of security interests in real, personal or mixed property or to sales conducted or made by sheriffs, deputy sheriffs, constables, collectors of taxes, executors, administrators, guardians, conservators, receivers, assignees under voluntary assignments for the benefit of creditors or insurers, or by any other person required by law to sell real, personal or mixed property.

2. Charity auctions. Any resident member of a charitable, educational, religious or other nonprofit organization within the State, may conduct a

charity auction without a license for that organization so long as no fee is charged for that service.

3. Prior auctioneers. Notwithstanding any other provision of law, the Secretary of State and State Board of Auctioneers shall grant and issue a license to any auctioneer applying therefor within 6 months after the effective date of this chapter, who shall pay the proper fee and make proof satisfactory to the Secretary of State and the board that he was at the time this chapter took effect, a resident of this State and engaged in the business of auctioneering real, personal or mixed property.

§ 283. Use of moneys collected

All moneys collected pursuant to this chapter shall be paid to the Treasurer of State who shall administer and apply these moneys in accordance with Title 5, section 151.

STATEMENT OF FACT

This bill would establish a comprehensive licensing system for auctioneers to replace the present licensing system.