

# MAINE STATE LEGISLATURE

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(EMERGENCY)  
FIRST REGULAR SESSION

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ONE HUNDRED AND NINTH LEGISLATURE

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**Legislative Document**

**No. 1379**

S. P. 430

In Senate, March 20, 1979

Referred to the Committee on Business Legislation. Sent down for concurrence and ordered printed.

Presented by Senator Clark of Cumberland.

MAY M. ROSS, Secretary of the Senate

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STATE OF MAINE

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-NINE

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**AN ACT Relating to the Licensing of Auctioneers.**

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**Emergency preamble.** Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, present licenses for auctioneers expire March 31, 1979; and

Whereas, it would necessitate an extra annual licensing period which would be time consuming and costly; and

Whereas, it would be in the best interests of the public, law enforcement officers and auctioneers if this bill were to become effective by the next licensure period; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

**Sec. 1.** 32 MRSA c. 5, as last amended by PL 1977, c. 273, §§ 3-10, is repealed.

**Sec. 2.** 32 MRSA c. 5-A is enacted to read:

**CHAPTER 5-A**  
**AUCTIONEERS**

**§ 271. Advisory board**

**There is created within the Department of Business Regulation an Auctioneers Advisory Board for the purpose of advising the commissioner or his designee on the administration of this chapter.**

**The board shall be composed of 3 members, 2 of whom shall be auctioneers and one who shall be a public member. The members shall be appointed by the commissioner and shall serve for initial terms of one, 2 and 3 years respectively without compensation. Members will be reimbursed for actual expenses for attendance at meetings. After the expiration of the terms of the initial members, succeeding members shall serve for a term of 3 years. The advisory board shall meet at least twice each year in the department offices and at any other times as the commissioner deems necessary.**

**§ 272. Prohibition**

**No person in this State shall engage in the business of auctioneering, hold himself out as an auctioneer or advertise that he will sell the real, personal or mixed property of another by auction unless he holds a valid auctioneer's license at the time of the sale.**

**§ 273. Resident application; fee**

**Every resident person in this State desiring to do business as an auctioneer shall file an application on a form designated by the commissioner. The original application shall be accompanied by 2 letters of recommendation as evidence of ethical business practice. One letter shall be from a licensed auctioneer, the other from an individual of the applicant's choice. The applicant shall produce evidence of attendance from a school of auctioneering or evidence that he has apprenticed under a licensed auctioneer for 6 months.**

**The applicant shall furnish evidence of a surety bond in the amount of \$10,000 issued by a surety company approved by the Bureau of Insurance and licensed to do business in the State of Maine.**

**The application and supporting information shall be kept on file together with a record of all licenses issued. The license fee shall be \$50 for a biennium and the original license shall be effective from date of issue until March 31st of the biennial expiration or at any date which the commissioner designates. Original licenses effective for less than one year for the biennial licensing period shall be \$25.**

**§ 274. Renewal**

**Notice of expiration shall be mailed to each licensee's last known address at least 30 days in advance of the expiration of his license. The renewal notice shall include any requests for information necessary to update the individual's records. The biennial license fee shall be \$50.**

A renewal received 30 days after expiration will be considered as a new application.

**§ 275. License limitations**

1. **License not transferrable.** A license is not transferrable nor does it give authority to more than one person, but each licensee may have the assistance of one or more persons in conducting the auction sale. These individuals may aid the licensee or shall act in the capacity of an apprentice but shall not act for or without the licensee.

2. **Advertising.** No auction shall be advertised in this State without including the name and license number of the auctioneer.

3. **Education requirements.** All those holding a license to auction, at the effective date of this chapter, and who have not met the education or apprenticeship requirements as provided in section 273 may renew their license once for the next biennial licensing period to enable compliance with this chapter.

**§ 276. Nonresident licensure**

Every nonresident person desiring to do business as an auctioneer in this State shall obtain an auctioneer's license. The commissioner may issue a license to any nonresident auctioneer duly licensed as an auctioneer in the state in which he resides upon fulfillment of the same application requirements as those set forth for resident auctioneers.

In addition, the applicant shall furnish proof to the commissioner that he is licensed to conduct auctions in the state in which he resides.

**§ 277. Nonresident fee; renewal**

The applicant shall pay an initial license fee of \$100. The license will be renewed biennially upon payment of a \$100 fee. A \$50 fee will be charged for licenses effective for less than one year of the biennial licensing period.

**§ 278. Revocation, suspension or refusal to issue or renew**

1. **Revocation, suspension or refusal to renew a license.** Revocation, suspension or refusal to renew a license shall be governed by the provisions of the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter V.

2. **Reasons for not issuing a renewal.** Refusal to issue an original license and an existing license may be revoked or suspended or nonrenewed for any of the following reasons:

A. Conviction of the licensee of a violation involving theft, burglary, forgery, fraud or tampering with official records as provided in the Maine Criminal Code, Title 17-A;

B. Failure to comply with or properly maintain records required by Title 15, section 456; or

**C. Failure to possess the necessary qualifications or to meet the requirements set forth in this chapter for issuance or holding of a license.**

**§ 279. Inspection of license**

Every auctioneer licensed by the State intending to conduct an auction sale in any city or town shall, prior to the sale, show his state license to the municipal law enforcement agency or municipal clerk or officers. The provisions for obtaining a state auctioneer's license shall not prohibit any municipality from establishing its own permit requirements for an auction sale, provided no municipal permit shall be required for an auction which last less than 2 full consecutive days.

**§ 280. Limitation on sale of property**

1. **Statement of ownership of property.** Any law enforcement officer may require the auctioneer to state whether the merchandise being sold is owned in part or in its entirety by the auctioneer. If the merchandise is owned by another party, the name and address of that party shall be stated to law enforcement officials.

2. **Property from outside the state.** No auction sale shall include property brought into the State for the express purpose of auction, even though the owner of that property may be a resident of this State, without public notification in the auction advertisement.

3. **Selling real estate.** If an auctioneer sells real estate, offers to sell real estate or offers to negotiate the sale of real estate, he is considered to be acting in the capacity of a real estate broker and shall be licensed as a broker.

**§ 281. Exemptions**

1. **Charitable, educational, religious or nonprofit organizations.** The provisions of this chapter shall not apply to individuals who conduct a sale or auction for a charitable, educational, religious or other nonprofit organization, provided that the charity retains the total amount of the proceeds with the exception of advertising fees and the person conducting the sale or auction receives no fee for his services.

2. **Sheriffs, tax collectors, executors and administrators.** This chapter shall not apply to sheriffs or their deputies, constables, tax collectors, executors, administrators or any other officers authorized to sell property by order of any court.

3. **Pedigreed animals.** This chapter shall not prohibit any person employed by the owner of pedigreed animals to sell those animals at public auction.

**§ 282. Penalties**

A violation of any provision of this chapter is a civil violation for which a forfeiture not to exceed \$200 may be adjudged.

**§ 283. Conditions of auction sales**

**Each auctioneer shall post for display and describe at the beginning of each auction the conditions of the auction sale. The conditions shall include:**

- 1. Description of property.** A description of the property to be sold and whether the property is sold "as is;"
- 2. Highest bidder acknowledged.** That the highest bidder will be acknowledged by the auctioneer;
- 3. Bid not commensurate.** Whether a bid not commensurate with value, in the opinion of the auctioneer, may be made;
- 4. Absentee bids.** Whether absentee bids will be allowed; and
- 5. Sales Tax.** Sales tax requirements.

**Emergency clause.** In view of the emergency cited in the preamble, this Act shall take effect when approved.

#### STATEMENT OF FACT

This bill creates a 3-member auctioneer advisory board. Board members shall serve without per diem but shall be paid expenses. The one-year grace period is changed to 30 days to eliminate constant costly and time consuming renewals through the year, since these licenses are on a computerized renewal system. The amount of the bond for nonresident auctioneers is increased from \$2,000 to \$10,000. Apprenticeship or schooling has been made a prerequisite for licensure which will insure greater protection for the consuming public. The licensure period has been changed from annual to biennial to conform with all others in the department. Present resident license fees have been increased from a \$15 initial annual fee to a \$50 biennial fee, if in the first year of the biennium period or a \$25 fee, if in the 2nd year. The present nonresident initial license is changed from an annual \$50 fee to a biennial \$100 fee, if in the first year of the biennium period or a \$50 fee, if in the 2nd year. Renewals for resident auctioneers will be changed from a \$10 annual fee to a \$50 biennial fee. Renewals for nonresident auctioneers will be changed from a \$50 annual fee to a \$100 biennial fee. A person presently licensed will be allowed one full biennial licensing period to meet the requirements of this chapter. This bill will afford better control and law enforcement for local and state authorities and the Department of Business Regulation. It will require that auctioneers comply with more stringent standards. It also provides greater protection for the consuming public.

It is projected that the enactment of this bill will increase the revenue to the General Fund by at least \$5,000 biennially when taking into consideration the increase in fees, the expenses of the advisory board and the possible decrease in the number of licenses issued after the first full licensure period.