

MAINE STATE LEGISLATURE

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119th MAINE LEGISLATURE

FIRST REGULAR SESSION-1999

Legislative Document

No. 955

S.P. 321

In Senate, February 3, 1999

An Act to Recodify the Auctioneers Licensing Law.

Submitted by the Department of Professional and Financial Regulation pursuant to Joint Rule 204.

Reference to the Committee on Business and Economic Development suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator MacKINNON of York.

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

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Sec. 1. 5 MRSA §12004-A, sub-§5, as enacted by PL 1987, c. 786, §5, is amended to read:

5. Board of	\$30/Day	32 MRSA §271
Licensing of Auctioneers		<u>§288</u>

Sec. 2. 9 MRSA §5008, sub-§1, as amended by PL 1991, c. 714, §3, is further amended to read:

1. **Registration.** A person may not act as a professional fund-raising counsel, professional solicitor or a commercial co-venturer before that person has registered with the commissioner. Applications for registration or reregistration must be in writing, under oath, in the form prescribed by the commissioner and must be accompanied by an application fee in the amount of \$50 and a registration fee in the amount of \$200. Application fees are nonrefundable. The applicant shall, at the time of making application for registration or reregistration, file with and have approved by the commissioner a bond, in which the applicant must be the principal obligor, in the sum of \$10,000, with one or more responsible sureties whose liability in the aggregate as such sureties will at least equal that sum. The bond runs to any person who may have a cause of action against the principal obligor of the bond for any malfeasance or misfeasance in the conduct of charitable solicitation in this State. Registration is for a period of one year. The registration fee and bond required by this chapter must be waived for an auctioneer, when that auctioneer engages in conduct for which that auctioneer is already bonded, who is licensed by the Department of Professional and Financial Regulation and who has otherwise complied with the requirements of Title 32, chapter 5-A 5-B.

Sec. 3. 29-A MRSA §1051, sub-§8, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

8. **Application.** This section does not apply to vehicle auctioneers who are licensed and bonded pursuant to Title 32, chapter 5-A 5-B and who are conducting a vehicle auction incidental to the liquidation of a business or an estate.

Sec. 4. 32 MRSA c. 5-A, as amended, is repealed.

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

CHAPTER 5-B

AUCTIONEERS

SUBCHAPTER I

2 **GENERAL PROVISIONS**

4 **§284. Definitions**

6 As used in this chapter, unless the context otherwise
8 indicates, the following terms have the following meanings.

10 1. Auction. "Auction" means the offering of goods or real
12 estate for sale by means of exchanges between an auctioneer and
14 bidders.

16 2. Auctioneer. "Auctioneer" means any person who conducts,
18 advertises or offers that person's service to conduct auctions;
20 contracts or offers to contract with consignors of real or
22 personal property, with or without receiving or collecting a fee,
24 commission or other valuable consideration; or sells or offers to
26 sell property at auction.

28 3. Bid. "Bid" means an offer to buy.

30 4. Board. "Board" means the Board of Licensing of
32 Auctioneers, as established by Title 5, section 12004-A,
34 subsection 5.

36 5. Buyer's premium. "Buyer's premium" means a premium
38 usually described as a percentage of the final bid to be paid by
40 the buyer as part of the purchase price.

42 6. Consignor. "Consignor" means the bona fide owner, agent
44 or party in interest of the personal property or real estate
46 being offered for sale.

48 7. Completion of sale. "Completion of the sale" means the
50 acceptance of the final bid by the auctioneer as indicated by the
52 fall of the hammer or in another customary manner.

8. Person. "Person" means an individual.

9. Reasonable period of time. "Reasonable period of time"
means not more than 30 days from the date of the auction or such
other time as is stated in a contract.

10. With reserve. "With reserve" means that the consignor
reserves the right to establish a minimum bid, to accept or
reject any bid and to withdraw the property at any time prior to
the announcement of the completion of the sale by the auctioneer.

11. Without reserve. "Without reserve" means that no
minimum opening bid or other condition that limits the sale other
than to the highest bidder is required and that the consignor may
not modify or nullify the sale by bidding either personally or

2 through a representative. An auction without reserve is the same
3 as an absolute auction.

4 **§285. License required**

6 A person in this State who engages in the business of
7 auctioneering, professes or advertises to be an auctioneer or
8 advertises the sale of real, personal or mixed property by
9 auction shall hold a valid auctioneer's license.

10 **§286. Exemptions to licensing**

12
13 1. Personal use. A person does not require a license in
14 order to auction personal or real property that the person has
15 maintained for that person's use or personal property that the
16 person's parents, spouse or children have maintained for their
17 own use.

18
19 2. Charitable, educational, religious or nonprofit
20 organizations. This chapter does not apply to individuals who
21 conduct a sale or auction for a charitable, educational,
22 religious or other nonprofit organization as long as the
23 nonprofit organization retains the total amount of the proceeds,
24 with the exception of advertising fees, and the person conducting
25 the sale or auction receives no fee for services.

26
27 3. Sheriffs, tax collectors, executors and administrators.
28 This chapter does not apply to sheriffs or their deputies,
29 constables, tax collectors, executors, administrators or any
30 other officers authorized to sell property by order of any court.

31
32 4. Pedigreed animals. This chapter does not prohibit any
33 person employed by the owner of pedigreed animals from selling
34 those animals at public auction.

35
36 5. Foreclosure sales. This chapter does not apply to any
37 individual conducting a foreclosure sale pursuant to a court
38 order.

39
40 6. Tax-acquired property. This chapter does not apply to
41 the sale by or on behalf of a municipality of any real or
42 personal property acquired by that municipality for nonpayment of
43 taxes.

44
45 7. Assistants. This chapter does not apply to a person
46 assisting the auctioneer in conducting the auction sale provided
47 the auctioneer is physically present and assumes full
48 responsibility for the auction sale.

49 **§287. Penalties: injunction**

2 Any person who purports to be or operates as a licensed
3 auctioneer without first obtaining a license commits a Class E
4 crime.

5 The State may bring an action in Superior Court to enjoin
6 any person from violating this chapter, regardless of whether
7 proceedings have been or may be instituted in the Administrative
8 Court or whether criminal proceedings have been or may be
9 instituted.

12 SUBCHAPTER II

14 BOARD

16 §288. Board of Licensing of Auctioneers; organization

18 1. Board composition. The Board of Licensing of
19 Auctioneers, as established by Title 5, section 12004-A,
20 subsection 5, is composed of 5 members, 3 of whom must be
21 auctioneers and 2 of whom must be public members.

22 2. Terms; removal. The terms of the members of the board
23 are for 3 years. Members may be removed by the Governor for
24 cause.

25 3. Appointments. The members of the board are appointed by
26 the Governor. Appointments of members must comply with section
27 60.

28 4. Meetings; quorum. The board shall meet at least once a
29 year and at such other times as the board determines necessary.
30 A majority of the members of the board constitutes a quorum for
31 the transaction of business under this chapter.

32 §289. Rules

33 The board may establish guidelines and rules by which this
34 chapter is administered. Rules adopted pursuant to this chapter
35 are routine technical rules pursuant to Title 5, chapter 375,
36 subchapter II-A. Rules adopted by the board must be consistent
37 with Title 5, chapter 375, subchapter II.

38 1. Adjudicatory hearings. The board may adopt rules
39 governing the conduct of hearings.

40 2. Investigations. The board may adopt rules governing
41 investigations and filing and processing of complaints pursuant
42 to section 60-G.

2 3. Standards of practice. The board may adopt rules
governing the practice of auctioneering that establish standards
of practice that serve to protect the public interest.

4
6 4. License qualifications. The board may adopt rules
relating to the qualifications of an applicant for any license
authorized under this chapter that ensure that an applicant is
sufficiently trustworthy and competent to practice auctioneering.

10 5. Fees. The board may establish by rule fees in amounts
that are reasonable and necessary for their respective purposes,
except that the set fee for any one purpose may not exceed \$200.

14 6. Other. The board may adopt any other rules that are
necessary for the performance of its duties under this chapter.

16 **§290. Powers**

18
20 The board has the following duties and powers, in addition
to those otherwise set forth in this chapter.

22 1. Investigations. The board shall investigate or cause to
be investigated all complaints made to it and all cases of
noncompliance with or violation of this chapter. The complaints
must be filed pursuant to section 60-G.

26
28 2. Hearings. The board shall conduct hearings in
conformity with Title 5, chapter 375, subchapter IV to the extent
applicable. The board after a hearing may impose disciplinary
sanctions pursuant to Title 10, section 8003, subsection 5,
paragraph A-1. In addition, the board may, pursuant to Title 5,
section 10004, revoke or suspend the license of an auctioneer.

34 3. Denial of license. The board may not refuse to renew a
license for any reason other than the failure to pay a required
fee unless the licensee has been afforded an opportunity for an
adjudicatory hearing consistent with the board's rules.

38 **§291. Grounds for disciplinary action**

40
42 1. Disciplinary sanctions. After a hearing pursuant to
section 290, subsection 3, the board has the authority to impose
disciplinary sanctions at any time when a licensee is found
guilty of one or more of the following:

46 A. Subject to Title 5, chapter 341, any Class A, Class B or
Class C crime or any other crime that bears directly on the
practice of auctioneering;

50 B. Failure, within a reasonable time, to account for or
remit any money or property coming into the licensee's
possession that belongs to others;

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

6 D. Violating any rule adopted by the board or any provision
8 of this chapter;

10 E. Any act or conduct, whether of the same or different
12 character than specified in this chapter, that constitutes
14 or demonstrates unprofessional conduct; and

16 F. Advertising an auction without including the name and
18 license number of the auctioneer.

16 SUBCHAPTER III

18 LICENSING QUALIFICATIONS

20 §292. License qualifications

22 1. Application. Applicants shall submit a properly
24 completed application on forms furnished by the board, together
26 with the prescribed fee.

28 2. Residence. The applicant shall provide evidence of the
30 applicant's legal residence.

32 3. Reputation. The applicant must have a good reputation
34 for honesty, fair dealing and competency. Recommendations from
36 at least 2 references who have acknowledged before a notary
38 public that they have known the applicant for at least one year
40 and that the applicant has such a reputation create a rebuttable
42 presumption that the applicant meets that qualification.

44 4. Examination. Each applicant shall satisfactorily pass
46 the examination, the content of which is determined by the
48 board. Examination results remain valid for issuance of a
50 license for 90 days from notification of a passing score.

52 5. Surety bond. Each applicant for licensure shall file a
54 surety bond in an amount set by the board by rule.

56 6. Criminal history information. Subject to Title 5,
58 chapter 341, the applicant shall provide criminal history record
60 information.

62 §293. License limited to individuals

64 Licensure is determined based on individual and personal
66 qualifications. A firm, company, partnership or corporation may
68 not be licensed under this chapter.

2 **§294. Nonresident licensure**

4 **1. Nonresident license.** Every nonresident person desiring
6 to do business as an auctioneer in this State shall obtain a
8 license. The board may issue a license to any nonresident upon
10 fulfillment of the same application requirements as those set
12 forth for resident auctioneers. In addition, a nonresident
14 applicant shall furnish the following:

16 **A. A certificate of good standing from each jurisdiction**
18 **where the applicant is licensed; and**

20 **B. An irrevocable consent that actions may be commenced**
22 **against the applicant in the proper court of any county in**
24 **this State in which a cause of action may arise or in which**
26 **the plaintiff may reside, by the service of any process or**
28 **pleading authorized by the laws of the State on the Director**
30 **of the Office of Licensing and Registration within the**
32 **Department of Professional and Financial Regulation.**

34 **§295. Renewal**

36 Licenses expire annually on March 31st or at a time the
38 Commissioner of Professional and Financial Regulation
40 designates. The board may issue a renewal license in the absence
42 of any reason or condition that might warrant the refusal of
44 granting a license upon receipt of the written request of the
46 applicant and the renewal fee and upon the applicant presenting
48 evidence of compliance with the requirements of section 292,
50 subsections 5 and 6. A license may be renewed up to 90 calendar
52 days after the date of its expiration upon payment of a late fee
 in addition to the renewal fee. Any applicant who submits an
 application for renewal more than 90 calendar days after the
 expiration date is subject to all requirements governing new
 applicants under this chapter.

54 **§296. Inspection of license; ownership**

56 Every auctioneer shall show that auctioneer's license at any
58 time upon the request of a municipal law enforcement agency or
60 officer or a municipal clerk or official in whose municipality
62 the auctioneer is conducting an auction. The provisions for
64 obtaining a state auctioneer's license do not prohibit any
66 municipality from establishing its own permit requirements for an
68 auction sale, provided no municipal permit is required for an
70 auction that lasts less than 2 full consecutive days.

72 A municipal law enforcement agency or officer or a municipal
74 clerk or official may require the auctioneer to state whether the
76 merchandise is owned by another party and the name and address of
78 that party.

2 **§297. Real estate brokerage**

4 If an auctioneer engages in real estate brokerage, the
6 auctioneer must be licensed under chapter 114, except that a real
8 estate license is not required if the auctioneer is hired to call
10 bids on real estate being sold at an auction and the auctioneer
12 does not prepare contracts or otherwise control the actual sale
14 or take custody of any part of the purchase price.

10 **§298. Contract required**

12 1. Contract required. An auctioneer may not conduct an
14 auction in this State without first having a written contract
16 with the consignor of any property to be sold. The contract must
18 contain the date of the contract and the name and license number
20 of the auctioneer. The contract must contain the terms and
22 conditions of the auction, including but not limited to:

- 20 A. The description of all items to be sold;
22 B. Whether the auction is with reserve or without reserve;
24 C. The payment schedule;
26 D. The commission rate; and
28 E. The statement of other charges, including a buyer's
30 premium.

30 **§299. Conditions of auction sales**

32 Each auctioneer shall post for display and describe at the
34 beginning of each auction the conditions of the auction sale.
36 The conditions must indicate:

- 38 1. Sold "as is." Whether the property is sold "as is";
40 2. Highest bidder acknowledged. Whether the highest bidder
42 at the completion of the sale will be acknowledged by the
44 auctioneer;
46 3. Reserve. Whether the auction is with reserve or without
48 reserve and the acceptable manner of bids;
50 4. Absentee bids. Whether absentee bids are allowed;
52 5. Sales tax. Sales tax requirements;
54 6. Auctioneer or consignor bidding. Whether or not the
56 auctioneer or consignor reserves the right to bid;

2 7. Uniform Commercial Code. A statement that Title 11,
section 2-328 applies to this auction sale;

4 8. Statement of buyer's premium. A statement of the
buyer's premium and any other charges to the bidders or any other
6 persons in attendance; and

8 9. Title and address. The title and address of the board.

10

SUMMARY

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14 This bill is a rewrite of the auctioneers licensing law.
The bill organizes the law into subchapters that clarify
standards of practice and license requirements. In addition,
16 definitions used in the chapter are clarified and expanded and
the license renewal cycle is changed from biennial to annual.