

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND NINTH LEGISLATURE

FIRST REGULAR SESSION

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CHAPTER 478

S. P. 430 — L. D. 1379

AN ACT Relating to the Licensing of Auctioneers.

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Sec. 1. 32 MRSA c. 5, as last amended by PL 1977, c. 273, §§ 3-10, is repealed.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

The applicant shall furnish evidence of a surety bond payable to the Treasurer of State 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.

§ 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. Whether or not 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;

5. Sales Tax. Sales tax requirements.

6. Auctioneer or owner bidding. Whether or not the owner or auctioneer reserves the right to bid;

7. Reserve. Whether or not the auction has a reserve; and

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