

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND NINETEENTH LEGISLATURE

FIRST REGULAR SESSION
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IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1999

§526. Penalty

1. Consumer remedies. A lender or settlement agent who violates any provision of this subchapter and causes actual damage to a consumer is subject to a civil action by the aggrieved consumer in which the consumer has the right to recover the greater of actual damages in an amount determined by the court or, except as provided in subsection 2, an amount determined by the court not less than \$250 nor more than \$1,000, plus costs of the action together with reasonable attorney's fees.

2. Bona fide error. Liability under subsection 1 is limited to actual damages, plus costs of the action together with reasonable attorney's fees, if the lender or settlement agent shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid any such error.

3. Limitation of actions. An action may not be brought pursuant to this subchapter more than 2 years after the violation occurred.

§527. Enforcement

With respect to lenders that are supervised financial organizations as that term is defined in Title 9-A, section 1-301, subsection 38-A, a violation of this subchapter is deemed an anticompetitive and deceptive practice and the Superintendent of Banking may take appropriate action to ensure compliance with this subchapter. With respect to all other supervised lenders, as that term is defined in Title 9-A, section 1-301, subsection 39, the Director of Consumer Credit Regulation may take such action.

See title page for effective date.

CHAPTER 146

S.P. 321 - L.D. 955

**An Act to Recodify the Auctioneers
Licensing Law**

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

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

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

GENERAL PROVISIONS

§284. Definitions

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

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

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

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

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

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

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

7. Completion of sale. "Completion of the sale" means the acceptance of the final bid by the auctioneer as indicated by the 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 through a representative. An auction without reserve is the same as an absolute auction.

§285. License required

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

§286. Exemptions to licensing

1. Personal use. A person does not require a license in order to auction personal or real property that the person has maintained for that person's use or

personal property that the person's parents, spouse or children have maintained for their own use.

2. Charitable, educational, religious or non-profit organizations. This chapter does not apply to individuals who conduct a sale or auction for a charitable, educational, religious or other nonprofit organization as long as the nonprofit organization 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 services.

3. Sheriffs, tax collectors, executors and administrators. This chapter does 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.

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

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

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

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

§287. Penalties; injunction

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

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

SUBCHAPTER II

BOARD

§288. Board of Licensing of Auctioneers; organization

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

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

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

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

§289. Rules

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

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

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

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. 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.

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 \$100 per year for residents and \$125 per year for nonresidents.

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

§290. Powers

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

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.

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.

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.

§291. Grounds for disciplinary action

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:

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;

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;

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

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

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

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

SUBCHAPTER III

LICENSING QUALIFICATIONS

§292. License qualifications

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

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

3. Reputation. The applicant must have a good reputation for honesty, fair dealing and competency. Recommendations from at least 2 references who have acknowledged before a notary public that they have known the applicant for at least one year and that the

applicant has such a reputation create a rebuttable presumption that the applicant meets that qualification.

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

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

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

§293. License limited to individuals

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

§294. Nonresident licensure

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

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

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

§295. Renewal

Licenses expire annually on March 31st or at a time the Commissioner of Professional and Financial Regulation designates. The board may issue a renewal license in the absence of any reason or condition that might warrant the refusal of granting a license upon receipt of the written request of the applicant and the renewal fee and upon the applicant presenting evidence of compliance with the requirements of section 292, subsections 5 and 6. A license may be renewed up to 90 calendar 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.

§296. Inspection of license; ownership

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

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

§297. Real estate brokerage

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

§298. Contract required

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

A. The description of all items to be sold;

B. Whether the auction is with reserve or without reserve;

C. The payment schedule;

D. The commission rate; and

E. The statement of other charges, including a buyer's premium.

§299. 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 must indicate:

1. Sold "as is." Whether the property is sold "as is";

2. Highest bidder acknowledged. Whether the highest bidder at the completion of the sale will be acknowledged by the auctioneer;

3. Reserve. Whether the auction is with reserve or without reserve and the acceptable manner of bids;

4. Absentee bids. Whether absentee bids are allowed;

5. Sales tax. Sales tax requirements;

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

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

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

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

See title page for effective date.

CHAPTER 147

H.P. 285 - L.D. 393

An Act to Redefine Hunting

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

Sec. 1. 12 MRSA §7001, sub-§15, as enacted by PL 1979, c. 420, §1, is amended to read:

15. Hunt. To "hunt" means to ~~hunt for, pursue, molest, shoot, catch, take, kill, wound or destroy or harvest~~ wild animals ~~and~~ or wild birds or to attempt to catch, take, kill or harvest wild animals or wild birds.

See title page for effective date.

CHAPTER 148

H.P. 958 - L.D. 1356

An Act to Allow Authorized Removal of a Beaver Dam Without a Permit

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

Sec. 1. 38 MRSA §480-Q, sub-§21 is enacted to read:

21. Removal of beaver dams. Removal of a beaver dam as authorized by a game warden, as long as:

A. Efforts are made to minimize erosion of soil and fill material from disturbed areas into a protected natural resource;

B. Efforts are made to minimize alteration of undisturbed portions of a wetland or water body; and

C. Wheeled or tracked equipment is operated in the water only for the purpose of crossing a water body to facilitate removal of the beaver dam. Where practicable, wheeled or tracked equipment may cross a water body only on a rock, gravel or ledge bottom.

This exemption includes the draining of a freshwater wetland resulting from removal of a beaver dam. It does not include removal of a beaver house.

See title page for effective date.

CHAPTER 149

S.P. 617 - L.D. 1782

An Act to Amend the Maine Criminal Code Regarding Improper Gifts

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

Sec. 1. 17-A MRSA §605, sub-§1, ¶A, as enacted by PL 1975, c. 499, §1, is amended to read:

A. Being a public servant ~~he~~ that person solicits, accepts or agrees to accept any pecuniary benefit from a person ~~who he knows is or is likely to become subject to or interested in any matter or action pending before or contemplated by himself or the governmental body with which he is affiliated~~ if the public servant knows or reasonably should know that the purpose of the donor in making the gift is to influence the public servant in the performance of the public servant's official duties or vote, or is intended as a reward for action on the part of the public servant; or

See title page for effective date.