

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

COMMITTEE SUBSTITUTE

FOR

SENATE BILL NO. 1190

By: Littlefield

COMMITTEE SUBSTITUTE

(Auctions and auctioneers - Licensed Auctioneer
Committee - requiring license for certain auctioneer
work - codification -

effective date)

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 995.1 of Title 59, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Auctioneer Licensing Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 995.2 of Title 59, unless there is created a duplication in numbering, reads as follows:

As used in the Auctioneer Licensing Act:

1. "Auction" means the public sale of real property or personal property if the sale price of the property offered is increased by bids until the highest accepted bidder becomes the purchaser;

2. "Auctioneer" means any individual who does not enter into a contract with the seller, does not handle the proceeds of the auction and acts only as a bid caller;

3. "Auction manager" means any individual who knowingly represents, creates or abets the inference of being available to manage or operate an auction and who is responsible for the collection and disbursement of auction funds;

4. "Board" means the State Board of Health;

5. "Committee" means the Licensed Auctioneer Committee; and

6. "Department" means the Oklahoma State Department of Health.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 995.3 of Title 59, unless there is created a duplication in numbering, reads as follows:

The State Board of Health shall have the power and duty to promulgate, prescribe, amend and repeal rules necessary to implement the provisions of the Auctioneer Licensing Act including, but not limited to, defining categories and limitations for such licenses.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 995.4 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created the Licensed Auctioneer Committee which shall consist of five (5) members who shall be citizens of the United States and shall be residents of this state.

B. No later than July 1, 1995, two members of the Committee, who shall have five (5) years' experience in the sale of property at auction, shall be appointed by the President Pro Tempore of the Senate. One member shall be appointed for a one-year term and one member shall be appointed for a two-year term.

C. No later than January 1, 1995, two members of the Committee, who shall have five (5) years' experience in auction work, shall be appointed by the Speaker of the House. One member shall be appointed for a one-year term and one member shall be appointed for a two-year term.

D. No later than January 1, 1995, one member of the Committee shall be appointed by the Commissioner of Health and shall be a lay member. The lay member shall be appointed for a two-year term.

E. After the initial appointments, members shall serve for terms of two (2) years. Any vacancy on the Committee shall be filled for the unexpired term within thirty (30) days in the manner in which that position was originally filled. Members may be removed for misconduct, incompetence or neglect of duty.

F. A majority of the Committee shall constitute a quorum for the transaction of business. The Committee shall elect a chair from among its members. The Committee shall meet at least quarterly to conduct examinations, and special meetings may be called by the Chair of the Committee or the Commissioner of Health. Each member shall be entitled to reimbursement of ordinary and necessary expenses incurred in the performance of official duties as provided in the State Travel Reimbursement Act, Section 500.1 et seq. of Title 74 of the Oklahoma Statutes.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 995.5 of Title 59, unless there is created a duplication in numbering, reads as follows:

The Licensed Auctioneer Committee shall:

1. Assist and advise the State Board of Health on all matters pertaining to the formation of rules pursuant to the provisions of the Auctioneer Licensing Act;

2. Assist and advise the Oklahoma State Department of Health on all matters relating to the licensing of auctioneers or auction managers;

3. Conduct investigations into the qualifications of applicants for licensure at the request of the Department;

4. Conduct investigations and proceedings, at the request of the Department, for alleged violations of the Auctioneer Licensing Act;

5. Develop and administer the examinations for applicants for licensing as auctioneers or auction managers;

6. Assist and advise the Board or Department in such other matters as requested; and

7. Notwithstanding any other section of law, authorize the Commissioner of Health to contract with the State Board of Vocational and Technical Education or other entities for facilities for testing applicants, provided that the integrity of the testing is maintained and adequate notice is given to persons interested in taking the exam at that location.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 995.6 of Title 59, unless there is created a duplication in numbering, reads as follows:

The Oklahoma State Department of Health shall have the power and duty to:

1. Issue, renew, suspend, revoke, modify or deny licenses to engage in auction work pursuant to the Auctioneer Licensing Act;
2. Enter upon public and private property for the purpose of inspecting auctioneer or auction manager licenses for compliance with the provisions of the Auctioneer Licensing Act and of the rules of the State Board of Health promulgated thereto;
3. Employ personnel to conduct investigations and inspections;
4. Enforce the standards and rules promulgated pursuant to the Auctioneer Licensing Act;
5. Reprimand or place on probation, or both, any holder of a license pursuant to the Auctioneer Licensing Act;
6. Investigate complaints and hold hearings;
7. Initiate disciplinary proceedings, request prosecution of and initiate injunctive proceedings against any person who violates any of the provisions of this act or any rule promulgated pursuant to this act;
8. Establish and levy administrative fines against any person who violates any of the provisions of this act or any rule promulgated pursuant to this act; and
9. Exercise all incidental powers as necessary and proper to implement and enforce the provisions of the Auctioneer Licensing Act and the rules of the State Board of Health.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 995.7 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. Examinations for licenses for auctioneers or auction managers authorized by this act shall be uniform and practical in nature for each respective license and shall test the qualifications and fitness of the applicants for licenses. The

Licensed Auctioneer Committee shall conduct examinations quarterly and at such other times as it deems necessary.

B. Any applicant initially failing to pass the examination shall not be permitted to take another examination for a period of thirty (30) days. Any applicant subsequently failing to pass the examination shall not be permitted to take another examination for a period of ninety (90) days.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 995.8 of Title 59, unless there is created a duplication in numbering, reads as follows:

After December 31, 1995, no person shall engage or offer to engage in, by advertisement or otherwise, any auction work who does not possess a valid and appropriate license from the Oklahoma State Department of Health.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 995.9 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. Except as authorized by the provisions of subsection B of this section, the State Department of Health shall issue a license as an auctioneer or auction manager to a person who:

1. Has been certified by the Licensed Auctioneer Committee as having successfully passed the appropriate examination; and
2. Has paid the license fee and has otherwise complied with the provisions of the Auctioneer Licensing Act. The license fees shall be Fifty Dollars (\$50.00) annually.

B. The Department shall license without examination any person as an auctioneer or auction manager who can demonstrate to the Licensed Auctioneer Committee that such person has been a practicing auctioneer or auction manager for at least one (1) year prior to the passage of this act.

C. All licenses shall be nontransferable. No license shall be issued for longer than one (1) year and all licenses shall expire on June 30 of each year. Licenses may be renewed upon application and payment of the required fees and payment of any penalty for late renewal, as shall be established by the Committee. Licenses, issued without state examination that have

not been renewed by December 31, shall not be renewed until the applicant passes the appropriate examination. No late fee shall be charged to renew a license which expired while the applicant was in military service if application is made within one (1) year of discharge from the military service.

D. No auctioneer licenses shall be issued pursuant to subsection B of this section after December 31, 1995.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 995.10 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. No person shall work in any capacity of auction work unless such person is licensed under the Auctioneer Licensing Act.

B. The Auctioneer Licensing Act shall not apply to any of the following:

1. An auction of property by an individual who personally sells property and who did not acquire the property for nonprofit purposes or by a civic organization which has tax-exempt status;

2. Sales required by law to be held at auction or sales ordered to be held at auction by a court of competent jurisdiction;

3. Any person registered with the Packers and Stockyards Administration of the United States Department of Agriculture as a livestock dealer pursuant to the Packers and Stockyards Act (7 U.S.C. Section 181 et seq.);

4. Any person licensed under the Vehicle Dealers and Manufacturers Act while engaged in performing the duties authorized under the act; and

5. Any properly enrolled student in a regularly scheduled term of an auction school while participating in an auction school approved auction. Such auction school shall be approved by the Licensed Auctioneer Committee and by the Oklahoma Board of Private Vocational Schools.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 995.11 of Title 59,

unless there is created a duplication in numbering, reads as follows:

A. Any auctioneer or auction manager who violates any of the provisions of the Auctioneer Licensing Act, in addition to suspension or revocation of a license, upon conviction, shall be guilty of a misdemeanor and punished by a fine of not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00), or both such fine and imprisonment together with the costs of prosecution.

B. In addition to other penalties provided by law, if after a hearing in accordance with the provisions of Section 13 of this act, the Auctioneer Hearing Board shall find any auctioneer or auction manager to be in violation of any of the provisions of this act, such person may be subject to an administrative fine of not more than Five Hundred Dollars (\$500.00) for each violation. All administrative fines collected pursuant to the provisions of this subsection shall be deposited in the Oklahoma Auctioneer Licensing Revolving Fund, as established in Section 12 of this act. Administrative fines imposed pursuant to this subsection shall be enforceable in the district courts of this state.

C. The Auctioneer Hearing Board may make application to the appropriate court for an order enjoining the acts or practices prohibited by this act, and upon a showing by the Auctioneer Hearing Board that the person has engaged in any of the prohibited acts or practices, an injunction, restraining order or other order as may be appropriate shall be granted by the court.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 995.12 of Title 59, unless there is created a duplication in numbering, reads as follows:

There is hereby created in the State Treasury a revolving fund for the Oklahoma State Department of Health, to be designated the "Oklahoma Auctioneer Licensing Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies received by the Department pursuant to the Auctioneer Licensing Act, as well as administrative fines

authorized by Section 11 of this act. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended by the Department for the purpose of implementing the Auctioneer Licensing Act. Expenditures from said fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 995.13 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. The State Department of Health and the Licensed Auctioneer Committee shall act as the Auctioneer Hearing Board and shall comply with the provisions of Article II of the Administrative Procedures Act, Section 308a et seq. of Title 75 of the Oklahoma Statutes.

B. The Auctioneer Hearing Board may, upon its own motion, and shall, upon written complaint filed by any person, investigate the business transactions of any auctioneer or auction manager. The State Department of Health shall suspend or revoke or may refuse to issue or renew any license or registration under the Auctioneer Licensing Act for any of the following:

1. Making a material misstatement in the application for a license or registration, or the renewal of a license or registration;

2. Obtaining any license or registration by false or fraudulent representation;

3. Loaning or allowing the use of such license by any other person or illegally using a license;

4. Demonstrating incompetence to act as an auctioneer or auction manager; or

5. Violating any provisions of the Auctioneer Licensing Act, or any rule, regulation or order prescribed by the State Board of Health pursuant to the provisions of the Auctioneer Licensing Act.

C. Any person whose license or registration has been revoked by the Auctioneer Hearing Board may apply for a new license one (1) year from the date of such revocation.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 995.14 of Title 59, unless there is created a duplication in numbering, reads as follows:

No agency of this state, municipality or other political subdivision shall have authority after the effective date of this act to levy or collect any license, tax or fee as a regulatory or revenue measure, or to require the licensing in any manner of any person licensed pursuant to the provisions of this act.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 995.15 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. Any nonresident applicant for a license in this state who is licensed by another state where the qualifications prescribed at the time of licensing were, in the opinion of the Licensed Auctioneer Committee, no less than those prescribed in this state at the date of application, and where reciprocal licensing privileges satisfactory to the Committee are granted to licensees of this state, may be granted a license without an examination or additional license fees and may practice the auction profession in this state, provided the license number and postal abbreviation of the other state must be displayed on all auction advertising in this state by a licensee of another state.

B. Any person desiring to make a complaint against a licensee licensed by another state shall submit a written complaint to the Auctioneer Hearing Board in verified form. All complaints against licensees from another state shall be administered according to Section 12 of this act.

SECTION 16. This act shall become effective January 1, 1995.

44-2-2191 LKT