

SHORT TITLE: Creating the Auctioneer Licensing Act; codification;  
effective date; emergency.

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

SENATE BILL NO. 1190

By: Littlefield

AS INTRODUCED

An Act relating to auctions and auctioneers; providing short title; defining terms; creating the Auctioneer Licensing Commission; providing for membership, appointment, qualifications, terms, vacancies, removal, officers, quorum, meetings, and reimbursement; providing for powers and duties of the Commission; providing for examination and reexamination for certain classes of auctioneers; requiring license for certain auction work; providing for licenses for certain classes of auctioneers; stating qualifications, fees, expiration, and renewal for licenses; excepting certain persons from examinations for a certain time; stating that licenses shall be nontransferable; providing for temporary licenses; requiring certain designated supervisors; requiring registry of supervisors; prohibiting certain auctioneering work without license; providing exceptions to the act; providing penalties under certain circumstances; providing for certain administrative fines; authorizing Commission to apply to certain courts for certain orders; creating the Oklahoma Auctioneer Licensing Revolving Fund; requiring compliance with Administrative Procedures Act; providing for certain investigations; providing for suspension, revocation or denial of certain licenses under certain conditions; prohibiting certain regulatory or revenue actions by certain public entities; requiring designated offices for certain licensees; providing for licensing nonresidents under certain circumstances; providing for codification; providing an effective date; and declaring an emergency.

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. "Associate auctioneer" means any person eighteen (18) years of age or older who, in order to be qualified for a principal auctioneer license, works a mandatory twelve (12) auctions performing various functions under the supervision of principal auctioneers in lieu of completing an accredited auction school course;
2. "Association" means the Oklahoma State Auctioneers Association;
3. "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;
4. "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, but who is not a bid caller;
5. "Bid caller" means an individual who publicly solicits bids for property by public outcry;
6. "Commission" means the Auctioneer Licensing Commission;
7. "Contract principal auctioneer" means any principal auctioneer who is employed by a principal auctioneer or auction manager who does not enter into the contract with the seller, does not handle the proceeds of the auction and acts only as a bid caller;
8. "Issuing state" means a state or country that has issued an auction license regardless of whether the licensee is a resident of that state or country;
9. "Junior bid caller" means any person who is at least sixteen (16) years of age but no more than eighteen (18) years of age who acts as a bid caller under the direct supervision of a supervising principal auctioneer;
10. "Office" means a place of business where records of a principal auctioneer or auction manager may be maintained and licenses displayed;

11. "Owner" means an individual, association, partnership, corporation, estate, trust or any other entity or the authorized representative of the same having the legal right to sell property;

12. "Principal auctioneer" means any person who knowingly represents, creates or abets the inference of being able to sell or offer to sell at auction, property of any description by or at auction or who sells property at auction, and who may be engaged in a combination of functions at any one auction, including responsible principal auctioneer, contract principal auctioneer and supervising principal auctioneer;

13. "Property" means any chattel, commodity, good, merchandise, or real or personal property of any form or type which may be lawfully kept or offered for sale at auction;

14. "Responsible principal auctioneer" means the principal auctioneer who is liable for the conduct and proceeds of the auction; and

15. "Supervising principal auctioneer" means a principal auctioneer who is responsible for the supervision of the activities of junior bid callers.

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:

A. There is hereby created the Auctioneer Licensing Commission. The Commission shall consist of five (5) members appointed by the Governor from a list of nominees furnished by the Oklahoma Auctioneers Association.

B. All members of the Commission shall have been a resident of the state for five (5) years and no more than three members of the Commission shall be of the same political party.

C. Four of the members of the Commission shall be principal auctioneers and shall have principal auctioneer experience for not less than five (5) years immediately preceding their appointment. One of the members shall be a lay member who has never been engaged in the business of conducting sales by auction.

D. The members shall serve for a term of three (3) years. Of the initial appointments, one member shall be appointed for a one-year term, two members for two-year terms and two members for three-year terms; provided, that the initial lay member shall be appointed for a three-year term. No person shall be appointed for more than two (2) consecutive terms. If a vacancy occurs in the membership of the Commission for any reason, the vacancy shall be filled by appointment by the Governor for the unexpired term. The Governor may remove a member for cause which shall include the violation of any of the provisions of this act or the rules adopted under the authority of this act.

E. The Governor shall designate one of the initial principal auctioneer appointees to be the chair. Thereafter, the chair will be elected annually from among the members. A quorum of the Commission shall consist of four (4) members.

F. The Commission shall meet at least once each calendar year to conduct its business, and special meetings may be called by the chair.

G. Commission members 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 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:

The Auctioneer Licensing Commission shall have the following duties and powers:

1. Promulgate, prescribe, amend and repeal rules necessary to implement the provisions of the Auctioneer Licensing Act;

2. Issue, renew, suspend, revoke, modify or deny licenses to engage in auctioneer work pursuant to the Auctioneer Licensing Act;

3. Register designated supervising principal auctioneers for associate auctioneers and junior bid callers;

4. Develop and administer examinations for applicants for licenses for all classes of auctioneers;

5. Set reasonable license fees;
6. Conduct investigations and hold hearings;
7. Reprimand or place on probation, or both, any holder in violation of a license issued 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;
9. Hire and retain such staff and support personnel as are necessary for the conduct of business and assure compliance with this act;
10. Enforce the standards and rules promulgated pursuant to this act; and
11. Exercise all incidental powers necessary and proper to implement and enforce the provisions of this act.

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:

A. Examinations for licenses for the classes of auctioneers authorized by the Auctioneer Licensing 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 Auctioneer Licensing Commission 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 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:

After January 1, 1995, no person shall engage or offer to engage in, by advertisement or otherwise, any auctioneering work who does not possess a valid and appropriate license from the Auctioneer Licensing Commission.

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. Except as authorized by the provisions of subsection B of this section, the Auctioneer Licensing Commission shall issue a license as a principal auctioneer, associate auctioneer, auction manager or a junior bid caller to a person who:

1. Has met the qualifications for and has been certified by the Commission 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 as follows:

- a. principal auctioneer: Seventy-five Dollars (\$75.00),
- b. associate auctioneer: Seventy-five Dollars (\$75.00),
- c. auction manager: Seventy-five Dollars (\$75.00), and
- d. junior bid callers shall be charged only a one-time license fee of Seventy-five Dollars (\$75.00).

B. The Commission shall license without examination any person as a principal auctioneer who submits an affidavit to the Commission that such person has been a practicing auctioneer for at least one (1) year prior to the passage of this act, pays the required annual fee, and has met the Auction Recovery Fund requirements as established by the Commission.

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 Commission. 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. A temporary license shall be issued to an applicant for any class of auctioneer license who meets all requirements for the appropriate license except for taking and passing the examination; provided, that the applicant has submitted application for the next examination and paid all applicable fees.

E. No auctioneer licenses shall be issued pursuant to subsection B of this section after December 31, 1994.

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:

All associate auctioneers and junior bid callers shall be required to have a supervising principal auctioneer designated to be responsible for their supervision prior to receiving a license. The Auctioneer Licensing Commission shall maintain a registry of all supervising principal auctioneers for all associate auctioneers and junior bid callers. Names of the supervising principal auctioneers shall be submitted to the Commission prior to the issuing of the license for associate auctioneers and junior bid callers. The Commission shall be notified within thirty (30) days when a change is made in the designated supervising principal auctioneer of an associate auctioneer or junior bid caller.

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. No person shall work in any capacity of auctioneering 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. (1921);

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 Auctioneer Licensing Commission and by the State Department of Education.

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. Any principal auctioneer, associate auctioneer, auction manager or junior bid caller 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 12 of this act, the Auctioneer Licensing Commission shall find any principal auctioneer, associate auctioneer, auction manager or junior bid caller to be in violation of any of the provisions of this act, such person or firm may be subject to an administrative fine of not more than Five Hundred Dollars (\$500.00) for each violation. Each day a person is in violation of this act may constitute a separate violation. The maximum fine will not exceed One Thousand Dollars (\$1,000.00). All administrative fines collected pursuant to the provisions of this subsection shall be deposited in the Oklahoma Auctioneer Licensing Revolving Fund, as established in Req. No. 1989Page 8

Section 11 of this act. Administrative fines imposed pursuant to this subsection shall be enforceable in the district courts of this state.

C. The Auctioneer Licensing Commission 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 Licensing Commission 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 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:

There is hereby created in the State Treasury a revolving fund for the Auctioneer Licensing Commission, 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 Commission pursuant to the Auctioneer Licensing Act, as well as administrative fines authorized by Section 10 of this act. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended by the Commission 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 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:

A. The Auctioneer Licensing Commission 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 Commission may, upon its own motion, and shall, upon written complaint filed by any person, investigate the business

transactions of any principal auctioneer, associate auctioneer, auction manager or junior bid caller. The Commission 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 a principal auctioneer, associate auctioneer, auction manager or junior bid caller;

5. Violating any provisions of the Auctioneer License Act, or any rule, regulation or order prescribed by the Commission pursuant to the provisions of the Auctioneer License Act; or

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

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:

No agency of this state, municipality or other political subdivision shall have authority after the effective date of the Auctioneer Licensing 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 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:

Every principal auctioneer or auction manager licensed under the Auctioneer Licensing Act shall maintain a designated office or location where such licensee may be reached or may be served with legal documents. The Auctioneer Licensing Commission shall be notified by the licensee of any change of such designated office or location within thirty (30) days subsequent to such change.

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 or country where the qualifications prescribed at the time of licensing were, in the opinion of the Auctioneer Licensing Commission, no less than those prescribed in this state at the date of application, and where reciprocal licensing privileges satisfactory to the Commission 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. The issuing state license number and issuing state postal abbreviation must be displayed on all auction advertising in this state by a licensee of an issuing state.

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

SECTION 16. This act shall become effective July 1, 1994.

SECTION 17. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.