

## AN ACT

Imposing regulations and licensing requirements on auctioneers, apprentice auctioneers, auction houses, auction companies and trading assistants; imposing powers and duties on the State Board of Auctioneer Examiners; and making repeals.

63 P.S. 734.1 - 734.34 (Amended October 2008)

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The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

#### Section 1. Short title.

This act shall be known and may be cited as the Auctioneer Licensing and Trading Assistant Registration Act.

#### Section 2. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Apprentice auctioneer." A person who is licensed under this act as an apprentice auctioneer.

"Auction" or "sale at auction." The offer to sell property by an auctioneer or apprentice auctioneer to the members of an audience congregated for the purpose of making bids for the purchase of the property in an

effort by the auctioneer or apprentice auctioneer to advance the amount of the bids to obtain the highest or most favorable offer. The term "auction" or "sale at auction" excludes any sale conducted through an online internet bidding platform.

"Auction company." A company which, as part of its business, arranges, manages, sponsors, advertises or carries out auctions.

"Auction house." An established place of business, including, but not limited to, an auction barn, a sale barn and a sale pavilion, where two or more auctions are held within any 12-month period and where representations are regularly made that property is sold at auction. The term does not include premises where isolated sales are conducted by an auctioneer or auctioneer apprentice and which are used primarily for purposes other than auctions or sales at auction.

"Auctioneer." A person who sells or offers or attempts to sell property at auction. The term includes any person who holds himself out as engaged in the business of selling property at auction.

"Board." The State Board of Auctioneer Examiners in the Department of State.

"Commissioner." The Commissioner of Professional and Occupational Affairs in the Department of State.

"Department." The Department of State.

"Licensee." A person licensed under this act including an auctioneer, apprentice auctioneer, holder of a special license and, in the case of an auction house or company, the person required to obtain the license.

"Online internet bidding platform." Hardware or software architecture that provides or enables computer access by multiple users to an interactive computer server for the purpose of allowing users to offer property for sale and that does not examine, set the price or prepare the description of the property to be offered.

"Person." An individual, partnership, association, corporation, limited liability company or other entity.

"Property." Real and personal property. The term includes, but is not limited to, domestic animals and farm products.

"Qualified auctioneer." A currently licensed auctioneer.

"Registrant." A person registered under this act as a trading assistant.

"Trading assistant." An individual who, for a commission or fee, conducts or intends to conduct a business within this Commonwealth of accepting personal property to sell on behalf of another through an online internet bidding platform.

### Section 3. Auctioneer and apprentice auctioneer licenses.

(a) Requirement for license.- Notwithstanding section 10.1, it is unlawful for any person to engage in or carry on the profession of auctioneer, to conduct a sale at auction, to hold himself out as an auctioneer or as an apprentice auctioneer or to offer to conduct sales at auction in this Commonwealth without first obtaining from the board a license as an auctioneer or apprentice auctioneer. Any member, officer or employee of a partnership, association or corporation who attempts to sell at auction or who is actively engaged in the auction profession must have a license as an auctioneer or apprentice auctioneer.

(b) Issuance and supervision of licenses.-It is the duty of the board, upon payment of the license fees required and upon compliance with the requirements of this act, to issue a license as an auctioneer or apprentice auctioneer to individuals or as an auctioneer to partnerships, associations and corporations who qualify under and comply with this act. The board shall supervise and control all licenses issued under this act.

(c) Qualifications in general for license.-Licenses shall be granted only to persons who have a good reputation for honesty, truthfulness, integrity and competence to transact the business of auctioneer or apprentice auctioneer in a manner as to safeguard the interest of the public and only after satisfactory proof of these qualifications has been presented to the board as required by regulation.

(d) Qualifications for apprentice auctioneer license.-To qualify for an apprentice auctioneer license, a person must be sponsored and employed for compensation by a qualified auctioneer who employs no more than one other apprentice auctioneer.

(e) Qualifications for auctioneer license.-To qualify for an auctioneer license, a person must have passed the prescribed examination after having:

(1) served an apprenticeship as a licensed apprentice auctioneer for a period of not less than two years in the employ of a qualified auctioneer and participated for compensation in no less than 30 auctions;

or

(2) successfully completed a prescribed course of study in auctioneering of at least 20 credit hours at a school approved by the board.

(f) Qualifications for license reissued after long inactivity.-Any person to whom an auctioneer or apprentice auctioneer license has been issued and who has been inactive as an auctioneer or apprentice auctioneer for a period of seven years without renewing the license issued to him shall be required to submit to and pass an examination approved by the board prior to having a license reissued to him.

(g) Designation of auctioneer-of-record.-If the applicant for a license is a partnership, association or corporation, then a member of the partnership or association or an officer of the corporation, who is licensed in this Commonwealth as an auctioneer, must be designated as the auctioneer-of-record. The auctioneer-of-record is principally responsible for the conduct of the auctions of the partnership, association or corporation in accordance with this act. A partnership, association or corporation auctioneer license becomes invalid if the license of the auctioneer-of-record is not renewed or is suspended or revoked.

(h) Sales exempt from license requirements.-The requirement to obtain a license under this act does not apply to sales at auction in the following circumstances:

(1) To a specified single sale per year conducted by the owner of property if the owner is not engaged in the business of selling the property and if the property is owned by the person in an individual capacity.

(2) To a sale conducted by or on behalf of a charitable organization if the person conducting the sale receives no compensation therefor.

(3) To a sale conducted by or on behalf of a person appointed by judicial order or decree.

(4) To a sale conducted in the settlement of any decedent's estate.

(5) To a sale conducted by or under the direction of any public authority.

(6) To any sale required by law to be at auction.

(i) Special license to conduct auction.-An auctioneer authorized to engage in auctioneering in another state shall, upon application and payment of the license fee, be issued a special license for each auction conducted by him. Applications must be made 20 days in advance of the sale and must include the name and address of the consignor or owner of all items to be sold. All applications are subject to approval by the board and shall include proof of authority to engage in auctioneering in the other state.

#### Section 4. Status of existing licensees.

(a) Apprentice auctioneers.-An individual licensed as an apprentice auctioneer on the effective date of this act shall thereafter possess the same rights and privileges and be subject to the same requirements pertaining to licensure as individuals to whom licenses as an apprentice auctioneer are issued under this act.

(b) Auctioneers.-A person licensed as an auctioneer on the effective date of this act shall thereafter possess the same rights and privileges as persons to whom licenses as an auctioneer are issued under this act.

#### Section 5. Applications for initial and renewal licenses.

(a) Application for auctioneer license.-Applications for license as an auctioneer shall be made to the board in writing upon forms provided by the board which shall contain such information as to the individual or, if the applicant is a partnership, association or corporation, as to its members or officers, as the board requires. If the applicant is an individual, the application shall be signed by that individual. If the applicant is a partnership or an association, the application shall be signed by a member. If the applicant is a corporation, the application shall be signed by an officer. An application by a licensed apprentice auctioneer seeking to qualify on the basis of an apprenticeship shall contain or be accompanied by satisfactory evidence that the applicant was in the employ of a sponsor for at least two years and participated for compensation in not less than 30 auctions on the dates and at the locations provided by the applicant. Upon the filing of an application, the board shall investigate the allegations contained in the application and if, upon investigation, it finds the allegations untrue, it may refuse to examine or license the applicant or may revoke any license issued to the applicant on the basis of materially untrue allegations contained in the application for a license. The board shall set forth in writing its findings and reasons for its refusal or revocation and furnish a copy to the applicant.

(b) Application for apprentice auctioneer license.-Applications for license as an apprentice auctioneer shall be made to the board in writing upon forms provided by the board which shall contain such information as to the applicant as the board requires. For license renewals, the licensee shall set forth the period of time, if any, during which he was engaged in the auction profession, stating the name of his present sponsor and any former sponsor for the period of five years immediately preceding the date of the renewal. If it becomes necessary to change sponsors, the apprentice auctioneer must notify the board by letter upon the termination of the sponsorship and submit a transfer form, provided by the board, when a new sponsor is

obtained. An apprentice auctioneer license is invalid when there is no sponsoring auctioneer and credit does not accrue during that time. A license will be reissued when the apprentice auctioneer submits a transfer form which informs the board that he has secured a new sponsor.

(c) Examinations.-The board shall contract with a professional testing organization for the preparation and administration of the examination, in accordance with section 812.1(a) of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929. No person may be issued an auctioneer license unless the person passes an examination approved by the board. The board shall hold examinations at locations, times and dates prescribed by regulation of the board.

(d) Issuance of new license after revocation.-In the event the license of an auctioneer or an apprentice auctioneer is revoked by the board subsequent to the effective date of this act, no new license may be issued to that person until he complies with all the provisions of this act.

(e) Expiration and renewal of license.-All licenses issued by the board shall be for a maximum term of two years and shall expire on the last day of February of each odd year. It is the duty of all persons licensed to practice as an auctioneer or apprentice auctioneer or to operate as an auction house or auction company to renew the license biennially with the board and to pay the license fee for each biennial license renewal. Applications for renewals of licenses issued under this act shall be made within 60 days prior to the expiration of the license upon forms and in the manner provided by the board.

(f) Internet sales. – An applicant or licensee renewing a license under this section must indicate to the board whether or not sales will be conducted via an online internet bidding platform.

#### Section 6. License, examination and other fees.

(a) Setting of fees.-The license and examination fees and all other fees imposed under the provisions of this act shall be fixed by the board by regulation and shall be subject to review in accordance with the act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act. If the revenues generated by fees, fines and civil penalties imposed in accordance with the provisions of this act are not sufficient to match expenditures over a two-year period, the board shall increase those fees by regulation, subject to review in accordance with the Regulatory Review Act, such that the projected revenues will meet or exceed projected expenditures.

(b) Changing fees.-If the Bureau of Professional and Occupational Affairs determines that the fees established by the board are inadequate to meet the minimum enforcement efforts required, then the bureau, after consultation with the board, shall increase the fees by regulation, subject to review in accordance with the Regulatory Review Act, such that adequate revenues are raised to meet the required enforcement effort.

#### Section 7. Special licensees to furnish bond.

(a) General rule.-A bond in the penal sum of \$5,000 shall accompany every application for a special license. The bond shall be executed by a surety company authorized by the laws of this Commonwealth to transact business in this Commonwealth. The bond shall be for the use of the Commonwealth and for any person or persons who may have a cause of action against a licensee arising under this act.

(b) Conditions of bond.-The conditions of the bond shall be that the licensee will comply with and abide by the provisions of this act and will pay to the Commonwealth, the board or any person or persons any and all money that may come due to the Commonwealth, the board or the person or persons from a licensee under and by virtue of this act.

(c) Action on bond.-If any person is aggrieved by the misconduct of any special licensee and recovers judgment against the licensee therefor, the person may on any execution issued under the judgment maintain an action upon the bond of the licensee in any court having jurisdiction of the amount claimed.

#### Section 8. Authority to transact business not transferable.

The authority to transact business as an auctioneer, apprentice auctioneer, auction house or auction company under a license issued by the board is restricted to the person named in the license and may not be transferred to the benefit of any other person. A partnership, association or corporation licensed under this act is only permitted to transact auction business through a member, officer or employee who is licensed under this act.

#### Section 9. Auction house license.

(a) Requirement for license.-Every person, except an individual who is licensed as an auctioneer, shall, before operating an auction house, obtain a license from the board to operate the auction house. Every partnership, association or corporation must obtain a license even though a member or officer is licensed as an auctioneer.

(b) Application for license.-Every person seeking a license to operate an auction house shall file with the board an application in writing upon forms provided by the board which shall contain such information as to the individual or, if the applicant is a partnership, association or corporation, as to the members or officers, as the board requires. A person must file a separate application for each auction house to be operated. The application shall be accompanied by the license fee and surety bond required by this act.

(c) Investigation and refusal of license.-Upon the filing of an application, the board shall investigate the allegations contained in the application and, if, upon investigation, it finds the allegations untrue, it may refuse to license the applicant to operate an auction house.

(d) Information from auctioneer.-A licensed auctioneer who also operates an auction house shall notify the board in writing of the address of each auction house operated by him and of the trade or business name by which each auction house is known. The auctioneer shall notify the board in writing if the operation of the auction house is sold or discontinued or if the name or location of the auction house is changed.

#### Section 10. Auction company license.

(a) Requirement for license.-Every person, except an individual who is licensed as an auctioneer or an individual who is licensed to operate an auction house, shall, before operating an auction company, obtain a license from the board to operate the auction company. Every partnership, association or corporation must obtain a license even though a member or officer is licensed as an auctioneer.

(b) Application for license.-Every person seeking a license to operate an auction company shall file with the board an application in writing upon forms provided by the board which shall contain such information as to the individual or, if the applicant is a partnership, association or corporation, as to the members or officers, as the board requires. Each application shall be accompanied by the license fee and surety bond required by this act.

(c) Investigation and refusal of license.-Upon the filing of an application, the board shall investigate the allegations contained in the application and, if, upon investigation, it finds the allegations untrue, it may refuse to license the applicant to operate an auction company.

(d) Information from auctioneer or auction house.-A licensed auctioneer or an individual licensed to operate an auction house, who also operates an auction company, shall notify the board in writing that he is operating an auction company and shall specify the trade or business name and the address of the principal place of business of each auction company which he operates. The individual who is licensed as an auctioneer or to operate as an auction house shall notify the board in writing if the operation of the auction company is sold or discontinued or if the name or location of the auction company is changed.

#### Section 10.1. Trading assistant registration.

(a) Requirement for registration. -It shall be unlawful for an individual to act as a trading assistant for a sale conducted by competitive bidding without either first registering with or obtaining licensure from the board. Registration is required on a biennial basis.

(b) Application.- Application for registration under this section shall include the following:

- (1) Name of the applicant, the business and the physical location where the business will be conducted.
- (2) Date the applicant will begin accepting goods for sale through an online internet bidding platform.
- (3) Pennsylvania tax identification number.
- (4) E-mail address.

(c) Fee.-A registration fee of \$100 shall be included with each application for registration.

#### Section 11. Nonresident licensees.

(a) General rule.-A nonresident of this Commonwealth may be licensed as an auctioneer or apprentice auctioneer or to operate an auction house or auction company upon complying with all the provisions and conditions of this act required of residents of this Commonwealth.

(b) Waiver of certain requirements.-The board may waive the requirement for serving an apprenticeship or completing a course of study in auctioneering if the nonresident was:

- (1) licensed by another state for at least two years; or

- (2) established in the business of auctioneering for at least two years and, in the case of states that do not require a license, the board reviews the application to determine the qualifications of the applicant.
- (c) Limitation on type of property sold.-The nonresident auctioneer or apprentice auctioneer is only permitted to sell at auction in this Commonwealth whatever property the laws of his state permit nonresident auctioneers and apprentice auctioneers to sell at auction.
- (d) Ineligibility to sponsor apprentices.-A nonresident auctioneer is not a qualified auctioneer for the purpose of sponsoring or employing an apprentice auctioneer.

#### Section 12. Reciprocity with other states.

- (a) General rule.-A nonresident of this Commonwealth who applies for a license as an auctioneer or apprentice auctioneer may be granted a license for which he applies if he is licensed as an auctioneer or apprentice auctioneer by the proper authority of the state of his domicile, upon the payment by the applicant of the proper license fee and the filing with the board of a properly certified copy of the license issued to the applicant by the state of his domicile, subject to the following limitations:
- (1) The auctioneer licensing laws of the nonresident state must extend to licensed auctioneers and apprentice auctioneers of this Commonwealth the same rights and privileges and the same authority to conduct auction sales in that state as this act extends to nonresidents of this Commonwealth without the necessity of the licensed auctioneers and apprentice auctioneers of this Commonwealth to obtain additional or further licenses or authority from any political subdivision of that state to conduct an auction sale.
- (2) The nonresident auctioneer or apprentice auctioneer is only permitted to sell at auction in this Commonwealth whatever property the laws of his state permit nonresident auctioneers and apprentice auctioneers to sell at auction.
- (b) Bond.-The bond required by this act shall accompany the application.
- (c) Change of nonresident status.-The movement from another state or jurisdiction to domicile in this Commonwealth eliminates the possibility of reciprocal licensing set forth in this section and the individual must qualify for a license under terms of this act which are applicable to residents of this Commonwealth.

#### Section 13. Licensee and registrant to furnish bond.

- (a) General rule.-An auctioneer, apprentice auctioneer, auction company or auction house license or trading assistant registration shall not be granted or issued to any person until the applicant has filed with the board an approved bond payable to the Commonwealth in the amount of \$5,000. The bond shall be executed by a surety company authorized by the laws of this Commonwealth to transact business in this Commonwealth. The bond shall be for the use of the Commonwealth and for any person or persons who may have a cause of action against a licensee or registrant under this act.
- (b) Conditions of bond.-The condition of the bond shall be that the licensee or registrant will comply with and abide by the provisions of this act and will pay to the Commonwealth, the board or any person or persons any and all money that may come due the Commonwealth, the board or the person or persons from a licensee or registrant under and by virtue of this act.
- (c) Action on bond.-If any person is aggrieved by the misconduct of any licensee or registrant and recovers judgment against the licensee or registrant therefor, the person may, on any execution issued under the judgment, maintain an action upon the bond of the licensee or registrant in any court having jurisdiction of the amount claimed.

#### Section 14. No other license or registration required.

No political subdivision of this Commonwealth shall have the power or authority to levy or collect any license tax or fee which is either a regulatory or a revenue measure upon or from any auctioneer or apprentice auctioneer or trading assistant licensed or registered under this act nor to require any auctioneer or apprentice auctioneer to be licensed by the political subdivision in order to carry on the business of auctioneer or to conduct a sale at auction.

#### Section 15. List of licensees and registrants.

The board shall maintain a current list of any person licensed by or registered with the board. The list shall be posted on the Department's internet website and shall be subject to the Act of February 14, 2008 (P.L. 6, No. 3), known as the Right-To-Know Law.

#### Section 16. Records of sales.

(a) General rule.-Every auctioneer or trading assistant, whether acting in his own behalf or as the officer, agent or representative of another, after the receipt or acceptance by him of any property for sale at auction or sale through an online internet bidding platform, shall maintain a written record which shall contain the following information:

(1) The name and address of the person who employed him to conduct the transaction and of the owner, the owner's authorized agent or consignor of the property to be sold.

(2) A copy of the written contract authorizing the transaction containing the terms and conditions of the transaction or a copy of the receiving invoice.

(3) A written record of the transaction.

(b) Inspection of records.-The records referred to in subsection (a) shall be open at all reasonable times for inspection by the board or any person who is authorized in writing for that purpose by the board and who exhibits the written authorization to the auctioneer or trading assistant before making an inspection.

(c) Retention of records.-The written records shall be kept on file in the office of the auctioneer or trading assistant for a period of at least two years and, if the auctioneer or trading assistant is notified of a complaint against him, the records shall be maintained by the auctioneer or trading assistant until the complaint is finally resolved.

(d) Receipts.-Every auctioneer or trading assistant must provide a written receipt for all transactions. A receipt may be provided electronically. Receipts must be retained for at least two years.

#### Section 17. Contracts for conduct of sale.

(a) General rule.-Prior to conducting a transaction, an auctioneer or trading assistant shall enter into a written contract, in duplicate, with the owner or consignor of the property to be sold, containing the terms and conditions upon which the licensee or registrant agrees to conduct the sale. The contract may be entered into electronically. The contracts shall be kept on file in the office of the auctioneer or trading assistant and shall be open to inspection as provided in this act. It is unlawful for a person to advertise an auction or sale at auction or a sale through an online internet bidding platform without including in the advertisement or notice of sale the name and license number of the auctioneer, auction house or auction company or the registration number of the trading assistant conducting the transaction.

(b) Penalty.-A person who violates subsection (a) commits a summary offense and shall, upon conviction, be sentenced to pay a fine not less than \$50.

#### Section 18. Display of licenses.

(a) General rule.-Every individual, partnership, association or corporation licensed as an auctioneer under this act shall prominently display the license certificate in their office and the current renewal card or any facsimile thereof shall be shown on demand of any person at all sales at auction conducted by any licensee.

(b) Apprentice auctioneers.-All auctioneers shall prominently display in their office the license certificate of any apprentice auctioneer employed by them and the current renewal card or any facsimile thereof of any apprentice auctioneer employed by them shall be available on demand at any sale in which an apprentice is employed. A license issued to an apprentice auctioneer shall designate his sponsor by name. Prompt notice in writing within ten days shall be given to the board by the apprentice auctioneer of any change of sponsor and of the name of the new sponsor into whose service the apprentice auctioneer is about to enter or has entered. A new license shall be issued without charge by the board to the apprentice auctioneer for the unexpired term of the original license. The new sponsor shall be a qualified auctioneer. The change of sponsor or employment by any licensed apprentice auctioneer without notice to the board shall automatically cancel the license issued to him. It is the duty of the sponsor named in the license to notify the board within ten days of any change in status of an apprentice licensed under him. It is unlawful for an apprentice auctioneer to pay compensation to an auctioneer for the sole purpose of listing the apprentice as an employee.

(c) Suspension or revocation of license for violation.-The violation of this section by any licensee is sufficient cause for the suspension or revocation of his license at the discretion of the board after a hearing in accordance with this act.

#### Section 19. Revocation or suspension of license for violation by employee.

A violation of this act by an apprentice auctioneer or other employee of a licensed auctioneer shall not be grounds for the revocation or suspension of the license of the sponsor of the apprentice auctioneer or

employee unless it appears at the hearing that the sponsor had knowledge of the violation. A course of dealing shown to have been consistently followed by an apprentice auctioneer or employee constitutes prima facie evidence of knowledge upon the part of the sponsor.

#### Section 20. Investigations and enforcement actions.

(a) General rule.-The board may, upon its own motion, and shall, promptly upon the verified complaint in writing of any person setting forth specifically the wrongful act or acts complained of, investigate any action or business transaction of any person licensed by the board and may temporarily suspend or permanently revoke licenses issued by the board or impose a civil penalty not exceeding \$1,000 at any time when, after due proceedings provided in this act, it finds the licensee to have been guilty in the performance or attempt to perform any of the acts prohibited to others than licensees under this act, as follows:

- (1) Knowingly making any substantial misrepresentation.
  - (2) Knowingly making any false promise of a character likely to influence, persuade or induce.
  - (3) A continued or flagrant course of misrepresentation or making false promises through agents or apprentice auctioneers.
  - (4) Within five years prior to the issuance of the license then in force, conviction in a court of competent jurisdiction in this or any other state or in Federal court of forgery, embezzlement, obtaining money under false pretenses, extortion, conspiracy to defraud or other like offense or offenses.
  - (5) Any failure to account for or to pay over moneys belonging to others which have come into his or its possession arising out of a sales transaction within a reasonable time.
  - (6) Any misleading or untruthful advertising.
  - (7) Any act or conduct in connection with a sales transaction which demonstrates incompetency, bad faith or dishonesty.
  - (8) Knowingly using false bidders, cappers or puffers.
  - (9) Violating any of the provisions of this act.
  - (10) Violating any regulation of the board.
  - (11) Having his license to engage in the auction profession revoked or suspended or having other disciplinary action taken or his application for licensure refused, revoked or suspended by the proper licensing authority of another state.
  - (12) Failing to establish or maintain an escrow account.
  - (13) For any licensed auctioneer or apprentice auctioneer to bid and buy for himself at any auction he is conducting.
  - (14) For any licensed auctioneer or apprentice auctioneer to pay any compensation in money or other valuable thing to any person other than a licensed auctioneer or apprentice auctioneer for the rendering of any service or the doing of any of the acts by this act forbidden to be rendered or performed by other than licensees.
- (b) Notice of charges.-Before refusing, suspending or revoking any license, the board shall, in writing, notify the applicant or licensee of the charges against him, accompanying the notice with a copy of the complaint filed, if any, and the board shall accord the applicant or licensee ample opportunity to be heard in person or by counsel.

#### Section 21. Escrow account.

Every auctioneer and registrant shall immediately deposit moneys, received from the sale of property, belonging to others in a separate custodial or trust fund account maintained by the auctioneer or trading assistant until the transaction involved is terminated, at which time the auctioneer or trading assistant shall account for the full amount received.

#### Section 22. Hearing on charges.

(a) General rule.-If the applicant or licensee desires, the board shall grant a hearing upon the charges. The said hearings may be held by the board or any member thereof or by any other person duly authorized by the board for such purpose in any particular case.

(b) Report of hearing officer.-If the hearing is held by a member of the board or by a person authorized by the board, a written report of the hearing shall be made to the board.

(c) Action on report of hearing officer.-The board may adopt the findings in the report or may, with or without additional testimony, either return the report for any further consideration the board deems necessary or make additional or other findings of fact on the basis of all the legally probative evidence in

the record and enter its findings of fact and conclusions of law and order in accordance with the requirements for the issuance of an adjudication under Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure).

Section 23. Administration and enforcement.

The board shall administer and enforce this act.

Section 24. Injunctive relief.

The board may authorize its agents to make application to the appropriate court for an order enjoining the acts or practices which constitute or will constitute a violation of this act.

Section 25. Records of courts to be evidence before board.

In proceedings before the board and in all proceedings upon appeal from any of its decisions, the record, or a duly certified or exemplified copy, in any proceedings at law or in equity in any court of competent jurisdiction in this or any other state in which the applicant or licensee charged or under investigation was a party shall be admissible where the issue of fact involved in the proceedings are pertinent to the inquiry before the board. The verdict of the jury or judgment of the court in any action at law or the decree of the court in any proceeding in equity shall be prima facie as to the facts at issue in the proceedings and necessarily adjudicated therein. The verdict in any criminal prosecution in a court of record in this or any other state in which the applicant or licensee charged was the defendant shall be conclusive as to the facts charged and at issue in the prosecution.

Section 26. Revocation or suspension of license or registration.

(a) Revocation or suspension of license or registration for committing crime.-Where, during the term of any license or registration issued by the board, the licensee or registrant is convicted in a court of competent jurisdiction in this or any other state of forgery, embezzlement, obtaining money under false pretenses, extortion, criminal conspiracy to defraud or other like offense and a duly certified or exemplified copy of the record in the proceeding is filed with the board, the board shall revoke or suspend the license issued to the licensee or registration issued to the registrant.

(b) Suspension of license or registration pending trial of crime.-In the event any licensee or registrant is indicted in this or any other state of forgery, embezzlement, obtaining money under false pretenses, extortion, criminal conspiracy to defraud or other offense or offenses and a certified copy of the indictment is filed with the board or other proper evidence is given to it, the board may, in its discretion, suspend the license issued to the licensee or registration issued to the registrant pending trial of the charges.

(c) Revocation of license of entity for violation by member or officer.-In the event of the revocation or suspension of the license issued to any member of a partnership or to any officer of an association or corporation, the license issued to the partnership, association or corporation shall be revoked by the board unless, within a time fixed by the board, the connection of the member of the partnership is severed and his interest in the partnership and his share in its activities brought to an end or the officer of the association or corporation is discharged and has no further participation in its activities.

Section 27. Issuance of new license or registration pending investigation and decision.

Pending an investigation or proceeding before the board affecting any licensee or registrant and pending final decision upon any appeal taken by a licensee or registrant from the ruling of the board, no new registration may be issued or license may be issued to a licensee or to a partnership of which he is a member or employee or to an association or corporation of which he is an officer or employee except for the period of the investigation or proceeding and subject to the action of the board.

Section 28. Issuance of new license or registration after revocation.

(a) General rule.-After the revocation of any license or registration, no new license or registration may be issued to the same licensee within a period of at least one year from the date of the revocation nor, except in the sole discretion of the board and subject to the conditions of this act, at any time thereafter.

(b) Criminal conduct.-No license or registration shall be issued by the board to any person known by it to have been, within five years, convicted of forgery, embezzlement, obtaining money under false pretenses, extortion, criminal conspiracy to defraud or other like offense, or to any copartnership of which any person

is a member or to any association or corporation of which any person is an officer or employee or in which as a stockholder any person has or exercises a controlling interest either directly or indirectly.

#### Section 29. Penalties.

(a) Criminal penalties.-Any person who engages in or carries on the profession or acts in the capacity of an auctioneer, apprentice auctioneer, auction house, auction company or trading assistant in this Commonwealth without a current license or registration or who employs any person without a current license as an apprentice auctioneer:

(1) For a first offense, commits a summary offense and shall, upon conviction, be sentenced to pay a fine not exceeding \$500 or to imprisonment not exceeding three months, or both.

(2) For a second or subsequent offense, commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of not less than \$2,000 but not more than \$5,000 or to imprisonment for not less than one year but not more than two years, or both.

(b) Civil penalty.-In addition to any other civil remedy or criminal penalty provided for in this act, the board, by a vote of the majority of the maximum number of the authorized membership of the board as provided by law or by a vote of the majority of the duly qualified and confirmed membership or a minimum of four members, whichever is greater, may levy a civil penalty of up to \$1,000 on any person who engages in the practice of auctioneering without being properly licensed to do so under this act. The board shall levy this penalty only after affording the accused party the opportunity for a hearing, as provided in Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure).

(c) Failure to register.- Any individual who fails to register under section 10.1 may be subject to a penalty of up to \$500 levied by the Commissioner. The individual may request a hearing before the board, which shall be conducted in accordance with 2 Pa.C.S. (relating to administrative law and procedure).

#### Section 30. Actions by unlicensed persons prohibited.

No action or proceeding may be instituted and no recovery may be had in any court of this Commonwealth by any individual, partnership, association or corporation for compensation for any act done or services rendered the doing or rendering of which is prohibited under this act to other than persons licensed by the board unless the individual, partnership, association or corporation was licensed at the time of doing the act or rendering of service.

#### Section 31. State Board of Auctioneer Examiners.

(a) Representation.-The State Board of Auctioneer Examiners shall consist of the Commissioner of Professional and Occupational Affairs, the Director of the Bureau of Consumer Protection in the Office of Attorney General, or his designee, two members appointed by the Governor with the advice and consent of the Senate, who shall be persons representing the public at large, one member appointed by the Governor with the advice and consent of the Senate, who shall be a registered trading assistant, and four members appointed by the Governor with the advice and consent of the Senate, who shall be licensed auctioneers, have served as licensed auctioneers for ten years or more and have conducted at least 50 auctions each year.

(b) Terms.-Each member of the board on December 31, 1983, shall continue in office until his term expires, or until his successor has been appointed and qualified, but no longer than six months beyond the expiration of his term. Thereafter, the term of office of each of said members shall be three years from his appointment, or until his successor has been appointed and qualified, but no longer than six months beyond the three-year period. In the event that any of said members shall die or resign during his term of office, his successor shall be appointed in the same way and with the same qualifications as above set forth and shall hold office for the unexpired term.

(c) Quorum.-Five members of the board shall constitute a quorum.

(d) Chairman and secretary.-The board shall select a chairman and secretary from among its members.

(e) Per diem.-The members of the board, other than the Commissioner of Professional and Occupational Affairs and the Director of the Bureau of Consumer Protection in the Office of Attorney General, or his designee, shall receive \$60 per diem when actually engaged in the transaction of official business. Members shall receive, in addition, the amount of reasonable travel, hotel and other necessary expenses incurred in performing their duties for the board.

(f) Sunset.-The board is subject to evaluation, review and termination within the time and in the manner provided in the act of December 22, 1981 (P.L.508, No.142), known as the Sunset Act.

(g) Attendance.-A member of the board who fails to attend three consecutive meetings shall forfeit his seat unless the Commissioner of Professional and Occupational Affairs, upon written request from the member, finds that the member should be excused from a meeting because of illness or the death of an immediate family member.

(h) Excuse from attendance.-A board member shall be excused from meetings due to illness or death of an immediate family member.

(i) Reports.-

(1) The board shall submit annually a report to the Professional Licensure Committee of the House of Representatives and to the Consumer Protection and Professional Licensure Committee of the Senate a description of the types of complaints received, status of cases, board action which has been taken and length of time from the initial complaint to final board resolution.

(2) The board shall also submit annually to the House of Representatives and the Senate Appropriation Committees, 15 days after the Governor has submitted his budget to the General Assembly, a copy of the budget request for the upcoming fiscal year which the board previously submitted to the commissioner.

#### Section 32. Rules and regulations.

The board may adopt rules and regulations necessary for the proper administration and enforcement of this act. Each rule and regulation of the board in effect on December 31, 1983, shall remain in effect after such date until repealed or amended by the board.

#### Section 33. Fees and fines.

(a) Existing fees.-All fees fixed pursuant to section 203 of the act of July 1, 1978 (P.L.700, No.124), known as the Bureau of Professional and Occupational Affairs Fee Act, shall continue in full force and effect until changed by the board.

(b) Disposition.-All fees paid to the board and all fines collected for violations of this act shall be paid into the State Treasury for the use of the board to aid in the administration and enforcement of this act.

#### Section 34. Reestablishment of agency.

This act, with respect to the State Board of Auctioneer Examiners, shall constitute the legislation required to reestablish an agency under the act of December 22, 1981 (P.L.508, No.142), known as the Sunset Act.

#### Section 35. Repeals.

(a) Absolute repeals.-The following acts and parts of acts are repealed: Section 476 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929. Act of September 29, 1961 (P.L.1745, No.708), known as The Auctioneers' License Act.

(b) Inconsistent repeals.-The following act or part of an act is repealed insofar as it is inconsistent with this act: Act of July 1, 1978 (P.L.700, No.124), known as the Bureau of Professional and Occupational Affairs Fee Act.

(c) General repeal.-All other acts or parts of acts are repealed insofar as they are inconsistent with this act.

#### Section 36. Effective date.

This act shall take effect January 1, 1984.