



SPONSOR: Rep. Q. Johnson & Sen. Poore  
Rep. Brady

HOUSE OF REPRESENTATIVES  
147th GENERAL ASSEMBLY

HOUSE BILL NO. 285

AN ACT TO AMEND TITLE 24 AND TITLE 29 OF THE DELAWARE CODE RELATING TO AUCTIONS AND AUCTIONEER LICENSING.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-fifths of all members elected to each house thereof concurring therein):

1 Section 1. Amend Title 24 of the Delaware Code by adding a new chapter by making insertions as shown by  
2 underlining as follows:

3 CHAPTER 56. AUCTION AND AUCTIONEER LICENSING ACT.

4 Subchapter I. General Provisions.

5 § 5601. Title.

6 This Act shall be known and may be cited as the “Delaware Auction and Auctioneer Licensing Act”.

7 § 5602. Legislative Intent.

8 The General Assembly finds that, in order to protect the interests of consumers who participate in auctions and to  
9 ensure that the profession in Delaware is conducted in accordance with the highest ethical standards by licensed and trained  
10 professionals, it is advisable to create the Auctioneer’s Licensing Commission.

11 § 5603. Objectives

12 (a) There is hereby established the Auctioneer Licensing Commission. The primary objective of the Auctioneer  
13 Licensing Commission, to which all other objectives and purposes are secondary, is to protect the general public,  
14 specifically those persons who are participants in auctions and or the recipients of services regulated by this chapter.

15 (b) The secondary objectives of this Commission are to maintain minimum standards of competency for the  
16 auctioneering profession and to maintain good standards in the delivery of services to the public. In meeting its objectives,  
17 the Commission shall develop standards assuring professional competence; shall monitor complaints brought against  
18 practitioners regulated by the Commission; shall adjudicate at informal hearings; shall promulgate rules and regulations;  
19 and shall impose sanctions where necessary against licensed practitioners.

20 § 5604. Definitions.

21 Unless otherwise provided hereof, as used in this chapter:

22 (1) "Absolute auction" means an auction where real or personal property is sold to the highest qualified bidder with no  
23 limiting conditions or amount. The seller may not bid personally or through an agent on property to be sold at an absolute  
24 auction. In an absolute auction, after the auctioneer calls for bids on real or personal property, it cannot be withdrawn  
25 unless no bid is made within a reasonable time.

26 (2) "Applicant" means any person applying for an auctioneer or auction firm license under this chapter.

27 (3) "Auction" means the public sale of real or personal property, or both, in which the sale price of the property offered  
28 is increased by competitive bids until the highest accepted bidder becomes the purchaser.

29 (4) "Auctioneer" means an individual who engages in, or who by advertising or otherwise holds himself out as being  
30 available to engage in the calling for, the recognition of, and the acceptance of competitive bids for the purchase of real or  
31 personal property at auction, or otherwise engaging in the business of auctioneering.

32 (5) "Licensed Auctioneer" means an applicant who meets the requirements for licensure set forth in this chapter.

33 (6) "Auctioneering" or "business of auctioneering" includes, in addition to the actual calling, recognition and  
34 acceptance of competitive bids, the following:

35 a. Contracting for an auction;

36 b. Accepting consignments of real or personal property for sale at auction;

37 c. Advertising an auction;

38 d. Offering real or personal property for sale at auction and calling for bids;

39 e. Accepting payment or disbursing monies for items sold at auction; and

40 f. Otherwise soliciting, arranging, sponsoring, or managing an auction, or holding oneself out as an auctioneer  
41 or auction firm;

42 (7) "Auction firm" means a sole proprietorship, corporation, or limited liability company of which the owner is a  
43 licensed auctioneer, or any partnership, association, corporation, or any other legal entity that sells, either directly or  
44 through agents, real or personal property at auction, or that arranges, sponsors, manages, conducts or advertises auctions, or  
45 otherwise engages in the business of auctioneering. This definition applies whether or not an owner or officer of the  
46 business acts as an auctioneer. The term "auction firm" does not apply to a charitable, religious, or civic organization that  
47 has tax-exempt status and holds auctions solely as a fund-raiser for the benefit of the organization or its clients.

48 (8) "Transact business" means to conduct auctions, take bids or otherwise perform as an auctioneer.

49 (9) "Calling for bids" means calling the auction, the chant, and asking the audience at an auction for bids.

50 (10) "Commission" means the Auctioneer Licensing Commission created by this chapter.

51 (11) "Consignment" means the act of delivering or transferring real or personal property, in fact or constructively, to an  
52 auctioneer or the auctioneer's agent in trust for the purpose of resale at auction whereby title does not pass to the buyer until  
53 the auctioneer declares the real or personal property 'sold'.

54 (12) "Designated agent" means a person approved by the Commission to have the authority to transact business for an  
55 auction firm.

56 (13) "Fund" means the Recovery Fund established under this chapter.

57 (14) "Real or personal property" means any goods, wares, chattels, merchandise, real estate or other personal property,  
58 including domestic animals and farm products.

59 (15) "Person" means an individual or any entity, including a partnership, corporation, limited liability company, or  
60 association.

61 (16) "Reserve auction" of real and personal property means an auction in which the seller retains the right to establish a  
62 minimum price, to accept or decline any and all bids or to withdraw the property at any time prior to the announcement of  
63 the completion of the sale by the auctioneer. An auction is a reserve auction unless the property is in explicit terms put up  
64 without reserve for an absolute auction.

65 (17) "State" means the State of Delaware.

66 § 5605. Grandfather provision for auctioneers and auction firms.

67 (a) Upon the effective date of this chapter and for a period of 1 year thereafter, an auctioneer or auction firm, including  
68 non-resident auctioneers and auction firms, who has engaged in the business of auctioneering in this State for at least 2  
69 years prior to the passage of this chapter and who has held a valid Delaware auctioneer's business license for that time may  
70 apply for an auctioneer license under this chapter without taking the examination set forth in § 5608 of this chapter. The  
71 requirements for an auctioneer license are as follows:

72 (1) Submit an application to the Commission on the forms provided by the Commission, pursuant to § 5608 of  
73 this chapter;

74 (2) Submit an affidavit with the application stating that the applicant has been a practicing auctioneer for at  
75 least 2 years immediately prior to the passage of this chapter, and that the applicant has actually called for bids in 6 sales in  
76 the past 12 months;

77 (3) Tender with the application the license fee of \$200; and

78 (4) Tender the applicant's initial contribution to the Recovery Fund in the sum of \$200 if application is  
79 accepted.

80 (b) Upon verification of the information contained in the application and if the individual is found to be otherwise  
81 qualified, the Commission shall issue the applicant an auctioneer's license without examination.

82 Subchapter II. Licensing Provisions.

83 § 5606. Auctioneer license.

84 No person shall conduct an auction, engage in the business of auctioneering, provide an auction service, hold himself  
85 or herself out as an auctioneer, or advertise his or her services as an auctioneer in this State without an auctioneer license,  
86 unless the sale is exempt under § 5616 of this chapter.

87 § 5607. Exemptions.

88 (a) The license requirement contained in § 5605 and 5606 of this chapter does not apply to any of the following types  
89 of auction sales or persons:

90 (1) A sale conducted by the owner or by a court appointed receiver or trustee of real or personal property  
91 being offered by a sheriff, constable or by a court appointed receiver or trustee of real or personal property representing the  
92 owner, unless the owner or the attorney representing the owner conducts the sale and either the owner's regular course of  
93 business includes the business of auctioneering or, in lieu thereof, the owner originally acquired the real or personal  
94 property for the purpose of resale at auction.

95 (2) A sale of livestock conducted by a person who specializes in the sale of livestock, provided that the sale is  
96 regulated by the Federal Packers and Stockyards Act (currently 7 U.S.C. § 181 *et. seq.*) and the auctioneer is bonded by the  
97 United States Department of Agriculture.

98 (3) A sale of real or personal property conducted by any charitable, religious, or civic organization, that has a  
99 tax-exempt status. The exemption in this section does not apply if the person engaged in the business of organizing,  
100 arranging, or conducting the auction receives compensation;

101 (4) A sale of real or personal property conducted by an agent, officer, or employee of the State, any political  
102 subdivision, or a federal agency in the conduct of his or her official duties;

103 (5) A sale of real or personal property required by law or authorized to be sold at auction or ordered by a court  
104 of competent jurisdiction; or

105 (6) A sale of real or personal property, securities, financial instruments, or commodities conducted by a  
106 person or entity owning the real or personal property, or by an affiliate, attorney, court-appointed receiver, or trustee of the  
107 person or entity owning the property, which sale arises in, under, or relates in any way to a bankruptcy proceeding filed by  
108 or against the person, entity, or affiliate thereof under Title 11 of the United States Code.

109 (b) This chapter shall not be construed to include in any way the services rendered by an attorney-at-law admitted to  
110 the bar of the Supreme Court of the State of Delaware and in good standing.

111 § 5608. Requirements for auctioneer license.

112 An applicant for an auctioneer license under this chapter shall possess the following minimum qualifications:

113 (a) The applicant must have attained the age of 18 years by the date that the Commission receives the application.

114 (b) The applicant must have obtained at a minimum a high school diploma, a general equivalency diploma, or its  
115 equivalent, or in the case of an Amish auctioneer conducting an auction on Amish property, at a minimum, an eighth grade  
116 education.

117 (c) The applicant must prepare a written application on forms provided by the Commission.

118 (d) The applicant must have successfully completed at least 80 hours of a prescribed course of study approved by the  
119 Commission at an accredited educational institution or auctioneering school and must also have called for bids at a  
120 minimum of 15 auctions over a consecutive 2-year period under the supervision of a licensed auctioneer.

121 (e) The applicant for a license under this chapter must take and successfully complete a written examination as  
122 prescribed by the Commission. The examination must include questions on ethics, reading comprehension, writing,  
123 elementary arithmetic, elementary principles of land economics, general knowledge of bulk sales law, contracts of sale,  
124 agency, leases and brokerage, knowledge of various goods commonly sold at auction, ability to call for bids, knowledge of  
125 sale preparation, proper sale advertising, and sale summary, and knowledge of the provisions of this chapter and the  
126 Commission's rules and regulations. The Commission shall ensure that the various forms of the test remain secure.

127 (f) In order to defray the cost of administration of the examination, an applicant taking the examination must pay a  
128 reasonable examination fee to be set by the commission, in relation to but not in excess of the Commission's cost of the  
129 administration of the examination.

130 (g) The applicant must pay a licensing fee in an amount to be established by the Commission; the fee may not exceed  
131 \$100.

132 (h) The applicant must pay an assessment fee of no more than \$300 as set forth in § 5647(a) of this chapter, to be  
133 determined by the Commission, to participate in the Recovery Fund.

134 (i) The applicant shall not have been convicted of a crime substantially related to the practice or profession of  
135 auctioneering. However, after a hearing or review of documentation demonstrating that the applicant meets the specified  
136 criteria for a waiver, the Commission, by an affirmative vote of a majority of the quorum, may waive this paragraph (i), if it  
137 finds the following:

138           (1) For a waiver of a felony conviction, more than five years have elapsed since the date of the conviction. At  
139 the time of the application, the applicant cannot be incarcerated, on work release, on probation, on parole or serving any  
140 part of a suspended sentence and must be in substantial compliance with all court orders pertaining to fines, restitution and  
141 community service;

142           (2) For a waiver of a misdemeanor conviction or violation, at the time of the application, the applicant may  
143 not be incarcerated, on work release, on probation, on parole or serving any part of a suspended sentence and must be in  
144 substantial compliance with all court orders pertaining to fines, restitution and community service;

145           (3) The applicant is capable of engaging in the profession of auctioneering in a competent and professional  
146 manner; and

147           (4) The granting of the waiver will not endanger public safety, health or welfare.

148           (j) The applicant must not have had his or her license revoked by another jurisdiction. In addition, the applicant shall  
149 contact any jurisdictions in which they are currently licensed and or were previously licensed to request that a certified  
150 statement be provided to the Commission stating whether or not there are any disciplinary proceedings or unresolved  
151 complaints against them pending. In the event that there is a disciplinary proceeding or unresolved complaint pending, the  
152 applicant shall not be licensed until the proceeding or complaint has been resolved.

153           (k) Any individual or business firm that conducts auctions online via the internet must be licensed as an auctioneer or  
154 auction firm unless otherwise exempt under this chapter. This includes both in-state and out-of-state auctioneers or auction  
155 firms that are auctioning real or personal property located in the State of Delaware.

156           § 5609. Issuance of auctioneer license.

157           (a) Upon the receipt of a completed application for an initial or a renewal auctioneer license, the Commission shall  
158 examine the application and verify the information contained therein.

159           (b) The Commission shall issue an auctioneer license, in such form as it may prescribe, to an applicant who meets all  
160 of the requirements for licensing required.

161           (c) An auctioneer license is valid for 2 years. A license must be renewed by the auctioneer before midnight on June  
162 30th of the year in which the license expires.

163           (d) The Commission, in its rules and regulations, shall determine the period of time within which a licensed auctioneer  
164 may renew his or her license, notwithstanding the fact that such licensee has failed to renew on or before the renewal date,  
165 provided that that period does not exceed 12 months.

166 (e) If a license has not been reactivated within 12 months of its expiration date, the license holder must file an  
167 application and comply with § 5608 of this chapter, except for the 80 hours of a prescribed course of study requirement in §  
168 5608(d).

169 § 5610. Continuing education.

170 (a) An auctioneer who applies for a renewal of an auctioneer license under this chapter must complete the continuing  
171 education requirements to be set forth by the Commission in its rules and regulations.

172 (b) The Commission may grant an auctioneer who applies for a renewal of an auctioneer license under § 5611 of this  
173 chapter a waiver from all or part of the continuing education requirement for a year if the auctioneer was not able to fulfill  
174 the requirements due to a hardship that resulted from any of the following conditions:

175 (1) service in the armed forces of the United States;

176 (2) an incapacitating illness or injury; or

177 (3) other circumstances determined to constitute a hardship by the Commission.

178 § 5611. Maintaining an auctioneer license.

179 Upon payment of the renewal fee and upon submission of proof of satisfactory completion of the continuing education  
180 requirements set forth in §5610, and payment of the renewal fee as determined by the Department of State, each license  
181 shall be renewed biennially in such a manner as determined by the Division of Professional Regulation.

182 § 5612. Real estate auctions.

183 As used in this section, an "auctioneer" is as defined in § 2301(a)(3) of Title 30 if he or she is employed only to call for  
184 bids at an auction of real property. A licensed auctioneer must present to a seller of real property a signed contract of sale  
185 within 15 days of conclusion of the advertised auction days from a bidder who was registered for and attended the auction  
186 in person or electronically where bids were called for that property, or the auction is null and void. In calculating the 15  
187 days, Saturdays, Sundays, and legal holidays shall not be included. A licensed auctioneer may advertise real property that  
188 is for sale at public auction when employed to do so pursuant to this exemption, and may advertise that he or she is  
189 authorized to auction real property at a public auction. However, property not sold on the day of auction may no longer be  
190 advertised by the auctioneer unless another auction day is scheduled. If a contract of sale is not signed until after the day of  
191 auction but within the permitted 15-day period, an affidavit verifying that the bidder was registered and attended the auction  
192 in person or electronically where bids were called for that property must be signed by the buyer and auctioneer, with copies  
193 retained by the auctioneer, buyer, and settlement attorney for as long as the settlement statement is retained.

194 § 5613. Actions for compensation.

195 A person engaged in the business of auctioneering that requires an auctioneer license shall not bring or maintain an  
196 action in the courts of this State for the collection of compensation for services provided as an auctioneer without first  
197 alleging and proving that he or she was a licensed auctioneer at the time the alleged cause of action arose.

198 § 5614. Nonresident auctioneer reciprocity.

199 (a) Upon payment of the mandated fee and acceptance of a written application on forms provided by the Commission,  
200 the Commission shall grant a license to each applicant who presents proof of current licensure in good standing in another  
201 state, the District of Columbia or territory of the United States whose standards for licensure are substantially similar to  
202 those of this state.

203 (b) An applicant, who is licensed in a state whose standards are not substantially similar to those of this State, shall  
204 have practiced a minimum of five years; provided, however, that the applicant meets the requirements of §5607(e) and (f)  
205 and all other requirements for reciprocity in this section.

206 (c) A nonresident applicant shall file an irrevocable consent with the Commission that actions may be commenced  
207 against the applicant or nonresident applicant in a court of competent jurisdiction in this State by the service of summons,  
208 process, or other pleadings authorized by the law in any action arising out of the practice of auctioneering in this State.

209 § 5615. Auction firm license.

210 No person shall engage in the business of auctioneering, provide an auction service, hold himself or herself out as an  
211 auction firm, or advertise his or her services as an auction firm in this State without an auction firm license, unless the sale  
212 is exempt under § 5616 of this chapter.

213 § 5616. Exemptions.

214 (a) The license requirement contained in § 5606 of this chapter shall not apply to any of the following types of auction  
215 sales or persons:

216 (1) A sale conducted by the owner of all of the real or personal property being offered, a sheriff or constable  
217 or attorney presenting the owner, unless the owner's regular course of business includes engaging in the business of  
218 auctioneering or unless the owner originally acquired the real or personal property for the purpose of resale at auction.

219 (2) A sale of livestock conducted by a person who specializes in the sale of livestock, provided that the sale is  
220 regulated by the Federal Packers and Stockyards Act (currently 7 U.S.C. § 181 *et. seq.*) and the auctioneer is required to be  
221 bonded by the United States Department of Agriculture;

222 (3) A sale of real or personal property conducted by any charitable, religious, or civic organization, that has a  
223 tax-exempt status. The exemption to the license requirement in this section does not apply if the person engaged in the



224 business of organizing, arranging, or conducting the auction receives compensation or if consignments are sold at auction  
225 and the consignor receives any proceeds from the sale;

226 (4) A sale of real or personal property conducted by an agent, officer, or employee of the State, any political  
227 subdivision, or a federal agency in the conduct of his or her official duties;

228 (5) A sale of personal or real property required by law, or authorized, to be sold at the auction or ordered to be  
229 held at auction, or sales ordered to be sold at auction by a court of competent jurisdiction; or

230 (6) A sale of real or personal property, securities, financial instruments, or commodities conducted by a  
231 person or entity owning the real or personal property, or by an affiliate, attorney, court-appointed receiver, or trustee of the  
232 person or entity owning the property, which sale arises in, under, or relates in any way to a bankruptcy proceeding filed by  
233 or against the person, entity, or affiliate thereof under Title 11 of the United States Code.

234 (b) This chapter shall not be construed to include in any way the services rendered by an attorney-at-law admitted to  
235 the bar of the Supreme Court of the State of Delaware and in good standing.

236 § 5617. Requirements for auction firm license.

237 An applicant for an auction firm license under this chapter shall possess the following minimum qualifications:

238 (a) The applicant or applicant's designated person must have attained the age of 18 years by the date the Commission  
239 receives the application.

240 (b) The applicant or applicant's designated person must have obtained at a minimum a high school diploma, a General  
241 Equivalency Diploma (G.E.D.), or its equivalent.

242 (c) The applicant must prepare a written application on forms provided by the Commission.

243 (d) The applicant must pay a licensing fee in an amount to be established by the Commission, the fee may not exceed  
244 \$100.

245 (e) The applicant must pay an assessment fee of not more than \$300, as set forth in § 5647(a), to be determined by the  
246 Commission, to participate in the Recovery Fund.

247 (f) Within the last 5 years the applicant or applicant's designated person must not have a conviction for an act that  
248 would constitute grounds for disciplinary action under the law, or a felony that has a direct bearing on his or her ability to  
249 practice competently.

250 (g) The applicant or applicant's designated person must not have had his or her auctioneer license or auction firm  
251 license, or an equivalent license, previously revoked by any jurisdiction.

252 (h) The applicant must provide the Commission with documentation from the Secretary of State's Office establishing  
253 that the licensee or designed person is authorized to transact business in this State, unless the person to be licensed as an  
254 auction firm is a sole proprietorship.

255 (i) The applicant must identify at least one designated person to have authority to transact business for the auction firm.  
256 The designated person must take and successfully complete a written examination as prescribed by the Commission. The  
257 Commission shall ensure that the various forms of the test remain secure. The designated person of applicant will not be  
258 required to take the written examination if he or she is licensed as an auctioneer under this chapter.

259 (j) In order to defray the cost of administration of the examination, an applicant or designated individual taking the  
260 examination must pay a reasonable examination fee to be set by the Commission, in relation to but not in excess of the cost  
261 of the administration of the examination.

262 § 5618. Issuance of license.

263 (a) Upon the receipt of a completed application for the initial or a renewal auction firm license, the Commission shall  
264 examine the application and verify the information contained therein.

265 (b) The Commission shall issue an auction firm license, in such form as it may prescribe, to an applicant or applicant's  
266 principal who meets all of the requirements for licensing.

267 (c) An auction firm license is valid for 2 years. A license must be renewed by the auction firm before midnight on June  
268 30th of the year in which the license expires.

269 (d) The Commission shall, in its rules and regulations, determine the period within which an auctioneer may still renew  
270 his or her license; provided, however, that the period not exceed 1 year. At the expiration of the period designated by the  
271 Commission, the license shall be deemed lapsed and not renewable unless the former licensee applies under the same  
272 conditions which govern reciprocity; provided, however, that the licensee shall also pay a reinstatement fee in an amount  
273 which is to be determined by the Division of Professional Regulation.

274 (e) If a license has not been reactivated within 12 months of its expiration date, the license holder must file an  
275 application and comply with § 5617 of this chapter.

276 § 5619. Maintaining an auction firm license.

277 When filing an application for the renewal of an auction firm license, each person licensed as an auction firm shall:

278 (a) File with the Commission a completed application on the form prescribed by the Commission;

279 (b) Provide the Commission with documentation from the Secretary of State's Office establishing that the entity is  
280 authorized to transact business in this State; and

281 (c) Pay the license fee established by the Commission for auction firm licenses.

282       § 5620. Actions for Compensation.

283       A person engaged in the business of auctioneering that requires an auction firm license shall not bring or maintain an  
284 action in the courts of this State for the collection of compensation for services provided as an auction firm without first  
285 alleging and proving that the person or business was licensed as an auction firm at the time the alleged cause of action  
286 arose.

287   Subchapter III. Business Practices Provisions.

288       § 5621. Written agreements.

289       (a) A licensed auctioneer shall not conduct an auction in this State without first having a written agreement with the  
290 owner of any real or personal property to be sold. The agreement must contain the terms and conditions upon which the  
291 auctioneer received the goods for sale. The auctioneer shall provide the owner with a signed copy of the agreement and  
292 shall keep at least one copy for his or her own records for 2 years from the date of the agreement. Copies of all written  
293 agreements must be made available to the Commission or its designated agent upon written request.

294       (b) A licensed auction firm shall not engage in the business of auctioneering without first having a written agreement  
295 with the owner of any real or personal property to be sold. The agreement must contain the terms and conditions of the  
296 transaction and work to be completed by the auction firm. The licensed auction firm shall provide the owner with a signed  
297 copy of the agreement and shall keep at least one copy for his or her own records for 2 years from the date of the  
298 agreement. Copies of all written agreements must be made available to the Commission or its designated agent upon  
299 written request.

300       § 5622. Agency.

301       A licensed auctioneer is the agent for the seller in the performance of the auctioneer's duties.

302       § 5623. Auctioneer's authority from the seller.

303       A licensed auctioneer, in the absence of special authorization provided in the written agreement to the contrary, has  
304 authority from the seller, only as follows:

305       (a) To sell by public auction to the highest bidder;

306       (b) To bind the seller by preparing a written memorandum of the written agreement;

307       (c) To prescribe reasonable rules and terms of sale;

308       (d) To deliver the real and personal property sold, upon payment of the price;

309       (e) To collect the price; and

310       (f) To do whatever else is necessary, or is proper and usual in the ordinary course of business, for affecting these  
311 purposes.

312        § 5624. Auctioneer's authority from the bidder.

313        An individual licensed auctioneer may bind a bidder at an auction by preparing a written memorandum of the written  
314 agreement of sale.

315        § 5625. Performance by auctioneer.

316        In performing the duties of an auctioneer, the auctioneer shall follow the reasonable requests of the owner or consignor  
317 of the real or personal property being sold at the auction, shall perform his or her duties so that the highest or most  
318 favorable offer made by a bidder is accepted.

319        § 5626. License.

320        A licensed auctioneer and a person licensed as an auction firm shall have his or her license available at each auction he  
321 or she conducts or advertises.

322        § 5627. Sales records.

323        A licensed auctioneer and a person licensed as an auction firm shall maintain sales records that shall contain an  
324 adequate description of real and personal property sold and must be sufficient to positively identify the owner of the  
325 property. Sales records must be maintained for a period of at least 2 years from the date of sale. Sales records must be open  
326 for inspection by the Commission or its designated agents after reasonable notice.

327        § 5628. Consignment Records.

328        A licensed auctioneer and a person licensed as an auction firm shall maintain consignment records and, upon receipt of  
329 real or personal property for auction and before the sale, enter in the records the name and address of the person who  
330 employed the auctioneer to sell the goods at auction and the name and address of the owner of the goods to be sold. The  
331 consignment record must contain an adequate description of the real or personal property to be sold. Consignment records  
332 must be maintained for a period of at least 2 years from the date of the sale. Consignment records must be open for  
333 inspection by the Commission or its designated agents after reasonable notice.

334        § 5629. Escrow and Trust Accounts for Real Property Auctions

335        (a) A licensed auctioneer and a person licensed as an auction firm who do not disburse all funds to the seller on auction  
336 day shall maintain a trust or escrow account and shall deposit in the account all funds that are received for the benefit of  
337 another person and are not disbursed to the seller on auction day. A licensed auctioneer and a person licensed as an auction  
338 firm shall deposit funds that are not disbursed on auction day with an insured bank or savings and loan association located  
339 within the State.

340        (b) A licensed auctioneer and a person licensed as an auction firm shall maintain for not less than 2 years of complete  
341 records showing the deposit, maintenance, and withdrawal of trust or escrow funds and the disbursement of funds on

342 auction days. Records of the disbursement of funds on auction day must include a copy of each receipt or settlement  
343 statement issued when the funds were disbursed. The Commission or its designated agent may inspect these records  
344 periodically, without prior notice, and may also inspect those records whenever the Commission determines that they are  
345 pertinent to an investigation of a specific complaint against a licensed auctioneer or a person licensed as an auction firm.

346 § 5630. Final settlements.

347 At or before the time of a final settlement, the licensed auctioneer or designated person of a licensed auction firm shall  
348 provide the seller or consignor with a settlement statement, which includes a description of all real or personal property  
349 sold, the selling price of the property sold, all expenses such as labor, advertising, the net proceeds due to the seller or  
350 consignor, the name and address of the person receiving the disbursement, and the amount of the disbursement. A  
351 settlement statement must be signed by the auctioneer or a designated person of the licensed auction firm and by the person  
352 receiving the disbursement. The licensed auctioneer or designated person of a licensed auction firm shall provide the owner  
353 with a signed copy of the settlement statement and shall keep at least one signed copy for his or her own records for 2 years  
354 from the date of the sale.

355 Subchapter IV - Administrative Provisions.

356 § 5631. Creation of Auctioneer Licensing Commission.

357 (a) The Auctioneer's Licensing Commission is hereby created. The Commission is composed of 5 members. The  
358 members are appointed by the Governor to serve for a term of 3 years, after which a member may participate in the  
359 proceedings of the Commission until replaced or reappointed by the Governor to a new term. A vacancy arising on the  
360 Commission must be filled by an appointment made by the Governor. The individual appointed to fill a vacancy serves for  
361 the unexpired term of the individual whose vacancy is being filled, after which that individual may be reappointed to a new  
362 term by the Governor.

363 (b) The Commission receives and acts upon applications for auctioneer and auction firm licenses and has the power to  
364 issue, reinstate, suspend, and revoke those licenses and to take such other action as is necessary to carry out the provisions  
365 of this chapter.

366 (c) The Commission has the authority to make or adopt such rules and regulations in accordance with the  
367 Administrative Procedures Act, Chapter 101 of Title 29, as are reasonable and necessary for the orderly regulation of the  
368 auctioneering occupation and the protection of the public. The Commission also has the authority to implement the  
369 provisions of this chapter that confer duties upon it.

370 (d) The requirements of this chapter shall take effect upon the appointment of the Commission and the promulgation of  
371 the necessary regulations.

372        § 5632. Members of the Commission.

373        At least 3 Commission members appointed must be licensed auctioneers. At least 1 of the members must be an  
374 individual who is not and has not been associated with auctioneering in any way other than as a consumer.

375        § 5633. Requirements for Commission members.

376        Each appointee to the Commission shall possess the following requirements:

377        (a) Each appointee must be a citizen of the United States of America;

378        (b) Each appointee must be a citizen of the State and domiciled in the State;

379        (c) Each must have obtained at least 21 years of age;

380        (d) Each appointee for an auctioneer position on the Commission must have been licensed as an auctioneer for a period  
381 of not less than 5 years immediately preceding the appointment;

382        (e) An appointee may not act as a member of the Commission while holding another elected or appointed office in  
383 either the State or federal government; and

384        (f) An appointee shall not be a member of the Commission while he or she maintains a controlling interest in a school  
385 or other facility to train individuals to be auctioneers.

386        § 5634. Officers and meetings.

387        (a) The Commission shall elect 1 member to serve as Chair. The Commission shall also elect 1 member to serve as  
388 Secretary. The Chair and Secretary must be elected annually by majority vote of the total membership of the Commission.

389        (b) The Commission shall meet each January at a time and place established by the Chair, to conduct an election of  
390 officers and to consider such other business as may be appropriate. The Commission shall also meet upon the call of the  
391 Chair or upon the request of any 2 members of the Commission. The Chair shall provide reasonable notice of the time and  
392 place of each meeting to all members, as currently promulgated by the Division of Professional Regulations.

393        (c) 3 members constitute a quorum for the purpose of transacting business. A majority vote of the quorum is necessary  
394 to bind the Commission.

395        (d) The Commission will meet not less than 4 times a year and not less than once a quarter.

396        § 5635. Per diem and expenses.

397        Each member of the Commission shall receive reimbursement for necessary travel expenses incurred in the  
398 performance of his or her official duties, in accordance with travel policies and procedures established by the Division of  
399 Professional Regulations.

400        § 5636. Jurisdiction.

401 The Commission has jurisdiction over the actions of auctioneers and any person licensed as an auction firm. The  
402 Commission also has jurisdiction over the business of auctioneering, including individuals and persons engaging in the  
403 business of auctioneering without a proper license pursuant to this chapter.

404 § 5637. Powers.

405 In addition to the powers specified in other sections of this chapter, the Commission has the following powers:

406 (a) The power to set reasonable license fees, examination fees, and other fees created under this chapter subject to the  
407 limitations of this chapter, to collect and hold those fees and to disburse such fees in any manner not inconsistent with this  
408 chapter;

409 (b) The power to examine an applicant who applies to be licensed as an auctioneer or auction firm in the State;

410 (c) The power to make rules and regulations that will promote the orderly functioning of the auction profession and  
411 ensure the protection of the public;

412 (d) The power to hire and retain staff and support necessary to conduct business and assure compliance with this  
413 chapter;

414 (e) The power to conduct investigations, hold hearings, make findings of fact, and otherwise enforce the disciplinary  
415 provisions contained in this chapter;

416 (f) The power to regulate the business of auctioneering and to fine or prosecute individuals or persons engaging in  
417 auctioneering without an auctioneer or auction firm license;

418 (g) The power to fine or otherwise discipline auctioneers and auction firms for violations of this chapter;

419 (h) The power to accredit educational institutions, auctioneering schools, and continuing education providers;

420 (i) The power to levy assessments on auctioneers and each person licensed as an auction firm, and to collect and hold  
421 such assessments for the Recovery Fund; and

422 (j) The power to sue in its own name for damages and injunctive relief to enforce the provisions of this chapter.

423 § 5638. Investigations.

424 The Commission may upon its own initiative and shall upon the written complaint of any person investigate alleged  
425 violations of this chapter by any licensed or unlicensed auctioneer, auction firm, person, or any applicant.

426 § 5639. Cease and desist orders.

427 (a) When the Commission determines that a person not licensed under this chapter is engaging in, or is believed to be  
428 engaged in, activities for which a license is required under this chapter, the Commission may issue an order requiring that  
429 person to show cause why he should not be ordered to cease and desist from such activities. The show cause order must set

430 forth a time and place for a hearing at which person may appear and show cause as to why he or she should not be subject  
431 to the licensing laws under this chapter.

432 (b) If after a hearing the Commission determines that the activities in which the person has engaged are subject to  
433 licensing under this chapter, the Commission may issue a cease and desist order that describes the person and the activities  
434 that are the subject of the order.

435 § 5640. Penalties for unlicensed conduct.

436 (a) A person violating the provisions of § 5606 on auctioneer license or § 5615 on auction firm license or § 5616 on  
437 exemptions shall be guilty of a class B misdemeanor. The Attorney General has jurisdiction to prosecute violations of this  
438 chapter, and Superior Court shall have jurisdiction over these offenses.

439 (b) The Commission may in its own name seek injunctive relief in the Court of Chancery to restrain any violation or  
440 anticipated violation of any provisions of this chapter.

441 (c) The Commission is entitled to the services of the Attorney General in enforcing the provisions of this chapter.

442 (d) When the Commission determines that a person has engaged in the business of auctioneering without being  
443 licensed under this chapter, and the person's conduct injured an individual or business within this State, it may impose a  
444 fine of not more than \$10,000.

445 (e) Appeals to Superior Court.

446 An aggrieved party may file an appeal to Superior Court pursuant to Subchapter V of the Administrative  
447 Procedures Act, Chapter 101 of Title 29.

448 § 5641. Current Laws.

449 The Commission shall maintain, and provide upon request, a copy of the current auctioneer and auction firm laws and  
450 an accurate list of those states having reciprocity with this State.

451 Subchapter V. Disciplinary Provisions.

452 § 5642. Prohibited acts.

453 Committing any of the following actions is a violation of the law, and may subject an individual licensed as an  
454 auctioneer or person licensed as an auction firm to the penalties and discipline as provided in this chapter:

455 (a) Knowingly filing or causing to be filed a false application;

456 (b) Failing to enter into a written agreement with the seller or consignor prior to the sale or prior to advertising the sale.

457 The appearance of an auctioneer's or auction firm's name in advertising creates a rebuttable presumption that the

458 advertising was placed with the auctioneer's or auction firm's knowledge;



459 (c) Failing to give the seller a signed receipt for real or personal property received for sale at auction, either by item or  
460 by lot at the time the item or lots are received, unless the goods are to remain in the possession of the seller;

461 (d) Failing to give to the seller of real or personal property sold at auction a statement indicating the item or lot  
462 description, selling price and the net proceeds due to the seller or consignor;

463 (e) Unless contemporaneous payment is made to the seller, failing to place funds received from a real property auction  
464 sale in an escrow or trust account, and failure to make a timely settlement on escrowed funds. Absent a written agreement  
465 to the contrary, 60 business days is considered timely for settlement on personal property. Real property must settle as per  
466 terms of real property contract;

467 (f) Knowingly permitting an unlicensed auctioneer to call for bids in an auction sale, unless they are working as an  
468 apprentice auctioneer;

469 (g) Engaging in the business of auctioneering for an unlicensed auction firm;

470 (h) Being convicted of one or more felonies. For the purposes of this section, "convicted" means a plea or verdict of  
471 guilty or a conviction following a plea of nolo contendere;

472 (i) Engaging in any course of intentional or wanton conduct which misleads or creates a false impression among the  
473 seller, buyer, or bidders in the advertising, conduct and closing of an auction;

474 (j) Violating any provision of this chapter or any regulations promulgated by the Commission;

475 (k) Aiding or abetting the activity of another person which violates this chapter or any regulations promulgated by the  
476 Commission;

477 (l) Misrepresenting a fact material to a buyer's decision on whether to or not to purchase real or personal property;

478 (m) Materially misrepresenting the qualities or characteristics of any real or personal property offered for sale at  
479 auction;

480 (n) Failing to comply with or violating any order of the Commission requiring an individual licensed as an auctioneer  
481 or person licensed as an auction firm to comply with any provision of this chapter or rules or with the regulations of the  
482 Commission;

483 (o) Failing to provide information within 30 days in response to a written request made by Commission;

484 (p) Engaging in the business of auctioneering without a license or after the license has expired, or has been revoked,  
485 suspended, or terminated;

486 (q) Failing to disclose to the bidders, immediately prior to offering real or personal property for sale, the existence and  
487 amount of any known liens or other encumbrances on real or personal property;

488 (r) Failing to notify the Commission of any change in name, address, business or trade name, or corporate status of the  
489 auctioneer or the auction firm within 30 days of the change.

490 (s) Failing to make the required contribution to the recovery fund;

491 (t) Selling or offering for sale at auction real or personal property known to be owned by a minor or other incapacitated  
492 individual, without the express written consent of a parent or legal guardian;

493 (u) Engaging in conduct in connection with a sales transaction that the Commission finds to have been transacted in  
494 bad faith or dishonesty;

495 (v) Engaging in conduct determined by the Commission to be unethical, unprofessional, and of a character likely to  
496 deceive, defraud, or harm the public; and

497 (w) Knowingly permitting or engaging in phantom bidding, or using skills or any type of bid rigging.

498 § 5643. Disciplinary action.

499 Nothing in this chapter limits the authority of the Commission to take disciplinary action against an individual licensed  
500 as an auctioneer or person licensed as an auction firm under this chapter, nor shall the repayment in full of all obligations to  
501 the Fund by an individual licensed as an auctioneer or person licensed as an auction firm nullify or modify the effect of any  
502 disciplinary proceedings brought under this chapter.

503 § 5644. Penalties.

504 (a) Each individual sale or act in connection with the conduct of an auction that is in violation of any provisions of this  
505 chapter or of any rules and regulations adopted by the Commission constitutes a separate offense. If the Commission finds  
506 an auctioneer or auction firm has violated any of the prohibited acts set out in this chapter, it may enter an order imposing  
507 one or more of the following penalties:

508 (1) A fine of not less than \$500 nor more than \$1000 for each offense; for a second or subsequent conviction,  
509 the fine shall not be less than \$1,000 nor more than \$2000 for each offense;

510 (2) Issuance of a letter of reprimand;

511 (3) Placement of the auctioneer on probation for a period of time and subject to conditions as the Commission  
512 may specify. However, the probation period may not 6 months from the date of the imposition of the penalty;

513 (4) Order payment of restitution from the Recovery Fund to each consumer affected by a violation. Proof that  
514 restitution was paid must be a signed and notarized release executed by the victim or the victim's estate;

515 (5) Suspension of license for a period of time established by the Commission with, or without automatic  
516 reinstatement; or

517 (6) Revocation of license.

518 (b) The Commission may in its own name seek injunctive relief in the Court of Chancery to prevent any violation or  
519 anticipated violation of any provision of this chapter.

520 (c) The Commission is entitled to the services of the Attorney General in enforcing the provisions of this chapter.

521 (d) When the Commission finds that an auctioneer or auction firm has violated this chapter and enters an order  
522 imposing a penalty, the investigative costs incurred by the Commission are recoverable. In its order the Commission may  
523 order the auctioneer or auction firm to pay the investigative costs; the Commission's order is enforceable in a court of  
524 competent jurisdiction.

525 § 5645. Disciplinary actions against out-of-state licenses.

526 (a) The Commission may refuse to issue or renew a license, may place a violator on probation, may suspend or revoke  
527 a license, or may otherwise discipline any auctioneer or auction firm for being disciplined by another state, the District of  
528 Columbia, a territory of the United States, or the United States if at least one of the grounds for that discipline is the same  
529 as or equivalent to one of the grounds for discipline in this chapter.

530 (b) The Commission may refuse to issue or renew a license, may place a violator on probation, may suspend or revoke  
531 a license, or may otherwise discipline any auctioneer or auction firm who fails to report to the Commission, within 30 days,  
532 any adverse final action taken against the auctioneer or auction firm by any other licensing jurisdiction, government agency,  
533 law enforcement agency, or court, or any liability for conduct that would constitute grounds for action as set forth in this  
534 chapter.

535 Subchapter VI. Recovery Fund.

536 § 5646. Establishment of the Recovery Fund

537 (a) The Recovery Fund is established for the purposes set forth in this chapter. The Fund is administered by the  
538 Commission.

539 (b) If at any time the monies in the Fund are insufficient to satisfy a valid claim or portion thereof, the Commission  
540 shall satisfy the unpaid claim or portion thereof as soon as a sufficient amount has been deposited in or transferred to the  
541 fund. If there is more than one unsatisfied claim outstanding, the claims must be paid in the order in which the claims were  
542 made.

543 (c) Upon the payment of any amount from the Fund in settlement of a claim or in satisfaction of a judgment against an  
544 auctioneer or auction firm, the license of the auctioneer or auction firm is automatically suspended until the auctioneer or  
545 auction firm has complied with § 5651 of this chapter. A discharge of bankruptcy shall not relieve a person from the  
546 penalties provided in this chapter.

547 (d) Monies in the Fund at the end of a fiscal year must be retained in the Fund and accrue for the benefit of auctioneers  
548 and auction firms. When the Fund exceeds the amount set forth in § 5647 of this chapter, all surcharges or assessments for  
549 the Fund are suspended until the Fund is reduced below the amount set forth in § 5647 of this chapter.

550 § 5647. Surcharge to license fee; assessments.

551 (a) Before an auctioneer or auction firm license is issued under this chapter, the licensee must pay, in addition to an  
552 examination fee and a license fee, an assessment as required by § 5608(h) and § 5617(e). The assessment must be in an  
553 amount to be determined by the Commission, a minimum of \$200 and not to exceed \$300 yearly, which shall be deposited  
554 in the fund at the time of licensure.

555 (b) The Commission shall maintain at least \$5,000 in the Fund for use as provided in this chapter. If the total amount  
556 in the Fund, including principal and interest, exceeds \$5,000 at the end of the State's fiscal year after the payment of all  
557 claims and expenses, the amount in excess of \$5,000 must remain in the Fund for the benefit of auctioneers and auction  
558 firms by holding the assessments until such time as the fund shall need replenishing.

559 (c) If the total amount of the Fund, including principal and interest, is less than \$5,000 at the end of the state's fiscal  
560 year after the payment of all claims and expenses, the Commission shall assess, in addition to any other fees required by  
561 this chapter, a surcharge against auctioneers and auction firms at the time of initial licensure or at the time of renewal,  
562 according to the following formula in order to maintain the fund at \$5,000:

563 (1) Determine the amount remaining in the Fund at the end of the State's fiscal year after all expenses and  
564 claims have been paid;

565 (2) Subtract the amount determined under paragraph (1) from the amount desired by the Commission for the  
566 Fund;

567 (3) Determine the number of initial licenses and license renewals in the fiscal year that precedes the current  
568 fiscal year; and

569 (4) Divide the amount determined under paragraph (2) by the number determined under paragraph (3).

570 (d) The Commission shall assess the surcharge described in subsection (c) of this section above against each individual  
571 and person who received an initial auctioneer or auction firm license during the fiscal year that follows the year in which  
572 the amount remaining in the fund was less than \$5,000.

573 § 5648. Conditions of recovery.

574 (a) Recovery from the Fund may be obtained as follows:

575 (1) An aggrieved person is eligible to receive recovery from the Fund if the Commission has issued a final  
576 order directing an offending licensed auctioneer or licensed auction firm to pay restitution to the claimant as the result of

577 violating any provision of this chapter or of any rule or regulation adopted by the Commission, and the Commission has  
578 determined that the order of restitution cannot be enforced; or

579 (2) An aggrieved person who obtains a final judgment in any court against a licensed auctioneer or licensed  
580 auction firm to recover damages for any actual loss that results from a violation of this chapter or of any rule or regulation  
581 adopted by the Commission may, upon termination of all proceedings, including appeals and proceedings supplemental to  
582 judgment for collection purposes, file a verified application to the Commission for an order directing payment out of the  
583 Fund of the amount of actual loss in the transaction that remains unpaid upon the judgment. The amount of actual loss may  
584 include court costs, but may not include attorney's fee or punitive damages awards.

585 (b) The amount paid from the fund shall not exceed \$5,000 per claim or claims arising out of the same transaction or  
586 auction or an aggregate lifetime limit of \$50,000 with respect to a violation or violations by any one auctioneer or auction  
587 firm. Auctions conducted under a single contract, agreement, or consignment shall be considered a single transaction or  
588 auction even though conducted at more than one time or place.

589 (c) A claim for recovery from the Fund must be made within 2 years from the time of the act giving rise to the claim or  
590 within 2 years from the time the act is discovered or should have been discovered with the exercise of due diligence;  
591 however, a claim for recovery may not be made more than 4 years from the date of the act giving rise to the claim.

592 (d) The Commission may not issue an order for payment of a claim from the Fund unless the claimant has reasonably  
593 established to the Commission that he or she has taken proper and reasonable action to collect the amount of his or her  
594 claim from the auctioneer or auction firm responsible for the loss and that any recovery made has been applied to reduce the  
595 amount of the claim on the Fund.

596 (e) Notwithstanding any other provision of this chapter, a claim based on any act or omission that occurred outside of  
597 this State is not payable from the Fund.

598 (f) In case of payment of loss from the Fund, the Fund is subrogated, to the extent of the amount of the payment, to all  
599 the rights of the claimant against any auctioneer or auction firm with respect to the loss.

600 § 5649. Payment of Claim.

601 Upon a final order of the court directing that payment be made out of the Recovery Fund, the Commission shall,  
602 subject to the provisions of this chapter, make the payment out of the Recovery Fund as provided in § 5648 of this chapter.

603 § 5650. Payment of multiple claims.

604 (a) If the payment in full of 2 or more pending valid claims that have been filed by aggrieved persons against a single  
605 auctioneer or auction firm would exceed the \$50,000 limit as set forth in § 5648(b), the money must be distributed among  
606 the aggrieved persons in the ratio of their respective claims to the aggregate of all valid claims, or in any other manner that

607 a court of record may determine to be equitable. The money must be distributed among the aggrieved persons entitled to  
608 share in it in the order the claims are filed.

609 (b) Upon petition by the Commission, the court may require all claimants and prospective claimants against one  
610 auctioneer or auction firm to be joined in one action, to the end that the respective rights of all the claimants to the  
611 Commission may be equitably adjudicated and settled.

612 (c) On June 30 and December 31 of each year, the Commission shall identify each claim that the court orders to be  
613 paid during the 6-month period that ended on that day. The Commission shall pay the part of each claim that is so identified  
614 within 20 days after the end of the 6-month period in which the claim was ordered to be paid. However, if the balance of  
615 the Fund is insufficient to pay the full payable amount of each claim that is ordered to be paid during a 6-month period, the  
616 Commission shall pay a pro-rated portion of each claim that was ordered to be paid during the period. Any part of the  
617 payable amount of a claim left unpaid due to the pro-rating of payments under this section must be paid, subject to the  
618 applicable limits set forth in § 5648 of this chapter, before the payment of claims ordered to be paid during the second 6-  
619 month period.

620 (d) Claims for the second 6-month may not be paid until all previous claims have been paid in full. Each claim must be  
621 processed in the order in which it was issued by the Commission.

622 § 5651. Suspension of license.

623 If the Commission is required to make a payment from the Fund in settlement of a claim or toward the satisfaction of a  
624 judgment under this chapter, the Commission shall suspend the auctioneer's or auction firm's license. The auctioneer or  
625 auction firm is not eligible to be licensed again as an auctioneer or auction firm until the auctioneer or auction firm has  
626 repaid in full the amount paid from the Fund, with interest at the current applicable rate.

627 § 5652. Expenditure of excess funds.

628 Subject to the approval of the majority of its members the Commission, the Commission may expend excess moneys  
629 from the Fund for any of the following purposes:

630 (1) To prepare publications which provide information concerning the Commission's activities and  
631 administrative rulings;

632 (2) To prepare publications which provide for the distribution of laws, rules, and educational information  
633 concerning the practice of auctioneering;

634 (3) To promote education and research in the auctioneer profession, in order to benefit persons licensed under  
635 this chapter and to improve the efficiency of the profession; or

636                   (4) To underwrite educational seminars, training centers, and other forms of educational projects for the use  
637 and benefit of auctioneers and auction firms.

638   Subchapter. VII Code of Ethics.

639                   § 5653. Responsibilities to clients and customers.

640                   (a) A licensee shall pledge to protect and promote the interests of the client. This obligation of absolute fidelity to a  
641 client's interests is primary, but does not relieve a licensee of his or her obligation to treat fairly all parties to the  
642 transaction.

643                   (b) A licensee shall, in conducting an auction, deal with customers in a manner exhibiting the highest standards of  
644 professionalism and respect. A licensee owes the customer the duties of honesty, integrity, and fair dealing at all times.

645                   (c) A licensee shall, to assure better service to the seller and to prevent misunderstandings, enter into written  
646 agreements that set forth the specific terms and conditions of the transaction.

647                   (d) A licensee shall not accept compensation from any party other than the client, even if permitted by law, without the  
648 full knowledge of all the parties to the transaction and a written disclosure.

649                   (e) A licensee shall provide the highest level of service in those fields in which the licensee is customarily engaged.  
650 This level of service is attained by education, training, study, practice, and experience. Level of service also includes the  
651 wisdom to recognize the limitations of his or her knowledge and the wisdom to seek the counsel, assistance, or client  
652 referral when appropriate for the circumstances.

653                   (f) A licensee shall not undertake to provide professional services where either the licensee or his or her immediate  
654 family, licensees of his or her firm, or any entity in which they have an ownership interest has presently or contemplates an  
655 interest, without first specifically disclosing such interest or contemplated interest.

656                   (g) A licensee shall not make a profit on expenditures made for his or her client without the client's prior knowledge  
657 and consent.

658                   (h) A licensee shall not engage in activities that constitute the unauthorized practice of law and shall recommend that  
659 legal counsel be obtained when the interest of any party to the transaction would be appropriately served.

660                   (i) A licensee shall keep monies such as escrows, trust funds, client's monies and other similar items coming into his or  
661 her possession in a separate special account in an appropriate financial institution.

662                   (j) A licensee shall not disclose any confidential client information without the client's written consent except as  
663 required by law or appropriate legal authorities.

664                   § 5654. Responsibilities to the public.

665 (a) A licensee shall avoid misrepresentation or concealment of pertinent facts. A licensee has an affirmative obligation  
666 to disclose adverse factors of a material nature of which he or she have personal knowledge.

667 (b) A licensee shall be careful at all times to present true information in their advertising and other representations to  
668 the public. A licensee shall ensure that all advertising includes the names and information necessary for the public to  
669 contact the auctioneer or firm responsible for conducting the auction.

670 (c) A licensee shall participate in Commission approved continuing education programs and shall keep informed on  
671 matters affecting the auction industry and his and her area of specialization.

672 (d) A licensee shall at all times abide by the laws, rules and regulations which govern the profession, as well as those  
673 which, if violated, would negatively affect his or her ability to present to the public an image of behavior that appropriately  
674 represents the professionalism of our industry.

675 § 5655. Responsibilities to the profession.

676 (a) A licensee shall never publicly criticize a competitor using false or deceptive information. If an opinion of a  
677 competitor's transaction is requested, it should be rendered in conformity with strict professional courtesy and dignity.

678 (b) A licensee should willingly share with other licensees the lessons learned through experience and study to better the  
679 profession, licensees' business practices, and how the profession is perceived by society.

680 (c) A licensee shall conduct his or her business affairs so as to avoid disputes with other licensees. If a controversy  
681 between licensees arises, the licensees shall seek the assistance of the Commission to arbitrate the controversy.

682 (d) A licensee, having personal knowledge of an act by another licensee that, in his or her opinion, is a material  
683 violation of the ethical principles of this Code, shall treat the matter in accordance with the procedures of filing a grievance.

684 (e) A licensee charged with unethical practice or who is asked to present evidence in a disciplinary proceeding or  
685 investigation shall promptly and voluntarily place all pertinent facts and information before the appropriate body.

686 Section 2. Amend § 10161(a)(1), Title 29 of the Delaware Code by making insertions as shown by underlining and  
687 deletions as shown by strike through as follows and re-numbering accordingly:

688 § 10161. State agencies affected

689 (a) This chapter shall apply only to the following agencies:

690 (52) Auctioneer's Licensing Commission.

691 Section 3. Amend §8735, Title 29 of the Delaware Code by making deletions as shown by strikethrough and insertions  
692 as shown by underlining as follows and re-numbering accordingly:

693 § 8735 Division of Professional Regulation.



694 (a) The Division of Professional Regulation shall have the powers, duties and functions set forth in this section. The  
695 Division shall be responsible for the administrative, ministerial, budgetary, clerical and exclusive investigative functions  
696 (including but not limited to the appointment, removal, compensation and duties of employees) as provided by law of the  
697 following commissions, boards and agencies, with the exception that the Secretary of State shall not be precluded from  
698 entering into a memorandum of understanding with the Secretary of the Department of Health and Social Services for the  
699 purpose of allowing employees of the Department of Health and Social Services to function as inspectors, investigators and  
700 administrative support for the Board of Pharmacy:

701 (35) Auctioneer's Licensing Commission as set forth in Chapter 56 of Title 24:

702 Section 4. Severability.

703 If a provision of this Act or the application of a provision to a person or circumstance is held to be invalid, the  
704 invalidity does not affect other provisions or applications of this Act which can be given effect without the invalid  
705 provision or application; and to this end the provisions of this Act are declared severable.

706 Section 4. This Act becomes effective 180 days after its enactment.

#### SYNOPSIS

This Act requires auctioneer and auction firm licensing and creates a commission to license auctioneers and auction firms and to oversee their activities. Approximately forty other states license and regulate the auctioneering profession. This legislation will provide important consumer protections and work to ensure that the profession in Delaware is practiced in accordance with high standards and the public interest.