

AUCTIONEER AND AUCTION LICENSING ACT
Act of Dec. 22, 1983, P.L. 327, No. 85
AN ACT

Cl. 63

Imposing regulations and licensing requirements on auctioneers, apprentice auctioneers, auction companies, trading assistants and trading assistant companies; imposing powers and duties on the State Board of Auctioneer Examiners; and making repeals. (Title amended July 20, 2016, P.L. , No.88)

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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.

(1 amended Oct. 8, 2008, P.L.1080, No.89)

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." An individual who is licensed under this act as an apprentice auctioneer.

"Auction" or "sale at auction."

(1) A method for the sale or lease of property, or any interest in property, by means of a verbal exchange, regular mail, telecommunications, the Internet, an electronic transmission or a physical gesture between an auctioneer, apprentice auctioneer or auction company and one or more potential purchasers or lessees through the solicitation of offers, in the form of bids, in an effort to advance the amount of the bids to obtain the highest or most favorable offer.

(2) The term "auction" or "sale at auction" includes:

(i) live auctions;

(ii) online auctions;

(iii) real-time auctions;

(iv) extended auctions;

(v) any similar such events as may be devised with the development of technology; and

(vi) any combination of the foregoing.

(3) The term "auction" or "sale at auction" does not include a negotiated transaction. Nothing in this act is intended to deny an auctioneer, apprentice auctioneer or auction company a commission or other compensation earned for auction-related activities that result in or facilitate a negotiated transaction by the seller, or other agent of the seller, and a buyer.

"Auction company." A legally recognized entity that sells or attempts to sell property at auction or performs, or offers to perform, any of the functions or activities requiring licensure as an auction company under section 3(a)(1). The term includes any legally recognized entity that holds itself out as engaged in the business of selling property at auction.

"Auction house." An established place of business, including, but not limited to, an auction barn, a sale barn and a sale pavilion, used primarily for conducting auctions, 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 or periodic sales are conducted by an auctioneer or

auctioneer apprentice and that are used primarily for purposes other than auctions or sales at auction.

"Auctioneer." An individual who sells or offers or attempts to sell property at auction. The term includes an individual who:

- (1) Engages in or offers the calling for and recognition of bids at auction.
- (2) Engages in or offers any of the activities of an auction company.
- (3) Performs, or offers to perform, any of the functions or activities requiring licensure under section 3(a)(1).
- (4) Holds himself out as engaged in the business of selling property at auction.

"Auctioneer-of-record." The licensed auctioneer designated by an auction company as its auctioneer-of-record. The auctioneer-of-record is principally responsible for the conduct of the auctions of the auction company in accordance with this act.

"Board." The State Board of Auctioneer Examiners.

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

"Department." The Department of State.

"Extended auction." An auction conducted in whole or in part online at which bids are received over an extended period of time identified by a starting time and ending time that may encompass multiple minutes, hours, days or other periods.

"Group A auction school." A provider, approved by the board, offering a course of study in auctioneering and the auction industry, as approved by the board, the completion of which requires not less than 20 credit hours, including two credit hours of practicum or cooperative practical experience.

"Group B auction school." A provider, approved by the board, offering a course of study in auctioneering and the auction industry, as approved by the board, the completion of which requires fewer than 20 credit hours.

"Legally recognized entity." A partnership, association, corporation, limited liability company or other entity recognized under the laws of this Commonwealth or any other state.

"Licensee." An individual licensed under this act as an auctioneer, apprentice auctioneer or holder of a special license and a legally recognized entity licensed under this act as an auction company.

"Live auction." An auction or sale at auction at which one or more members of an audience are present in person, are communicating telephonically or by other digital or electronic means or are participating by absentee bid.

"Negotiated transaction." A transaction for the sale of property, involving offers and counteroffers, conducted through a process of negotiation between the prospective buyer and any of the following:

- (1) the seller;
- (2) the seller's agent; or
- (3) other interested party.

"Online auction." An auction or sale at auction conducted over the Internet or similar interactive communication media.

"Online Internet bidding platform." (Def. deleted by amendment).

"Online trading assistant consignment transaction." A transaction pursuant to which a registrant or licensee describes and lists personal property of another for sale through the use of hardware or software that enables computer access by multiple users to an interactive computer server:

(1) allowing individual sellers, and those acting on behalf of sellers, to list and offer the property for sale at a set price, or best offer, or through competitive and progressive offers that may include a buy-it-now feature; and

(2) allowing prospective buyers access to the hardware or software.

"On-site auction." An auction or sale at auction conducted at the seller's residential or business location where the property to be sold is located.

"Person." An individual or a legally recognized entity.

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

"Qualified sponsor." A currently licensed auctioneer residing in this Commonwealth.

"Real-time auction." An auction or sale at auction at which bids are solicited and received contemporaneously, in real time.

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

"Seller." The owner of property, or the legal representative or agent of the owner of property, who consigns or otherwise agrees to have the property sold at auction or by way of an online trading assistant consignment sale transaction.

"Special licensee." The holder of a special license issued pursuant to section 3.

"Temporary venue." A venue, including a rented hall, used primarily for other purposes, at which an auction or sale at auction is held by an auction company or an auctioneer, regardless of the frequency of the auctions or sales at auction.

"Trading assistant." An individual who, for a commission or fee, conducts or intends to conduct a business within this Commonwealth of selling, or offering to sell, the personal property of another through an online trading assistant consignment sale transaction, or who performs, or offers to perform, any of the functions or activities requiring registration under section 5.1(a).

"Trading assistant company." A legally recognized entity that, for a commission or fee, conducts or intends to conduct a business within this Commonwealth of selling, or offering to sell, the personal property of another through an online trading assistant consignment sale, or that performs, or offers to perform, any of the functions or activities requiring registration under section 5.1(a).

(2 amended July 20, 2016, P.L. , No.88)

Section 3. Auctioneer, apprentice auctioneer, auctioneer company and special licenses.

(a) Requirement for license.--

(1) It is unlawful for any person to engage in the business or profession of an auctioneer, apprentice auctioneer or an auction company to conduct an auction, to hold himself out as an auctioneer or as an apprentice auctioneer, to hold itself out as an auction company or to offer to conduct auctions in this Commonwealth without first obtaining a license from the board as an auctioneer, apprentice auctioneer, auction company or special licensee.

(2) (i) Regardless of whether the computer system or server utilized in connection with an online auction is physically located within this Commonwealth, a license shall be required for any person offering to conduct or agreeing to conduct an online auction, or conducting an online auction, if:

(A) the seller is situate in this Commonwealth at the time the offer is made, the agreement is made or the online auction is held;

(B) the online auction involves the sale of real property situate in this Commonwealth; or

(C) the online auction involves the sale of personal property situate in this Commonwealth at the time the offer is made, the agreement is made or the online auction is held.

(ii) Under this section, licensure is not required under circumstances in which the seller initiates contact with an auctioneer, auction company or other provider of auction services located outside of this Commonwealth to sell personal property at an online auction outside of this Commonwealth.

(3) Any owner, member, officer, employee or independent contractor retained by an auction company who calls bids or engages in other activities requiring licensure under this act must be licensed as an auctioneer or apprentice auctioneer. Notwithstanding the foregoing, a license is not required for an individual, acting as an agent or representative of a licensee under this act, to negotiate or execute contracts on behalf of the licensee.

(4) Licensees under this act shall be authorized to conduct auctions at any venue within this Commonwealth, including on-site auctions and auctions held at auction houses and temporary venues, and by any method of conducting the sale, including live auctions and online auctions and auctions that are conducted live and online contemporaneously, whether real-time auctions or extended auctions.

(b) Issuance and supervision of licenses.--(b) deleted by amendment).

(c) Qualifications in general for license.--Auctioneer, apprentice auctioneer and special auctioneer licenses shall be granted only to individuals who have a good reputation for honesty, truthfulness, integrity and competence to transact the business of an 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 this act and regulation.

(d) Apprentice auctioneer license.--To qualify for an apprentice auctioneer license, an individual must be sponsored

and employed for compensation by a qualified sponsor who employs no more than one other apprentice auctioneer. As approved by the board, an apprentice auctioneer may transfer his apprenticeship to another qualified sponsor without forfeiting any qualifying auctions previously completed in accordance with subsection (e) (1).

(e) Auctioneer license.--To qualify for an auctioneer license, an individual must have passed the prescribed examination after:

(1) serving an apprenticeship as a licensed apprentice auctioneer for a period of not less than two years in the employ of a qualified sponsor and participating for compensation in no less than 30 auctions, including auctions under the supervision of a substitute qualified sponsor, without limitation as to the method of conducting the auctions, which may include online auctions;

(2) successfully completing a prescribed course of study in auctioneering at a Group A auction school;

(3) successfully completing a prescribed course of study in auctioneering at a Group B auction school and serving an apprenticeship as a licensed apprentice auctioneer for a period of not less than one year in the employ of a qualified sponsor and participating for compensation in no less than 15 auctions, which may include auctions under the supervision of a substitute qualified sponsor, without limitation as to the format of the auctions, which may include online auctions;

(4) being licensed in good standing by another state to engage in auctioneering for at least two years. The board shall review applications under this paragraph to determine the qualifications of the applicant; or

(5) demonstrating that the individual has conducted auctioneering for at least two years in a state that does not require a license. The board shall review applications under this paragraph to determine the qualifications of the applicant.

(e.1) Auction company license.--

(1) Every legally recognized entity shall, before operating as an auction company, obtain an auction company license issued by the board.

(2) Every auction company shall designate an auctioneer-of-record. Each auction company licensed under this act shall designate an individual licensed as an auctioneer under this act to serve as the auction company's auctioneer-of-record. The designation of the auctioneer-of-record shall be made in the initial application for licensure as an auction company and in each application for renewal of an auction company license. The auctioneer-of-record may be an owner, shareholder, member, partner, employee, independent contractor or other agent of the auction company. The auctioneer-of-record is principally responsible for the conduct of the auctions of the auction company in accordance with this act. However, nothing in this act shall limit or restrict the ability of an auction company to utilize the services of one or more auctioneers in addition to the auctioneer identified as auctioneer-of-record, and it shall not be necessary for the auctioneer-of-record to be present at every auction conducted by the

auction company, provided that a licensed auctioneer is present to conduct the activities required to be conducted by a licensed auctioneer under this act. An auction company license becomes invalid if the license of the auctioneer-of-record is not renewed or is suspended or revoked or if the auctioneer-of-record becomes deceased or otherwise ceases to be the auction company's auctioneer-of-record without substitution by a successor auctioneer-of-record.

(3) Within 30 calendar days after an auction company's auctioneer-of-record ceases to serve as auctioneer-of-record for the auction company, both the auction company and the auctioneer-of-record or the auctioneer-of-record's legal representative shall notify the board in writing of the termination of such status.

(f) Reissuance of inactive license.--Any individual to whom an auctioneer license has been issued and whose license has been in an inactive or nonrenewed status for a period of seven or more years shall be required to submit to and pass an examination approved by the board prior to having a license reissued. Any individual to whom an apprentice auctioneer license has been issued and whose license has been in an inactive or nonrenewed status for a period of seven or more years shall be required to make a new application to the board.

(g) Designation of auctioneer-of-record.--((g) deleted by amendment).

(g.1) Special license to conduct auction.--An auctioneer or auction company authorized to engage in auctioneering in another state shall, on application and payment of the license fee, be issued a special license for each specifically identified auction to be conducted in this Commonwealth. Applications must be made not less than 20 days in advance of the auction or sale at auction and must include the name and address of the seller 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. This subsection does not prohibit an auctioneer or auction company licensed in another state from working or sharing compensation with a licensed Pennsylvania auctioneer or auction company in this Commonwealth with respect to an auction conducted pursuant to a contract between the seller or owner of the property and an auctioneer or auction company licensed in this Commonwealth and, under such circumstances, a special license shall not be required unless the out-of-State auctioneer will call bids or engage in any other conduct that requires a license under this act.

(h) Sales exempt from license requirements.--((h) deleted by amendment).

(i) Special license to conduct auction.--((i) deleted by amendment).

(3 amended July 20, 2016, P.L. , No.88)

Section 3.1. 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 conducted by the executor or administrator of the estate.

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

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

(3.1 added July 20, 2016, P.L. , No.88)

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.

(c) Licensed auction houses.--An auction house license issued under and pursuant to this act and existing on the effective date of this paragraph shall remain in full force and effect until the license shall expire and shall not be subject to renewal. Thereafter, auction house licenses will no longer be issued or renewed in this Commonwealth, and any holder of an expired auction house license who is not also the holder of an auction company license shall be required to obtain either an auction company license or an auctioneer license in order to continue in the business and profession of auctioneering in this Commonwealth. ((c) added July 20, 2016, P.L. , No.88)

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

(a) Application for auctioneer license.--Applications for license as an auctioneer shall be made to the board in writing on forms provided by the board which shall contain such information 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.

(a.1) Apprenticeship.--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 meets one of the following:

(1) Was in the employ of one or more qualified sponsors for at least two years total and participated for compensation in not less than 30 auctions on the dates and at the locations provided by the applicant.

(2) Was in the employ of one or more qualified sponsors for at least one year total and participated for compensation in not less than 15 auctions on the dates and

at the locations provided by the applicant and successfully completed a course of study in auctioneering at a Group B auction school.

(a.2) Group A auction school attendance.--An application by an applicant seeking to qualify on the basis of having completed a course of study in auctioneering at a Group A auction school shall contain or be accompanied by satisfactory evidence that the applicant has completed such course of study.

(a.3) Affidavit.--Each application for licensure as an auctioneer shall include a self-affirming affidavit, in a form as prescribed by the board, attesting to the truth and accuracy of the statements contained in the application. If an applicant makes false or misleading statements in an application, the board 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 on 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 the apprentice auctioneer was engaged in the auction profession, stating the name of the apprentice auctioneer's current qualified sponsor and any former qualified sponsor for the period of five years immediately preceding the date of the renewal. If it becomes necessary to change qualified 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 qualified 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 reactivated when the apprentice auctioneer submits a transfer form which informs the board that the apprentice auctioneer has secured a new qualified sponsor.

(b.1) Application for auction company license.--Every legally recognized entity seeking an auction company license shall file with the board an application in writing on forms provided by the board which shall contain such information as to the applicant and as to the members or officers of the applicant, as the board shall require. Each application shall identify an auctioneer-of-record. On the filing of an application, the board may refuse to license the applicant to operate an auction company on the basis of materially untrue allegations in the application.

(c) Auctioneer examinations.--The board shall contract with a professional testing organization for the preparation and administration of the auctioneer 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. Except as otherwise provided under this act, no individual may be issued an auctioneer license unless the individual 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, apprentice auctioneer 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 on forms and in the manner provided by the board.

(f) Online trading assistant consignment sale transactions by licensees.--Auctioneers, apprentice auctioneers and auction companies licensed under this act may conduct online trading assistant consignment sale transactions. Initial and renewal applications for auctioneers, apprentice auctioneers and auction companies shall request that the applicant or licensee renewing a license indicate in the space provided on the form whether the applicant or licensee will also engage in online trading assistant consignment sale transactions.

(g) Self-affirming affidavit.--An application for an initial or renewal license shall include a preprinted self-affirming affidavit, to be signed by the applicant under the penalty of perjury, attesting to the truth and accuracy of the allegations set forth in the application.

(5 amended July 20, 2016, P.L. , No.88)

Section 5.1. Registration of trading assistants and trading assistant companies.

(a) Requirement for registration.--It shall be unlawful for an individual to act as a trading assistant, or for any legally recognized entity to act as a trading assistant company, without either first registering with or obtaining licensure from the board. A legally recognized entity conducting business as a trading assistant must register as a trading assistant company even though a member or officer is registered as a trading assistant. Registration is required on a biennial basis, and renewal shall be due on the last day of February of each odd-numbered year.

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

(1) The name of the applicant, the business and the physical location where the business will be conducted.

(2) The date the applicant will begin accepting goods for sale through an online trading assistant consignment sale transaction.

(3) The applicant's Pennsylvania tax identification number.

(4) The applicant's e-mail address.

(c) Fee.--A registration fee of \$100 shall be included with each application for registration or renewal. The fee may be established by the board by regulation.

(d) Renewal.--It is the duty of all registrants to renew the registration biennially with the board and to pay the fee for each biennial registration.

(e) Self-affirming affidavit.--An application for an initial or renewal registration shall include a preprinted self-affirming affidavit, to be signed by the applicant under the penalty of perjury, attesting to the truth and accuracy of the allegations set forth in the application.

(5.1 added July 20, 2016, P.L. , No.88)

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. Licensees and registrants to furnish bond.

(a) General rule.--No license, including a special license, or registration shall be granted or issued to any person under this act 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, and no licensee or registrant shall engage in the businesses regulated under this act without an active bond. 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, including a special 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 to 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, including a special 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.

(7 amended July 20, 2016, P.L. , No.88)

Section 8. Authority to transact business not transferable.

The authority to transact business as an auctioneer, apprentice auctioneer or auction company licensed under this act, or as a trading assistant or trading assistant company registered under this act, is restricted to the person named in the license or registration and may not be transferred to the benefit of any other person.

(8 amended July 20, 2016, P.L. , No.88)

Section 9. Auction house license. (9 repealed July 20, 2016, P.L. , No.88)

Section 10. Auction company license. (10 repealed July 20, 2016, P.L. , No.88)

Section 10.1. Trading assistant registration. (10.1 repealed July 20, 2016, P.L. , No.88)

Compiler's Note: Section 7 of Act 89 of 2008, which added section 10.1, provided that the board shall not promulgate regulations pertaining to section 10.1 ad registrations pursuant to section 10.1 shall be accepted by the board upon the effective date of section 7.

Section 11. Nonresident licensees. (11 repealed July 20, 2016, P.L. , No.88)

Section 12. Reciprocity with other states.

(a) General rule.--A person who is licensed in good standing as an auctioneer, apprentice auctioneer or auction company in another state may, on application to the board, be granted licensure as an auctioneer, apprentice auctioneer or auction company in this Commonwealth upon the payment by the applicant of the proper application fee and the filing with the board of a properly certified copy of the license issued to the applicant by the applicant's current licensing state, provided that:

(1) the requirements for licensure in the applicant's current licensing state are, in the determination of the board, commensurate with the requirements for licensure in this Commonwealth;

(2) the licensing laws of the applicant's current licensing state extend to licensees of this Commonwealth the same reciprocal rights and privileges in that state without the necessity of the licensees in this Commonwealth to obtain additional or further licenses or authority from any political subdivision of that state; and

(3) the applicant satisfies all other requirements of licensees and applicants for licensure in this Commonwealth, including the requirement to furnish a bond.

(a.1) Review by board.--Each application for licensure by reciprocity shall be reviewed by the board and shall be determined by a vote of the board.

(12 amended July 20, 2016, P.L. , No.88)

Section 13. Licensee and registrant to furnish bond. (13 repealed July 20, 2016, P.L. , No.88)

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 licensee or registrant under this act nor to require the following:

(1) A licensee or registrant to be licensed by the political subdivision in order to carry on the business of the licensee or registrant.

(2) A licensee to be licensed by the political subdivision in order to conduct a sale at auction.

(3) A licensee or registrant to be licensed by the political subdivision in order to engage in online trading assistant consignment sale transactions.

(14 amended July 20, 2016, P.L. , No.88)

Section 15. List of licensees and registrants.

The board shall maintain a current list of licensees and registrants under this act. 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.

(15 amended July 20, 2016, P.L. , No.88)

Section 15.1. Contracts.

Prior to conducting a transaction, a licensee or registrant 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. Each contract shall include the license or registration number of the licensee or registrant conducting the transaction. The contract may be entered into electronically. The contracts shall be kept on file in the office of the licensee or registrant and shall be open to inspection as provided in this act.

(15.1 added July 20, 2016, P.L. , No.88)

Section 16. Records of sales.

(a) General rule.--Every licensee and registrant under this act who receives or accepts any property for sale at auction or sale through an online trading assistant consignment sale transaction shall maintain a written record which shall contain the following information, provided that, if the transaction is being conducted by an auction company or a trading assistant company, the records shall be maintained by the auction company or trading assistant company:

(1) The name and address of the seller of the property to be sold.

(2) A copy of the written or electronic 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 licensee or registrant before making an inspection.

(c) Retention of records.--The written records shall be kept on file in the office of the licensee or registrant for a period of not less than two years and, if the licensee or registrant is notified of a complaint against the licensee or registrant, the records shall be maintained until the complaint is finally resolved.

(d) Receipts.--Every licensee or registrant must provide a written receipt for all transactions conducted by the licensee or registrant, which receipt may be provided electronically. Copies of receipts must be retained for not less than two years.

(16 amended July 20, 2016, P.L. , No.88)

Section 17. Contracts for conduct of transaction. (17 repealed July 20, 2016, P.L. , No.88)

Section 18. Display of licenses and registration certificates.

(a) General rule.--Every licensee and registrant under this act shall prominently display the certificate of licensure or registration at the licensee's or registrant's office, and the current wallet card or any facsimile thereof issued to the licensee or registrant shall be shown on demand of any person at all auctions or sales at auction conducted by any licensee or in connection with any transaction conducted by any registrant.

(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 qualified sponsor by name. Prompt notice in writing within ten days shall be given to the board by the apprentice auctioneer of any change of qualified sponsor and of the name of the new qualified 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 sponsor. The change of qualified 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 qualified 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.--
(c) deleted by amendment).

(18 amended July 20, 2016, P.L. , No.88)

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. Enforcement actions.

(a) General rule.--The board may refuse, suspend or revoke licenses or registrations issued by the board or impose a civil penalty not exceeding \$10,000 when it finds the

applicant, licensee or registrant to have been guilty in the performance or attempt to perform any of the following:

- (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) The failure of a licensee or registrant who receives moneys on account of others to establish or maintain an escrow account as required in section 21.
- (13) For any licensed auctioneer or apprentice auctioneer to bid and buy for himself at any auction he is conducting.
- (14) For any licensee or registrant to pay any compensation in money or other valuable thing to any person other than a licensee or registrant 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 or registrants.
- (15) For a licensee or registrant to advertise an auction or a sale through an online trading assistant consignment sale without including in the advertisement or notice of sale the name and the license or registration number of the licensee or registrant conducting the transaction.

(b) Procedure.--A disciplinary action of the board shall be taken subject to the right of notice, hearing and adjudication and the right of appeal, in accordance with 2 Pa.C.S. (relating to administrative law and procedure).

(20 amended July 20, 2016, P.L. , No.88)

Section 21. Escrow account.

Every licensee and registrant shall promptly deposit moneys, received from the sale of property, belonging to others in a separate custodial or trust fund account

maintained by the licensee or registrant until the transaction involved is terminated, at which time the licensee or registrant shall account for the full amount received. Such moneys received by a licensee or registrant working for an auction company or trading assistant company shall be promptly turned over to such company for deposit and accounting.

(21 amended July 20, 2016, P.L. , No.88)

Section 22. Hearing on charges.

(a) General rule.--If the applicant, licensee or registrant desires, the board shall grant a hearing upon the charges. The hearing 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 2 Pa.C.S. (relating to administrative law and procedure).

(22 amended July 20, 2016, P.L. , No.88)

Section 23. Administration and enforcement.

(a) Administration and enforcement.--The board shall administer and enforce this act.

(b) Issuance and supervision of licenses.--It is the duty of the board, on payment of the required fee and on compliance with the requirements of this act, to issue a license as an auctioneer, apprentice auctioneer or auction company and to issue registrations to trading assistants and to trading assistant companies. The board shall supervise and control all licenses and registrations issued under this act.

(23 amended July 20, 2016, P.L. , No.88)

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 or registration of legally recognized entity for violation by member or officer.--In the event of the revocation or suspension of the license or registration issued to any member of a partnership or to any officer of an association, corporation, limited liability company or other entity, the license or registration issued to the legally recognized entity 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, corporation, limited liability company or other entity is discharged and has no further participation in its activities. ((c) amended July 20, 2016, P.L. , No.88)

(26 amended Oct. 8, 2008, P.L.1080, No.89)

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, corporation, limited liability company or other entity 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.

(27 amended July 20, 2016, P.L. , No.88)

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 requested by or issued to the same licensee or registrant within a period of at least five years 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, corporation, limited liability company or other entity 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.

(28 amended July 20, 2016, P.L. , No.88)

Section 29. Penalties.

(a) Criminal penalties.--Any person who engages in or carries on the profession or acts in the capacity of a licensee or registrant in this Commonwealth without a current license or registration or who employs any individual without a current license or registration:

(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.--

(1) 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 \$10,000 on any person:

(i) who engages in the business or practice of auctioneering without being properly licensed to do so under this act; or

(ii) who engages in business as a trading assistant or trading assistant company without being properly registered to do so under this act.

(2) The board shall levy this penalty only after affording the accused party the opportunity for a hearing, as provided in 2 Pa.C.S. (relating to administrative law and procedure).

(c) Failure to register.--Any person who fails to register under section 5.1 may be subject to a penalty of up to \$500 levied by the commissioner. The person may request a hearing before the board, which shall be conducted in accordance with 2 Pa.C.S.

(29 amended July 20, 2016, P.L. , No.88)

Compiler's Note: Section 3 of Act 25 of 2009, which amended section 5 of the act of July 2, 1993 (P.L.345, No.49), provided that section 29(b) is repealed insofar as it is inconsistent with the amendment of section 5.

Section 30. Actions by unlicensed or unregistered persons prohibited.

No action or proceeding may be instituted and no recovery may be had in any court of this Commonwealth by any person 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 or registered by the board, unless the person was licensed or registered at the time of doing the act or rendering of service.

(30 amended July 20, 2016, P.L. , No.88)

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, each of whom is a licensed auctioneer meaningfully engaged in the auction industry such that the person is aware of current and developing issues and practices, and each of whom shall have been licensed as an auctioneer for ten years or more.

((a) amended July 20, 2016, P.L. , No.88)

(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.