

SECOND REGULAR SESSION

SENATE BILL NO. 1088

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATORS FOSTER, DePASCO, MATHEWSON, HOUSE AND JOHNSON.

Read 1st time January 31, 2002, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

3510S.03I

AN ACT

To repeal sections 343.010, 343.030, 343.040, 343.050, 343.060, 343.070, 343.080, 343.090, 343.100 and 343.250, RSMo, relating to the licensing of auctioneers, and to enact in lieu thereof twenty new sections relating to the same subject with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 343.010, 343.030, 343.040, 343.050, 343.060, 343.070, 343.080, 343.090, 343.100 and 343.250, RSMo, are repealed and twenty new sections enacted in lieu thereof, to be known as sections 343.350, 343.353, 343.356, 343.359, 343.362, 343.365, 343.368, 343.371, 343.374, 343.377, 343.380, 343.383, 343.386, 343.392, 343.395, 343.401, 343.404, 343.410, 343.413 and 343.416, to read as follows:

343.350. As used in sections 343.350 to 343.416, the following terms shall mean:

(1) "Apprentice auctioneer", any person less than eighteen years of age who acts as a bid caller under the direct supervision of a licensed auctioneer, or any person eighteen years of age or older who chooses not to complete an accredited auction school, but works a mandatory twelve auctions as a bid caller under the supervision of a licensed auctioneer prior to receiving a state license;

(2) "Auction", the sale or lease of goods, real or personal, by means of exchange between an auctioneer or apprentice auctioneer and prospective purchasers or lessees, which consists of a series of invitations for offers made by the auctioneer or apprentice auctioneer and offers by prospective purchasers or lessees for the purpose of obtaining an acceptable offer for the sale or lease of goods via in-person exchange, mail, telecommunications or the Internet;

(3) "Auctioneer", one who sells goods, merchandise, or property of any kind, at public or private auction, for another person, and who receives any commission or compensation of any kind for conducting such sale; but not including one who

conducts such a sale by or under the jurisdiction of any court, or pursuant to any judicial judgment or order, or any foreclosure sale of real estate, and not including any owner of any goods, merchandise or property of any kind, who himself conducts such sale;

(4) "Board", the state board of auctioneers;

(5) "Goods", any chattels, merchandise, real or personal property, or commodities of any form or type which may be lawfully kept or offered for sale;

(6) "Subaccount", the auctioneers education, research and recovery fund which is a subaccount of the state board of auctioneers fund established in section 343.413.

343.353. It is unlawful for any person in this state to engage in the occupation of auctioneering unless such person has first obtained a license pursuant to sections 343.350 to 343.416.

343.356. There is hereby created the "State Board of Auctioneers" for the purpose of licensing all persons engaged in the practice of auctioneering. The board shall have control and supervision of the licensed occupations and enforcement of the terms and provisions of sections 343.350 to 343.416.

343.359. 1. The board shall be composed of five members, including one voting public member, appointed by the governor with the advice and consent of the senate.

2. All members shall be citizens and residents of this state and qualified voters of this state for at least one year preceding their appointments. Auctioneer members shall be licensed pursuant to the laws of this state and shall have been actively engaged in the lawful practice of auctioneering for a period of at least five years, and after January 1, 2003, licensed as auctioneers pursuant to sections 343.350 to 343.416. The public member shall be a person who is not and never was a member of any profession licensed or regulated pursuant to sections 343.350 to 343.416 or the spouse of such person; a person who does not have and never has had a material financial interest in either the providing of the professional services regulated by sections 343.350 to 343.416, or an activity or organization directly related to any profession licensed or regulated pursuant to sections 343.350 to 343.416. All members including the public member shall be chosen from lists submitted by the director of the division of professional registration. The duties of the public member shall not include the determination of the technical requirements to be met for licensure or whether any person meets such technical requirements, or the technical competence or technical judgment of a licensee or a candidate for licensure.

3. At no time shall there be more than three members of the same political party on the board.

4. Each member shall be appointed by the governor for a five-year term, except

that of the members first appointed, one shall be appointed for a term of one year, one for a term of two years, one for a term of three years, one for a term of four years and one for a term of five years.

343.362. The governor shall designate one of the members as the first chairman and thereafter the senior member shall serve as chairman. Vacancies on the board shall be filled for the unexpired term in the same manner as the original appointments are made. The governor may remove any member for cause.

343.365. 1. The board shall administer and enforce the provisions of sections 343.350 to 343.416, prescribe the duties of its officers and employees, and adopt, publish and enforce such rules and regulations within the scope and purview of sections 343.350 to 343.416 as may be considered by the board to be necessary or proper for the effective administration and interpretation of sections 343.350 to 343.416, and for the conduct of its business and management of its internal affairs. The board shall:

(1) Conduct examinations of applicants for licensure to practice the professions pursuant to sections 343.350 to 343.416 and issue licenses;

(2) Employ and remove board personnel, as defined in subdivision (4) of subsection 15 of section 620.010, RSMo, as may be necessary for the efficient operation of the board, within the limitations of its appropriation;

(3) Determine the sufficiency of the qualifications of applicants;

(4) Hire and retain staff and support personnel, including counsel, as are necessary for conducting board business;

(5) Publish annually a list of names of all auctioneers and apprentice auctioneers licensed pursuant to sections 343.350 to 343.416. The list shall also contain the names of all persons whose license has been suspended or revoked within the preceding year, as well as any other information relevant to the enforcement of the provisions of sections 343.350 to 343.416 that the board may deem of interest to the public;

(6) Administer the state board of auctioneers fund; and

(7) Administer the subaccount of the state board of auctioneers fund pursuant to the provisions of subsection 4 of section 343.416.

2. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in sections 343.350 to 343.416 shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. Sections 343.350 to 343.416 and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then

the grant of rulemaking authority and any rule proposed or adopted after August 28, 2002, shall be invalid and void.

343.368. At all meetings of the board two members shall be necessary to constitute a quorum for the transaction of business but no official action may be taken unless a majority of the whole board may vote.

343.371. 1. Applicants for examination or licensure pursuant to sections 343.350 to 343.416 shall possess the following qualifications:

(1) The individual must be a person of good moral character, have an education equivalent to the successful completion of the twelfth grade or general educational development certificate and be at least eighteen years of age, excluding apprentice auctioneers; and

(2) A diploma from an auction school that is approved by the board or provide proof of completion of an apprenticeship.

2. The sufficiency of the qualifications of applicants shall be determined by the board, but the board may delegate this authority to its executive director subject to such provisions as the board may adopt.

3. For the purpose of meeting the minimum requirements for examination, training completed by a student or apprentice shall be recognized by the board for a period of no more than one year from the date it is received.

343.374. 1. Every person desiring to sit for the examination for any of the occupations provided for in sections 343.350 to 343.416 must file with the board a written application on a form supplied to the applicant, and submit proof of age, education qualifications and good moral character along with the required fees. Each application must contain a statement that it is made under oath or affirmation and that its representations are true and correct to the best knowledge and belief of the person signing the same, subject to the penalties of making a false affidavit or declaration.

2. If the board finds that the applicant has submitted the credentials required for admission to the examination and has paid the required fees, the board shall admit such applicant to examination for licensure.

3. The examination of applicants for licenses to practice pursuant to sections 343.350 to 343.416 shall be conducted by the state board of auctioneers and shall include questions on ethics, reading, writing, spelling, a general knowledge of the statutes of Missouri relating to deeds, mortgages, contracts of sale, agency, lease, auctions, brokerage, elementary arithmetic, mathematics, the provisions of sections 343.350 to 343.416 and other subject matters determined by the board to be appropriate to license classifications, except as otherwise provided in this section.

343.377. 1. Any person who is licensed as an auctioneer by any county in this state on August 28, 2002, may apply for an auctioneer license without taking the examination as set forth in this section. To apply for such license, an applicant shall:

- (1) Submit an application;**
- (2) Tender with such application the appropriate license fee; and**
- (3) Tender with such application the subaccount fee.**

2. Upon verification of the information contained in the application and upon the individual being found to be otherwise qualified, the board shall issue the applicant a license without examination.

343.380. 1. After January 1, 2003, no person shall practice as or hold himself or herself out as a licensed auctioneer unless such person has obtained a license pursuant to the provisions of sections 343.350 to 343.416. Any person who violates this subsection shall be guilty of a class C misdemeanor and shall be disqualified from exercising the rights or pursuing the business of an auctioneer for a period of one year.

2. Beginning with the renewal of a license expiring on or after January 1, 2004, the board may require as a condition precedent to the renewal of any license that all licensees complete continuing auction education, approved by the board, of six hours per year per licensee.

343.383. 1. All licenses granted pursuant to sections 343.350 to 343.416 shall be for a term of two years.

2. No examination shall be required for the renewal of any license, unless such license has been revoked. In such case, the applicant shall take and pass the written examination offered by the board before a new license may be issued.

3. Licensees shall have a sixty-day grace period beyond a renewal date to renew a license. If a license is not renewed by the end of the grace period, it is revoked and a new license may only be issued pursuant to the provisions of sections 343.350 to 343.416.

4. Penalty for late renewals shall be two times the sum of a normal license renewal fee.

343.386. 1. Notice in writing shall be given to the board by each licensee of any change of business location within thirty days after any change in location, whereupon the board shall issue a new license for the unexpired period.

2. A change of business location shall automatically cancel the license previously issued.

3. Changing a business location and issuance of a new license shall entitle the board to collect a fee of fifteen dollars.

343.392. 1. If an applicant passes the examination to the satisfaction of the board and has paid the fees required and complied with the requirements of sections 343.350 to 343.416, the board shall issue a license.

2. The board shall prepare and deliver to each licensee a license and pocket card. The license and pocket card of the apprentice auctioneer shall contain the name and address of his or her auctioneer.

3. All licensees shall carry their pocket cards with them when performing auctioneering tasks, to be shown upon request.

4. A duplicate license or replacement for a lost license or pocket card shall be replaced upon request by the licensee and payment of a fee of fifteen dollars.

343.395. The provisions of sections 343.350 to 343.416 shall not apply to:

(1) A person conducting the auction of goods by an individual who personally owns such goods, and who did not acquire such goods for the purpose of resale. This exemption applies only to individuals, and not partnerships, corporations and other business entities;

(2) A person conducting an auction for any charitable, religious or civic organization which has tax exempt status and for which the auctioneer receives no compensation;

(3) Any properly enrolled student in a regularly scheduled term of an auction school approved by the state board of auctioneers while participating in an auction school-approved auction;

(4) A person conducting a public motor vehicle auction as defined in section 301.550, RSMo; and

(5) A person engaged in the business of operating a livestock market as defined in section 277.020, RSMo.

343.401. The board shall dispense with the examination of an applicant, as provided in sections 343.350 to 343.416, and shall grant a license provided that the applicant has complied with the requirements of another state, territory of the United States or District of Columbia wherein the requirements for licensure are substantially equal to those in force in this state at the time the application of the license is filed and upon due proof that the applicant at the time of making the application holds a current license in the other state, territory of the United States or District of Columbia, and upon the payment of a fee equal to the licensing fees required to accompany an application for a renewal of a license. A licensee who is currently under disciplinary action with another auctioneering board shall not be licensed by reciprocity.

343.404. 1. The board may refuse to issue any license pursuant to sections

343.350 to 343.416 for one or any combination of causes stated in subsection 2 of this section. The board shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of the applicant's right to file a complaint with the administrative hearing commission as provided by chapter 621, RSMo.

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of a license or licenses required by sections 343.350 to 343.416 or any person who has failed to renew or has surrendered the person's license or licenses for any one or any combination of the following causes:

(1) Use or illegal possession of any controlled substance, as defined in chapter 195, RSMo; use of an alcoholic beverage to an extent that such use impairs a person's ability to perform the work of any profession licensed or regulated by sections 343.350 to 343.416;

(2) The person has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of any state or of the United States for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated pursuant to the provisions of sections 343.350 to 343.416, for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed;

(3) Use of fraud, deception, misrepresentation or bribery in securing any license issued pursuant to sections 343.350 to 343.416 or in obtaining permission to take any examination given or required pursuant to sections 343.350 to 343.416;

(4) Obtaining or attempting to obtain any fee, charge or other compensation by fraud, deception or misrepresentation;

(5) Incompetence, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by sections 343.350 to 343.416;

(6) Violation of, or assisting or enabling any person to violate, any provision of sections 343.350 to 343.416, or of any lawful rule or regulation adopted pursuant to sections 343.350 to 343.416;

(7) Impersonation of any person holding a license or licenses or allowing any person to use his or her license or licenses;

(8) Disciplinary action against the holder of a license or other right to practice any profession regulated by sections 343.350 to 343.416 granted by another state, territory, federal agency or country upon grounds for which revocation or suspension is authorized in this state;

(9) A person is finally adjudged insane or incompetent by a court of competent jurisdiction;

(10) Assisting or enabling any person to practice or offer to practice any profession licensed or regulated by sections 343.350 to 343.416 who is not licensed and is currently ineligible to practice pursuant to sections 343.350 to 343.416;

(11) Issuance of a license based upon a material mistake of fact;

(12) Failure to display a valid license if so required by sections 343.350 to 343.416 or any rule promulgated pursuant to the provisions of sections 343.350 to 343.416;

(13) Violation of any professional trust or confidence;

(14) Use of any advertisement or solicitation which is false, misleading or deceptive to the general public or persons to whom the advertisement or solicitation is primarily directed.

3. After the filing of such complaint, the proceedings shall be conducted in accordance with the provisions of chapter 621, RSMo. Upon a finding by the administrative hearing commission that the grounds for disciplinary action are met, the board may, singly or in combination, censure or place the person named in the complaint on probation on such terms and conditions as the board deems appropriate for a period not to exceed two years, or may suspend, for a period not to exceed five years, or revoke the license, certificate or permit.

4. The board, acting upon its own knowledge or written or verified complaint filed by any person, may discipline a person as provided in this section or the board may bring an action to enjoin any person, firm or corporation from engaging in an occupation regulated by the provisions of sections 343.350 to 343.416 if such person, firm or corporation without being licensed to do so by the board engages in or practices an occupation licensed pursuant to the provisions of sections 343.350 to 343.416. The action shall be brought in the county in which such person resides, or, in the case of a firm or corporation, where the firm or corporation maintains its principal office; and unless it appears that such person, firm or corporation so engaging or practicing such occupation is licensed, the injunction shall be issued and such person, firm or corporation shall be enjoined from engaging in such activities throughout the state.

5. Any licensee who has had his or her license revoked shall not be issued another license for a period of one year from the date of revocation.

6. Revocation of an auctioneer's license shall automatically suspend every apprentice auctioneer's license granted to any person by virtue of his or her employment by the auctioneer whose license has been revoked. The apprentice

auctioneer may retain his or her license by transferring to the employment of another auctioneer within thirty days, notice of which shall immediately be given to the board.

343.410. 1. The board shall set the amount of fees authorized and required by sections 343.350 to 343.416 by rules and regulations promulgated pursuant to section 536.021, RSMo. The fees shall be set at a level to produce revenue which shall not substantially exceed the cost and expenses of administering the provisions of sections 343.350 to 343.416. All fees provided for in sections 343.350 to 343.416 shall be payable to the director of the division of professional registration in the department of economic development who shall keep a record of the account showing the total payments received and shall immediately thereafter transmit them to the department of revenue for deposit in the state treasury to the credit of a fund to be known as the "State Board of Auctioneers Fund", which is hereby created. All the salaries and expenses for the operation of the board shall be appropriated and paid from such fund; provided, however, the board shall create no expense exceeding the sum received from time to time as fees.

2. The provisions of section 33.080, RSMo, to the contrary notwithstanding, moneys in this fund shall not be transferred and placed to the credit of general revenue until the amount in the fund at the end of the biennium exceeds two times the amount of the appropriation from the board's funds for the preceding fiscal year or, if the board allows license renewal less frequently than yearly, then three times the appropriation from the board's funds for the preceding fiscal year. The amount, if any, in the fund which shall lapse is that amount in the fund which exceeds the appropriate multiple of the appropriations from the board's funds for the preceding fiscal year.

343.413. In addition to the examination and license renewal fees required by sections 343.350 to 343.416, the board shall collect a fee of fifty dollars each year from each licensee at the time of license application or renewal. These funds shall be deposited by the director of revenue into a subaccount of the state board of auctioneers fund pursuant to section 343.410 and used according to the provisions of section 343.416.

343.416. 1. When a licensee has been found guilty of violating any one or more of the provisions of sections 343.350 to 343.416, and upon the entry of a final decision by the administrative hearing commission pursuant to chapter 621, RSMo, or if appealed, a court order, and upon certification to the board, the aggrieved party or parties shall be paid such amount or amounts in the aggregate not to exceed twenty thousand dollars by the board from the subaccount and the auctioneer's license held by the licensee against whom the claim was made by the aggrieved party shall be

suspended until such time as the licensee has reimbursed the subaccount for all amounts paid to the aggrieved party due to the violation of the licensee.

2. When, upon the final order of the court, the board provides any sum to the aggrieved party from the subaccount, the board shall be subrogated to all of the rights of the aggrieved party to the extent of payment and the aggrieved party shall, to the extent of the payment, assign his or her right, title and interest to the board.

3. All the claims for monetary damage or relief from the subaccount must be made in writing on a proof of loss form submitted to the board within six months of the act of the auctioneer giving rise to the loss. Failure to file such claims within the six-month period shall bar the claim. Additional evidence shall be submitted by the claimant if required by the board.

4. The board, in its discretion, may use all subaccount funds in excess of two hundred thousand dollars for the following purposes:

(a) To carry out the advancement of education and research in the auctioneering profession for the benefit of those licensed pursuant to the provisions of sections 343.350 to 343.416 and improvement of efficiency of the industry as such;

(b) To underwrite educational seminars, training centers and other forms of educational projects for the use and benefit generally of licensees;

(c) To sponsor, contract for, and underwrite any and all other educational and research projects of a similar nature having to do with the advancement of the auctioneers profession in Missouri.

[343.010. 1. No person shall exercise the trade or business of a public auctioneer by selling any goods, property or real estate, without a license.

2. "Auctioneer", as used in section 150.380, RSMo, and sections 343.010, 343.070 to 343.105 is one who sells goods, merchandise, or property of any kind, at public or private auction, for another person, and who receives any commission or compensation of any kind for conducting such sale; but not including one who conducts such a sale by or under the jurisdiction of any court, or pursuant to any judicial judgment or order, or any foreclosure sale of real estate, and not including any owner of any goods, merchandise or property of any kind, who himself conducts such sale.]

[343.030. The clerks of the respective county commissions shall issue, at each term, as many blank auction licenses for ten days, and for one, three, six and twelve months, respectively, as requested.]

[343.040. The licenses shall be under the seals of the respective county commissions, signed by the clerk, and shall authorize the persons to whom granted to exercise the trade and business of auctioneers, by selling any property, real or personal, by auction within the county for the period of time specified in such license.]

[343.050. The clerk shall deliver the blank licenses so issued to the collector of the counties, respectively, and charge them with the amount thereof, in a book to be kept for that purpose.]

[343.060. The county commission shall, at every term, settle with the collector for all blank licenses delivered to him and not before accounted for, and give him credit for all blank licenses returned, and charge him with all not returned; and, as soon as may be, the clerk shall, under the direction of the county commission, certify to the state auditor the amount with which each collector stands charged, who shall charge such collector therewith.]

[343.070. Each collector shall grant to any person, upon application and upon compliance with the requirements of this chapter, an auction license for ten days, or for one, three, six or twelve months, and for that purpose fill up and countersign one of the blank licenses received from the clerk.]

[343.080. 1. There shall be levied upon every license, to be paid to the county clerk before the delivery thereof, a fee as follows:

- (1) On each license for one month, ten dollars;
- (2) On each license for three months, twenty dollars;
- (3) On each license for six months, thirty dollars;
- (4) On each license for twelve months, fifty dollars.

2. An auctioneer license issued in any county of this state shall be valid in each county of this state during the period for which it is issued.

3. All fees imposed by this section shall be paid into the county general revenue fund.]

[343.090. In each case of a license delivered, there shall be paid to the county clerk two dollars as an issuance fee to the clerk. The fee shall be paid into the county's general revenue fund.]

[343.100. No person shall be permitted to sell goods or property of any kind at auction unless he shall have resided in this state six months next preceding the time of making application for license. Except that any nonresident individual may be granted a license to engage in auctioneering in this state upon application and payment of the appropriate fees set out in this chapter.]

[343.250. Every person who shall violate any of the provisions of this chapter is guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than twenty nor more than five hundred dollars, and shall be disqualified from exercising the rights or pursuing the business of an auctioneer for a period of one year from the date of his conviction. After January 1, 1979, every person who shall violate any of the provisions of this chapter is guilty of a class C misdemeanor and shall be disqualified from

exercising the rights or pursuing the business of an auctioneer for a period of one year from the date of his conviction.]

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