

CHAPTER 118

(HB 291)

AN ACT relating to auctioneers.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. KRS 330.020 is amended to read as follows:

As used in this chapter, unless the context otherwise requires:

- (1) "Advertisement" means any written, oral, or electronic communication that:
 - (a) Offers real or personal property or any combination thereof by or at auction; or
 - (b) Promotes, solicits, induces, or offers to conduct an auction or to provide auction services;
- (2) "Apprentice auctioneer" means any person who is employed or supervised, directly or indirectly, by an auctioneer to deal or engage in any activity in subsection (6) of this section, excluding the authority to enter into an auction listing contract or to independently maintain an auction escrow account;
- (3) "Auction" means any method of sale, lease, or exchange of real property, personal property, or any combination thereof, by means of competitively increasing or decreasing bids. Any sale, lease, or exchange of real property, personal property, or any combination thereof, advertised or presented in any way by or at auction, is an auction for the purposes of this chapter;
- (4) (a) "Auction house" means any *fixed-base* commercial establishment at which personal property is regularly or customarily offered at auction, or at which personal property is customarily or regularly deposited and accepted, on consignment or otherwise, for sale at auction at a fixed location;
 - (b) "Auction house" does not mean:
 1. Those establishments which limit personal property sold in regard to Thoroughbred horses or other horses or any interests therein, including but not limited to horse shares and seasons;
 2. Tobacco and fixed-base livestock markets regulated by the United States Department of Agriculture; or
 3. Fixed-base motor vehicle markets regulated by the Kentucky Motor Vehicle Commission pursuant to KRS Chapter 190;
- (5) "Auction house operator" means the individual principally or ultimately responsible for the operation of an auction house, or in whose principal interest the establishment is operated. The auction house operator is responsible for retaining a licensed auctioneer to call bids at all auctions at the auction house;
- (6) "Auctioneer" or "principal auctioneer" means any person who offers, solicits, negotiates, or attempts to offer, solicit, or negotiate an auction listing contract, sale, lease, or exchange of real property, personal property, or any other item of value, or any combination thereof, which may lawfully be kept or offered for sale, lease, or exchange, or any combination thereof, by or at auction, or who offers the same at auction and who is allowed to supervise and accepts the responsibility of sponsoring one (1) or more apprentice auctioneers;
- (7) "Board" means the Board of Auctioneers;
- (8) ***"Escrow account" means an account, separate from the auctioneer's individual or office account, in which all money belonging to others is held for the preservation and guarantee of funds until disbursement to the appropriate party;***
- (9) "Limited livestock auctioneer" means any auctioneer whose professional activities are limited to the calling of bids at the sale of livestock at fixed-based livestock yards operating under the control and guidance of the United States Department of Agriculture;
- ~~(10)~~(9) "Personal property" means any tangible or intangible property, goods, services, chattels, merchandise, commodities, or any item of value in any form or type, other than real property, which may be lawfully kept or offered for sale, exchange, or lease;

- (11)~~(10)~~ "Person" means any individual, association, partnership, corporation, limited liability company, or other business entity, including any officer, director, or employee thereof;
- (12)~~(11)~~ "Real property" means real estate in its ordinary meaning, including but not limited to timeshares, options, leaseholds, and other interests less than leaseholds of any form or type which may be lawfully kept or offered for sale, exchange, or lease; and
- (13)~~(12)~~ "Sealed bid auction" means a sealed bidding procedure which incorporates or allows for any competitive increasing or decreasing of bids after the opening of sealed bids. A "sealed bid auction" is an auction subject to the provisions of this chapter.

➔Section 2. KRS 330.030 is amended to read as follows:

- (1) It is unlawful for any person to advertise or act as an auctioneer or apprentice auctioneer within the Commonwealth, or advertise or act as an auctioneer or apprentice auctioneer of real or personal property located within the Commonwealth, without a license issued by the board.
- (2) It is unlawful for any person to advertise or act as a limited livestock auctioneer within the Commonwealth without a license issued by the board.
- (3)
 - (a) It is unlawful for any person to advertise or act as an auction house operator within the Commonwealth without a license issued by the board.
 - (b) An auction house operator shall be a licensed auctioneer or apprentice auctioneer if he or she acts as an auctioneer or apprentice auctioneer. If licensed as an auctioneer, an auction house operator license shall not be required.
 - (c) If an auction house operator conducts and operates more than one (1) auction house, a license shall be issued for each location, and the initial and renewal fees shall be applicable.
 - (d) This subsection applies to each co-owner or manager of an auction house who actively participates in the operation of the auction house, but who is not an auctioneer.
- (4)
 - (a) ***Each licensed principal auctioneer or auction house operator who takes possession of money for another in relation to an auction shall maintain at least one (1) escrow account.***
 - (b) ***If a licensee already maintains an escrow account due to licensure pursuant to KRS Chapter 324, Chapter 324A, or Chapter 198B, the licensee shall not be required to maintain a second, separate escrow account.***

➔Section 3. KRS 330.060 is amended to read as follows:

- (1)
 - (a) Every applicant for licensure shall be at least eighteen (18) years of age, show proof of a high school diploma or equivalent, and, within the preceding five (5) years, shall not have committed any act that constitutes grounds for license suspension or revocation under this chapter.
 - (b) The board may waive the high school diploma or equivalent requirement ***if the applicant demonstrates sufficient life experience and competency by affidavit or other evidence as required by the board***~~for an apprentice, licensed prior to 1985, applying for an auctioneer license~~.
 - (c) Any license issued pursuant to this chapter shall be granted only to a person found to be of good repute, trustworthy, and competent to transact the business for which the license was granted in a manner requisite to safeguarding the interest of the public.
 - (d) Effective July 1, 2015, an applicant for an apprentice auctioneer license or auction house operator's license shall have successfully completed at least twelve (12) hours of approved classroom instruction, consisting of the core course and six (6) additional hours as prescribed by the board, from a board-approved auction education provider.
 - (e) The board may waive the twelve (12) hours of approved classroom instruction requirement if the applicant demonstrates sufficient previous auction experience and competency by affidavit or other evidence as required by the board.
- (2) The board is authorized to require information from every applicant to determine the applicant's honesty and truthfulness.

- (3) (a) Every applicant shall successfully complete an examination, conducted by the board or its authorized representative. Every application for examination shall be submitted on board-prepared forms, and each applicant shall furnish pertinent background data as outlined on the forms.
- (b) To defray the cost of administration of the examination, the board shall require each applicant to remit an examination fee established by administrative regulations promulgated by the board in accordance with KRS Chapter 13A.
- (c) Examination fees shall be nonrefundable.
- (d) If the applicant is unable to attend the scheduled exam, the examination fee shall be deferred to the next scheduled administration of the examination.
- (e) Upon successful completion of the examination, the applicant shall apply for initial licensure within forty-five (45) days of receiving notice of successfully completing the examination.
- (f) The examination shall be of the scope and wording sufficient in the judgment of the board to establish the competency of the applicant to act as an auctioneer or other licensee regulated by the board.
- (4) If a license has been revoked, suspended, or is allowed to expire without renewal, the board may require the applicant to pass the written examination or complete some form of board-approved auction education before a license may be issued.
- (5) If a license has not been renewed within six (6) months of the expiration date, the board shall require a person to successfully complete the written examination before a license is issued.
- (6) In addition, every nonresident applicant shall file an irrevocable consent that actions may be commenced against the applicant in any court of competent jurisdiction in the Commonwealth of Kentucky, by the service of any summons, process, or pleadings authorized by law on the authorized representative of the board. The consent shall stipulate and agree that the service of any summons, process, or pleadings on the authorized representative shall be taken and held in all courts to be as valid and binding as if actual service had been made upon the applicant in Kentucky. In case any summons, process, or pleadings are served upon the authorized representative of the board, it shall be by duplicate copies, one (1) of which shall be retained in the office of the board, and the other immediately forwarded by certified mail, return receipt requested, to the last known business address of the applicant against whom the summons, process, or pleadings are directed.

➔Section 4. KRS 330.110 is amended to read as follows:

The board may suspend for a period up to five (5) years or revoke the license of any licensee, or levy fines not to exceed two thousand dollars (\$2,000), with a maximum fine of five thousand dollars (\$5,000) per year arising from any single incident or complaint, against any licensee, or place any licensee on probation for a period of up to five (5) years, or require successful passage of any examination administered by the board, or require successful completion of any course of auction study or auction seminars designated by the board, or issue a formal reprimand, or order any combination of the above, for violation by any licensee of any of the provisions of this chapter, or for any of the following causes:

- (1) Obtaining a license through false or fraudulent representation;
- (2) Making any substantial misrepresentation;
- (3) Pursuing a continued and flagrant course of misrepresentation or intentionally making false promises or disseminating misleading information through agents or advertising or otherwise;
- (4) Accepting valuable consideration as an apprentice auctioneer for the performance of any of the acts specified in this chapter, from any person, except his or her principal auctioneer;
- (5) Failing to account for or remit, within a reasonable time, any money belonging to others that comes into the licensee's possession, commingling funds of others with the licensee's own funds, or failing to keep the funds of others in an escrow or trustee account;
- (6) Paying valuable consideration to any person for services performed in violation of this chapter, or procuring, permitting, aiding, or abetting any unlicensed person acting in violation of any of the provisions of this chapter;
- (7) Entering a plea of guilty, an Alford plea, a plea of no contest to, or being convicted of, any felony, and the time for appeal has passed or the judgment of conviction has been finally affirmed on appeal;

- (8) Violation of any provision of this chapter or any administrative regulation promulgated by the board;
- (9) Failure to furnish voluntarily at the time of execution, copies of all written instruments prepared by any licensee to each signatory of the written instrument;
- (10) Any conduct of a licensee which demonstrates bad faith, dishonesty, incompetence, or untruthfulness;
- (11) Any other conduct that constitutes improper, fraudulent, dishonest, or negligent dealings;
- (12) Failure to enter into a binding written auction listing contract with the seller or with the seller's duly authorized agent prior to advertising, promoting, or offering any real or personal property by or at auction;
- (13) Failure to provide a receipt to all persons consigning personal property with any licensee for auction;
- (14) Failure to establish and maintain, for a minimum of five (5) years from final settlement, complete and correct written or electronic records and accounts of all auction transactions, including:
 - (a) Listing contracts, including the name and address of the seller;
 - (b) Written purchase contracts;
 - (c) Descriptive inventory and final bid amounts of all items or lots offered;
 - (d) Buyer registration records; and
 - (e) Settlement records, including all moneys received and disbursed and escrow account activity;
- (15) Failure of any licensee to **deliver within thirty (30) days**~~present~~ any auction-related information, including but not limited to advertisements, listing contracts, purchase contracts, clerking records, buyer registration records, settlement records, escrow account information, license, or any other auction-related information **to the board or the board's designee upon request**~~, subsequent to a request by the board's executive director, a board compliance officer, or board counsel~~; or
- (16) Failure of a principal auctioneer to provide supervision to his or her apprentice auctioneers **to ensure compliance with this chapter and the administrative regulations promulgated thereunder.**

➔Section 5. KRS 330.220 is amended to read as follows:

- (1) If real or personal property is offered in lots or parcels in a sale by auction, each lot or parcel shall be the subject of a separate sale. This subsection shall not preclude real or personal property from being offered for bidding individually or in some form or combination.
- (2) Unless otherwise provided in the conditions of sale for auctions regarding horses or any interests therein, a sale by auction is complete when the auctioneer so announces by the fall of the hammer, announcing the item sold, and the successful bidder's identification or in other customary manner. If it becomes immediately apparent at the close of the bidding that the auctioneer and a bid assistant or ringman have acknowledged the same bid from different bidders, the auctioneer may continue the bidding between the disputed bidders. When a bid is made while the auctioneer is in the process of completing the sale by auction, the auctioneer may continue the bidding or declare the real or personal property sold under the bid on which the hammer was falling.
- (3) No auction shall be advertised as "absolute" nor shall any advertising contain the words "absolute auction" or the word "absolute" or words with similar meaning nor shall any licensee offer or sell any real or personal property at absolute auction unless:
 - (a) There are no liens or encumbrances on the real or personal property, except property tax obligations, easements, or restrictions of record, in favor of any person, firm, or corporation other than the seller, or unless each and every holder of each and every lien and encumbrance, by execution of the auction listing contract, or otherwise furnishing to the auctioneer written evidence of a binding commitment therefor, shall have agreed to the unqualified acceptance of the highest bid for the property, without regard to the amount of the highest bid or the identity of the high bidder; or, alternatively, that a financially responsible person, firm, or corporation, by execution of the auction listing contract or by otherwise furnishing to the auctioneer written evidence of a binding commitment therefor, shall have absolutely guaranteed the forthwith and complete discharge and satisfaction of any and all liens and encumbrances immediately after the sale or at the closing, without regard to the amount of the highest bid received, or the identity of the high bidder; and
 - (b) There is the bona fide intention at the time of the advertising and at the time of the auction to transfer ownership of the real or personal property, regardless of the amount of the highest and last bid, to the

high bidder, *subject to the provisions of subsection (5)(b) of this section*, that intent existing without reliance on any agreement that any particular bid or bid level must be made or be reached, below which level the real or personal property would not be transferred to the high bidder; and

- (c) The auction listing contract contains a binding requirement that the auction be conducted without reserve, and includes an acknowledgment that the seller, or anyone acting upon behalf of the seller, shall not bid at the absolute auction, or otherwise participate in the bidding process.
- (4) Compliance with subsection (3) of this section shall not prohibit:
- (a) A secured party or other lienholder who is not the seller from bidding at an absolute auction, providing that such bidding does not constitute, nor is it tantamount to the direct or indirect establishment or agreement to the establishment of a reserve price on the real or personal property by the seller or by the auctioneer, or by anyone aiding or assisting, or acting upon behalf of, the seller or the auctioneer; or
 - (b) Any individual party to the dissolution of any marriage, partnership, trust, limited liability company, or corporation from bidding as an individual entity apart from the selling entity, on real or personal property being sold at auction pursuant to that dissolution; or
 - (c) Any individual party or heir of a deceased person's bona fide estate from bidding as an individual entity, apart from the selling entity, on real or personal property being offered at auction pursuant to that estate settlement; or
 - (d) The inclusion of nonmisleading advertising of certain real or personal property to be sold at "absolute auction" and the nonmisleading advertising of certain real or personal property to be offered at auction with reserve, within the same advertisement, or for sale at the same date and place, providing that advertisement shall make clearly apparent through equal or appropriate emphasis, which real or personal property is being offered by each method.
- (5) (a) Any auction sale is, without requirement of announcement at any time, presumed to be with reserve unless the real or personal property is in explicit terms offered at absolute auction. An auction without reserve means an absolute auction. An auction with reserve means the real or personal property may be offered subject to the seller's confirmation or subject to a certain reserve price. In an auction with reserve, the auctioneer may withdraw the real or personal property at any time until he or she announces completion of the sale. In an absolute auction, after the auctioneer calls for bids on an article, lot, or parcel, that article, lot, or parcel shall not be withdrawn unless no bid is made within a reasonable time.
- (b) At both reserve auctions and without reserve auctions, the auctioneer may establish reasonable *minimum* bid increments once an opening bid has been offered.
- (6) (a) The provisions of this chapter shall not prohibit any licensee from bidding on his or her own behalf at any auction sale, whether absolute or with reserve, if his or her option to do so has been fully disclosed, including disclosure to the seller.
- (b) Except as provided in subsection (4) of this section, the seller may not bid at an absolute auction, nor may anyone bid upon his or her behalf. No licensee shall knowingly receive a bid by or on behalf of the seller at an absolute auction.
- (c) Bids may be made by the seller, or upon the seller's behalf, at any auction with reserve, provided that full disclosure has clearly been made that liberty for bidding is retained. No licensee shall knowingly receive a bid in the absence of full disclosure. If the auctioneer knowingly receives a bid on the seller's behalf or the seller makes or procures a bid and notice has not been clearly given that liberty for bidding is reserved, the buyer may avoid the sale or take the real or personal property at the price of the last good faith bid prior to the completion of the sale.
- (d) There shall be no requirement that the reserve be announced when it is attained.
- (e) Nothing in this subsection shall be construed to alter or diminish the provisions of KRS 330.210.
- (7) (a) At any absolute auction, any advertisement or representation of a minimum or suggested starting bid is prohibited.
- (b) At any reserve auction, any advertisement or representation of a minimum or suggested starting bid is prohibited unless:

1. The minimum or suggested starting bid advertised or represented is sufficient to satisfy the auction listing contract stated reserve or confirmation amount; and
2. The auction listing contract contains a binding acknowledgment by the seller that permission has been granted for disclosure.

➔Section 6. KRS 330.990 is amended to read as follows:

- (1) Any person engaging in auction activities regulated by this chapter without a license shall be guilty of:
 - (a) For the first offense, a violation with a fine up to two hundred fifty dollars (\$250);
 - (b) For the second offense, a Class B misdemeanor with a fine up to two hundred fifty dollars (\$250) and up to ninety (90) days imprisonment; and
 - (c) For the third and subsequent offenses, a Class A misdemeanor with a fine up to five hundred dollars (\$500) and up to twelve (12) months imprisonment.
- (2) The board or its authorized representative may apply for injunctive relief to the Circuit Court of the county in which the alleged violation occurred *or in which the alleged offender resides* to enjoin any person or entity from committing an act in violation of this chapter. The injunction proceedings shall be in addition to, and not in lieu of, all penalties and other remedies in this chapter. In an action for injunction, the board may demand and recover a civil penalty of fifty dollars (\$50) per day for each violation, reasonable attorney's fees, and court costs.

Signed by Governor March 26, 2019.