

1 AN ACT relating to auctions.

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

3 ➔Section 1. KRS 139.496 is amended to read as follows:

4 (1) Notwithstanding any other provisions of this chapter, the taxes imposed ***in KRS***
5 ***139.200 to 139.310*** herein do not apply to:

6 ***(a)*** The first one thousand dollars (\$1,000) of sales made in any calendar year by
7 individuals or nonprofit organizations not engaged in the business of selling.

8 This exemption is limited to the following types of transactions or activities:

9 ~~1. (a)~~ Garage or yard sales of household items by an individual or family
10 which are in no way associated with or related to the operation of a
11 business;

12 ~~2. (b)~~ Fundraising ***events*** ~~event~~ held by nonprofit civic, governmental,
13 or other nonprofit organizations, except as set forth in KRS 139.497; ***or***

14 ***(b) Gross receipts derived from a charity auction held on or after July 1, 2017,***
15 ***but before July 1, 2021, by a nonprofit civic, governmental, or other***
16 ***nonprofit organization if the total proceeds from the auction are designated***
17 ***and used for a specific charitable purpose.***

18 (2) The exemption does not apply to activities in which all or substantially all the
19 household goods of a person are offered for sale or where nonprofit organizations
20 conduct regular selling activities in competition with private business.

21 ➔Section 2. KRS 330.020 is amended to read as follows:

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

23 (1) "Advertisement" means any written, oral, or electronic communication that:

24 (a) Offers real or personal property or any combination thereof by or at auction;
25 or

26 (b) Promotes, solicits, induces, or offers to conduct an auction or to provide
27 auction services;

- 1 (2) "Apprentice auctioneer" means any person who is employed or supervised, directly
2 or indirectly, by an auctioneer to deal or engage in any activity in subsection (6) of
3 this section, excluding the authority to enter into an auction listing contract or to
4 independently maintain an auction escrow account;
- 5 (3) "Auction" means any method of sale, lease, or exchange of real property, personal
6 property, or any combination thereof, by means of competitively increasing or
7 decreasing bids. Any sale, lease, or exchange of real property, personal property, or
8 any combination thereof, advertised or presented in any way by or at auction, is an
9 auction for the purposes of this chapter;
- 10 (4) (a) "Auction house" means any commercial establishment at which personal
11 property is regularly or customarily offered at auction, or at which personal
12 property is customarily or regularly deposited and accepted, on consignment
13 or otherwise, for sale at auction at a physical fixed location;
- 14 (b) "Auction house" does not mean:
- 15 1. Those establishments which limit personal property sold in regard to
16 Thoroughbred horses or other horses or any interests therein, including
17 but not limited to horse shares and seasons;
- 18 2. Tobacco and fixed-base livestock markets regulated by the United States
19 Department of Agriculture; or
- 20 3. Fixed-base motor vehicle markets regulated by the Kentucky Motor
21 Vehicle Commission pursuant to KRS Chapter 190;
- 22 (5) "Auction house operator" means the individual principally or ultimately responsible
23 for the operation of an auction house, or in whose principal interest the
24 establishment is operated. The auction house operator is responsible for retaining a
25 licensed auctioneer to call bids at all auctions at the auction house;
- 26 (6) "Auctioneer" or "principal auctioneer" means any person who offers, solicits,
27 negotiates, or attempts to offer, solicit, or negotiate an auction listing contract, sale,

1 lease, or exchange of real property, personal property, or any other item of value, or
2 any combination thereof, which may lawfully be kept or offered for sale, lease, or
3 exchange, or any combination thereof, by or at auction, or who offers the same at
4 auction and who is allowed to supervise and accepts the responsibility of sponsoring
5 one (1) or more apprentice auctioneers;

6 (7) "Board" means the Board of Auctioneers;

7 (8) **"Escrow account" means an account or accounts separate from the auctioneer's**
8 **individual or office account in which all money belonging to others is held for the**
9 **preservation and guarantee of the funds until disbursement to the appropriate**
10 **party;**

11 **(9)** "Limited livestock auctioneer" means any auctioneer whose professional activities
12 are limited to the calling of bids at the sale of livestock at fixed-based livestock
13 yards operating under the control and guidance of the United States Department of
14 Agriculture;

15 **(10)**~~(9)~~ "Personal property" means any tangible or intangible property, goods,
16 services, chattels, merchandise, commodities, or any item of value in any form or
17 type, other than real property, which may be lawfully kept or offered for sale,
18 exchange, or lease;

19 **(11)**~~(10)~~ "Person" means any individual, association, partnership, corporation, limited
20 liability company, or other business entity, including any officer, director, or
21 employee thereof;

22 **(12)**~~(11)~~ "Real property" means real estate in its ordinary meaning, including but not
23 limited to timeshares, options, leaseholds, and other interests less than leaseholds of
24 any form or type which may be lawfully kept or offered for sale, exchange, or lease;
25 and

26 **(13)**~~(12)~~ "Sealed bid auction" means a sealed bidding procedure which incorporates or
27 allows for any competitive increasing or decreasing of bids after the opening of

1 sealed bids. A "sealed bid auction" is an auction subject to the provisions of this
2 chapter.

3 ➔Section 3. KRS 330.032 is amended to read as follows:

- 4 (1) A licensed auctioneer shall not sell real estate at auction without a real estate
5 broker's license.
- 6 (2) A licensed real estate broker shall not sell real estate at auction without an
7 auctioneer's license.
- 8 (3) Notwithstanding the provisions set forth in KRS 426.522, an auctioneer and real
9 estate broker may collaborate in conducting the sale of real estate at auction. When
10 an auctioneer and real estate broker collaborate in the conduct of a sale of real estate
11 at auction, a real estate broker shall be paid for services rendered as a broker, and an
12 auctioneer shall be paid for services rendered as an auctioneer.

13 **(4) The proceeds of all real property auctions conducted through collaboration shall**
14 **be placed into the escrow account of the real estate broker.**

15 ➔Section 4. KRS 330.040 is amended to read as follows:

- 16 (1) KRS 330.030 shall not apply to:
- 17 (a) An auction conducted by or under the direction of any public authority or
18 pursuant to any judicial order or decree, or to any sale required by law to be at
19 auction;
- 20 (b) An auction of any real or personal property conducted exclusively by an
21 individual who personally owns such real or personal property and who did
22 not acquire such real or personal property for resale. This paragraph is
23 applicable only to individuals. It does not apply to any other "person" as
24 defined in KRS 330.020, nor does it apply to any officer, director, or
25 employee thereof when engaged in any duties associated with those capacities.
- 26 (c) Any person who calls bids at the sale of livestock owned and offered at
27 auction by 4-H Clubs or FFA Clubs or club members, or by any university

1 operated by the Commonwealth of Kentucky; **or**

2 (d) An auction conducted by or on behalf of any political party, church, or
3 charitable organization, corporation, or association if:

4 1. The individual conducting the sale receives no compensation and does
5 not, by advertising or otherwise, present himself or herself as a licensed
6 auctioneer;

7 2. All real or personal property is donated and not consigned; and

8 3. One hundred percent (100%) of the net proceeds of the auction are
9 donated to the political party, church, or charitable organization,
10 corporation, or association]; ~~or~~

11 ~~(e) A student who:~~

12 ~~1. Is calling bids for a maximum of twenty (20) items or lots of personal
13 property during a twenty four (24) hour period at an auction;~~

14 ~~2. Is under the direct supervision of a person who is both the student's
15 instructor from a board approved auction education provider and a
16 licensed auctioneer; and~~

17 ~~3. Receives no compensation and does not, by advertising or otherwise,
18 present himself or herself as being a licensed auctioneer.~~

19 ~~—The student and the supervising auctioneer instructor may both be liable for
20 the student's auction-related activities].~~

21 (2) Notwithstanding the provisions of this section, a licensee shall not be exempt from
22 any provisions of this chapter in connection with or by reason of his participation in
23 any sale excepted under this section.

24 ➔Section 5. KRS 330.050 is amended to read as follows:

25 (1) There is hereby created a Board of Auctioneers. The Governor shall appoint a board
26 consisting of five (5) members, all of whom immediately prior to the date of their
27 appointment have been residents of the Commonwealth of Kentucky for five (5)

1 years, and four (4) whose vocation for a period of at least five (5) years has been
2 that of an auctioneer. One (1) member shall be a citizen at large who is not
3 associated with or financially interested in the practice or business regulated. The
4 term of the members of the board shall be for three (3) years and until their
5 successors are appointed and qualified. Members to fill vacancies shall be appointed
6 for the unexpired term.

7 (2) At no time shall there be more than two (2) auctioneer members of the same
8 political party on the board. Whenever there is an auctioneer vacancy on the board,
9 the Kentucky Auctioneer Association shall recommend to the Governor at least
10 three (3) names for each auctioneer vacancy, and such appointment or appointments
11 shall be made from the recommendations of the association.

12 (3) The board, immediately upon qualification of the member appointed in each year,
13 shall organize by selecting from its members a chairman.

14 ~~(4) Each member of the board shall receive the sum of twelve thousand dollars~~
15 ~~(\$12,000) per year, payable twice monthly, and reimbursement for actual and~~
16 ~~necessary expenses incurred in the performance of official duties.~~

17 ~~(5)~~ The board shall have full authority to employ, and discharge, any personnel,
18 including counsel, as it may deem necessary to efficiently administer and enforce
19 the provisions of this chapter, and it shall outline the duties and fix the
20 compensation of such persons, provided that compensation shall be comparable to
21 the salaries paid other state employees, if any, which the board may deem to be
22 doing similar work. The board shall obtain office space, furniture, stationery, and
23 any other proper supplies and conveniences reasonably necessary to carry out the
24 provisions of this chapter. If any items deemed to be reasonably necessary by or
25 which are required by the board are available through vendors under contract with
26 the Commonwealth of Kentucky at less cost than if obtained otherwise, then the
27 items shall be acquired pursuant to the contract. The board shall have full authority

1 to obtain for its members, staff, and employees complete insurance coverage,
2 including, but not limited to, liability and errors and omissions insurance, so long as
3 the insurance concerns the business of the board.

4 ~~(5)~~~~(6)~~ All fees and charges collected by the board under the provisions of this
5 chapter shall be paid into the State Treasury through the Finance and
6 Administration Cabinet and shall be credited to an agency fund account for the
7 Board of Auctioneers under the provisions of KRS 45.253 and shall be withdrawn
8 or expended as provided in that section, if such payment, credit, withdrawal, or
9 expense provisions do not conflict with any provision of this chapter.

10 (a) The board may establish and collect reasonable fees relating to the
11 administration and enforcement of this chapter for application or other
12 processing costs, on-line service, continuing education provider services, copy
13 and mailing services, or other fees necessary to offset the licensing and
14 processing costs.

15 (b) The total expenses for all purposes and obligations of the board shall not
16 exceed the total fees, charges, fines, penalties, and other income imposed
17 under the provisions of this chapter and paid into the state treasury.

18 (c) The board shall be financially self-sustaining, and if funds permit it may
19 underwrite, within its financial limitations, educational programs for the
20 enlightenment and benefit of all licensees who have paid fees pursuant to this
21 chapter.

22 ~~(6)~~~~(7)~~ The board shall maintain annually a list of the names and addresses of all
23 licensees regulated by the board. This list shall also contain the names of all persons
24 whose licenses have been suspended or revoked within the preceding year, as well
25 as any other information relative to the enforcement of the provisions of this chapter
26 that the board may deem of interest to the public.

27 ~~(7)~~~~(8)~~ The board may promulgate administrative regulations in accordance with KRS

1 Chapter 13A as required to fulfill the duties and functions assigned to the board by
2 this chapter.

3 ~~(8)~~~~(9)~~ A board member shall be automatically removed from the board and a
4 vacancy shall occur when:

- 5 (a) An auctioneer member of the board ceases to be a licensed auctioneer;
- 6 (b) A nonlicensed member of the board acquires a license regulated by the board;
- 7 (c) A board member enters a plea of guilty, an Alford plea, a plea of no contest to,
8 or has been convicted of, any felony, and the time for appeal has passed or the
9 judgment of conviction has been finally affirmed on appeal; or
- 10 (d) A board member ceases to be a resident of the Commonwealth of Kentucky.

11 **(9) The Governor shall set the compensation of the members of the board, but voting**
12 **members of the board shall be compensated no more than three hundred dollars**
13 **(\$300) per day for official business, subject to an annual maximum of six**
14 **thousand dollars (\$6,000). Members shall be reimbursed for all expenses paid**
15 **and incurred in the discharge of official business consistent with the**
16 **reimbursement policy for state employees.**

17 ➔Section 6. KRS 330.060 is amended to read as follows:

- 18 (1) (a) Every applicant for licensure shall be at least eighteen (18) years of age~~, show~~
19 ~~proof of a high school diploma or equivalent~~, and, within the preceding five
20 (5) years, shall not have committed any act that constitutes grounds for license
21 suspension or revocation under this chapter.
- 22 (b) ~~[The board may waive the high school diploma or equivalent requirement for~~
23 ~~an apprentice, licensed prior to 1985, applying for an auctioneer license.~~
- 24 (e) ~~—~~Any license issued pursuant to this chapter shall be granted only to a person
25 found to be of good repute, trustworthy, and competent to transact the
26 business for which the license was granted in a manner requisite to
27 safeguarding the interest of the public.

1 ~~(c)~~~~(d)~~ An~~[Effective July 1, 2015,]~~ an applicant for an apprentice auctioneer
2 license or auction house operator's license shall have successfully completed~~{~~
3 ~~at least twelve (12) hours of approved classroom instruction, consisting of }~~the
4 ~~core course~~ ~~and six (6) additional hours as prescribed by the board,~~ from a
5 board-approved auction education provider.

6 ~~(d)~~~~(e)~~ The board may waive the core course~~[twelve (12) hours of approved~~
7 ~~classroom instruction requirement]~~ if the applicant demonstrates sufficient
8 previous auction experience and competency by affidavit or other evidence as
9 required by the board.

10 (2) The board is authorized to require information from every applicant to determine
11 the applicant's honesty and truthfulness.

12 (3) (a) Every applicant shall successfully complete an examination, conducted by the
13 board or its authorized representative. Every application for examination shall
14 be submitted on board-prepared forms, and each applicant shall furnish
15 pertinent background data as outlined on the forms.

16 (b) To defray the cost of administration of the examination, the board shall
17 require each applicant to remit an examination fee established by
18 administrative regulations promulgated by the board in accordance with KRS
19 Chapter 13A.

20 (c) Examination fees shall be nonrefundable.

21 (d) If the applicant is unable to attend the scheduled exam, the examination fee
22 shall be deferred to the next scheduled administration of the examination.

23 (e) Upon successful completion of the examination, the applicant shall apply for
24 initial licensure within forty-five (45) days of receiving notice of successfully
25 completing the examination.

26 (f) The examination shall be of the scope and wording sufficient in the judgment
27 of the board to establish the competency of the applicant to act as an

1 auctioneer or other licensee regulated by the board.

2 (4) If a license has been revoked, suspended, or is allowed to expire without renewal,
3 the board may require the applicant to pass the written examination or complete
4 some form of board-approved auction education before a license may be issued.

5 (5) If a license has not been renewed within six (6) months of the expiration date, the
6 board shall require a person to successfully complete the written examination before
7 a license is issued.

8 (6) In addition, every nonresident applicant shall file an irrevocable consent that actions
9 may be commenced against the applicant in any court of competent jurisdiction in
10 the Commonwealth of Kentucky, by the service of any summons, process, or
11 pleadings authorized by law on the authorized representative of the board. The
12 consent shall stipulate and agree that the service of any summons, process, or
13 pleadings on the authorized representative shall be taken and held in all courts to be
14 as valid and binding as if actual service had been made upon the applicant in
15 Kentucky. In case any summons, process, or pleadings are served upon the
16 authorized representative of the board, it shall be by duplicate copies, one (1) of
17 which shall be retained in the office of the board, and the other immediately
18 forwarded by certified mail, return receipt requested, to the last known business
19 address of the applicant against whom the summons, process, or pleadings are
20 directed.

21 ➔Section 7. KRS 330.070 is amended to read as follows:

22 (1) An apprentice auctioneer applying for an auctioneer license shall, subject to the
23 provisions of KRS 330.060:

24 (a) Possess a current Kentucky apprentice auctioneer license;

25 (b) Serve an apprenticeship for a period of one (1) year as an apprentice
26 auctioneer in Kentucky;

27 (c) Submit a statement to the board, signed by the principal auctioneer, verifying

1 that the applicant has actively and materially participated in at least ten (10)
2 auctions prior to application; and

3 (d) Successfully complete at least eighty (80) hours of approved~~[-classroom]~~
4 instruction from a board-approved auction education provider. The board may
5 waive the eighty (80) hours of approved classroom instruction requirement if
6 the applicant demonstrates sufficient previous auction experience and
7 competency by affidavit or other evidence as required by the board.

8 (2) An apprentice auctioneer with an original license issued prior to June 30, 2010, or
9 after July 1, 2015, shall be required to successfully complete the auctioneer
10 examination.

11 (3) If an applicant for an auctioneer license resides in a state which does not have a
12 current reciprocity agreement with the board, the board may waive the eighty (80)
13 hour education requirement or the apprenticeship requirement, or both, if the
14 applicant demonstrates sufficient previous auction experience and competency by
15 affidavit or by other evidence as required by the board.

16 (4) An applicant for an auctioneer license who has previously held an auctioneer license
17 which has been revoked, suspended, or which has expired without renewal may
18 request, and the board may grant, a waiver of the requirement of possession of a
19 current apprentice license.

20 (5) Every application for a license issued by the board shall be submitted on forms
21 prepared by the board. Each applicant shall furnish pertinent background data as
22 outlined on those forms.

23 (6) The board shall promulgate administrative regulations in accordance with KRS
24 Chapter 13A to establish an initial license fee and annual renewal license fee,
25 neither of which shall exceed one hundred fifty dollars (\$150).

26 (a) All licenses shall expire on the thirtieth day of June.

27 (b) Each license shall be renewed on or before the expiration date.

- 1 (c) In addition to the renewal fee, a late fee shall be established by administrative
2 regulations promulgated by the board on each license renewed within six (6)
3 months after the expiration date.
- 4 (d) In the absence of any reason or condition which might warrant the refusal of
5 renewing a license, and upon timely receipt of the renewal form and the
6 annual fee, the board shall issue a license for the ensuing year.
- 7 (7) (a) The board may require as a condition precedent to the renewal of any license,
8 that each licensee complete continuing education up to ten (10) hours per
9 license year. The board may impose different continuing education
10 requirements upon different classifications of licenses under this chapter. The
11 continuing education requirements in this subsection shall not apply to those
12 auctioneers licensed prior to January 1, 1980.
- 13 (b) A licensee who has not completed the required continuing education may,
14 within the time period set forth in subsection (6) of this section, remit a fee
15 established by administrative regulations promulgated by the board with the
16 applicable renewal fees, and the continuing education reporting requirement
17 shall be deferred to the next annual renewal. If the licensee fails to meet the
18 continuing education requirement for the next annual renewal, the licensee
19 shall successfully complete the examination before renewal of his or her
20 license.
- 21 (c) 1. The board may require all licensees to complete a six (6) hour board-
22 approved core course once every four (4) years, that includes the core
23 subjects of Kentucky auction statutes and regulations, ethics, and any
24 other subject matter deemed appropriate by the board.
- 25 2. Effective July 1, 2016, each licensee with at least twenty-five (25) years
26 of continuous licensure shall be exempt from the requirements of this
27 paragraph.

- 1 (8) The board shall prepare and deliver to each licensee a pocket license. The pocket
2 license of the apprentice auctioneer shall contain the name and address of his or her
3 principal auctioneer. The board shall also prepare and deliver a license to each
4 auction house operator.
- 5 (a) Auction house operators shall display their licenses conspicuously and at all
6 times in the auction house identified on the license.
- 7 (b) All licensees shall carry their pocket licenses, or a digital facsimile thereof,
8 when performing auctioneering tasks, to be shown upon request.
- 9 (c) A license or pocket license shall be replaced upon the request of the licensee
10 and payment of a replacement fee established by administrative regulations
11 promulgated by the board in accordance with KRS Chapter 13A.
- 12 (9) When an apprentice auctioneer is discharged or voluntarily terminates employment
13 with the auctioneer for any reason:
- 14 (a) It shall be the immediate duty of the principal auctioneer to deliver to the
15 board a written release of the apprentice auctioneer; and
- 16 (b) The apprentice auctioneer shall affiliate with a principal auctioneer within
17 thirty (30) days by submitting to the board an affiliation letter signed by the
18 new principal auctioneer and a fee established by administrative regulations
19 promulgated by the board in accordance with KRS Chapter 13A.
- 20 An apprentice auctioneer shall not perform any of the acts regulated by this chapter
21 until receiving a new license bearing a new principal auctioneer's name and address.
- 22 (10) (a) A licensee may place his or her license in escrow with the board if the licensee
23 does not engage in any board-regulated auctioneering activity and continues to
24 pay the annual renewal license fee.
- 25 (b) For each year the license is in escrow, a licensee shall be exempt from the
26 contribution to the auctioneer's education, research, and recovery fund and the
27 continuing education requirement.

1 (c) To reactivate a license in escrow, the licensee shall complete the core course
2 and pay a reactivation fee and the annual renewal recovery fee, both of which
3 shall be established by administrative regulations promulgated by the board in
4 accordance with KRS Chapter 13A.

5 (11) Notice in writing shall be given to the board by each licensee of any change of
6 principal business location or residence address within ten (10) days of the change,
7 and the board shall issue an updated license for the unexpired period. The board
8 may fine, suspend, or revoke the license of a licensee who does not notify the board
9 of a change of address within ten (10) days. Changing a business or a residence
10 address on its records shall entitle the board to collect a fee established by
11 administrative regulations promulgated by the board in accordance with KRS
12 Chapter 13A.

13 ➔Section 8. KRS 330.110 is amended to read as follows:

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

- 23 (1) Obtaining a license through false or fraudulent representation;
24 (2) Making any substantial misrepresentation;
25 (3) Pursuing a continued and flagrant course of misrepresentation or intentionally
26 making false promises or disseminating misleading information through agents or
27 advertising or otherwise;

- 1 (4) Accepting valuable consideration as an apprentice auctioneer for the performance of
2 any of the acts specified in this chapter, from any person, except his or her principal
3 auctioneer;
- 4 (5) Failing to account for or remit, within a reasonable time, any money belonging to
5 others that comes into the licensee's possession, commingling funds of others with
6 the licensee's own funds, or failing to keep the funds of others in an escrow or
7 trustee account;
- 8 (6) Paying valuable consideration to any person for services performed in violation of
9 this chapter, or procuring, permitting, aiding, or abetting any unlicensed person
10 acting in violation of any of the provisions of this chapter;
- 11 (7) Entering a plea of guilty, an Alford plea, a plea of no contest to, or being convicted
12 of, any felony, and the time for appeal has passed or the judgment of conviction has
13 been finally affirmed on appeal;
- 14 (8) Violation of any provision of this chapter or any administrative regulation
15 promulgated by the board;
- 16 (9) Failure to furnish voluntarily at the time of execution, copies of all written
17 instruments prepared by any licensee to each signatory of the written instrument;
- 18 (10) Any conduct of a licensee which demonstrates bad faith, dishonesty, incompetence,
19 or untruthfulness;
- 20 (11) Any other conduct that constitutes improper, fraudulent, dishonest, or negligent
21 dealings;
- 22 (12) Failure to enter into a binding written auction listing contract with the seller or with
23 the seller's duly authorized agent prior to advertising, promoting, or offering any
24 real or personal property by or at auction;
- 25 (13) Failure to provide a receipt to all persons consigning personal property with any
26 licensee for auction;
- 27 (14) Failure to establish and maintain, for a minimum of five (5) years from final

1 settlement, complete and correct written or electronic records and accounts of all
 2 auction transactions, including:

- 3 (a) Listing contracts, including the name and address of the seller;
- 4 (b) Written purchase contracts;
- 5 (c) Descriptive inventory and final bid amounts of all items or lots offered;
- 6 (d) Buyer registration records; and
- 7 (e) Settlement records, including all moneys received and disbursed and escrow
 8 account activity;

9 (15) Failure of any licensee to deliver, within twenty (20) days of receipt of a request
 10 from the board, any auction-related information, including but not limited to
 11 clerking records, buyer registration records, settlement records, escrow account
 12 information, license, or any other auction-related information to the board staff
 13 or the board's designee [~~present any auction-related information, including but not~~
 14 ~~limited to advertisements, listing contracts, purchase contracts, clerking records,~~
 15 ~~buyer registration records, settlement records, escrow account information, license,~~
 16 ~~or any other auction-related information, subsequent to a request by the board's~~
 17 ~~executive director, a board compliance officer, or board counsel~~]; or

18 (16) Failure of a principal auctioneer to provide supervision to his or her apprentice
 19 auctioneers to ensure compliance with this chapter.

20 ➔Section 9. KRS 330.120 is amended to read as follows:

21 (1) The board may upon its own motion, and shall upon the verified written complaint
 22 of any person, investigate the actions of any licensee or any person who assumes to
 23 act as a licensee if the complaint, or complaint together with other evidence
 24 presented in connection with it, presents a prima facie case of a violation of this
 25 chapter. If a prima facie case is not established or the violation is deemed
 26 inconsequential, the board may immediately dismiss the complaint.

27 (2) If, after an investigation that includes opportunity for the licensee to respond, the

1 board determines that a violation took place but was not of a serious nature, it may
 2 issue a written admonishment to the licensee. A copy of the admonishment shall be
 3 placed in the file of the licensee. The licensee shall have the right to file a response
 4 to the admonishment within thirty (30) days of its receipt and to have the response
 5 placed in the licensure file. The licensee may alternatively, within thirty (30) days of
 6 the receipt, file a request for hearing with the board. Upon receipt of this request,
 7 the board shall set aside the written admonishment and set the matter for hearing
 8 under the provisions of KRS Chapter 13B.

9 **(3) Upon the board's request, the licensee shall submit to a criminal background**
 10 **check at the licensee's expense.**

11 ➔Section 10. KRS 330.130 is amended to read as follows:

12 (1) Before denying an application for license or before imposing any disciplinary action
 13 authorized under KRS 330.110, the board shall set the matter for an administrative
 14 hearing, if a hearing is requested by the applicant or licensee. The hearing shall be
 15 conducted in accordance with KRS Chapter 13B. If the subject of the hearing is an
 16 apprentice auctioneer, the board shall also provide notification of the hearing to the
 17 auctioneer employing **the apprentice auctioneer**~~him~~ or whose employ he **or she**
 18 is about to enter, by sending notice by certified mail, return receipt requested, to the
 19 auctioneer's last known business address.

20 (2) Any party aggrieved by a final order of the board **or authority** refusing to grant a
 21 license or suspending or revoking a license may appeal the final order **within thirty**
 22 **(30) days after the issuance of the order** to the **Franklin Circuit Court or the**
 23 Circuit Court of the county in which the applicant or licensee resides, in accordance
 24 with KRS Chapter 13B.

25 ➔Section 11. KRS 330.220 is amended to read as follows:

26 (1) If real or personal property is offered in lots or parcels in a sale by auction, each lot
 27 or parcel shall be the subject of a separate sale. This subsection shall not preclude

1 real or personal property from being offered for bidding individually or in some
2 form or combination.

3 (2) Unless otherwise provided in the conditions of sale for auctions regarding horses or
4 any interests therein, a sale by auction is complete when the auctioneer so
5 announces by the fall of the hammer, announcing the item sold, and the successful
6 bidder's identification or in other customary manner. If it becomes immediately
7 apparent at the close of the bidding that the auctioneer and a bid assistant or
8 ringman have acknowledged the same bid from different bidders, the auctioneer
9 may continue the bidding between the disputed bidders. When a bid is made while
10 the auctioneer is in the process of completing the sale by auction, the auctioneer
11 may continue the bidding or declare the real or personal property sold under the bid
12 on which the hammer was falling.

13 (3) No auction shall be advertised as "absolute" nor shall any advertising contain the
14 words "absolute auction" or the word "absolute" or words with similar meaning nor
15 shall any licensee offer or sell any real or personal property at absolute auction
16 unless:

17 (a) There are no liens or encumbrances on the real or personal property, except
18 property tax obligations, easements, or restrictions of record, in favor of any
19 person, firm, or corporation other than the seller, or unless each and every
20 holder of each and every lien and encumbrance, by execution of the auction
21 listing contract, or otherwise furnishing to the auctioneer written evidence of a
22 binding commitment therefor, shall have agreed to the unqualified acceptance
23 of the highest bid for the property, without regard to the amount of the highest
24 bid or the identity of the high bidder; or, alternatively, that a financially
25 responsible person, firm, or corporation, by execution of the auction listing
26 contract or by otherwise furnishing to the auctioneer written evidence of a
27 binding commitment therefor, shall have absolutely guaranteed the forthwith

- 1 and complete discharge and satisfaction of any and all liens and encumbrances
2 immediately after the sale or at the closing, without regard to the amount of
3 the highest bid received, or the identity of the high bidder; and
- 4 (b) There is the bona fide intention at the time of the advertising and at the time
5 of the auction to transfer ownership of the real or personal property, regardless
6 of the amount of the highest and last bid, to the high bidder, subject to
7 subsection (5)(a) of this section, that intent existing without reliance on any
8 agreement that any particular bid or bid level must be ~~made or be~~ reached,
9 below which level the real or personal property would not be transferred to the
10 high bidder; and
- 11 (c) The auction listing contract contains a binding requirement that the auction be
12 conducted without reserve, and includes an acknowledgment that the seller, or
13 anyone acting upon behalf of the seller, shall not bid at the absolute auction,
14 or otherwise participate in the bidding process.
- 15 (4) Compliance with subsection (3) of this section shall not prohibit:
- 16 (a) A secured party or other lienholder who is not the seller from bidding at an
17 absolute auction, providing that such bidding does not constitute, nor is it
18 tantamount to the direct or indirect establishment or agreement to the
19 establishment of a reserve price on the real or personal property by the seller
20 or by the auctioneer, or by anyone aiding or assisting, or acting upon behalf of,
21 the seller or the auctioneer; or
- 22 (b) Any individual party to the dissolution of any marriage, partnership, trust,
23 limited liability company, or corporation from bidding as an individual entity
24 apart from the selling entity, on real or personal property being sold at auction
25 pursuant to that dissolution; or
- 26 (c) Any individual party or heir of a deceased person's bona fide estate from
27 bidding as an individual entity, apart from the selling entity, on real or

1 personal property being offered at auction pursuant to that estate settlement; or

2 (d) The inclusion of nonmisleading advertising of certain real or personal
3 property to be sold at "absolute auction" and the nonmisleading advertising of
4 certain real or personal property to be offered at auction with reserve, within
5 the same advertisement, or for sale at the same date and place, providing that
6 advertisement shall make clearly apparent through equal or appropriate
7 emphasis, which real or personal property is being offered by each method.

8 (5) (a) Any auction sale is, without requirement of announcement at any time,
9 presumed to be with reserve unless the real or personal property is in explicit
10 terms offered at absolute auction. An auction without reserve means an
11 absolute auction. An auction with reserve means the real or personal property
12 may be offered subject to the seller's confirmation or subject to a certain
13 reserve price. In an auction with reserve, the auctioneer may withdraw the real
14 or personal property at any time until he or she announces completion of the
15 sale. In an absolute auction, after the auctioneer calls for bids on an article, lot,
16 or parcel, that article, lot, or parcel shall not be withdrawn unless no bid is
17 made within a reasonable time.~~[At both reserve auctions and without reserve~~
18 ~~auctions, the auctioneer may establish reasonable bid increments once an~~
19 ~~opening bid has been offered.]~~

20 **(b) At both reserve auctions and without-reserve auctions, the auctioneer may**
21 **establish reasonable, minimum bid increments once an opening bid has**
22 **been offered.**

23 (6) (a) The provisions of this chapter shall not prohibit any licensee from bidding on
24 his or her own behalf at any auction sale, whether absolute or with reserve, if his or
25 her option to do so has been fully disclosed, including disclosure to the seller.

26 (b) Except as provided in subsection (4) of this section, the seller may not bid at
27 an absolute auction, nor may anyone bid upon his or her behalf. No licensee

1 shall knowingly receive a bid by or on behalf of the seller at an absolute
2 auction.

3 (c) Bids may be made by the seller, or upon the seller's behalf, at any auction with
4 reserve, provided that full disclosure has clearly been made that liberty for
5 bidding is retained. No licensee shall knowingly receive a bid in the absence
6 of full disclosure. If the auctioneer knowingly receives a bid on the seller's
7 behalf or the seller makes or procures a bid and notice has not been clearly
8 given that liberty for bidding is reserved, the buyer may avoid the sale or take
9 the real or personal property at the price of the last good faith bid prior to the
10 completion of the sale.

11 (d) There shall be no requirement that the reserve be announced when it is
12 attained.

13 (e) Nothing in this subsection shall be construed to alter or diminish the
14 provisions of KRS 330.210.

15 (7) (a) At any absolute auction, any advertisement or representation of a minimum or
16 suggested starting bid is prohibited.

17 (b) At any reserve auction, any advertisement or representation of a minimum or
18 suggested starting bid is prohibited unless:

19 1. The minimum or suggested starting bid advertised or represented is
20 sufficient to satisfy the auction listing contract stated reserve or
21 confirmation amount; and

22 2. The auction listing contract contains a binding acknowledgment by the
23 seller that permission has been granted for disclosure.

24 ➔Section 12. KRS 330.192 is amended to read as follows:

25 (1) (a) There is hereby created and established in the State Treasury the auctioneer's
26 education, research, and recovery fund.

27 (b) In addition to the license fees established in KRS 330.070, and KRS 330.095,

1 the board may assess each licensee a renewal recovery fee established by
2 administrative regulations promulgated by the board in accordance with KRS
3 Chapter 13A. Each initial applicant shall pay an initial recovery fee
4 established by administrative regulations promulgated by the board in
5 accordance with KRS Chapter 13A.

6 (2) The purposes of the auctioneer's education, research, and recovery fund shall be as
7 follows:

8 (a) When a licensee has been duly found guilty of violating one (1) or more of the
9 provisions of this chapter, or one (1) or more of the administrative regulations
10 duly promulgated by the board, and upon the conclusion of a final order
11 entered by the board or by the courts, if appealed, the board is authorized to
12 pay to the aggrieved party an amount not to exceed fifty thousand dollars
13 (\$50,000) against any one (1) licensee, if the licensee has refused to pay the
14 claim within twenty (20) days of entry of a final order and provided further
15 that the amount or amounts of money in question are certain and liquidated.

16 (b) The board shall maintain a minimum of two hundred fifty thousand dollars
17 (\$250,000) for recovery and guaranty purposes. These funds may be invested
18 and reinvested in the same manner as funds of the State Employees'
19 Retirement System and the interest from said investments shall be deposited
20 to the credit of the research and recovery fund, or, in the discretion of the
21 board, to the agency fund account as set out in KRS 330.050~~(5)~~~~(6)~~.
22 Sufficient liquidity, however, shall be maintained so that money is available to
23 satisfy all claims which may be processed through the board by means of
24 administrative hearing as outlined in this chapter.

25 (c) The board may use funds in excess of two hundred fifty thousand dollars
26 (\$250,000), whether from the auctioneer's education, research, and recovery
27 fund fees or accrued interest thereon, for any of the following purposes:

- 1 1. To advance education and research in the auction field for the benefit of
2 those seeking an auctioneer license, those licensed under the provisions
3 of this chapter and to improve and make more efficient the auction
4 industry;
- 5 2. To underwrite educational seminars, caravans, and other forms of
6 educational projects for the general benefit of licensees;
- 7 3. To establish an auction chair or courses at Kentucky state institutions of
8 higher learning for the purpose of making college or university level
9 courses available to licensees and the general public;
- 10 4. To contract for a particular research project in the auction field for the
11 Commonwealth of Kentucky;
- 12 5. To sponsor, contract for, and to underwrite all other educational and
13 research projects that contribute to the advancement of the auction field
14 in Kentucky;
- 15 6. To cooperate with associations of auctioneers and any other groups for
16 the enlightenment and advancement of Kentucky licensees;
- 17 7. To increase the level of the auctioneer's education, research, and
18 recovery fund above two hundred fifty thousand dollars (\$250,000); and
- 19 8. To augment the regular trust and agency account of the board for
20 purposes of addressing cash flow shortfalls, budget deficits, and for
21 reimbursement of personnel, administrative, operational, and capital
22 expenses incurred by the trust and agency account pursuant to the
23 purposes of the education, research, and recovery fund as provided in
24 this section, an amount not to exceed two hundred fifty thousand dollars
25 (\$250,000) annually.
- 26 (d) Within one hundred twenty (120) days after the end of each fiscal year, the
27 board shall make public, through its Web site or other public media, a

1 statement of income and expenses of the auctioneer's education, research, and
2 recovery fund, the details of which are in accordance with state financial
3 reporting requirements.

4 (3) (a) If a licensee is found guilty of one (1) or more provisions of this chapter or of
5 violating one (1) or more of the administrative regulations of the board, and if
6 the amount of the money lost by the aggrieved party or parties is in dispute or
7 cannot be determined accurately, then the amount of damages shall be
8 determined by the Circuit Court in the county where the alleged violation took
9 place, provided that the board has previously determined that a violation of
10 the license laws or of the administrative regulations has occurred and a final
11 order has been entered.

12 (b) If an order has been entered and the license rights of the licensee have been
13 finally adjudicated, then the local Circuit Court shall determine the monetary
14 damages due from the aforesaid violation or violations.

15 (c) When a final order has been entered by the Circuit Court, Court of Appeals, or
16 Supreme Court, and upon certification to the board, the aggrieved party or
17 parties shall be paid an amount not to exceed fifty thousand dollars (\$50,000)
18 by the board, and the license held by the licensee against whom the claim was
19 made by the aggrieved party shall be suspended at least until the licensee has
20 reimbursed the auctioneer's education, research, and recovery fund for all
21 amounts paid to the aggrieved party due to the violation of the licensee.

22 (d) When, upon the final order of the court, the board has paid from the
23 auctioneer's education, research, and recovery fund any sum to the aggrieved
24 party, the board shall be subrogated to all of the rights of the aggrieved party
25 to the extent of the payment and the aggrieved party shall, to the extent of the
26 payment, assign his right, title, and interest in the judgment to the board.

27 (e) All claims for monetary damages or relief from the auctioneer's education,

1 research, and recovery fund shall be made in writing and submitted to the
2 board within twelve (12) months of the act of the auctioneer giving rise to the
3 loss. Failure to file a claim within the twelve (12) month period shall bar the
4 claim. Additional evidence shall be submitted by the claimant if required by
5 the board.

6 (f) Notwithstanding any other provisions of this chapter, no unreimbursed
7 amount greater than fifty thousand dollars (\$50,000) shall be paid by the board
8 on account of any one (1) licensee, no matter over how long a time, or for how
9 many claims, and no matter what the number of claimants be or the size of
10 such claims, individually or in the aggregate. Should the licensee reimburse
11 the fund for all amounts paid, then future claims timely filed with the board
12 concerning different matters may be received pursuant to this section.

13 (g) No claims shall be approved under this section for amounts which, in the
14 aggregate, exceed the maximum payable on account of any one (1) licensee in
15 effect at the time of the act or acts of the licensee giving rise to the claims,
16 except to the extent of said maximum. Statutory increases in the maximum set
17 out in this section do not apply retroactively.

18 (4) All categories of licensees under this chapter are covered under the provisions of
19 this section for the benefit and protection of the public.

20 (5) This section is not intended to substitute for, circumvent, or duplicate other
21 remedies existing at law or otherwise for claimants or potential claimants, but
22 constitutes a last resort for aggrieved persons who would not, but for the provisions
23 of this section, be able to recover their losses by any other means available. The
24 board shall have full discretion to require that claimants exhaust all other remedies
25 prior to proceeding under this section, including but not limited to the remedy of
26 obtaining a judgment by all diligent and appropriate means.