

§ 62-19-101. Definitions

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

- (1) "Acquisition agent" means any individual who by means of telephone, mail, advertising, inducement, solicitation, or otherwise attempts directly to encourage any person to sale goods or real estate at auction under the supervision of a licensed Auctioneer.
- (1) "Apprentice auctioneer" means any individual who, for compensation or valuable consideration, or otherwise, is employed, directly or indirectly, by an auctioneer to deal or engage in any activity defined in subdivision (3);
- (2) "Auction" means a sales transaction conducted by means of oral or written exchange between an auctioneer and members of the audience, which exchange consists of a series of invitations for offers for purchase of goods or real estate made by the auctioneer and offers to purchase made by members of the audience culminating in the acceptance by the auctioneer of the highest or most favorable offer made by a member of the participating audience;
- (3) "Auctioneer" means any individual who, for a fee, commission or any other valuable consideration, or with the intention or expectation of receiving a fee, commission or any other valuable consideration, ~~by the means or process of auction or sale at auction, offers, negotiates or attempts to negotiate a listing contract, sale, purchase or exchange of goods;~~ conducts an auction or executes a contract for the sale of goods at an auction.
- (4) "Commission" means the Tennessee auctioneer commission;
- (5) "Continuing education" means six (6) hours each renewal period;
- (6) "Firm" means any person who, as part of the person's business, arranges, manages, sponsors, advertises or carries out auctions;
- (7) "Goods" means any chattels, merchandise, real or personal property or commodities of any form or type that may lawfully be kept or offered for sale;
- (8) "Person" includes an individual, association, partnership, corporation and the officers, directors and employees of a corporation;
- (9) "Principal auctioneer" means the auctioneer who is responsible for the management and supervision of a firm;

(10) “Public automobile auction” means offering motor vehicles for sale to the highest bidder where buyers are members of the public by any motor vehicle dealer licensed to sell used motor vehicles and which dealer is licensed as a public automobile auctioneer by the Tennessee auctioneer commission; provided, that no public automobile auction shall otherwise limit the auctioning of used motor vehicles exclusively to licensed motor vehicle dealers or their duly authorized agents; and

(11) “Public automobile auctioneer” means any individual who, for a fee, commission or any other valuable consideration, or with the intention or expectation of receiving a fee, commission or any other valuable consideration, by the means or process of auction or sale at auction, offers, negotiates or attempts to negotiate a listing contract, sale, purchase or exchange of goods, including motor vehicles.

(12) “Timed Listings” means offering goods for sale with a fixed ending time and date which does not extend based on bidding activity.

§ 62-19-102. Unlicensed practice

(a) It is unlawful for any person to:

(1) Act as or advertise or represent to be an auctioneer or apprentice auctioneer or firm without holding a valid license issued by the commission under this chapter or prior state law;

(2) Conduct or offer to conduct an auction of real property unless the person is duly licensed as an auctioneer or apprentice auctioneer and as a broker or affiliate broker under the provisions of the Tennessee Real Estate Broker License Act of 1973, compiled in chapter 13 of this title; provided, however, with respect to the authority of an apprentice auctioneer to conduct or offer to conduct an auction of real property, that the auctioneer for whom the apprentice auctioneer is employed for such purposes must be on the premises of the property during the auction. This subdivision (a)(2) shall not be construed to require ringpersons, or acquisition agents or other persons not vocally conducting an auction to be duly licensed as auctioneers, nor to be duly licensed under chapter 13 of this title, unless the ringpersons or other persons act as an affiliate broker or broker within the meaning of chapter 13 of this title; or

(3) Act as or advertise or represent to be a public automobile auctioneer unless the person is duly licensed as a public automobile auctioneer and as a motor vehicle dealer under title 55, chapter 17, part 1.

(b) All auctions ~~arranged by or through a firm~~ shall be ~~conducted exclusively~~ supervised by individuals who are licensed as auctioneers under this chapter.

§ 62-19-103. Exemptions

The provisions of this chapter do not apply to:

(1) Any person acting as a receiver, trustee in bankruptcy, guardian, administrator, executor or other such person acting under order of any court;

(2) Any trustee acting under a trust agreement, deed of trust or will or any secured party selling collateral after default by a debtor in accordance with title 47, chapter 9;

(3) Any auction conducted by or under the direction of any governmental entity or pursuant to any judicial order or decree;

(4) Any auction conducted by or on behalf of any political party, church or charitable corporation or association, if the individual conducting the sale receives no compensation and does not, by advertising or otherwise, hold the individual out as available to engage in the sale of goods at auction;

(5) Any person performing acts in the regular course of or as an incident to the management of and investment in property owned or leased by the person, if the property was not acquired for the purpose of resale. When a sales tax, as provided by title 67, chapter 1, is not levied upon the sale of personal property, there is a presumption that the personal property was purchased for the purpose of resale;

(6) Any auction conducted for the sale of livestock sponsored through or in cooperation with the state department of agriculture or the University of Tennessee extension, or both;

(7) Any auctioneer conducting a sale of tobacco at or for a warehouse operated pursuant to title 43, chapter 19;

(8) Any livestock auction sale regulated by the United States department of agriculture packers and stockyards administration, if the sale uses:

(A) The shipper's proceeds account required by federal regulations; and

(B) A Tennessee licensed auctioneer; or

(9) Any fixed price or timed listings that allow bidding on an Internet web site but that do not constitute a simulcast of a live auction.

(10) Any exchange of goods conducted through bidding, some or all of which may occur, on an internet-based trading platform by a publicly traded company, or its subsidiary, that primarily sells motor vehicles; provided, such company or subsidiary is a licensed motor vehicle dealer and motor vehicle auction under Title 55, chapter 17, part 1. For purposes of this subdivision (10), "motor vehicle" means any vehicle that is self-propelled and designed to be used on highways.

§ 62-19-104. State auctioneer commission

(a) There is created in the division of regulatory boards the Tennessee auctioneer commission for issuing licenses to auctioneers and apprentice auctioneers engaged in the auction business.

(b) The commission shall be composed of five (5) members. The term of each member shall be three (3) years. The additional member appointed pursuant to Acts 1989, ch. 331 shall be appointed to serve a regular three-year term and shall meet the requirements of subdivision (b)(1).

(1) Four (4) members of the commission shall be auctioneers. Each member shall have been actively and principally engaged as a licensed auctioneer for a period of no less than five (5) years next preceding the appointment, shall be of recognized standing in the member's branch of the auction business and shall be at least thirty (30) years of age and of good moral character.

(2) One (1) member of the commission shall not be engaged in the auction business. The member shall be at least thirty (30) years of age and of good moral character and shall be appointed from the state at large.

(3)(A) The new auctioneer member authorized by Acts 1989, ch. 331, shall be appointed from the state at large.

(B) The governor, in making appointments of the auctioneer members to the commission, shall ensure that each grand division of the state is represented.

(c) All members of the commission shall be appointed by the governor. In making appointments to the commission, the governor shall strive to ensure that at least one (1) person serving on the commission is sixty (60) years of age or older and that at least one (1) person serving on the commission is a member of a racial minority.

(d) Each member shall hold over after the expiration of the member's term until a successor shall have been duly appointed and qualified.

(e) The governor may remove any member of the commission for misconduct, incompetency or willful neglect of duty.

 **§ 62-19-105. Certificates; actions and proceedings; legal services**

(a) Each member of the commission shall receive a certificate of appointment from the governor before entering upon the discharge of the duties of office.

(b) The commission or any committee of the commission shall be entitled to the services of the attorney general and reporter in connection with the affairs of the commission.

(c) The commission may prefer a complaint for violation of this chapter before any court of competent jurisdiction, and it may take the necessary legal steps through the proper legal officers of the state to enforce this chapter and collect the penalties provided in this chapter.

(d) Complaints shall be prosecuted in the name of the Tennessee auctioneer commission.

 **§ 62-19-106. Powers and duties; rules and regulations; seals; records**

(a) Immediately upon their qualification, the commission shall meet and organize by selecting from among its members a chair and other officers considered necessary and may do all things necessary and convenient for carrying into effect the provisions of this chapter.

(b) The commission has the power to make bylaws, rules and regulations that it considers necessary that are not inconsistent with the provisions of this chapter or other general laws of the state.

(c) The commission shall adopt a seal for its use, which shall bear the words “Tennessee Auctioneer Commission,” and the administrative director of the commission shall have care and custody of the seal.

(d) Copies of all records and papers in the office of the commission shall be received in evidence in all courts and with like effect as the originals.

(e)(1) The commission has the authority to establish continuing education requirements and standards for individual licensees. The provisions of this subsection (e) shall apply only to those licensees who received their licenses after January 1, 1985.

(2) An auctioneer or apprentice auctioneer shall be exempt from continuing education requirements if:

(A) The auctioneer individual has reached sixty (60) years of age and has been licensed as an auctioneer or an apprentice auctioneer for ten (10) years or longer; or

(B) The auctioneer individual has been was licensed pursuant to this chapter since prior to July 1, 1999.

~~(3) No apprentice shall be exempt from continuing education requirements.~~

§ 62-19-107. Meetings; quorum

(a) The commission shall meet at least one (1) time each quarter of every calendar year for the purpose of transacting business that may properly come before it.

(b) Special meetings of the commission shall be held at times that the commission may provide in the bylaws it may adopt.

(c) Three (3) members shall constitute a quorum at a commission meeting.

(d) Due notice of each meeting and the time and place of the meeting shall be given each member in the manner that the bylaws may provide.

§ 62-19-108. Auctioneers; denial of payment; liens

(a) Notwithstanding § 62-19-119, any auctioneer who performs auctioneering services and is subsequently denied payment for a commission or fee for services performed shall have a lien for the work upon the property that the auctioneer was hired to auction; provided, however, that the lien shall only extend to property that is owned by the person who has denied payment for a commission or fee for services performed by the auctioneer.

(b) Notice of the lien shall be filed within sixty (60) days after the date of the auction with the register's office in the county or counties in which the property is located. The lien shall not be effective against a bona fide purchaser for value.

(c) The lien shall continue for a period of ninety (90) days from the date of filing in the register's office in the county or counties in which the property is located and until the final termination of any suit for enforcement brought within that period.

§ 62-19-109. Executive secretary

The director of the division of regulatory boards in the department of commerce and insurance or the director's designee shall serve as administrative director for the commission and shall provide all administrative functions for the commission.

§ 62-19-110. Register of applicants; roster of licensees; official manual

(a) The administrative director of the commission shall keep a register of all applicants for license, showing for each the date of application, name, place of business, place of residence and whether the license was granted or refused.

(b) The register shall be prima facie evidence of all matters recorded in the register.

§ 62-19-111. Licenses; requirements

(a) Any individual who desires a license as an apprentice auctioneer shall submit an application to the commission on the prescribed form. The application shall be accompanied by a nonrefundable examination fee as set by the commission and satisfactory proof that the applicant has:

(1) Reached at least eighteen (18) years of age; and

(2) Successfully completed eighty (80) hours of classroom or online instruction in the fundamentals of auctioneering at an auction school accredited by the commission.

(b) Any individual who desires a license as an auctioneer shall submit an application to the commission on the prescribed form. The application shall be accompanied by a nonrefundable examination fee as set by the commission and satisfactory proof that the applicant has:

(1) Reached at least eighteen (18) years of age;

(2) Served as an apprentice auctioneer under the supervision of a licensed, full-time auctioneer for a period of ~~two (2) years;~~ one (1) year;

(3) Successfully completed, in addition to the education required by subdivision (a)(2), thirty (30) hours of more rigorous classroom or online instruction in an auctioneering-related subject approved by the commission; and

(4) Obtained a high school diploma or general equivalency diploma (GED).

(c) The commission may require other proof, through the application or otherwise, that it deems desirable as to the honesty, trustworthiness, integrity, reputation and competency of the auctioneer or apprentice auctioneer applicant. **However, no log book or point system shall be required by the commission.**

(d) Any person who meets the requirements of subsections (a)-(c) is entitled to an examination

prescribed by the commission to determine the person's qualifications. The examination shall include, but not be limited to, reading, writing, spelling, elementary arithmetic, elementary principles of land economics, ethics, the law of this state relating to bulk sales, auctions and brokerage and the provisions of this chapter. The examination for an auctioneer's license shall be of more exacting nature and scope than the examination for an apprentice auctioneer's license.

(e) Any applicant who fails an examination must pay a fee as set by the commission for each reexamination.

(f) The commission shall issue to a qualified applicant a license and pocket card upon receipt of the appropriate fee as set by the commission. The license shall be conspicuously displayed at all times in the office of the licensee.

(g) Except as provided in § 62-19-117(a), every auctioneer licensed under this chapter shall maintain a place of business in this state at a firm that has been duly licensed by the commission.

(h)(1) A person who desires a license for a firm shall submit an application to the commission on the prescribed form. A firm license must be issued in the name of the firm with a specific person acting as principal ~~and holder of a valid auctioneer's license~~. The application shall be accompanied by a nonrefundable examination fee as set by the commission and satisfactory proof that:

(A) The applicant has reached at least eighteen (18) years of age;

~~(B) The applicant, if not a holder of a principal auctioneer's license, has completed thirty (30) hours of rigorous classroom instruction in an auctioneering related subject approved by the commission; and~~

(C) The applicant has obtained a high school diploma or general equivalency diploma (GED).

(2) The commission may require other proof, through the application or otherwise, that it deems desirable as to the honesty, trustworthiness, integrity, reputation and competency of ~~the auctioneer or apprentice auctioneer applicant~~ the principal; and

~~(3) Any person who meets the requirements of subdivisions (h)(1) and (2) shall be entitled to an examination prescribed by the commission to determine the person's qualifications. The examination shall include, but shall not be limited to, reading, writing, spelling, elementary arithmetic, elementary~~

~~principles of land economics, ethics, the law of this state relating to bulk sales, auctions and brokerage and the provisions of this chapter.~~

~~(4) The examination for a firm license shall be of a more exacting nature and scope than the examination for an apprentice auctioneer's license, except that a nonauctioneer applying for a firm license shall not be required to take the oral part of the auctioneer's test consisting of actual bid calling.~~

~~(5) Any applicant who fails an examination must pay a fee as set by the commission for each reexamination.~~

(6) The commission shall issue to qualified applicants a license and pocket card upon receipt of the appropriate fee as set by the commission. The firm license shall be conspicuously displayed at all times in the office of the licensee.

(7) Any person currently holding a valid auctioneer firm license may renew the license by filing an application for renewal and paying the required fee before the expiration date of the firm license.

(8) If the applicant for a firm license maintains more than one (1) place of business within the state, the applicant shall apply for and obtain an additional firm license for each branch office.

(9) A firm license shall automatically be suspended if no licensed auctioneer is engaged in business in the firm. The license may be reinstated by the commission for the unexpired term upon proof that a duly licensed auctioneer has been affiliated with the firm.

(10) Any person in this state who for a fee is in the business of managing auctions to the extent the person is responsible for the advertising, consignments, promotion or distribution of funds must hold a valid firm license.

(11) All contracts for services to be performed by an auction firm, except an auto auction as defined in § 55-17-102, must be negotiated for and signed by an auctioneer who is a member of the firm or by the auctioneer's attorney.

(i) All licenses issued by the commission shall expire two (2) years from the original date the license was issued. Each license must be renewed on or before its expiration date.

(j) If a licensee fails to renew a license on or before its expiration date, the commission may, in its discretion, renew the license upon application within two (2) months thereafter. The application shall be accompanied by the prescribed fee plus a penalty as set by the commission. Any person wishing to renew a license later than two (2) months after its expiration shall reapply for licensure; provided, that the commission may, in its discretion:

(1) Waive reexamination or additional education requirements for such an applicant; or

(2) Reinstate a license subject to the applicant's compliance with reasonable conditions that the commission may prescribe, including payment of an additional reasonable fee to be set by the commission.

(k) When fees are remitted by mail to the commission, the date of payment shall be determined by the official postmark of the mail.

(l) When an apprentice auctioneer's employment with an auctioneer is terminated for any reason, the auctioneer shall immediately deliver or send by registered mail the apprentice auctioneer's license to the commission. The apprentice auctioneer shall not engage in any activity defined in § 62-19-101(3) until the apprentice auctioneer receives a new license and pocket card for the unexpired term, bearing the name and address of the new employer. The fee for the new license and pocket card shall be set by the commission.

(m) No more than one (1) license shall be issued to any apprentice auctioneer to be in effect at any one time.

(n) No license issued by the commission shall authorize the licensee to engage in business at any location other than that set forth on the license. A licensee shall immediately notify the commission in writing in the event of a change of business location. The written notice shall be accompanied by the current license and pocket card and a fee as set by the commission.

~~(o) Notwithstanding subdivision (b)(2), any individual who otherwise would qualify for the auctioneer's examination by January 1, 1984, need complete only one (1) year of apprenticeship in order to be eligible for the examination.~~

(p) Auctions for the sale of registered livestock must be conducted by a licensed auctioneer. The

auctioneer shall be exempt from the responsibilities of issuing closing statements and disbursing funds if the responsibilities are performed by a duly chartered livestock association or livestock breed association.

(q) **Notwithstanding subdivision (n)**, An apprentice auctioneer may be employed by a licensed auctioneer who is not designated as the apprentice's sponsor upon receiving written permission from the apprentice's sponsor and notifying the commission of the employment in the proper form and manner as prescribed by the rules of the commission. An auctioneer employing an apprentice who is not under that auctioneer's sponsorship shall be responsible for the actions of the apprentice while under that auctioneer's employment, and the sponsor shall be responsible for the actions of the apprentice at all other times.

~~(r) The commission may deny any applicant for an apprentice, auctioneer or firm license the right to take an examination for a period up to two (2) years if the applicant is found by the commission to have conducted business within this state as an apprentice auctioneer, auctioneer or firm owner without first having been properly licensed.~~

(s) Any individual who desires a license as public automobile auctioneer shall submit an application to the commission on the prescribed form. The application shall be accompanied by a nonrefundable examination fee as set by the commission and satisfactory proof that the applicant has:

(1) Reached at least twenty-one (21) years of age;

(2) Served as an auctioneer for a period of two (2) years; and

(3) Successfully completed, in addition to the education required by subdivision (a)(2), thirty (30) hours of more rigorous classroom instruction in automobile auctioneering approved by the commission.

New Section

(a) An acquisition agent, as defined in [§ 62-19-102](#), shall register with the commission and furnish such information as provided by commission regulation including the name of the Principal Auctioneer supervising the acquisition agent. The application for registration shall be accompanied by a twenty-five dollar (\$25.00) registration fee.

(b) The commission has the authority to assess civil penalties, or to suspend or revoke the registration of an acquisition agent, for any activity or conduct in violation of this chapter. The commission also has the authority to promulgate rules and guidelines for the training and conduct of acquisition agents.

(c) Acquisition agents remain under the responsibility of the principal Auctioneer.

New Section

(a) No licensee shall engage in any auction activity unless there is a principal auctioneer.

(b) Each location of a firm must have a principal auctioneer registered with the Commission.

§ 62-19-112. Licenses; denial, revocation or suspension; retirement

(a) The commission may, upon its own motion, and shall, upon the verified complaint in writing of any person, hold a hearing as provided in this chapter and investigate the actions of any auctioneer, apprentice auctioneer, acquisition agent or any person who assumes to act in either capacity; provided, that the complaint with the evidence, documentary or otherwise, presented in connection with the complaint, makes out a prima facie case.

(b) The commission may suspend, revoke or refuse to renew any license issued under this chapter where the license has been obtained by false or fraudulent representations or for any of the following causes:

(1) Making any substantial misrepresentation;

(2) Pursuing a continued and flagrant course of misrepresentation or making false promises through agents or advertising or otherwise;

(3) Accepting valuable consideration as an apprentice auctioneer for the performance of any of the acts specified in this chapter, from any person, except the licensee's employer auctioneer;

(4) 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 or failing to keep the funds of others in an escrow or trustee account; provided, however, that nothing in this section shall be construed to require an auto auction as defined in § 55-17-102(2)(A) to maintain or use an escrow account when the auction does not accept and deposit funds of others;

(5) Paying valuable consideration to any person for services performed in violation of this chapter;

(6) Being convicted in a court of competent jurisdiction of this or any other state, or of the United States, of a criminal offense involving moral turpitude or a felony. However, an action taken under this subdivision (b)(6) shall be subject to the applicable provisions of the Fresh Start Act that are compiled in title 62, chapter 76, part 1;

(7) Violating any provision of this chapter, or any rule or regulation duly promulgated under this chapter;

(8) Failing to furnish voluntarily to all interested parties, at the time of execution, copies of all written instruments prepared by the auctioneer or apprentice auctioneer;

(9) Failing prior to the sale at public auction to enter into a written contract with the owner or consignee of any property to be sold, containing the terms and conditions upon which the licensee receives the property for sale;

(10) Engaging in the business of auctioning real property without being duly licensed as a broker or affiliate broker under the provisions of the Tennessee Real Estate Broker License Act of 1973, compiled in chapter 13 of this title;

(11) Knowingly using false bidders, ~~cappers or pullers~~;

(12) Any conduct of any auctioneer that demonstrates improper, fraudulent, incompetent or dishonest dealings; or

(13) Violating title 55, chapter 17, or any rule duly promulgated under title 55, chapter 17, pertaining to the sale or auction of motor vehicles.

(c) The affirmative vote of a majority of the commission shall be necessary to revoke or suspend a license.

(d) An auctioneer or apprentice auctioneer may retire the auctioneer's or apprentice auctioneer's license by making such request in writing ~~and paying the appropriate fees set by the commission~~. The written request must be accompanied by the license certificate and pocket card. The retiree shall be responsible for notifying the commission of any change in address. Only licenses that are current and in good standing with the commission may be retired.

(e) A licensee delinquent in the renewal of a license for two (2) years or more shall pay an amount set by the Rules of the Commission and show satisfactory completion of six (6) continuing education hours, which may be used towards continuing education requirements set by the Commission in order to reinstate their license.

§ 62-19-113. Commission members; privileges and immunities

The commission is declared to be a quasi-judicial body and the members or the employees of the commission are granted immunity from civil liability when acting in good faith and in the performance of their duties as described in this chapter.

§ 62-19-114. Revocation; judgements and decrees; reissuance

Whenever any person claiming to have been injured or damaged by the gross negligence, incompetency, fraud, dishonesty or misconduct on the part of any licensee following the calling or engaging in the business described in this chapter files suit upon the claim against the licensee in any court of record in this state and recovers judgment on the claim, the court may as part of its judgment or decree in the case, if it deems it a proper case in which so to do, revoke the defendant's license, which shall not be reissued to the licensee except upon unanimous vote of all members of the commission in favor of reissuance and only then after the lapse of a period of ninety (90) days from the date of revocation.

§ 62-19-115. Licensees; powers and duties

(a) Any auctioneer licensed under this chapter may conduct auctions at any time or place in this state. The licensee shall, upon request, furnish to the chief of police or sheriff of the city or county where the auction is to be held a list of properties to be sold twenty-four (24) hours prior to the auction.

(b) Any auctioneer licensed under this chapter may sponsor an affiliate auctioneer. There is no limit as to how many affiliate auctioneers an auctioneer may sponsor pursuant to this subsection (b).

§ 62-19-116. Auctioneer education and recovery account

(a) There is established within the general fund an auctioneer education and recovery account, referred to as the “account” in this section. All funds received by the commission under this section shall be deposited into the account and held solely for the purposes of this section. The commission shall maintain a minimum balance of one hundred fifty thousand dollars (\$150,000) in the account.

(b) Moneys within the account shall be invested by the state treasurer in accordance with § 9-4-603 for the sole benefit of the account.

(c)(1) No new auctioneer apprentice auctioneer or firm license shall be issued unless the applicant pays, in addition to the license fee, a fee of fifty dollars (\$50.00) or a lesser amount that the commission may by rule establish for deposit into the account.

(2) No renewal auctioneer apprentice auctioneer or firm license shall be issued unless the applicant pays, in addition to the renewal fee, a fee of fifty dollars (\$50.00) or a lesser amount that the commission may by rule establish for the purpose of ensuring that the required minimum balance is maintained in the account.

(d) Any person may, by order of any court of competent jurisdiction, recover from the account actual or compensatory damages, not including interest and costs, resulting from any violation of this chapter or of any rule promulgated under this chapter, committed by a licensee on or after June 30, 1987; provided, that:

(1) The liability of the account shall not exceed ten thousand dollars (\$10,000) per transaction, regardless of the number of persons aggrieved;

(2) The liability of the account for the acts of a licensee, when acting as such, shall be terminated upon the issuance of court orders authorizing payments from the account for judgments, or any unsatisfied portion of judgments, in an aggregate amount of twenty thousand dollars (\$20,000) on behalf of the licensee;

(3) A licensee acting as such shall have no claim against the account; and

(4) A bonding company not involved in an auction shall have no claim against the account.

(e) When any aggrieved person commences an action for a judgment that may result in collection from the account, the person shall promptly notify the commission to this effect in writing by certified mail, return receipt requested. The commission may, subject to the approval of the attorney general and reporter, take any action it may deem appropriate to protect the integrity of the account.

(f) When any aggrieved person obtains a valid judgment respecting which recourse against the account is permitted under this section and all or any part of the judgment is unpaid sixty (60) days after the date of the judgment, the person may, upon termination of all proceedings, including reviews and appeals in connection with the judgment, apply to the court in which the judgment was entered for an order directing payment from the account of the amount unpaid upon the judgment. Upon determination of the court that the judgment or any part of the judgment is unpaid, the court shall enter an order directing the commission to make payment from the account to satisfy the judgment.

(g) If the commission, pursuant to a court order, pays any amount from the account on behalf of a licensed auctioneer or apprentice auctioneer, the commission may, in its discretion, suspend or revoke the license of the auctioneer or apprentice auctioneer. No auctioneer or apprentice auctioneer whose license is revoked under this subsection (g) shall be eligible to apply for a new license until the person has repaid in full the amount paid from the account on the person's behalf, plus interest at the effective earnings rate for the account for the period the claim is unpaid.

(h) When, upon the order of the court, the commission has paid from the account any sum to the judgment creditor, the commission shall be subrogated to all of the rights of the judgment creditor in the judgment. Any amount recovered by the commission on the judgment shall be deposited to the account. If the total amount collected on the judgment by the commission exceeds the amount paid from the account to the original judgment creditor, plus interest and the cost of collection, the commission may elect to pay the overage or reassign the remaining interest in the judgment to the original judgment creditor. The payment or reassignment to the original judgment creditor shall not subject the account to further liability for payment to the original judgment creditor based on that transaction or judgment. Any costs incurred by the commission in attempting to collect judgments shall be paid from the account.

(i) If, at any time, the money deposited in the account is insufficient to satisfy any duly authorized claim or portion of the claim, the commission shall, when sufficient money has been deposited in the account, satisfy the unpaid claims or portions of the claim in the order that they were originally filed, plus interest at the effective earnings rate for the account for the period the claim is unpaid.

(j) The failure of an aggrieved person to comply with this section constitutes a waiver of any rights under this section.

(k) It is unlawful for any person to file or cause to be filed with the commission any notice, statement or other document required under this section that is false or contains any material misstatement of fact.

(l)(1) The commission may, in its discretion, utilize any return on investment of funds in the account and any balance in the account over one hundred fifty thousand dollars (\$150,000) to:

(A) Sponsor, conduct or assist in conducting, education, training or research designed to improve the competence, effectiveness or professionalism of licensees, the members of the commission or its staff;

(B) Prepare and disseminate information for the benefit of licensees and the general public; and

(C) Employ an investigator to assist the commission. The investigator shall carry an identification badge issued by the department of commerce and insurance and has the authority to make investigations concerning the enforcement of the laws, rules and policies promulgated under this chapter. The investigator shall have the authority to stop any auction activity that is being promoted, managed or supervised by unlicensed individuals in violation of this chapter.

(2) The commission shall not expend or commit sums pursuant to subdivision (l)(1) in an amount that would reduce the account to a balance of less than one hundred fifty thousand dollars (\$150,000).

(m) No state funds shall be expended to effectuate this section other than the fees and charges set forth in this section.

§ 62-19-117. Nonresidents; reciprocity; service of process

(a) A nonresident of this state may become an auctioneer or apprentice auctioneer in this state by conforming to this chapter, except that a nonresident auctioneer or apprentice auctioneer regularly engaged in the auction business as a vocation and maintaining a definite place of business in some other state is not required to maintain a place of business in this state.

(b)(1) The commission may recognize a license issued by any other state to a nonresident auctioneer or apprentice auctioneer if the nonresident auctioneer or apprentice auctioneer is domiciled in the other state that issued the license, the other state reciprocates with this state in like manner and the licensure requirements of the other state include the passing of an examination of equal or higher standards than those required by this state.

(2) The nonresident shall, however, be required to secure a license from the commission, which shall be issued upon application for the license, accompanied by the license fee required by this chapter and the filing of a certified copy of the applicant's license issued by the other state.

(c) Every nonresident auctioneer ~~shall obtain a firm license as provided in § 62-19-111 and~~ shall maintain an escrow account for all funds belonging to others that come into the nonresident auctioneer's possession as a result of an auction sale in this state.

(d) Every nonresident applicant shall file an irrevocable consent that suits and actions may be commenced against the applicant in the proper court in the county in this state in which a cause of action may arise, in which the plaintiff may reside, by service of any process or pleadings authorized by laws of this state on the commission, or a deputy to be designated by it, the consent stipulating and agreeing that the service of process or pleading shall be begun and held in all courts to be as valid and binding as if due service had been made upon the applicant in this state. The consent shall be duly acknowledged and, if made by a corporation, shall be authenticated by the seal of the corporation.

(e)(1) In case of any process or pleadings mentioned in this chapter being served upon the commission or upon a deputy to be designated by it, duplicate copies shall be made, one (1) of which shall be filed in the office of the administrative director of the commission and the other immediately forwarded by registered mail to the main office of the applicant against which the process or pleadings are directed.

(2) No default in the proceedings or action shall be taken unless it is made to appear by affidavit of a member of the commission or a deputy designated by it that a copy of the process or pleadings was mailed to defendant as required by this subsection (e).

(3) No judgment by default shall be taken in any such action or proceedings within twenty (20) days after the date of the mailing of the process or pleadings to the nonresident defendant.

(f) The Tennessee auctioneer commission has the authority to impose any fee or licensing requirements on applicants for licenses from a reciprocal state that the reciprocal state imposes on Tennessee licensees by rule, regulation, policy or law.

~~§ 62-19-118. Place of business; signs and advertisements~~

~~(a) Every person licensed under this chapter shall maintain a definite place of business in this state, except as provided in § 62-19-117 as to nonresidents, and shall erect and maintain a sign in a conspicuous place on the premises at or near the outside entrance to the principal office and all branch offices.~~

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~~(b)(1) The sign shall be written in clear and legible letters of no less than two inches (2") in height and shall clearly show the person's name and indicate that the person is an auctioneer or show the firm name and indicate that the firm is in the auction business.~~

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~~(2) The sign shall be placed so that it can easily be observed and read by anyone entering the place of business; however, licensees maintaining a place of business in multistory office buildings shall be deemed to comply with this section if their names and professions are displayed on the directories of the building in the usual fashion and manner of other tenants located in the building.~~

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~~(c)(1) The commission may waive the requirements of subsections (a) and (b) in the event of a conflict with local ordinances or other unusual circumstances.~~

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~~(2) The commission has the authority to promulgate rules with regard to advertising auctions in this state.~~

§ 62-19-119. Compensation and salary; collection; actions and proceedings

(a) No person engaged in the business of or acting in the capacity of an auctioneer or an apprentice auctioneer shall bring or maintain any action in the courts of this state for the collection of compensation for any services performed as an auctioneer or apprentice auctioneer without first alleging and proving that the person was a duly licensed auctioneer or apprentice auctioneer at the time the alleged cause of action arose.

(b) No apprentice auctioneer shall have the right to institute a suit in the apprentice auctioneer's own name for the recovery of a commission, fee or compensation for services as an apprentice auctioneer, but any such action shall be instituted and brought by the licensed auctioneer employing the apprentice auctioneer.

(c) Nothing contained in this section shall be construed so as to prevent a licensed apprentice auctioneer from suing the apprentice auctioneer's employing auctioneer for any compensation, fees or commissions due the apprentice auctioneer from the auctioneer.

§ 62-19-120. Apprentice auctioneers; revocation of employers licenses; effect

The license of an apprentice auctioneer shall be automatically suspended upon the revocation or suspension of the license of the auctioneer by whom the apprentice auctioneer is employed. The apprentice auctioneer may retain the apprentice auctioneer's license by transferring to the employment of another licensed auctioneer within twenty-one (21) days of the effective date of the revocation or suspension.

~~§ 62-19-121. Crimes and offenses~~

~~A violation of this chapter or any rule or regulation of the commission is a Class C misdemeanor.~~

§ 62-19-122. Repealed by 1983 Pub.Acts, c. 250, § 19

§ 62-19-123. Hearing; appeal and review; Administrative Procedures Act

The Uniform Administrative Procedures Act, compiled in title 4, chapter 5, governs all matters and procedures respecting the hearing and judicial review of any contested case arising under this chapter.

§ 62-19-124. Collection actions; costs and attorneys fees

Any judgment obtained by a licensed auctioneer as the result of an action in the courts of this state for the collection of the sales price for goods or real estate sold by a licensed auctioneer or apprentice auctioneer may include an award for court costs and reasonable attorney's fees.

~~§ 62-19-125. Gallery license~~

~~(a) Any person who desires to own and operate an auction house, auction barn, auction gallery or any other type of auction operating at a fixed site for the purpose of selling consigned or purchased goods at a fixed location is required to first obtain a gallery license. If the gallery license holder operates more than one (1) auction, the licensee shall be required to obtain a branch license for each permanent location and pay the appropriate fees. If the auction house, auction barn or auction gallery is owned and~~

~~operated by a licensed auctioneer holding a valid firm license, no further license shall be required.~~

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~~(b) A gallery license holder may sign consignment agreements, issue closing statements and collect and disperse funds. The licensee must hire a licensed auctioneer to call bids at all auctions. The gallery license holder is responsible for all auction activities that take place on the auction site and may not conduct auctions off the designated site. A gallery license does not give the license holder the right to call bids or act as an auctioneer at any time.~~

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~~(c) The person who desires to obtain a gallery license shall submit an application to the commission on the prescribed form. A person who desires to obtain a gallery license for a firm shall request issuance of the license in the name of the firm with a specific person acting as principal. The application shall demonstrate satisfactory proof that the person has:~~

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~~(1) Reached eighteen (18) years of age;~~

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~~(2) Successfully completed at least thirty (30) hours of classroom education approved by the commission; and~~

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~~(3) Provided other information as the commission may require to demonstrate honesty, trustworthiness, integrity, reputation and competency.~~

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~~(d) Upon approval of the application by the commission, the applicant must take and successfully pass an examination prescribed by the commission. All examination fees are set by the commission.~~

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~~(e) Applicants completing the requirements of this section shall be issued a license certificate and a pocket card. The license certificate shall be displayed in a conspicuous place where it can be examined by the public.~~

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~~(f) The gallery license holder must comply with all of the requirements of Tennessee license laws and regulations that apply to all licensees.~~

§ 62-19-126. Violations; citations

(a)(1) The administrative director and the investigator, acting on behalf of the commission, are

authorized to issue citations against persons acting in the capacity of engaging in the auction business without a license in violation of this chapter.

(2) Each citation shall be in writing and shall describe with specificity the basis of each citation.

(3) Each citation shall contain an order to cease all violations of this chapter and an assessment of a civil penalty in an amount of not less than fifty dollars (\$50.00) nor more than two thousand five hundred dollars (\$2,500) for each violation.

(b) The commission shall promulgate rules and regulations to specify those conditions necessary to the issuance of a citation and the range of penalties for violations of this chapter.

(c) Service of a citation issued pursuant to this section may be made in person or by certified mail at the last known business address or residence address of the person cited.

(d) A citation issued pursuant to this section shall be issued by the administrative director or investigator within one (1) year after the act or omission that is the basis for the citation.

(e) Any person served with a citation pursuant to this section may appeal to the administrative director by written notice postmarked within fifteen (15) working days after service of the citation with respect to violations alleged, scope of the order or amount of civil penalty assessed.

(f) If a person cited timely notifies the administrative director that the person intends to contest the citation, the administrative director shall afford an opportunity for a contested case hearing pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(g) After all administrative appeals have been exhausted, the administrative director may apply to the appropriate court for judgment in an amount of the civil penalty, plus applicable court costs, and for an order to cease activities in violation of this chapter. The motion for the order, which shall include a certified copy of the final order of the hearing officer or administrative judge, shall constitute a sufficient showing to warrant the issuance of judgment and order.

(h) The commission may waive any or all of a civil penalty by stating the reasons for the waiver in the official minutes of the commission.

§ 62-19-127. Injunction; petition; jurisdiction

In addition to the powers and duties otherwise conferred upon the commission in this chapter, the commission is empowered to petition directly any circuit or chancery court having jurisdiction over any person in this state who is violating any of the provisions of this chapter, either with or without a license under this chapter, to enjoin the person from continuing the violation; and jurisdiction is conferred upon the chancery and circuit courts of this state to hear and determine such causes.

§ 62-19-128. Public automobile auctions; licensure

(a) Public automobile auctions shall be licensed and regulated by the Tennessee auctioneer commission and the Tennessee motor vehicle commission when engaged in the sale of motor vehicles.

(b) The following are minimum requirements for licensed public automobile auctions:

(1) The public automobile auction shall have a letter of compliance with local ordinances from the local zoning authority;

(2) The public automobile auction shall have garagekeeper's legal liability insurance in an amount not less than five hundred thousand dollars (\$500,000);

(3) The public automobile auction shall have a surety bond of fifty thousand dollars (\$50,000) issued by a licensed bonding company;

(4) The public automobile auction shall have a compiled financial statement prepared in accordance with generally accepted accounting principles by a certified public accountant or public accountant dated not earlier than twelve (12) months prior to the date of the application and shall furnish a copy of the financial statement to the commission along with any changes to the statement;

(5) The public automobile auction shall have a minimum net worth of at least one hundred thousand dollars (\$100,000);

(6) The public automobile auction shall have a business telephone in the auction company name. For

purposes of this subdivision (b)(6), cellular telephones are not acceptable;

(7) All signs shall be visible, and a permanent professional business sign shall be installed and have letters that are at least eight inches (8") tall;

(8) The public automobile auction shall hold a current business tax license as required by local applicable law;

(9) The public automobile auctioneer shall obtain and have displayed on its premises a valid motor vehicle dealer license from the Tennessee motor vehicle commission; and

(10) The public automobile auction shall obtain and have displayed on its premises a valid license from the Tennessee auctioneer commission.

(c) Prior to a motor vehicle being subject to a public automobile auction, the public automobile auctioneer shall verify that the motor vehicle has a clean and unencumbered title, by obtaining a valid motor vehicle title history from the department of revenue or if the motor vehicle is registered in a state other than this state, the appropriate titling agency in the other state.

(d) All public automobile auctions must take place at the established place of business listed on the motor vehicle dealer license.

(e) The public automobile auction shall not sell new or unused motor vehicles or vehicles with a manufacturer's statement of origin.

(f) The public automobile auctioneer shall take possession of and retain title to each motor vehicle offered for sale at the auction. If the sale is finalized on a motor vehicle, the owner of the vehicle shall sign the title over to the public automobile auctioneer, who shall then sign the title over to and deliver the title to the buyer on the date of the sale. If a sale of the vehicle is not made, then the unsigned title shall be returned to the owner of the vehicle who offered the vehicle for sale at the auction. At all times, the public automobile auction shall be deemed the seller of the motor vehicle with the same duties and responsibilities as other licensed motor vehicle dealers.

T. C. A. § 55-17-120

§ 55-17-120. State vehicles; heavy construction equipment; farm equipment and machinery; nonrepairable and salvage vehicles; penalty

Currentness

(a) Notwithstanding this part, when motor vehicles of the state are being sold at an automobile auction sale, no license as a motor vehicle dealer shall be required for any person or participant who purchases or bids on the vehicles of the state. This person shall not participate in the sales of any other motor vehicles without being licensed as required by this part, except as provided in § 55-17-102(1)(C).

(b)(1) Notwithstanding this part to the contrary, whenever heavy construction equipment is being sold at auction, no license as a motor vehicle dealer shall be required for any person or participant who purchases or bids at the auction on any motor vehicle, having three (3), four (4), or five (5) axles that is designed to unload itself and that transports crushed stone, fill dirt and rock, soil, bulk sand, coal, phosphate muck, asphalt, concrete, and other building materials. In addition, no license as a motor vehicle dealer shall be required for any person or participant who purchases or bids at the auction on any motor vehicle, including cars, pick-up trucks, flat bed trucks having two (2) or more axles, service trucks, two-axle dump trucks, or any other vehicle used by the contractor for whose benefit the auction is held or by any other contractor offering such equipment or motor vehicles for sale from the contractor's fleet at the auction. The auction shall not be an automobile auction within this part if the sale of the motor vehicles is incidental to the sale of the heavy construction equipment, and the person conducting the auction need only be licensed as an auctioneer as required by title 62, chapter 19. Notice of the auction shall be given to the motor vehicle commission at least two (2) weeks prior to the auction. The total value of all motor vehicles sold at the auction shall not exceed ten percent (10%) of the sales prices of all equipment sold at the auction.

(2)(A) In addition to subdivision (b)(1), no motor vehicle dealer license shall be required for the operator of a permanent auction facility that has been in continuous operation for at least two (2) years prior to January 1, 2008, and that:

- (i) Sells large construction equipment in an auction format;
- (ii) Has sales of used motor vehicles whose total value does not exceed fifteen percent (15%) of the total value of all equipment sold, including motor vehicles, as calculated on an annual basis;
- (iii) Maintains a regularly staffed facility during normal business hours of not less than thirty (30) hours per week;
- (iv) Has a permanent facility with at least fifty (50) contiguous fenced acres located in this state;
- (v) Has titles present for all vehicles to be sold by auction at the facility;
- (vi) Conducts, at the facility, not more than five (5) such auctions in a calendar year, one (1) of which may be a "vehicles only" auction;
- (vii) Does not sell new or unused motor vehicles, or vehicles with a manufacturer's statement of origin only; and
- (viii) Sells, at the facility, only motor vehicles that:
 - (a) Weigh in excess of ten thousand pounds (10,000 lbs.) gross vehicle weight rating (GVWR); or
 - (b) Weigh less than ten thousand pounds (10,000 lbs.) gross vehicle weight rating (GVWR) if owned by an entity that used the motor vehicle in its normal business operation as either a construction or common carrier or transportation-related entity hauling freight.

(B) The auction shall file with the motor vehicle commission on an annual basis a certification stating:

- (i) That all such vehicles sold were not vehicles covered under the Tennessee Consumer Protection Act, compiled in title 47, chapter 18, part 1; and

(ii) The gross proceeds of the auction and the value of all vehicles sold at the auction.

(c)(1) Notwithstanding this part to the contrary, whenever farm equipment and machinery, as defined in § 67-6-102, is being sold at an auction conducted on farm property in accordance with the requirements set forth within subdivision (c)(2), no license as a motor vehicle dealer shall be required for any person or participant who purchases or bids at the auction on a motor vehicle.

(2) If the sale at auction, on property owned or possessed by the farmer, of five (5) or fewer motor vehicles is incidental to the sale at auction of farm equipment and machinery owned and used by the farmer, and if each such motor vehicle is owned for at least one (1) year by the farmer, the farmer's parents, or the farmer's children, and if each such motor vehicle is at least two (2) model years old, and if the farmer has not sold motor vehicles at an auction within the previous twelve-month period, then the auction shall not be an automobile auction within this part, and the person conducting the auction need only be licensed as an auctioneer by the auctioneer commission; provided, that the auctioneer must give at least fourteen (14) days' advance written notification to the motor vehicle commission describing the time and place of the auction as well as the items to be sold therein.

(d)(1) Notwithstanding this part to the contrary, a motor vehicle dealer license shall not be required to purchase nonrepairable vehicles, salvage vehicles, or a combination of nonrepairable and salvage vehicles from an automobile auction if the automobile auction primarily sells motor vehicles on consignment.

(2) A natural person who resides in this state may purchase at retail no more than five (5) nonrepairable vehicles or salvage vehicles, or any combination thereof, within a twelve-month period.

(3) Each automobile auction engaged in the sale of nonrepairable vehicles, salvage vehicles, or a combination of nonrepairable and salvage vehicles, shall:

(A) Keep an electronic record of all sales of each vehicle and include in the record the make, model, year, vehicle identification number, and the name and address of the purchaser and seller of the vehicle;

(B) Obtain from the purchaser of each vehicle a copy of the purchaser's driver license, passport, or other government-issued identification. The automobile auction shall maintain each copy obtained under this subdivision (d)(3)(B) for a period of two (2) years from the date of obtaining the copy; and

(C) Obtain from the purchaser of each vehicle a copy of any license or other authorization required to do business under this chapter or, if the purchaser represents a third party authorized to purchase the vehicle under this chapter, a copy of the third party's license or other authorization required to do business under this chapter and a copy of any document authorizing the purchaser to act on behalf of the third party. The automobile auction shall maintain each copy obtained under this subdivision (d)(3)(C) for a period of two (2) years from the date of obtaining the copy.

(4) Each automobile auction required to maintain records pursuant to subdivision (d)(3) shall make the records available, upon written request, to:

(A) Law enforcement officers;

(B) The department of revenue; or

(C) The motor vehicle commission.

(5) This subsection (d) shall not limit:

(A) The sale of nonrepairable vehicles or salvage vehicles to a person who resides outside of this state; or

(B) The sale of nonrepairable vehicles or salvage vehicles titled in a state or jurisdiction other than this state.

(6) A violation of this subsection (d) is a Class A misdemeanor, punishable by a fine of no less than one thousand dollars (\$1,000) and no more than two thousand five hundred dollars (\$2,500).

(7) An action to impose any penalty under this subsection (d) may be brought in any court of competent jurisdiction by a district attorney or the attorney general and reporter.

(8) Monies generated from any fine imposed pursuant to subdivision (d)(6) shall be used only for purposes of enforcement, investigation, prosecution, and training as those purposes relate to violations of this subsection (d).

(9) As used in this subsection (d):

(A) "Nonrepairable vehicle" has the same meaning as defined in § 55-3-201; and

(B) "Salvage vehicle" has the same meaning as defined in § 55-3-201.

(e) If the sale of motor vehicles is incidental to the sale at auction of a business liquidation or estate, and if each such motor vehicle is owned for at least one (1) year by the business or deceased, then the auction shall not be an automobile auction within this part, and the person conducting the auction need only be licensed as an auctioneer by the auctioneer commission; provided, that the auctioneer must give at least fourteen (14) days' advance written notification to the motor vehicle commission describing the time and place of the auction as well as the items to be sold therein.

Credits

1971 Pub.Acts, c. 315, § 1; 1984 Pub.Acts, c. 718, § 3; 1985 Pub.Acts, c. 266, § 1; 1991 Pub.Acts, c. 12, § 1; 1991 Pub.Acts, c. 359, § 2; 2008 Pub.Acts, c. 875, § 1, eff. July 1, 2008; 2016 Pub.Acts, c. 533, § 1, eff. July 1, 2016.

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