

House Bill 1042

By: Representatives Dempsey of the 13<sup>th</sup>, Coleman of the 97<sup>th</sup>, Teasley of the 37<sup>th</sup>, Watson of the 172<sup>nd</sup>, Clark of the 98<sup>th</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 6 of Title 43 of the Official Code of Georgia Annotated, relating to  
2 auctioneers, so as to change certain provisions relative to auctioneers and the auction  
3 business; to provide and change certain definitions applicable to the licensing of auctioneers  
4 and those engaged in the business of auctioning; to eliminate the authority for the Georgia  
5 Auctioneers Commission to issue apprentice auctioneer licenses and remove any references  
6 to such licenses; to provide for gender neutrality; to provide for related matters; to repeal  
7 conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 style="text-align:center">**SECTION 1.**

10 Chapter 6 of Title 43 of the Official Code of Georgia Annotated, relating to auctioneers, is  
11 amended by revising Code Section 43-6-1, relating to definitions applicable to auctioneers,  
12 as follows:

13 "43-6-1.

14 As used in this chapter, the term:

15 (1) 'Absolute auction' ~~shall mean that~~ means an auction in which the ownership and title  
16 of real or personal property offered ~~at auction~~ must be conveyed to the high bidder  
17 without reservation and without any ~~competing bids~~ bid of any type by the owner or an  
18 agent of the owner of ~~the~~ such property.

19 (2) ~~'Apprentice auctioneer' means any person who for compensation or valuable~~  
20 ~~consideration, or otherwise, is employed, directly or indirectly, by an auctioneer to deal~~  
21 ~~or engage in any auctioning activity and who is duly licensed under this chapter or any~~  
22 ~~person who is not employed by an auctioneer and who conducts the business of~~  
23 ~~auctioning in cases where gross sales do not exceed \$2,000.00 per auction and who is~~  
24 ~~duly licensed under this chapter.~~

25 (2) 'Auction' means a method of selling property or goods by competitive bid using any  
 26 method, format, or venue including, but not limited to, competitive bidding that occurs  
 27 in person or through the Internet by a sealed bid or silent bid.

28 (3) 'Auction business' or 'business of auctioning' means the performing of any of the acts  
 29 of an auctioneer ~~or apprentice auctioneer~~, including bid calling for a fee, commission, or  
 30 any other valuable consideration or with the intention or expectation of receiving the  
 31 same by means of or by process of an auction or sale at auction or offering, negotiating,  
 32 or attempting to negotiate a listing contract for the sale, purchase, or exchange of goods,  
 33 chattels, merchandise, real or personal property, or any other commodity which lawfully  
 34 may be kept or offered for sale.

35 (4) 'Auction with reserve' ~~shall mean that~~ means an auction in which the seller reserves  
 36 the right to refuse any and all bids.

37 (5) 'Auctioneer' means any person who, for a fee, commission, or any other valuable  
 38 consideration or with the intention or expectation of receiving the same by means of or  
 39 by process of an auction or sale at auction, offers, negotiates, or attempts to negotiate a  
 40 listing contract, sale, purchase, or exchange of goods, chattels, merchandise, real or  
 41 personal property, or any other commodity which lawfully may be kept or offered for sale  
 42 and has been duly licensed, as provided in this chapter.

43 (6) 'Commission' means the Georgia Auctioneers Commission.

44 (7) 'Company' means an association, partnership, limited liability company, corporation,  
 45 or sole proprietorship and shall also include the officers, directors, members, and  
 46 employees of such entities.

47 (8) 'Goods' means any chattel, goods, merchandise, real or personal property, or  
 48 commodities of any form or type which lawfully may be kept or offered for sale.

49 (9) 'Person or persons' means an individual.

50 (10) 'Ringperson' means any person employed directly by an auctioneer or auction  
 51 company responsible for a sale who assists the auctioneer in the conduct of an auction,  
 52 provided that such person shall not be permitted to call or chant a bid or negotiate a  
 53 listing contract."

## 54 SECTION 2.

55 Said chapter is further amended by revising subsection (c) of Code Section 43-6-2, relating  
 56 to the creation of the Georgia Auctioneers Commission, composition, terms of office, and  
 57 qualifications of members, as follows:

58 "(c) Five members of the commission shall be licensed auctioneers who shall have been  
 59 residents of this state and actively engaged in the ~~auctioneering~~ auction business for at least  
 60 five years. One member shall be a consumer advocate and a resident of this state and shall

61 have no connection whatsoever with ~~the practice or profession of auctioneering~~ any auction  
 62 company or the business of auctioning."

63 **SECTION 3.**

64 Said chapter is further amended by revising subsections (a) and (b) of Code Section 43-6-9,  
 65 relating to license requirement for auctioneers and apprentice auctioneers, registration for  
 66 companies conducting auctions, and restrictions as to sales of real property, as follows:

67 "(a) It shall be unlawful for any person, directly or indirectly, to engage in, conduct,  
 68 advertise, hold himself or herself out as engaging in or conducting the business of, or act  
 69 in the capacity of, an auctioneer ~~or apprentice auctioneer~~ within this state without first  
 70 obtaining a license as an auctioneer ~~or apprentice auctioneer~~, as provided in this chapter,  
 71 unless he or she is exempted from obtaining a license under Code Section 43-6-24.

72 (b) It shall be unlawful for any licensed auctioneer ~~or apprentice auctioneer~~ to act in such  
 73 capacity in the sale of real property unless such auctioneer ~~or apprentice auctioneer~~ shall  
 74 also be licensed as a real estate broker, associate broker, or salesperson under Chapter 40  
 75 of this title; provided, however, that any auctioneer ~~or apprentice auctioneer~~ who was  
 76 licensed as such by this state prior to July 1, 1978, and who, prior to December 31, 1984,  
 77 submits proof to the commission that he or she has been auctioning real property for five  
 78 years or more immediately prior to the date of application shall not be required to meet the  
 79 provisions of this subsection but such person shall not thereby be construed to be a real  
 80 estate broker, associate broker, or salesperson under Chapter 40 of this title."

81 **SECTION 4.**

82 Said chapter is further amended by revising Code Section 43-6-10, relating to an application  
 83 by a person for a license, as follows:

84 "43-6-10.

85 Any person desiring to act as an auctioneer ~~or apprentice auctioneer~~ must file an  
 86 application for a license with the commission. The application shall be in such form and  
 87 detail as the commission shall prescribe, setting forth the following:

- 88 (1) The name and address of the applicant or the name under which he or she intends to  
 89 conduct business; if the applicant is a partnership or limited liability company, the name  
 90 and residence address of each member thereof and the name under which the partnership  
 91 or limited liability company business is to be conducted; and, if the applicant is a  
 92 corporation, the name and address of each of its principal officers;
- 93 (2) The place or places, including the municipality, with the street and street number, if  
 94 any, where the business is to be conducted; and
- 95 (3) Such other information as the commission shall require."

96 **SECTION 5.**

97 Said chapter is further amended by revising Code Section 43-6-11, relating to qualifications  
98 of applicants, as follows:

99 "43-6-11.

100 (a) No auctioneer's ~~or apprentice auctioneer's~~ license shall be issued to any person who has  
101 not attained the age of 18 years, nor to any person who is not a resident of this state unless  
102 he or she has fully complied with Code Section 43-6-12, nor to any person who is not a  
103 citizen or has not filed his or her intent to become a citizen of the United States.

104 (b) Each applicant for an auctioneer's ~~or apprentice auctioneer's~~ license shall be required  
105 to pass an examination in a form prescribed by the commission.

106 (c) Each applicant for licensure as an auctioneer ~~or apprentice auctioneer~~ must prove to  
107 the commission that he or she is reputable, trustworthy, honest, and competent to transact  
108 the business of ~~an auctioneer or of an apprentice auctioneer~~ auctioning in such a manner  
109 as to safeguard the interest of the public.

110 (d) Each applicant for licensure as an auctioneer shall have successfully graduated from  
111 an accredited high school or obtained a GED and have graduated from an auctioneers  
112 school approved by the commission prior to making an application for an auctioneer's  
113 license.

114 ~~(e) On and after December 31, 1995, no apprentice auctioneer's license shall be issued or~~  
115 ~~renewed."~~

116 **SECTION 6.**

117 Said chapter is further amended by revising subsections (a) and (c) of Code Section 43-6-12,  
118 relating to reciprocity, nonresident license requirement, and designation of agents for service  
119 of process, as follows:

120 "(a) Any resident of another state who holds a current license as an auctioneer ~~or an~~  
121 ~~apprentice auctioneer~~ under the laws of any other state having requirements similar to those  
122 in this chapter may, at the discretion of the commission, be issued a license to practice as  
123 an auctioneer ~~or an apprentice auctioneer~~ in this state without written examination upon the  
124 payment of the fees as required by the commission."

125 "(c) Prior to the issuance of a license to a nonresident auctioneer ~~or apprentice auctioneer~~,  
126 such nonresident shall file with the commission a designation in writing that appoints the  
127 commission or a deputy to be designated by it to act as the licensee's agent upon whom all  
128 judicial and other process or legal notices directed to such licensee may be served. Service  
129 upon the agent so designated shall be equivalent to personal service upon the licensee.  
130 Copies of such appointment, certified by the commission chairman, shall be deemed  
131 sufficient evidence thereof and shall be admitted in evidence with the same force and effect

132 as the original thereof might be admitted. In such written designation, the licensee shall  
 133 agree that any lawful process against the licensee which is served upon such agent shall be  
 134 of the same legal force and validity as if served upon the licensee and that the authority  
 135 shall continue in force so long as any liability remains outstanding in this state. Upon the  
 136 receipt of all such process or notices, the commission or the deputy as designated by it shall  
 137 immediately mail a copy of the same by certified mail or statutory overnight delivery to the  
 138 last known business address of the licensee."

139 **SECTION 7.**

140 Said chapter is further amended by revising Code Section 43-6-14, relating to affixing seal  
 141 to licenses, delivery of licenses, display of licenses, pocket card, and branch office licenses,  
 142 as follows:

143 "43-6-14.

144 Each license shall have placed thereon the seal of the commission. The license of each  
 145 auctioneer ~~or apprentice auctioneer~~ shall be delivered or mailed to his or her place of  
 146 business and shall be displayed conspicuously at all times in the office of the licensee. The  
 147 commission shall prepare and deliver a pocket card certifying that the person whose name  
 148 appears thereon is a licensed auctioneer ~~or apprentice auctioneer~~, as the case may be,  
 149 stating the period of time for which fees have been paid ~~and including, on apprentice~~  
 150 ~~auctioneers' cards only, the name and address of the auctioneer for whom such apprentice~~  
 151 ~~auctioneer is acting~~. If an auctioneer maintains more than one place of business within the  
 152 state, a branch office license shall be issued to such auctioneer for each branch office so  
 153 maintained by him or her upon the payment of a biennial fee in an amount established by  
 154 the commission; and the branch office license shall be conspicuously displayed in each  
 155 branch office."

156 **SECTION 8.**

157 Said chapter is further amended by revising Code Section 43-6-14.1, relating to requirement  
 158 of carrying license identification card, as follows:

159 "43-6-14.1.

160 All licensees must carry on their person, when participating in the auctioneering auction  
 161 business in any capacity, their Georgia auctioneer's license identification card and must  
 162 present such card upon demand by any official of the State of Georgia."

163 **SECTION 9.**

164 Said chapter is further amended by revising subsections (a) and (c) of Code Section 43-6-16,  
 165 relating to grounds for refusal to issue license, as follows:

166 "(a) Licenses shall be granted only to persons who bear a good reputation for honesty,  
 167 trustworthiness, integrity, and competence to transact the business of ~~auctioneer or~~  
 168 ~~apprentice auctioneer~~ auctioning in such manner as to safeguard the interest of the public  
 169 and only after satisfactory proof of such qualifications has been presented to the  
 170 commission. The commission shall grant a license to a corporation, limited liability  
 171 company, or partnership only if the stockholder, member, or partner having a controlling  
 172 interest therein bears a good reputation for honesty, trustworthiness, and integrity."  
 173 "(c) Where an applicant has made a false statement of material fact on his or her  
 174 application, such false statement, in itself, may be sufficient ground for refusal of a  
 175 license."

### 176 SECTION 10.

177 Said chapter is further amended by revising Code Section 43-6-18, relating to grounds for  
 178 revocation or suspension of licenses and censure of licensees, as follows:

179 "43-6-18.

180 The commission may, upon its own motion, and shall, upon the signed complaint in writing  
 181 of any person, investigate the actions of any auctioneer ~~or apprentice auctioneer~~ and shall  
 182 have power to censure such licensee or to revoke or suspend any license issued under this  
 183 chapter whenever such license has been obtained by false or fraudulent representation or  
 184 the licensee has been found guilty of any unfair trade practices, including, but not limited  
 185 to, the following:

- 186 (1) Making any substantial misrepresentation while describing any property, real or  
 187 personal; using any false, deceptive, misleading, or untruthful advertising; or making any  
 188 statements, either in person or through any form of advertising, which may create false  
 189 or unjustified expectations of the services to be performed;
- 190 (2) Pursuing a continued and flagrant course of misrepresentation or making false  
 191 promises through agents or advertising an auction to be an absolute auction, but  
 192 conducting it as an auction with reserve or otherwise;
- 193 (3) Failing to account for or remit, within 30 days unless otherwise provided by contract,  
 194 any money belonging to others that comes into his or her possession, commingling funds  
 195 of others with his or her own, or failing to keep such funds of others in an escrow or  
 196 trustee account; ~~provided, however, that the requirement of an escrow or trust account~~  
 197 ~~shall not apply to an apprentice auctioneer who conducts the business of auctioning~~  
 198 ~~where gross sales do not exceed \$2,000.00 per auction;~~
- 199 (4) Being convicted in a court of competent jurisdiction of this or any other state of a  
 200 criminal offense involving moral turpitude or a felony;
- 201 (5) Violation of any rule or regulation or code of ethics promulgated by the commission;

- 202 (6) Any conduct of any auctioneer which demonstrates bad faith, dishonesty,  
 203 incompetency, or untruthfulness;
- 204 (7) Any conduct of an auctioneer which demonstrates improper, fraudulent, or dishonest  
 205 dealings;
- 206 (8) Having had any license to practice a business or profession revoked, suspended,  
 207 annulled, or sanctioned, or otherwise having had any disciplinary action taken by any  
 208 other licensing authority in this or any other state; or
- 209 (9) Knowingly making any misleading, false, or deceptive statement on any application  
 210 for a license under this chapter."

211 **SECTION 11.**

212 Said chapter is further amended by revising Code Section 43-6-20, relating to effect of  
 213 revocation of auctioneer's license on licenses of apprentice auctioneers, as follows:

214 "43-6-20.

215 ~~The revocation of an auctioneer's license shall automatically suspend every apprentice~~  
 216 ~~auctioneer's license granted to any person by virtue of his employment by the auctioneer~~  
 217 ~~whose license has been revoked. The apprentice auctioneer may retain his license by~~  
 218 ~~transferring to the employment of another licensed auctioneer within 90 days Reserved."~~

219 **SECTION 12.**

220 Said chapter is further amended by revising Code Section 43-6-21, relating to notification  
 221 of change of address and effect of apprentice's leaving auctioneer, as follows:

222 "43-6-21.

223 (a) Should the auctioneer change his or her place of business, he or she shall notify the  
 224 commission in writing within ten days of such change, and thereupon a new pocket card  
 225 shall be granted to the auctioneer ~~and to his apprentice auctioneers~~.

226 ~~(b) When an apprentice auctioneer is discharged or terminates his employment with the~~  
 227 ~~auctioneer for any reason, it shall be the immediate duty of the auctioneer to deliver or mail~~  
 228 ~~by registered or certified mail or statutory overnight delivery to the commission the license~~  
 229 ~~of the apprentice auctioneer. It shall be unlawful for any apprentice auctioneer to perform~~  
 230 ~~any of the acts contemplated by this chapter, either directly or indirectly under authority~~  
 231 ~~of his license, until the apprentice auctioneer receives a new license bearing the name and~~  
 232 ~~address of his new employer. No more than one license shall be issued to any apprentice~~  
 233 ~~auctioneer for the same period of time."~~

234 **SECTION 13.**

235 Said chapter is further amended by revising subsection (a) of Code Section 43-6-22, relating  
236 to prerequisite for bringing action for compensation and power of commission to sue for  
237 violation, as follows:

238 "(a) No person shall bring or maintain any action in the courts of this state for the  
239 collection of compensation for the performance of any of the acts mentioned in this chapter  
240 without alleging and proving that he or she was a duly licensed auctioneer ~~or apprentice~~  
241 ~~auctioneer~~ at the time the alleged cause of action arose."

242 **SECTION 14.**

243 Said chapter is further amended by revising Code Section 43-6-25, relating to penalty, as  
244 follows:

245 "43-6-25.

246 Any person or corporation acting as an auctioneer ~~or apprentice auctioneer~~ within the  
247 meaning of this chapter without a license and any person who violates this chapter shall be  
248 guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to  
249 exceed \$1,000.00, by imprisonment for a term not to exceed 90 days, or both."

250 **SECTION 15.**

251 All laws and parts of laws in conflict with this Act are repealed.