

House Bill 1042 (COMMITTEE SUBSTITUTE)

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

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 6 of Title 43 of the Official Code of Georgia Annotated, relating to auctioneers, so as to change certain provisions relative to auctioneers and the auction business; to provide and change certain definitions applicable to the licensing of auctioneers and those engaged in the business of auctioning; to eliminate the authority for the Georgia Auctioneers Commission to issue apprentice auctioneer licenses and remove any references to such licenses; to provide for an exception as to those persons licensed under Chapter 40 of Title 43; to provide for gender neutrality; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

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

"43-6-1.

As used in this chapter, the term:

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

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

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

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

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

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

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

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

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

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

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

SECTION 2.

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

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

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

SECTION 3.

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

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

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

SECTION 4.

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

"43-6-10.

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

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

SECTION 5.

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

"43-6-11.

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

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

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

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

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

SECTION 6.

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

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

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

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

SECTION 7.

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

"43-6-14.

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

SECTION 8.

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

"43-6-14.1.

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

SECTION 9.

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

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

177 SECTION 10.

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

180 "43-6-18.

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

187 (1) Making any substantial misrepresentation while describing any property, real or
188 personal; using any false, deceptive, misleading, or untruthful advertising; or making any
189 statements, either in person or through any form of advertising, which may create false
190 or unjustified expectations of the services to be performed;

191 (2) Pursuing a continued and flagrant course of misrepresentation or making false
192 promises through agents or advertising an auction to be an absolute auction, but
193 conducting it as an auction with reserve or otherwise;

194 (3) Failing to account for or remit, within 30 days unless otherwise provided by contract,
195 any money belonging to others that comes into his or her possession, commingling funds
196 of others with his or her own, or failing to keep such funds of others in an escrow or
197 trustee account; ~~provided, however, that the requirement of an escrow or trust account~~
198 ~~shall not apply to an apprentice auctioneer who conducts the business of auctioning~~
199 ~~where gross sales do not exceed \$2,000.00 per auction;~~

200 (4) Being convicted in a court of competent jurisdiction of this or any other state of a
201 criminal offense involving moral turpitude or a felony;

202 (5) Violation of any rule or regulation or code of ethics promulgated by the commission;

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

SECTION 11.

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

"43-6-20.

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

SECTION 12.

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

"43-6-21.

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

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

SECTION 13.

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

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

SECTION 14.

Said chapter is further amended by revising Code Section 43-6-24, relating to exceptions to operation of the chapter, by designating the existing text as subsection (a) and adding a new subsection to read as follows:

"(b) Nothing in this chapter shall be construed to alter the scope of practice of any person licensed under Chapter 40 of this title."

SECTION 15.

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

"43-6-25.

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

SECTION 16.

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