

House Bill 1042 (AS PASSED HOUSE AND SENATE)

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

1 To amend Chapter 6 of Title 43 of the Official Code of Georgia Annotated, relating to
2 auctioneers, so as to eliminate the authority for the Georgia Auctioneers Commission to issue
3 apprentice auctioneer licenses and remove any references to such licenses; to provide for
4 gender neutrality; to provide for related matters; to repeal conflicting laws; and for other
5 purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Chapter 6 of Title 43 of the Official Code of Georgia Annotated, relating to auctioneers, is
9 amended by revising paragraphs (2) and (3) of Code Section 43-6-1, relating to definitions
10 applicable to auctioneers, as follows:

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

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

24 **SECTION 2.**

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

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

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

42 **SECTION 3.**

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

45 "43-6-10.

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

49 (1) The name and address of the applicant or the name under which he or she intends to
 50 conduct business; if the applicant is a partnership or limited liability company, the name
 51 and residence address of each member thereof and the name under which the partnership
 52 or limited liability company business is to be conducted; and, if the applicant is a
 53 corporation, the name and address of each of its principal officers;

54 (2) The place or places, including the municipality, with the street and street number, if
 55 any, where the business is to be conducted; and

56 (3) Such other information as the commission shall require."

57 **SECTION 4.**

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

60 "43-6-11.

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

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

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

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

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

77 **SECTION 5.**

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

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

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

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

100 SECTION 6.

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

104 "43-6-14.

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

117 SECTION 7.

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

120 "(a) Licenses shall be granted only to persons who bear a good reputation for honesty,
 121 trustworthiness, integrity, and competence to transact the business of ~~auctioneer or~~
 122 ~~apprentice auctioneer~~ auctioning in such manner as to safeguard the interest of the public
 123 and only after satisfactory proof of such qualifications has been presented to the
 124 commission. The commission shall grant a license to a corporation, limited liability
 125 company, or partnership only if the stockholder, member, or partner having a controlling
 126 interest therein bears a good reputation for honesty, trustworthiness, and integrity."

127 "(c) Where an applicant has made a false statement of material fact on his or her
 128 application, such false statement, in itself, may be sufficient ground for refusal of a
 129 license."

130

SECTION 8.

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

133 "43-6-18.

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

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

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

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

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

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

156 (6) Any conduct of any auctioneer which demonstrates bad faith, dishonesty,
 157 incompetency, or untruthfulness;

158 (7) Any conduct of an auctioneer which demonstrates improper, fraudulent, or dishonest
 159 dealings;

160 (8) Having had any license to practice a business or profession revoked, suspended,
 161 annulled, or sanctioned, or otherwise having had any disciplinary action taken by any
 162 other licensing authority in this or any other state; or

163 (9) Knowingly making any misleading, false, or deceptive statement on any application
 164 for a license under this chapter."

165 **SECTION 9.**

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

168 "43-6-20.

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

173 **SECTION 10.**

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

176 "43-6-21.

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

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

188 **SECTION 11.**

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

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

196 **SECTION 12.**

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

199 "43-6-25.

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

204 **SECTION 13.**

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