

1 State of Arkansas As Engrossed: S3/15/23 S3/29/23

2 94th General Assembly

A Bill

3 Regular Session, 2023

SENATE BILL 320

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5 By: Senator Irvin

6 By: Representatives Wooldridge, L. Johnson, Wardlaw

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For An Act To Be Entitled

9 AN ACT TO PROVIDE CONSUMER PROTECTION FOR IN-STATE
10 INTERNET AUCTION SALES AND ESTATE SALES; TO AMEND THE
11 LAW CONCERNING THE AUCTIONEERS LICENSING BOARD; TO
12 AMEND THE AUCTIONEER'S LICENSING LAW; AND FOR OTHER
13 PURPOSES.

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Subtitle

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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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SECTION 1. Arkansas Code § 17-17-102 is amended to read as follows:

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17-17-102. Legislative findings and intent.

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(a) It is hereby found and determined by the General Assembly that:

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(1) ~~the~~ The current law pertaining to auctioneers is out of date
and ~~is not being enforced, there is no administrative agency to enforce the~~
~~laws pertaining to auctioneers, Arkansas does not have the ability, without~~
~~legislation, to enter into reciprocal agreements with other states to allow~~
~~the persons licensed as auctioneers in Arkansas to engage in the business of~~
~~auctioneering in other states, auctioneers are not required to establish an~~
~~escrow account to handle money belonging to others, and without legislation~~
~~the level of professionalism desired by auctioneers cannot be attained~~ should

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1 be revised to permit administrative efficiencies when practical and address
2 areas in which unregulated activities harm consumers;

3 (2) The existing exemption for online auctions is overly broad
4 and does not permit the regulation of online auctions conducted within this
5 state or which sell property located within this state;

6 (3) The state has no mechanism in place to regulate estate sales
7 and to protect owners and consumers from fraudulent or other undesirable
8 conduct in connection with an estate sale; and

9 (4) The Auctioneer's Licensing Board has the appropriate
10 expertise and is the proper regulatory authority to protect the citizens of
11 this state from fraudulent and other undesirable practices in connection with
12 online auctions and estate sales occurring within or affecting property
13 within this state.

14 (b) Therefore, it is the purpose of this chapter to ~~establish a~~
15 provide the board all necessary and desirable authority to efficiently
16 license and regulate;

17 (1) ~~auctioneers~~ Auctioneers, other than livestock auction barn
18 auctioneers and auctioneers conducting certain kinds of auctions; and

19 (2) Online auctions and estate sales occurring within or
20 affecting property within this state.

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22 SECTION 2. Arkansas Code § 17-17-103 is amended to read as follows:

23 17-17-103. Definitions.

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

25 (1) "Auction" means:

26 (A) A sales transaction conducted in person or
27 electronically by means of one (1) or more oral or written exchanges between
28 an auctioneer and a member of his or her audience, which includes an
29 invitation for an offer for the purchase of personal property made by the
30 auctioneer and an offer to purchase made by a member of his or her audience
31 and culminates in the acceptance by the auctioneer of the highest or most
32 favorable offer made by a member of the participating audience, if the sales
33 transaction offers personal property:

34 (i) Located within this state; or

35 (ii) From a location within this state;

36 (B) All transactions associated with what is commonly

1 known and advertised as an estate sale in which an owner, homeowner, or
2 representative of a deceased homeowner engages a person to offer for sale
3 personal property at a specific location to liquidate some or all of the
4 personal property:

5 (i) Of the owner or homeowner; or

6 (ii) Currently or formerly owned by a deceased
7 homeowner; or

8 (C) A sales transaction conducted in connection with any
9 sale of personal property advertised as an auction or estate sale.

10 (2) "Auction house" means an individual or entity that provides
11 a facility for conducting an auction other than an estate sale.

12 (3) "Auctioneer" means any person who, for a fee, commission, or
13 any other valuable consideration, or with the intention or expectation of
14 receiving the same, by the means of, or process of, an auction or sale at
15 an auction, offers, negotiates, or attempts to negotiate, a listing contract,
16 sale, purchase, or exchange of goods, chattels, merchandise, or personal
17 property, or of any other commodity which may lawfully be kept or offered for
18 sale by or at public conducts an auction;

19 (2)(4) "Goods" means any chattels, goods, merchandise, or
20 personal property, or commodities of any form or type, which may be lawfully
21 kept or offered for sale;

22 (3)(5) "Livestock auction barn" means a place where livestock is
23 sold on a regular basis to the public;

24 (4)(6) "Livestock auction barn auctioneer" means an auctioneer
25 who is solely engaged in the selling of livestock on a regular basis at one
26 (1) or more locations; and

27 (5)(7) "Persons" includes individuals, associations,
28 partnerships, and corporations, and the word "persons" shall also include the
29 officers, directors, and employees of a corporation.

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31 SECTION 3. Arkansas Code § 17-17-104 is amended to read as follows:

32 17-17-104. Applicability – Exception.

33 ~~(a)~~ This chapter does not apply to:

34 (1) Sales at an auction conducted by or under the direction of a
35 public authority or pursuant to a judicial order or decree or to a sale by
36 law required to be at auction;

1 (2) An auction conducted by or for a nonprofit organization;
 2 (3)(A) An individual who offers his or her own goods for
 3 auction.

4 (B) This exception does not apply:

5 (i) To an auction of consigned goods; or

6 (ii) If the auctioneer does not own or is not able
 7 to deliver immediate possession of the goods;

8 (4) A livestock auction barn auctioneer; ~~or~~

9 (5) *An auction conducted over the internet by means of a website*
 10 *dedicated primarily to conducting auctions if:*

11 (A) The person conducting the auction is licensed as a
 12 used motor vehicle dealer; and

13 (B) The property auctioned is within the scope of the
 14 license; or

15 (6) The owner of an e-commerce website or online marketplace
 16 that facilitates or provides consumer-to-consumer or business-to-consumer
 17 sales through the website or online marketplace and provides buyer and seller
 18 protections to the participants.

19 ~~(b)(1) An auctioneer may work for an auction company that is licensed~~
 20 ~~in the State of Arkansas in an emergency for a period of ninety (90) days.~~

21 ~~(2) During the ninety day period, the auctioneer shall make~~
 22 ~~application and pay fees for the next testing date.~~

23 ~~(3) After the ninety day period, the auctioneer shall meet all~~
 24 ~~of the provisions of this chapter.~~

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 26 SECTION 4. Arkansas Code § 17-17-203(a), concerning employees of the
 27 Auctioneer's Licensing Board, is amended to read as follows:

28 (a) The Auctioneer's Licensing Board shall have authority to employ, in
 29 consultation with the Secretary of the Department of Labor and Licensing, and
 30 discharge;

31 (1) a A Director of the Auctioneer's Licensing Board who shall
 32 provide administrative services to the board and who shall also be the
 33 Treasurer of the Auctioneer's Licensing Board; and

34 (2) ~~such~~ Such other personnel as may be necessary to administer
 35 and enforce the provisions of this chapter.

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1 SECTION 5. Arkansas Code § 17-17-204 is amended to read as follows:

2 17-17-204. Director – Disposition of Funds.

3 (a) All fees, charges, and penalties collected by the Auctioneer's
4 Licensing Board under the provisions of this chapter shall be paid to the
5 Director of the Auctioneer's Licensing Board, who shall be the custodian of
6 all funds and shall deposit them into ~~a bank or banks to be designated by the~~
7 ~~board~~ the State Treasury.

8 ~~(b) The director shall execute a bond in an amount determined by the~~
9 ~~State Risk Manager pursuant to the self-insured fidelity program as~~
10 ~~authorized in § 21-2-701 et seq.~~

11 ~~(c)(1) The director shall~~ manage and pay funds of the board ~~only on~~
12 ~~vouchers signed by himself or herself and countersigned by the Chair of the~~
13 ~~Auctioneer's Licensing Board~~ subject to oversight by the Finance Division of
14 the Department of Labor and Licensing.

15 (2) The total expenses for all purposes and obligations of the
16 board shall not exceed the total fees, charges, penalties, and other funds
17 paid to the board under the provisions of this chapter.

18 ~~(d)(c)~~ The director shall make semiannual financial reports in detail
19 to the board not later than January 30 and July 30 of each year, which will
20 be kept on permanent file by the board.

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22 SECTION 6. Arkansas Code 17-17-302 is amended to read as follows:

23 17-17-302. Issuance and Renewal – Change of location.

24 (a)(1) An examination shall not be required for the renewal of any
25 present or future license unless the license has been revoked. In this case,
26 the applicant shall take and pass the written examination offered by the
27 Auctioneer's Licensing Board before a new license may be issued.

28 (2) Licensed auctioneers shall have a ~~one hundred twenty-day~~
29 thirty-day grace period beyond ~~a~~ the renewal date to renew a license.

30 (3)(A) ~~Penalty~~ The penalty for late renewals beyond the ~~one-~~
31 ~~hundred twenty-day~~ thirty-day grace period shall be two (2) times the sum of
32 a normal license renewal fee.

33 (B)(i) The board shall notify a licensee of the penalty in
34 subdivision (a)(3)(A) of this section by first class and electronic mail to
35 the addresses the licensee has on file with the board.

36 (ii) If a licensee does not renew his or her license

1 within thirty (30) days after the notice in subdivision (a)(3)(B)(i) of this
2 section is ~~mailed~~ sent, the board shall send a second notice by ~~certified~~
3 first-class and electronic mail.

4 (b)(1)(A) The issuance fee for each auctioneer's license shall be one
5 hundred dollars (\$100).

6 (B) The annual renewal fee for each license shall be one
7 hundred dollars (\$100).

8 (C) All licenses shall expire on June 30 of each year.

9 (2) In the absence of a reason or condition that might warrant
10 the refusal ~~of the renewing of the~~ to renew a license and upon receipt of the
11 written request of the applicant and the applicant's annual fee, the board
12 shall issue a new license each ensuing year.

13 (c) ~~The~~ Upon the issuance or renewal of a license, the board shall
14 prepare and deliver to each licensee a license certificate ~~and~~ or pocket
15 card, each of which shall be deemed sufficient proof of licensure.

16 (d)(1) Notice in writing shall be given to the board by each licensee
17 of any change of business location within thirty (30) days after any change
18 in location, and at that time the board shall issue a new license for the
19 unexpired period.

20 (2) A change of business location shall automatically cancel the
21 license previously issued.

22 (3) ~~Changing~~ Unless changed by the licensee on the board's online
23 licensing platform, changing a business location and issuance of a new
24 *license shall entitle the board to collect a processing fee of five dollars*
25 *(\$5.00) from the licensee.*

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27 SECTION 7. Arkansas Code § 17-17-305(b)(2), concerning license fees
28 for nonresident auctioneers, is amended to read as follows:

29 (2) The license and renewal fee applicable to a nonresident
30 auctioneer ~~from another state which does not permit an auctioneer who is a~~
31 ~~resident of this state and who is duly licensed in this state to conduct~~
32 ~~auctions in the other state without being required to obtain a license in the~~
33 ~~other state shall be of the same amount that the other state charges~~
34 ~~auctioneers who are residents of this state and who are duly licensed in this~~
35 ~~state to obtain a license to conduct an auction in the other state~~ shall be
36 the same as the license and renewal fee applicable to a resident auctioneer.

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SECTION 8. Arkansas Code § 17-17-307 is amended to read as follows:
17-17-307. Auction house owners.

(a) If an auction house owner is one other than the principal auctioneer, the auction house owner shall apply for a license and meet all the provisions of this chapter.

(b) When the owner of an auction company or the designated person of a corporation and the auctioneer are one and the same, only one (1) license shall be required.

SECTION 9. Arkansas Code § 17-17-310 is amended to read as follows:
17-17-310. Advertisements.

Each and every advertisement by an auctioneer or ~~consignment~~ auction house shall include the number of the license issued to the auctioneer or auction company by the Auctioneer's Licensing Board.

SECTION 10. Arkansas Code § 17-17-312(c), concerning criminal background checks, is amended to read as follows:

(c) The applicant shall sign a release of information to the board and shall be responsible ~~to the Division of Arkansas State Police~~ for the payment of any fee associated with the criminal background check.

SECTION 11. Arkansas Code § 17-17-401(a), concerning the Auctioneer Education and Recovery Fund, is amended to read as follows:

(a) The Auctioneer's Licensing Board shall establish ~~a separate high interest bearing account in a bank located in this state. The account shall be referred to as~~ and administer the "Auctioneer Education and Recovery Fund" ~~and which~~ shall only be used for education and recovery purposes as detailed in this chapter.

/s/ Irvin

APPROVED: 4/11/23