

Chapter 17.
Auctioneers.

Subchapter 1. General provisions.

- 17-17-101. Title.
- 17-17-102. Legislative findings and intent.
- 17-17-103. Definitions.
- 17-17-104. Applicability – Exception.
- 17-17-105. License Required – Penalty for violation.
- 17-17-106. Actions by auctioneers.
- 17-17-107. Municipal taxes.
- 17-17-108 – 17-17-111. (Repealed.)
- 17-17-112. Written Contract
- 17-17-113. Injunction.
- 17-17-114. Civil penalty.
- 17-17-115. Inspection – Cease and desist.

Subchapter 2. Auctioneer’s Licensing Board.

- 17-17-201. Creation – Members.
- 17-17-202. Organization.
- 17-17-203. Employees.
- 17-17-204. Director – Disposition of funds.
- 17-17-205. Finances – Educational programs.
- 17-17-206. List of licensees.
- 17-17-207. Rules.
- 17-17-208. Proceedings.
- 17-17-209. Seal – Records.

Subchapter 3. Licensing.

- 17-17-301. Qualifications – Examination.
- 17-17-302. Issuance and renewal – Change of location.
- 17-17-303. (Repealed.)
- 17-17-304. Nonresidents – Licensing generally.
- 17-17-305. Nonresidents – Reciprocity.
- 17-17-306. Nonresidents – Actions against.
- 17-17-307. Auction House owners.
- 17-17-308. Suspension or revocation.
- 17-17-309. Investigation by board.
- 17-17-310. Advertisements.
- 17-17-311. Continuing Education.
- 17-17-312. Criminal background checks.

Subchapter 4. Auctioneer Education and Recovery Fund.

- 17-17-401. Auctioneer Education and Recovery Fund.
- 17-17-402. Applicability.
- 17-17-403. Construction.
- 17-17-404. Additional Fee.
- 17-17-405. Disciplinary hearing – Recovery procedure.
- 17-17-406. Education
- 17-17-407. Jurisdiction.
- 17-17-408. Appeal
- 17-17-409. Subrogation – Suspension of license.

17-17-101. Title.

This chapter shall be known and cited as the "Auctioneer's Licensing Act".

17-17-102. Legislative findings and intent.

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

(1) The current law pertaining to auctioneers is out of date and should be revised to permit administrative efficiencies when practical and address areas in which unregulated activities harm consumers;

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

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

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

(b) Therefore, it is the purpose of this chapter to provide the board all necessary and desirable authority to efficiently license and regulate:

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

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

History Acts 1989, No. 266, § 1; 2023, No. 677, § 1.

17-17-103. Definitions.

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

(1) "Auction" means:

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

(i) Located within this state; or

(ii) From a location within this state;

(B) All transactions associated with what is commonly known and advertised as an estate sale in which an owner, homeowner, or representative of a deceased homeowner engages a person to offer for sale personal property at a specific location to liquidate some or all of the personal property:

(i) Of the owner or homeowner; or

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

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

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

- (3) “Auctioneer” means any person who conducts an auction;
- (4) “Goods” means any chattels, goods, merchandise, or personal property, or commodities of any form or type, which may be lawfully kept or offered for sale;
- (5) “Livestock auction barn” means a place where livestock is sold on a regular basis to the public;
- (6) “Livestock auction barn auctioneer” means an auctioneer who is solely engaged in the selling of livestock on a regular basis at one (1) or more locations; and
- (7) “Persons” includes individuals, associations, partnerships, and corporations, and the word “persons” shall also include the officers, directors, and employees of a corporation.

History Acts 1989, No. 266, § 3; 2019, No. 386, § 2; 2023, No. 677, § 2.

17-17-104. Applicability — Exception.

This chapter does not apply to:

- (1) Sales at an auction conducted by or under the direction of a public authority or pursuant to a judicial order or decree or to a sale by law required to be at auction;
- (2) An auction conducted by or for a nonprofit organization;
- (3)
 - (A) An individual who offers his or her own goods for auction.
 - (B) This exception does not apply:
 - (i) To an auction of consigned goods; or
 - (ii) If the auctioneer does not own or is not able to deliver immediate possession of the goods;
- (4) A livestock auction barn auctioneer;
- (5) An auction conducted over the internet by means of a website dedicated primarily to conducting auctions if:
 - (A) The person conducting the auction is licensed as a used motor vehicle dealer; and
 - (B) The property auctioned is within the scope of the license; or
- (6) The owner of an e-commerce website or online marketplace that facilitates or provides consumer-to-consumer or business-to-consumer sales through the website or online marketplace and provides buyer and seller protections to the participants.

History Acts 1989, No. 266, § 4; 2009, No. 183, § 1; 2023, No. 677, § 3.

17-17-105. License required — Penalty for violation.

- (a) On and after July 1, 1989, it shall be unlawful for any person to act as an auctioneer or to advertise or to assume to act as either within this state without a license issued by the Auctioneer's Licensing Board.
- (b) Any person who violates subsection (a) of this section shall be punished by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500), or by imprisonment for a term not to exceed ninety (90) days, or both.

History Acts 1989, No. 266, §§ 4, 19.

17-17-106. Actions by auctioneers.

No person engaged in the business of or acting in the capacity of an auctioneer shall bring or maintain any action in the courts of the State of Arkansas for the collection of compensation for any services permitted as an auctioneer without first alleging and proving that he or she was operating legally under the provisions of this chapter and was a duly licensed auctioneer at the time the alleged cause of action arose.

History Acts 1989, No. 266, § 15.

17-17-107. Municipal taxes.

No person following for a livelihood the profession of an auctioneer shall be taxed or made liable to pay any municipal or other corporation tax or license fee for the privilege of following or carrying on the profession by a municipality unless that person maintains a business office within that municipality.

History Acts 1989, No. 266, § 18.

17-17-112. Written contract.

(a) An auctioneer may not sell the property of another at auction without a prior written contract with the seller which sets forth the terms and conditions upon which the auctioneer will sell the property. The licensee must retain a copy of each contract for at least three (3) years after the auction.

(b) The Auctioneer's Licensing Board is authorized to prescribe by rule the minimum requirements which must be included in a written contract.

History Acts 1999, No. 1333, § 1; 2019, No. 315, § 1348.

17-17-113. Injunction.

(a) Whenever there is reason to believe that any person, licensed or unlicensed, has violated any provision of this chapter or any order, license, decision, demand, or requirement issued or made pursuant to this chapter, the Auctioneer's Licensing Board or its authorized representative may bring an action in the circuit court of any county in which the person resides or does business to enjoin such a person from continuing such a violation or engaging therein or doing any act or acts in furtherance thereof.

(b) Whenever there is any action brought pursuant to this section, the circuit court shall have jurisdiction and authority to enter a preliminary or final injunction or such other relief as may be appropriate.

History Acts 1999, No. 1333, § 2.

17-17-114. Civil penalty.

(a)

- (1) Whenever the Auctioneer's Licensing Board finds that the holder of a license issued by the board is guilty of a violation of the rules of the board or the laws of the State of Arkansas pertaining to any occupation, profession, or business licensed or regulated by the board, it shall have the power and authority to impose a civil penalty and suspension or revocation of the license.
- (2) Upon imposition of a civil penalty, the board shall have the power and authority to require that the licensee pay a penalty to the board in regard to the violation with the sanction that the license may be suspended until the penalty is paid.
- (3) Before the imposition of any penalty, the board shall hold an investigation and hearing after notice to a licensee or his or her attorney. The penalty may be imposed only if the board formally finds that the public health, safety, welfare, and morals would not be impaired thereby and that payment of the penalty will achieve the desired disciplinary result.
- (b) No penalty imposed by the board may exceed a total of one thousand dollars (\$1,000). The power and authority of the board to impose these penalties shall not be affected by any other civil or criminal proceeding concerning the same violation.
- (c) If any person upon whom the board has levied a civil penalty fails to pay the civil penalty within sixty (60) days of the board's decision to impose the penalty, the amount of the fine shall be considered to be a debt owed to the board and may be collected by civil action by the board.
- (d) Any person penalized by the board under this chapter may appeal any order of the board in the manner now provided by law.
- (e) In addition to any other sanctions authorized by this chapter, the board may impose a civil penalty as provided in this section against any unlicensed person, firm, or corporation practicing or offering to practice any actions requiring licensure pursuant to the provisions of this chapter.
- (f) The board is authorized to promulgate rules to implement the provisions of this chapter.

History Acts 1999, No. 1333, § 3; 2003, No. 1748, § 1; 2019, No. 315, § 1349.

17-17-115. Inspection — Cease and desist.

- (a) Subsequent to five (5) days after proof of receipt of certified mail by the alleged offending auctioneer or auction house of any alleged violation or violations, the Auctioneer's Licensing Board or its authorized representative may enter the premises of any auction or auction house for the purpose of examining the license of an auctioneer or auction house, or both.
- (b) Should the board or its authorized representative find that an unlicensed auctioneer or auction house, or both, is practicing or offering to practice any actions requiring a license pursuant to the provisions of this chapter, the board or its authorized representative has the authority to demand that such unlicensed activity cease and desist immediately.
- (c) Any auctioneer or auction house, or both, refusing to allow the board or its authorized representative to inspect the premises of an auction or auction house for the purpose of examining the license of the auctioneer or auction house, or both, may be subject to a civil penalty.
- (d) Any unlicensed auctioneer or auction house, or both, found to be practicing or offering to practice any actions requiring a license pursuant to the provisions of this chapter who refuses to cease and desist such unlicensed activity upon the request of the board or its authorized representative will be subject to criminal or civil penalties, or both.

History Acts 1999, No. 1333, § 4.

17-17-201. Creation — Members.

- (a) There is hereby created the Auctioneer's Licensing Board. The Governor shall appoint a board consisting of seven (7) members, four (4) of whom are licensed auctioneers and three (3) from the public at large, each of whom immediately before the date of his or her appointment has been a resident of the State of Arkansas for five (5) years.
- (b) The four (4) members who are auctioneers shall have been auctioneers for at least five (5) years.
- (c) Each member shall serve until his or her successor is appointed and qualified. All successor members shall serve terms of four (4) years and until their successors are elected and qualified.
- (d) Vacancies shall be filled by appointment of the Governor for the unexpired term.
- (e) Each member of the board may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

History Acts 1989, No. 266, § 6; 1997, No. 250, § 125.

17-17-201. Creation - Members.

- (a) There is hereby created the Auctioneer's Licensing Board. The Governor shall appoint a board consisting of seven (7) members, four (4) of whom are licensed auctioneers and three (3) from the public at large, each of whom immediately prior to the date of his or her appointment has been a resident of the State of Arkansas for five (5) years.
25
- (b) The four (4) members who are auctioneers shall have been auctioneers for at least five (5) years.
- (c) Each member shall serve until his or her successor is appointed and qualified. All successor members shall serve terms of four (4) years and until their successors are elected and qualified.
- (d) Vacancies shall be filled by appointment of the Governor for the unexpired term.
- (e) Each member of the board may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

17-17-202. Organization.

- (a) The Auctioneer's Licensing Board, immediately upon qualification of the member appointed in each year, shall organize by selecting from its members a chair.
- (b) A quorum of the board shall be four (4) members.

History Acts 1989, No. 266, § 6.

17-17-203. Employees.

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

- (1) A Director of the Auctioneer's Licensing Board who shall provide administrative services to the board; and
 - (2) Such other personnel as may be necessary to administer and enforce the provisions of this chapter.
- (b) [Repealed.]

History Acts 1989, No. 266, § 6; 2019, No. 910, §§ 5407, 5408; 2023, No. 677, § 4.

17-17-204. Director — Disposition of funds.

- (a) All fees, charges, and penalties collected by the Auctioneer's Licensing Board under the provisions of this chapter shall be paid to the Director of the Auctioneer's Licensing Board, who shall be the custodian of all funds and shall deposit them into the State Treasury.
- (b)
- (1) The director shall manage and pay funds of the board subject to oversight by the Finance Division of the Department of Labor and Licensing.
 - (2) The total expenses for all purposes and obligations of the board shall not exceed the total fees, charges, penalties, and other funds paid to the board under the provisions of this chapter.
 - (c) The director shall make semiannual financial reports in detail to the board not later than January 30 and July 30 of each year, which will be kept on permanent file by the board.

History Acts 1989, No. 266, § 6; 1999, No. 1333, §§ 5, 6; 2019, No. 910, § 5409; 2023, No. 677, § 5.

17-17-205. Finances — Educational programs.

The Auctioneer's Licensing Board shall be financially self-sustaining, and, if funds permit, it may underwrite, within its financial limitations, educational programs for the enlightenment and benefit of the public and all auctioneers licensed under this chapter.

History Acts 1989, No. 266, § 6.

17-17-206. List of licensees.

The Auctioneer's Licensing Board shall annually publish a list of the names and addresses of all auctioneers licensed by it pursuant to this chapter. This list shall contain the names of all persons whose licenses have been suspended or revoked within the preceding year as well as any other information relative to the enforcement of the provisions of this chapter that the board may deem of interest to the public.

History Acts 1989, No. 266, § 6.

17-17-207. Rules.

The Auctioneer's Licensing Board shall have the authority to promulgate such rules as may be necessary to implement this chapter and may establish by rule such forms as may be necessary to administer this chapter.

History Acts 1989, No. 266, § 6; 2019, No. 315, § 1350.

17-17-208. Proceedings.

The Auctioneer's Licensing Board shall be subject to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History Acts 1989, No. 266, § 13.

17-17-209. Seal — Records.

(a) The Auctioneer's Licensing Board shall adopt a seal by which it shall authenticate its proceedings.

(b) Copies of all records and papers in the office of the board, duly certified and authenticated by the seal of the board, shall be received in evidence in all courts equally and with like effect as the original.

(c) All records kept in the office of the board under the authority of this chapter shall be open to public inspection under such rules as shall be prescribed by the board.

History Acts 1989, No. 266, § 14; 2019, No. 315, § 1351.

17-17-301. Qualifications — Examination.

(a) Auctioneer licenses shall be granted only to persons who are found to be of good reputation, trustworthy, and competent to transact the business of an auctioneer, in such a manner as to safeguard the interest of the public.

(b) The Auctioneer's Licensing Board is authorized to require information from every applicant to determine the applicant's honesty and truthfulness.

(c)

(1) In addition to proof of honesty, truthfulness, and good reputation, an examination conducted by the board or its authorized representatives shall be held four (4) times each year, and an examination fee of one hundred dollars (\$100) shall be collected from each applicant to defray the expenses of the examination.

(2) The examination shall include questions on ethics, reading, writing, spelling, elementary arithmetic, and a general knowledge of the laws of Arkansas and the Arkansas Code, including, but not limited to, contracts of sale, agency, leases, auctions brokerage, and the provisions of the Uniform Commercial Code, § 4-1-101 et seq.

(d) In addition to the other qualifications provided for by this chapter, every applicant for an auctioneer's license shall be at least eighteen (18) years of age. Every application for a license shall be submitted on forms prepared by the board.

History Acts 1989, No. 266, § 7; 1993, No. 1219, § 3; 2003, No. 1748, § 2.

17-17-302. Issuance and renewal — Change of location.

(a)

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

(2) Licensed auctioneers shall have a thirty-day grace period beyond the renewal date to renew a license.

(3)

(A) The penalty for late renewals beyond the thirty-day grace period shall be two (2) times the sum of a normal license renewal fee.

(B)

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

(ii) If a licensee does not renew his or her license within thirty (30) days after the notice in subdivision (a)(3)(B)(i) of this section is sent, the board shall send a second notice by first-class and electronic mail.

(b)

(1)

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

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

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

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

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

(d)

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

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

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

History Acts 1989, No. 266, § 8; 2003, No. 1748, § 3; 2009, No. 773, § 1; 2023, No. 677, § 6.

17-17-304. Nonresidents — Licensing generally.

(a) A nonresident of this state may become a licensed auctioneer in this state by registering with the Auctioneer's Licensing Board and confirming in writing that his or her actions will be regulated by this chapter and other applicable laws of this state as stated in this section and §§ 17-17-305 and 17-17-306.

(b)

(1) In every instance the nonresident must pay the issuance fee, the annual renewal fee, and the Auctioneer Education and Recovery Fund fee.

(2)

(A) No person who is not a resident of this state shall conduct any livestock auction in this state unless bonded for at least fifty thousand dollars (\$50,000) by a surety licensed to do business in this state by the Insurance Commissioner.

(B) A violation of this section shall constitute a Class A misdemeanor.

History Acts 1985, No. 477, § 1; A.S.A. 1947, § 71-413; Acts 1989, No. 266, § 10; 1999, No. 227, § 2.

17-17-305. Nonresidents — Reciprocity.

(a) A person holding a license to engage in auctions issued to him or her by a proper authority of a state, territory, or possession of the United States or the District of Columbia having licensing requirements comparable to Arkansas and who in the opinion of the Auctioneer's Licensing Board otherwise meets the requirements of this chapter may upon application be licensed without further examination.

(b)

(1) Nothing in this section and §§ 17-17-304 and 17-17-306 shall prevent the conducting of any auction in this state by any nonresident auctioneer if such an auctioneer is duly licensed by the state of his or her residence and that state, through reciprocity, permits a resident of this state who is an auctioneer duly licensed to conduct auctions in this state to conduct auctions in the other state without being required to obtain a license in the other state.

(2) The license and renewal fee applicable to a nonresident auctioneer shall be the same as the license and renewal fee applicable to a resident auctioneer.

(c) Notwithstanding any other provision of law to the contrary, no person duly licensed as an auctioneer in any other state and temporarily present in this state shall conduct an auction in this state unless he or she acts in association with an auctioneer duly licensed in this state if the state in which the nonresident auctioneer is licensed requires such an association with an auctioneer licensed in that state before an auctioneer duly licensed in Arkansas may conduct an auction in that state.

History Acts 1989, No. 266, § 10; 1991, No. 786, § 22; 2023, No. 677, § 7.

17-17-306. Nonresidents — Actions against.

In addition, every nonresident applicant shall file an irrevocable consent that actions may be commenced against the applicant in any court of competent jurisdiction in the State of Arkansas, by the service of any summons, process, or pleading authorized by the law on the Secretary-treasurer of the Auctioneer's Licensing Board. The consent shall stipulate and agree that the service of the process, summons, or pleading on the secretary-treasurer shall be taken and held in all courts to be as valid and binding as if actual service had been made upon the applicant in Arkansas. In case any summons, process, or pleading is served upon the secretary-treasurer of the board, it shall be by duplicate copies, one (1) of which shall be retained in the office of the

board, and the other immediately forwarded by registered mail to the last known business address of the applicant against whom the summons, process, or pleading may be directed.

History Acts 1989, No. 266, § 10.

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.

History Acts 1989, No. 266, § 16; 2023, No. 677, § 8.

17-17-308. Suspension or revocation.

The Auctioneer's Licensing Board may impose a civil penalty or suspend or revoke the license of an auctioneer for any of the following causes:

- (1) Obtaining a license through false or fraudulent representation;
- (2) Pursuing a continued and flagrant course of misrepresentation or making false promises through agents or advertising or otherwise;
- (3) Failing to account for or remit within a reasonable time any money belonging to others that comes into his or her possession;
- (4) Commingling funds of others with his or her own or failing to keep the funds of others in an escrow or trustee account;
- (5) Paying valuable consideration to any person for services performed in violation of this chapter;
- (6) Being convicted of a criminal offense involving a felony listed under § 17-3-102 in a court of competent jurisdiction of this or any other jurisdiction;
- (7) Willfully violating a rule promulgated by the board;
- (8) Failing to enter into a written contract with the seller and to furnish voluntarily to the seller at the time of execution copies of all written instruments prepared by the auctioneer, including the contract;
- (9) Any conduct of an auctioneer that demonstrates bad faith, dishonesty, incompetency, untruthfulness, or deceptive practices;
- (10) Any other conduct that constitutes improper, fraudulent, or dishonest dealings, including falsely accusing any auctioneer or auction house;
- (11) Failing to complete or submit the continuing education requirements as specified by this chapter and the rules adopted by the board; or
- (12) Failing to disclose the buyer's premium in all advertising associated with an auction.

History Acts 1989, No. 266, § 11; 1999, No. 1333, § 7; 1999, No. 1506, § 2; 2001, No. 1258, § 1; 2003, No. 1748, § 4; 2019, No. 315, §§ 1352, 1353; 2019, No. 990, § 20.

17-17-309. Investigation by board.

The Auctioneer's Licensing Board may, upon its own motion, and shall, upon the verified written complaint of any person, investigate the actions of any auctioneer or any person who assumes to act in that capacity, if the complaint, or complaint together with other evidence presented in connection with it if true, would be a violation of this chapter.

History Acts 1989, No. 266, § 12.

17-17-310. Advertisements.

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

History Acts 1989, No. 266, § 17; 2023, No. 677, § 9.

17-17-311. Continuing education.

- (a) Except as provided in subsection (c) of this section, every application to the Auctioneer's Licensing Board for annual renewal of the license of an auctioneer shall be accompanied by proof that the applicant has satisfactorily completed six (6) hours of continuing education in approved programs within the preceding twelve-month period. No auctioneer's license shall be renewed unless the application for renewal is accompanied by the proof required in this section.
- (b) All programs of continuing education for licensed auctioneers shall be subject to approval of the board. The board is authorized to prescribe by rule the minimum standards and requirements for continuing education programs for auctioneers, the procedures and policies for administering such programs, and the manner and conditions under which credit will be granted for participation in such programs.
- (c) The continuing education requirements of this section shall not be applicable to any person who has been licensed as an auctioneer or auction house owner or operator by the board for a period of ten (10) consecutive years or more and who is at least fifty-five (55) years of age.

History Acts 1999, No. 1506, § 1; 2001, No. 1754, § 1; 2019, No. 315, § 1354.

17-17-312. Criminal background checks.

- (a) Beginning July 16, 2003, each first-time applicant for a license issued by the Auctioneer's Licensing Board and each applicant seeking reinstatement of an expired license from the board shall be required to apply to the Identification Bureau of the Division of Arkansas State Police for a state and national criminal background check to be conducted by the Federal Bureau of Investigation.
- (b) The check shall conform to the applicable federal standards and shall include the taking of fingerprints.
- (c) The applicant shall sign a release of information to the board and shall be responsible for the payment of any fee associated with the criminal background check.

(d) Upon completion of the criminal background check, the Identification Bureau of the Division of Arkansas State Police shall forward to the board all information obtained concerning the applicant in the commission of any offense listed in subsection (f) of this section.

(e) At the conclusion of any background check required by this section, the Identification Bureau of the Division of Arkansas State Police shall promptly destroy the fingerprint card of the applicant.

(f) No person shall be eligible to receive or hold a license issued by the board if that person has pleaded guilty or nolo contendere to, or been found guilty of, any of the following offenses by any court in the State of Arkansas or of any similar offense by a court in another state or of any similar offense by a federal court:

- (1) Capital murder, as prohibited in § 5-10-101;
- (2) Murder in the first degree and second degree, as prohibited in §§ 5-10-102 and 5-10-103;
- (3) Manslaughter, as prohibited in § 5-10-104;
- (4) Negligent homicide, as prohibited in § 5-10-105;
- (5) Kidnapping, as prohibited in § 5-11-102;
- (6) False imprisonment in the first degree, as prohibited in § 5-11-103;
- (7) Permanent detention or restraint, as prohibited in § 5-11-106;
- (8) Robbery, as prohibited in § 5-12-102;
- (9) Aggravated robbery, as prohibited in § 5-12-103;
- (10) Battery in the first degree, as prohibited in § 5-13-201;
- (11) Aggravated assault, as prohibited in § 5-13-204;
- (12) Introduction of a controlled substance into the body of another person, as prohibited in § 5-13-210;
- (13) Aggravated assault upon a law enforcement officer or an employee of a correctional facility, § 5-13-211, if a Class Y felony;
- (14) Terroristic threatening in the first degree, as prohibited in § 5-13-301;
- (15) Rape, as prohibited in § 5-14-103;
- (16) Sexual indecency with a child, as prohibited in § 5-14-110;
- (17) Sexual extortion, § 5-14-113;
- (18) Sexual assault in the first degree, second degree, third degree, or fourth degree, as prohibited in §§ 5-14-124 — 5-14-127;
- (19) Incest, as prohibited in § 5-26-202;
- (20) Offenses against the family, as prohibited in §§ 5-26-303 — 5-26-306;
- (21) Endangering the welfare of an incompetent person in the first degree, as prohibited in § 5-27-201;
- (22) Endangering the welfare of a minor in the first degree, as prohibited in § 5-27-205;
- (23) Permitting the abuse of a child, as prohibited in § 5-27-221;
- (24) Engaging children in sexually explicit conduct for use in visual or print media, transportation of minors for prohibited sexual conduct, pandering or possessing a visual or print medium depicting sexually explicit conduct involving a child, or use of a child or consent to use of a child in a sexual performance by producing, directing, or promoting a sexual performance by a child, as prohibited in §§ 5-27-303 — 5-27-305, 5-27-402, and 5-27-403;
- (25) Felony adult abuse, as prohibited in § 5-28-103;
- (26) Theft of property, as prohibited in § 5-36-103;
- (27) Theft by receiving, as prohibited in § 5-36-106;
- (28) Arson, as prohibited in § 5-38-301;

- (29) Burglary, as prohibited in § 5-39-201;
- (30) Felony violation of the Uniform Controlled Substances Act, § 5-64-101 et seq., as prohibited in the former § 5-64-401 and §§ 5-64-419 — 5-64-442;
- (31) Promotion of prostitution in the first degree, as prohibited in § 5-70-104;
- (32) Stalking, as prohibited in § 5-71-229; and
- (33) Criminal attempt, criminal complicity, criminal solicitation, or criminal conspiracy, as prohibited in §§ 5-3-201, 5-3-202, 5-3-301, and 5-3-401, to commit any of the offenses listed in this subsection.

(g)

(1) The provisions of subsection (f) of this section may be waived by the board upon the request of:

- (A) An affected applicant for licensure; or
- (B) The person holding a license subject to revocation.

(2) Circumstances for which a waiver may be granted shall include, but not be limited to, the following:

- (A) The age at which the crime was committed;
- (B) The circumstances surrounding the crime;
- (C) The length of time since the crime;
- (D) Subsequent work history;
- (E) Employment references; and
- (F) Character references.

(h)

(1) Any information received by the board from the Identification Bureau of the Division of Arkansas State Police under this section shall not be available for examination except by the:

- (A) Affected applicant for licensure, or his or her authorized representative; or
- (B) Person whose license is subject to revocation, or his or her authorized representative.

(2) No record, file, or document shall be removed from the custody of the Division of Arkansas State Police.

(i) Any information made available to the affected applicant for licensure or to the person whose license is subject to revocation shall be information pertaining to that person only.

(j) Rights of privilege and confidentiality established under this section shall not extend to any document created for purposes other than this background check.

(k) The board shall adopt the necessary rules to fully implement the provisions of this section.

History Acts 2003, No. 834, § 1; 2011, No. 570, § 119; 2017, No. 367, § 15; 2017, No. 664, § 9; 2019, No. 315, § 1355; 2023, No. 677, § 10.

17-17-401. Auctioneer Education and Recovery Fund.

(a) The Auctioneer's Licensing Board shall establish and administer the "Auctioneer Education and Recovery Fund" which shall only be used for education and recovery purposes as detailed in this chapter.

(b) The fees collected under § 17-17-404 shall be deposited into the fund.

History Acts 1999, No. 227, § 3; 2023, No. 677, § 11.

17-17-402. Applicability.

The provisions of this subchapter shall apply only to:

- (1) Auctioneers who were licensed at the time of the occurrence of the acts or violations complained of; and
- (2) Acts or violations which occur after December 31, 1999.

History Acts 1999, No. 227, § 3.

17-17-403. Construction.

Nothing in this subchapter shall be construed to limit or restrict in any manner other civil or criminal remedies which may be available to any person.

History Acts 1999, No. 227, § 3.

17-17-404. Additional fee.

(a) Except as provided in subsection (b) of this section, each auctioneer shall pay to the Auctioneer's Licensing Board at the time of initial licensure and at each annual renewal a fee as the board may require, not to exceed one hundred dollars (\$100). This fee shall be in addition to the other fees provided for in this chapter.

(b) When the balance in the Auctioneer Education and Recovery Fund reaches one hundred eighty thousand dollars (\$180,000), the fee shall be suspended until the fund balance falls to one hundred thousand dollars (\$100,000) at which time the collection of the fee shall resume until the fund balance reaches one hundred eighty thousand dollars (\$180,000).

History Acts 1999, No. 227, § 3.

17-17-405. Disciplinary hearing — Recovery procedure.

(a)

(1) In any disciplinary hearing before the Auctioneer's Licensing Board that involves a licensee who has allegedly violated any provision of this chapter, the board shall first determine whether a violation has occurred.

(2) If so, the board shall then determine the amount of damages, if any, suffered by the aggrieved party or parties. However, damages shall be limited to actual damages in accordance with § 17-17-407.

(3) The board shall then direct the licensee to pay that amount to the aggrieved party or parties.

(4)

(A) If that amount has not been paid within thirty (30) calendar days following entry of the board's final order in the matter and the order has not been appealed to the circuit court, then upon request the board shall pay from the Auctioneer Education and Recovery Fund to the aggrieved party or parties the amount specified.

(B) However, the board shall not:

- (i) Pay in excess of fifteen thousand dollars (\$15,000) for any one (1) violation or continuing series of violations regardless of the number of licensees who participated in the violation or continuing series of violations; or
- (ii) Pay an amount in excess of the fund balance.
- (b) The question of whether certain violations constitute a continuing series of violations shall be a matter solely within the discretion and judgment of the board.
- (c) Nothing within this subchapter shall obligate the fund for any amount in excess of a total of fifteen thousand dollars (\$15,000) with respect to:
 - (1) The acts of any one (1) licensee; or
 - (2) Any group of related claims.
- (d) Whether a claim is one (1) of a group of related claims shall be a matter solely within the discretion and judgment of the board.
- (e) When unsatisfied or pending claims exceed the limits payable under subsection (c) of this section, the board shall be the sole determinant of how the available funds shall be allocated among such claims.

History Acts 1999, No. 227, § 3; 2009, No. 773, § 2.

17-17-406. Education.

The Auctioneer's Licensing Board, in its discretion, may use any funds in the Auctioneer Education and Recovery Fund in excess of the one-hundred-eighty-thousand-dollar level, regardless of whether it is from the fund fees or accrued interest thereon for any or all of the following purposes:

- (1) To carry out the advancement of education in the auction field for the benefit of those licensed under the provisions of this chapter;
- (2) To assist in the improvement and efficiency of the auctioneering profession; and
- (3) To underwrite educational seminars and other forms of educational projects for the use and benefit of auctioneer licensees.

History Acts 1999, No. 227, § 3.

17-17-407. Jurisdiction.

(a) The Auctioneer's Licensing Board's jurisdiction and authority to award damages to an aggrieved party pursuant to § 17-17-405 is limited to actual compensatory damages. The board shall not award punitive or exemplary damages, nor shall it award interest on damages.

(b) The appellate jurisdiction of the circuit court is limited to the awarding of actual compensatory damages.

(c) The circuit court shall have no authority or jurisdiction to assess punitive or exemplary damages under this subchapter.

(d) The circuit court's jurisdiction over the Auctioneer Education and Recovery Fund shall be limited to appeals from the board's orders.

(e) The circuit court shall have no jurisdiction or authority to order payments from the fund in any amount in excess of either:

- (1) The amount determined by the board; or
- (2) The limits set forth in § 17-17-405.

History Acts 1999, No. 227, § 3.

17-17-408. Appeal.

(a) An appeal may be taken to the circuit court from a final order of the Auctioneer's Licensing Board in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(b) An appeal shall automatically stay that portion of the board's order which directs the payment of damages, and neither the licensee nor the board shall be obligated to pay the damages to the aggrieved party or parties until such time as the appeal is finally decided, whether in the circuit court or in the Supreme Court.

History Acts 1999, No. 227, § 3.

17-17-409. Subrogation — Suspension of license.

Upon the payment by the Auctioneer's Licensing Board of any amount of money under § 17-17-405:

- (1) The recipients of the payment, to the extent of the payment, shall assign to the board all rights and claims that they may have against the licensee involved;
- (2) The board shall be subrogated to all of the rights of the recipients of the payment to the extent of the payment; and
- (3) In addition to any other disciplinary action taken against the licensee on the merits of the hearing, his or her license shall be immediately suspended until he or she has completely reimbursed the board for the payment plus interest at a rate to be determined by the board.

History Acts 1999, No. 227, § 3.