

HOUSE BILL NO. 489

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE ROKEBERG

Introduced: 2/9/96

Referred: Labor and Commerce, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act regulating auctions and auctioneers; and providing for an effective date."**

2 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3 * **Section 1.** AS 08 is amended by adding a new chapter to read:

4 CHAPTER 10. AUCTIONS; AUCTIONEERS.

5 ARTICLE 1. BOARD OF AUCTIONEERS.

6 Sec. 08.10.010. CREATION OF BOARD; MEMBERSHIP. There is created
7 the Board of Auctioneers. It shall consist of five members appointed by the governor
8 and confirmed by the legislature. Three members shall be auctioneers licensed under
9 this chapter, and two members shall be public members under AS 08.01.025.

10 Sec. 08.10.020. REMOVAL OF MEMBER. Notwithstanding AS 08.01.020,
11 a member of the board may be removed only for cause. Unexcused absences from
12 three board meetings during a 12-month period may constitute cause. Valid excuses
13 for absences include

14 (1) illness of the board member;

15 (2) death of the member's spouse, child, mother, father, mother-in-law,

1 father-in-law, grandmother, or grandfather;

2 (3) acts of God, including severe weather, that made attendance
3 impracticable.

4 Sec. 08.10.030. MEETINGS. The board shall meet as necessary to transact its
5 business, but no more than once every three months.

6 Sec. 08.10.040. QUORUM; VOTES. As provided under AS 08.01.030, a
7 majority of the membership of the board constitutes a quorum. However, a majority
8 vote of the full membership of the board is required to transact business that requires
9 a vote, other than convening and adjourning.

10 Sec. 08.10.050. OFFICERS. The members shall elect from among themselves
11 a chair and a secretary. A person may not serve more than two consecutive terms as
12 chair.

13 Sec. 08.10.060. REGULATIONS. The board shall adopt regulations to
14 implement the licensing requirements of this chapter.

15 ARTICLE 2. LICENSING REQUIREMENTS.

16 Sec. 08.10.100. LICENSES REQUIRED. (a) An individual may not conduct
17 an auction, offer to conduct an auction, or advertise as being available to conduct an
18 auction unless the person is licensed as an auctioneer under this chapter, is exempt
19 from auctioneer licensing under AS 08.10.900, or is an apprentice licensed under this
20 chapter who is participating in an auction under the direct supervision of an auctioneer
21 licensed under this chapter.

22 (b) An individual may not be an apprentice auctioneer unless licensed under
23 this chapter as an apprentice auctioneer.

24 (c) An auction company may not conduct an auction, offer to conduct an
25 auction, or advertise as being available to conduct an auction unless the business is
26 licensed under this chapter as an auction business.

27 Sec. 08.10.110. AUCTIONEER LICENSE. Upon proper application and
28 payment of the appropriate fees set under AS 08.01.065, the board shall issue an
29 auctioneer license to an individual who submits proof satisfactory to the board that the
30 individual

31 (1) is at least 18 years of age;

1 (2) has not, within the preceding five years, been convicted of a felony;

2 (3) has not been convicted of an offense under AS 11.46, violation of
3 an ordinance with elements similar to an offense under AS 11.46, or violation of a law
4 or ordinance in another jurisdiction with elements similar to an offense under AS
5 11.46;

6 (4) has not been a partner in a partnership or an officer or controlling
7 stockholder of a corporation, association, or other business entity that has been
8 convicted of an offense described in (3) of this section;

9 (5) has not had a license similar to one issued under this chapter
10 revoked or suspended in another jurisdiction;

11 (6) has been licensed as an apprentice auctioneer under this chapter for
12 at least one year and participated in at least 20 auctions under the direct supervision
13 of an auctioneer licensed under this chapter;

14 (7) has passed a written and oral examination approved by the
15 department that tests the individual's vocal abilities for auctioneering and the person's
16 general knowledge of the laws of this state relating to bulk sales, auctions, brokerage
17 transactions, trade and commerce, and the provisions of this chapter;

18 (8) is in compliance with AS 08.10.200 - 08.10.310; and

19 (9) has graduated from an auction school approved by the board that
20 requires for graduation the successful completion of at least 80 hours of instruction
21 approved by the board in the following areas:

22 (A) audience communications;

23 (B) procurement of merchandise for auction;

24 (C) appraisals;

25 (D) auction law;

26 (E) preparations for auctions;

27 (F) advertising auctions; and

28 (G) conducting auctions.

29 Sec. 08.10.120. APPRENTICE AUCTIONEER LICENSE. Upon proper
30 application and payment of the appropriate fees set under AS 08.01.065, the board
31 shall issue an apprentice auctioneer license to an individual who submits proof

1 satisfactory to the board that the individual

2 (1) is sponsored by an auctioneer licensed under this chapter;

3 (2) has not, within the preceding five years, been convicted of a felony;

4 (3) has not been convicted of an offense under AS 11.46, violation of
5 an ordinance with elements similar to an offense under AS 11.46, or violation of a law
6 or ordinance in another jurisdiction with elements similar to an offense under AS
7 11.46;

8 (4) has not been a partner in a partnership or an officer or controlling
9 stockholder of a corporation, association, or other business entity that has been
10 convicted of an offense described in (3) of this section; and

11 (5) has not had a license similar to one issued under this chapter
12 revoked or suspended in another jurisdiction.

13 Sec. 08.10.130. AUCTION BUSINESS LICENSE. (a) Upon proper
14 application and payment of the appropriate fees set under AS 08.01.065, the board
15 shall issue an auction business license to an auction company that submits proof
16 satisfactory to the board that the auction company

17 (1) employs a person licensed under this chapter as an auctioneer; if
18 the licensed auctioneer leaves the company, the company may not conduct an auction
19 until employing another licensed auctioneer;

20 (2) has not, within the preceding five years, been convicted of a felony;

21 (3) has not been convicted of an offense under AS 11.46, violation of
22 an ordinance with elements similar to an offense under AS 11.46, or violation of a law
23 or ordinance in another jurisdiction with elements similar to an offense under AS
24 11.46;

25 (4) is in compliance with AS 08.10.200 - 08.10.310; and

26 (5) has not had a license similar to one issued under this chapter
27 revoked or suspended in another jurisdiction.

28 (b) An application for an auction business license must include

29 (1) the name of the auction company;

30 (2) the names of the owners of the auction company;

31 (3) the auction company's mailing address;

- 1 (4) the location where the records of the auction company are kept; and
2 (5) other information the board may require.

3 (c) Within 30 days after a change in the information required under (b) of this
4 section, a licensed auction business shall report the change to the board.

5 (d) A licensed auction business may not operate indoors at a fixed location
6 without

- 7 (1) adequate ventilation for removal of tobacco smoke;
8 (2) separate restrooms for male and female customers;
9 (3) adequate unlocked lighted fire escapes; and
10 (4) automatic emergency lighting that operates during general power
11 failures.

12 Sec. 08.10.140. LICENSES NONTRANSFERABLE. A license issued under
13 this chapter is not transferable.

14 ARTICLE 3. BONDING REQUIREMENTS.

15 Sec. 08.10.200. AMOUNT OF BOND; SCOPE. A licensed auctioneer and a
16 licensed auction business shall maintain a \$100,000 surety bond issued by an entity
17 authorized to do bonding business in the state. The bond must be in a form approved
18 by the board and run in favor of the state for the use and benefit of persons who do
19 business with the auctioneer or auction business who are damaged by the auctioneer's
20 or auction business's violation of this chapter or by the auctioneer's or auction
21 business's breach of a contract with the person. In addition to damages, the bond must
22 cover reasonable costs and attorney fees for prevailing plaintiffs under this section.

23 Sec. 08.10.210. PERSONS COVERED UNDER BOND. (a) A bond
24 maintained under AS 08.10.200 for a licensed auctioneer must include coverage of
25 licensed apprentice auctioneers that are supervised by the auctioneer except that the
26 auctioneer's bond need not include coverage of an apprentice auctioneer if the
27 apprentice auctioneer is covered under the bond maintained by a licensed auction
28 business and the apprentice works exclusively for the auction business.

29 (b) The bond maintained under AS 08.10.200 by a licensed auction business
30 may include coverage of auctioneers and apprentice auctioneers who work exclusively
31 for the auction business. The bond's coverage of an auctioneer or apprentice

1 auctioneer expires when the auctioneer or apprentice auctioneer leaves the employment
2 of the auction business.

3 Sec. 08.10.220. BONDING OPTION FOR CERTAIN AUCTIONEERS. A
4 licensed auctioneer who is the sole proprietor of an auction company is required to
5 maintain a bond under AS 08.10.200 only as either

6 (1) an auctioneer; or

7 (2) a covered person under the bond maintained by a licensed auction
8 business if the auctioneer conducts auctions exclusively for the auction business.

9 Sec. 08.10.230. POSTING OF BOND. A bond required under AS 08.10.200
10 need not be posted until the applicant for a license under this chapter is notified by the
11 board that the applicant meets all other requirements for licensure under this chapter.
12 However, a license may not be issued to an applicant until the required bond is posted
13 with the department.

14 ARTICLE 4. INSURANCE REQUIREMENTS.

15 Sec. 08.10.300. LIABILITY INSURANCE. (a) A licensed auctioneer and a
16 licensed auction business shall maintain comprehensive commercial general liability
17 insurance with coverage limits of not less than \$300,000 per occurrence, subject to an
18 annual maximum as provided in the policy. The policy must include coverage for

19 (1) premises - operations;

20 (2) independent contractors working with the auctioneer or auction
21 business;

22 (3) products - complete operations;

23 (4) broad form property damage;

24 (5) blanket contractual; and

25 (6) personal injury.

26 (b) A policy maintained under this section must provide that the insurer will
27 notify the department if the policy is cancelled or its coverage is changed as to
28 amount, types of coverage, or persons covered.

29 Sec. 08.10.310. MOTOR VEHICLE INSURANCE. A licensed auctioneer or
30 licensed auction business shall maintain comprehensive motor vehicle liability
31 insurance. A policy maintained under this section must provide coverage subject to

1 limits exclusive of interest and costs, with respect to each vehicle owned, hired, or
2 rented by the auctioneer or auction business, as follows:

3 (1) \$100,000 because of bodily injury to or death of one person in one
4 accident, and, subject to the same limit for one person, \$300,000 because of bodily
5 injury to or death of two or more persons in one accident; and

6 (2) \$50,000 because of injury to or destruction of property of others in
7 one accident.

8 ARTICLE 5. AUCTION PRACTICES.

9 Sec. 08.10.400. ADVERTISING CERTAIN AUCTIONS. (a) An
10 advertisement for an auction of a person's estate, whether it is the estate of a decedent
11 or of a living person, must include the

12 (1) person's name; and

13 (2) name, telephone number, and license number of the auctioneer or
14 auction business conducting the auction.

15 (b) An advertisement for an auction conducted under AS 45.07.210 must
16 describe the auction as a storage auction and include the following information:

17 (1) the name and address of the storage facility;

18 (2) the name of the individuals whose units or property are involved
19 in the auction unless the individuals' names have already been published under
20 AS 45.07.210(b)(6) in a newspaper of general circulation in the area where the auction
21 will be held.

22 Sec. 08.10.410. AUCTION AGREEMENT. (a) Before conducting an auction
23 in this state, a licensed auctioneer or licensed auction business shall execute a written
24 agreement with the owner of the property to be offered for sale or with the owner's
25 agent. The agreement must include

26 (1) the name and address of the owner of the property;

27 (2) the name and address of the person who is employing the
28 auctioneer or auction business if different from the owner of the property; and

29 (3) the terms and conditions under which the auctioneer or auction
30 business will receive the property and remit the sale proceeds to the owner.

31 (b) Before an auction is conducted at an auction house or similar place where

1 the public regularly offers property for sale in multiple lots and there has been no prior
2 negotiation between the property's owner or agent and the auctioneer or auction
3 company involving terms or conditions pertaining to the property being offered for
4 sale, then

5 (1) the property of lots to be auctioned must be received and
6 inventoried on a three-part form stating the name and address of the property's owner
7 or the owner's agent, the lot number assigned, the date the form was completed, the
8 date of the anticipated auction, the date of the actual auction, total sales proceeds of
9 items sold, commission, cost of related fees or services, actual amount of money sent
10 to the consignor, check number of money sent to the consignor, and number of pages
11 in the document required under this paragraph;

12 (2) one copy of the form required under (1) of this subsection shall be
13 given to the consignor at the time of consignment and another copy shall be given to
14 the consignor after the auction along with a copy of the clerk tickets or an itemized
15 printout that shows the lot number, bidder number, a description of the item auctioned,
16 and the price received for the item;

17 (3) the auctioneer or auction company shall file the original of the
18 document required under (1) of this subsection with the paperwork associated with this
19 auction and keep it for at least five years.

20 Sec. 08.10.420. AUCTION RECORDS. (a) A licensed auctioneer or licensed
21 auction business shall keep a record of the bidders at an auction. The record must
22 include at least the following information:

23 (1) location and date of sale;

24 (2) the bidder's bidding number, name, and company;

25 (3) the physical location of the bidder's residence or the bidder's
26 company by use of a street number or milepost, city, state, and zip code;

27 (4) the bidder's telephone number; and

28 (5) the bidder's signature.

29 (b) The information required under (a) of this section may include a post office
30 box in addition to, but not instead of, the street address of the bidder or of the bidder's
31 company.

1 Sec. 08.10.430. AUCTION PROCEEDS. A licensed auctioneer or licensed
2 auction business shall maintain a separate trust or escrow account in a federally insured
3 bank or savings and loan association located in the state in which shall be deposited
4 all proceeds received by the auctioneer or auction business for another person through
5 an auction sale.

6 ARTICLE 6. DISCIPLINARY ACTIONS; PENALTIES.

7 Sec. 08.10.500. GROUNDS FOR DISCIPLINARY ACTIONS. The board may
8 deny a license to a person or take a disciplinary action authorized under AS 08.01.075
9 against a licensee if the person or licensee

10 (1) violates AS 45 or a regulation adopted under AS 45;

11 (2) violates this chapter or a regulation adopted under this chapter;

12 (3) is convicted or has been convicted in any jurisdiction of a felony,
13 an offense that would be grounds for denial of an initial license under this chapter, or
14 an offense that in the judgment of the board, directly relates to the practice or the
15 ability to practice the profession of auctioneering;

16 (4) misrepresents property for auction or makes false promises
17 concerning the use, value, or condition of the property;

18 (5) fails to account for or to pay, within a reasonable time not to
19 exceed 15 banking days from the last auction of goods, money belonging to another
20 that has come into the control of the person or licensee through an auction unless a
21 written contract between the relevant parties stipulates other applicable terms and
22 conditions;

23 (6) uses false, deceptive, misleading, or untruthful advertising;

24 (7) acts in connection with a sales transaction in a manner that
25 demonstrates bad faith or dishonesty;

26 (8) uses or permits the use of false bidders, cappers, shills, puffing, or
27 other method of employing false bids to increase the sale price of an auctioned item;

28 (9) makes a material false statement on a license application;

29 (10) commingles money or property of another person or business
30 received at auction with those of the licensee; or

31 (11) has a license to practice a comparable profession revoked,

1 suspended, or otherwise acted against by another jurisdiction.

2 Sec. 08.10.510. PENALTY. A person who violates this chapter or a regulation
3 adopted under this chapter is guilty of a class C felony.

4 ARTICLE 7. GENERAL PROVISIONS.

5 Sec. 08.10.900. EXEMPTIONS. This chapter does not apply to the following:

6 (1) an auction of goods conducted by an individual who personally
7 owns the goods and who did not acquire the goods at auction or for resale publicly or
8 privately;

9 (2) an auction conducted by or for charitable, civic, religious, or
10 political organizations by an auctioneer who neither receives compensation for the
11 auction nor is advertised as being the auctioneer for the auction;

12 (3) an auction of fur pelts or reindeer horn conducted by a cooperative
13 association organized under state law or the cooperative's wholly owned subsidiary if
14 at least 85 percent of the fur pelts and reindeer horn are from members of the
15 association and the fur pelts and reindeer horn from nonmembers are included only for
16 the purpose of completing lots or orders;

17 (4) an auction conducted by a person enrolled in a class at a school of
18 auctioneering approved by the board if the auction is for the purpose of training and
19 receiving instruction, is under the direct supervision of a licensed auctioneer who is
20 an instructor at the school or a licensed auctioneer who assumes full responsibility for
21 the activities of the student auctioneer.

22 Sec. 08.10.990. DEFINITIONS. In this chapter,

23 (1) "auction" means a transaction conducted by means of exchanges
24 between an auctioneer and the members of the auctioneer's audience, constituting a
25 series of invitations for offers for the purchase of goods or real property made by the
26 auctioneer, offers by the members of the audience, and the acceptance of the highest
27 or most favorable offer;

28 (2) "auction company" means a sole proprietorship, person, partnership,
29 corporation, or other legal or commercial entity that sells or offers to sell goods or real
30 estate at auction or that arranges, sponsors, advertises, or manages auctions;

31 (3) "auctioneer" means an individual who calls for bids or conducts or

1 offers to conduct an auction either orally or silently;

2 (4) "auction house" means a fixed or established place designed,
3 intended, or used for the conduct of auctions;

4 (5) "board" means the Board of Auctioneers established under this
5 chapter;

6 (6) "goods" means wares, chattels, merchandise, or personal property,
7 owned or consigned, that may be lawfully kept or offered for sale;

8 (7) "licensee" means an auctioneer, apprentice auctioneer, or auction
9 company licensed under this chapter.

10 * **Sec. 2.** AS 08.01.010 is amended by adding a new paragraph to read:

11 (37) Board of Auctioneers (AS 08.10.010).

12 * **Sec. 3.** AS 08.03.010(c) is amended by adding a new paragraph to read:

13 (25) Board of Auctioneers (AS 08.10.010) -- June 30, 2000.

14 * **Sec. 4.** AS 44.62.330(a) is amended by adding a new paragraph to read:

15 (60) Board of Auctioneers.

16 * **Sec. 5.** TRANSITIONAL PROVISIONS. (a) Notwithstanding AS 39.05.055, the five
17 persons initially appointed to the Board of Auctioneers that is established under this Act shall
18 be appointed to terms as follows:

19 (1) one person each shall be appointed to terms of one, two, and three years;

20 (2) two persons shall be appointed to a term of four years.

21 (b) Notwithstanding AS 08.10.010, enacted by sec. 1 of this Act, the three initial
22 appointees to the Board of Auctioneers that is established under this Act who are auctioneers
23 are not required to be licensed under this chapter before their appointment, but they must have
24 had, in the seven years immediately preceding their initial appointment, at least five years of
25 regular auctioneering experience. A person appointed under this subsection may not be
26 reappointed unless the person is licensed under AS 08.10, enacted by sec. 1 of this Act.

27 (c) Notwithstanding AS 08.10, added by sec. 1 of this Act, the Board of Auctioneers
28 shall issue an auctioneer license to an individual who

29 (1) applies for the license by July 1, 1997;

30 (2) submits proof satisfactory to the board of having been the auctioneer at no
31 less than 30 auctions in the state within the preceding two years, one of which involved at

1 least \$30,000 in gross proceeds;

2 (3) demonstrates compliance with the insurance and bonding requirements of
3 AS 08.10.200 - 08.10.310; and

4 (4) pays the applicable fee set under AS 08.01.065.

5 (d) After initial issuance, a license issued under (c) of this section and the licensee to
6 whom the license is issued are subject to AS 08.10, enacted by sec. 1 of this Act.

7 * **Sec. 6.** AS 08.10.010 - 08.10.060, enacted by sec. 1 of this Act, and secs. 2 - 4 and 5(a)
8 and (b) of this Act take effect immediately under AS 01.10.070(c).

9 * **Sec. 7.** Except as provided in sec. 6 of this Act, this Act takes effect January 1, 1997.