

CHAPTER NO. 358

SENATE BILL NO. 1825

By Ramsey

Substituted for: House Bill No. 336

By Sands

AN ACT To amend Tennessee Code Annotated, Title 62, Chapter 19, Part 1, relative to auctioneers.

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

SECTION 1. Tennessee Code Annotated, Title 62, Chapter 19, Part 1, is amended by deleting the words "executive secretary" every time such words appear and by substituting instead the words "administrative director".

SECTION 2. Tennessee Code Annotated, Section 62-19-106(e), is amended by deleting the subsection in its entirety and by substituting instead the following:

(e)(1) The commission has the authority to establish continuing education requirements and standards for individual licensees. The provisions of this subsection shall apply only to those licensees who received their license after January 1, 1985.

(2) Auctioneers who have reached the age of sixty (60) years and have been licensed as an auctioneer for ten (10) years or longer are exempt from continuing education requirements.

(3) No apprentice shall be exempt from continuing education requirements.

SECTION 3. Tennessee Code Annotated, Section 62-19-110(b), is amended by deleting the subsection in its entirety.

SECTION 4. Tennessee Code Annotated, Section 62-19-111, is amended by adding the following as an appropriately designated new subsection:

() The commission may deny any applicant for an apprentice, auctioneer, or firm license the right to take an examination for a period up to two (2) years if the applicant is found by the commission to have conducted business within this state as an apprentice auctioneer, auctioneer, or firm owner without first having been properly licensed.

SECTION 5. Tennessee Code Annotated, Section 62-19-111(h), is amended by adding the following as appropriately designated new subdivisions:

() Any person in this state who for a fee is in the business of managing auctions to the extent they are responsible for the advertising, consignments, promotion, and/or distribution of funds must hold a valid firm license.

() All contracts for services to be performed by an auction firm, except an auto auction as defined in Tennessee Code Annotated, Section 55-17-102(2),

must be negotiated for and signed by an auctioneer who is a member of the firm or by his attorney.

SECTION 6. Tennessee Code Annotated, Section 62-19-111(i), is amended by deleting the subsection in its entirety and by substituting instead the following:

(i) All licenses issued by the commission shall expire two (2) years from the original date the license was issued. Each license must be renewed on or before its expiration date.

SECTION 7. Tennessee Code Annotated, Section 62-19-112(d), is amended by deleting the subsection in its entirety and by substituting instead the following:

(d) An auctioneer or apprentice auctioneer may retire such auctioneer's or apprentice auctioneer's license by making such request in writing and paying the appropriate fees set by the commission. The written request must be accompanied by the license certificate and pocket card. The retiree shall be responsible for notifying the commission of any change in address. Only licenses that are current and in good standing with the commission may be retired.

SECTION 8. Tennessee Code Annotated, Section 62-19-116(l)(1)(C), is amended by adding the following at the end of the subdivision:

The investigator shall carry an identification badge issued by the Department of Commerce and Insurance and shall have the authority to make investigations concerning the enforcement of the laws, rules, and policies promulgated under this part. The investigator shall have the authority to stop any auction activity that is being promoted, managed or supervised by unlicensed individuals in violation of this part.

SECTION 9. Tennessee Code Annotated, Section 62-19-118(c)(2), is amended by deleting the subdivision in its entirety and by substituting instead the following:

The commission shall have the authority to promulgate rules with regard to advertising auctions in Tennessee.

SECTION 10. Tennessee Code Annotated, Title 62, Chapter 19, Part 1, is amended by adding the following as an appropriately designated new section:

Section 62-19-1____.

(a) Any person that desires to own and operate an auction house, auction barn, auction gallery, or any other type auction operating at a fixed site for the purpose of selling consigned or purchased goods at a fixed location is required to first obtain a gallery license. If the gallery license holder operates more than one (1) auction, the licensee shall be required to obtain a branch license for each permanent location and pay the appropriate fees. If the auction house, auction barn, or auction gallery is owned and operated by a licensed auctioneer holding a valid firm license, no further license shall be required.

(b) A gallery license holder may sign consignment agreements, issue closing statements, collect and disperse funds. The licensee must hire a licensed auctioneer to call bids at all auctions. The gallery license holder is responsible for all auction activities that take place on the auction site and may

not conduct auctions off the designated site. A gallery license does not give the license holder the right to call bids or act as an auctioneer at any time.

(c) The person who desires to obtain a gallery license shall submit an application to the commission on the prescribed form. A person who desires to obtain a gallery license for a firm shall request issuance of the license in the name of the firm with a specific person acting as principal. The application shall demonstrate satisfactory proof that such person has:

(1) reached the age of eighteen (18) years;

(2) successfully completed at least thirty (30) hours of classroom education approved by the commission; and

(3) provided other information as the commission may require to demonstrate honesty, trustworthiness, integrity, reputation, and competency.

(d) Upon approval of the application by the commission, the applicant must take and successfully pass an examination prescribed by the commission. All examination fees are set by the commission.

(e) Applicants completing the requirements of this section shall be issued a license certificate and a pocket card. The license certificate shall be displayed in a conspicuous place where it can be examined by the public.

(f) The gallery license holder must comply with all of the requirements of Tennessee license laws and regulations that apply to all licensees.

(g) Licensees holding non-auctioneer firm licenses for the purpose of owning and operating an auction barn, auction house, or auction gallery, may convert their non-auctioneer firm license to a gallery license at any time during a two (2) year period beginning July 1, 1999, and ending June 30, 2001, by requesting such change in writing without meeting any other requirements. No fee other than ordinary renewal fees shall be charged to convert licenses described in this section.

SECTION 11. Tennessee Code Annotated, Title 62, Chapter 19, Part 1, is amended by adding the following as an appropriately designated new section:

62-19-1__.

(a)(1) The director and the investigator, acting on behalf of the commission, is authorized to issue citations against persons acting in the capacity of engaging in the auction business without a license in violation of this part.

(2) Each citation shall be in writing and shall describe with specificity the basis of each citation.

(3) Each citation shall contain an order to cease all violation of this part and an assessment of a civil penalty in an amount of not less than fifty dollars (\$50.00) nor more than two thousand five hundred dollars (\$2,500) for each violation.

(b) The commission shall promulgate rules and regulations to specify those conditions necessary to the issuance of a citation, and the range of penalties for violations of this part.

(c) Service of a citation issued pursuant to this section may be made in person or by certified mail at the last known business address or residence address of the person cited.

(d) A citation issued pursuant to this section shall be issued by the director or investigator within one (1) year after the act or omission which is the basis for the citation.

(e) Any person served with a citation pursuant to this section may appeal to the director by written notice postmarked within fifteen (15) working days after service of the citation with respect to violations alleged, scope of the order or amount of civil penalty assessed.

(f) If a person cited timely notifies the director that such person intends to contest the citation, the director shall afford an opportunity for a contested case hearing pursuant to the Uniform Administrative Procedures Act.

(g) After all administrative appeals have been exhausted, the director may apply to the appropriate court for judgment in an amount of the civil penalty, plus applicable court costs, and for an order to cease activities in violation of this part. The motion for the order, which shall include a certified copy of the final order of the hearing officer or administrative judge, shall constitute a sufficient showing to warrant the issuance of judgment and order.

(h) The commission may waive any or all of a civil penalty by stating the reasons for such waiver in the official minutes of the commission.

SECTION 12. Tennessee Code Annotated, Title 62, Chapter 19, Part 1, is hereby amended by adding the following appropriately designated new section:

62-19-1__.

In addition to the powers and duties otherwise conferred upon the commission herein, the commission is empowered to petition directly any circuit or chancery court having jurisdiction of any person in this state who is violating any of the provisions of this part, either with or without a license hereunder, to enjoin such person from continuing such violation, and jurisdiction is conferred upon the chancery and circuit courts of this state to hear and determine such causes.

SECTION 13. The commissioner is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the provisions of Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 14. The provisions of this act shall not apply to any court sale.

SECTION 15. This act shall take effect on July 1, 1999, the public welfare requiring it.

PASSED: May 24, 1999


JOHN S. WILDER
SPEAKER OF THE SENATE


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 14th day of June 1999


DON CONQUIST, GOVERNOR