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Chapter No. 415
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HOUSE BILL NO. 1165

Originated in House _____ Clerk

HOUSE BILL NO. 1165

AN ACT TO REENACT SECTIONS 73-4-1 THROUGH 73-4-51, MISSISSIPPI CODE OF 1972, WHICH CREATE THE MISSISSIPPI AUCTIONEERS LICENSE ACT; TO AMEND REENACTED SECTIONS 73-4-23, 73-4-27 AND 73-4-35, MISSISSIPPI CODE OF 1972, TO MAKE TECHNICAL CORRECTIONS; TO AMEND SECTION 73-4-53, MISSISSIPPI CODE OF 1972, TO EXTEND THE DATE OF REPEAL ON THE MISSISSIPPI AUCTIONEERS LICENSE ACT; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. Section 73-4-1, Mississippi Code of 1972, is reenacted as follows:

73-4-1. This chapter shall be known and may be cited as the "Mississippi Auctioneers License Act."

SECTION 2. Section 73-4-3, Mississippi Code of 1972, is reenacted as follows:

73-4-3. For the purposes of this chapter, the following words and phrases shall have the meanings ascribed herein, unless the context otherwise requires:

(a) "Auction" means a sale transaction conducted by means of oral or written exchanges between an auctioneer and the members of his audience, which exchanges consist of a series of

invitations for offers for the purchase of goods made by the auctioneer and offers to purchase made by members of his audience and culminate in the acceptance by the auctioneer of the highest or most favorable offer made by a member of the participating audience.

(b) "Auction firm" means any business establishment or other location owned by any entity where goods are sold or advertised to be sold at auction or on any recurring basis.

(c) "Auctioneer" means an individual who is engaged in, or who by advertising or otherwise holds himself out as being available to engage in, the calling for, the recognition of, and the acceptance of, offers for the purchase of goods or real estate at an auction.

(d) "Commission" means the Mississippi Auctioneer Commission.

(e) "Goods" means any tangible personal property that can be lawfully offered for sale, real estate, property sold pursuant to any will or settlement of any estate, property sold pursuant to any legal foreclosure, automobiles or farm or other heavy equipment.

(f) "Licensee" means any person licensed under this chapter, and, in the case of an auction firm, includes the person required to obtain a license for such auction firm.

(g) "Organization" means a corporation, partnership, trust (specifically a business trust), firm, association, or any

other form of business enterprise which is owned by two (2) or more individuals.

(h) "Person" means an organization or an individual.

SECTION 3. Section 73-4-5, Mississippi Code of 1972, is reenacted as follows:

73-4-5. (1) It is unlawful for any person, corporation, limited liability company, partnership or other entity to conduct an auction, provide an auction service, hold himself out as an auctioneer, or advertise his services as an auctioneer in the State of Mississippi without a license issued by the commission under this chapter.

(2) The provisions of this chapter shall not apply to the following transactions:

(a) A sale conducted by order of any United States court pursuant to Title 11 of the United States Code relating to bankruptcy;

(b) A sale conducted by an employee of the United States or the State of Mississippi or its political subdivisions in the course and scope of his employment;

(c) A sale conducted by a charitable or nonprofit organization if the auctioneer receives no compensation;

(d) A sale conducted by an individual of his own property if such individual is not engaged in the business of selling such property as an auctioneer on a recurring basis;

(e) A sale conducted by an individual acting as a receiver, trustee in bankruptcy, guardian, administrator or executor or any such person acting under order of court; by a real estate agent, broker or salesman, who auctions property that he has an exclusive listing agreement on, if done through a silent or written auction not done by public outcry or by a trustee acting under a trust agreement, deed of trust or will;

(f) A foreclosure sale of personal property conducted personally by the mortgagee or other secured party or an employee or agent of such mortgagee or other secured party acting in the course and scope of his employment if the employee or agent is not engaged otherwise in the auction business and if all property for sale in the auction is subject to a security agreement;

(g) A sale conducted by sealed bid;

(h) An auction conducted in a course of study, approved by the Secretary of State, for auctioneers and conducted only for student training purposes;

(i) An auction conducted by a posted stockyard or market agency as defined by the Federal Packers and Stockyard Act, 1921, as amended (7 USCS 181 et seq.);

(j) An auction of livestock conducted by a nonprofit livestock trade association chartered in this state if the auction involves only the sale of the trade association's members' livestock; or

(k) An auction conducted by a charitable or nonprofit organization chartered in this state if the auction involves only the property of the organization's members and the auction is part of a fair that is organized under state, county or municipal authority.

SECTION 4. Section 73-4-7, Mississippi Code of 1972, is reenacted as follows:

73-4-7. (1) The Mississippi Auctioneer Commission is created, and it shall have the authority to make such rules and regulations as are reasonable and necessary for the orderly regulation of the auctioneering profession and the protection of the public, which rules and regulations are not inconsistent with the Mississippi Constitution of 1890 and state laws. The commission shall have the following powers:

(a) The power to set reasonable license fees, to collect and hold such fees and to disburse such fees in any manner not inconsistent with this chapter.

(b) The power to make such rules and regulations as will promote the orderly functioning of the auction profession and ensure the protection of the public.

(c) The power to hire and retain such staff and support personnel as are necessary to conduct business and assure compliance with this chapter.

(d) The power to conduct investigations, hold hearings, subpoena witnesses, make findings of fact and otherwise enforce the disciplinary provisions contained in this chapter.

(2) The Mississippi Auctioneer Commission shall consist of five (5) members, one (1) from each congressional district, who shall be appointed by the Governor. All appointees shall possess the following minimum qualifications:

(a) An appointee shall be a citizen of Mississippi.

(b) An appointee shall have been engaged as an auctioneer for a period of not less than five (5) years immediately preceding his appointment.

(c) An appointee shall be of good reputation, trustworthy and knowledgeable in the auction profession.

An individual may not act as a member of the commission while holding another elected or appointed office in either the state or federal government or while owning a school or other facility to train individuals to be auctioneers.

(3) In order to assure continuity, the Governor shall appoint the initial members of the commission for the following terms:

(a) The member appointed from the First Congressional District shall serve a term of one (1) year;

(b) The member appointed from the Second Congressional District shall serve a term of two (2) years;

(c) The member appointed from the Third Congressional District shall serve a term of three (3) years;

(d) The member appointed from the Fourth Congressional District shall serve a term of four (4) years; and

(e) The member appointed from the Fifth Congressional District shall serve a term of five (5) years.

Subsequent terms shall be for five (5) years, except for interim appointments to fill unexpired terms which shall be only for the unexpired term.

(4) Each member of the commission shall receive a per diem as provided by Section 25-3-69 per meeting and shall be reimbursed for ordinary and necessary expenses incurred in the performance of official duties as provided in Section 25-3-41.

SECTION 5. Section 73-4-9, Mississippi Code of 1972, is reenacted as follows:

73-4-9. The commission shall meet each January at a time and place established by the chairman to conduct an election of officers and such other business as may be appropriate. The commission shall also meet upon the call of the chairman or upon the request of any two (2) members of the commission. The secretary shall provide reasonable notice of the time and place of each meeting to all members.

Three (3) members shall constitute a quorum for the purpose of transacting business. A majority vote of the commission shall be necessary to bind the commission.

SECTION 6. Section 73-4-11, Mississippi Code of 1972, is reenacted as follows:

73-4-11. (1) At the meeting to be held each January, the commission shall elect from its membership a chairman and a vice chairman. Each officer shall serve a term of one (1) year and shall not vacate office until a successor is elected.

(2) The chairman shall preside at all meetings of the commission.

(3) The vice chairman shall act as presiding officer in the absence of the chairman and shall perform such other duties as the chairman may direct.

(4) The commission shall appoint an executive director who shall not be a member of the commission.

(5) The executive director shall:

(a) Notify all members of meetings;

(b) Keep a record of all meetings of the commission, votes taken by the commission and other proceedings, transactions, communications, official acts and records of the commission; and

(c) Perform such other duties as the chairman directs.

SECTION 7. Section 73-4-13, Mississippi Code of 1972, is reenacted as follows:

73-4-13. The commission is empowered to:

(a) Administer and enforce the provisions of this chapter.

(b) Promulgate such rules and regulations and prescribe such forms as are necessary for the administration and the effective and efficient enforcement of this chapter.

(c) Issue, suspend and revoke licenses in accordance with this chapter.

(d) Provide for the filing and approval of surety bonds as required by this chapter.

(e) Investigate complaints concerning licensees or persons the commission has reason to believe should be licensees, specifically including complaints respecting failure to comply with this chapter or the rules and regulations promulgated as authorized by this chapter and to take appropriate action to address such complaints.

(f) Commence actions, in the name of the State of Mississippi, in an appropriate circuit court in order to force compliance with this chapter or rules and regulations promulgated hereunder by restraining order or injunction.

(g) Hold public hearings on any matters for which a hearing is required under this chapter and to have all powers granted by law for such hearings.

(h) Adopt a seal and, through its secretary, certify copies.

(i) Appoint an executive director and employ all necessary employees and consultants to administer and enforce this chapter.

SECTION 8. Section 73-4-15, Mississippi Code of 1972, is reenacted as follows:

73-4-15. All fees and other monies collected or received by the commission under this chapter shall be deposited into a special fund which is hereby created in the State Treasury, to be known as the "Mississippi Auctioneer Licensure Fund." Unexpended amounts remaining in such special fund at the end of a fiscal year shall not lapse into the State General Fund, and any interest earned on amounts in such special funds shall be deposited to the credit of the special fund. All monies in the special fund shall be expended or used exclusively for the purposes of carrying out the provisions of this chapter. All records of such fees received by the commission and deposited in the special fund shall be available for inspection by the State Auditor. Monies from the special fund shall be used to support the commission, upon appropriation by the Legislature.

SECTION 9. Section 73-4-17, Mississippi Code of 1972, is reenacted as follows:

73-4-17. There shall be two (2) classes of auctioneers' licenses, which shall be auctioneer and auction firm. All applicants for a license under this chapter shall possess the following minimum qualifications:

(a) Applicants shall have attained the age of eighteen (18) years by the issuance date of the license.

(b) Applicants shall have obtained at a minimum a high school diploma or G.E.D. equivalent and shall be graduates of an auctioneering school approved by the commission.

(c) Each applicant for a license under this chapter shall demonstrate to the commission that he is of good moral character and worthy of public trust through background information to be provided on his application form and two (2) letters of reference from persons not related to the applicant who have known the applicant at least three (3) years. The commission may require additional information or a personal interview with the applicant to determine if such applicant should be granted a license.

(d) Each applicant for a license under this chapter shall take and successfully complete an examination as prescribed by the commission. The examination shall include questions on ethics, reading comprehension, writing, spelling, elementary arithmetic, elementary principals of land economics, general knowledge of bulk sales law, contracts of sale, agency, leases, brokerage, knowledge of various goods commonly sold at auction, ability to call bids, knowledge of sale preparation and proper sale advertising and sale summary, and knowledge of the provisions of this chapter and the commission's rules and regulations. There shall be separate examinations for auctioneer and auction firm each based upon relevant subject matter appropriate to the license classification as set forth herein. Examinations shall be

administered at least once a year and may be administered quarterly at the commission's discretion provided there are at least twenty-five (25) examinees. The commission shall ensure that the various forms of the test remain secure.

(e) In order to defray the cost of administration of the examinations, applicants for the examination shall pay fees as follows:

(i) Auctioneer ..... $100.00.

(ii) Auction firm ..... $100.00.

(f) Each applicant desiring to sit for the examination for any license required under this chapter shall be required to furnish to the commission at least thirty (30) days prior to the examination evidence of a surety bond in the following minimum amounts:

(i) Auctioneer ..... $10,000.00.

(ii) Auction firm ..... $10,000.00.

(g) In addition to the bond required herein, applicants for the auction firm license shall furnish the commission with all relevant information concerning the premises to be licensed, to include location, whether the premises are owned or leased, and an affidavit that the proposed use of the premises as an auction firm does not violate zoning or any other use restrictions. A separate license shall be required for each business location of the owner of multiple auction galleries.

(h) Except as provided in Section 33-1-39, all licenses granted pursuant to this chapter shall be for a term of two (2) years and shall expire on the first day of March at the end of such two-year term. The biennial license fees shall be set from time to time by the commission with a maximum fee of Two Hundred Dollars ($200.00). License fees shall not be prorated for any portion of a year but shall be paid for the entire biennial period regardless of the date of the application. Individuals failing to submit license renewal fees on or before March 1 of the year for renewal shall be required to successfully pass the next administration of the examination in order to renew a license.

(i) Each application or filing made under this section shall include the social security number(s) of the applicant in accordance with Section 93-11-64, Mississippi Code of 1972.

(j) A licensee shall keep such books, accounts and records as will enable the commission to determine whether such licensee is in compliance with the provisions of this chapter, and rules and regulations made pursuant thereto, and any other law, rule and regulation applicable to the conduct of such business. The commission and its employees or representatives shall have the right to enter and make inspections of any place where the auction business is carried on and inspect and copy any record pertaining to the auction business under this chapter. The commission may conduct or cause to be conducted an examination or audit of the books and records of any licensee at any time the commission deems

proper, the cost of the examination or audit to be borne by the licensee. The refusal of access to the books and records shall be cause for the revocation of its license.

SECTION 10. Section 73-4-19, Mississippi Code of 1972, is reenacted as follows:

73-4-19. (1) The commission may, upon its own motion or upon the complaint in writing of any person, provided the complaint and any evidence presented with it establishes a prima facie case, hold a hearing and investigate the actions of any auctioneer or auction firm, or any person who holds himself out as an auctioneer or auction firm.

(2) Any person desiring to make a complaint against a licensee shall submit a complaint to the commission in verified form as prescribed by the commission. Upon receipt of a properly verified complaint, the commission shall send a copy of the complaint to the affected licensee by certified mail, and the licensee shall make answer to the complaint in writing within twenty (20) days after receipt of the complaint. The licensee shall mail a copy of his response to the commission and the complainant. Upon receipt of the licensee's response or lapse of twenty (20) days, the commission shall make investigation of the underlying allegations of the complaint, and upon a finding of probable cause that a violation of this chapter has occurred, the commission shall order a hearing for the licensee to appear and

show cause why he should not be disciplined for a violation of this chapter.

(3) (a) All hearings held pursuant to this chapter shall be held at the offices of the commission. The commission, for good cause shown, may order that a hearing be held in another location convenient to all parties.

(b) The commission shall give the complainant and the affected licensee twenty (20) days' notice of any hearing upon a complaint. Such notice shall be by United States certified mail.

(c) Any party appearing before the commission may be accompanied by counsel.

(d) The commission or its executive director shall have the right to subpoena witnesses and documents as they deem necessary for the proper conduct of the hearing. The commission shall not entertain a motion for a continuance for failure of a witness to appear unless such witness shall have been duly subpoenaed.

(e) (i) Before commencing a hearing, the chairman of the commission shall determine if all parties are present and ready to proceed. If the complainant fails to attend a hearing without good cause shown, the complaint shall be dismissed summarily and all fees and expenses of convening the hearing shall be assessed to, and paid by, the complainant. If any affected licensee fails to appear for a hearing without good cause shown,

such licensee shall be presumed to have waived his right to appear and be heard.

(ii) Upon the chairman's determination that all parties are ready to proceed, the chairman shall call the hearing to order and the complainant and the licensee may give opening statements. At the request of any party, the chairman shall order the sequestration of nonparty witnesses. The complainant shall then present his complaint through sworn testimony and the production of physical evidence. The licensee, any counsel and any member of the commission may ask questions of witnesses.

(iii) The licensee shall then present his case in rebuttal with equal right of cross-examination of the parties. At the completion of the evidence, all parties may give closing statements.

(iv) At the conclusion of testimony and argument, the commission may go into closed session for deliberation.

(v) At the conclusion of deliberations, the commission may announce the commission's decision in an open session, and shall notify the parties of its decision by mail within ten (10) days after the commission reaches its decision.

(4) Service of notice to the party shall be considered to have been given if the notice was personally served on the licensee, applicant or complainant or if the notice was sent by certified United States mail to the licensee, applicant or

complainant to that party's last known address of record with the board.

(5) No person whose license has been revoked hereunder may apply for a new license for a period of at least five (5) years. A person whose license has been denied, suspended or revoked may not apply in that person's name or in any other manner within the period during which the order of denial, suspension or revocation is in effect, and no firm, partnership or corporation in which any person whose license has been denied, suspended or revoked has a substantial interest or exercises management responsibility or control may be licensed during the period. The procedure for the reissuance of a license that is for being out of compliance with an order for support, as defined in Section 93-11-153, shall be governed by Section 93-11-157 or 93-11-163, as the case may be.

(6) Any civil or monetary penalty, fine or other costs imposed by the commission under this chapter shall become due and payable within the time allowed by the commission for payment thereof. Failure of the licensee or party to pay all penalties or fines so assessed as ordered by the commission shall, unless an appeal is taken and perfected within the time and in the manner provided in this chapter, result in an automatic revocation of such licensee's license. In addition, if any amounts assessed against a party by final order of the commission become otherwise uncollectible or payment is in default, and if all the right to appeal has passed, the order of the commission containing the

amount of money assessed by the commission may be filed with the appropriate clerk of the court in the county in which the licensee or party is located. The order shall constitute a judgment and the filing of such final order shall have the full force and effect of a judgment duly docketed in the office of such clerk and may be enforced in the same manner and with the same effect as that provided by law in respect to executions issued against property upon judgments of a court of record.

(7) The commission may also assess and levy upon any licensee or applicant for licensure the costs incurred or expended by the commission in the investigation and prosecution of any licensure or disciplinary action, including, but not limited to, the cost of process service, court reports, expert witness, investigators and attorney fees.

(8) The commission may, upon its own motion, summarily suspend a license when the interest, health, safety or welfare of the public is at risk, such as in the event of a potential loss of consigned items or potential loss of funds. If the commission suspends summarily a license under the provisions of this subsection, a hearing must begin within twenty (20) days after such suspension begins, unless continued at the request of the licensee.

(9) Any person aggrieved by an action of the commission may file an appeal of such action in the Circuit Court of Hinds County. Any appeal must be accompanied by an attested copy of the

record of the hearing before the commission. An appeal must, however, be filed with the Chancery Court of Hinds County within thirty (30) days immediately following the date of the commission's decision, unless the court, for good cause shown, extends the time. Appeals may be taken to the Mississippi Supreme Court as provided by law from any final judgment of the chancery court. If the board appeals from any judgment of the chancery court, no bond shall be required of it in order to perfect its appeal. Any actions taken by the commission in suspending a license when required by Section 93-11-157 or 93-11-163 are not actions from which an appeal may be taken under this section. Any appeal of a license suspension that is required by Section 93-11-157 or 93-11-163 shall be taken in accordance with the appeal procedure specified in Section 93-11-157 or 93-11-163, as the case may be, rather than the procedure specified in this section.

(10) If any licensee is indicted in this or any other state for forgery, embezzlement, obtaining money under false pretenses, extortion, criminal conspiracy to defraud or other offense, and a certified copy of the indictment is filed with the commission or other proper evidence is given to it, the commission may, in its discretion, suspend the license issued to the licensee pending trial of the charges.

(11) If the revocation or suspension of a license issued to any member of a partnership, or to any officer of an association,

corporation or organization to whom an auction license has been issued, the license issued to the partnership, association, corporation or organization shall be revoked by the commission unless, within a time fixed by the commission, the connection of the member of the partnership is severed and his interest in the partnership and his share in its activities brought to an end, or the officer of the association, corporation or organization is discharged and has no further participation in its activities.

(12) Nothing in this section shall be deemed as an exclusive remedy or prevent or proscribe any person's right to petition a court of law or equity for redress of a grievance against a licensee or any other entity.

SECTION 11. Section 73-4-21, Mississippi Code of 1972, is reenacted as follows:

73-4-21. (1) Any person who has practiced the auctioneering profession in this state and has been a resident of the State of Mississippi for at least two (2) years before July 1, 1995, may apply for an auctioneer's license hereunder without taking the examination as set forth in Section 73-4-17. The requirements for such an application are as follows:

(a) Submit an application as provided in this chapter.

(b) Submit an affidavit with the application that such applicant has been a practicing auctioneer and a resident of the State of Mississippi for at least two (2) years before July 1,

1995, and that such applicant has actually called bids in at least three (3) sales in the past one (1) year.

(c) Tender with the application the license fee set by the commission.

(d) Tender proof of financial responsibility in the form of a surety bond in the sum of Ten Thousand Dollars ($10,000.00).

(2) If, upon verification of the information contained in the application, the individual is found to be otherwise qualified, the commission shall issue the applicant a license without examination.

SECTION 12. Section 73-4-23, Mississippi Code of 1972, is reenacted and amended as follows:

73-4-23. Any auctioneer who is licensed in a state that (a) has requirements equal to the requirements of this chapter, (b) has requirements that have been approved by the commission, after a review of such state's licensing law, and (c) has entered into a reciprocal licensing agreement with the State of Mississippi through such state's regulatory authority over auctioneering, may apply for and be granted a license without examination. Applicants for a license through reciprocity shall furnish the commission by application the same information as that required of resident applicants. In addition to the * * * <u>biennial</u> license fee, nonresidents shall pay to the commission a fee of Two Hundred Fifty Dollars ($250.00). A nonresident auctioneer shall furnish

to the commission a surety bond, obligated to the State of Mississippi, in the amount of Ten Thousand Dollars ($10,000.00) prior to being issued a license. The bond shall be executed by the person seeking the license as principal and by a corporate surety, licensed to do business in this state, as surety. The bond shall otherwise be in accordance with the provisions of this chapter.

SECTION 13. Section 73-4-25, Mississippi Code of 1972, is reenacted as follows:

73-4-25. (1) The commission may refuse to issue or renew a license, place a licensee on probation or administrative supervision, suspend or revoke any license, or may reprimand or take any other action in relation to a license, including the imposition of a fine not to exceed Five Thousand Dollars ($5,000.00) for each violation upon a licensee, or applicant for licensure, under this chapter for any of the following reasons:

(a) Knowingly filing or causing to be filed a false application.

(b) Failure to enter into a written contract with a seller or consignor prior to placing or permitting advertising for an auction sale to be placed.

(c) Failure by the licensee to give the seller or consignor a signed receipt for items received for sale at auction, either by item or lot number at the time the goods are received,

unless the goods are to remain in the possession of the seller or consignor.

(d) Failure to give the seller or consignor a statement or lot description, selling price, purchaser's identity and the net proceeds due to the seller or consignor.

(e) Failure to place funds received from an auction sale in an escrow or trust account, and failure to make timely settlement on escrowed funds. Absent a written agreement to the contrary, five (5) business days shall be deemed timely for settlement on personal property.

(f) Permitting an unlicensed auctioneer to call for bids in an auction sale.

(g) Having been convicted of or pled guilty to a felony in the courts of this state or any other state, territory or country. Conviction, as used in this paragraph, shall include a deferred conviction, deferred prosecution, deferred sentence, finding or verdict of guilt, an admission of guilt or a plea of nolo contendere.

(h) Any course of intentional, willful or wanton conduct by a licensee or such licensee's employees which misleads or creates a false impression among the seller, buyer, bidders and the auctioneer in the advertising, conducting and closing of an auction sale.

(i) A continued and flagrant course of misrepresentation or making false promises, either by the

licensee, an employee of the licensee, or by someone acting on behalf of and with the licensee's consent.

(j) Any failure to account for or to pay over within a reasonable time funds belonging to another which have come into the licensee's possession through an auction sale.

(k) Any false, misleading or untruthful advertising.

(l) Any act of conduct in connection with a sales transaction which demonstrates bad faith or dishonesty.

(m) Knowingly using false bidders, cappers or pullers, or knowingly making a material false statement or representation.

(n) Commingling the funds or property of a client with the licensee's own or failing to maintain and deposit in a trust or escrow account in an insured bank or savings and loan association located in Mississippi funds received for another person through sale at auction.

(o) Failure to give full cooperation to the commission and/or its designees, agents or other representatives in the performance of official duties of the commission. Such failure to cooperate includes, but is not limited to:

(i) Failure to properly make any disclosures or to provide documents or information required by this chapter or by the commission;

(ii) Not furnishing, in writing, a full and complete explanation covering the matter contained in a complaint filed with the commission;

(iii) Failure, without good cause, to cooperate with any request by the board to appear before it;

(iv) Not providing access, as directed by the commission, for its authorized agents or representatives seeking to perform reviews, audits or inspections at facilities or places utilized by the license holder in the auction business;

(v) Failure to provide information within the specified time allotted and as required by the board and/or its representatives or designees;

(vi) Failure to cooperate with the board or its designees or representatives in the investigation of any alleged misconduct or willfully interfering with a board investigation.

(p) A demonstrated lack of financial responsibility.

(q) Having had a license for the practice of auctioneering or the auction business suspended or revoked in any jurisdiction, having voluntarily surrendered a license in any jurisdiction, having been placed on probation in any jurisdiction, having been placed under disciplinary order(s) or other restriction in any manner for auctioneering or the auction business (a certified copy of the order of suspension, revocation, probation or disciplinary action shall be prima facie evidence of such action).

(r) Any violation of this chapter or any violation of a rule or regulation duly adopted by the commission.

(2) In addition to the acts specified in subsection (1) of this section, the commission shall be authorized to suspend the license of any licensee for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a license for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a license suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a license suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163. If there is any conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this chapter, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

SECTION 14. Section 73-4-27, Mississippi Code of 1972, is reenacted and amended as follows:

73-4-27. (1) No person or party who is not otherwise exempt from licensure under Section 73-34-5 shall sell, or offer to sell, goods or real estate at auction in this state or perform any act for which an auction firm license is required, unless the person or party holds a currently valid license issued by the commission.

(2) Any person who is not otherwise licensed under this chapter and who only provides auction services or holds himself out as providing auction services shall do so only with a valid auction firm license issued under this section.

(3) The commission may grant an auction firm license to an auction firm that is determined to be qualified by the commission. To be eligible for license, the auction firm shall:

(a) Comply with the requirements of Sections 73-4-17 and 73-4-29 and the rules and regulations of the commission; and

(b) * * * Employ a firm manager as required under subsection (5) of this section.

(4) An application submitted under this section for an auction firm license shall list the names of all of the owners, directors, partners or members of the applicant, as applicable.

(5) An auction firm shall designate a firm manager. The firm manager shall have sufficient authority in the operation of the auction firm to ensure compliance with this chapter and rules and regulations of the commission. If the firm manager does not have a current license issued under this chapter, the firm manager must become licensed under this chapter before the commission may issue a license under this section to the auction firm.

(6) An auction firm license issued under this section immediately shall terminate if any of the following occur:

(a) The auction firm ceases to operate as a corporation.

(b) The auction firm changes ownership or there is any change in ownership.

(c) If the auction firm is a partnership, the firm changes the number of partners in the partnership or changes the partners comprising the partnership.

(d) The auction firm changes the firm manager.

(e) The auction firm changes the name under which the firm conducts business.

(f) The auction firm changes its permanent business location.

(7) If the applicant for a firm license maintains more than one (1) place of business within the state, the applicant shall apply for and obtain an additional firm license for each branch office.

(8) A firm license shall automatically be suspended if no licensed auctioneer is engaged in business therein. Such license may be reinstated by the commission for the unexpired term upon proof that a duly licensed auctioneer has been affiliated with the firm.

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

(10) In addition to the other requirements contained elsewhere in this chapter, the holder of an auction firm license shall comply with the following:

(a) Enter into a written contract with a licensed auctioneer to call bids prior to the start of any auction sale. A copy of such contract shall be maintained on the premises and available for inspection by the commission.

(b) The firm license and the license of its manager shall be conspicuously posted at the firm location.

(c) Maintain complete records of each sale held at the licensed premises which shall include, but shall not be limited to, consignment receipts, bidder registrations, final settlements with consignors and any other documents relevant to the conduct of the sale. These records shall be maintained for a period of one (1) year from the date of the sale.

(d) Maintain a file on all current and past employees of the auction firm for the previous year. Such file should contain the employee's name, last known address and social security number.

(e) Assume responsibility for all checks, drafts and other negotiable instruments tendered by buyers in payment for goods sold through the auction firm.

(f) Deposit all proceeds from auction sales into the licensee's escrow account and make all disbursements from such escrow account.

(g) The licensee shall make all of his records pertaining to the auction firm available to a member or employee of the commission for inspection upon demand.

SECTION 15. Section 73-4-29, Mississippi Code of 1972, is reenacted as follows:

73-4-29. (1) Every person who applies for an auctioneer's license, as a condition to the granting and the retention thereof, shall file or have on file with the commission, a bond in the amount of Ten Thousand Dollars ($10,000.00).

(2) Every person or persons who apply for an auction firm license, as a condition to the granting and the retention thereof, shall file or have on file with the commission, a bond in the amount of Ten Thousand Dollars ($10,000.00).

(3) (a) Factory-built homes as defined by Section 75-49-3, because of the manner of their construction, assembly and use and that of their systems, components and appliances (including heating, plumbing and electrical systems), like other finished products having concealed vital parts, may present hazards to the health, life and safety of persons and to the safety of property unless properly inspected prior to sale and properly anchored and blocked at the homesite after the sale so as to provide reasonable safety and protection to their owners and users. In order to insure that these homes are properly anchored and blocked at the homesite in accordance with the rules, regulations and procedures promulgated by the State Commissioner of Insurance pursuant to his rule-making power contained in Section 75-49-5, auctions of these homes shall be restricted to factory-built housing dealers licensed pursuant to Section 75-49-9 and subject to the penalties

of Section 75-49-19, except as otherwise provided in paragraph (b).

(b) An auctioneer licensed under this chapter may auction a factory-built home without obtaining a license pursuant to Section 75-49-9, if the auction is not for the sole purpose of disposing of factory-built homes and if the disposal of the factory-built home is incidental to, and a part of, an entire estate or liquidation auction. The number of such homes that may be auctioned pursuant to this paragraph is limited to three (3) being offered for sale in one (1) auction or event.

SECTION 16. Section 73-4-31, Mississippi Code of 1972, is reenacted as follows:

73-4-31. (1) The State of Mississippi shall be the obligee under any bond under this chapter.

(2) Such bond shall be:

(a) Executed by the person seeking the license as principal and by a corporate surety, licensed to do business in this state as a surety;

(b) In such form and containing such terms and conditions as the commission prescribes;

(c) Conditioned upon the faithful performance of all obligations of a licensee under this chapter and the rules and regulations promulgated hereunder, including the obligation to account for and pay over monies and proceeds to persons who are entitled to them; and

(d) Effective from the date of its filing with the commission, such bond shall not be affected by the expiration of the license period and shall continue in full force and effect until cancelled, provided that the total and aggregate liability of the surety on a bond shall be limited to the amount specified in the bond and the continuous nature of the bond shall in no way be construed as allowing the liability of the surety under a bond to accumulate for each successive license period during which the bond is in force.

(3) (a) A licensee may not cancel a bond without the prior written approval of the commission and its approval of a substitute bond so as to provide continuous bonding of the licensee's activities.

(b) The surety on a bond may cancel a bond filed under this chapter only after the expiration of ninety (90) days from the date the surety mails a notice of intent to cancel, by registered or certified mail, return receipt requested, to the commission and to the principal of the bond.

(c) Not later than thirty (30) days prior to the date upon which a bond cancellation becomes effective, the licensee shall give written notice to the commission that a new bond has been obtained so as to provide continuous coverage of the licensee's activities.

SECTION 17. Section 73-4-33, Mississippi Code of 1972, is reenacted as follows:

73-4-33. (1) If any licensee fails, or is alleged to have failed, to meet the obligations under this chapter and the rules and regulations promulgated hereunder, the commission shall hold a hearing and determine whether there has been such a failure, determine those persons who are proven claimants under the bond and, if appropriate, distribute the bond proceeds to the proven claimants.

(2) Actions upon the bond and the right to payment under the bond shall extend solely to the commission, except that if the commission has not initiated action under the bond by scheduling and holding a hearing, by litigation or otherwise, within thirty (30) days of a written request to do so, any claimant may initiate an action in the Circuit Court of Hinds County, Mississippi, to require the commission to take action.

(3) If, after a hearing, the commission determines that proven claims exceed the amount of the bond proceeds, the proceeds shall be prorated among proven claimants in the ratio that the amount of their proven claim bears to the total amount of all proven claims.

(4) The determination of the commission as to the fact and the amount of liability under the bond and the amount distributed to the claimants under the bond shall be binding upon the principal and surety of the bond.

(5) All hearings held under this section shall be held in accordance with the laws of this state.

(6) The existence of the bond and the bond recovery procedure shall in no way affect or alter any other right or remedy which a person may have under applicable law.

SECTION 18. Section 73-4-35, Mississippi Code of 1972, is reenacted and amended as follows:

73-4-35. (1) In performing the duties of an auctioneer, every auctioneer shall follow all reasonable requests of the owner or consignor of the goods being sold at the auction. Every auctioneer shall perform such auctioneer's duties so that the highest or most favorable offer made by a member of the audience is accepted, and shall otherwise perform such duties in accordance with the highest standards of the auctioneering profession.

(2) (a) Every licensee, within five (5) business days after the sale transaction, shall account to, or provide an accounting for, those persons who own or who are acting as consignor of goods which are the subject of an auction engaged in or conducted by such licensee or upon such licensee's premises.

(b) Every licensee, within five (5) business days after a sale of goods and at closing of the sale, shall pay over, or provide for the paying over of, all monies and proceeds due to the owner or consignor of goods which was the subject of an auction engaged in or conducted by such licensee or upon such licensee's premises.

SECTION 19. Section 73-4-37, Mississippi Code of 1972, is reenacted as follows:

73-4-37. Each licensee shall keep and maintain in a safe place for a period of not less than two (2) years complete and correct records and accounts pertaining to such licensee's licensed activity, including the name and address of the owner or consignor of all goods involved in such activities, a description of such goods, the terms and conditions of the acceptance of such goods and accounts of all monies received and paid out, whether on the licensee's own behalf or as agent, as a result of such activities.

SECTION 20. Section 73-4-39, Mississippi Code of 1972, is reenacted as follows:

73-4-39. Except with respect to goods sold through an auction firm, no licensee shall sell goods at an auction until the auctioneer or auction firm involved has first entered into a written contract with the owner or consignor of such goods, which contract sets forth the terms and conditions upon which such auctioneer or auction firm accepts the goods for sale. A copy of every written contract shall be retained for a period of two (2) years from the date of the auction.

SECTION 21. Section 73-4-41, Mississippi Code of 1972, is reenacted as follows:

73-4-41. All advertisements of auctions shall disclose:

(a) The auctioneer's name and the name of the auction firm involved; and

(b) Whether the auction is to be absolute or with reserve; and

(c) The auctioneer's or auction firm's auction license number.

SECTION 22. Section 73-4-43, Mississippi Code of 1972, is reenacted as follows:

73-4-43. (1) An individual may not act as an auctioneer without first having obtained and having in effect the license required under this chapter.

(2) Any person, except a licensed auctioneer who shall have become exempt by reason of compliance with the applicable provisions of this chapter, may not operate an auction firm without having obtained and having in effect a license for such auction firm as required under this chapter.

(3) A person who violates the provisions of this section shall be fined, upon conviction, not more than One Thousand Dollars ($1,000.00).

(4) When the commission or its authorized designee determines that person or party not licensed under this chapter is engaged in or is believed to be engaged in activities for which a license is required under this chapter, the commission or its designee may issue an order requiring that person to desist immediately and refrain from such conduct or activities. The affected person or party may appeal the issuance of the cease and desist order by filing notice of appeal within seven (7) calendar

days after service of the order. A hearing must be held within twenty (20) days after a notice of appeal has been timely filed. Service of the cease and desist order shall be considered to have been given if the notice or order was personally served on the person or party or if the order was mailed by certified United States mail to the person's or party's last known address available to the commission. A person or party who has been issued an order to cease and desist that has become final either through default or administrative proceeding before the commission may not engage in the activity or conduct which is the subject of the order. A cease and desist order issued by the commission shall be enforceable in the courts of competent jurisdiction in this state.

(5) Any person or party that practices, offers to practice, attempts to practice, or holds oneself out to practice as an auctioneer, auction firm, or any other licensee under this chapter without being licensed by the commission shall, in addition to any other penalty provided by law, pay a civil penalty to the commission in an amount not to exceed Five Thousand Dollars ($5,000.00) for each offense as determined by the commission. The civil penalty shall be paid within sixty (60) calendar days after the effective date of the order imposing the penalty. The order shall constitute a judgment and may be filed and execution had thereon in the same manner from any court of record.

SECTION 23. Section 73-4-45, Mississippi Code of 1972, is reenacted as follows:

73-4-45. Any person who violates any provision of this chapter for which a specific penalty is not provided, upon conviction, shall be fined not more than One Thousand Dollars ($1,000.00).

SECTION 24. Section 73-4-47, Mississippi Code of 1972, is reenacted as follows:

73-4-47. The commission may maintain an action in the name of the State of Mississippi to enjoin any person from engaging, without a license issued under this chapter or pursuant to an exemption defined in this chapter, in any activity for which a license is required under this chapter.

SECTION 25. Section 73-4-49, Mississippi Code of 1972, is reenacted as follows:

73-4-49. In charging any person in an affidavit, information, or indictment with a violation of conducting, without a license or pursuant to an exemption of this chapter, any activity for which a license or an exemption therefor is required, it shall be sufficient to charge that the person did, upon a certain day and in certain county, engage in such activity and that such person did not have a license or exemption to do so. No further facts need to be averred concerning the matter.

SECTION 26. Section 73-4-51, Mississippi Code of 1972, is reenacted as follows:

73-4-51. All new programs authorized in this chapter are subject to the availability of funds specifically appropriated therefor by the Legislature.

SECTION 27. Section 73-4-53, Mississippi Code of 1972, is amended as follows:

73-4-53. Sections 73-4-1 through 73-4-51 shall stand repealed from and after July 1, * * * 2016.

SECTION 28. This act shall take effect and be in force from and after July 1, 2013.

PASSED BY THE HOUSE OF REPRESENTATIVES
February 7, 2013

Philip Gunn
SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
March 8, 2013

Tate Reeves
PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR

Phil Bryant
GOVERNOR

4:39pm
3/20/13