

JAN 13 1999
COMMERCE AND REGULATION

HOUSE FILE 71
BY GREINER

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the regulation of auctions and the licensing
2 of auctioneers and other auction personnel and providing fees,
3 penalties, and an appropriation.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. NEW SECTION. 545A.1 TITLE.

2 This chapter shall be known and may be cited as the "Iowa
3 Auction and Auctioneer Licensing Act".

4 Sec. 2. NEW SECTION. 545A.2 DEFINITIONS.

5 1. "Associate auctioneer" means a person who acts as an
6 auctioneer, but who is under the direct supervision of a
7 licensed auctioneer or auction service.

8 2. "Auction" means the sale of property, real or personal,
9 by public outcry, in which the sale price of the property
10 offered is increased until the highest accepted bidder becomes
11 the purchaser.

12 3. "Auction clerk" or "auction cashier" means a person
13 who, with or without receiving or collecting a fee,
14 commission, or other valuable consideration, collects,
15 accounts for, or distributes proceeds from an auction.

16 4. "Auctioneer" means a person who, as a bid caller, sells
17 or offers to sell property with or without receiving or
18 collecting a fee, commission, or other valuable consideration.

19 5. "Auction service" means a person who engages in the
20 business of arranging, managing, sponsoring, advertising, or
21 conducting auctions.

22 6. "Certified auction school" means a public or private
23 educational institution offering curriculum of auctioneer
24 education and training approved by the commission.

25 7. "Commission" means the Iowa auction and auctioneer
26 commission established in section 545A.3.

27 8. "Licensee" means a person licensed under this chapter.

28 9. "Person" means as defined in section 4.1.

29 10. "Property" means anything of value, and includes any
30 interest in property, including any benefit, privilege, claim,
31 or right with respect to anything of value, whether real or
32 personal, tangible or intangible, which may be kept or offered
33 for sale.

34 11. "Secured party" means as defined in section 554.9105.

35 12. "Trust account" means an account in a federally

1 insured financial institution used for the deposit and
2 disbursement of the proceeds of an auction.

3 | Sec. 3. NEW SECTION. 545A.3 IOWA AUCTION AND AUCTIONEER
4 COMMISSION ESTABLISHED -- MEMBERS -- DUTIES.

5 1. An Iowa auction and auctioneer commission is
6 established within the professional licensing and regulation
7 division of the department of commerce.

8 | 2. Members of the commission shall be appointed by the
9 governor and subject to confirmation by the senate.

10 | 3. The commission shall consist of five voting members as
11 follows:

12 | a. Four members who represent auctioneers, auction clerks
13 and auction cashiers, associate auctioneers, and auction
14 services. An individual appointed pursuant to this paragraph
15 must be a licensee.

16 | b. One member who shall represent the public. An
17 individual appointed pursuant to this paragraph must not be or
18 have been a licensee under this chapter or have engaged in any
19 manner in the auction profession.

20 4. Members of the commission shall serve three-year
21 staggered terms as designated by the governor consistent with
22 this section and appointments to the commission are subject to
23 the requirements of sections 69.16, 69.16A, and 69.19. A
24 member of the commission shall serve no more than two
25 consecutive terms, not including any partial term which the
26 member is appointed to fill as the result of a vacancy.
27 Vacancies shall be filled by the governor for the duration of
28 the unexpired term in the same manner as provided for other
29 appointments.

30 | 5. A member of the commission is entitled to be reimbursed
31 for all actual and necessary expenses incurred in performance
32 of duties as a member. A member of the commission shall also
33 receive a per diem as specified in section 7E.6 for each day
34 spent in performance of duties as a member.

35 6. A quorum shall consist of a majority of the members of

1 the commission.

2 7. Members of the commission shall elect a chairperson and
3 vice chairperson annually and other officers as they
4 determine.

5 8. The commission shall meet as often as necessary, but at
6 least once during each calendar quarter. Meetings shall be
7 set by a majority of the commission or upon the call of the
8 chairperson.

9 Sec. 4. NEW SECTION. 545A.4 DUTIES OF THE COMMISSION.

10 1. The commission shall adopt rules pursuant to chapter
11 17A establishing licensing requirements and other rules
12 necessary to administer and enforce this chapter. The
13 commission shall consider proposed rules recommended by a
14 commission member, a public citizen, or a professional auction
15 organization. The commission may publish guidelines to
16 provide clarification and explanation of adopted rules.

17 2. The commission shall maintain a registry of the names
18 and addresses of auctioneers, associate auctioneers, auction
19 clerks, and auction services licensed under this chapter. The
20 commission shall retain records and application materials
21 submitted to the commission.

22 3. The commission shall establish the licensing
23 requirements for each type of license, provide appropriate
24 examinations, establish procedures for grading examinations,
25 receive and approve or disapprove applications for licensing,
26 and issue licenses.

27 An applicant for an auctioneer, associate auctioneer,
28 auction clerk or auction cashier, or auction service license
29 shall provide evidence that the applicant has working
30 knowledge of current auction marketing theories, practices,
31 and techniques which will enable the applicant to provide high
32 quality service and protection to members of the public.

33 4. The commission shall establish continuing education
34 requirements for licensees and monitor compliance with the
35 established requirements. The basic continuing education

1 requirement for renewal of a license shall be the completion,
2 during the immediately preceding licensure term, of the number
3 of classroom hours of instruction required by the commission
4 in courses or seminars approved by the commission.

5 Participation in continuing education for license renewal
6 is mandatory, except for nonresident licensees whose
7 nonresident license is issued by reciprocity with the
8 nonresident's state of residence. A nonresident licensee
9 whose state does not have a substantially similar licensing
10 requirement shall fulfill the mandatory continuing education
11 requirements established pursuant to this section.

12 Sec. 5. NEW SECTION. 545A.5 LICENSE FEES.

13 1. The commission shall establish and collect a reasonable
14 fee for a license application, examination, reexamination,
15 issuance of a license, renewal of a license, and any
16 delinquency fee sufficient to pay for the costs of
17 administration and implementation of this chapter. The fees
18 shall include, but are not limited to, amounts to cover the
19 cost for the following items:

- 20 a. Per diem and necessary expenses for commission members.
- 21 b. Office facilities, supplies, and equipment of the
22 commission.

23 2. Fees collected by the commission shall be transmitted
24 to the treasurer of state and shall be deposited in the
25 auctioneer recovery and education fund established in section
26 545A.12. Moneys in the fund are appropriated to and shall be
27 used by the commission consistent with this chapter.

28 Sec. 6. NEW SECTION. 545A.6 LICENSE REQUIREMENTS.

29 1. An application for a license, renewal of a license, or
30 an examination shall be made in writing to the commission on
31 forms approved by the commission.

32 2. Prior to the adoption of rules by the commission, the
33 commission may issue an interim license to a qualified
34 applicant. An interim license shall not be issued or renewed
35 following the adoption of licensure rules by the commission.

1 3. except as otherwise provided in this chapter, a person
2 shall not act as an auctioneer, associate auctioneer, auction
3 clerk or auction cashier, or auction service in this state
4 unless that person holds a license issued under this chapter.

5 4. A person is eligible for an auctioneer's license if the
6 applicant satisfies all of the following:

7 a. The applicant is at least eight years of age.

8 b. The applicant is a citizen of the United States or a
9 legal alien.

10 c. The applicant does one of the following:

11 (1) Passes a written or oral examination offered pursuant
12 to section 545A.7 demonstrating the applicant's knowledge of
13 auctioneering and the laws pertaining to auctioneering.

14 (2) Shows proof that the applicant has legally performed
15 as an auctioneer in at least five auctions prior to the date
16 of application.

17 (3) Shows proof that the applicant has successfully
18 completed a course of study at a certified auction school.

19 5. A person is eligible for an associate auctioneer's
20 license if the applicant satisfies both of the following:

21 a. The applicant is a citizen of the United States or a
22 legal alien.

23 b. The applicant is employed under the direct supervision
24 of an auctioneer or auction service licensed pursuant to this
25 chapter.

26 6. A person is eligible for an auction clerk or auction
27 cashier license if the applicant satisfies all of the
28 following:

29 a. The applicant is at least eighteen years of age.

30 b. The applicant is a citizen of the United States or a
31 legal alien.

32 c. The applicant has not been convicted of a felony.

33 d. The applicant does one of the following:

34 (1) Passes a written examination offered pursuant to
35 section 545A.7 demonstrating the applicant's knowledge of the

1 position of auction clerk or auction cashier, acceptable
2 accounting methodology, and the laws pertaining to such
3 position.

4 (2) Shows proof that the applicant has successfully
5 completed a course of study at a certified auction school.

6 (3) Shows proof that the applicant has legally performed
7 as an auction clerk or auction cashier in at least five
8 auctions within the previous five years prior to application.

9 7. An auction service license may be issued for the
10 purpose of engaging in the business of arranging, managing,
11 sponsoring, advertising, or conducting auctions, to a person
12 who satisfies the requirements both for licensure as an
13 auctioneer and for licensure as an auction clerk or auction
14 cashier.

15 8. A licensed auction clerk or auction cashier, and a
16 licensed auction service, must hold an Iowa retail sales tax
17 permit.

18 Sec. 7. NEW SECTION. 545A.7 EXAMINATION REQUIREMENTS.

19 1. The commission shall prepare license examinations for
20 an auctioneer license, auction clerk or auction cashier
21 license, and auction service license. The commission shall
22 also prepare study and reference materials on which the
23 examinations are based. The examination for auctioneers,
24 auction clerks or auction cashiers, and auction services must
25 be designed to establish the applicant's general knowledge of
26 the auction profession, the principles of conducting an
27 auction, and the laws of this state pertaining to auctioneers,
28 auction clerks or auction cashiers, and auction services. The
29 license examination must be offered at least four times a year
30 at locations designated by the commission.

31 2. A person seeking to become eligible for an auctioneer
32 license, auction clerk or auction cashier license, or auction
33 service license by examination must apply to the commission to
34 take a license examination. The application must be
35 accompanied by an examination fee. Upon the receipt of an

1 examination application with the required fee, the commission
2 shall furnish the applicant with study materials and
3 references on which the examination will be based and a
4 schedule specifying the dates and places the examination will
5 be offered. The applicant may take the examination at any
6 scheduled offering within ninety days after receipt of the
7 study materials. If an applicant fails the examination, the
8 applicant may reapply to take the license examination again.
9 However, if the applicant fails the examination twice within a
10 one-year period, the applicant must wait one year from the
11 last date of examination to reapply.

12 Sec. 8. NEW SECTION. 545A.8 NONRESIDENT LICENSE.

13 1. An application for an auctioneer license, auction clerk
14 or auction cashier license, or auction service license from a
15 nonresident may be issued by the commission as follows:

16 a. If the application is accompanied by a certified copy
17 of an auctioneer license, auction clerk or auction cashier
18 license, or auction service license issued to the applicant by
19 the applicant's state of residence, and the commission has
20 determined that the applicant's state has substantially
21 equivalent licensing requirements, and only if the applicant's
22 state extends similar recognition and courtesies to this
23 state, the commission shall accept the license as proof of the
24 applicant's professional competence and shall waive the course
25 of study and examination requirements of section 545A.7.

26 b. If an application is received from a nonresident of
27 this state where the applicant's state of residency does not
28 have an auctioneer license, auction clerk or auction cashier
29 license, or auction service license requirement, the
30 commission may issue a nonresident license to the applicant if
31 the applicant meets the requirements of section 545A.6 and all
32 other application requirements must be complied with by
33 nonresidents.

34 2. The commission may issue a license to a nonresident
35 applicant for an associate auctioneer license if the applicant

1 meets the requirements of section 545A.6 and all other
2 application requirements must be complied with by
3 nonresidents.

4 3. A nonresident applying for a license pursuant to this
5 section shall file a written power of attorney designating the
6 secretary of state as the agent of the nonresident upon whom
7 service of process may be had in the event of any suit against
8 the nonresident person, and such power of attorney shall be so
9 prepared and in such form as to render effective the
10 jurisdiction of the courts of this state over the nonresident
11 applicant. A nonresident who has a duly appointed resident
12 agent upon whom process may be served as provided by law is
13 not required to designate the secretary of state as such
14 agent. The secretary of state is allowed such fees as
15 provided by law for designating resident agents. The
16 secretary shall be furnished with a copy of such designation
17 of the secretary of state or of a resident agent, with the
18 copy to be certified by the secretary of state.

19 4. A licensed nonresident auction clerk or auction cashier
20 and licensed nonresident auction service must hold an Iowa
21 sales tax permit.

22 Sec. 9. NEW SECTION. 545A.9 LICENSE CERTIFICATE.

23 1. A license certificate issued under this chapter shall
24 bear the signature or facsimile signature of a member of the
25 commission and a license number assigned by the commission.

26 2. No less than ninety days prior to the expiration of a
27 licensee's license, the commission shall issue a renewal
28 notice to each licensee.

29 Sec. 10. NEW SECTION. 545A.10 DENIAL, SUSPENSION, OR
30 REVOCATION OF LICENSE.

31 1. The rights of a holder of a license as a licensed
32 auctioneer, licensed associate auctioneer, licensed auction
33 clerk or auction cashier, or licensed auction service may be
34 revoked or suspended, or the holder may be otherwise
35 disciplined as provided in this chapter. The commission may

1 investigate the actions of a licensee and may revoke or
2 suspend the rights of a licensee or otherwise discipline a
3 licensee for violation of this chapter or of a rule adopted
4 pursuant to this chapter. Violations shall include, but are
5 not limited to, the following acts or omissions:

6 a. Procurement or attempt to procure a license under this
7 chapter by knowingly making a false statement, submitting
8 false information, refusing to provide complete information in
9 response to a question in an application for license, or
10 participating in any form of fraud or misrepresentation.

11 b. Failure to meet the minimum qualifications established
12 by this chapter.

13 c. Continued and flagrant misrepresentations or for making
14 false promises through agents, advertising, or otherwise.

15 d. Failing to account for or remit, within a reasonable
16 time, any money or property belonging to others that comes
17 into the licensee's possession, or for commingling funds of
18 others with the licensee's own or failing to keep such funds
19 of others in an escrow or trust account.

20 e. Conviction, including a conviction based upon a plea of
21 guilt or nolo contendere, in a court of competent jurisdiction
22 of this state or any other state of a crime which is
23 substantially related to the qualifications, functions, and
24 duties of a person engaged in the auction profession or
25 involving moral turpitude or a felony.

26 f. Failure or refusal without good cause to exercise
27 reasonable diligence in preparing an auction, conducting an
28 auction, or completing an auction.

29 g. A violation of the uniform commercial code, chapter
30 554, in the conduct of an auction.

31 2. Before denying an application for a license or before
32 suspending or revoking any license, the commission shall in
33 all cases set the matter for a hearing and shall, at least
34 thirty days before the date set for the hearing, notify in
35 writing the applicant or licensee of the charges made against

1 the applicant or licensee, or of the question to be
2 determined, including notice of when and where the hearing
3 will be held.

4 3. The applicant or licensee is entitled to an opportunity
5 to be present and to be heard in person or by counsel and to
6 have an opportunity to offer evidence by oral testimony, by
7 affidavit, or by deposition.

8 4. Written notice may be served by delivery of the notice
9 personally to the applicant or licensee or by mailing the
10 notice by certified mail to the last known mailing address of
11 the applicant or licensee. If the applicant or licensee is an
12 associate auctioneer, the commission shall also notify the
13 auctioneer employing the associate auctioneer by mailing the
14 notice by certified mail to the employing auctioneer's last
15 known address.

16 5. The hearing shall be conducted pursuant to chapter 17A.

17 6. If, after hearing, the commission determines that a
18 license should be denied, revoked, or suspended, the applicant
19 or licensee has thirty days in which to appeal the
20 commission's decision to the district court of the county in
21 which the disqualification or violation is alleged to have
22 occurred.

23 Sec. 11. NEW SECTION. 545A.11 INACTIVE LICENSE.

24 A licensee who does not engage in any activity for which a
25 license under this chapter is required during the year
26 succeeding the expiration of the license shall notify the
27 commission to place the licensee on a list of inactive
28 licensees and the licensee shall not be required to pay a
29 license renewal fee for as long as the licensee remains
30 inactive and annually notifies the commission of such inactive
31 status. In order to resume engaging in an activity for which
32 a license under this chapter is required, the licensee shall
33 notify the commission and remit the appropriate renewal fee
34 for the current renewal period.

35 Sec. 12. NEW SECTION. 545A.12 AUCTIONEER RECOVERY AND

1 EDUCATION FUND ESTABLISHED -- PURPOSE.

2 1. a. An auctioneer recovery and education fund is
3 created in the state treasury under the control of the
4 commission.

5 b. In addition to the license fees collected pursuant to
6 this chapter, upon renewal of every auction clerk or auction
7 cashier and auction service license, the commission, in its
8 discretion and based upon the needs of the commission, may
9 assess every licensee an amount not to exceed fifty dollars
10 per year to be deposited in the auctioneer recovery and
11 education fund.

12 c. In addition to the license fees collected pursuant to
13 this chapter, an applicant for an initial license shall pay an
14 additional amount of fifty dollars, but upon renewal shall pay
15 the same fee as other licensees.

16 2. Moneys in the fund shall be used for the following
17 purposes:

18 a. Payment to a person aggrieved by a licensee as the
19 result of a violation of this chapter or rules adopted
20 pursuant to this chapter. Payment is to be made upon the
21 entry of a final order entered by the commission or by a
22 court. The commission is authorized to pay to the aggrieved
23 person or persons an aggregate amount not to exceed twenty
24 thousand dollars against any one licensee, provided that the
25 licensee has refused to pay such claim within a period of
26 twenty days of entry of a final order and provided further
27 that the amount or amounts of money in question are certain
28 and liquidated.

29 b. The commission shall attempt to maintain a minimum
30 level of two hundred thousand dollars in the fund for recovery
31 and guaranty purposes. All moneys in the fund may be invested
32 in the same manner as funds of the Iowa public employees'
33 retirement system and the interest from such investments shall
34 be deposited to the credit of the fund. Sufficient liquidity
35 shall be maintained so that moneys are available to satisfy

1 any and all claims, subject to available funds, which may be
2 processed through the commission by means of administrative
3 hearing as outlined in this chapter.

4 c. The commission, in its discretion, may use any funds in
5 excess of the two hundred thousand dollar level for any of the
6 following purposes:

7 (1) To carry out the advancement of education and research
8 in the auction field for the benefit of licensees, and for
9 improving the efficiency of the auction profession.

10 (2) To underwrite educational seminars and other forms of
11 education projects for the use and benefit generally of
12 licensees.

13 (3) To establish an auction chair or courses at state
14 institutions of higher learning for the purpose of making such
15 courses available to licensees and the general public.

16 (4) To contract for particular research projects relating
17 to the auction profession.

18 (5) To sponsor, contract for, and to underwrite any and
19 all other educational and research projects of a similar
20 nature having to do with the advancement of the auction
21 profession.

22 (6) To cooperate with associations of auctioneers and any
23 other groups for the enlightenment and advancement of
24 licensees.

25 (7) To increase the level of the auctioneer recovery and
26 education fund above two hundred thousand dollars.

27 (8) To augment the regular trust and agency account of the
28 commission.

29 3. a. If a licensee is found guilty of violation of this
30 chapter or of the rules adopted pursuant to this chapter, and
31 if the amount of money lost by the aggrieved party or parties
32 is in dispute or cannot be determined accurately, the
33 liability of the licensee and the amount of damages shall be
34 determined by the district court in the county where the
35 alleged violation took place, provided that the commission has

1 previously determined that a violation has occurred and a
2 final order has been entered.

3 b. If such an order has been entered and the rights of the
4 licensee have been finally adjudicated, the district court
5 shall make a finding as to the monetary damages growing out of
6 the violation.

7 c. When a final order has been entered by the district
8 court, or after appeal, if any, and upon certification to the
9 commission, the aggrieved party or parties shall be paid such
10 amount or amounts in the aggregate not to exceed twenty
11 thousand dollars by the commission, and the license held by
12 the licensee against whom the claim was made by the aggrieved
13 party shall be suspended at a minimum until such time as the
14 licensee has reimbursed the auctioneer recovery and education
15 fund for all amounts paid to the aggrieved party as a result
16 of the violation.

17 d. Upon payment by the commission of any sum to the
18 aggrieved party, the commission shall be subrogated to all
19 rights of the aggrieved party to the extent of the payment and
20 the aggrieved party shall to the extent of the payment assign
21 such right, title, and interest in the judgement to the
22 commission.

23 e. A claim for monetary damages or relief from the
24 auctioneer recovery and education fund must be made in writing
25 on a proof of loss form submitted to the commission within six
26 months of the act of the auctioneer giving rise to the loss.
27 Failure to file such claims within the six-month period shall
28 bar the claim. Additional evidence shall be submitted by the
29 claimant if required by the commission.

30 f. Notwithstanding any other provisions of this chapter,
31 an unreimbursed amount greater than twenty thousand dollars
32 shall not be paid by the commission on account of any one
33 licensee, regardless of the length of time, the number of
34 claims or claimants, or the size of such claims, individually
35 or in the aggregate. Upon reimbursement of the fund by the

1 licensee for all amounts paid, future claims timely filed with
2 the commission regarding the licensee concerning different
3 matters may be received pursuant to this section.

4 g. A claim shall not be approved under this section for
5 amounts which, in the aggregate, exceed the maximum payable in
6 effect at the time of the act or acts of the licensee giving
7 rise to the claims on account of any one licensee. A
8 statutory increase in the established maximum shall not apply
9 retroactively.

10 4. This section is not intended to substitute for,
11 circumvent, or duplicate other remedies existing at law for
12 claimants or potential claimants, but constitutes a last
13 resort for aggrieved persons who would not, but for the
14 provisions of this section, be able to recover their losses by
15 any other means available. The commission shall have full
16 discretion to require that claimants exhaust all other
17 remedies prior to proceeding under this section.

18 Sec. 13. NEW SECTION. 545A.13 PREEMPTION.

19 A political subdivision of this state shall not levy or
20 collect any license fee, tax, or other fee, or require the
21 licensing in any manner of any auctioneer, associate
22 auctioneer, auction clerk or auction cashier, or auction
23 service subject to this chapter.

24 Sec. 14. NEW SECTION. 545A.14 TRUST ACCOUNT
25 REQUIREMENTS.

26 1. A licensee shall maintain a trust account as provided
27 in this section for the deposit and dispersal of all proceeds
28 collected on the behalf of another person, including sales
29 tax, if applicable. The account shall be separate from all
30 other trust accounts of the holder and may be an interest
31 bearing account. For purposes of this section, "licensee"
32 means a licensed auction clerk or auction cashier or licensed
33 auction service.

34 2. A licensee required to maintain a trust account
35 pursuant to this section shall report to the commission the

1 name and mailing address of the financial institution where
2 the trust account is maintained and the trust account number.
3 A consent form shall also be furnished to the commission from
4 the licensee and the financial institution to permit the
5 examination and audit of the trust account by the commission
6 or the commission's representative.

7 3. Auction trust accounts shall be maintained as follows:

8 a. A resident licensee shall maintain a trust account in a
9 federally insured financial institution located in this state.

10 b. A nonresident licensee licensed in such licensee's
11 state of residence shall maintain a trust account in this
12 state in the same manner as provided for a resident licensee
13 under paragraph "a", or in a federally insured financial
14 institution in the licensee's state of residence and the
15 licensee shall comply with subsection 2.

16 c. A nonresident licensee who is a resident of a state
17 that does not provide for the licensing of auctioneers,
18 auction clerks or auction cashiers, or auction services must
19 maintain an auction trust account in a federally insured Iowa
20 financial institution and the licensee shall comply with
21 subsection 2.

22 4. An auction trust account may contain sufficient
23 personal funds of the licensee to maintain that account.

24 Sec. 15. NEW SECTION. 545A.15 INVESTIGATION OF COMPLAINT
25 -- ACTION.

26 The commission, upon its own motion, may, or on the written
27 and verified complaint of any person aggrieved by the actions
28 of an auctioneer, associate auctioneer, auction clerk or
29 auction cashier, or an auction service in the conduct of an
30 auction shall, investigate alleged violations and complaints
31 of this chapter by a licensed or unlicensed auctioneer,
32 associate auctioneer, auction clerk or auction cashier, or
33 auction service.

34 Sec. 16. NEW SECTION. 545A.16 PENALTIES.

35 1. A person who acts as an auctioneer, associate

1 auctioneer, auction clerk or auction cashier, or auction
2 service without first obtaining a license under this chapter
3 commits a simple misdemeanor.

4 2. A person who violates any other provisions of this
5 chapter, or a rule adopted by the commission in the
6 administration of this chapter for which no other penalty is
7 provided, commits a simple misdemeanor.

8 3. The commission shall adopt rules providing for civil
9 penalties in amounts as permitted by state law and as
10 determined by the commission.

11 Sec. 17. NEW SECTION. 545A.17 AUCTION CONTRACTS.

12 1. A licensee and each seller of personal property at an
13 auction which is to be conducted or managed within the state
14 shall enter into a written contract. Such contract must be
15 signed by all parties.

16 2. The written contract, at a minimum, shall contain the
17 following:

18 a. The auctioneer's, auction clerk's or auction cashier's,
19 and the auction service's name, trade or business name, and
20 the license number of the auctioneer, auction clerk or auction
21 cashier, or auction service.

22 b. The name of the owner or consignor of the property to
23 be auctioned.

24 c. A general description of the property to be sold.

25 d. Any restriction relating to conducting the auction and
26 a statement indicating whether the auctioneer, auction clerk
27 or auction cashier, or auction service is authorized to
28 purchase at the auction.

29 e. A description of all services to be provided and the
30 fee for such services, including whether a buyer's premium
31 will be assessed and, if so, the amount of such premium.

32 f. A statement indicating which party is responsible for
33 advertising and other auction expenses.

34 g. The date, location, and starting time of the auction,
35 if known.

1 h. A statement as to the responsibilities of each party
2 for the auction.

3 i. A statement by the seller that the seller has title or
4 right to sell all property to be sold at auction with
5 identification of those items which are subject to an
6 encumbrance or lien and the disclosure of the person or entity
7 holding an encumbrance or lien.

8 3. An owner or consignor of the property to be auctioned
9 shall be furnished with a copy of the contract.

10 4. Section 543B.7 applies to an auction involving real
11 property.

12 Sec. 18. NEW SECTION. 545A.18 ADVERTISING REQUIREMENTS.

13 1. An auctioneer, auction clerk or auction cashier, or
14 auction service who advertises to hold, conduct, or act as an
15 auction clerk or auction cashier at an auction within this
16 state shall indicate in such advertisement the name and
17 license number of the auctioneer, auction clerk or auction
18 cashier, or auction service.

19 2. This section does not pertain to advertisements for an
20 auction that is to be held in another state.

21 Sec. 19. NEW SECTION. 545A.19 EMPLOYMENT BY AUCTION
22 SERVICE.

23 A person licensed under this chapter shall not act as an
24 auctioneer, associate auctioneer, or auction clerk or auction
25 cashier for an auction service unless the auction service is
26 licensed under this chapter.

27 Sec. 20. NEW SECTION. 545A.20 EXEMPT TRANSACTIONS.

28 This chapter does not apply to a person who engages in any
29 of the following:

30 1. An auction conducted by order of the court pursuant to
31 Title 11 of the United States Code relating to bankruptcy.

32 2. An auction conducted by an employee of the United
33 States, or of this state or its political subdivisions, in the
34 course and scope of the employee's employment.

35 3. An auction conducted by a charitable or nonprofit

1 organization, if the auctioneer receives no compensation.

2 4. An auction conducted by an individual of that
3 individual's own property if such individual is not engaged in
4 the business of selling such property as an auctioneer on a
5 recurring basis.

6 5. A foreclosure auction of realty conducted personally by
7 a trustee under a deed of trust.

8 6. A foreclosure auction of personal property conducted
9 personally by the mortgagee, or other secured party, or an
10 employee or agent of such mortgagee or other secured party
11 acting in the course and scope of the employee's employment,
12 if the employee or agent is not engaged otherwise in the
13 auction business and if all property for sale at auction is
14 subject to a security agreement.

15 7. A sale conducted by sealed bid.

16 8. An auction conducted in a course of study for
17 auctioneers or auction clerks or auction cashiers and
18 conducted for student training purposes.

19 9. An auction conducted by a posted stockyard or market
20 agency as defined by the federal Packers and Stockyard Act,
21 1921, as amended, 7 U.S.C. § 181 et seq.

22 10. An auction of livestock conducted by a nonprofit
23 livestock trade association chartered in this state if the
24 auction involves only the sale of livestock of the trade
25 association's members.

26 11. An auction conducted by a charitable or nonprofit
27 organization chartered in this state if the auction involves
28 only the property of the organization or its members and the
29 auction is part of an event that is organized under state or
30 local authority.

31 Sec. 21. INITIAL IOWA AUCTION AND AUCTIONEER COMMISSION
32 APPOINTMENTS. The initial members of the Iowa auction and
33 auctioneer commission shall be appointed to the following
34 terms:

35 1. Two members shall be appointed for a term of three

1 years.

2 2. Two members shall be appointed for a term of two years.

3 3. One member shall be appointed for a term of one year.

4 EXPLANATION

5 This bill creates a new Code chapter 545A entitled the
6 "Iowa Auction and Auctioneer Licensing Act".

7 New Code section 545A.2 creates definitions for terms used
8 in the chapter including "associate auctioneer", "auction",
9 "auction clerk" or "auction cashier", "auctioneer", "auction
10 service", "certified auction school", "commission",
11 "licensee", "person", "property", "secured party", and "trust
12 account".

13 New Code section 545A.3 establishes the Iowa auction and
14 auctioneer commission consisting of five voting members
15 appointed by the governor and subject to senate confirmation.
16 Members of the commission are to serve three-year staggered
17 terms. Four members are to be appointed who represent
18 auctioneers, auction clerks and auction cashiers, associate
19 auctioneers, and auction services. One member is to be
20 appointed who represents the public.

21 New Code section 545A.4 establishes the duties of the
22 commission including maintaining a registry of licensees,
23 establishing licensing requirements, establishing continuing
24 education requirements, and adopting rules for the
25 implementation of the new Code chapter.

26 New Code section 545A.5 provides that the commission is to
27 establish and collect a reasonable fee for a license
28 application, examination, reexamination, issuance and renewal
29 of a license, and any delinquency fee. Such fees are to be
30 deposited in the auctioneer recovery and education fund.

31 New Code section 545A.6 establishes license requirements
32 for an auctioneer, associate auctioneer, auction clerk or
33 auction cashier, and auction service.

34 New Code section 545A.7 provides that the commission is to
35 establish license examinations for an auctioneer, associate

1 auctioneer, auction clerk or cashier, or auction service. The
2 commission is also required to prepare study and reference
3 materials on which the examinations are based.

4 New Code section 545A.8 establishes requirements for
5 nonresident licenses.

6 New Code section 545A.9 provides for a license certificate
7 and provides that the commission is to issue a renewal notice
8 to licensees no less than 90 days prior to the expiration of a
9 license.

10 New Code section 545A.10 establishes acts which are to
11 result in the denial, suspension, or revocation of a license.

12 New Code section 545A.11 provides that a licensee who does
13 not engage in any activity for which a license under the
14 chapter is required during the year succeeding the expiration
15 of the license may notify the commission to place the licensee
16 on the inactive list and the licensee shall not be required to
17 pay a license renewal fee for as long as the licensee remains
18 inactive and annually notifies the commission of such inactive
19 status.

20 New Code section 545A.12 creates the auctioneer recovery
21 and education fund to be used for the payment of the expenses
22 of the commission and for making payments to persons aggrieved
23 by a licensee. The commission is to maintain a minimum level
24 of \$200,000 in the fund. The bill directs the commission to
25 assess an additional fee not to exceed \$50 against licensees
26 for deposit into the fund. The additional fee is to be paid
27 upon making an initial application for a license and upon the
28 renewal of such license.

29 New Code section 545A.13 provides that a political
30 subdivision of the state is prohibited from levying or
31 collecting a license fee, tax, or other fee, or requiring any
32 license of an auctioneer, associate auctioneer, auction clerk
33 or auction cashier, or auction service who is subject to this
34 chapter.

35 New Code section 545A.14 provides that a licensee is to

1 maintain a trust account in a federally insured financial
2 institution.

3 New Code section 545A.15 provides for the investigation of
4 a complaint against a licensee by the commission.

5 New Code section 545A.16 provides that a violation of the
6 provisions of new Code chapter 545A is a simple misdemeanor.

7 The bill also authorizes the commission to establish civil
8 penalties.

9 New Code section 545A.17 provides that a written contract
10 is to be entered into between a licensee and each seller of
11 personal property at an auction. The bill provides that Code
12 section 543B.7 applies to an auction involving real property.
13 The bill establishes items which are to be included in any
14 such contract.

15 New Code section 545A.18 provides that an auctioneer,
16 auction clerk or auction cashier, or auction service who
17 advertises to hold, conduct, or act as a clerk or cashier at
18 an auction within this state shall indicate in such
19 advertisement the name and license number of the auctioneer,
20 auction clerk or auction cashier, and auction service.

21 New Code section 545A.19 prohibits a person from acting as
22 an auctioneer, auction clerk or auction cashier, or auction
23 service unless the person is licensed under the chapter.

24 New Code section 545A.20 establishes transactions which are
25 exempt from the requirements of new Code chapter 545A.

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