

Senate Study Bill 1249

SENATE FILE _____
BY (PROPOSED COMMITTEE ON STATE
GOVERNMENT BILL BY CO=CHAIRPERSONS
HORN AND McKIBBEN)

Passed Senate, Date _____ Passed House, 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:
5 TLSB 2784SC 81
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1 1 Section 1. NEW SECTION. 545A.1 TITLE.
1 2 This chapter shall be known and may be cited as the "Iowa
1 3 Auction and Auctioneer Licensing Act".
1 4 Sec. 2. NEW SECTION. 545A.2 DEFINITIONS.
1 5 1. "Associate auctioneer" means a person who acts as an
1 6 auctioneer, but who is under the direct supervision of a
1 7 licensed auctioneer or auction service.
1 8 2. "Auction" means the sale of property, real or personal,
1 9 by public outcry, in which the sale price of the property
1 10 offered is increased until the highest accepted bidder becomes
1 11 the purchaser.
1 12 3. "Auction clerk" or "auction cashier" means a person
1 13 who, with or without receiving or collecting a fee,
1 14 commission, or other valuable consideration, collects,
1 15 accounts for, or distributes proceeds from an auction.
1 16 4. "Auction service" means a person who engages in the
1 17 business of arranging, managing, sponsoring, advertising, or
1 18 conducting auctions.
1 19 5. "Auctioneer" means a person who, as a bid caller, sells
1 20 or offers to sell property with or without receiving or
1 21 collecting a fee, commission, or other valuable consideration.
1 22 6. "Certified auction school" means a public or private
1 23 educational institution offering a curriculum of auctioneer
1 24 education and training approved by the commission.
1 25 7. "Commission" means the Iowa auction and auctioneer
1 26 commission established in section 545A.3.
1 27 8. "Licensee" means a person licensed under this chapter.
1 28 9. "Person" means as defined in section 4.1.
1 29 10. "Property" means anything of value, and includes any
1 30 interest in property, including any benefit, privilege, claim,
1 31 or right with respect to anything of value, whether real or
1 32 personal, tangible or intangible, which may be kept or offered
1 33 for sale.
1 34 11. "Secured party" means as defined in section 554.9102.
1 35 12. "Trust account" means an account in a federally
2 1 insured financial institution used for the deposit and
2 2 disbursement of the proceeds of an auction.
2 3 Sec. 3. NEW SECTION. 545A.3 IOWA AUCTION AND AUCTIONEER
2 4 COMMISSION ESTABLISHED == MEMBERS == DUTIES.
2 5 1. An Iowa auction and auctioneer commission is
2 6 established within the professional licensing and regulation
2 7 division of the department of commerce.
2 8 2. Members of the commission shall be appointed by the
2 9 governor and subject to confirmation by the senate pursuant to
2 10 section 2.32.
2 11 3. The commission shall consist of five voting members as
2 12 follows:
2 13 a. Three members who represent auctioneers, auction clerks
2 14 and auction cashiers, associate auctioneers, and auction
2 15 services. An individual appointed pursuant to this paragraph

2 16 must be a licensee.

2 17 b. Two members who shall represent the public. An
2 18 individual appointed pursuant to this paragraph must not be or
2 19 have been a licensee under this chapter or have engaged in any
2 20 manner in the auction profession.

2 21 4. Members of the commission shall serve three-year
2 22 staggered terms as designated by the governor consistent with
2 23 this section and appointments to the commission are subject to
2 24 the requirements of sections 69.16, 69.16A, and 69.19. A
2 25 member of the commission shall serve no more than two
2 26 consecutive terms, not including any partial term which the
2 27 member is appointed to fill as the result of a vacancy.
2 28 Vacancies shall be filled by the governor for the duration of
2 29 the unexpired term in the same manner as provided for other
2 30 appointments.

2 31 5. A member of the commission is entitled to be reimbursed
2 32 for all actual and necessary expenses incurred in performance
2 33 of duties as a member. A member of the commission shall also
2 34 receive a per diem as specified in section 7E.6 for each day
2 35 spent in performance of duties as a member.

3 1 6. A quorum shall consist of a majority of the members of
3 2 the commission.

3 3 7. Members of the commission shall elect a chairperson and
3 4 vice chairperson annually and other officers as they
3 5 determine.

3 6 8. The commission shall meet as often as necessary, but at
3 7 least once during each calendar quarter. Meetings shall be
3 8 set by a majority of the commission or upon the call of the
3 9 chairperson.

3 10 Sec. 4. NEW SECTION. 545A.4 DUTIES OF THE COMMISSION.

3 11 1. The commission shall adopt rules pursuant to chapter
3 12 17A establishing licensing requirements and other rules
3 13 necessary to administer and enforce this chapter. The
3 14 commission shall consider proposed rules recommended by a
3 15 commission member, a member of the general public, or a
3 16 professional auction organization. The commission may publish
3 17 guidelines to provide clarification and explanation of adopted
3 18 rules.

3 19 2. The commission shall maintain a registry of the names
3 20 and addresses of auctioneers, associate auctioneers, auction
3 21 clerks, auction cashiers, and auction services licensed under
3 22 this chapter. The commission shall retain records and
3 23 application materials submitted to the commission.

3 24 3. The commission shall establish the licensing
3 25 requirements for each type of license, provide appropriate
3 26 examinations, establish procedures for grading examinations,
3 27 receive and approve or disapprove applications for licensing,
3 28 and issue licenses.

3 29 An applicant for an auctioneer, associate auctioneer,
3 30 auction clerk or auction cashier, or auction service license
3 31 shall provide evidence that the applicant has working
3 32 knowledge of current auction marketing theories, practices,
3 33 and techniques which will enable the applicant to provide
3 34 high-quality service and protection to members of the public.

3 35 4. The commission shall establish continuing education
4 1 requirements for licensees and monitor compliance with the
4 2 established requirements. The basic continuing education
4 3 requirement for renewal of a license shall be the completion,
4 4 during the immediately preceding licensure term, of the number
4 5 of classroom hours of instruction required by the commission
4 6 in courses or seminars approved by the commission.

4 7 Participation in continuing education for license renewal
4 8 is mandatory, except for nonresident licensees whose
4 9 nonresident license is issued by reciprocity with the
4 10 nonresident's state of residence. A nonresident licensee
4 11 whose state does not have a substantially similar licensing
4 12 requirement shall fulfill the mandatory continuing education
4 13 requirements established pursuant to this section.

4 14 Sec. 5. NEW SECTION. 545A.5 LICENSE FEES.

4 15 1. The commission shall establish and collect a reasonable
4 16 fee for a license application, examination, reexamination,
4 17 issuance of a license, renewal of a license, and any
4 18 delinquency fee sufficient to pay for the costs of
4 19 administration of this chapter. The fees shall include, but
4 20 are not limited to, amounts to cover the cost for the
4 21 following items:

4 22 a. Per diem and necessary expenses for commission members.
4 23 b. Office facilities, staff assistance, supplies, and
4 24 equipment of the commission.

4 25 2. Fees collected by the commission shall be transmitted
4 26 to the treasurer of state and shall be deposited in the

4 27 auctioneer recovery and education fund established in section
4 28 545A.12. Moneys in the fund are appropriated to and shall be
4 29 used by the commission consistent with this chapter.
4 30 Sec. 6. NEW SECTION. 545A.6 LICENSE REQUIREMENTS.
4 31 1. An application for a license, renewal of a license, or
4 32 an examination shall be made in writing to the commission on
4 33 forms approved by the commission.
4 34 2. Prior to the adoption of rules by the commission, the
4 35 commission may issue an interim license to a qualified
5 1 applicant. An interim license shall not be issued or renewed
5 2 following the adoption of licensure rules by the commission.
5 3 3. Except as otherwise provided in this chapter, a person
5 4 shall not act as an auctioneer, associate auctioneer, auction
5 5 clerk or auction cashier, or auction service in this state
5 6 unless that person holds a license issued under this chapter.
5 7 4. A person is eligible for an auctioneer's license if the
5 8 applicant satisfies all of the following:
5 9 a. The applicant is at least eighteen years of age.
5 10 b. The applicant is a citizen of the United States or a
5 11 legal alien.
5 12 c. The applicant does one of the following:
5 13 (1) Passes a written or oral examination offered pursuant
5 14 to section 545A.7 demonstrating the applicant's knowledge of
5 15 auctioneering and the laws pertaining to auctioneering.
5 16 (2) Shows proof that the applicant has legally performed
5 17 as an auctioneer in at least five auctions prior to the date
5 18 of application.
5 19 (3) Shows proof that the applicant has successfully
5 20 completed a course of study at a certified auction school.
5 21 5. A person is eligible for an associate auctioneer's
5 22 license if the applicant satisfies both of the following:
5 23 a. The applicant is a citizen of the United States or a
5 24 legal alien.
5 25 b. The applicant is employed under the direct supervision
5 26 of an auctioneer or auction service licensed pursuant to this
5 27 chapter.
5 28 6. A person is eligible for an auction clerk or auction
5 29 cashier license if the applicant satisfies all of the
5 30 following:
5 31 a. The applicant is at least eighteen years of age.
5 32 b. The applicant is a citizen of the United States or a
5 33 legal alien.
5 34 c. The applicant has not been convicted of a felony.
5 35 d. The applicant does one of the following:
6 1 (1) Passes a written examination offered pursuant to
6 2 section 545A.7 demonstrating the applicant's knowledge of the
6 3 position of auction clerk or auction cashier, acceptable
6 4 accounting methodology, and the laws pertaining to the
6 5 position of auction clerk or auction cashier.
6 6 (2) Shows proof that the applicant has successfully
6 7 completed a course of study at a certified auction school.
6 8 (3) Shows proof that the applicant has legally performed
6 9 as an auction clerk or auction cashier in at least five
6 10 auctions within the previous five years prior to application.
6 11 7. An auction service license may be issued for the
6 12 purpose of engaging in the business of arranging, managing,
6 13 sponsoring, advertising, or conducting auctions, to a person
6 14 who satisfies the requirements both for licensure as an
6 15 auctioneer and for licensure as an auction clerk or auction
6 16 cashier.
6 17 8. A licensed auction clerk or auction cashier, and a
6 18 licensed auction service, must hold an Iowa retail sales tax
6 19 permit.
6 20 Sec. 7. NEW SECTION. 545A.7 EXAMINATION REQUIREMENTS.
6 21 1. The commission shall prepare license examinations for
6 22 an auctioneer license, auction clerk or auction cashier
6 23 license, and auction service license. The commission shall
6 24 also prepare study and reference materials on which the
6 25 examinations are based. The examination for auctioneers,
6 26 auction clerks or auction cashiers, and auction services must
6 27 be designed to establish the applicant's general knowledge of
6 28 the auction profession, the principles of conducting an
6 29 auction, and the laws of this state pertaining to auctioneers,
6 30 auction clerks or auction cashiers, and auction services. The
6 31 license examination must be offered at least four times a year
6 32 at locations designated by the commission.
6 33 2. A person seeking to become eligible for an auctioneer
6 34 license, auction clerk or auction cashier license, or auction
6 35 service license by examination must apply to the commission to
7 1 take a license examination. The application must be
7 2 accompanied by an examination fee. Upon the receipt of an

7 3 examination application with the required fee, the commission
7 4 shall furnish the applicant with study materials and
7 5 references on which the examination will be based and a
7 6 schedule specifying the dates and places the examination will
7 7 be offered. The applicant may take the examination at any
7 8 scheduled offering within ninety days after receipt of the
7 9 study materials. If an applicant fails the examination, the
7 10 applicant may reapply to take the license examination again.
7 11 However, if the applicant fails the examination twice within a
7 12 one-year period, the applicant must wait one year from the
7 13 last date of examination to reapply.

7 14 Sec. 8. NEW SECTION. 545A.8 NONRESIDENT LICENSE.

7 15 1. An auctioneer license, auction clerk or auction cashier
7 16 license, or auction service license may be issued by the
7 17 commission to a nonresident as follows:

7 18 a. If the application is accompanied by a certified copy
7 19 of an auctioneer license, auction clerk or auction cashier
7 20 license, or auction service license issued to the applicant by
7 21 the applicant's state of residence, and the commission has
7 22 determined that the applicant's state has substantially
7 23 equivalent licensing requirements, and only if the applicant's
7 24 state extends similar recognition and courtesies to this
7 25 state, the commission shall accept the license as proof of the
7 26 applicant's professional competence and shall waive the course
7 27 of study and examination requirements of section 545A.7.

7 28 b. If an application is received from a nonresident of
7 29 this state where the applicant's state of residency does not
7 30 have an auctioneer license, auction clerk or auction cashier
7 31 license, or auction service license requirement, the
7 32 commission may issue a nonresident license to the applicant if
7 33 the applicant meets the requirements of section 545A.6 and all
7 34 other application requirements.

7 35 2. The commission may issue a license to a nonresident
8 1 applicant for an associate auctioneer license if the applicant
8 2 meets the requirements of section 545A.6 and all other
8 3 application requirements.

8 4 3. A nonresident applying for a license pursuant to this
8 5 section shall file a written power of attorney designating the
8 6 secretary of state as the agent for service of process in the
8 7 event of any suit against the nonresident person, and
8 8 submitting to the jurisdiction of the courts of this state. A
8 9 nonresident who has a duly appointed resident agent for
8 10 service of process as provided by law is not required to
8 11 designate the secretary of state as the nonresident's agent.
8 12 The secretary of state is allowed to collect fees as provided
8 13 by law for designating resident agents. The secretary shall
8 14 be furnished with a copy of any designation of the secretary
8 15 of state or of a resident agent, with the copy to be certified
8 16 by the secretary of state.

8 17 4. A licensed nonresident auction clerk or auction cashier
8 18 and licensed nonresident auction service must hold an Iowa
8 19 sales tax permit.

8 20 Sec. 9. NEW SECTION. 545A.9 LICENSE CERTIFICATE.

8 21 1. A license certificate issued under this chapter shall
8 22 bear the signature or facsimile signature of a member of the
8 23 commission and a license number assigned by the commission.

8 24 2. No less than ninety days prior to the expiration of a
8 25 licensee's license, the commission shall issue a renewal
8 26 notice to each licensee.

8 27 Sec. 10. NEW SECTION. 545A.10 DENIAL, SUSPENSION, OR
8 28 REVOCATION OF LICENSE.

8 29 1. The rights of a holder of a license as a licensed
8 30 auctioneer, licensed associate auctioneer, licensed auction
8 31 clerk or auction cashier, or licensed auction service may be
8 32 revoked or suspended, or the holder may be otherwise
8 33 disciplined as provided in this chapter. The commission may
8 34 investigate the actions of a licensee and may revoke or
8 35 suspend the rights of a licensee or otherwise discipline a
9 1 licensee for violation of this chapter or of a rule adopted
9 2 pursuant to this chapter. Violations shall include, but are
9 3 not limited to, the following acts or omissions:

9 4 a. Procurement or attempt to procure a license under this
9 5 chapter by knowingly making a false statement, submitting
9 6 false information, refusing to provide complete information in
9 7 response to a question in an application for license, or
9 8 participating in any form of fraud or misrepresentation.

9 9 b. Failure to meet the minimum qualifications established
9 10 by this chapter.

9 11 c. Continued and flagrant misrepresentations or making
9 12 false promises through agents, advertising, or otherwise.

9 13 d. Failure to account for or remit, within a reasonable

9 14 time, any money or property belonging to others that comes
9 15 into the licensee's possession, or commingling funds of others
9 16 with the licensee's own or failure to keep such funds of
9 17 others in an escrow or trust account.

9 18 e. Conviction, including a conviction based upon a plea of
9 19 guilt or nolo contendere, in a court of competent jurisdiction
9 20 of this state or any other state of a crime which is
9 21 substantially related to the qualifications, functions, and
9 22 duties of a person engaged in the auction profession or
9 23 involving moral turpitude or a felony.

9 24 f. Failure or refusal without good cause to exercise
9 25 reasonable diligence in preparing an auction, conducting an
9 26 auction, or completing an auction.

9 27 g. A violation of the uniform commercial code, chapter
9 28 554, in the conduct of an auction.

9 29 2. Before denying an application for a license or before
9 30 suspending or revoking any license, the commission shall in
9 31 all cases set the matter for a hearing and shall, at least
9 32 thirty days before the date set for the hearing, notify in
9 33 writing the applicant or licensee of the charges made against
9 34 the applicant or licensee, or of the question to be
9 35 determined, including notice of when and where the hearing
10 1 will be held.

10 2 3. The applicant or licensee is entitled to an opportunity
10 3 to be present and to be heard in person or by counsel and to
10 4 have an opportunity to offer evidence by oral testimony, by
10 5 affidavit, or by deposition.

10 6 4. Written notice may be served by delivery of the notice
10 7 personally to the applicant or licensee or by mailing the
10 8 notice by certified mail to the last known mailing address of
10 9 the applicant or licensee. If the applicant or licensee is an
10 10 associate auctioneer, the commission shall also notify the
10 11 auctioneer employing the associate auctioneer by mailing the
10 12 notice by certified mail to the employing auctioneer's last
10 13 known address.

10 14 5. The hearing shall be conducted pursuant to chapter 17A.

10 15 6. If, after hearing, the commission determines that a
10 16 license should be denied, revoked, or suspended, the applicant
10 17 or licensee has thirty days in which to appeal the
10 18 commission's decision to the district court of the county in
10 19 which the disqualification or violation is alleged to have
10 20 occurred.

10 21 Sec. 11. NEW SECTION. 545A.11 INACTIVE LICENSE.

10 22 A licensee who does not engage in any activity for which a
10 23 license under this chapter is required during the year
10 24 succeeding the expiration of the license shall notify the
10 25 commission to place the licensee on a list of inactive
10 26 licensees and the licensee shall not be required to pay a
10 27 license renewal fee for as long as the licensee remains
10 28 inactive and annually notifies the commission of such inactive
10 29 status. In order to resume engaging in an activity for which
10 30 a license under this chapter is required, the licensee shall
10 31 notify the commission and remit the appropriate renewal fee
10 32 for the current renewal period.

10 33 Sec. 12. NEW SECTION. 545A.12 AUCTIONEER RECOVERY AND
10 34 EDUCATION FUND ESTABLISHED == PURPOSE.

10 35 1. a. An auctioneer recovery and education fund is
11 1 created in the state treasury under the control of the
11 2 commission.

11 3 b. In addition to the license fees collected pursuant to
11 4 this chapter, upon renewal of every auctioneer, associate
11 5 auctioneer, auction clerk or auction cashier and auction
11 6 service license, the commission, in its discretion and based
11 7 upon the needs of the commission, may assess every licensee an
11 8 amount not to exceed fifty dollars per year to be deposited in
11 9 the auctioneer recovery and education fund.

11 10 c. In addition to the license fees collected pursuant to
11 11 this chapter, an applicant for an initial license shall pay an
11 12 additional amount of fifty dollars, but upon renewal shall pay
11 13 the same fee as other licensees.

11 14 2. Moneys in the fund shall be used for the following
11 15 purposes:

11 16 a. Payment to a person aggrieved by a licensee as the
11 17 result of a violation of this chapter or rules adopted
11 18 pursuant to this chapter. Payment is to be made upon the
11 19 entry of a final order entered by the commission or by a
11 20 court. The commission is authorized to pay to the aggrieved
11 21 person or persons an aggregate amount not to exceed fifty
11 22 thousand dollars against any one licensee, provided that the
11 23 licensee has refused to pay the claim within a period of
11 24 twenty days of entry of a final order and provided further

11 25 that the amount or amounts of money in question are certain
11 26 and liquidated.

11 27 b. The commission shall attempt to maintain a minimum
11 28 level of two hundred thousand dollars in the fund for recovery
11 29 and guaranty purposes. All moneys in the fund may be invested
11 30 in the same manner as funds of the Iowa public employees'
11 31 retirement system and the interest from the investments shall
11 32 be deposited to the credit of the fund. Sufficient liquidity
11 33 shall be maintained so that moneys are available to satisfy
11 34 any and all claims, subject to available funds, which may be
11 35 processed through the commission by means of administrative
12 1 hearing as outlined in this chapter.

12 2 c. The commission, in its discretion, may use any funds in
12 3 excess of the two hundred thousand dollar level for any of the
12 4 following purposes:

12 5 (1) To carry out the advancement of education and research
12 6 in the auction field for the benefit of licensees, and for
12 7 improving the efficiency of the auction profession.

12 8 (2) To underwrite educational seminars and other forms of
12 9 education projects for the use and benefit generally of
12 10 licensees.

12 11 (3) To establish an auction chair or courses at state
12 12 institutions of higher learning for the purpose of making the
12 13 courses available to licensees and the general public.

12 14 (4) To contract for particular research projects relating
12 15 to the auction profession.

12 16 (5) To sponsor, contract for, and to underwrite any and
12 17 all other educational and research projects of a similar
12 18 nature having to do with the advancement of the auction
12 19 profession.

12 20 (6) To cooperate with associations of auctioneers and any
12 21 other groups for the enlightenment and advancement of
12 22 licensees.

12 23 (7) To increase the level of the auctioneer recovery and
12 24 education fund above two hundred thousand dollars.

12 25 (8) To augment the regular trust account of the
12 26 commission.

12 27 3. a. If a licensee is found guilty of violation of this
12 28 chapter or of the rules adopted pursuant to this chapter, and
12 29 if the amount of money lost by the aggrieved party or parties
12 30 is in dispute or cannot be determined accurately, the
12 31 liability of the licensee and the amount of damages shall be
12 32 determined by the district court in the county where the
12 33 alleged violation took place, provided that the commission has
12 34 previously determined that a violation has occurred and a
12 35 final order has been entered.

13 1 b. If a final order of the commission has been entered and
13 2 the rights of the licensee have been finally adjudicated, the
13 3 district court shall make a finding as to the monetary damages
13 4 to be awarded.

13 5 c. When a final order has been entered by the district
13 6 court, or after appeal, if any, and upon certification to the
13 7 commission, the aggrieved party or parties shall be paid an
13 8 amount or amounts in the aggregate not to exceed fifty
13 9 thousand dollars by the commission, and the license held by
13 10 the licensee against whom the claim was made by the aggrieved
13 11 party shall be suspended at a minimum until the licensee has
13 12 reimbursed the auctioneer recovery and education fund for all
13 13 amounts paid to the aggrieved party as a result of the
13 14 violation.

13 15 d. Upon payment by the commission of any sum to the
13 16 aggrieved party, the commission shall be subrogated to all
13 17 rights of the aggrieved party to the extent of the payment and
13 18 the aggrieved party shall to the extent of the payment assign
13 19 such right, title, and interest in the judgment to the
13 20 commission.

13 21 e. A claim for monetary damages or relief from the
13 22 auctioneer recovery and education fund must be made in writing
13 23 on a proof of loss form submitted to the commission within six
13 24 months of the act of the auctioneer giving rise to the loss.
13 25 Failure to file such claims within the six-month period shall
13 26 bar the claim. Additional evidence shall be submitted by the
13 27 claimant if required by the commission.

13 28 f. Notwithstanding any other provisions of this chapter,
13 29 an unreimbursed amount greater than fifty thousand dollars
13 30 shall not be paid by the commission on account of any one
13 31 licensee, regardless of the length of time, the number of
13 32 claims or claimants, or the size of the claims, individually
13 33 or in the aggregate. Upon reimbursement of the fund by the
13 34 licensee for all amounts paid, future claims timely filed with
13 35 the commission regarding the licensee concerning different

14 1 matters may be received pursuant to this section.
14 2 g. A claim shall not be approved under this section for
14 3 amounts which, in the aggregate, exceed the maximum payable in
14 4 effect at the time of the act or acts of the licensee giving
14 5 rise to the claims on account of any one licensee. A
14 6 statutory increase in the established maximum shall not apply
14 7 retroactively.

14 8 4. This section is not intended to substitute for,
14 9 circumvent, or duplicate other remedies existing at law for
14 10 claimants or potential claimants, but constitutes a last
14 11 resort for aggrieved persons who would not, but for the
14 12 provisions of this section, be able to recover their losses by
14 13 any other means available. The commission shall have full
14 14 discretion to require that claimants exhaust all other
14 15 remedies prior to proceeding under this section.

14 16 Sec. 13. NEW SECTION. 545A.13 PREEMPTION.

14 17 A political subdivision of this state shall not levy or
14 18 collect any license fee, tax, or other fee, or require the
14 19 licensing in any manner of any auctioneer, associate
14 20 auctioneer, auction clerk or auction cashier, or auction
14 21 service subject to this chapter.

14 22 Sec. 14. NEW SECTION. 545A.14 TRUST ACCOUNT
14 23 REQUIREMENTS.

14 24 1. A licensee shall maintain a trust account as provided
14 25 in this section for the deposit and disbursement of all
14 26 proceeds collected on the behalf of another person, including
14 27 sales tax, if applicable. The account shall be separate from
14 28 all other trust accounts of the holder and may be an interest=
14 29 bearing account. For purposes of this section, "licensee"
14 30 means a licensed auction clerk or auction cashier or licensed
14 31 auction service.

14 32 2. A licensee required to maintain a trust account
14 33 pursuant to this section shall report to the commission the
14 34 name and mailing address of the financial institution where
14 35 the trust account is maintained and the trust account number.
15 1 A consent form shall also be furnished to the commission from
15 2 the licensee and the financial institution to permit the
15 3 examination and audit of the trust account by the commission
15 4 or the commission's representative.

15 5 3. Auction trust accounts shall be maintained as follows:

15 6 a. A resident licensee shall maintain a trust account in a
15 7 federally insured financial institution located in this state.

15 8 b. A nonresident licensee licensed in such licensee's
15 9 state of residence shall maintain a trust account in this
15 10 state in the same manner as provided for a resident licensee
15 11 under paragraph "a", or in a federally insured financial
15 12 institution in the licensee's state of residence and the
15 13 licensee shall comply with subsection 2.

15 14 c. A nonresident licensee who is a resident of a state
15 15 that does not provide for the licensing of auctioneers,
15 16 auction clerks or auction cashiers, or auction services must
15 17 maintain an auction trust account in a federally insured Iowa
15 18 financial institution and the licensee shall comply with
15 19 subsection 2.

15 20 4. An auction trust account may contain sufficient
15 21 personal funds of the licensee to maintain that account.

15 22 Sec. 15. NEW SECTION. 545A.15 INVESTIGATION OF COMPLAINT
15 23 == ACTION.

15 24 The commission, upon its own motion, may, or on the written
15 25 and verified complaint of any person aggrieved by the actions
15 26 of an auctioneer, associate auctioneer, auction clerk or
15 27 auction cashier, or an auction service in the conduct of an
15 28 auction, shall, investigate alleged violations and complaints
15 29 of this chapter by a licensed or unlicensed auctioneer,
15 30 associate auctioneer, auction clerk or auction cashier, or
15 31 auction service.

15 32 Sec. 16. NEW SECTION. 545A.16 PENALTIES.

15 33 1. A person who acts as an auctioneer, associate
15 34 auctioneer, auction clerk or auction cashier, or auction
15 35 service without first obtaining a license under this chapter
16 1 commits a simple misdemeanor.

16 2 2. A person who violates any other provisions of this
16 3 chapter, or a rule adopted by the commission in the
16 4 administration of this chapter for which no other penalty is
16 5 provided, commits a simple misdemeanor.

16 6 3. The commission shall adopt rules providing for civil
16 7 penalties in amounts as permitted by state law and as
16 8 determined by the commission.

16 9 Sec. 17. NEW SECTION. 545A.17 AUCTION CONTRACTS.

16 10 1. A licensee and each seller of personal property at an
16 11 auction which is to be conducted or managed within the state

16 12 shall enter into a written contract. A contract between a
16 13 licensee and a seller of personal property must be signed by
16 14 all parties.

16 15 2. The written contract, at a minimum, shall contain the
16 16 following:

16 17 a. The auctioneer's, auction clerk's or auction cashier's,
16 18 or the auction service's name, trade or business name, and the
16 19 license number of the auctioneer, auction clerk or auction
16 20 cashier, or auction service.

16 21 b. The name of the owner or consignor of the property to
16 22 be auctioned.

16 23 c. A general description of the property to be sold.

16 24 d. Any restriction relating to conducting the auction and
16 25 a statement indicating whether the auctioneer, auction clerk
16 26 or auction cashier, or auction service is authorized to
16 27 purchase at the auction.

16 28 e. A description of all services to be provided and the
16 29 fee for services, including whether a buyer's premium will be
16 30 assessed and, if so, the amount of the buyer's premium.

16 31 f. A statement indicating which party is responsible for
16 32 advertising and other auction expenses.

16 33 g. The date, location, and starting time of the auction,
16 34 if known.

16 35 h. A statement as to the responsibilities of each party
17 1 for the auction.

17 2 i. A statement by the seller that the seller has title or
17 3 right to sell all property to be sold at auction with
17 4 identification of those items which are subject to an
17 5 encumbrance or lien and the disclosure of the person or entity
17 6 holding an encumbrance or lien.

17 7 3. An owner or consignor of the property to be auctioned
17 8 shall be furnished with a copy of the contract.

17 9 4. Section 543B.7 applies to an auction involving real
17 10 property.

17 11 Sec. 18. NEW SECTION. 545A.18 ADVERTISING REQUIREMENTS.

17 12 1. An auctioneer, auction clerk or auction cashier, or
17 13 auction service who advertises to hold, conduct, or act as an
17 14 auction clerk or auction cashier at an auction within this
17 15 state shall indicate in the advertisement the name and license
17 16 number of the auctioneer, auction clerk or auction cashier, or
17 17 auction service.

17 18 2. This section does not pertain to advertisements for an
17 19 auction that is to be held in another state.

17 20 Sec. 19. NEW SECTION. 545A.19 EMPLOYMENT BY AUCTION
17 21 SERVICE.

17 22 A person licensed under this chapter shall not act as an
17 23 auctioneer, associate auctioneer, or auction clerk or auction
17 24 cashier for an auction service unless the auction service is
17 25 licensed under this chapter.

17 26 Sec. 20. NEW SECTIONS. 545A.20 EXEMPT TRANSACTIONS.

17 27 This chapter does not apply to a person who engages in any
17 28 of the following:

17 29 1. An auction conducted by order of the court pursuant to
17 30 Title 11 of the United States Code relating to bankruptcy.

17 31 2. An auction conducted by an employee of the United
17 32 States, or of this state or its political subdivisions, in the
17 33 course and scope of the employee's employment.

17 34 3. An auction conducted by a charitable or nonprofit
17 35 organization, if the auctioneer receives no compensation.

18 1 4. An auction conducted by an individual of that
18 2 individual's own property if the individual is not engaged in
18 3 the business of selling such property as an auctioneer on a
18 4 recurring basis.

18 5 5. A foreclosure auction of realty conducted personally by
18 6 a trustee under a deed of trust.

18 7 6. A foreclosure auction of personal property conducted
18 8 personally by the mortgagee, or other secured party, or an
18 9 employee or agent of the mortgagee or other secured party
18 10 acting in the course and scope of the employee's employment,
18 11 if the employee or agent is not engaged otherwise in the
18 12 auction business and if all property for sale at auction is
18 13 subject to a security agreement.

18 14 7. A sale conducted by sealed bid.

18 15 8. An auction conducted in a course of study for
18 16 auctioneers or auction clerks or auction cashiers and
18 17 conducted for student training purposes.

18 18 9. An auction conducted by a posted stockyard or market
18 19 agency as defined by the federal Packers and Stockyard Act,
18 20 1921, as amended, 7 U.S.C. } 181 et seq.

18 21 10. An auction of livestock conducted by a nonprofit
18 22 livestock trade association chartered in this state if the

18 23 auction involves only the sale of livestock of the trade
18 24 association's members.
18 25 11. An auction conducted by a charitable or nonprofit
18 26 organization chartered in this state if the auction involves
18 27 only the property of the organization or its members and the
18 28 auction is part of an event that is organized under state or
18 29 local authority.

18 30 12. A motor vehicle auction, including the auction of
18 31 wrecked, salvage, or abandoned vehicles.

18 32 Sec. 21. INITIAL IOWA AUCTION AND AUCTIONEER COMMISSION
18 33 APPOINTMENTS. The initial members of the Iowa auction and
18 34 auctioneer commission shall be appointed to the following
18 35 terms:

19 1 1. Two members shall be appointed for a term of three
19 2 years.

19 3 2. Two members shall be appointed for a term of two years.

19 4 3. One member shall be appointed for a term of one year.

19 5 EXPLANATION

19 6 This bill creates a new Code chapter 545A entitled the
19 7 "Iowa Auction and Auctioneer Licensing Act".

19 8 New Code section 545A.2 creates definitions for terms used
19 9 in the chapter including "associate auctioneer", "auction",
19 10 "auction clerk" or "auction cashier", "auctioneer", "auction
19 11 service", "certified auction school", "commission",
19 12 "licensee", "person", "property", "secured party", and "trust
19 13 account".

19 14 New Code section 545A.3 establishes the Iowa auction and
19 15 auctioneer commission consisting of five voting members
19 16 appointed by the governor and subject to senate confirmation.
19 17 Members of the commission are to serve three-year staggered
19 18 terms. Three members are to be appointed who represent
19 19 auctioneers, auction clerks and auction cashiers, associate
19 20 auctioneers, and auction services. Two members are to be
19 21 appointed who represent the public.

19 22 New Code section 545A.4 establishes the duties of the
19 23 commission including maintaining a registry of licensees,
19 24 establishing licensing requirements, establishing continuing
19 25 education requirements, and adopting rules for the
19 26 implementation of the new Code chapter.

19 27 New Code section 545A.5 requires the commission to
19 28 establish and collect a reasonable fee for a license
19 29 application, examination, reexamination, issuance and renewal
19 30 of a license, and any delinquency fee. Such fees are to be
19 31 deposited in the auctioneer recovery and education fund.

19 32 New Code section 545A.6 establishes license requirements
19 33 for an auctioneer, associate auctioneer, auction clerk or
19 34 auction cashier, and auction service.

19 35 New Code section 545A.7 requires the commission to
20 1 establish license examinations for an auctioneer, associate
20 2 auctioneer, auction clerk or cashier, or auction service. The
20 3 commission is also required to prepare study and reference
20 4 materials on which the examinations are based.

20 5 New Code section 545A.8 establishes requirements for
20 6 nonresident licenses.

20 7 New Code section 545A.9 provides for a license certificate
20 8 and requires the commission to issue a renewal notice to
20 9 licensees no less than 90 days prior to the expiration of a
20 10 license.

20 11 New Code section 545A.10 establishes acts which are to
20 12 result in the denial, suspension, or revocation of a license.

20 13 New Code section 545A.11 provides that a licensee who does
20 14 not engage in any activity for which a license under the
20 15 chapter is required during the year succeeding the expiration
20 16 of the license may notify the commission to place the licensee
20 17 on the inactive list and the licensee shall not be required to
20 18 pay a license renewal fee for as long as the licensee remains
20 19 inactive and annually notifies the commission of such inactive
20 20 status.

20 21 New Code section 545A.12 creates the auctioneer recovery
20 22 and education fund to be used for the payment of the expenses
20 23 of the commission and for making payments to persons aggrieved
20 24 by a licensee. The commission is to maintain a minimum level
20 25 of \$200,000 in the fund. The bill directs the commission to
20 26 assess an additional fee not to exceed \$50 against licensees
20 27 for deposit into the fund. The additional fee is to be paid
20 28 upon making an initial application for a license and upon the
20 29 renewal of such license.

20 30 New Code section 545A.13 provides that a political
20 31 subdivision of the state is prohibited from levying or
20 32 collecting a license fee, tax, or other fee, or requiring any
20 33 license of an auctioneer, associate auctioneer, auction clerk

20 34 or auction cashier, or auction service who is subject to this
20 35 chapter.

21 1 New Code section 545A.14 provides that a licensee is to
21 2 maintain a trust account in a federally insured financial
21 3 institution.

21 4 New Code section 545A.15 provides for the investigation of
21 5 a complaint against a licensee by the commission.

21 6 New Code section 545A.16 provides that a violation of the
21 7 provisions of new Code chapter 545A is a simple misdemeanor.

21 8 The bill also authorizes the commission to establish civil
21 9 penalties.

21 10 New Code section 545A.17 requires a written contract to be
21 11 entered into between a licensee and each seller of personal
21 12 property at an auction. The bill provides that Code section
21 13 543B.7 applies to an auction involving real property. The
21 14 bill establishes items which are to be included in any such
21 15 contract.

21 16 New Code section 545A.18 provides that an auctioneer,
21 17 auction clerk or auction cashier, or auction service who
21 18 advertises to hold, conduct, or act as a clerk or cashier at
21 19 an auction within this state shall indicate in such
21 20 advertisement the name and license number of the auctioneer,
21 21 auction clerk or auction cashier, and auction service.

21 22 New Code section 545A.19 prohibits a person from acting as
21 23 an auctioneer, auction clerk or auction cashier, or auction
21 24 service unless the person is licensed under the chapter.

21 25 New Code section 545A.20 establishes transactions which are
21 26 exempt from the requirements of new Code chapter 545A.

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