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SENATE FILE 338
BY COMMITTEE ON STATE GOVERNMENT

(SUCCESSOR TO SSB 1249)

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:

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SF 338

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. "Auction service" means a person who engages in the
17 business of arranging, managing, sponsoring, advertising, or
18 conducting auctions.

19 5. "Auctioneer" means a person who, as a bid caller, sells
20 or offers to sell property with or without receiving or
21 collecting a fee, commission, or other valuable consideration.

22 6. "Certified auction school" means a public or private
23 educational institution offering a 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 554.9102.

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 pursuant to
10 section 2.32.

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

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

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

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

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

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

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

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

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

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

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

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

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

35 4. The commission shall establish continuing education

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

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

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

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

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

25 2. Fees collected by the commission shall be transmitted
26 to the treasurer of state and shall be deposited in the
27 auctioneer recovery and education fund established in section
28 545A.12. Moneys in the fund are appropriated to and shall be
29 used by the commission consistent with this chapter.

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

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

34 2. Prior to the adoption of rules by the commission, the
35 commission may issue an interim license to a qualified

1 applicant. An interim license shall not be issued or renewed
2 following the adoption of licensure rules by the commission.

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

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

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

10 b. The applicant is a citizen of the United States or a
11 legal alien.

12 c. The applicant does one of the following:

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

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

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

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

23 a. The applicant is a citizen of the United States or a
24 legal alien.

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

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

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

32 b. The applicant is a citizen of the United States or a
33 legal alien.

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

35 d. The applicant does one of the following:

1 (1) Passes a written examination offered pursuant to
2 section 545A.7 demonstrating the applicant's knowledge of the
3 position of auction clerk or auction cashier, acceptable
4 accounting methodology, and the laws pertaining to the
5 position of auction clerk or auction cashier.

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

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

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

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

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

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

33 2. A person seeking to become eligible for an auctioneer
34 license, auction clerk or auction cashier license, or auction
35 service license by examination must apply to the commission to

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

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

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

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

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

35 2. The commission may issue a license to a nonresident

1 applicant for an associate auctioneer license if the applicant
2 meets the requirements of section 545A.6 and all other
3 application requirements.

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

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

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

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

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

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

29 1. The rights of a holder of a license as a licensed
30 auctioneer, licensed associate auctioneer, licensed auction
31 clerk or auction cashier, or licensed auction service may be
32 revoked or suspended, or the holder may be otherwise
33 disciplined as provided in this chapter. The commission may
34 investigate the actions of a licensee and may revoke or
35 suspend the rights of a licensee or otherwise discipline a

1 licensee for violation of this chapter or of a rule adopted
2 pursuant to this chapter. Violations shall include, but are
3 not limited to, the following acts or omissions:

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

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

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

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

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

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

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

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

1 will be held.

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

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

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

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

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

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

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

35 1. a. An auctioneer recovery and education fund is

1 created in the state treasury under the control of the
2 commission.

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

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

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

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

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

1 hearing as outlined in this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 matters may be received pursuant to this section.

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

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

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

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

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

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

32 2. A licensee required to maintain a trust account
33 pursuant to this section shall report to the commission the
34 name and mailing address of the financial institution where
35 the trust account is maintained and the trust account number.

1 A consent form shall also be furnished to the commission from
2 the licensee and the financial institution to permit the
3 examination and audit of the trust account by the commission
4 or the commission's representative.

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

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

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

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

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

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

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

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

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

1 commits a simple misdemeanor.

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

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

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

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

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

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

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

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

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

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

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

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

35 h. A statement as to the responsibilities of each party

1 for the auction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 7. A sale conducted by sealed bid.

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

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

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

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

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

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

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

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

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

5 EXPLANATION

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

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

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

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

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

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

35 New Code section 545A.7 requires the commission to

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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**Fiscal Services Division
Legislative Services Agency
Fiscal Note**

SF 338 (Successor to SSB 1249) – Auctioneer Licensing Commission (LSB 2784 SV)
Analyst: Ron Robinson (Phone: (515) 281-6256) (ron.robinson@legis.state.ia.us)
Fiscal Note Version - New

Description

Senate File 338 establishes an Auctioneer Licensing Commission to regulate and license auctioneers. The Commission is established as a five-member commission consisting of three persons representing auctioneers, auction clerks and cashiers, associate auctioneers, and auction services, and two members of the general public. The Bill establishes an Auctioneer Recovery and Education Fund (Fund) to be used for the payment of the expenses of the Commission and for making payments to persons aggrieved by a licensee. The Commission is to establish license application, examination, reexamination, issuance and renewal of a license, and any delinquency fees to be deposited into the Fund. The Fund is to maintain a minimum level of \$200,000 and an additional fee not to exceed \$50 is established to support the Fund.

Assumptions

1. The Professional Licensing Division of the Department of Commerce would utilize three employees to start the registration process.
2. Approximately 1,900 individuals would be licensed.
3. The Commission would establish license fees so that revenue deposited into the Fund would cover the costs of sustaining the Commission's operations.
4. The estimated number of licensees and the total biannual licensing fees are as follows:
 - 750 - Auctioneer - \$250.
 - 750 - Auction Clerk or Auction Cashier - \$150.
 - 50 - Associate Auctioneer - \$100.
 - 350 - Auction Service - \$150.
 - \$50 per licensee per year at the discretion of the Commission.
 - \$50 assessed against all first-time applicants.
5. One-half of the licensees would obtain a two-year license and one-half would obtain a one-year license, at one-half the cost of a two-year license, the first year.
6. The Commission would be appointed in December of 2005 and rules would be implemented by May 2006 (FY 2006).
7. The first license would be issued by July 2006 (FY 2007).

Correctional Impact

Senate File 338 makes it a simple misdemeanor to perform auction functions without a license. Criminal penalties are rare when civil penalties and loss of licensure are in place as provided for in SF 338. To the extent that additional violations are prosecuted, the average State costs associated with imposing criminal penalties for one conviction of a simple misdemeanor ranges from \$14 to \$300.

Fiscal Impact

Senate File 338 will have no impact on the General Fund due to all fees being paid into the Auctioneer Recovery and Education Fund and all expenses being paid from the Fund.

The estimated fiscal impact of SF 338 on the Fund would be as follows:

	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>
Revenue:				
Fees	\$ 0	\$ 410,625	\$ 273,750	\$ 273,750
Recovery Fund		95,000	0	0
Total Revenue	<u>\$ 0</u>	<u>\$ 505,625</u>	<u>\$ 273,750</u>	<u>\$ 273,750</u>
Expenditures:				
Salaries	\$ 142,000	\$ 142,000	\$ 142,000	\$ 142,000
Support	35,000	35,000	35,000	35,000
Capital Outlay	15,000	0	0	0
Total Expenditures	<u>\$ 192,000</u>	<u>\$ 177,000</u>	<u>\$ 177,000</u>	<u>\$ 177,000</u>
Fund Net Impact	<u>\$ -192,000</u>	<u>\$ 328,625</u>	<u>\$ 96,750</u>	<u>\$ 96,750</u>

Source

Professional Licensing Division of the Department of Commerce

/s/ Holly M. Lyons

March 21, 2005

The fiscal note and correctional impact statement for this bill was prepared pursuant to Joint Rule 17 and pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Fiscal Services Division, Legislative Services Agency to members of the Legislature upon request.

Tinsman co-chair
Hancock co-chair
McKibben
Wood

Succeeded By
(SF) / HF 338

SSB# 1249
State Government

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:

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TLSB 2784SC 81

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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. "Auction service" means a person who engages in the
17 business of arranging, managing, sponsoring, advertising, or
18 conducting auctions.

19 5. "Auctioneer" means a person who, as a bid caller, sells
20 or offers to sell property with or without receiving or
21 collecting a fee, commission, or other valuable consideration.

22 6. "Certified auction school" means a public or private
23 educational institution offering a 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 554.9102.

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 pursuant to
10 section 2.32.

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

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

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

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

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

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

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

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

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

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

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

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

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

35 4. The commission shall establish continuing education

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

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

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

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

22 a. Per diem and necessary expenses for commission members.

23 b. Office facilities, staff assistance, supplies, and
24 equipment of the commission.

25 2. Fees collected by the commission shall be transmitted
26 to the treasurer of state and shall be deposited in the
27 auctioneer recovery and education fund established in section
28 545A.12. Moneys in the fund are appropriated to and shall be
29 used by the commission consistent with this chapter.

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

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

34 2. Prior to the adoption of rules by the commission, the
35 commission may issue an interim license to a qualified

1 applicant. An interim license shall not be issued or renewed
2 following the adoption of licensure rules by the commission.

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

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

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

10 b. The applicant is a citizen of the United States or a
11 legal alien.

12 c. The applicant does one of the following:

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

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

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

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

23 a. The applicant is a citizen of the United States or a
24 legal alien.

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

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

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

32 b. The applicant is a citizen of the United States or a
33 legal alien.

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

35 d. The applicant does one of the following:

1 (1) Passes a written examination offered pursuant to
2 section 545A.7 demonstrating the applicant's knowledge of the
3 position of auction clerk or auction cashier, acceptable
4 accounting methodology, and the laws pertaining to the
5 position of auction clerk or auction cashier.

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

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

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

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

20 **Sec. 7. NEW SECTION. 545A.7 EXAMINATION REQUIREMENTS.**

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

33 2. A person seeking to become eligible for an auctioneer
34 license, auction clerk or auction cashier license, or auction
35 service license by examination must apply to the commission to

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

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

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

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

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

35 2. The commission may issue a license to a nonresident

1 applicant for an associate auctioneer license if the applicant
2 meets the requirements of section 545A.6 and all other
3 application requirements.

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

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

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

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

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

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

29 1. The rights of a holder of a license as a licensed
30 auctioneer, licensed associate auctioneer, licensed auction
31 clerk or auction cashier, or licensed auction service may be
32 revoked or suspended, or the holder may be otherwise
33 disciplined as provided in this chapter. The commission may
34 investigate the actions of a licensee and may revoke or
35 suspend the rights of a licensee or otherwise discipline a

1 licensee for violation of this chapter or of a rule adopted
2 pursuant to this chapter. Violations shall include, but are
3 not limited to, the following acts or omissions:

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

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

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

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

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

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

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

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

1 will be held.

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

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

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

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

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

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

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

35 1. a. An auctioneer recovery and education fund is

1 created in the state treasury under the control of the
2 commission.

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

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

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

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

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

1 hearing as outlined in this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 matters may be received pursuant to this section.

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

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

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

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

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

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

32 2. A licensee required to maintain a trust account
33 pursuant to this section shall report to the commission the
34 name and mailing address of the financial institution where
35 the trust account is maintained and the trust account number.

1 A consent form shall also be furnished to the commission from
2 the licensee and the financial institution to permit the
3 examination and audit of the trust account by the commission
4 or the commission's representative.

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

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

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

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

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

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

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

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

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

1 commits a simple misdemeanor.

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

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

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

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

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

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

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

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

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

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

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

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

35 h. A statement as to the responsibilities of each party

1 for the auction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 7. A sale conducted by sealed bid.

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

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

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

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

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

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

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

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

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

5

EXPLANATION

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

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

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

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

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

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

35 New Code section 545A.7 requires the commission to

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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