

## CHAPTER 24

## ( HB 436 )

AN ACT relating to auctioneer licensure.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. KRS 330.070 is amended to read as follows:

- (1) An apprentice auctioneer applying for an auctioneer license shall, subject to the provisions of KRS 330.060:
  - (a) Possess a current Kentucky apprentice auctioneer license;
  - (b) Serve an apprenticeship for a period of one (1) year as an apprentice auctioneer in Kentucky;
  - (c) Submit a statement to the board, signed by the principal auctioneer, verifying that the applicant has actively and materially participated in at least ten (10) auctions prior to application; and
  - (d) Successfully complete at least eighty (80) hours of approved classroom instruction from a board-approved auction education provider. The board may waive the eighty (80) hours of approved classroom instruction requirement if the applicant demonstrates sufficient previous auction experience and competency by affidavit or other evidence as required by the board.
- (2) An apprentice auctioneer with an original license issued prior to June 30, 2010, or after July 1, 2015, shall be required to successfully complete the auctioneer examination.
- (3) If an applicant for an auctioneer license resides in a state which does not have a current reciprocity agreement with the board, the board may waive the eighty (80) hour education requirement or the apprenticeship requirement, or both, if the applicant demonstrates sufficient previous auction experience and competency by affidavit or by other evidence as required by the board.
- (4) An applicant for an auctioneer license who has previously held an auctioneer license which has been revoked, suspended, or which has expired without renewal may request, and the board may grant, a waiver of the requirement of possession of a current apprentice license.
- (5) Every application for a license issued by the board shall be submitted on forms prepared by the board. Each applicant shall furnish pertinent background data as outlined on those forms.
- (6) The board shall promulgate administrative regulations in accordance with KRS Chapter 13A to establish an initial license fee and ~~biennial~~~~annual~~ renewal license fee. ***The initial license fee shall not exceed one hundred fifty dollars (\$150) and the biennial renewal fee shall not exceed three hundred dollars (\$300),*** ~~neither of which shall exceed one hundred fifty dollars (\$150).~~
  - (a) All licenses shall expire on the thirtieth day of June ***of each even year.***
  - (b) Each license shall be renewed on or before the expiration date.
  - (c) In addition to the renewal fee, a late fee shall be established by administrative regulations promulgated by the board on each license renewed within six (6) months after the expiration date.
  - (d) In the absence of any reason or condition which might warrant the refusal of renewing a license, and upon timely receipt of the renewal form and the ~~biennial~~~~annual~~ fee, the board shall issue a license for the ***remainder of the*** ensuing ***biennial license period***~~year~~.
- (7)
  - (a) The board may require as a condition precedent to the renewal of any license, that each licensee complete continuing education up to ten (10) hours per license year. The board may impose different continuing education requirements upon different classifications of licenses under this chapter. The continuing education requirements in this subsection shall not apply to those auctioneers licensed prior to January 1, 1980.
  - (b) A licensee who has not completed the required continuing education may, within the time period set forth in subsection (6) of this section, remit a fee established by administrative regulations promulgated by the board with the applicable renewal fees, and the continuing education reporting requirement shall be deferred to the next ~~biennial~~~~annual~~ renewal. If the licensee fails to meet the continuing education

requirement for the next ~~biennial~~~~annual~~ renewal, the licensee shall successfully complete the examination before renewal of his or her license.

- (c) 1. The board may require all licensees to complete a six (6) hour board-approved core course once every four (4) years, that includes the core subjects of Kentucky auction statutes and regulations, ethics, and any other subject matter deemed appropriate by the board.
- 2. Effective July 1, 2016, each licensee with at least twenty-five (25) years of continuous licensure shall be exempt from the requirements of this paragraph.
- (8) (a) ***The board shall ensure that licensees may access a copy of their license certificate via an electronic portal account***~~[The board shall prepare and deliver to each licensee a pocket license. The pocket license of the apprentice auctioneer shall contain the name and address of his or her principal auctioneer. The board shall also prepare and deliver a license to each auction house operator].~~
  - ~~(b)(a)~~ Auction house operators shall display their licenses conspicuously and at all times in the auction house identified on the license.
  - ~~(c)(b)~~ All licensees shall carry ***a copy of their license***~~[their pocket licenses]~~, or a digital facsimile thereof, when performing auctioneering tasks, to be shown upon request.
  - ~~(c)~~ ~~A license or pocket license shall be replaced upon the request of the licensee and payment of a replacement fee established by administrative regulations promulgated by the board in accordance with KRS Chapter 13A.]~~
- (9) When an apprentice auctioneer is discharged or voluntarily terminates employment with the auctioneer for any reason:
  - (a) It shall be the immediate duty of the principal auctioneer to deliver to the board a written release of the apprentice auctioneer; and
  - (b) The apprentice auctioneer shall affiliate with a principal auctioneer within thirty (30) days by submitting to the board an affiliation letter signed by the new principal auctioneer and a fee established by administrative regulations promulgated by the board in accordance with KRS Chapter 13A.

An apprentice auctioneer shall not perform any of the acts regulated by this chapter until receiving a new license bearing a new principal auctioneer's name and address.
- (10) (a) A licensee may place his or her license in escrow with the board if the licensee does not engage in any board-regulated auctioneering activity and continues to pay the ~~biennial~~~~annual~~ renewal license fee.
- (b) For each year the license is in escrow, a licensee shall be exempt from the contribution to the auctioneer's education, research, and recovery fund and the continuing education requirement.
- (c) To reactivate a license in escrow, the licensee shall complete the core course and pay a reactivation fee and the ~~biennial~~~~annual~~ renewal recovery fee, both of which shall be established by administrative regulations promulgated by the board in accordance with KRS Chapter 13A.
- (11) Notice in writing shall be given to the board by each licensee of any change of principal business location or residence address within ten (10) days of the change, and the board shall issue an updated license for the unexpired period. The board may fine, suspend, or revoke the license of a licensee who does not notify the board of a change of address within ten (10) days. Changing a business or a residence address on its records shall entitle the board to collect a fee established by administrative regulations promulgated by the board in accordance with KRS Chapter 13A.

➔Section 2. KRS 330.110 is amended to read as follows:

- (I) The board may suspend for a period up to five (5) years or revoke the license of any licensee, or levy fines not to exceed two thousand dollars (\$2,000), with a maximum fine of five thousand dollars (\$5,000) per year arising from any single incident or complaint, against any licensee, or place any licensee on probation for a period of up to five (5) years, or require successful passage of any examination administered by the board, or require successful completion of any course of auction study or auction seminars designated by the board, or issue a formal reprimand, or order any combination of the above, for violation by any licensee of any of the provisions of this chapter, or for any of the following causes:
  - ~~(a)(1)~~ Obtaining a license through false or fraudulent representation;
  - ~~(b)(2)~~ Making any substantial misrepresentation;

- (c)~~{(3)}~~ Pursuing a continued and flagrant course of misrepresentation or intentionally making false promises or disseminating misleading information through agents or advertising or otherwise;
- (d)~~{(4)}~~ Accepting valuable consideration as an apprentice auctioneer for the performance of any of the acts specified in this chapter, from any person, except his or her principal auctioneer;
- (e)~~{(5)}~~ Failing to account for or remit, within a reasonable time, any money belonging to others that comes into the licensee's possession, commingling funds of others with the licensee's own funds, or failing to keep the funds of others in an escrow or trustee account;
- (f)~~{(6)}~~ Paying valuable consideration to any person for services performed in violation of this chapter, or procuring, permitting, aiding, or abetting any unlicensed person acting in violation of any of the provisions of this chapter;
- (g)~~{(7)}~~ Entering a plea of guilty, an Alford plea, a plea of no contest to, or being convicted of:~~{}~~
1. Any felony;~~{}~~ *or*
  2. *A misdemeanor involving theft, deception, fraud, burglary, or violence, or that relates to the practice of auctioneering;* and
- the time for appeal has passed or the judgment of conviction has been finally affirmed on appeal;
- (h)~~{(8)}~~ Violation of any provision of this chapter or any administrative regulation promulgated by the board;
- (i)~~{(9)}~~ Failure to furnish voluntarily at the time of execution, copies of all written instruments prepared by any licensee to each signatory of the written instrument;
- (j)~~{(10)}~~ Any conduct of a licensee which demonstrates bad faith, dishonesty, incompetence, or untruthfulness;
- (k)~~{(11)}~~ Any other conduct that constitutes improper, fraudulent, dishonest, or negligent dealings;
- (l)~~{(12)}~~ Failure to enter into a binding written auction listing contract with the seller or with the seller's duly authorized agent prior to advertising, promoting, or offering any real or personal property by or at auction;
- (m)~~{(13)}~~ Failure to provide a receipt to all persons consigning personal property with any licensee for auction;
- (n)~~{(14)}~~ Failure to establish and maintain, for a minimum of five (5) years from final settlement, complete and correct written or electronic records and accounts of all auction transactions, including:
- 1.~~{(a)}~~ Listing contracts, including the name and address of the seller;
  - 2.~~{(b)}~~ Written purchase contracts;
  - 3.~~{(c)}~~ Descriptive inventory and final bid amounts of all items or lots offered;
  - 4.~~{(d)}~~ Buyer registration records; and
  - 5.~~{(e)}~~ Settlement records, including all moneys received and disbursed and escrow account activity;
- (o)~~{(15)}~~ Failure of any licensee to deliver within thirty (30) days any auction-related information, including but not limited to advertisements, listing contracts, purchase contracts, clerking records, buyer registration records, settlement records, escrow account information, license, or any other auction-related information to the board or the board's designee upon request; or
- (p)~~{(16)}~~ Failure of a principal auctioneer to provide supervision to his or her apprentice auctioneers to ensure compliance with this chapter and the administrative regulations promulgated thereunder.
- (2) *If any licensee is alleged to have committed a violation that warrants emergency action, including emergency suspension of the licensee's license, the board may conduct an emergency hearing in accordance with KRS Chapter 13B as it relates to emergency orders and emergency hearings. The board shall promulgate administrative regulations to describe the specific circumstances and allegations that authorize emergency action.*

➔Section 3. KRS 330.120 is amended to read as follows:

- (1) The board may upon its own motion, and shall upon the verified written complaint of any person, investigate the actions of any licensee or any person who assumes to act as a licensee if the complaint, or complaint together with other evidence presented in connection with it, presents a prima facie case of a violation of this chapter. If a prima facie case is not established or the violation is deemed inconsequential, the board may immediately dismiss the complaint.
- (2) *To investigate allegations of practices violating this chapter, the board may:*
- (a) *Issue subpoenas to compel attendance of witnesses and the production of books, papers, documents, or other evidence;*
  - (b) *Administer oaths;*
  - (c) *Review evidence;*
  - (d) *Examine witnesses; and*
  - (e) *Pay appropriate witness fees.*
- (3) If, after an investigation that includes opportunity for the licensee to respond, the board determines that a violation took place but was not of a serious nature, it may issue a written admonishment to the licensee. A copy of the admonishment shall be placed in the file of the licensee. The licensee shall have the right to file a response to the admonishment within thirty (30) days of its receipt and to have the response placed in the licensure file. The licensee may alternatively, within thirty (30) days of the receipt, file a request for hearing with the board. Upon receipt of this request, the board shall set aside the written admonishment and set the matter for hearing under the provisions of KRS Chapter 13B.

➔Section 4. KRS 330.210 is amended to read as follows:

- (1) Notwithstanding any contrary provisions of law and in furtherance of the policies set forth in KRS 355.2-328, at any auction sale of horses, the auctioneer:
- (a) May receive bids from the seller, consignor, or his agent, disclosed or undisclosed, if notice has been given in the terms and conditions governing the sale, or otherwise, that liberty for such bidding has been reserved by seller;
  - (b) Shall conduct the sale with respect to each lot or parcel on a with-reserve basis unless the seller has authorized the auctioneer, in writing, to conduct the sale on a without-reserve basis, in which event the auctioneer shall announce, in explicit terms, that the goods are being sold without reserve; and
  - (c) Shall not be required to announce at any with-reserve sale when the reserve is attained.
- (2) Notwithstanding any other provision of this chapter, the following shall not apply to auctions or auctioneers participating in an auction regarding the sale, lease, or exchange of an equine as defined in KRS 230.357(1):
- (a) The advertising requirements set forth in KRS 330.230(1), (2), and (7);
  - (b) The causes justifying disciplinary action set forth in KRS 330.110(1)(l), (m), (n), and (o)~~+(12), (13), (14), and (15)}~~; or
  - (c) The provisions regulating absolute auctions and reserve auctions set forth in KRS 330.220(5) and (7).

**Signed by Governor March 24, 2022.**