

## **Chapter 85B.**

### **Auctions and Auctioneers.**

#### **§ 85B-1. Definitions.**

For the purposes of this Chapter the following definitions shall apply:

- (1) "Auction" means the sale of goods or real estate by means of exchanges between an auctioneer and members of an audience, the exchanges consisting of a series of invitations for offers made by the auctioneer, offers by members of the audience, and the acceptance by the auctioneer of the highest or most favorable offer.
- (2) "Auctioneer" means any person who conducts or offers to conduct auctions and includes apprentice auctioneers except as stricter standards are specified by this Chapter for apprentice auctioneers.
- (3) "Owner" means the bona fide owner of the property being offered for sale; in the case of partnerships, "owner" means a general partner in a partnership that owns the property being offered for sale, provided that in the case of a limited partnership it has filed a certificate of limited partnership as required by Chapter 59 of the General Statutes; in the case of corporations, "owner" means an officer or director or employee or someone acting on behalf of the employee of a corporation that owns the property being offered for sale provided that the corporation is registered to do business in the State.
- (4) "Absolute Auction" means the sale of real or personal property at auction in which the item offered for auction is sold to the highest bidder without reserve, without the requirement of any minimum bid, and without competing bids of any type by the owner, or agent of the owner, of the property.
- (5) "Estate Sale" means the liquidation by sale at auction of real or personal property of a specified person.
- (6) "Auction Firm" means a sole proprietorship of which the owner is not a licensed auctioneer, or any partnership, association, or corporation, not otherwise exempt from this Chapter, that sells either directly or through agents, real or personal property at auction, or that arranges, sponsors, manages, conducts or advertises auctions, or that in the regular course of business uses or allows the use of its facilities for auctions. This definition applies whether or not an owner or officer of the business acts as an auctioneer.
- (7) "Fund" means Auctioneer Recovery Fund.
- (8) "Auctioneering", "conduct of auction", or "conduct of business" means, in addition to the actual calling of bids, any of the following:
  - a. Contracting for auction.
  - b. Accepting consignments of items for sale at auction.
  - c. Advertising an auction.
  - d. Offering items for sale at auction.
  - e. Accepting payment or disbursing monies for items sold at auction.
  - f. Otherwise soliciting, arranging, sponsoring, or managing an auction or holding oneself out as an auctioneer or auction firm.
- (9) "Consignment" means, unless otherwise modified by written agreement, the act of delivering or transferring goods or real estate in fact or constructively to an auctioneer or the auctioneer's agent in trust for the purpose of resale at auction

whereby title does not pass to the buyer until there is an action indicating a sale. For purposes of this section, consignment may also mean a bailment for sale.

- (10) "Designated person" means any person approved by the Board to have the authority to transact business for a licensed auction firm. (1973, c. 552, s. 1; 1983, c. 751, s. 1; 1991 (Reg. Sess., 1992), c. 819, s. 1; 2005-330, s. 1.)

**§ 85B-2. Activities governed by Chapter.**

(a) This Chapter shall apply to all auctions held in this State except the following:

- (1) Sales at auction conducted by the owner of all of the goods or real estate being offered, or an attorney representing the owner, unless the owner's regular course of business includes engaging in the sale of goods or real estate by means of auction or unless the owner originally acquired the goods for the purposes of resale at auction;
- (2) Sales at auction conducted by or under the direction of any public authority;
- (3) Sales conducted by a receiver, trustee, guardian, administrator or executor or any similarly appointed person under order of any court or any person conducting a sale pursuant to an order of a United States Bankruptcy Court or the agent or attorney of such person, receiver, trustee, guardian, administrator or executor;
- (4) Any sale required by law to be at auction;
- (5) Sale of livestock at a public livestock market authorized and regulated by the Commissioner of Agriculture;
- (6) Leaf tobacco sales conducted in accordance with the provisions of Chapter 106 of the General Statutes;
- (7) Sale at auction of automobiles conducted under the provisions of G.S. 20-77, or sale at auction of motor vehicles by a motor vehicle dealer licensed under Article 12, Chapter 20 of the General Statutes;
- (8) Sale at auction of a particular breed of livestock conducted by an auctioneer who specializes in the sale of that breed when such sale is conducted under the auspices of a livestock trade association; provided that the sale is regulated by the Packers and Stockyards Act and the auctioneer is required to be bonded by the United States Department of Agriculture;
- (9) Sales conducted by and on behalf of any charitable or religious organization;
- (9a) Sales conducted by and on behalf of a civic club, not exceeding one sale per year;
- (10) Sales conducted by a trustee pursuant to a power of sale contained in a deed of trust on real property;
- (11) Sales of collateral, sales conducted to enforce carriers' or warehousemen's liens, sales of goods by a presenting bank following dishonor of a documentary draft, resales of rightfully rejected goods, resales of goods by an aggrieved seller, or other resales conducted pursuant to authority in Articles 2, 4, 7, and 9 of Chapter 25 of the General Statutes (the Uniform Commercial Code).

(b) The exceptions provided in subdivisions (2), (4), (9), (9a) and (11) of subsection (a) of this section shall not apply to any person or entity engaged in the business of organizing, arranging, or conducting auction sales for compensation or any person who or entity that accepts consignments to be sold at auction where the consignor receives any proceeds from the sale.

(c) The exceptions provided in subdivision (7) of subsection (a) of this section shall not apply to any auctioneer licensed pursuant to this Chapter employed to be an auctioneer of motor vehicles for a licensed motor vehicle dealer, while conducting an auction for that dealer. (1973, c. 552, s. 2; 1977, c. 1115; 1983, c. 751, ss. 2, 3; 1991 (Reg. Sess., 1992), c. 819, s. 2; 2004-190, s. 5; 2005-330, ss. 2, 3.)

### **§ 85B-3. Auctioneers Commission.**

(a) There shall be a five-member North Carolina Auctioneers Commission having the powers and responsibilities set out in this Chapter. The Governor shall appoint the members of the Commission, at least three of whom, and their successors, may be from nominations submitted by the Auctioneers Association of North Carolina. The Auctioneers Association shall submit, within 45 days of when the vacancy occurs, at least three names for each position for which it is entitled to make a nomination. Of the initial five members of the Commission one shall be appointed for a one-year term, two shall be appointed for two-year terms and two for three-year terms; thereafter, each new member shall be appointed for a term of three years. Any vacancy shall be filled for the remainder of the unexpired term only. Each member shall continue in office until his successor is appointed and qualified. No member shall serve more than two complete consecutive terms.

(b) At least three members of the Commission shall be experienced auctioneers who are licensed under this Chapter. One member shall be a person who shall represent the public at large and shall not be licensed under this Chapter.

(c) The Commission shall employ an executive director and other employees as needed to carry out the duties of this Chapter. All employees shall serve at the pleasure of the Commission.

(d) Any action that may be taken by the Commission may be taken by vote of any three of its members.

(e) The members of the Commission shall elect from among themselves a chairman to serve a one-year term. No person shall serve more than two consecutive terms as chairman.

(f) Repealed by Session Laws 1999-142, s. 1, effective October 1, 1999.

(g) Members of the Commission shall receive the compensation set for members of occupational licensing boards by G.S. 93B-5. (1973, c. 552, s. 3; 1975, c. 648, s. 1; 1983, c. 751, ss. 4, 5; 1991 (Reg. Sess., 1992), c. 819, s. 3; 1999-142, s. 1; 2008-138, s. 1.)

#### **§ 85B-3.1. Auctioneers Commission; powers and duties.**

(a) The Commission shall have the following powers and duties:

- (1) To receive and act upon applications for licenses.
- (2) To issue licenses.
- (3) To deny, suspend, and revoke licenses pursuant to G.S. 85B-8.
- (4) To issue declaratory rulings.
- (5) To adopt rules for auctioneers and auctions that are consistent with the provisions of this Chapter and the General Statutes.

(b) The Commission may assess a civil penalty not in excess of two thousand dollars (\$2,000) for acts prohibited in G.S. 85B-8. All civil penalties collected by the Commission shall be remitted to the school fund of the county in which the violation occurred. Before imposing and assessing a civil penalty and fixing the amount thereof, the Commission shall, as a part of its deliberations, take into consideration the following factors:

- (1) The nature, gravity, and persistence of the particular violation.

- (2) The appropriateness of the imposition of a civil penalty when considered alone or in combination with other punishment.
- (3) Whether the violation was willful.
- (4) Any other factors that would tend to mitigate or aggravate the violations found to exist.

(c) The Commission shall have the power to acquire, hold, rent, encumber, alienate, and otherwise deal with real property in the same manner as a private person or corporation, subject only to approval of the Governor and the Council of State. Collateral pledged by the Commission for an encumbrance is limited to the assets, income, and revenues of the Commission.

(d) The Commission may purchase, rent, or lease equipment and supplies and purchase liability insurance or other insurance to cover the activities of the Commission, its operations, or its employees. (1999-142, s. 2; 1999-456, s. 23; 2001-198, s. 3.)

### **§ 85B-3.2. Criminal history record checks of applicants for licensure.**

(a) Definitions. – The following definitions apply in this section:

- (1) Applicant. – An applicant for initial licensure as an auctioneer, apprentice auctioneer, or auction firm.
- (2) Criminal history. – A State or federal history of conviction of a crime, whether a misdemeanor or felony, that bears upon an applicant's fitness to be licensed as an auctioneer, apprentice auctioneer, or auction firm.

(b) The Commission shall ensure that the State criminal history of an applicant is checked. National criminal history checks are authorized for an applicant who has not resided in the State of North Carolina during the past five years. The Commission shall provide to the State Bureau of Investigation the fingerprints of the applicant to be checked, a form signed by the applicant to be checked consenting to the check of the criminal history and to the use of fingerprints and other identifying information required by the State or National Repositories, and any additional information required by the State Bureau of Investigation.

(c) All releases of criminal history information to the Commission are subject to, and shall comply with, rules governing the dissemination of criminal history record checks as adopted by the State Bureau of Investigation. All of the information the Commission receives through the checking of the criminal history is for the exclusive use of the Commission and shall be kept confidential.

(d) If the applicant's verified criminal history record check reveals one or more convictions of a crime that is punishable as a felony offense, or the conviction of any crime involving fraud or moral turpitude, the Commission may deny the applicant's license. However, the conviction does not automatically prohibit licensure, and the following factors shall be considered by the Commission in determining whether to deny licensure:

- (1) The level and seriousness of the crime.
- (2) The date of the crime.
- (3) The age of the person at the time of the crime.
- (4) The circumstances surrounding the commission of the crime, if known.
- (5) The nexus between the criminal conduct of the applicant and the applicant's duties as an auctioneer, apprentice auctioneer, or auction firm.
- (6) The prison, jail, probation, parole, rehabilitation, and employment records of the applicant since the date the crime was committed.
- (7) The subsequent commission by the person of a crime.

(e) The Commission may deny licensure to an applicant who refuses to consent to a criminal history record check or use of fingerprints or other identifying information required by the State or National Repositories of Criminal Histories.

(f) The Commission shall notify the applicant of the applicant's right to review the criminal history information, the procedure for challenging the accuracy of the criminal history, and the applicant's right to contest the Commission's denial of licensure.

(g) The Commission shall collect any fees required by the State Bureau of Investigation and shall remit the fees to the State Bureau of Investigation for expenses associated with conducting the criminal history record check. (1999-142, s. 3; 2000-140, ss. 59(a), (b); 2001-198, s. 1; 2014-100, s. 17.1(o), (q); 2021-88, s. 7; 2023-134, s. 19F.4(yy).)

#### **§ 85B-4. Licenses required.**

(a) No person who is not exempt under G.S. 85B-2, shall sell, or offer to sell, goods or real estate at auction in this State or perform any act for which an auction firm license is required unless the person holds a currently valid license issued under this Chapter.

(b) No person shall be licensed as an apprentice auctioneer, auctioneer, or receive an auction firm license if the person:

(1) Is under 18 years of age.

(1a) Is not a high school graduate or the equivalent. However, a person licensed under this Chapter prior to July 1, 1999, does not need to meet this requirement.

(2) Repealed by Session Laws 1983, c. 751, s. 6.

(3) Has within the preceding five years pleaded guilty to, entered a plea of nolo contendere or been convicted of any felony, or committed or been convicted of any act involving fraud or moral turpitude.

(4) Has had an auctioneer or apprentice auctioneer or auction firm license revoked.

(5) Has, within the preceding five years, committed any act that constitutes grounds for license suspension or revocation under this Chapter or a Commission rule.

(c) Each applicant for an apprentice auctioneer license shall submit a written application in a form approved by the Commission and containing at least two statements by residents of the community in which the applicant resides attesting to the applicant's good moral character.

(c1) Each apprentice auctioneer application and license shall name a licensed auctioneer to serve as the supervisor of the apprentice. No apprentice auctioneer may enter into an agreement to conduct an auction, or conduct an auction, without the express approval of his supervisor. The supervisor shall review all contracts before approving them and shall regularly review the records his apprentice is required to maintain under G.S. 85B-7 to see that they are accurate and current, and shall perform such other supervisory duties as may be required by the Commission.

(d) No person shall be licensed as an auctioneer unless the person has held an apprentice auctioneer license and served as an apprentice auctioneer for the two preceding years, accumulated sufficient knowledge and experience in such areas of the auctioneer profession as the Commission may deem appropriate, and has taken an examination approved by the Commission and performed on it to the satisfaction of the Commission. The examination shall test the applicant's understanding of the law relating to auctioneers and auctions, ethical practices for auctioneers, the mathematics applicable to the auctioneer business, and such other matters relating to auctions as the Commission considers appropriate. The examination shall be given at least twice each year in North Carolina, and at other times and places the Commission designates, but no person shall be allowed to take the examination within six months after having failed it a second time.

Any person who has successfully completed the equivalent of at least 80 hours of classroom instruction in a course in auctioneering at an institution whose curriculum and instructors meet the qualifications approved or established by the Commission may be licensed as an auctioneer without holding an apprentice license and serving as an apprentice for two years, but shall take the examination required by this subsection and perform on it to the satisfaction of the Commission.

Each applicant for an auctioneer license shall submit a written application in a form approved by the Commission, pay all applicable fees, and consent in writing to a criminal history check as required by G.S. 85B-3.2. If the applicant has been previously licensed as an apprentice auctioneer, the application shall contain an evaluation by the applicant's supervisor of the applicant's performance as an apprentice auctioneer and the applicant's performance in specific areas as required by the Commission. If the applicant is exempted from apprenticeship after completion of the equivalent of at least 80 hours of classroom instruction in auctioneering, the application shall contain a transcript of the applicant's course work in auctioneering. Each application shall be accompanied by statements of at least two residents of the community in which the applicant resides attesting to the applicant's good moral character. The Commission may require verification of any information included in an application for an auctioneer license and may request other information or verification of information provided to determine whether the applicant possesses the good moral character or other qualifications for licensure.

(e) Each license issued under this Chapter shall be valid from July 1 of the year issued, or from the date issued, whichever is later, to the following June 30 unless sooner revoked or suspended pursuant to this Chapter or a rule of the Commission. A license may be renewed for one year at a time, except an apprentice auctioneer license may not be renewed for more than three times. No examination shall be required for renewal of an auctioneer license if the application for renewal is made within 24 months of the expiration of the previous license.

(e1) The Commission may require licensees to complete annually not more than six hours of Commission-approved continuing education courses prior to license renewal. The Commission may impose different continuing education requirements, including no such requirements, upon the classes of licensees under this Chapter. The Commission may waive any or all continuing education requirements in cases of hardship, disability, or illness, or under other circumstances as the Commission deems appropriate. The Commission may adopt rules not inconsistent with the provisions of this Chapter to establish continuing education requirements, including rules that govern any of the following:

- (1) The content and subject matter of continuing education courses.
- (2) The curriculum of required continuing education courses.
- (3) The criteria, standards, and procedures for the approval of courses, course sponsors, and course instructors.
- (4) The methods of instruction for continuing education courses.
- (5) The computation of course credit.
- (6) The number of credit hours needed annually.
- (7) The ability to carry forward course credit from one year to another.
- (8) The waiver of the continuing education requirement for hardship or other reasons to be determined by the Commission.
- (9) The procedures for compliance and noncompliance with continuing education requirements.

(f) No person shall be issued an auctioneer or apprentice auctioneer license until the person has made the contribution to the Fund as required by G.S. 85B-4.1.

(g) An auction firm must be licensed by the Board even though no owner or officer of the firm acts as an auctioneer. To be licensed an auction firm must make the contribution to the Fund as required by G.S. 85B-4.1 and must pay the proper fees as set out in G.S. 85B-6. Auction firms are covered by the provisions of G.S. 85B-8.

An auction firm license issued by the Commission is restricted to the persons named in the license and does not inure to the benefit of any other person. Where a license is issued to an auction firm, authority to transact business under the license is limited to the person or persons designated in the application and named in the license.

The designated person or persons, prior to being licensed, shall be required to take a written examination, approved by the Commission, and demonstrate to the satisfaction of the Commission a thorough understanding of the law relating to the conduct of the auction business and other matters the Commission deems appropriate. An individual who is licensed as an auctioneer and who is the designated person applying for an auction firm license is not required to take the auction firm examination. Licensed real estate brokers and real estate firms may be exempt from the auction firm examination provided they employ or associate themselves with a licensed auctioneer to handle those aspects of the transactions peculiar to the auctioneer profession. Any person or entity, on the effective date of this Chapter, duly licensed as an auction firm in good standing is not required to take any examination in order to maintain or to renew an auction firm license provided that the license does not otherwise expire or lapse and is not suspended or revoked by the Commission.

(h) The Commission shall publish at least once a year a list of names and addresses of all persons, sole proprietorships, partnerships and corporations holding valid apprentice auctioneer, auctioneer, or auction firm licenses.

(i) The Commission may investigate as it deems necessary the ethical background of any applicant for licensure under this Chapter. (1973, c. 552, s. 4; c. 1195, ss. 1, 2; 1975, c. 648, ss. 2-4; 1983, c. 603, s. 4; c. 751, ss. 6-8; 1989, c. 732, s. 1; 1991 (Reg. Sess., 1992), c. 819, s. 4; c. 1030, s. 51.5; 1993, c. 421, s. 3; 1999-142, s. 4; 2001-198, s. 2; 2005-330, s. 4.)

#### **§ 85B-4.1. Auctioneer Recovery Fund.**

(a) In addition to license fees, upon application for a license or renewal of a license, the Commission may charge the applicant or licensee up to fifty dollars (\$50.00) per year to be included in the Fund.

(b) The Commission shall maintain at least two hundred thousand dollars (\$200,000) in the Fund for use as provided in this Chapter. The Fund may be invested by the State Treasurer in interest bearing accounts, and any interest accrued shall be added to the Fund. Sufficient liquidity shall be maintained to insure that funds will be available to satisfy claims processed through the Board. The Fund may be disbursed by a warrant drawn against the State Treasurer or by other method at the discretion of the State Treasurer.

(c) The Commission, in its discretion, may use contents of the Fund in excess of two hundred thousand dollars (\$200,000) for the following purposes:

- (1) To promote education and research in the auctioneer profession, in order to benefit persons licensed under this Chapter and to improve the efficiency of the profession.
- (2) To underwrite educational seminars, training centers, and other forms of educational projects for the use and benefit of licensees.

- (3) To sponsor, contract for, or underwrite education and research projects in order to advance the auctioneer profession in North Carolina.
- (4) To cooperate with associations of auctioneers, or other groups, in order to promote the enlightenment and advancement of the auctioneer profession in North Carolina. (1983, c. 603, s. 2; 1989, c. 732, s. 2; 1991 (Reg. Sess., 1992), c. 819, s. 5; 1999-142, s. 5.)

**§ 85B-4.2. Grounds for payment; notice and application to Commission.**

An aggrieved person who has suffered a monetary loss as a direct result of the conversion of funds or property or other fraudulent act or conduct by a licensed auctioneer, apprentice auctioneer, or auction firm shall be eligible to seek compensation from the Fund subject to the limitations of this Chapter and the amount of loss which is otherwise unrecoverable provided that:

- (1) The aggrieved person has sued the licensee in a court of competent jurisdiction and has filed with the Commission written notice of such lawsuit within 60 days after its commencement unless the total loss claimed excluding attorneys' fees is less than two thousand five hundred dollars (\$2,500), in which case the notice may be filed within 90 days after the termination of all judicial proceedings, including appeals;
- (2) The aggrieved person has obtained final judgment in a court of competent jurisdiction against the licensee based upon conversion or other fraudulent conduct arising out of a transaction which occurred when the licensee was licensed by the Commission and was acting in a capacity for which a North Carolina license is required, which judgment shall show the amount owed the aggrieved person;
- (3) The aggrieved person was not engaged in any act or conduct for which an auctioneer license is required and was not acting in violation of any of the laws of the State of North Carolina or of the United States; and
- (4) Execution on the judgment has been issued and has been returned unsatisfied in whole or in part.

Upon the termination of all judicial proceedings including appeals, and for a period of one year thereafter, a person eligible for recovery may file a verified application with the Commission for payment out of the Fund of the amount remaining unpaid upon the judgment which represents the actual and direct loss sustained by reason of conversion or other fraudulent conduct. A certified copy of the judgment and return of execution shall be attached to the application and filed with the Commission. The applicant shall serve upon the judgment debtor a copy of the application and shall file with the Commission an affidavit or certificate of service, in accordance with the procedures specified by rule by the Commission. (1983, c. 603, s. 2; 1989, c. 732, s. 3; 1991 (Reg. Sess., 1992), c. 819, s. 6.)

**§ 85B-4.3. Hearing; required showing.**

Upon application by an aggrieved person, the Commission shall conduct a hearing and the aggrieved person shall be required to show that:

- (1) The person is not a spouse of the judgment debtor or a person representing such spouse;
- (2) The person gave notice of the lawsuit as required by G.S. 85B-4.2;



- (3) The person is making application not more than one year after termination of all judicial proceedings, including appeals, in connection with the judgment;
- (4) The person has complied with all requirements of this Article;
- (5) The person has obtained a judgment as described in G.S. 85B-4.2;
- (6) The person has made all reasonable searches and inquiries to ascertain whether the judgment debtor is possessed of real or personal property or other assets subject to be sold or applied in satisfaction of the judgment;
- (7) That by a search the person has discovered no real or personal property or other assets subject to be sold or applied, or has discovered certain of them, describing them, but that the amount realized was insufficient to satisfy the judgment, stating the amount realized and the balance remaining due on the judgment after application of the amount realized; and
- (8) The person has diligently pursued available remedies including attempted execution on the judgment against all the judgment debtors and the execution has been returned unsatisfied. In addition to that, the person knows of no assets of the judgment debtor and has attempted collection from all other persons who may be liable in the transaction for which payment is sought from the Fund if there are any other persons. (1991 (Reg. Sess., 1992), c. 819, s. 7.)

**§ 85B-4.4. Response and defense by Commission and judgment debtor; proof of conversion or other fraudulent act.**

(a) When the Commission proceeds upon an application as set forth in this Article, counsel for the Commission may defend action on behalf of the Fund and shall have recourse to all appropriate means of defense, including the examination of witnesses. The judgment debtor may personally defend the action and shall have recourse to all appropriate means of defense, including the examination of witnesses. Within 30 days after service of the application, counsel for the Commission and the judgment debtor may file responses setting forth answers and defenses. Responses shall be filed with the Commission and copies shall be served upon every party by the filing party. If at any time it appears there are no triable issues of fact and the application for payment from the Fund is without merit, the Commission shall dismiss the application. A motion to dismiss may be supported by affidavit of any person having knowledge of the facts and may be made on the basis that the application or the judgment referred to does not form a basis for meritorious recovery under G.S. 85B-4.2, that the applicant has not complied with the provisions of this Article, or that the liability of the Fund with regard to the particular licensee or transaction has been exhausted; provided, however, notice of such motion shall be given at least 10 days prior to the time fixed for hearing.

(b) Whenever the judgment obtained by an applicant is by default, stipulation, or consent, or whenever the action against the licensee was defended by a trustee in bankruptcy, the applicant, for purposes of this Article, shall have the burden of proving the cause of action for conversion of funds or property or other fraudulent conduct. Otherwise, the judgment shall create a rebuttable presumption of conversion or other fraudulent conduct. (1991 (Reg. Sess., 1992), c. 819, s. 8.)

**§ 85B-4.5. Determination of certain small claims without a prior judicial determination.**

Notwithstanding any other provisions of this Chapter, the Commission may, in its discretion, order that payment be made from the Fund, without requiring a prior judicial determination in any case where:

- (1) The total loss claimed by the claimant is two thousand five hundred dollars (\$2,500) or less;
- (2) The amount of alleged loss is readily ascertainable rather than speculative in nature;
- (3) The alleged loss is one that is otherwise compensable under this Chapter;
- (4) The claimant filed a properly notarized complaint with the Commission not more than one year following the date of the alleged wrongful act or conduct of the licensee; and
- (5) The Commission, in its discretion, determines that, based upon the evidence presented, justice would be better served by allowing compensation to be paid without first requiring the aggrieved party to obtain a judgment from a court of competent jurisdiction. (1991 (Reg. Sess., 1992), c. 819, s. 9.)

**§ 85B-4.6. Order directing payment out of Fund; compromise of claims.**

(a) Applications for payment from the Fund shall be heard and decided by a majority of the members of the Commission. If, after a hearing, the Commission finds that the claim should be paid from the Fund, the Commission shall enter an order requiring payment from the Fund of whatever sum the Commission shall find to be payable upon the claim in accordance with the limitations contained in this Article.

(b) Subject to Commission approval, a claim based upon the application of an aggrieved person may be compromised; however, the Commission shall not be bound in any way by any compromise or stipulation of the judgment debtor. (1991 (Reg. Sess., 1992), c. 819, s. 10.)

**§ 85B-4.7. Limitations; pro rata distribution; attorneys' fees.**

(a) Payments from the Fund shall be subject to the following limitations:

- (1) The right to recovery under this Article shall be forever barred unless timely notice is given as required by G.S. 85B-4.2(a)(1) and application is made within one year after termination of all proceedings, including appeals, in connection with the judgment.
- (2) The Fund shall not be liable for more than ten thousand dollars (\$10,000) per transaction regardless of the number of persons aggrieved.
- (3) The liability of the Fund shall not exceed in the aggregate ten thousand dollars (\$10,000) for any one licensee within a single calendar year, and in no event shall it exceed in the aggregate twenty thousand dollars (\$20,000) for any one licensee.
- (4) The Fund shall not be liable for payment of any judgment awards of consequential damages, multiple or punitive damages, civil penalties, incidental damages, special damages, interest, costs of court or action, or other similar awards.

(b) If the maximum of the Fund is insufficient to pay in full the valid claims of all aggrieved persons whose claims relate to the same transaction or to the same licensee, the amount for which the Fund is liable shall be distributed among the claimants in a ratio that their respective claims bear to the total of such valid claims or in a manner the Commission deems equitable. Upon petition of the Commission, the Commission may require all claimants and prospective claimants to be joined in one proceeding so that the respective rights of all claimants to the Fund may be equitably resolved. (1991 (Reg. Sess., 1992), c. 819, s. 11.)

**§ 85B-4.8. Repayment to Fund; automatic suspension of license.**

Should the Commission pay from the Fund any amount in settlement of a claim or toward satisfaction of a judgment against a licensee, the license of the licensee shall be automatically suspended upon the effective date of the order authorizing payment from the Fund. The licensee shall not be eligible for consideration for reinstatement until repayment in full, plus interest at the legal rate as provided for in G.S. 24-1, the amount paid from the Fund. (1991 (Reg. Sess., 1992), c. 819, s. 12.)

**§ 85B-4.9. Subrogation of rights.**

When the Commission has paid from the Fund any sum to the judgment creditor, the Commission shall be subrogated to all of the rights of the judgment creditor to the extent of the amount paid and the judgment creditor shall assign all his right, title, and interest in the judgment to the extent of the amount paid to the Commission and any amount and interest recovered by the Commission on the judgment shall be deposited in the Fund. (1991 (Reg. Sess., 1992), c. 819, s. 13.)

**§ 85B-4.10. Waiver of rights.**

The failure of an aggrieved person to comply with this Chapter shall constitute a waiver of any rights hereunder. (1991 (Reg. Sess., 1992), c. 819, s. 14.)

**§ 85B-4.11. Persons ineligible to recover from Fund.**

No licensee who suffers the loss of any commission from any transaction in which the licensee was acting in the capacity of an auctioneer, apprentice auctioneer, or auction firm shall be entitled to make application for payment from the Fund for the loss. Likewise, any person who suffers any monetary loss as a result of a joint business venture of any sort with a licensee shall not be entitled to be compensated from the Fund for the loss. (1991 (Reg. Sess., 1992), c. 819, s. 15.)

**§ 85B-4.12. Disciplinary action against licensee.**

Nothing contained in this Article shall limit the authority of the Commission to take disciplinary action against any licensee under this Chapter, nor shall the repayment in full of all obligations to the Fund by any licensee nullify or modify the effect of any other disciplinary proceeding brought under this Chapter. (1991 (Reg. Sess., 1992), c. 819, s. 16.)

**§ 85B-5. Licensing of nonresidents.**

(a) Any person who holds a valid auctioneer license in another state may apply for and be granted a reciprocal North Carolina license if the resident state in which the person is licensed has minimum training or experience standards which are acceptable to the Commission but are not more lenient than those required by this Chapter, if the resident state extends similar reciprocal privileges to auctioneers who are residents of and licensed by the State of North Carolina.

(b) An applicant under this section shall submit an application and other documentation and proof of eligibility for licensure as may be required by the Commission, but shall not be required to take the examination required under G.S. 85B-4. Applicants shall pay the appropriate fee under G.S. 85B-6 and shall file with the Commission an irrevocable consent that service on the Executive Director of the Commission shall be sufficient service of process for actions against the applicant by a resident of this State arising out of his auctioneering activities.

(c) An applicant under this section shall make the contribution to the Fund as required by G.S. 85B-4.1. Any license issued under this section shall be marked to indicate that its holder is a nonresident reciprocal licensee.

(d) A license issued pursuant to this section shall be valid from the date of issuance to the following June 30 and may be renewed from year to year unless suspended or revoked pursuant to the provisions of this Chapter or rule of the Commission, provided that the licensee continues to be a resident of and duly licensed in good standing in the licensee's resident state.

(e) Any person licensed under this section shall notify the Commission of the lapse, surrender, suspension, revocation, or any other act amounting to a loss of license in the person's resident state. The notice must be sent to the Commission, by certified mail, return receipt requested, within 10 days of the occurrence.

(f) Any person licensed under this section shall provide the Commission with written notice of any change of business address or residence within 10 days of the occurrence.

(g) Any license issued under this section shall be immediately suspended or revoked based upon the occurrence of any of the events set out in subsection (e) of this section or based upon a change of principal state residence of the reciprocal licensee.

(h) Any person whose license is terminated as a result of a change of principal state residence may reapply for reciprocal status provided the person is otherwise eligible for a license based upon the new state residence, and submits with the application the fees required by the Commission.

(i) Notwithstanding any other provision of this section, a reciprocal licensee who subsequently becomes a domiciliary of the State of North Carolina may request, by application, that the reciprocal license be converted to that of an in-State licensee without having to take the State exam required by G.S. 85B-4. The Commission may, however, require an applicant to pay processing and application fees it deems appropriate. (1973, c. 552, s. 5; 1983, c. 603, s. 5; c. 751, ss. 9-11; 1989, c. 732, s. 4; 1991 (Reg. Sess., 1992), c. 819, s. 17.)

#### **§ 85B-6. Fees; local governments not to charge fees or require licenses.**

(a) The Commission shall collect and remit to the State Treasurer fees in an amount not to exceed the following:

<u>Item</u>	<u>Maximum Fee</u>
Apprentice Auctioneers:	
Application for license.....	\$ 125.00
Issuance or renewal of license.....	125.00
Auctioneers:	
Application for license.....	125.00
Examination.....	75.00
Issuance or renewal of license.....	250.00
Auction Firms:	
Application for license.....	125.00
Examination.....	75.00
Issuance or renewal of license.....	250.00
Reinstatement of License.....	75.00.

An application fee for a license and an examination fee are nonrefundable. The amount payable by a nonresident under G.S. 85B-5 to obtain a nonresident reciprocal auctioneer license is the greater of the amount set in the above table for an examination for and the issuance of an

auctioneer's license and the amount the nonresident's state would charge a resident auctioneer of this State to obtain a comparable license from that state.

A reinstatement fee is payable when a person applies for renewal of a license after the license has lapsed for failure to renew it before it expired. The reinstatement of a lapsed license is not retroactive in effect and does not limit the authority of the courts or of the Commission to take disciplinary action against a person who engages in the auctioneer profession with a lapsed license.

(b) No local government or agency of local government may charge any fees or require any licenses for auctioneers, apprentice auctioneers, or auction firms in addition to those set out in this Chapter. (1973, c. 552, s. 6; c. 1195, s. 3; 1975, c. 648, s. 5; 1977, 2nd Sess., c. 1219, s. 43.7; 1983, c. 751, s. 12; 1991 (Reg. Sess., 1992), c. 819, s. 18; 1993, c. 421, s. 1; 1999-142, s. 6.)

#### **§ 85B-7. Conduct of auction; records.**

(a) No licensee shall conduct an auction in this State without first having a written agreement with the owner of any property to be sold. The agreement must contain the terms and conditions upon which the auctioneer received the goods for sale. The licensee shall provide the owner with a signed copy of the agreement and shall keep at least one copy for his own records for two years from the date of the agreement. Copies of all contracts shall be made available to the Commission or its designated agent upon request.

(b) Each licensee shall maintain consignment records and enter in them, upon receipt of goods for auction and before sale, the name and address of the person who employed the licensee to sell the goods at auction and the name and address of the owner of the goods to be sold. The consignment record shall contain an adequate description of the goods to be sold and shall be sufficient to positively identify each item. Consignment records shall be open for inspection by the Commission or its designated agent at reasonable times.

(c) All licensees shall have their licenses available at each auction they conduct.

(d) Each licensee shall maintain sales records, which identify the purchaser of all goods sold by name, address, and when possible, telephone number. The sales records shall contain an adequate description of the items sold and must be sufficient to positively identify the owner of the property. Sales records shall be maintained for a period of not less than two years from the date of sale. Sales records shall be open for inspection by the Commission or its designated agent at reasonable times. (1973, c. 552, s. 7; 1991 (Reg. Sess., 1992), c. 819, s. 19; 2005-330, s. 5.)

#### **§ 85B-7.1. Handling clients' funds.**

(a) Each licensee who does not disburse all funds to the seller on auction day shall maintain a trust or escrow account and shall deposit in the account all funds that are received for the benefit of another person and are not disbursed to the seller on auction day. The licensee shall deposit funds that are not disbursed on auction day with a federally insured depository institution or a trust institution authorized to do business in this State. At or before the time of all final settlements, the auctioneer shall provide the seller or consignor with a settlement statement, which includes a description of all goods sold, the selling price of the goods sold, the net proceeds due to the seller or consignor, the name and address of the person receiving the disbursement, and the amount of the disbursement. All settlement statements shall be signed by the licensee or the licensee's agent and by the person receiving the disbursement.

(b) Each licensee shall maintain, for not less than five years, complete records showing the deposit, maintenance, and withdrawal of trust or escrow funds and the disbursement of funds on auction day. Records of the disbursement of funds on auction day shall include a copy of each

receipt or settlement statement issued when the funds were disbursed. The Commission or its designated agent may inspect these records periodically, without prior notice, and may also inspect these records whenever the Commission determines that they are pertinent to an investigation of any specific complaint against a licensee. (1991 (Reg. Sess., 1992), c. 819, s. 20; 1993, c. 421, s. 2; 2005-330, s. 6; 2017-25, s. 1(d).)

**§ 85B-8. Prohibited acts; assessment of civil penalty; denial, suspension, or revocation of license.**

(a) The following shall be grounds for the assessment of a civil penalty in accordance with G.S. 85B-3.1(b) or the denial, suspension, or revocation of an auctioneer, auctioneer apprentice, or auction firm license:

- (1) Any violation of this Chapter or any violation of a rule or regulation duly adopted by the Commission.
  - (2) A continued and flagrant course of misrepresentation or making false promises, either by the licensee, an employee of the licensee, or by someone acting on behalf of and with the licensee's consent.
  - (3) Any failure to account for or to pay over within a reasonable time, not to exceed 30 days, funds belonging to another which have come into the licensee's possession through an auction sale.
  - (4) Any false, misleading, or untruthful advertising.
  - (5) Any act of conduct in connection with a sales transaction which demonstrates bad faith or dishonesty.
  - (6) Knowingly using false bidders, cappers or pullers, or knowingly making a material false statement or representation.
  - (7) Commingling the funds or property of a client with the licensee's own or failing to maintain and deposit in a trust or escrow account in a federally insured depository institution or a trust institution authorized to do business in this State funds received for another person through sale at auction.
  - (8) Failure to make the required contribution to the Fund.
  - (9) The commission or conviction of a crime that is punishable as a felony offense under the laws of North Carolina or the laws of the jurisdiction where committed or convicted, or the commission of any act involving fraud or moral turpitude.
  - (10) Failure to properly make any disclosures or to provide documents or information required by this Chapter or by the Commission.
  - (11) A demonstrated lack of financial responsibility.
- (b) through (d) Repealed by Session Laws 1973, c. 1195, s. 5.
- (e) The Commission may investigate complaints and conduct hearings as follows:
- (1) The Commission may upon its own motion or upon the complaint in writing of any person, provided the complaint and any evidence presented with it establishes a prima facie case, hold a hearing and investigate the actions of any auctioneer, apprentice auctioneer, or auction firm, or any person who holds himself or herself out as an auctioneer or apprentice auctioneer, and shall have the power to impose a civil penalty on any licensee, suspend or revoke any license issued under the provisions of this Chapter, or to reprimand or censure any licensee. In all proceedings for the imposition of a civil penalty or the

denial, suspension, or revocation of licenses, the provisions of Chapter 150B of the General Statutes including provisions relating to summary suspension shall be applicable. Any person who desires to appeal the denial of an application for any license authorized to be issued under this Chapter shall file a written appeal with the Commission not later than 30 days following notice of denial.

- (2) The Commission may, upon its own motion, summarily suspend a license when the health, safety, or welfare of the public is at risk, such as in the event of a potential loss of consigned items or potential loss of funds.

(f) A person whose license has been denied, suspended, or revoked may not apply in that person's name or in any other manner within the period during which the order of denial, suspension, or revocation is in effect, and no firm, partnership, or corporation in which any person has a substantial interest or exercises management responsibility or control may be licensed during the period. (1973, c. 552, s. 8; c. 1195, ss. 4, 5; c. 1331, s. 3; 1975, c. 648, s. 6; 1983, c. 603, s. 6; 1989, c. 732, s. 5; 1991 (Reg. Sess., 1992), c. 819, s. 21; 1999-142, s. 7; 2005-330, s. 7; 2017-25, s. 1(e).)

#### **§ 85B-9. Penalties and enforcement.**

(a) Any person, corporation or association of persons violating the provisions of G.S. 85B-4(a) shall be guilty of a Class 1 misdemeanor. The Attorney General of North Carolina, or the Attorney General's designee, shall have concurrent jurisdiction with the district attorneys of this State to prosecute violations of this Chapter.

(b) The Commission may in its own name seek injunctive relief in the General Court of Justice to restrain any violation or anticipated violation of the provisions of G.S. 85B-4(a) or any violation of this Chapter.

(c) The Commission shall be entitled to the services of the Attorney General of North Carolina in enforcing the provisions of this Chapter or may employ an attorney to assist and represent it in enforcement of specific matters. (1973, c. 1195, s. 6; 1975, c. 648, s. 7; 1991 (Reg. Sess., 1992), c. 819, s. 22; 1993, c. 539, s. 600; 1994, Ex. Sess., c. 24, s. 14(c); 1999-142, s. 8.)