

ASSEMBLY BILL

No. 875

Introduced by Assembly Member Horton

February 22, 2001

An act to add Chapter 3.7 (commencing with Section 5700) to Division 3 of the Business and Professions Code, relating to auctioneers, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 875, as introduced, Horton. Auctioneers and auction companies.

Existing law regulating auctioneers and auction companies was repealed in 1993.

This bill would enact the Auctioneer and Auction Licensing Act, regulating auctioneers and auction companies. The bill would authorize the charging of licensing and renewal fees and administrative fines and civil penalties by the California Auctioneer Commission. These funds would be deposited into the Auctioneer Commission Fund which would be continuously appropriated for the licensing and regulation of auctioneers and auction companies. By appropriating these funds, the bill would make an appropriation.

This bill provides that a violation of the act by a licensee would be a misdemeanor. Because this bill would create new crimes, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: ²/₃. Appropriation: yes. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 3.7 (commencing with Section 5700) is
2 added to Division 3 of the Business and Professions Code, to read:

3

4 CHAPTER 3.7. AUCTIONEERS AND AUCTIONS

5

6 Article 1. General Provisions

7

8 5700. This chapter shall be known and cited as the Auctioneer
9 and Auction Licensing Act.

10 5701. As used in this chapter:

11 (a) "Advertisement" means any of the following:

12 (1) Any written or printed communication for the purpose of
13 soliciting, describing, or offering to practice auctioneering or
14 auction company services, including any brochure, pamphlet,
15 newspaper, periodical, or publication.

16 (2) A telephone or other directory listing caused or permitted
17 by a licensee to be published that indicates the licensee's offer to
18 practice auctioneering or auction company services.

19 (3) A radio, television, or similar airwave transmission that
20 solicits or offers the practice of auctioneering or auction company
21 services.

22 (b) "Auction" means a sale transaction conducted by means of
23 oral or written exchanges between an auctioneer and the members
24 of his or her audience, which exchanges consist of a series of
25 invitations for offers for the purchase of goods made by the
26 auctioneer and offers to purchase made by members of the
27 audience and culminate in the acceptance by the auctioneer of the
28 highest or most favorable offer made by a member of the
29 participating audience.

30 (c) "Auction company" means any person who arranges,
31 manages, sponsors, advertises, accounts for the proceeds of, or
32 carries out auction sales at locations, including, but not limited to,
33 a fixed location, an auction barn, gallery, place of business, sale



1 barn, sale yard, sale pavilion, and the contiguous surroundings of
2 each.

3 (d) “Auctioneer” means an individual who is engaged in, or
4 who by advertising or otherwise holds himself or herself out as
5 being available to engage in, the calling for, the recognition of, and
6 the acceptance of, offers for the purchase of goods at an auction.

7 (e) “Board” means the Board of Governors of the California
8 Auctioneer Commission.

9 (f) “Commission” means the California Auctioneer
10 Commission.

11 (g) “Employee” means an individual who works for an
12 employer, is listed on the employer’s payroll records, and is under
13 the employer’s control.

14 (h) “Employer” means a person who employs an individual
15 for wages or salary, lists the individual on the person’s payroll
16 records, and withholds legally required deductions and
17 contributions.

18 (i) “Executive officer” means the Executive Officer of the
19 California Auctioneer Commission.

20 (j) “Goods” means any goods, wares, chattels, merchandise,
21 or other personal property, including domestic animals and farm
22 products.

23 (k) “Licensee” means any person licensed under this chapter
24 as an auctioneer or auction company.

25 (l) “Person” means an individual, corporation, partnership,
26 trust, including a business trust, firm association, organization, or
27 any other form of business enterprise.

28 (m) “Pocket card” means a certified copy of an auctioneer’s
29 license, issued by the commission, that shall include a photograph
30 of the auctioneer, and that is the property of the commission.

31

32 Article 2. Administration

33

34 5710. There is hereby created a public corporation known as
35 the California Auctioneer Commission.

36 5711. All persons licensed pursuant to this chapter shall be
37 members of the commission.

38 5712. The commission has perpetual succession and a seal. It
39 may sue and be sued. It may own property, make contracts, and do



1 all other lawful acts necessary or expedient for the administration
2 of its affairs.

3 The commission may accept gifts, bequests, and other
4 charitable donations.

5 5713. The headquarters of the commission shall be in
6 Sacramento. Branch offices may be in other locations as deemed
7 necessary by the board.

8 5714. (a) The powers conferred on the commission shall be
9 exercised by its board of governors. The board is charged with the
10 administration of these powers.

11 (b) The board shall govern, control, and administer the affairs
12 of the commission, and shall exercise all rights and powers vested
13 in it by this chapter.

14 (c) The commission is invested with all duties, powers,
15 purposes, responsibilities, and jurisdiction regarding auctions and
16 auctioneering. No other agency, or political subdivision of the
17 state, shall impose on a licensee or seller at auction any registration
18 or license requirement or any license or employment fee or charge
19 on account of auction activities. No provision of this subdivision
20 or chapter prohibits any city or county, or city and county, from
21 imposing a business license fee on a licensed auctioneer or auction
22 company whose permanent place of business, as filed with the
23 commission, is located in that city, county, or city and county.

24 5715. (a) The business of the commission shall be
25 administered by the board, which shall consist of seven members.
26 Each member of the board shall be a citizen of the United States.
27 Except for the first members appointed to the board, three
28 members of the board shall be licensed under this chapter and four
29 members shall be public members.

30 The members of the first board appointed shall consist of three
31 members representing the auctioneering industry and four
32 members representing the public at large.

33 (b) The Governor shall appoint the first members of the board
34 within 60 days from the effective date of this chapter and the board
35 shall hold its first meeting within 30 days after all the initial
36 members are appointed.

37 (c) Each member, except the public members, shall have at
38 least five years of experience in auctioneering and shall be
39 recognized as having standing in his or her practice of the
40 auctioneering business. Each member of the board shall be at least



1 21 years of age and shall have been a resident of this state for at
2 least five years immediately preceding his or her appointment.

3 (d) The first board shall consist of seven members appointed by
4 the Governor. Two of the industry members and two of the public
5 members shall be appointed for a term of two years and one of the
6 industry members and two of the public members shall be
7 appointed for a term of four years. Thereafter, members shall be
8 appointed for a term of four years. Before selecting the industry
9 members of the board, the Governor shall consult with, and
10 consider qualified candidates nominated by, individuals within, or
11 organizations representing, the auctioneering business. Any
12 vacancies shall be filled by appointment by the Governor for the
13 unexpired term. Each member appointed to fill a new term or
14 vacancy shall be a licensed auctioneer or a public member as was
15 his or her predecessor.

16 (e) Each member of the board shall hold office until the
17 appointment and qualification of his or her successor or until six
18 months have elapsed since the expiration of the term for which he
19 or she was appointed, whichever first occurs. Whenever the
20 Governor has failed to appoint and qualify a member six months
21 after the expiration of a term, or a vacancy created by other cause,
22 the Speaker of the Assembly and President pro Tempore of the
23 Senate, jointly, shall appoint a successor to fill the unexpired term.
24 No individual shall serve as a member of the board for more than
25 two consecutive terms.

26 (f) The Governor may remove any member of the board for
27 misconduct, incompetency, or neglect of duty.

28 5715.1. There shall be a council of advisers to the board. The
29 board shall, by rule and appointment as deemed necessary to
30 comprehensively address matters of concern to the board,
31 establish the number and qualifications of the advisers. An adviser
32 shall be appointed by the board, and his or her term of office shall
33 be one year. No individual shall serve as a member of the council
34 of advisers for more than two full consecutive terms. The board
35 shall provide for the appointment of three members of the council
36 of advisers representing consumer interest organizations in this
37 state. Vacancies in the council of advisers shall be filled by the
38 board by appointment for the unexpired term.

39 5715.2. The board shall hold not less than four regular
40 meetings each fiscal year for the purpose of transacting the



1 business as may properly come before it. Once each year, the board
2 shall elect officers.

3 5716. The members of the board shall elect from the board
4 membership a president, vice president, and secretary. Officers
5 shall serve for one year or until their successors are chosen and
6 qualify. The president shall preside at all meetings of the
7 commission and of the board, and in the event of his or her absence
8 or inability to act, the vice president shall preside.

9 5717. Subject to the laws of this state, the board may
10 formulate and declare rules and regulations necessary for the
11 carrying out of this chapter. The rules and regulations shall be
12 adopted in accordance with the Administrative Procedure Act,
13 Chapter 3.5 (commencing with Section 11340) of Part 1 of
14 Division 3 of Title 2 of the Government Code.

15 5717.1. Upon enactment of this chapter, there is created a
16 special fund in the State Treasury, known as the Auctioneer
17 Commission Fund. Notwithstanding Section 13340 of the
18 Government Code, the fund shall be continuously appropriated for
19 the purposes of this chapter. The board may make disbursements
20 from the Auctioneer Commission Fund to pay all necessary
21 expenses associated with the performance of the duties and powers
22 of the board. Each member of the board shall receive one hundred
23 dollars (\$100) per day and his or her necessary expenses for each
24 day he or she performs duties of the board.

25 5717.2. The board shall appoint an executive officer for the
26 commission. No member of the commission is eligible to serve as
27 the executive officer.

28 5717.3. The board may appoint committees, representatives,
29 delegates, examiners, firms, and employees as it deems necessary.
30 The board may provide for the assignment of duties to the
31 executive officer, the council of advisers, committees of the
32 council, or any other person. Committees of the council may be
33 assigned responsibility for accepting or denying applications,
34 preparing and grading examinations, receiving or designating
35 complaints involving professional competence or standards of
36 conduct and assisting the executive officer to investigate those
37 complaints, and performing other duties as the board may delegate
38 to them. Except as otherwise provided in this section, the board
39 may fix and pay salaries, fees, and necessary expenses.



1 5717.4. The board shall formulate rules of professional
2 conduct that shall be binding upon members when ratified by
3 majority vote of the members of the commission who vote at a
4 regular or special meeting at which all members have an
5 opportunity to vote in person or by mail ballot.

6 5718. The board shall appoint two Disciplinary Review
7 Committees, hereafter DRCs. The DRCs shall each consist of two
8 members who have been actively engaged in the business of
9 auctioneering for at least three years, and one public member.
10 None of the members shall be members of the board. The DRCs
11 shall meet every 60 days, or more or less frequently as may be
12 required. Each member shall be paid fifty dollars (\$50) per day for
13 each day he or she performs duties under this chapter. The
14 members shall be appointed for a term of two years, and no
15 member may serve more than two consecutive terms. The board
16 may remove any member of a DRC for misconduct,
17 incompetence, or neglect of duty.

18 The DRCs shall perform all of the following functions:

19 (a) Affirm, rescind, or modify all appeals concerning
20 administrative fines assessed by the executive officer.

21 (b) Affirm, rescind, or modify all appeals concerning denial of
22 licenses issued by the executive officer, excluding any denial
23 ordered by the board in accordance with Chapter 5 (commencing
24 with Section 11500) of Part 1 of Division 3 of Title 2 of the
25 Government Code.

26 (c) Upon request of the executive officer, affirm, rescind, or
27 modify any decision by the executive officer to initiate
28 disciplinary action against a licensee.

29 5719. Notice of all board meetings shall be governed by rule
30 of the board. A majority of the board constitutes a quorum.

31 All meetings shall be open and public, except that the board may
32 hold closed sessions to do any of the following:

33 (a) Deliberate on the decision to be reached upon evidence in
34 a disciplinary proceeding conducted in accordance with Chapter
35 5 (commencing with Section 11500) of Part 1 of Division 3 of Title
36 2 of the Government Code.

37 (b) Prepare, approve, grade, or administer examinations.

38 (c) Consider the appointment, employment, or dismissal of an
39 employee or hear complaints or charges against the employee.



1 (d) Discuss matters that would constitute an unwarranted
2 invasion of the privacy of an individual licensee or applicant if
3 discussed in an open meeting.

4 (e) Consider any gifts, donations, or bequests that the donor or
5 proposed donor has requested in writing be kept confidential.

6 (f) Confer with legal counsel regarding pending litigation
7 when discussion in open session concerning those matters would
8 adversely affect or be detrimental to the public interest. Litigation
9 shall be considered pending when a complaint, claim, or petition
10 for writ of mandate has been filed, or the threat of litigation is
11 imminent in the opinion of the board.

12 5720. The board may, by regulation, define the scope of each
13 branch of auctioneering for licensure provided under this chapter,
14 and establish standards for the board's approval of schools of
15 auctioneering.

16 5721. Any member of the board and the executive officer may
17 administer oaths and take testimony and evidence concerning all
18 matters within the board's jurisdiction.

19 5722. The executive officer shall keep a complete record of all
20 applications for licensure and the action of the board thereon and,
21 between July 1 and December 1 of each year, shall prepare a roster
22 showing the names, addresses, and telephone numbers of all
23 licensees. The telephone number may be omitted from the
24 directory upon request of the licensee.

25 A copy of the roster shall be filed with the Secretary of State and
26 with the clerk of each county in the state, and a copy of the roster
27 shall be furnished to each licensee. Copies of the roster shall be
28 available on application to the executive officer, at a price per copy
29 that reimburses the commission for the cost of publication.

30 All records of the commission shall be public records except
31 confidential letters of reference, examination material, and
32 investigation files.

33 5724. On or before December 1 of each even-numbered year,
34 the board shall submit to the Governor, the Speaker of the
35 Assembly, and the President pro Tempore of the Senate a full
36 report of their transactions during the preceding two years,
37 including a complete statement of the receipts and expenditures of
38 the commission during the period. A copy of the report shall be
39 filed with the Secretary of State.

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Article 3. Licensing

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5730. No individual may act as an auctioneer and no person may operate an auction company unless that individual or person holds an unexpired valid license issued pursuant to this chapter. However, the requirements of this chapter do not apply to any of the following:

(a) An auction of goods conducted by an individual who personally owns those goods and who did not acquire the goods for resale.

(b) An auction conducted by, on behalf of, or under the direction of, any public authority, political candidate or party, church, or charitable organization. However, if the individual conducting the sale receives compensation or, by advertising or otherwise, holds himself or herself out as being available to engage in the sale of goods at auction for compensation, that individual shall be required to hold a license pursuant to this chapter.

(c) A sale of real estate.

(d) An automobile auction regulated by the Department of Motor Vehicles. However, an individual acting as an auctioneer at an auto auction shall hold a license as required by this chapter, unless the auctioneer is licensed as a salesman by the Department of Motor Vehicles and is employed by the auto auction.

(e) An auction of livestock in any place designated by the Secretary of the United States Department of Agriculture as a stockyard pursuant to Section 202 of Chapter 9 of Title 7 of the United States Code. The exemption provided by this subdivision shall extend to individuals acting as auctioneers at a livestock auction only if the sale is conducted under the jurisdiction of the United States Department of Agriculture.

(f) An auction conducted by an owner if the goods are being auctioned to enforce a lien, or a judgment entered on a lien in favor of the owner, on goods stored at a self-service storage facility, and the lien is obtained pursuant to Chapter 10 (commencing with Section 21700) of Division 8.

5731. Every individual, before acting as an auctioneer, shall obtain an auctioneer license. An individual seeking an initial license as an auctioneer shall meet all of the following requirements:

(a) Be at least 18 years of age.



- 1 (b) File with the commission a completed application on a form
2 prescribed by the board.
 - 3 (c) Pay the nonrefundable examination fee and the
4 nonrefundable application fee specified in Section 5791.
 - 5 (d) Provide proof that the applicant, or his or her employer,
6 holds a valid seller’s permit issued by the State Board of
7 Equalization, if applicable.
 - 8 (e) Provide one set of fingerprints on a form approved by the
9 Department of Justice and pay the fee specified in Section 5791 for
10 fingerprint processing.
 - 11 (f) Provide two color photographs of passport quality of the
12 size prescribed by the board.
 - 13 (g) Pass an examination prepared by the board.
 - 14 (h) File a surety bond in the amount and form prescribed in
15 Article 3.5 (commencing with Section 5760).
 - 16 (i) Pay the license fee and pocket card fee specified in Section
17 5791.
- 18 5732. The executive officer shall hold examinations as the
19 board may prescribe. The examination for an auctioneer’s license
20 shall include questions on the applicant’s ability to read and write,
21 his or her ability to call bids, his or her knowledge of sale
22 preparation, proper sale advertising and sale summary, his or her
23 knowledge of mathematics and accounting principles, and his or
24 her knowledge of the provisions of this chapter, the commission’s
25 regulations, and other laws relating to auctioneering and auction
26 company services, including, but not limited to, the Commercial
27 Code, the Penal Code, the Vehicle Code, and other applicable state
28 laws.
- 29 5733. An applicant who fails to pass the initial examination
30 may, upon payment of the reexamination fee specified in Section
31 5791, apply for reexamination on a form prescribed by the board.
- 32 5733.5. If an applicant fails to complete his or her application
33 within one year after it has been filed, or fails to take the
34 examination within a one-year period after becoming eligible, the
35 application shall be considered to be abandoned. An application
36 submitted after the abandonment of a former application shall be
37 treated as a new application and shall be required to meet all of the
38 requirements for an initial license.



1 5734. The board may waive the requirement that a
2 nonresident applicant pass an examination if the nonresident
3 applicant complies with all of the following:

4 (a) Is licensed or registered to act as an auctioneer by the state
5 of his or her domicile.

6 (b) That state's requirements for licensing or registration are at
7 least as stringent as those in effect in California, and the applicant
8 meets all the other requirements set forth in Section 5731.

9 (c) Submits with his or her application a duly certified letter of
10 certification issued by the licensing board of his or her state.

11 (d) Includes with his or her application an irrevocable consent
12 that actions may be commenced against him or her. The consent
13 shall stipulate that service of process or pleadings on the board
14 shall be taken and held in all courts as valid and binding as if
15 service of process had been made upon the applicant personally
16 within this state. If any process or pleading mentioned in this
17 subdivision is served upon the board, it shall be by duplicate
18 copies. One of the duplicate copies shall be filed in the Sacramento
19 office of the commission and one shall be immediately forwarded
20 by the executive officer by registered or certified mail to the
21 applicant against whom the process or pleadings are directed.

22 5735. Upon compliance by the applicant with the
23 requirements of Section 5731, except subdivision (g), the board
24 may issue a temporary permit authorizing the applicant to practice
25 auctioneering, pending the results of the first licensing
26 examination administered after the date of application. The
27 temporary permit of an applicant who fails, or who does not appear
28 at, the examination for which he or she is scheduled shall be void
29 upon receiving notice thereof.

30 5735.5. Upon written application, the board may reissue a
31 temporary permit to any individual who, in the judgment of the
32 board, has been excusably delayed in completing his or her
33 application. The board may not reissue a temporary permit more
34 than twice to any one individual within a five-year period.

35 5736. A temporary permit has the same effect as a license and
36 subjects the permittee to the same obligations as if he or she had
37 obtained a license under this chapter. However, a temporary
38 permitholder shall not be a member of the commission, nor shall
39 he or she be listed in the roster.



1 5737. Upon the request of an applicant, an examination may
2 be scheduled on a date other than the date of a regularly scheduled
3 examination, provided that the applicant pays the fee for a special
4 examination specified in Section 5791 in addition to the cost of all
5 facilities and services necessary for the administration of the
6 examination.

7 5738. Every person, before operating an auction company,
8 shall obtain an auction company license. This provision does not
9 apply to an individual who is a licensed auctioneer and operates an
10 auction company as a sole proprietorship. A person seeking an
11 initial license as an auction company shall meet all of the following
12 requirements:

13 (a) File with the commission a completed application on a form
14 prescribed by the board.

15 (b) Pay a nonrefundable application fee and the license fee in
16 the amounts specified in Section 5791.

17 (c) File a surety bond in the amount and form prescribed in
18 Article 3.5 (commencing with Section 5760).

19 (d) Provide proof that the applicant holds a valid seller's permit
20 issued by the State Board of Equalization.

21 (e) Provide one set of fingerprints for each owner, partner, or
22 officer, as applicable, on a form approved by the Department of
23 Justice, and pay the fee specified in Section 5791 for the
24 processing of each set of fingerprints except for any owner, officer,
25 or partner who is a licensed auctioneer.

26 5738.5. Each owner, partner, or officer of an auction company
27 may apply for a pocket card by providing two color photographs
28 of passport quality of the size prescribed by the board and paying
29 the pocket card fee specified in Section 5791.

30 5739. The board shall issue an auction company license to
31 each nonresident applicant who complies with the requirements of
32 Section 5738 and includes with his or her application an
33 irrevocable consent that actions may be commenced against him,
34 her, or them. The consent shall stipulate that service of process or
35 pleadings on the board shall be taken and held in all courts as valid
36 and binding as if service of process had been made upon the
37 applicant personally within this state. If any process or pleading
38 mentioned in this subdivision is served upon the board, it shall be
39 by duplicate copies. One of the duplicate copies shall be filed in
40 the Sacramento office of the commission and one shall be



1 immediately forwarded by the executive officer by registered or
2 certified mail to the person against whom the process or pleadings
3 are directed.

4 5740. The Department of Justice shall notify the board of all
5 misdemeanor and felony convictions of each applicant.

6 5741. Upon the receipt of a completed application, the
7 executive officer shall verify the truthfulness of the information
8 contained in the application. The board shall issue a license, in a
9 form as it may prescribe, to each person who meets all of the
10 requirements for licensing and pays the appropriate fees, unless
11 cause exists under Section 5777 to deny the license.

12 5742. Auctioneer and auction company licenses shall expire
13 at 12 midnight on June 30 of every even-numbered year, unless
14 renewed before that date. Neither license nor renewal fees shall be
15 prorated for those licenses issued at any time prior to the renewal
16 date.

17 5743. An applicant for renewal of an auctioneer or auction
18 company license shall meet all of the following requirements:

19 (a) File with the commission a completed application on a form
20 prescribed by the board.

21 (b) Pay the license renewal fee specified in Section 5791.

22 (c) Satisfy the executive officer that a surety bond in the
23 amount and form prescribed in Article 3.5 (commencing with
24 Section 5760) is in full force and effect.

25 (d) Provide two color photographs of passport quality of the
26 size prescribed by the board and pay the pocket card fee specified
27 in Section 5791. Auction company owners, partners, and officers
28 may, but are not required to, comply with the requirements of this
29 subdivision.

30 5744. Once a license has expired, it may be reinstated not
31 more than one year after the date of expiration upon payment of
32 the renewal fee plus the sum of fifty dollars (\$50). If the license
33 has been expired for a period of more than one year, the applicant
34 shall file for and meet all of the requirements for an initial license,
35 including passage of the examination, if applicable.

36 5745. Upon the receipt of notification from the executive
37 officer of the expiration of any license under this chapter, the
38 holder of the license shall cease to display the certificate of license
39 and to wear the pocket card, and shall immediately return the
40 certificate and pocket card to the executive officer.



1 5747. Any licensee who wishes to conduct an auction
2 company under a name other than, or in addition to, that on record
3 with the commission shall, within 30 days of the change or
4 addition, pay the fee specified in Section 5791.

5
6 Article 3.5. Bonding
7

8 5760. Every individual who applies for an auctioneer’s
9 license shall, as a condition to the granting and the retention
10 thereof, file or have on file with the executive officer a bond in the
11 amount of ten thousand dollars (\$10,000) that meets the
12 requirements contained in Section 5763.

13 5761. Every person who applies for an auction company
14 license shall, as a condition to the granting and the retention
15 thereof, file or have on file with the executive officer a bond in the
16 amount of ten thousand dollars (\$10,000) that meets the
17 requirements contained in Section 5763.

18 5762. (a) In lieu of the bond required by this article, there
19 may be deposited with the commission any of the following:

20 (1) Lawful money of the United States. The money shall be
21 maintained by the executive officer in an interest-bearing trust
22 account.

23 (2) Certificates of deposit payable to the executive officer, not
24 exceeding the federally insured amount, issued by banks
25 authorized to do business in this state and insured by the Federal
26 Deposit Insurance Corporation or by savings and loan associations
27 authorized to do business in this state and insured by the Federal
28 Savings and Loan Insurance Corporation.

29 (3) Savings accounts assigned to the executive officer, not
30 exceeding the federally insured amount, together with evidence of
31 the deposit of the savings accounts with banks authorized to do
32 business in this state and insured by the Federal Deposit Insurance
33 Corporation.

34 (4) Investment certificates or share accounts assigned to the
35 executive officer, not exceeding the federally insured amount,
36 issued by savings and loan associations authorized to do business
37 in this state and insured by the Federal Savings and Loan Insurance
38 Corporation.

39 (5) Certificates for funds or share accounts assigned to the
40 executive officer, not exceeding the guaranteed amount, issued by



1 a credit union, as defined in Section 14002 of the Financial Code,
2 whose share deposits are guaranteed by the National Credit Union
3 Administration or guaranteed by any other agency approved by the
4 Department of Corporations.

5 (b) The deposit shall be in an amount or have a face value equal
6 to or in excess of ten thousand dollars (\$10,000).

7 (c) The deposit shall be accompanied by an agreement
8 executed by the depositor authorizing the executive officer to
9 collect, sell, or otherwise apply the deposit to enforce the liability
10 of the depositor on the deposit. The agreement shall include the
11 address at which the depositor may be served with notices, papers,
12 and other documents under this chapter.

13 (d) The board may prescribe terms and conditions to
14 implement this section.

15 5762.1. All instruments and certificates representing any
16 deposit made under Section 5762 shall be filed by the depositor
17 with the executive officer.

18 5762.2. All obligations and remedies specified in this article
19 relating to bonds apply to all deposits made pursuant to Section
20 5762.

21 5763. (a) The state shall be the obligee under the bond.

22 (b) The bond shall comply with all of the following:

23 (1) Be executed by the person seeking the license as principal
24 and by a corporate surety, licensed to do business in this state, as
25 surety.

26 (2) Be in the form as the board prescribes.

27 (3) Be conditioned upon the faithful performance of all
28 obligations of a licensee under this chapter and the regulations,
29 including the obligation to account for and pay over moneys and
30 proceeds to persons who are entitled to them.

31 (4) Be effective from the date of filing with the executive
32 officer, shall not be affected by the expiration of the license, and
33 shall continue in full force and effect until canceled, provided that
34 the total and aggregate liability of the surety on a bond shall be
35 limited to the amount specified in the bond and the continuous
36 nature of the bond shall in no event be construed as allowing the
37 liability of the surety under a bond to accumulate for each
38 successive license period during which the bond is in force.



1 (c) (1) A licensee may not cancel a bond without the prior
2 written approval of the board and its approval of a substitute bond
3 so as to provide continuous bonding of the licensee’s activities.

4 (2) The surety on a bond may cancel a bond filed under this
5 chapter only after the expiration of 30 days from the date the surety
6 mails a notice of intent to cancel, by registered or certified mail,
7 return receipt requested, to the commission and to the principal on
8 the bond.

9 (3) Not later than the date upon which a bond cancellation
10 becomes effective, the licensee shall give written notice to the
11 commission that a new bond has been obtained, and shall file the
12 new bond with the executive officer, in order to provide
13 continuous bond coverage of the licensee’s activities. Failure to
14 provide this notice and to file a new bond shall result in the
15 automatic revocation of the license. A license revoked pursuant to
16 this subdivision may be reinstated only by filing a bond as
17 provided in this article and paying a reinstatement fee in the
18 amount of one hundred dollars (\$100).

19 (d) The bond shall at all times reflect the name of the licensee
20 as shown in the records of the commission. Failure to provide a
21 new or amended bond within 30 days following a change in the
22 name of the licensee shall result in the automatic revocation of the
23 license. A license revoked pursuant to this subdivision may only
24 be reinstated by filing a new or amended bond as provided in this
25 article and paying a reinstatement fee in the amount of one hundred
26 dollars (\$100).

27 (e) No action shall be brought upon any bond after the
28 expiration of three years from the accrual of the cause of action.
29 The executive officer shall keep each bond on file for a period of
30 three years following termination of the bond.

31 5764. (a) If any licensee fails, or is alleged to have failed, to
32 comply with subdivision (m), (o), (p), or (q) of Section 5775, or
33 subdivision (l) of Section 5777, the board may hold a hearing and
34 determine whether there has been a failure, determine those
35 persons who are proved claimants under bond, and, if appropriate,
36 distribute the bond proceeds to the proven claimants.

37 (b) Actions upon the bond and the right to payment under the
38 bond shall extend solely to the board. However, if the board has not
39 initiated action under the bond by scheduling and holding a
40 hearing, by litigation or otherwise, within 60 days of a written



1 request any claimant may initiate an action in a superior court in
2 this state to require the board to take action.

3 (c) If, upon a hearing, the board determines that proved claims
4 exceed the amount of the bond proceeds, the proceeds shall be
5 prorated among proved claimants in the ratio that the amount of
6 each proved claim bears to the total amount of all proved claims.

7 (d) The determination of the board as to the fact and the amount
8 of liability under the bond and the amount distributed to the
9 claimants under the bond shall be binding upon the principal and
10 surety of the bond.

11 (e) All hearings held under this section shall be held in
12 accordance with Chapter 5 (commencing with Section 11500) of
13 Part I of Division 3 of Title 2 of the Government Code.

14 (f) The existence of the bond and the bond recovery procedure
15 shall in no way affect or alter any other right or remedy that any
16 person or the board may have under applicable law.

17 (g) Upon a hearing held under this article where the total of all
18 claims is less than the total of the sum of the bond, the board may
19 order that the remainder of the bond proceeds, or any portion, be
20 paid to the commission as reimbursement for administrative and
21 investigative expenses incurred by the commission, including
22 amounts charged to the commission by the Department of Justice
23 and the Office of Administrative Hearings, in bringing the action
24 upon the bond.

25

26 Article 4. Conduct of Business and Prohibited Acts

27

28 5770. The board and executive officer shall have the power,
29 duty, and authority to investigate all violations of this chapter and
30 of the regulations of the board. It is the duty of the executive
31 officer, under the direction of the board, to seek compliance of all
32 persons with the provisions of this chapter.

33 5771. A violation of this chapter may result in the assessment
34 of an administrative fine, a claim upon the surety bond or deposit
35 of cash or other funds, the initiation of disciplinary action, as
36 specified in Article 3.5 (commencing with Section 5760), Article
37 5 (commencing with Section 5780), and Article 6 (commencing
38 with Section 5785), or any other remedy provided by law.

39 5772. (a) The superior court for the county in which any
40 person has engaged or is about to engage in any act that constitutes



1 a violation of this chapter may, upon a petition filed by the board
2 or any other person, issue an injunction or other appropriate order
3 restraining the violative conduct. Proceedings under this
4 subdivision shall be governed by Chapter 3 (commencing with
5 Section 525) of Title 7 of Part 2 of the Code of Civil Procedure,
6 except that no undertaking shall be required.

7 (b) The superior court for the county in which any person has
8 engaged in any act that constitutes a violation of this chapter may,
9 upon a petition filed by the board or any other person, order the
10 person who committed the violation to make restitution to any
11 person injured as a result of the violation.

12 (c) The court may order any person against whom an injunction
13 or restraining order pursuant to subdivision (a), or an order
14 requiring restitution pursuant to subdivision (b), is directed, to
15 reimburse the petitioning board for expenses incurred by the board
16 in its investigation related to its petition.

17 (d) The remedies set forth in this section are in addition to, and
18 not a limitation on, the authority provided for in any other section
19 of this code.

20 5772.5. Any person who violates any provision of this
21 chapter, who conspires with another to violate any provision of this
22 chapter, or who knowingly engages an unlicensed person or
23 organization to perform any act or service for which a license is
24 required by this chapter, is guilty of a misdemeanor, which offense
25 is punishable by a fine not exceeding one thousand dollars
26 (\$1,000), or by imprisonment in a county jail for not more than one
27 year, or by both that fine and imprisonment.

28 5772.6. No person may bring or maintain any action in any
29 court of this state for the collection of compensation for the
30 performance of any act or service requiring a license under this
31 chapter without alleging and proving that he or she was duly
32 licensed at all times during the performance of the act or service.

33 5772.7. Any person who performs any act or service requiring
34 a license under this chapter, but does not at the time of performance
35 hold a valid license, shall not receive or be entitled to receive any
36 moneys or consideration in payment for the act or service.

37 5773. Upon finding a violation of any subdivision of Section
38 5776 by an applicant for licensure, the board may issue the license
39 upon the condition that the applicant first pay the fine specified for



1 a violation of that subdivision, to a maximum of one thousand
2 dollars (\$1,000).

3 5774. In conducting the business of auctioneering, each
4 auctioneer and auction company, and the company's owners,
5 partners, officers, agents, and employees, shall do all of the
6 following:

7 (a) Follow all lawful requests of the owner or consignor of the
8 goods being sold at auction with regard to the sale of those goods.

9 (b) Perform his or her duties so that the highest or most
10 favorable offer made by a member of his or her audience is
11 accepted, except to the extent that any item or sale is offered with
12 reserve or subject to confirmation.

13 (c) Truthfully represent the goods to be auctioned.

14 (d) Otherwise perform his or her duties in accordance with the
15 Commercial Code, the Penal Code, this chapter, the regulations of
16 the board, and the rules of professional conduct established by the
17 commission.

18 5774.1. Each auctioneer who operates his or her own auction
19 company as a sole proprietor, and each auction company, together
20 with its owners, partners, and officers, that employs an auctioneer,
21 shall be responsible for all violations committed by the auctioneer
22 or by any company employee in the conduct of auction business.
23 An auctioneer who is employed by an auctioneer or auction
24 company shall be responsible for all violations committed by him
25 or her in the conduct of auction business.

26 5774.2. Each auctioneer and auction company, together with
27 the company's owners, partners, and officers, that contracts with
28 an auctioneer to perform specified auction duties shall be exempt
29 from responsibility under this chapter for any violations of this
30 chapter arising from the auctioneer's performance of those duties.

31 5774.3. An auctioneer who contracts with an auctioneer or
32 auction company to perform specified auction duties shall be
33 responsible for only those violations of this chapter arising from
34 the performance of those duties.

35 5774.4. It is a violation of this chapter for any auctioneer or
36 auction company, or the company's owners, partners, and officers,
37 to direct or knowingly permit any violation of this chapter by any
38 auctioneer employed by or under contract with that auctioneer or
39 auction company, or by any owner, partner, officer, agent, or
40 employee of the auction company.



1 5775. Every person licensed under this chapter shall do all of
2 the following:

3 (a) Display his or her license, or a certified copy of the license
4 issued by the board, in full and unobstructed view of the public at
5 his or her principal place of business. A first violation of this
6 subdivision is subject to a fine of fifty dollars (\$50); a second
7 violation is subject to a fine of seventy-five dollars (\$75); and a
8 third or subsequent violation is subject to a fine of one hundred
9 dollars (\$100).

10 (b) Disclose his or her name, trade or business name, telephone
11 number and state license number in all advertising of auctions. A
12 first violation of this subdivision is subject to a fine of fifty dollars
13 (\$50); a second violation is subject to a fine of seventy-five dollars
14 (\$75); and a third or subsequent violation is subject to a fine of one
15 hundred dollars (\$100). This section shall not apply to business
16 cards, business stationery, or to any advertisement that does not
17 specify an auction date.

18 (c) Post a sign, the dimensions of which shall be at least 18
19 inches by 24 inches, at the main entrance to each auction, stating
20 all of the following:

21 (1) That the auction is being conducted pursuant to Section
22 2328 of the Commercial Code, Section 535 of the Penal Code, and
23 the provisions of the California Auctioneer and Auction Licensing
24 Act.

25 (2) The name and address of the California Auctioneer
26 Commission as designated by the commission.

27 A first violation of this subdivision is subject to a fine of fifty
28 dollars (\$50); a second violation is subject to a fine of seventy-five
29 dollars (\$75); and a third or subsequent violation is subject to a fine
30 of one hundred dollars (\$100).

31 (d) Post or distribute to the audience, the terms, conditions,
32 restrictions, and procedures whereby goods will be sold at the
33 auction, and announce any changes to those terms, conditions,
34 restrictions, and procedures prior to the beginning of the auction
35 sale. A first violation of this subdivision is subject to a fine of fifty
36 dollars (\$50); a second violation is subject to a fine of one hundred
37 dollars (\$100); and a third or subsequent violation is subject to a
38 fine of two hundred fifty dollars (\$250).

39 (e) Have in his or her possession at the time of any auction sale
40 a pocket card, which shall be presented upon demand to any police



1 officer, sheriff, state official, or citizen. This requirement applies
2 only to licensed auctioneers. A first violation of this subdivision
3 is subject to a fine of fifty dollars (\$50); a second violation is
4 subject to a fine of seventy-five dollars (\$75); and a third or
5 subsequent violation is subject to a fine of one hundred dollars
6 (\$100).

7 (f) Notify the executive officer of any acquisition of an auction
8 company, specifying the address and the trade or business name of
9 the auction company, within 30 days of acquisition. This
10 requirement applies only to an acquisition by a licensed auctioneer
11 who is not required to obtain an auction company license for the
12 auction company. A violation of this subdivision is subject to a fine
13 of one hundred dollars (\$100).

14 (g) Notify the executive officer of the sale, transfer, closure, or
15 change of address or trade or business name of any auction
16 company for which that person holds the license, within 30 days
17 of the sale, transfer, closure, or change. This subdivision applies
18 only to a licensed auctioneer who is not required to obtain an
19 auction company license for the auction company. A violation of
20 this subdivision is subject to a fine of one hundred dollars (\$100).

21 (h) Notify the executive officer of any change in address of
22 record within 30 days of the change. A violation of this subdivision
23 is subject to a fine of fifty dollars (\$50).

24 (i) Notify the executive officer of any change in the officers of
25 a corporate licensee within 30 days of the change. A violation of
26 this subdivision is subject to a fine of fifty dollars (\$50).

27 (j) Notify the executive officer of any change in the business or
28 trade name of the licensee within 30 days of the change. A
29 violation of this subdivision is subject to a fine of fifty dollars
30 (\$50).

31 (k) Keep and maintain, at the licensee's address of record,
32 complete and correct records and accounts pertaining to the
33 licensee's licensed activity for a period of not less than two years.
34 The records shall include the name and address of the owner or
35 consignor and of any buyer of goods at any auction sale engaged
36 in or conducted by the licensee, a description of the goods, the
37 terms and conditions of the acceptance and sale of the goods, all
38 written contracts with owners and consignors, and accounts of all
39 moneys received and paid out, whether on the licensee's own
40 behalf or as agent, as a result of those activities. A first violation



1 of this subdivision is subject to a fine of five hundred dollars
2 (\$500); and a second or subsequent violation is subject to a fine of
3 one thousand dollars (\$1,000).

4 (l) Within 30 working days after the sale transaction, provide,
5 or cause to be provided, an account to the owner or consignor of
6 all goods that are the subject of an auction engaged in or conducted
7 by the licensee. A first violation of this subdivision is subject to a
8 fine of five hundred dollars (\$500); and a second or subsequent
9 violation is subject to a fine of one thousand dollars (\$1,000).

10 (m) Within 30 working days after a sale transaction of goods,
11 pay or cause to be paid, all moneys and proceeds due to the owner
12 or the consignor of all goods that were the subject of an auction
13 engaged in or conducted by the licensee, unless delay is compelled
14 by legal proceedings or the inability of the licensee, through no
15 fault of his or her own, to transfer title to the goods or to comply
16 with any provision of this chapter, the Commercial Code, the Code
17 of Civil Procedure, or any other applicable provision of law. A first
18 violation of this subdivision is subject to a fine of one thousand
19 dollars (\$1,000); a second violation is subject to a fine of one
20 thousand five hundred dollars (\$1,500); and a third or subsequent
21 violation is subject to a fine of two thousand dollars (\$2,000).

22 (n) Maintain the funds of all owners, consignors, buyers, and
23 other clients and customers, separate from his or her personal
24 funds and accounts. A violation of this subdivision is subject to a
25 fine of two hundred fifty dollars (\$250).

26 (o) Immediately prior to offering any item for sale, disclose to
27 the audience the existence and amount of any liens or other
28 encumbrances on the item, unless the item is sold as free and clear.
29 For the purposes of this subdivision, an item is “free and clear”
30 if all liens and encumbrances on the item are to be paid prior to the
31 transfer of title. A violation of this subdivision is subject to a fine
32 of two hundred fifty dollars (\$250), in addition to the requirement
33 that the buyer be refunded, upon demand, the amount paid for any
34 item that is the subject of the violation.

35 (p) Within two working days after an auction sale, return the
36 blank check or deposit of each buyer who purchased no goods at
37 the sale. A first violation of this subdivision is subject to a fine of
38 one hundred dollars (\$100); and a second or subsequent violation
39 is subject to a fine of two hundred fifty dollars (\$250).



1 (q) Within 30 working days of any auction sale, refund that
2 portion of the deposit of each buyer that exceeds the cost of the
3 goods purchased, unless delay is compelled by legal proceedings,
4 by the inability of the licensee, through no fault of his or her own,
5 to transfer title to the goods or to comply with any provision of this
6 chapter, the Commercial Code, the Code of Civil Procedure, or
7 other applicable provision of law, or unless the buyer violated the
8 terms of a written agreement that he or she take possession of
9 purchased goods within a specified period of time. A first violation
10 of this subdivision is subject to a fine of one hundred dollars
11 (\$100); and a second or subsequent violation is subject to a fine of
12 two hundred fifty dollars (\$250).

13 5776. In addition to other requirements and prohibitions of
14 this chapter, it is a violation of this chapter for any person to do any
15 of the following:

16 (a) Fail to comply with any provision of this code, any
17 regulation of the board, or with any provision of the Vehicle Code,
18 the Commercial Code (including, but not limited to, Sections 2328
19 and 2401), the Code of Civil Procedure, the Penal Code, or any law
20 administered by the State Board of Equalization, relating to the
21 auctioneering business, including, but not limited to, sales and the
22 transfer of title of goods.

23 (b) Give false evidence of any kind to the board, any board
24 member, or the executive officer, in obtaining or renewing a
25 license. A violation of this subdivision is subject to a fine of two
26 hundred fifty dollars (\$250).

27 (c) Engage in or offer to engage in any activity for which a
28 license is required by this chapter without holding that license. A
29 violation of this subdivision is subject to a fine of one thousand
30 dollars (\$1,000).

31 (d) Represent himself or herself as, or use the title of,
32 auctioneer or auction company, or any other title whereby the
33 person could be reasonably understood to be practicing or offering
34 to practice as an auctioneer or auction company, unless he or she
35 has obtained the license or licenses required by this chapter for the
36 activity or activities. A violation of this subdivision is subject to
37 a fine of one thousand dollars (\$1,000).

38 (e) Aid or abet the activity of any other person that violates any
39 provision of this chapter. A violation of this subdivision is subject
40 to a fine of one thousand dollars (\$1,000).

1 (f) Impersonate any licensee, or present or attempt to present
2 as his or her own the license of another. A violation of this
3 subdivision is subject to a fine of one thousand dollars (1,000).

4 (g) Use or present, as if it were valid, an expired, suspended, or
5 revoked license. A violation of this subdivision is subject to a fine
6 of one thousand dollars (\$1,000).

7 (h) Conduct any auction business for which a license is
8 required as an individual, partnership, or corporation unless the
9 person holds a valid license issued to that same individual,
10 partnership, or corporation. A violation of this subdivision is
11 subject to a fine of one thousand dollars (\$1,000).

12 (i) Subvert or attempt to subvert any licensing examination or
13 the administration of a licensing examination, including, but not
14 limited to, any of the following:

15 (1) Conduct that violates the security of the examination
16 materials: removing from the examination room any examination
17 materials; the unauthorized photographic or other mechanical
18 reproduction of any portion of the actual licensing examination;
19 aiding by any means the unauthorized photographic or other
20 mechanical reproduction of any portion of the actual licensing
21 examination; paying or using professional or paid
22 examination-takers for the purpose of reconstructing any portion
23 of the licensing examination; obtaining examination questions or
24 other examination material, except by specific authorization,
25 either before, during, or after an examination or using or
26 purporting to use any examination questions or materials that were
27 improperly removed or taken from any examination for the
28 purpose of instructing or preparing applicants for examinations; or
29 selling, distributing, buying, receiving, or having unauthorized
30 possession of any portion of a future, current, or previously
31 administered licensing examination.

32 (2) Conduct that violates the standard of examination
33 administration: communicating with any other examinee during
34 the administration of a licensing examination; copying answers
35 from another examinee or permitting one's answers to be copied
36 by another examinee; having in one's possession during the
37 administration of the licensing examination any books,
38 equipment, notes, written or printed materials, or data of any kind,
39 other than the examination materials distributed or otherwise
40 authorized to be in one's possession during the examination; or



1 impersonating any examinee or having an impersonator take the
2 licensing examination on one's behalf.

3 A violation of this subdivision is subject to a fine of five hundred
4 dollars (\$500).

5 (j) Place or use any misleading or untruthful advertising or
6 statements or make any substantial misrepresentation in
7 conducting auctioneering business. A first violation of this
8 subdivision is subject to a fine of five hundred dollars (\$500); and
9 a second or subsequent violation is subject to a fine of one
10 thousand dollars (\$1,000).

11 (k) Sell goods at auction before the auctioneer or auction
12 company involved has first entered into a written contract with the
13 owner or consignor of the goods, which contract sets forth the
14 terms and conditions upon which the licensee accepts the goods for
15 sale. The written contract shall include all of the following:

16 (1) The licensee's name, trade or business name, state license
17 number, business address, and business telephone number.

18 (2) An inventory of the item or items to be sold at auction.

19 (3) A description of the services to be provided and the agreed
20 consideration for the services, that shall explicitly state which
21 party shall be responsible for advertising and other expenses.

22 (4) The approximate date or dates when the item or items will
23 be sold at auction.

24 (5) A statement as to which party shall be responsible for
25 insuring the item or items against loss by theft, fire, or other means.

26 (6) A disclosure that the licensee is bonded to, and licensed and
27 regulated by, the California Auctioneer Commission, and a
28 disclosure of the commission's current address.

29 A first violation of this subdivision is subject to a fine of two
30 hundred fifty dollars (\$250); a second violation is subject to a fine
31 of five hundred dollars (\$500); and a third or subsequent violation
32 is subject to a fine of one thousand dollars (\$1,000).

33 (l) Sell goods at auction before the auctioneer or auction
34 company involved has first entered into a written contract with the
35 auctioneer who is to conduct the auction, if other than the licensee,
36 that specifies the duties to be performed by each party. A first
37 violation of this subdivision is subject to a fine of one hundred
38 dollars (\$100); and a second or subsequent violation is subject to
39 a fine of two hundred fifty dollars (\$250).



1 (m) Fail to reduce to writing all amendments to any written
2 contract with an owner, consignor, or an auctioneer. A first
3 violation of this subdivision is subject to a fine of one hundred
4 dollars (\$100); and a second or subsequent violation is subject to
5 a fine of two hundred fifty dollars (\$250).

6 (n) Fail to abide by the terms of any written contract required
7 by this section. A first violation of this subdivision is subject to a
8 fine of one hundred dollars (\$100); and a second or subsequent
9 violation is subject to a fine of two hundred fifty dollars (\$250).

10 (o) Cause or allow any person to bid at a sale for the sole
11 purpose of increasing the bid on any item or items being sold by
12 the auctioneer, except as authorized by Section 2328 of the
13 Commercial Code or by this chapter. A violation includes, but is
14 not limited to, any of the following:

15 (1) Stating any increased bid greater than that offered by the
16 last highest bidder when, in fact, no person has made such a bid.

17 (2) Allowing the owner, consignor, or agent, of any item or
18 items to bid on the item or items, without disclosing to the audience
19 that the owner, consignor, or agent has reserved the right to so bid.

20 (3) Any violation of Section 535 of the Penal Code.

21 A violation of this subdivision is subject to a fine of one hundred
22 dollars (\$100).

23 (p) Knowingly misrepresent the nature of any item or items to
24 be sold at auction, including, but not limited to, age, authenticity,
25 value, condition, or origin. A violation of this subdivision is
26 subject to a fine of two hundred fifty dollars (\$250). In addition,
27 it shall be required that the buyer of the misrepresented item be
28 refunded the purchase price of the item or items within 24 hours
29 of return to the licensee of the item by the buyer, provided that the
30 item is returned within five days after the date of the auction sale.

31 (q) Misrepresent the terms, conditions, restrictions, or
32 procedures under which goods will be sold at auction. A violation
33 of this subdivision is subject to a fine of seventy-five dollars (\$75).

34 (r) Sell any item subject to sales tax without possessing a valid
35 and unrevoked seller's permit from the State Board of
36 Equalization. A violation of this subdivision is subject to a fine of
37 five hundred dollars (\$500).

38 5777. In addition to other requirements and prohibitions of
39 this chapter, it is grounds for denial, suspension, or revocation of
40 an auctioneer or auction company license for the applicant or



1 licensee, or any of its owners, partners, or officers, to have done
2 any of the following:

3 (a) Violate any provision of Section 5776, which violation is
4 also subject to a fine as specified in the applicable subdivisions of
5 Section 5776.

6 (b) Be convicted of forgery, embezzlement, obtaining money
7 under false pretenses, extortion, conspiracy to defraud, receiving
8 stolen property, issuance of insufficient fund checks, or any similar
9 offense substantially, related to the auctioneering profession.

10 (c) Be adjudicated a bankrupt or make an assignment for the
11 benefit of creditors while a licensee or within two years
12 immediately preceding the filing of an application for a license.

13 (d) Committed any act, while unlicensed, which would be
14 grounds for suspension or revocation of a license.

15

16 Article 5. Citations and Administrative Fines

17

18 5780. Upon finding that a violation of any provision of this
19 chapter has occurred, the executive officer, or his or her designee,
20 may issue citations and assess administrative fines in the amounts
21 specified in Article 4 (commencing with Section 5770) of this
22 chapter. The assessment of a fine shall not preclude the initiation
23 of any disciplinary, civil, or criminal action against an applicant or
24 licensee for the same or similar violations.

25 5781. Each citation and fine shall be in writing and with
26 particularity the basis for the citation. No citation or fine
27 assessment shall be issued more than six months after discovery by
28 the executive officer or the commission that a violation occurred.

29 5781.5. Each citation and fine assessment shall be served in
30 person, or by certified mail at the last address of record of the
31 person cited.

32 5781.6. Each citation and fine assessment shall inform the
33 licensee that if he or she desires a review by a disciplinary review
34 committee, "DRC," the review shall be initiated by filing a
35 written request with the executive officer within 30 days of the
36 issuance of the citation and fine assessment. Payment of an
37 administrative fine does not constitute an admission of the
38 violation charged.

39 5782. If a licensee fails to request a review or to pay the
40 assessed fine within 30 days of the issuance of the citation and fine



1 assessment, his or her license shall be automatically suspended. A
2 license suspended under this section may be reinstated only by
3 payment, within one year of the issuance of the citation and fine
4 assessment, of the assessed fine and a fee of one hundred dollars
5 (\$100).

6 5783. Upon review of a citation and fine assessment, a DRC
7 may modify, rescind, or uphold the citation and fine assessment.
8 The decision of the DRC shall be served by regular mail at the last
9 address of record of the person cited.

10 5783.5. If the licensee disagrees with the decision of the DRC,
11 he or she may request an administrative hearing within 30 days of
12 issuance of the decision, to be held in accordance with Chapter 5
13 (commencing with Section 11500) of Part 1 of Division 3 of Title
14 2 of the Government Code. If the licensee fails to either request a
15 hearing or to pay the assessed fine as specified by the DRC within
16 30 days of the date of the DRC's decision, the license of the
17 licensee shall be automatically revoked. If the licensee fails to
18 either appeal the board's decision or to pay the assessed fine
19 ordered by the board following an administrative hearing, within
20 30 days after service of the board's decision, the license of the
21 licensee shall be automatically revoked.

22 5784. All administrative fines collected pursuant to this article
23 shall be deposited in the Auctioneer Commission Fund and are
24 continuously appropriated for the purposes of enforcement,
25 consumer and licensee education, and administration.

26
27 Article 6. Denial, Suspension, and Revocation of Licenses

28
29 5785. The board may deny, suspend, or revoke a license of any
30 person for the violation of this chapter or any regulation of the
31 board.

32 5786. Upon notice of the denial of an application, the applicant
33 may appeal the decision to a disciplinary review committee,
34 "DRC," by filing a written request for review within 30 days of
35 the date of the notice of denial.

36 (a) If the applicant fails to request a review within the 30 days,
37 the applicant may not further appeal the decision and may reapply
38 after one year from the date of the denial.

39 (b) If, upon review, the DRC rescinds the denial of the
40 application, the license shall be issued within 10 days of the



1 decision, or within 10 days of completion of the application,
2 whichever is later.

3 (c) If, upon review, the DRC upholds the denial of the
4 application, the applicant has all of the rights and remedies
5 prescribed in Division 1.5 (commencing with Section 475) of this
6 code.

7 (d) A DRC may not review any decision ordered by the board
8 in accordance with Chapter 5 (commencing with Section 11500)
9 of Part 1 of Division 3 of Title 2 of the Government Code.

10 5786.4. An application may be denied without a hearing if,
11 within one year prior to the filing of the application, the board
12 denied an application from the same applicant on the same ground
13 in accordance with Section 5786.

14 5786.5. Notwithstanding any other provision of law, and as
15 prescribed by regulations of the board, any person whose
16 application is subject to denial under this chapter may be issued a
17 license conditioned upon those terms, conditions, and restrictions
18 deemed necessary to protect the public, in addition to the
19 requirements of this chapter applicable to licensees generally, for
20 a period not to exceed two years following the issuance of the
21 restricted license. Terms and conditions may include, but are not
22 limited to, the prohibition of certain acts, the requirement of
23 certain disclosures, the requirement of certain accountings or
24 reportings to the board or others, the restriction of the scope of
25 practice, and any other terms, conditions, or restrictions deemed
26 necessary to protect the public, including the payment of any fine
27 that was or could have been assessed against the applicant for a
28 violation of any provision of this chapter.

29 5787. In any proceeding conducted by the board concerning
30 the denial of an application for a license, the suspension or
31 revocation of a license, or other disciplinary action against a
32 person who holds a license, upon the ground that the applicant or
33 licensee has been convicted of a crime substantially related to the
34 qualifications, functions, and duties of an auctioneer or auction
35 company, the record of conviction of the crime shall be conclusive
36 evidence of the fact that the conviction occurred, but only of that
37 fact, and the board may inquire into the circumstances surrounding
38 the commission of the crime in order to fix the degree of discipline
39 or to determine if the conviction is substantially related to the
40 qualifications, functions, and duties of the licensee in question.



1 5788. After a hearing held in accordance with Chapter 5
2 (commencing with Section 11500) of Part 1 of Division 3 of Title
3 2 of the Government Code, resulting in the finding of a violation
4 by the licensee of this chapter or any regulation of the board, the
5 board may do one or more of the following:

6 (a) Suspend the license of the licensee for a period not to exceed
7 two years, and, at its discretion, allow continued activity of the
8 licensee under specified restrictions and conditions.

9 (b) Revoke the license of the licensee.

10 (c) Order that restitution be made by the licensee to any person
11 monetarily harmed as a result of any violation by such licensee.

12 (d) Assess an administrative fine against the licensee in
13 accordance with the amounts specified in this chapter, not to
14 exceed an aggregate amount of three thousand dollars (\$3,000).

15 (e) Order that the licensee pay all costs incurred by the
16 commission in the course of the disciplinary action against the
17 licensee, including the investigation.

18 (f) Order that a public reprimand of the licensee’s unlawful
19 activities be issued in a manner specified by the board.

20 (g) Prohibit any individual licensee, or any owner, partner, or
21 officer of a licensee, from engaging in any or all activities related
22 to the auctioneering business, for a period not to exceed three
23 years.

24 (h) Impose, in addition to the requirements of this chapter, any
25 other terms, conditions, or restrictions upon a licensee as deemed
26 necessary to protect the public, for a period not to exceed three
27 years.

28 5789. A person whose license has been revoked or who has
29 been prohibited from engaging in any or all activities related to the
30 auctioneering business may, not earlier than one year after the
31 effective date of that order, apply to the board for reconsideration.
32 The board may thereupon issue a new license for good cause or
33 may issue a restricted license as provided in Section 5786.5.

34

35 Article 7. Revenue

36

37 5790. All fees and administrative fines received under this
38 chapter shall be deposited in the Auctioneer Commission Fund.

39 5791. Fees are fixed as follows:



1 (a) The nonrefundable application fee for an initial auctioneer
2 or auction company license is thirty-five dollars (\$35).

3 (b) The license fee for an auctioneer or auction company shall
4 not exceed six hundred dollars (\$600).

5 (c) The nonrefundable examination fee for an auctioneer
6 license is fifty dollars (\$50).

7 (d) The nonrefundable reexamination fee is thirty-five dollars
8 (\$35).

9 (e) The fee for the administration of an examination other than
10 those that are regularly scheduled shall be two hundred dollars
11 (\$200), and the applicant may be required additionally to pay the
12 cost of facilities or services necessary for the administration of that
13 examination.

14 (f) The license renewal fee for an auctioneer or auction
15 company shall not exceed six hundred dollars (\$600).

16 (g) The fingerprint processing fee is that amount charged to the
17 commission by the Department of Justice.

18 (h) The charge for a duplicate license or to replace a lost or
19 destroyed license is ten dollars (\$10).

20 (i) The charge for the cost of a certified copy of any license,
21 including any pocket card, or for the certification of any license,
22 is ten dollars (\$10).

23 (j) The fee for a change in the name of a licensee or for an
24 additional name is twenty dollars (\$20).

25 (k) The fee for processing a dishonored check is twenty dollars
26 (\$20).

27 5791.5. The commission may sell any publication, material,
28 sign, or any item deemed appropriate by the board at a price that
29 reimburses the commission for the preparation and distribution of
30 the publication, material, sign, or item.

31 SEC. 2. No reimbursement is required by this act pursuant to
32 Section 6 of Article XIII B of the California Constitution because
33 the only costs that may be incurred by a local agency or school
34 district will be incurred because this act creates a new crime or
35 infraction, eliminates a crime or infraction, or changes the penalty
36 for a crime or infraction, within the meaning of Section 17556 of
37 the Government Code, or changes the definition of a crime within



1 the meaning of Section 6 of Article XIII B of the California
2 Constitution.

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