

By: Representative White

To: Judiciary A

COMMITTEE SUBSTITUTE  
FOR  
HOUSE BILL NO. 504

1 AN ACT TO REENACT SECTIONS 73-4-1, 73-4-3, 73-4-5, 73-4-7,  
2 73-4-9, 73-4-11, 73-4-13, 73-4-15, 73-4-17, 73-4-19, 73-4-21,  
3 73-4-23, 73-4-25, 73-4-27, 73-4-29, 73-4-31, 73-4-33, 73-4-35,  
4 73-4-37, 73-4-39, 73-4-41, 73-4-43, 73-4-45, 73-4-47, 73-4-49 AND  
5 73-4-51, MISSISSIPPI CODE OF 1972, WHICH PROVIDE FOR THE  
6 "MISSISSIPPI AUCTIONEERS LICENSE ACT"; TO AMEND SECTION 73-4-53,  
7 MISSISSIPPI CODE OF 1972, TO REMOVE THE DATE OF REPEAL OF SUCH  
8 ACT; TO AMEND SECTION 73-4-19, MISSISSIPPI CODE OF 1972, TO MAKE  
9 SOME MINOR SUBSTANTIVE CHANGES; AND FOR RELATED PURPOSES.

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

11 **SECTION 1.** Section 73-4-1, Mississippi Code of 1972, is  
12 reenacted as follows:

13 73-4-1. This chapter shall be known and may be cited as the  
14 "Mississippi Auctioneers License Act."

15 **SECTION 2.** Section 73-4-3, Mississippi Code of 1972, is  
16 reenacted as follows:

17 73-4-3. For the purposes of this chapter, the following  
18 words and phrases shall have the meanings ascribed herein, unless  
19 the context otherwise requires:

20 (a) "Auction" means a sale transaction conducted by  
21 means of oral or written exchanges between an auctioneer and the



22 members of his audience, which exchanges consist of a series of  
23 invitations for offers for the purchase of goods made by the  
24 auctioneer and offers to purchase made by members of his audience  
25 and culminate in the acceptance by the auctioneer of the highest  
26 or most favorable offer made by a member of the participating  
27 audience.

28 (b) "Auction firm" means any business establishment or  
29 other location owned by any entity where goods are sold or  
30 advertised to be sold at auction or on any recurring basis.

31 (c) "Auctioneer" means an individual who is engaged in,  
32 or who by advertising or otherwise holds himself out as being  
33 available to engage in, the calling for, the recognition of, and  
34 the acceptance of, offers for the purchase of goods or real estate  
35 at an auction.

36 (d) "Commission" means the Mississippi Auctioneer  
37 Commission.

38 (e) "Goods" means any tangible personal property that  
39 can be lawfully offered for sale, real estate, property sold  
40 pursuant to any will or settlement of any estate, property sold  
41 pursuant to any legal foreclosure, automobiles or farm or other  
42 heavy equipment.

43 (f) "Licensee" means any person licensed under this  
44 chapter, and, in the case of an auction firm, includes the person  
45 required to obtain a license for such auction firm.



46 (g) "Organization" means a corporation, partnership,  
47 trust (specifically a business trust), firm, association, or any  
48 other form of business enterprise which is owned by two (2) or  
49 more individuals.

50 (h) "Person" means an organization or an individual.

51 **SECTION 3.** Section 73-4-5, Mississippi Code of 1972, is  
52 reenacted as follows:

53 73-4-5. (1) It is unlawful for any person, corporation,  
54 limited liability company, partnership or other entity to conduct  
55 an auction, provide an auction service, hold himself out as an  
56 auctioneer, or advertise his services as an auctioneer in the  
57 State of Mississippi without a license issued by the commission  
58 under this chapter.

59 (2) The provisions of this chapter shall not apply to the  
60 following transactions:

61 (a) A sale conducted by order of any United States  
62 court pursuant to Title 11 of the United States Code relating to  
63 bankruptcy;

64 (b) A sale conducted by an employee of the United  
65 States or the State of Mississippi or its political subdivisions  
66 in the course and scope of his employment;

67 (c) A sale conducted by a charitable or nonprofit  
68 organization if the auctioneer receives no compensation;



69 (d) A sale conducted by an individual of his own  
70 property if such individual is not engaged in the business of  
71 selling such property as an auctioneer on a recurring basis;

72 (e) A sale conducted by an individual acting as a  
73 receiver, trustee in bankruptcy, guardian, administrator or  
74 executor or any such person acting under order of court; by a real  
75 estate agent, broker or salesman, who auctions property that he  
76 has an exclusive listing agreement on, if done through a silent or  
77 written auction not done by public outcry or by a trustee acting  
78 under a trust agreement, deed of trust or will;

79 (f) A foreclosure sale of personal property conducted  
80 personally by the mortgagee or other secured party or an employee  
81 or agent of such mortgagee or other secured party acting in the  
82 course and scope of his employment if the employee or agent is not  
83 engaged otherwise in the auction business and if all property for  
84 sale in the auction is subject to a security agreement;

85 (g) A sale conducted by sealed bid;

86 (h) An auction conducted in a course of study, approved  
87 by the Secretary of State, for auctioneers and conducted only for  
88 student training purposes;

89 (i) An auction conducted by a posted stockyard or  
90 market agency as defined by the Federal Packers and Stockyard Act,  
91 1921, as amended (7 USCS 181 et seq.);

92 (j) An auction of livestock conducted by a nonprofit  
93 livestock trade association chartered in this state if the auction



94 involves only the sale of the trade association's members'  
95 livestock; or

96 (k) An auction conducted by a charitable or nonprofit  
97 organization chartered in this state if the auction involves only  
98 the property of the organization's members and the auction is part  
99 of a fair that is organized under state, county or municipal  
100 authority.

101 **SECTION 4.** Section 73-4-7, Mississippi Code of 1972, is  
102 reenacted as follows:

103 73-4-7. (1) The Mississippi Auctioneer Commission is  
104 created, and it shall have the authority to make such rules and  
105 regulations as are reasonable and necessary for the orderly  
106 regulation of the auctioneering profession and the protection of  
107 the public, which rules and regulations are not inconsistent with  
108 the Mississippi Constitution of 1890 and state laws. The  
109 commission shall have the following powers:

110 (a) The power to set reasonable license fees, to  
111 collect and hold such fees and to disburse such fees in any manner  
112 not inconsistent with this chapter.

113 (b) The power to make such rules and regulations as  
114 will promote the orderly functioning of the auction profession and  
115 ensure the protection of the public.

116 (c) The power to hire and retain such staff and support  
117 personnel as are necessary to conduct business and assure  
118 compliance with this chapter.



119 (d) The power to conduct investigations, hold hearings,  
120 subpoena witnesses, make findings of fact and otherwise enforce  
121 the disciplinary provisions contained in this chapter.

122 (2) The Mississippi Auctioneer Commission shall consist of  
123 five (5) members, one (1) from each congressional district, who  
124 shall be appointed by the Governor. All appointees shall possess  
125 the following minimum qualifications:

126 (a) An appointee shall be a citizen of Mississippi.

127 (b) An appointee shall have been engaged as an  
128 auctioneer for a period of not less than five (5) years  
129 immediately preceding his appointment.

130 (c) An appointee shall be of good reputation,  
131 trustworthy and knowledgeable in the auction profession.

132 An individual may not act as a member of the commission while  
133 holding another elected or appointed office in either the state or  
134 federal government or while owning a school or other facility to  
135 train individuals to be auctioneers.

136 (3) In order to assure continuity, the Governor shall  
137 appoint the initial members of the commission for the following  
138 terms:

139 (a) The member appointed from the First Congressional  
140 District shall serve a term of one (1) year;

141 (b) The member appointed from the Second Congressional  
142 District shall serve a term of two (2) years;



143 (c) The member appointed from the Third Congressional  
144 District shall serve a term of three (3) years;

145 (d) The member appointed from the Fourth Congressional  
146 District shall serve a term of four (4) years; and

147 (e) The member appointed from the Fifth Congressional  
148 District shall serve a term of five (5) years.

149 Subsequent terms shall be for five (5) years, except for  
150 interim appointments to fill unexpired terms which shall be only  
151 for the unexpired term.

152 (4) Each member of the commission shall receive a per diem  
153 as provided by Section 25-3-69 per meeting and shall be reimbursed  
154 for ordinary and necessary expenses incurred in the performance of  
155 official duties as provided in Section 25-3-41.

156 **SECTION 5.** Section 73-4-9, Mississippi Code of 1972, is  
157 reenacted as follows:

158 73-4-9. The commission shall meet each January at a time and  
159 place established by the chairman to conduct an election of  
160 officers and such other business as may be appropriate. The  
161 commission shall also meet upon the call of the chairman or upon  
162 the request of any two (2) members of the commission. The  
163 secretary shall provide reasonable notice of the time and place of  
164 each meeting to all members.

165 Three (3) members shall constitute a quorum for the purpose  
166 of transacting business. A majority vote of the commission shall  
167 be necessary to bind the commission.



168           **SECTION 6.** Section 73-4-11, Mississippi Code of 1972, is  
169 reenacted as follows:

170           73-4-11. (1) At the meeting to be held each January, the  
171 commission shall elect from its membership a chairman and a vice  
172 chairman. Each officer shall serve a term of one (1) year and  
173 shall not vacate office until a successor is elected.

174           (2) The chairman shall preside at all meetings of the  
175 commission.

176           (3) The vice chairman shall act as presiding officer in the  
177 absence of the chairman and shall perform such other duties as the  
178 chairman may direct.

179           (4) The commission shall appoint an executive director who  
180 shall not be a member of the commission.

181           (5) The executive director shall:

182                   (a) Notify all members of meetings;

183                   (b) Keep a record of all meetings of the commission,  
184 votes taken by the commission and other proceedings, transactions,  
185 communications, official acts and records of the commission; and

186                   (c) Perform such other duties as the chairman directs.

187           **SECTION 7.** Section 73-4-13, Mississippi Code of 1972, is  
188 reenacted as follows:

189           73-4-13. The commission is empowered to:

190                   (a) Administer and enforce the provisions of this  
191 chapter.





192 (b) Promulgate such rules and regulations and prescribe  
193 such forms as are necessary for the administration and the  
194 effective and efficient enforcement of this chapter.

195 (c) Issue, suspend and revoke licenses in accordance  
196 with this chapter.

197 (d) Provide for the filing and approval of surety bonds  
198 as required by this chapter.

199 (e) Investigate complaints concerning licensees or  
200 persons the commission has reason to believe should be licensees,  
201 specifically including complaints respecting failure to comply  
202 with this chapter or the rules and regulations promulgated as  
203 authorized by this chapter and to take appropriate action to  
204 address such complaints.

205 (f) Commence actions, in the name of the State of  
206 Mississippi, in an appropriate circuit court in order to force  
207 compliance with this chapter or rules and regulations promulgated  
208 hereunder by restraining order or injunction.

209 (g) Hold public hearings on any matters for which a  
210 hearing is required under this chapter and to have all powers  
211 granted by law for such hearings.

212 (h) Adopt a seal and, through its secretary, certify  
213 copies.

214 (i) Appoint an executive director and employ all  
215 necessary employees and consultants to administer and enforce this  
216 chapter.



217           **SECTION 8.** Section 73-4-15, Mississippi Code of 1972, is  
218 reenacted as follows:

219           73-4-15. All fees and other monies collected or received by  
220 the commission under this chapter shall be deposited into a  
221 special fund which is hereby created in the State Treasury, to be  
222 known as the "Mississippi Auctioneer Licensure Fund." Unexpended  
223 amounts remaining in such special fund at the end of a fiscal year  
224 shall not lapse into the State General Fund, and any interest  
225 earned on amounts in such special funds shall be deposited to the  
226 credit of the special fund. All monies in the special fund shall  
227 be expended or used exclusively for the purposes of carrying out  
228 the provisions of this chapter. All records of such fees received  
229 by the commission and deposited in the special fund shall be  
230 available for inspection by the State Auditor. Monies from the  
231 special fund shall be used to support the commission, upon  
232 appropriation by the Legislature.

233           **SECTION 9.** Section 73-4-17, Mississippi Code of 1972, is  
234 reenacted as follows:

235           73-4-17. There shall be two (2) classes of auctioneers'  
236 licenses, which shall be auctioneer and auction firm. All  
237 applicants for a license under this chapter shall possess the  
238 following minimum qualifications:

239           (a) Applicants shall have attained the age of eighteen  
240 (18) years by the issuance date of the license.



241 (b) Applicants shall have obtained at a minimum a high  
242 school diploma or G.E.D. equivalent and shall be graduates of an  
243 auctioneering school approved by the commission.

244 (c) Each applicant for a license under this chapter  
245 shall demonstrate to the commission that he is of good moral  
246 character and worthy of public trust through background  
247 information to be provided on his application form and two (2)  
248 letters of reference from persons not related to the applicant who  
249 have known the applicant at least three (3) years. The commission  
250 may require additional information or a personal interview with  
251 the applicant to determine if such applicant should be granted a  
252 license.

253 (d) Each applicant for a license under this chapter  
254 shall take and successfully complete an examination as prescribed  
255 by the commission. The examination shall include questions on  
256 ethics, reading comprehension, writing, spelling, elementary  
257 arithmetic, elementary principals of land economics, general  
258 knowledge of bulk sales law, contracts of sale, agency, leases,  
259 brokerage, knowledge of various goods commonly sold at auction,  
260 ability to call bids, knowledge of sale preparation and proper  
261 sale advertising and sale summary, and knowledge of the provisions  
262 of this chapter and the commission's rules and regulations. There  
263 shall be separate examinations for auctioneer and auction firm  
264 each based upon relevant subject matter appropriate to the license  
265 classification as set forth herein. Examinations shall be



266 administered at least once a year and may be administered  
267 quarterly at the commission's discretion provided there are at  
268 least twenty-five (25) examinees. The commission shall ensure  
269 that the various forms of the test remain secure.

270 (e) In order to defray the cost of administration of  
271 the examinations, applicants for the examination shall pay fees as  
272 follows:

273 (i) Auctioneer.....\$100.00.

274 (ii) Auction firm.....\$100.00.

275 (f) Each applicant desiring to sit for the examination  
276 for any license required under this chapter shall be required to  
277 furnish to the commission at least thirty (30) days prior to the  
278 examination evidence of a surety bond in the following minimum  
279 amounts:

280 (i) Auctioneer.....\$10,000.00.

281 (ii) Auction firm.....\$10,000.00.

282 (g) In addition to the bond required herein, applicants  
283 for the auction firm license shall furnish the commission with all  
284 relevant information concerning the premises to be licensed, to  
285 include location, whether the premises are owned or leased, and an  
286 affidavit that the proposed use of the premises as an auction firm  
287 does not violate zoning or any other use restrictions. A separate  
288 license shall be required for each business location of the owner  
289 of multiple auction galleries.



290 (h) Except as provided in Section 33-1-39, all licenses  
291 granted pursuant to this chapter shall be for a term of two (2)  
292 years and shall expire on the first day of March at the end of  
293 such two-year term. The biennial license fees shall be set from  
294 time to time by the commission with a maximum fee of Two Hundred  
295 Dollars (\$200.00). License fees shall not be prorated for any  
296 portion of a year but shall be paid for the entire biennial period  
297 regardless of the date of the application. Individuals failing to  
298 submit license renewal fees on or before March 1 of the year for  
299 renewal shall be required to successfully pass the next  
300 administration of the examination in order to renew a license.

301 (i) Each application or filing made under this section  
302 shall include the social security number(s) of the applicant in  
303 accordance with Section 93-11-64, Mississippi Code of 1972.

304 (j) A licensee shall keep such books, accounts and  
305 records as will enable the commission to determine whether such  
306 licensee is in compliance with the provisions of this chapter, and  
307 rules and regulations made pursuant thereto, and any other law,  
308 rule and regulation applicable to the conduct of such business.  
309 The commission and its employees or representatives shall have the  
310 right to enter and make inspections of any place where the auction  
311 business is carried on and inspect and copy any record pertaining  
312 to the auction business under this chapter. The commission may  
313 conduct or cause to be conducted an examination or audit of the  
314 books and records of any licensee at any time the commission deems



315 proper, the cost of the examination or audit to be borne by the  
316 licensee. The refusal of access to the books and records shall be  
317 cause for the revocation of its license.

318         **SECTION 10.** Section 73-4-19, Mississippi Code of 1972, is  
319 reenacted and amended as follows:

320         73-4-19. (1) The commission may, upon its own motion or  
321 upon the complaint in writing of any person, provided the  
322 complaint and any evidence presented with it establishes a prima  
323 facie case, hold a hearing and investigate the actions of any  
324 auctioneer or auction firm, or any person who holds himself out as  
325 an auctioneer or auction firm.

326         (2) Any person desiring to make a complaint against a  
327 licensee shall submit a complaint to the commission in verified  
328 form as prescribed by the commission. Upon receipt of a properly  
329 verified complaint, the commission shall send a copy of the  
330 complaint to the affected licensee by certified mail, and the  
331 licensee shall make answer to the complaint in writing within  
332 twenty (20) days after receipt of the complaint. The licensee  
333 shall mail a copy of his response to the commission and the  
334 complainant. Upon receipt of the licensee's response or lapse of  
335 twenty (20) days, the commission shall make investigation of the  
336 underlying allegations of the complaint, and upon a finding of  
337 probable cause that a violation of this chapter has occurred, the  
338 commission shall order a hearing for the licensee to appear and



339 show cause why he should not be disciplined for a violation of  
340 this chapter.

341 (3) (a) All hearings held pursuant to this chapter shall be  
342 held at the offices of the commission. The commission, for good  
343 cause shown, may order that a hearing be held in another location  
344 convenient to all parties.

345 (b) The commission shall give the complainant and the  
346 affected licensee twenty (20) days' notice of any hearing upon a  
347 complaint. Such notice shall be by United States certified mail.

348 (c) Any party appearing before the commission may be  
349 accompanied by counsel.

350 (d) The commission or its executive director shall have  
351 the right to subpoena witnesses and documents as they deem  
352 necessary for the proper conduct of the hearing. The commission  
353 shall not entertain a motion for a continuance for failure of a  
354 witness to appear unless such witness shall have been duly  
355 subpoenaed.

356 (e) (i) Before commencing a hearing, the chairman of  
357 the commission shall determine if all parties are present and  
358 ready to proceed. If the complainant fails to attend a hearing  
359 without good cause shown, the complaint shall be dismissed  
360 summarily and all fees and expenses of convening the hearing shall  
361 be assessed to, and paid by, the complainant. If any affected  
362 licensee fails to appear for a hearing without good cause shown,



363 such licensee shall be presumed to have waived his right to appear  
364 and be heard.

365 (ii) Upon the chairman's determination that all  
366 parties are ready to proceed, the chairman shall call the hearing  
367 to order and the complainant and the licensee may give opening  
368 statements. At the request of any party, the chairman shall order  
369 the sequestration of nonparty witnesses. The complainant shall  
370 then present his complaint through sworn testimony and the  
371 production of physical evidence. The licensee, any counsel and  
372 any member of the commission may ask questions of witnesses.

373 (iii) The licensee shall then present his case in  
374 rebuttal with equal right of cross-examination of the parties. At  
375 the completion of the evidence, all parties may give closing  
376 statements.

377 (iv) At the conclusion of testimony and argument,  
378 the commission may go into closed session for deliberation.

379 (v) At the conclusion of deliberations, the  
380 commission may announce the commission's decision in an open  
381 session, and shall notify the parties of its decision by mail  
382 within ten (10) days after the commission reaches its decision.

383 (4) Service of notice to the party shall be considered to  
384 have been given if the notice was personally served on the  
385 licensee, applicant or complainant or if the notice was sent by  
386 certified United States mail to the licensee, applicant or





387 complainant to that party's last known address of record with the  
388 board.

389 (5) No person whose license has been revoked hereunder may  
390 apply for a new license for a period of at least five (5) years.  
391 A person whose license has been denied, suspended or revoked may  
392 not apply in that person's name or in any other manner within the  
393 period during which the order of denial, suspension or revocation  
394 is in effect, and no firm, partnership or corporation in which any  
395 person whose license has been denied, suspended or revoked has a  
396 substantial interest or exercises management responsibility or  
397 control may be licensed during the period. The procedure for the  
398 reissuance of a license that is for being out of compliance with  
399 an order for support, as defined in Section 93-11-153, shall be  
400 governed by Section 93-11-157 or 93-11-163, as the case may be.

401 (6) Any civil or monetary penalty, fine or other costs  
402 imposed by the commission under this chapter shall become due and  
403 payable within the time allowed by the commission for payment  
404 thereof. Failure of the licensee or party to pay all penalties or  
405 fines so assessed as ordered by the commission shall, unless an  
406 appeal is taken and perfected within the time and in the manner  
407 provided in this chapter, result in an automatic revocation of  
408 such licensee's license. In addition, if any amounts assessed  
409 against a party by final order of the commission become otherwise  
410 uncollectible or payment is in default, and if all the right to  
411 appeal has passed, the order of the commission containing the



412 amount of money assessed by the commission may be filed with the  
413 appropriate clerk of the court in the county in which the licensee  
414 or party is located. The order shall constitute a judgment and  
415 the filing of such final order shall have the full force and  
416 effect of a judgment duly docketed in the office of such clerk and  
417 may be enforced in the same manner and with the same effect as  
418 that provided by law in respect to executions issued against  
419 property upon judgments of a court of record.

420 (7) The commission may also assess and levy upon any  
421 licensee or applicant for licensure the costs incurred or expended  
422 by the commission in the investigation and prosecution of any  
423 licensure or disciplinary action, including, but not limited to,  
424 the cost of process service, court reports, expert witness,  
425 investigators and attorney fees.

426 (8) The commission may, upon its own motion, summarily  
427 suspend a license when the interest, health, safety or welfare of  
428 the public is at risk, such as in the event of a potential loss of  
429 consigned items or potential loss of funds. If the commission  
430 suspends summarily a license under the provisions of this  
431 subsection, a hearing must begin within twenty (20) days after  
432 such suspension begins, unless continued at the request of the  
433 licensee.

434 (9) Any person aggrieved by an action of the commission may  
435 file an appeal of such action in the Circuit Court of Hinds  
436 County. Any appeal must be accompanied by an attested copy of the



437 record of the hearing before the commission. An appeal must,  
438 however, be filed with the Chancery Court of the First Judicial  
439 District of Hinds County, Mississippi, within thirty (30) days  
440 immediately following the date of the commission's decision,  
441 unless the court, for good cause shown, extends the time. Appeals  
442 may be taken to the Mississippi Supreme Court as provided by law  
443 from any final judgment of the chancery court. If the board  
444 appeals from any judgment of the chancery court, no bond shall be  
445 required of it in order to perfect its appeal. Any actions taken  
446 by the commission in suspending a license when required by Section  
447 93-11-157 or 93-11-163 are not actions from which an appeal may be  
448 taken under this section. Any appeal of a license suspension that  
449 is required by Section 93-11-157 or 93-11-163 shall be taken in  
450 accordance with the appeal procedure specified in Section  
451 93-11-157 or 93-11-163, as the case may be, rather than the  
452 procedure specified in this section.

453 (10) If any licensee is indicted in this or any other state  
454 for forgery, embezzlement, obtaining money under false pretenses,  
455 extortion, criminal conspiracy to defraud or other offense, and a  
456 certified copy of the indictment is filed with the commission or  
457 other proper evidence is given to it, the commission may, in its  
458 discretion, suspend the license issued to the licensee pending  
459 trial of the charges.

460 (11) If the revocation or suspension of a license issued to  
461 any member of a partnership, or to any officer of an association,



462 corporation or organization to whom an auction license has been  
463 issued, the license issued to the partnership, association,  
464 corporation or organization shall be revoked by the commission  
465 unless, within a time fixed by the commission, the connection of  
466 the member of the partnership is severed and his interest in the  
467 partnership and his share in its activities brought to an end, or  
468 the officer of the association, corporation or organization is  
469 discharged and has no further participation in its activities.

470 (12) Nothing in this section shall be deemed as an exclusive  
471 remedy or prevent or proscribe any person's right to petition a  
472 court of law or equity for redress of a grievance against a  
473 licensee or any other entity.

474 **SECTION 11.** Section 73-4-21, Mississippi Code of 1972, is  
475 reenacted as follows:

476 73-4-21. (1) Any person who has practiced the auctioneering  
477 profession in this state and has been a resident of the State of  
478 Mississippi for at least two (2) years before July 1, 1995, may  
479 apply for an auctioneer's license hereunder without taking the  
480 examination as set forth in Section 73-4-17. The requirements for  
481 such an application are as follows:

482 (a) Submit an application as provided in this chapter.

483 (b) Submit an affidavit with the application that such  
484 applicant has been a practicing auctioneer and a resident of the  
485 State of Mississippi for at least two (2) years before July 1,



486 1995, and that such applicant has actually called bids in at least  
487 three (3) sales in the past one (1) year.

488 (c) Tender with the application the license fee set by  
489 the commission.

490 (d) Tender proof of financial responsibility in the  
491 form of a surety bond in the sum of Ten Thousand Dollars  
492 (\$10,000.00).

493 (2) If, upon verification of the information contained in  
494 the application, the individual is found to be otherwise  
495 qualified, the commission shall issue the applicant a license  
496 without examination.

497 **SECTION 12.** Section 73-4-23, Mississippi Code of 1972, is  
498 reenacted as follows:

499 73-4-23. Any auctioneer who is licensed in a state that (a)  
500 has requirements equal to the requirements of this chapter, (b)  
501 has requirements that have been approved by the commission, after  
502 a review of such state's licensing law, and (c) has entered into a  
503 reciprocal licensing agreement with the State of Mississippi  
504 through such state's regulatory authority over auctioneering, may  
505 apply for and be granted a license without examination.

506 Applicants for a license through reciprocity shall furnish the  
507 commission by application the same information as that required of  
508 resident applicants. In addition to the biennial license fee,  
509 nonresidents shall pay to the commission a fee of Two Hundred  
510 Fifty Dollars (\$250.00). A nonresident auctioneer shall furnish



511 to the commission a surety bond, obligated to the State of  
512 Mississippi, in the amount of Ten Thousand Dollars (\$10,000.00)  
513 prior to being issued a license. The bond shall be executed by  
514 the person seeking the license as principal and by a corporate  
515 surety, licensed to do business in this state, as surety. The  
516 bond shall otherwise be in accordance with the provisions of this  
517 chapter.

518 The issuance of a license by reciprocity to a  
519 military-trained applicant or military spouse shall be subject to  
520 the provisions of Section 73-50-1.

521 **SECTION 13.** Section 73-4-25, Mississippi Code of 1972, is  
522 reenacted as follows:

523 73-4-25. (1) The commission may refuse to issue or renew a  
524 license, place a licensee on probation or administrative  
525 supervision, suspend or revoke any license, or may reprimand or  
526 take any other action in relation to a license, including the  
527 imposition of a fine not to exceed Five Thousand Dollars  
528 (\$5,000.00) for each violation upon a licensee, or applicant for  
529 licensure, under this chapter for any of the following reasons:

530 (a) Knowingly filing or causing to be filed a false  
531 application.

532 (b) Failure to enter into a written contract with a  
533 seller or consignor prior to placing or permitting advertising for  
534 an auction sale to be placed.



535           (c) Failure by the licensee to give the seller or  
536 consignor a signed receipt for items received for sale at auction,  
537 either by item or lot number at the time the goods are received,  
538 unless the goods are to remain in the possession of the seller or  
539 consignor.

540           (d) Failure to give the seller or consignor a statement  
541 or lot description, selling price, purchaser's identity and the  
542 net proceeds due to the seller or consignor.

543           (e) Failure to place funds received from an auction  
544 sale in an escrow or trust account, and failure to make timely  
545 settlement on escrowed funds. Absent a written agreement to the  
546 contrary, five (5) business days shall be deemed timely for  
547 settlement on personal property.

548           (f) Permitting an unlicensed auctioneer to call for  
549 bids in an auction sale.

550           (g) Having been convicted of or pled guilty to a felony  
551 in the courts of this state or any other state, territory or  
552 country. Conviction, as used in this paragraph, shall include a  
553 deferred conviction, deferred prosecution, deferred sentence,  
554 finding or verdict of guilt, an admission of guilt or a plea of  
555 nolo contendere.

556           (h) Any course of intentional, willful or wanton  
557 conduct by a licensee or such licensee's employees which misleads  
558 or creates a false impression among the seller, buyer, bidders and



559 the auctioneer in the advertising, conducting and closing of an  
560 auction sale.

561 (i) A continued and flagrant course of  
562 misrepresentation or making false promises, either by the  
563 licensee, an employee of the licensee, or by someone acting on  
564 behalf of and with the licensee's consent.

565 (j) Any failure to account for or to pay over within a  
566 reasonable time funds belonging to another which have come into  
567 the licensee's possession through an auction sale.

568 (k) Any false, misleading or untruthful advertising.

569 (l) Any act of conduct in connection with a sales  
570 transaction which demonstrates bad faith or dishonesty.

571 (m) Knowingly using false bidders, cappers or pullers,  
572 or knowingly making a material false statement or representation.

573 (n) Commingling the funds or property of a client with  
574 the licensee's own or failing to maintain and deposit in a trust  
575 or escrow account in an insured bank or savings and loan  
576 association located in Mississippi funds received for another  
577 person through sale at auction.

578 (o) Failure to give full cooperation to the commission  
579 and/or its designees, agents or other representatives in the  
580 performance of official duties of the commission. Such failure to  
581 cooperate includes, but is not limited to:





582 (i) Failure to properly make any disclosures or to  
583 provide documents or information required by this chapter or by  
584 the commission;

585 (ii) Not furnishing, in writing, a full and  
586 complete explanation covering the matter contained in a complaint  
587 filed with the commission;

588 (iii) Failure, without good cause, to cooperate  
589 with any request by the board to appear before it;

590 (iv) Not providing access, as directed by the  
591 commission, for its authorized agents or representatives seeking  
592 to perform reviews, audits or inspections at facilities or places  
593 utilized by the license holder in the auction business;

594 (v) Failure to provide information within the  
595 specified time allotted and as required by the board and/or its  
596 representatives or designees;

597 (vi) Failure to cooperate with the board or its  
598 designees or representatives in the investigation of any alleged  
599 misconduct or willfully interfering with a board investigation.

600 (p) A demonstrated lack of financial responsibility.

601 (q) Having had a license for the practice of  
602 auctioneering or the auction business suspended or revoked in any  
603 jurisdiction, having voluntarily surrendered a license in any  
604 jurisdiction, having been placed on probation in any jurisdiction,  
605 having been placed under disciplinary order(s) or other  
606 restriction in any manner for auctioneering or the auction



607 business (a certified copy of the order of suspension, revocation,  
608 probation or disciplinary action shall be prima facie evidence of  
609 such action).

610 (r) Any violation of this chapter or any violation of a  
611 rule or regulation duly adopted by the commission.

612 (2) In addition to the acts specified in subsection (1) of  
613 this section, the commission shall be authorized to suspend the  
614 license of any licensee for being out of compliance with an order  
615 for support, as defined in Section 93-11-153. The procedure for  
616 suspension of a license for being out of compliance with an order  
617 for support, and the procedure for the reissuance or reinstatement  
618 of a license suspended for that purpose, and the payment of any  
619 fees for the reissuance or reinstatement of a license suspended  
620 for that purpose, shall be governed by Section 93-11-157 or  
621 93-11-163. If there is any conflict between any provision of  
622 Section 93-11-157 or 93-11-163 and any provision of this chapter,  
623 the provisions of Section 93-11-157 or 93-11-163, as the case may  
624 be, shall control.

625 **SECTION 14.** Section 73-4-27, Mississippi Code of 1972, is  
626 reenacted as follows:

627 73-4-27. (1) No person or party who is not otherwise exempt  
628 from licensure under Section 73-34-5 shall sell, or offer to sell,  
629 goods or real estate at auction in this state or perform any act  
630 for which an auction firm license is required, unless the person  
631 or party holds a currently valid license issued by the commission.



632 (2) Any person who is not otherwise licensed under this  
633 chapter and who only provides auction services or holds himself  
634 out as providing auction services shall do so only with a valid  
635 auction firm license issued under this section.

636 (3) The commission may grant an auction firm license to an  
637 auction firm that is determined to be qualified by the commission.  
638 To be eligible for license, the auction firm shall:

639 (a) Comply with the requirements of Sections 73-4-17  
640 and 73-4-29 and the rules and regulations of the commission; and

641 (b) Employ a firm manager as required under subsection  
642 (5) of this section.

643 (4) An application submitted under this section for an  
644 auction firm license shall list the names of all of the owners,  
645 directors, partners or members of the applicant, as applicable.

646 (5) An auction firm shall designate a firm manager. The  
647 firm manager shall have sufficient authority in the operation of  
648 the auction firm to ensure compliance with this chapter and rules  
649 and regulations of the commission. If the firm manager does not  
650 have a current license issued under this chapter, the firm manager  
651 must become licensed under this chapter before the commission may  
652 issue a license under this section to the auction firm.

653 (6) An auction firm license issued under this section  
654 immediately shall terminate if any of the following occur:

655 (a) The auction firm ceases to operate as a  
656 corporation.



657           (b) The auction firm changes ownership or there is any  
658 change in ownership.

659           (c) If the auction firm is a partnership, the firm  
660 changes the number of partners in the partnership or changes the  
661 partners comprising the partnership.

662           (d) The auction firm changes the firm manager.

663           (e) The auction firm changes the name under which the  
664 firm conducts business.

665           (f) The auction firm changes its permanent business  
666 location.

667           (7) If the applicant for a firm license maintains more than  
668 one (1) place of business within the state, the applicant shall  
669 apply for and obtain an additional firm license for each branch  
670 office.

671           (8) A firm license shall automatically be suspended if no  
672 licensed auctioneer is engaged in business therein. Such license  
673 may be reinstated by the commission for the unexpired term upon  
674 proof that a duly licensed auctioneer has been affiliated with the  
675 firm.

676           (9) Any person in this state who for a fee is in the  
677 business of managing auctions to the extent such person is  
678 responsible for the advertising, consignments, promotion and/or  
679 distribution of funds must hold a valid firm license.



680 (10) In addition to the other requirements contained  
681 elsewhere in this chapter, the holder of an auction firm license  
682 shall comply with the following:

683 (a) Enter into a written contract with a licensed  
684 auctioneer to call bids prior to the start of any auction sale. A  
685 copy of such contract shall be maintained on the premises and  
686 available for inspection by the commission.

687 (b) The firm license and the license of its manager  
688 shall be conspicuously posted at the firm location.

689 (c) Maintain complete records of each sale held at the  
690 licensed premises which shall include, but shall not be limited  
691 to, consignment receipts, bidder registrations, final settlements  
692 with consignors and any other documents relevant to the conduct of  
693 the sale. These records shall be maintained for a period of one  
694 (1) year from the date of the sale.

695 (d) Maintain a file on all current and past employees  
696 of the auction firm for the previous year. Such file should  
697 contain the employee's name, last known address and social  
698 security number.

699 (e) Assume responsibility for all checks, drafts and  
700 other negotiable instruments tendered by buyers in payment for  
701 goods sold through the auction firm.

702 (f) Deposit all proceeds from auction sales into the  
703 licensee's escrow account and make all disbursements from such  
704 escrow account.



705 (g) The licensee shall make all of his records  
706 pertaining to the auction firm available to a member or employee  
707 of the commission for inspection upon demand.

708 **SECTION 15.** Section 73-4-29, Mississippi Code of 1972, is  
709 reenacted as follows:

710 73-4-29. (1) Every person who applies for an auctioneer's  
711 license, as a condition to the granting and the retention thereof,  
712 shall file or have on file with the commission, a bond in the  
713 amount of Ten Thousand Dollars (\$10,000.00).

714 (2) Every person or persons who apply for an auction firm  
715 license, as a condition to the granting and the retention thereof,  
716 shall file or have on file with the commission, a bond in the  
717 amount of Ten Thousand Dollars (\$10,000.00).

718 (3) (a) Factory-built homes as defined by Section 75-49-3,  
719 because of the manner of their construction, assembly and use and  
720 that of their systems, components and appliances (including  
721 heating, plumbing and electrical systems), like other finished  
722 products having concealed vital parts, may present hazards to the  
723 health, life and safety of persons and to the safety of property  
724 unless properly inspected prior to sale and properly anchored and  
725 blocked at the homesite after the sale so as to provide reasonable  
726 safety and protection to their owners and users. In order to  
727 insure that these homes are properly anchored and blocked at the  
728 homesite in accordance with the rules, regulations and procedures  
729 promulgated by the State Commissioner of Insurance pursuant to his



730 rule-making power contained in Section 75-49-5, auctions of these  
731 homes shall be restricted to factory-built housing dealers  
732 licensed pursuant to Section 75-49-9 and subject to the penalties  
733 of Section 75-49-19, except as otherwise provided in paragraph  
734 (b).

735 (b) An auctioneer licensed under this chapter may  
736 auction a factory-built home without obtaining a license pursuant  
737 to Section 75-49-9, if the auction is not for the sole purpose of  
738 disposing of factory-built homes and if the disposal of the  
739 factory-built home is incidental to, and a part of, an entire  
740 estate or liquidation auction. The number of such homes that may  
741 be auctioned pursuant to this paragraph is limited to three (3)  
742 being offered for sale in one (1) auction or event.

743 **SECTION 16.** Section 73-4-31, Mississippi Code of 1972, is  
744 reenacted as follows:

745 73-4-31. (1) The State of Mississippi shall be the obligee  
746 under any bond under this chapter.

747 (2) Such bond shall be:

748 (a) Executed by the person seeking the license as  
749 principal and by a corporate surety, licensed to do business in  
750 this state as a surety;

751 (b) In such form and containing such terms and  
752 conditions as the commission prescribes;

753 (c) Conditioned upon the faithful performance of all  
754 obligations of a licensee under this chapter and the rules and



755 regulations promulgated hereunder, including the obligation to  
756 account for and pay over monies and proceeds to persons who are  
757 entitled to them; and

758           (d) Effective from the date of its filing with the  
759 commission, such bond shall not be affected by the expiration of  
760 the license period and shall continue in full force and effect  
761 until cancelled, provided that the total and aggregate liability  
762 of the surety on a bond shall be limited to the amount specified  
763 in the bond and the continuous nature of the bond shall in no way  
764 be construed as allowing the liability of the surety under a bond  
765 to accumulate for each successive license period during which the  
766 bond is in force.

767           (3) (a) A licensee may not cancel a bond without the prior  
768 written approval of the commission and its approval of a  
769 substitute bond so as to provide continuous bonding of the  
770 licensee's activities.

771           (b) The surety on a bond may cancel a bond filed under  
772 this chapter only after the expiration of ninety (90) days from  
773 the date the surety mails a notice of intent to cancel, by  
774 registered or certified mail, return receipt requested, to the  
775 commission and to the principal of the bond.

776           (c) Not later than thirty (30) days prior to the date  
777 upon which a bond cancellation becomes effective, the licensee  
778 shall give written notice to the commission that a new bond has





779 been obtained so as to provide continuous coverage of the  
780 licensee's activities.

781 **SECTION 17.** Section 73-4-33, Mississippi Code of 1972, is  
782 reenacted as follows:

783 73-4-33. (1) If any licensee fails, or is alleged to have  
784 failed, to meet the obligations under this chapter and the rules  
785 and regulations promulgated hereunder, the commission shall hold a  
786 hearing and determine whether there has been such a failure,  
787 determine those persons who are proven claimants under the bond  
788 and, if appropriate, distribute the bond proceeds to the proven  
789 claimants.

790 (2) Actions upon the bond and the right to payment under the  
791 bond shall extend solely to the commission, except that if the  
792 commission has not initiated action under the bond by scheduling  
793 and holding a hearing, by litigation or otherwise, within thirty  
794 (30) days of a written request to do so, any claimant may initiate  
795 an action in the Circuit Court of Hinds County, Mississippi, to  
796 require the commission to take action.

797 (3) If, after a hearing, the commission determines that  
798 proven claims exceed the amount of the bond proceeds, the proceeds  
799 shall be prorated among proven claimants in the ratio that the  
800 amount of their proven claim bears to the total amount of all  
801 proven claims.

802 (4) The determination of the commission as to the fact and  
803 the amount of liability under the bond and the amount distributed



804 to the claimants under the bond shall be binding upon the  
805 principal and surety of the bond.

806 (5) All hearings held under this section shall be held in  
807 accordance with the laws of this state.

808 (6) The existence of the bond and the bond recovery  
809 procedure shall in no way affect or alter any other right or  
810 remedy which a person may have under applicable law.

811 **SECTION 18.** Section 73-4-35, Mississippi Code of 1972, is  
812 reenacted as follows:

813 73-4-35. (1) In performing the duties of an auctioneer,  
814 every auctioneer shall follow all reasonable requests of the owner  
815 or consignor of the goods being sold at the auction. Every  
816 auctioneer shall perform such auctioneer's duties so that the  
817 highest or most favorable offer made by a member of the audience  
818 is accepted, and shall otherwise perform such duties in accordance  
819 with the highest standards of the auctioneering profession.

820 (2) (a) Every licensee, within five (5) business days after  
821 the sale transaction, shall account to, or provide an accounting  
822 for, those persons who own or who are acting as consignor of goods  
823 which are the subject of an auction engaged in or conducted by  
824 such licensee or upon such licensee's premises.

825 (b) Every licensee, within five (5) business days after  
826 a sale of goods and at closing of the sale, shall pay over, or  
827 provide for the paying over of, all monies and proceeds due to the  
828 owner or consignor of goods which was the subject of an auction



829 engaged in or conducted by such licensee or upon such licensee's  
830 premises.

831         **SECTION 19.** Section 73-4-37, Mississippi Code of 1972, is  
832 reenacted as follows:

833         73-4-37. Each licensee shall keep and maintain in a safe  
834 place for a period of not less than two (2) years complete and  
835 correct records and accounts pertaining to such licensee's  
836 licensed activity, including the name and address of the owner or  
837 consignor of all goods involved in such activities, a description  
838 of such goods, the terms and conditions of the acceptance of such  
839 goods and accounts of all monies received and paid out, whether on  
840 the licensee's own behalf or as agent, as a result of such  
841 activities.

842         **SECTION 20.** Section 73-4-39, Mississippi Code of 1972, is  
843 reenacted as follows:

844         73-4-39. Except with respect to goods sold through an  
845 auction firm, no licensee shall sell goods at an auction until the  
846 auctioneer or auction firm involved has first entered into a  
847 written contract with the owner or consignor of such goods, which  
848 contract sets forth the terms and conditions upon which such  
849 auctioneer or auction firm accepts the goods for sale. A copy of  
850 every written contract shall be retained for a period of two (2)  
851 years from the date of the auction.

852         **SECTION 21.** Section 73-4-41, Mississippi Code of 1972, is  
853 reenacted as follows:



854           73-4-41. All advertisements of auctions shall disclose:  
855                   (a) The auctioneer's name and the name of the auction  
856 firm involved; and  
857                   (b) Whether the auction is to be absolute or with  
858 reserve; and  
859                   (c) The auctioneer's or auction firm's auction license  
860 number.

861           **SECTION 22.** Section 73-4-43, Mississippi Code of 1972, is  
862 reenacted as follows:

863           73-4-43. (1) An individual may not act as an auctioneer  
864 without first having obtained and having in effect the license  
865 required under this chapter.

866           (2) Any person, except a licensed auctioneer who shall have  
867 become exempt by reason of compliance with the applicable  
868 provisions of this chapter, may not operate an auction firm  
869 without having obtained and having in effect a license for such  
870 auction firm as required under this chapter.

871           (3) A person who violates the provisions of this section  
872 shall be fined, upon conviction, not more than One Thousand  
873 Dollars (\$1,000.00).

874           (4) When the commission or its authorized designee  
875 determines that person or party not licensed under this chapter is  
876 engaged in or is believed to be engaged in activities for which a  
877 license is required under this chapter, the commission or its  
878 designee may issue an order requiring that person to desist



879 immediately and refrain from such conduct or activities. The  
880 affected person or party may appeal the issuance of the cease and  
881 desist order by filing notice of appeal within seven (7) calendar  
882 days after service of the order. A hearing must be held within  
883 twenty (20) days after a notice of appeal has been timely filed.  
884 Service of the cease and desist order shall be considered to have  
885 been given if the notice or order was personally served on the  
886 person or party or if the order was mailed by certified United  
887 States mail to the person's or party's last known address  
888 available to the commission. A person or party who has been  
889 issued an order to cease and desist that has become final either  
890 through default or administrative proceeding before the commission  
891 may not engage in the activity or conduct which is the subject of  
892 the order. A cease and desist order issued by the commission  
893 shall be enforceable in the courts of competent jurisdiction in  
894 this state.

895 (5) Any person or party that practices, offers to practice,  
896 attempts to practice, or holds oneself out to practice as an  
897 auctioneer, auction firm, or any other licensee under this chapter  
898 without being licensed by the commission shall, in addition to any  
899 other penalty provided by law, pay a civil penalty to the  
900 commission in an amount not to exceed Five Thousand Dollars  
901 (\$5,000.00) for each offense as determined by the commission. The  
902 civil penalty shall be paid within sixty (60) calendar days after  
903 the effective date of the order imposing the penalty. The order



904 shall constitute a judgment and may be filed and execution had  
905 thereon in the same manner from any court of record.

906 **SECTION 23.** Section 73-4-45, Mississippi Code of 1972, is  
907 reenacted as follows:

908 73-4-45. Any person who violates any provision of this  
909 chapter for which a specific penalty is not provided, upon  
910 conviction, shall be fined not more than One Thousand Dollars  
911 (\$1,000.00).

912 **SECTION 24.** Section 73-4-47, Mississippi Code of 1972, is  
913 reenacted as follows:

914 73-4-47. The commission may maintain an action in the name  
915 of the State of Mississippi to enjoin any person from engaging,  
916 without a license issued under this chapter or pursuant to an  
917 exemption defined in this chapter, in any activity for which a  
918 license is required under this chapter.

919 **SECTION 25.** Section 73-4-49, Mississippi Code of 1972, is  
920 reenacted as follows:

921 73-4-49. In charging any person in an affidavit,  
922 information, or indictment with a violation of conducting, without  
923 a license or pursuant to an exemption of this chapter, any  
924 activity for which a license or an exemption therefor is required,  
925 it shall be sufficient to charge that the person did, upon a  
926 certain day and in certain county, engage in such activity and  
927 that such person did not have a license or exemption to do so. No  
928 further facts need to be averred concerning the matter.



929           **SECTION 26.** Section 73-4-51, Mississippi Code of 1972, is  
930 reenacted as follows:

931           73-4-51. All new programs authorized in this chapter are  
932 subject to the availability of funds specifically appropriated  
933 therefor by the Legislature.

934           **SECTION 27.** Section 73-4-53, which provides for repeal of  
935 the Mississippi Auctioneers License Act is hereby repealed.

936           **SECTION 28.** This act shall take effect and be in force from  
937 and after July 1, 2016.

