

HOUSE BILL 770

Introduced by Grady, et al.

2/12	Introduced
2/12	Referred to Agriculture, Livestock & Irrig.
2/12	First Reading
2/12	Fiscal Note Requested
2/16	Fiscal Note Received
2/18	Fiscal Note Printed
2/20	Hearing
2/23	Committee Report--Bill Passed as Amended
3/07	2nd Reading Do Pass Motion Failed

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House BILL NO. 770
Donna Green Krebs
T. Bond, David, John, Mary

INTRODUCED BY
A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR LICENSURE AND REGULATION OF AUCTIONEERS; CREATING A BOARD OF AUCTIONEERS TO LICENSE AND REGULATE AUCTIONEERS; PROVIDING FOR FEES; AND REPEALING SECTIONS 30-11-501, 30-11-508, 30-11-509, 30-11-510, 30-11-513, AND 30-11-516, MCA."

STATEMENT OF INTENT

A statement of intent is required for this bill because it establishes the board of auctioneers and delegates to the board rulemaking authority to administer the provisions of the auctioneer licensing and regulation provisions.

It is the intent of [section 2] that the governor have the authority to implement staggered terms for board members during the appointment process.

It is the intent of [section 5] that the board of auctioneers have the general authority to adopt rules to implement and enforce the provisions of this bill, including specific authority to adopt rules regarding procedures for processing license applications and issuing licenses, administering examinations, setting criteria for grading examinations, establishing disciplinary standards for licensees, and investigating complaints against licensees.

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It is the intent of [section 13] that the board have authority to set and modify fees commensurate with the costs of licensing and regulating the auctioneer occupation.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title. [Sections 1 through 17] may be cited as the "Auctioneer Licensing Act".

NEW SECTION. Section 2. Board of auctioneers. (1) There is a board of auctioneers.

(2) The board consists of five members appointed by the governor with the consent of the senate.

(3) At least three members must be experienced auctioneers who are active in the auction profession.

(4) Members shall serve staggered 3-year terms.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

NEW SECTION. Section 3. Definitions. As used in [sections 1 through 17], unless the context requires otherwise, the following definitions apply:

(1) "Auction" means the sale of goods or real estate by means of exchanges between an auctioneer and members of his audience, the exchanges consisting of a series of invitations for offers made by the auctioneer, offers by members of the audience, and the acceptance of the highest or most favorable offer by the auctioneer. The term does not



1 include the sale of goods or real estate by a sheriff or
2 other public official at a public auction. All sales
3 advertised as an auction must comply with these rules and
4 regulations.

5 (2) "Auctioneer" means any person who conducts or
6 offers his services to conduct auctions and includes
7 apprentice auctioneers.

8 (3) "Board" means the board of auctioneers provided for
9 in [section 2].

10 (4) "Department" means the department of commerce
11 provided for in Title 2, chapter 15, part 18.

12 (5) "Goods" means all personal property sold at
13 auction.

14 NEW SECTION. Section 4. Organization of board --
15 compensation. (1) The board shall meet annually and elect a
16 chairman who may not serve as chairman for more than 2
17 years. The board shall hold other meetings when necessary to
18 transact its business.

19 (2) Three board members constitute a quorum for
20 transacting business.

21 (3) Each board member shall receive compensation and
22 travel expenses as provided in 37-1-133.

23 NEW SECTION. Section 5. Powers and duties of board.

24 The board shall:

25 (1) administer, coordinate, and enforce the provisions

1 of [sections 1 through 17];

2 (2) establish rules to determine the qualifications of
3 applicants for licensure as auctioneers and to provide for
4 the examination of applicants;

5 (3) adopt, amend, and repeal rules necessary for the
6 implementation and enforcement of licensure and regulation
7 of auctioneers;

8 (4) collect the fees and charges required of
9 applicants, apprentices, and auctioneers;

10 (5) adopt a seal for authentication of its orders and
11 records;

12 (6) issue, suspend, and revoke licenses for
13 auctioneering;

14 (7) determine the auction records an apprentice
15 auctioneer is required to maintain;

16 (8) issue annually a list of the names and addresses of
17 all licensed auctioneers and the names of any person whose
18 license has been suspended or revoked by the board within
19 the preceding year.

20 NEW SECTION. Section 6. License required. A person may
21 not conduct an auction or hold himself out as engaging in or
22 conducting the business of auctioneering without an
23 auctioneer or apprentice auctioneer license.

24 NEW SECTION. Section 7. Exemptions. The licensing
25 requirements of [section 6] do not apply to: (1) a person

1 eligible for reciprocity under [section 14];
 2 (2) an auction of goods or real estate conducted
 3 exclusively by the owner if the goods or real estate was not
 4 principally purchased for resale;
 5 (3) an auction conducted by or on behalf of a
 6 charitable organization if the person conducting the auction
 7 receives no compensation;
 8 (4) a sale of livestock under the Montana livestock
 9 Marketing Act, Title 81, chapter 8, part 2; or
 10 (5) a sale or auction conducted by a public official.
 11 **NEW SECTION. Section 8. Apprentice auctioneer license**
 12 -- apprenticeship. (1) To be eligible for licensure as an
 13 apprentice auctioneer, an applicant shall:
 14 (a) submit a written application on a form approved by
 15 the board that includes statements of at least two licensed
 16 auctioneers attesting to the applicant's trustworthiness,
 17 good reputation, and competency to conduct the business of
 18 auctioneering in a manner that safeguards the public
 19 interest;
 20 (b) pass an examination as provided in [section 12];
 21 and
 22 (c) name a licensed auctioneer to act as the
 23 applicant's supervisor while the applicant is an apprentice
 24 auctioneer.
 25 (2) (a) A licensed apprentice auctioneer may not

1 conduct or enter into an agreement to conduct an auction
 2 without the approval of his supervisor.
 3 (b) A supervisor shall periodically review for accuracy
 4 the auction records the apprentice is required to maintain.
 5 (c) If an auctioneer does not agree to supervise an
 6 apprentice, the board shall appoint a supervisor.
 7 **NEW SECTION. Section 9. Auctioneer license.** (1) An
 8 auctioneer license may be granted only to a person
 9 considered by the board to have a good reputation, to be
 10 trustworthy, and to be competent to conduct the business of
 11 auctioneering in a manner that safeguards the public
 12 interest.
 13 (2) To be eligible for licensure as an auctioneer, an
 14 applicant shall:
 15 (a) have graduated from an accredited auctioneering
 16 school;
 17 (b) (i) have served as a licensed apprentice auctioneer
 18 for at least 1 year; or
 19 (ii) have conducted five commercially viable auctions
 20 under the direct supervision of a licensed auctioneer in the
 21 year immediately preceding his application for licensure;
 22 (c) submit a written application for licensure on a
 23 form prescribed by the board;
 24 (d) pass a written examination prepared by or
 25 administered by the board; and

1 (e) provide the bond required by [section 10].

2 **NEW SECTION. Section 10. Bond required.** (1) An

3 applicant for licensure as an auctioneer or an apprentice

4 auctioneer shall provide a bond in the amount of \$10,000

5 with his application.

6 (2) The bond must be in a form approved by the board

7 and may be a cash or property bond, an irrevocable bank

8 letter of credit, or a surety bond.

9 (3) A surety bond must:

10 (a) be executed by a surety company authorized to do

11 business in this state;

12 (b) be made out to the benefit of the secretary of

13 state and filed with the secretary of state's office; and

14 (c) provide for forfeiture of the bond upon the

15 applicant's failure to conduct his business according to the

16 standards and regulations established by the board.

17 (4) A license may not be issued until a bond has been

18 filed with the board.

19 **NEW SECTION. Section 11. Insurance required for**

20 **licensure.** An applicant for licensure as an auctioneer or an

21 apprentice auctioneer shall file and maintain evidence

22 satisfactory to the board as established by rule of an

23 effective policy of liability insurance issued by a company

24 authorized to do business in this state.

25 **NEW SECTION. Section 12. Examination.** (1) A person

1 satisfying the requirements of [sections 8 or 9] may apply

2 to take the examination prescribed by the board.

3 (2) The board shall adopt a written examination for

4 apprentice auctioneers and auctioneers and shall by rule

5 establish standards for acceptable performance on the

6 examinations.

7 (3) Applicants must be examined on the following

8 subjects:

9 (a) the laws and principles relating to the conduct of

10 an auction;

11 (b) ethical practices for auctioneers;

12 (c) mathematics relating to the auction business; and

13 (d) any other subject considered necessary by the

14 board.

15 (3) Examinations must be given at least four times each

16 year in Helena and at other times and places as the board

17 determines.

18 (4) An applicant may not retake the exam within 6

19 months after having failed it for the second time.

20 **NEW SECTION. Section 13. Issuance -- renewal.** (1) The

21 board shall issue an auctioneer or apprentice auctioneer

22 license and identification card to any person who has met

23 the requirements established by the board and who has paid

24 the fee required by the board.

25 (2) (a) The license must include the issuance and

1 renewal date.

2 (b) The licensee shall conspicuously display the
3 license in his principal place of business. A license is
4 valid for a period of 1 year and must be renewed annually,
5 and a renewal fee must be paid. The board may provide for
6 the late renewal of a license upon the payment of a late
7 renewal fee in accordance with its rules, but a license may
8 not be renewed more than 1 year after its expiration.

9 NEW SECTION. **Section 14. Reciprocity.** (1) A person
10 holding an auctioneer license in another state may conduct
11 an auction in this state upon satisfying the requirements of
12 this section.

13 (2) He shall provide the board:

14 (a) proof of his out-of-state license;

15 (b) the time, date, and place of any auction to be
16 conducted in this state;

17 (c) a bond as provided for in [section 10];

18 (d) proof of insurance as required in [section 11];

19 (e) any required fee as established by the board; and

20 (f) any other information the board considers
21 necessary.

22 (3) Prior to conducting any auction in this state, an
23 out-of-state licensed auctioneer shall execute, on a form
24 supplied by the board, an irrevocable consent to service
25 providing that any civil action may be commenced against the

1 applicant in any competent court of this state by the
2 service of any summons, process, or pleading authorized by
3 the laws of this state upon the Montana secretary of state.
4 The service of summons, process, or pleadings upon the
5 secretary of state is valid and binding as though it had
6 been made personally on the applicant in this state. If
7 service is made upon the secretary of state, one conformed
8 copy must be retained in the board's office and a second
9 conformed copy immediately forwarded by registered mail to
10 the last-known address of the applicant.

11 NEW SECTION. **Section 15. Principal place of business**
12 -- change in place of business. Unless he is a nonresident,
13 a licensed auctioneer shall maintain a principal place of
14 business in this state and shall notify the board of any
15 change of his principal place of business.

16 NEW SECTION. **Section 16. Auction agreement -- records**
17 -- advertising. (1) A person may not conduct an auction in
18 this state unless he first executes a written agreement with
19 the owner of the property to be sold containing the terms
20 and conditions upon which the auctioneer received the goods
21 for sale.

22 (2) Any advertising by a licensee must contain the
23 following:

24 (a) the name of the property owner;

25 (b) the name, address, and telephone number of the

1 auctioneer or firm conducting the sale;

2 (c) the auctioneer's license number; and

3 (d) any other information the board may require by
4 rule.

5 NEW SECTION. Section 17. Denial, suspension, or
6 revocation of license -- grounds -- procedure. (1) The board
7 may deny, revoke, suspend, or refuse to renew the license of
8 any licensee for:

9 (a) obtaining a license through deceit or
10 misrepresentation;

11 (b) failing to account for or remit, within a
12 reasonable time, any property of other persons that comes
13 into the licensee's possession;

14 (c) commingling funds of any other person with the
15 licensee's or failing to keep the funds of another person in
16 an escrow or trust account;

17 (d) paying valuable consideration to a person to
18 perform an activity that violates this section or the rules
19 established by the board;

20 (e) conviction in this or any other state of a criminal
21 offense involving moral turpitude;

22 (f) using misleading or untruthful advertising;

23 (g) committing any act relating to the business of
24 auctioneering that is dishonest, fraudulent, or incompetent;
25 or

1 (h) violating any rule of the board.

2 (2) The board may not deny, suspend, revoke, or refuse
3 to renew a license without complying with the applicable
4 requirements provided for in the Montana Administrative
5 Procedure Act, Title 2, chapter 4.

6 (3) A licensee whose license has been suspended may
7 apply for reinstatement after the expiration of the
8 suspension period, and a licensee whose license was revoked
9 may apply for reinstatement 1 year after the revocation. The
10 board may require an examination for reinstatement.

11 NEW SECTION. Section 18. Repealer. Sections 30-11-501,
12 30-11-508, 30-11-509, 30-11-510, 30-11-513, and 30-11-516,
13 MCA, are repealed.

14 NEW SECTION. Section 19. Codification instruction. (1)
15 [Section 2] is intended to be codified as an integral part
16 of Title 2, chapter 15, part 18, and the provisions of Title
17 2, chapter 15, part 18, apply to [section 2].

18 (2) [Sections 1 and 3 through 17] are intended to be
19 codified as an integral part of Title 30, chapter 11, part
20 5, and the provisions of Title 30, chapter 11, part 5, apply
21 to [sections 1 and 3 through 17].

22 NEW SECTION. Section 20. Severability. If a part of
23 [this act] is invalid, all valid parts that are severable
24 from the invalid part remain in effect. If a part of [this
25 act] is invalid in one or more of its applications, the part

LC 0035/01

1 remains in effect in all valid applications that are
2 severable from the invalid applications.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0770, as introduced.DESCRIPTION OF PROPOSED LEGISLATION:


An act creating a Board of Auctioneers to license and regulate auctioneers; providing for fees; and repealing sections 30-11-501, 30-11-508, 30-11-509, 30-11-510, 30-11-513, and 30-11-516, MCA.

ASSUMPTIONS:

1. The Board of Auctioneers will conduct four meetings during the first year and two meetings during the second year. The board will need one day to conduct its business. During the first year, the board will develop its rules. During the second year, the board will conduct the business prescribed in its rules.
2. The board will issue and renew approximately 150 licenses per year.
3. Board expenses will include per diem, travel, supplies, communications, postage, and printing. Travel costs will be approximately \$600 per meeting.
4. The Professional and Occupational Licensing Bureau (POL Bureau) will collect license fees and process the adoption of rules, applications and licenses, examinations, registry of licensees, administrative support for disciplinary procedures, reciprocity licenses, and board meetings. These additional services will require an additional .30 FTE in the POL Bureau. Administrative overhead charges for the above services must be reflected in the POL Bureau.
5. License fees are projected to be \$100 per license including the renewal of licenses.

FISCAL IMPACT:Brd of Auctioneers:

	FY 92			FY 93		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
<u>Expenditures:</u>						
Personal Services	0	1,600	1,600	0	650	650
Operating Costs	0	14,157	14,157	0	9,550	9,550
Total	0	15,757	15,757	0	10,200	10,200
<u>Funding:</u>						
State Special	0	15,757	15,757	0	10,200	10,200
<u>Revenues:</u>						
Application Fees (02)	0	3,750	3,750	0	0	0
License Fees (02)	0	15,000	15,000	0	15,000	15,000
Total	0	18,750	18,750	0	15,000	15,000


 ROD SUNDSTED, BUDGET DIRECTOR
 Office of Budget and Program Planning

2-16-91
 DATE


 EDWARD J. "ED" GRADY, PRIMARY SPONSOR

2-18-91
 DATE

Fiscal Note for HB0770, as introduced.

HB770

APPROVED BY COMMITTEE
ON AGRICULTURE LIVESTOCK
& IRRIGATION

1 HOUSE BILL NO. 770
 2 INTRODUCED BY GRADY, REA, KOEHNKE, THOFT,
 3 T. BECK, SWIFT, FOSTER, HARPER, MAZUREK,
 4 WATERMAN
 5
 6 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR LICENSURE
 7 AND REGULATION OF AUCTIONEERS; CREATING A BOARD OF
 8 AUCTIONEERS TO LICENSE AND REGULATE AUCTIONEERS; PROVIDING
 9 FOR FEES; AND REPEALING SECTIONS 30-11-501, 30-11-508,
 10 30-11-509, 30-11-510, 30-11-513, AND 30-11-516, MCA."

11
 12 STATEMENT OF INTENT
 13 A statement of intent is required for this bill because
 14 it establishes the board of auctioneers and delegates to the
 15 board rulemaking authority to administer the provisions of
 16 the auctioneer licensing and regulation provisions.
 17 It is the intent of [section 2] that the governor have
 18 the authority to implement staggered terms for board members
 19 during the appointment process.
 20 It is the intent of [section 5] that the board of
 21 auctioneers have the general authority to adopt rules to
 22 implement and enforce the provisions of this bill, including
 23 specific authority to adopt rules regarding procedures for
 24 processing license applications and issuing licenses,
 25 administering examinations, setting criteria for grading

1 examinations, establishing disciplinary standards for
 2 licensees, ESTABLISHING SUPPORTING DOCUMENTATION FOR PERSONS
 3 CURRENTLY ENGAGED IN AUCTIONEERING, and investigating
 4 complaints against licensees.
 5 It is the intent of [section ~~13~~ 14] that the board have
 6 authority to set and modify fees commensurate with the costs
 7 of licensing and regulating the auctioneer occupation.
 8
 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 10 NEW SECTION. Section 1. Short title. [Sections 1
 11 through ~~17~~ 18] may be cited as the "Auctioneer Licensing
 12 Act".
 13 NEW SECTION. Section 2. Board of auctioneers. (1)
 14 There is a board of auctioneers.
 15 (2) The board consists of five members appointed by the
 16 governor with the consent of the senate.
 17 (3) At least three members must be experienced
 18 auctioneers who are active in the auction profession.
 19 (4) Members shall serve staggered 3-year terms.
 20 (5) The board is allocated to the department for
 21 administrative purposes only as prescribed in 2-15-121.
 22 NEW SECTION. Section 3. Definitions. As used in
 23 [sections 1 through ~~17~~ 18], unless the context requires
 24 otherwise, the following definitions apply:
 25 (1) "Auction" means the sale of goods or real estate by

1 means of exchanges between an auctioneer and members of his
 2 audience, the exchanges consisting of a series of
 3 invitations for offers made by the auctioneer, offers by
 4 members of the audience, and the acceptance of the highest
 5 or most favorable offer by the auctioneer. The term does not
 6 include the sale of goods or real estate by a sheriff or
 7 other public official at a public auction. All sales
 8 advertised as an auction must comply with these rules and
 9 regulations.

10 (2) "Auctioneer" means any person who conducts or
 11 offers his services to conduct auctions and includes
 12 apprentice auctioneers.

13 (3) "Board" means the board of auctioneers provided for
 14 in [section 2].

15 (4) "Department" means the department of commerce
 16 provided for in Title 2, chapter 15, part 18.

17 (5) "Goods" means all personal property sold at
 18 auction.

19 **NEW SECTION. Section 4. Organization of board --**
 20 **compensation.** (1) The board shall meet annually and elect a
 21 chairman who may not serve as chairman for more than 2
 22 years. The board shall hold other meetings when necessary to
 23 transact its business.

24 (2) Three board members constitute a quorum for
 25 transacting business.

1 (3) Each board member shall receive compensation and
 2 travel expenses as provided in 37-1-133.

3 **NEW SECTION. Section 5. Powers and duties of board.**

4 The board shall:

5 (1) administer, coordinate, and enforce the provisions
 6 of [sections 1 through ~~17~~ 18];

7 (2) establish rules to determine the qualifications of
 8 applicants for licensure as auctioneers and to provide for
 9 the examination of applicants;

10 (3) adopt, amend, and repeal rules necessary for the
 11 implementation and enforcement of licensure and regulation
 12 of auctioneers;

13 (4) collect the fees and charges required of
 14 applicants, apprentices, and auctioneers;

15 (5) adopt a seal for authentication of its orders and
 16 records;

17 (6) issue, suspend, and revoke licenses for
 18 auctioneering;

19 (7) determine the auction records an apprentice
 20 auctioneer is required to maintain;

21 (8) issue annually a list of the names and addresses of
 22 all licensed auctioneers and the names of any person whose
 23 license has been suspended or revoked by the board within
 24 the preceding year; AND

25 (9) ADOPT SUPPORTING DOCUMENTATION REQUIREMENTS FOR

1 PERSONS CURRENTLY ENGAGED IN AUCTIONEERING.

2 NEW SECTION. Section 6. License required. A person may
3 not conduct an auction or hold himself out as engaging in or
4 conducting the business of auctioneering without an
5 auctioneer or apprentice auctioneer license.

6 NEW SECTION. Section 7. Exemptions. The licensing
7 requirements of [section 6] do not apply to: (1) a person
8 eligible for reciprocity under [section 14 15];

9 (2) an auction of goods or real estate conducted
10 exclusively by the owner if the goods or real estate was not
11 principally purchased for resale;

12 (3) an auction conducted by or on behalf of a
13 charitable organization if the person conducting the auction
14 receives no compensation;

15 (4) a sale of livestock under the Montana livestock
16 Marketing Act, Title 81, chapter 8, part 2; or

17 (5) a sale or auction conducted by a public official.

18 NEW SECTION. Section 8. Apprentice auctioneer license
19 -- apprenticeship. (1) To be eligible for licensure as an
20 apprentice auctioneer, an applicant shall:

21 (a) submit a written application on a form approved by
22 the board that includes statements of at least two licensed
23 auctioneers attesting to the applicant's trustworthiness,
24 good reputation, and competency to conduct the business of
25 auctioneering in a manner that safeguards the public

1 interest;

2 (b) pass an examination as provided in [section 12 13];
3 and

4 (c) name a licensed auctioneer to act as the
5 applicant's supervisor while the applicant is an apprentice
6 auctioneer.

7 (2) (a) A licensed apprentice auctioneer may not
8 conduct or enter into an agreement to conduct an auction
9 without the approval of his supervisor.

10 (b) A supervisor shall periodically review for accuracy
11 the auction records the apprentice is required to maintain.

12 (c) If an auctioneer does not agree to supervise an
13 apprentice, the board shall appoint a supervisor.

14 NEW SECTION. Section 9. Auctioneer license. (1) An
15 auctioneer license may be granted only to a person
16 considered by the board to have a good reputation, to be
17 trustworthy, and to be competent to conduct the business of
18 auctioneering in a manner that safeguards the public
19 interest.

20 (2) To be eligible for licensure as an auctioneer, an
21 applicant shall:

22 (a) have graduated from an accredited auctioneering
23 school;

24 (b) (i) have served as a licensed apprentice auctioneer
25 for at least 1 year; or

1 (ii) have conducted five commercially viable auctions
 2 under the direct supervision of a licensed auctioneer in the
 3 year immediately preceding his application for licensure;

4 (c) submit a written application for licensure on a
 5 form prescribed by the board;

6 (d) pass a written examination prepared by or
 7 administered by the board; and

8 (e) provide the bond required by [section 10].

9 NEW SECTION. Section 10. Bond required. (1) An
 10 applicant for licensure as an auctioneer or an apprentice
 11 auctioneer shall provide a bond in the amount of \$10,000
 12 with his application.

13 (2) The bond must be in a form approved by the board
 14 and may be a cash or property bond, an irrevocable bank
 15 letter of credit, or a surety bond.

16 (3) A surety bond must:

17 (a) be executed by a surety company authorized to do
 18 business in this state;

19 (b) be made out to the benefit of the secretary of
 20 state and filed with the secretary of state's office; and

21 (c) provide for forfeiture of the bond upon the
 22 applicant's failure to conduct his business according to the
 23 standards and regulations established by the board.

24 (4) A license may not be issued until a bond has been
 25 filed with the board.

1 NEW SECTION. Section 11. Insurance required for
 2 licensure. An applicant for licensure as an auctioneer or an
 3 apprentice auctioneer shall file and maintain evidence
 4 satisfactory to the board as established by rule of an
 5 effective policy of liability insurance issued by a company
 6 authorized to do business in this state.

7 NEW SECTION. SECTION 12. EXEMPTION. A PERSON IS EXEMPT
 8 FROM THE REQUIREMENTS OF [SECTIONS 8 AND 9(2)(A), (2)(B),
 9 AND (2)(D)] IF THE PERSON FILES SUPPORTING DOCUMENTATION, AS
 10 REQUIRED BY THE BOARD BY RULE.

11 NEW SECTION. Section 13. Examination. (1) A person
 12 satisfying the requirements of [sections 8 or 9] may apply
 13 to take the examination prescribed by the board.

14 (2) The board shall adopt a written examination for
 15 apprentice auctioneers and auctioneers and shall by rule
 16 establish standards for acceptable performance on the
 17 examinations.

18 (3) Applicants must be examined on the following
 19 subjects:

20 (a) the laws and principles relating to the conduct of
 21 an auction;

22 (b) ethical practices for auctioneers;

23 (c) mathematics relating to the auction business; and

24 (d) any other subject considered necessary by the
 25 board.

1 (3) Examinations must be given at least four times each
2 year in Helena and at other times and places as the board
3 determines.

4 (4) An applicant may not retake the exam within 6
5 months after having failed it for the second time.

6 NEW SECTION. Section 14. Issuance -- renewal. (1) The
7 board shall issue an auctioneer or apprentice auctioneer
8 license and identification card to any person who has met
9 the requirements established by the board and who has paid
10 the fee required by the board.

11 (2) (a) The license must include the issuance and
12 renewal date.

13 (b) The licensee shall conspicuously display the
14 license in his principal place of business. A license is
15 valid for a period of 1 year and must be renewed annually,
16 and a renewal fee must be paid. The board may provide for
17 the late renewal of a license upon the payment of a late
18 renewal fee in accordance with its rules, but a license may
19 not be renewed more than 1 year after its expiration.

20 NEW SECTION. Section 15. Reciprocity. (1) A person
21 holding an auctioneer license in another state may conduct
22 an auction in this state upon satisfying the requirements of
23 this section.

24 (2) He shall provide the board:

25 (a) proof of his out-of-state license;

1 (b) the time, date, and place of any auction to be
2 conducted in this state;

3 (c) a bond as provided for in [section 10];

4 (d) proof of insurance as required in [section 11];

5 (e) any required fee as established by the board; and

6 (f) any other information the board considers
7 necessary.

8 (3) Prior to conducting any auction in this state, an
9 out-of-state licensed auctioneer shall execute, on a form
10 supplied by the board, an irrevocable consent to service
11 providing that any civil action may be commenced against the
12 applicant in any competent court of this state by the
13 service of any summons, process, or pleading authorized by
14 the laws of this state upon the Montana secretary of state.
15 The service of summons, process, or pleadings upon the
16 secretary of state is valid and binding as though it had
17 been made personally on the applicant in this state. If
18 service is made upon the secretary of state, one conformed
19 copy must be retained in the board's office and a second
20 conformed copy immediately forwarded by registered mail to
21 the last-known address of the applicant.

22 NEW SECTION. Section 16. Principal place of business
23 -- change in place of business. Unless he is a nonresident,
24 a licensed auctioneer shall maintain a principal place of
25 business in this state and shall notify the board of any

1 change of his principal place of business.

2 **NEW SECTION. Section 17. Auction agreement -- records**

3 -- **advertising.** (1) A person may not conduct an auction in
4 this state unless he first executes a written agreement with
5 the owner of the property to be sold containing the terms
6 and conditions upon which the auctioneer received the goods
7 for sale.

8 (2) Any advertising by a licensee must contain the
9 following:

- 10 (a) the name of the property owner;
11 (b) the name, address, and telephone number of the
12 auctioneer or firm conducting the sale;
13 (c) the auctioneer's license number; and
14 (d) any other information the board may require by
15 rule.

16 **NEW SECTION. Section 18. Denial, suspension, or**
17 **revocation of license -- grounds -- procedure.** (1) The board
18 may deny, revoke, suspend, or refuse to renew the license of
19 any licensee for:

- 20 (a) obtaining a license through deceit or
21 misrepresentation;
22 (b) failing to account for or remit, within a
23 reasonable time, any property of other persons that comes
24 into the licensee's possession;
25 (c) commingling funds of any other person with the

1 licensee's or failing to keep the funds of another person in
2 an escrow or trust account;

3 (d) paying valuable consideration to a person to
4 perform an activity that violates this section or the rules
5 established by the board;

6 (e) conviction in this or any other state of a criminal
7 offense involving moral turpitude;

8 (f) using misleading or untruthful advertising;

9 (g) committing any act relating to the business of
10 auctioneering that is dishonest, fraudulent, or incompetent;
11 or

12 (h) violating any rule of the board.

13 (2) The board may not deny, suspend, revoke, or refuse
14 to renew a license without complying with the applicable
15 requirements provided for in the Montana Administrative
16 Procedure Act, Title 2, chapter 4.

17 (3) A licensee whose license has been suspended may
18 apply for reinstatement after the expiration of the
19 suspension period, and a licensee whose license was revoked
20 may apply for reinstatement 1 year after the revocation. The
21 board may require an examination for reinstatement.

22 **NEW SECTION. Section 19. Repealer.** Sections 30-11-501,
23 30-11-508, 30-11-509, 30-11-510, 30-11-513, and 30-11-516,
24 MCA, are repealed.

25 **NEW SECTION. Section 20. Codification instruction.** (1)

1 [Section 2] is intended to be codified as an integral part
2 of Title 2, chapter 15, part 18, and the provisions of Title
3 2, chapter 15, part 18, apply to [section 2].

4 (2) [Sections 1 and 3 through ~~17~~ 18] are intended to be
5 codified as an integral part of Title 30, chapter 11, part
6 5, and the provisions of Title 30, chapter 11, part 5, apply
7 to [sections 1 and 3 through ~~17~~ 18].

8 NEW SECTION. **Section 21. Severability.** If a part of
9 [this act] is invalid, all valid parts that are severable
10 from the invalid part remain in effect. If a part of [this
11 act] is invalid in one or more of its applications, the part
12 remains in effect in all valid applications that are
13 severable from the invalid applications.

-End-