

1 *House* BILL NO. *764*
 2 INTRODUCED BY *Ramirez*
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 5 LAWS RELATING TO AUCTION SALES; RENUMBERING AND AMENDING
 6 SECTIONS 66-201 THROUGH 66-203, 66-203.1, 66-204 THROUGH
 7 66-207, 66-211, 66-213, 66-216, 66-219, AND 66-230, R.C.M.
 8 1947; AMENDING SECTION 87A-2-328, R.C.M. 1947; AND REPEALING
 9 SECTIONS 66-208, 66-209, 66-210, 66-212, 66-214, 66-215,
 10 66-217, 66-218, AND 66-220 THROUGH 66-229, R.C.M. 1947."
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 12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
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 19 renumbered 74-702 and is amended to read as follows:
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 24 so announces by the fall of the hammer or in other customary
 25 manner. Where a bid is made while the hammer is falling in

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 6 reserve the auctioneer may withdraw the goods at any time
 7 until he announces completion of the sale. In an auction
 8 without reserve, after the auctioneer calls for bids on an
 9 article or lot, that article or lot cannot be withdrawn
 10 unless no bid is made within a reasonable time. In either
 11 case a bidder may retract his bid until the auctioneer's
 12 announcement of completion of the sale, but a bidder's
 13 retraction does not revive any previous bid.

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 15 seller's behalf or the seller makes or procures such a bid,
 16 and notice has not been given that liberty for such bidding
 17 is reserved, the buyer may at his option avoid the sale or
 18 take the goods at the price of the last good faith bid prior
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- 3 2. ~~To~~ to sell for cash only, except ~~such for~~ for articles
4 ~~as are~~ usually sold on credit at auction;
- 5 3. ~~To~~ to warrant ~~in like manner with other agents to~~
6 ~~sell according as an agent pursuant~~ to section 2-130;
- 7 4. ~~To~~ to prescribe reasonable rules and terms of sale;
- 8 5. ~~To~~ to deliver the thing sold, upon payment of the
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14 Section 7. Section 66-202, R.C.M. 1947, is renumbered
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16 "~~66-20274-707~~. Auctioneer's authority from the bidder.
17 An auctioneer has authority from a bidder at the auction, as
18 well as from the seller, to bind both by a memorandum of the
19 contract, sale as prescribed in ~~section 66-219~~ 74-704."

20 Section 8. Section 66-203, R.C.M. 1947, is renumbered
21 74-708 and is amended to read as follows:

22 "~~66-20374-708~~. Auctioneer -- authority and bond. Any
23 citizen of this state ~~may~~ become an auctioneery and be
24 authorized to sell real or personal property at public
25 auction in any county in this state ~~on after~~ after giving a bond

1 in accordance with the provisions of this chapter for the
2 faithful performance of his duties."

3 Section 9. Section 66-203.1, R.C.M. 1947, is
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5 "~~66-203-174-709~~. Reciprocal privileges to nonresident
6 auctioneers. The citizenship residency requirements required
7 by the ~~this~~ state of ~~Montana~~ for an auctioneer are hereby
8 waived for the citizens of any other state or ~~states~~ to the
9 same extent that the home state of the applicant waives such
10 citizenship residency requirements for the citizens of the
11 ~~this~~ state of ~~Montana~~."

12 Section 10. Section 66-204, R.C.M. 1947, is
13 renumbered 74-710 and is amended to read as follows:

14 "~~66-20474-710~~. The bond -- sureties, approval and
15 filing. ~~(1) The bond~~ Bond must be conditioned to be paid
16 payable to the state of ~~Montana~~, with one or more sureties,
17 in the sum of ~~five-thousand-dollars~~ \$5,000, and approved by
18 the county clerk of the county in which the auctioneer
19 resides, and filed in his office, ~~or if~~

20 (2) If the auctioneer is not a resident of ~~Montana~~,
21 ~~said~~ the bond shall be filed with the county clerk of the
22 county of this state in which he carries on his principal
23 auction business."

24 Section 11. Section 66-205, R.C.M. 1947, is
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1 "~~66-20574-711~~. Auctioneers ex officio. (1) In any
2 county ~~where there is no~~ without an auctioneer, the sheriff
3 or a constable thereof is ex officio auctioneer, and is
4 permitted to sell any property, ~~real or personal,~~ at public
5 auctions, ~~and for any delinquency as such ex officio~~
6 ~~auctioneer he~~

7 (2) He is liable on his official bond for any
8 delinquency as the ex officio auctioneer."

9 Section 12. Section 66-206, R.C.M. 1947, is
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11 "~~66-20674-712~~. Assistant -- who may act and when.
12 Every (1) An auctioneer, in case ~~the event~~ of inability to
13 attend an auction by reason of sickness, or the performance
14 of any a duty imposed upon him by law, or during a temporary
15 absence from the city or county within which he is
16 auctioneer, may employ ~~a copartner or clerk~~ an agent or
17 employee to hold ~~such the~~ auction in his name and behalf,
18 ~~such~~

19 (2) The employee ~~to take and~~ shall file with the
20 county clerk of the county an affidavit swearing to
21 faithfully to perform the duties of auctioneer.

22 (3) An ~~But any~~ auctioneer may employ a crier at any
23 sale, for whose acts he shall be responsible."

24 Section 13. Section 66-207, R.C.M. 1947, is
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1 ~~"66-20774-713. Auctioneers to designate places one~~
 2 ~~place of business -- partners. No auctioneer in any city of~~
 3 ~~this state must have at one time more than one place for~~
 4 ~~holding auctions and every such auctioneer, before acting as~~
 5 ~~such, must file with the clerk of the county in which said~~
 6 ~~city is situated a writing signed by him, designating such~~
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 14 ~~than that designated unless the goods are in their original~~
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17 Section 14. There is a new R.C.M. section numbered
 18 74-714 that reads as follows:

19 74-714. Penalty. A person convicted of violating a
 20 provision of this act shall be fined no more than \$500 or
 21 imprisoned in the county jail for a term not to exceed 6
 22 months, or both. In addition he shall be liable for damages
 23 incurred by any aggrieved party by reason of such violation.

24 Section 15. There is a new R.C.M. section numbered
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1 74-715. Enforcement. The provisions of this act shall
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7 ~~"66-23074-716. Powers of cities and towns not~~
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 10 ~~license, and regulate persons, firms, associations or~~
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 12 ~~desiring to engage in public auctions, and may require a~~
 13 ~~license and charge a fee therefor, but such license fee~~
 14 ~~shall not exceed the amount provided in this act for a~~
 15 ~~county license but shall be in addition thereto and such~~
 16 ~~towns Towns and cities may provide for penalties for~~
 17 ~~violations of said the ordinance requirements. A city or~~
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19 Section 17. Repealer. Sections 66-208, 66-209, 66-210,
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15 74-707 and is amended to read as follows:

16 "~~66-20274-707~~. Auctioneer's authority from the bidder.
17 An auctioneer has authority from a bidder at the auction, as
18 well as from the seller, to bind both by a memorandum of the
19 ~~contract sale~~ as prescribed in ~~section 66-219 74-704~~."

20 Section 8. Section 66-203, R.C.M. 1947, is renumbered
21 74-708 and is amended to read as follows:

22 "~~66-20374-708~~. Auctioneer -- authority and bond. Any
23 citizen of this state ~~may~~ become an auctioneery "and be
24 authorized to sell real or personal property at public
25 auction in any county in this state ~~on after~~ giving a bond

1 in accordance with the provisions of this chapter for the
2 faithful performance of his duties."

3 Section 9. Section 66-203.1, R.C.M. 1947, is
4 renumbered 74-709 and is amended to read as follows:

5 "~~66-203.1~~74-709. Reciprocal privileges to nonresident
6 auctioneers. The ~~citizenship~~ residency requirements required
7 by the ~~this~~ state of ~~Montana~~ for an auctioneer are hereby
8 waived for the citizens of any ~~other~~ state or ~~states~~ to the
9 same extent that the home state of the applicant waives such
10 ~~citizenship~~ residency requirements for the citizens of the
11 ~~this~~ state of ~~Montana~~."

12 Section 10. Section 66-204, R.C.M. 1947, is
13 renumbered 74-710 and is amended to read as follows:

14 "~~66-204~~74-710. The bond -- sureties, approval and
15 filing. ~~(1)~~ The ~~bond~~ Bond must be ~~conditioned to be paid~~
16 ~~payable~~ to the state of ~~Montana~~, with one or more sureties,
17 in the sum of ~~five thousand dollars~~ \$5,000, and approved by
18 the county clerk of the county in which the auctioneer
19 resides, and filed in his office, ~~or if~~

20 ~~(2)~~ If the auctioneer is not a resident of ~~Montana~~,
21 ~~said~~ the bond shall be filed with the county clerk of the
22 county of this state in which he carries on his principal
23 auction business."

24 Section 11. Section 66-205, R.C.M. 1947, is
25 renumbered 74-711 and is amended to read as follows:

1 "~~66-205~~74-711. Auctioneers ex officio. ~~(1)~~ In any
2 county ~~where there is no~~ without an auctioneer, the sheriff
3 or a constable thereof is ex officio auctioneer, and is
4 permitted to sell any property, ~~real or personal,~~ at public
5 auction, ~~and for any delinquency as such ex officio~~
6 ~~auctioneer he~~

7 ~~(2)~~ He is liable on his official bond for any
8 delinquency as the ex officio auctioneer."

9 Section 12. Section 66-206, R.C.M. 1947, is
10 renumbered 74-712 and is amended to read as follows:

11 "~~66-206~~74-712. Assistant -- who may act and when.
12 Every ~~(1)~~ An auctioneer, in case ~~the event~~ of inability to
13 attend an auction by reason of sickness, ~~or~~ the performance
14 of any ~~a~~ duty imposed upon him by law, or during a temporary
15 absence from the city or county within which he is
16 auctioneer, may employ ~~a copartner or clerk~~ an agent or
17 employee to hold ~~such the~~ auction in his name and behalf
18 ~~such~~.

19 ~~(2)~~ The employee to ~~take and~~ shall file with the
20 county clerk of the county an affidavit swearing to
21 faithfully to perform the duties of auctioneer.

22 ~~(3)~~ An ~~But any~~ auctioneer may employ a crier at any
23 sale, for whose acts he shall be responsible."

24 Section 13. Section 66-207, R.C.M. 1947, is
25 renumbered 74-713 and is amended to read as follows:

1 ~~"66-2074-713. Auctioneers to designate one~~
 2 ~~place of business partners. No auctioneer in any city of~~
 3 ~~this state must have at one time more than one place for~~
 4 ~~holding auctions and every such auctioneer, before acting as~~
 5 ~~such, must file with the clerk of the county in which said~~
 6 ~~city is situated a writing signed by him, designating such~~
 7 ~~place and naming therein the partners, if any, engaged with~~
 8 ~~him in business. (1) An auctioneer shall designate in~~
 9 ~~writing with the county clerk one place at which he will~~
 10 ~~conduct auctions within any city.~~

11 ~~(2) He shall designate, in the same document, his~~
 12 ~~partners, if any, in the business.~~

13 ~~(3) He may not offer goods for sale at a place other~~
 14 ~~than that designated unless the goods are in their original~~
 15 ~~packages, are bulky and usually sold in warehouses, or are~~
 16 ~~usually sold on public streets."~~

17 Section 14. There is a new R.C.M. section numbered
 18 74-714 that reads as follows:

19 74-714. Penalty. A person convicted of violating a
 20 provision of this act shall be fined no more than \$500 or
 21 imprisoned in the county jail for a term not to exceed 6
 22 months, or both. In addition he shall be liable for damages
 23 incurred by any aggrieved party by reason of such violation.

24 Section 15. There is a new R.C.M. section numbered
 25 74-715 that reads as follows:

1 74-715. Enforcement. The provisions of this act shall
 2 be enforced by the department of business regulation and the
 3 county attorney of the county in which the violation
 4 occurred.

5 Section 16. Section 66-230, R.C.M. 1947, is
 6 renumbered 74-716 and is amended to read as follows:

7 ~~"66-23074-716. Powers of cities and towns not~~
 8 ~~affected. The towns Towns and cities of the state of Montana~~
 9 ~~are hereby given full power and authority to pay tax,~~
 10 ~~license, and regulate persons, firms, associations or~~
 11 ~~corporations, or other legal entities engaging in or~~
 12 ~~desiring to engage in public auctions, and may require a~~
 13 ~~license and charge a fee therefor, but such license fee~~
 14 ~~shall not exceed the amount provided in this act for a~~
 15 ~~county license but shall be in addition thereto and such~~
 16 ~~towns Towns and cities may provide for penalties for~~
 17 ~~violations of said the ordinance requirements. A city or~~
 18 ~~town license shall not be in lieu of a county license."~~

19 Section 17. Repealer. Sections 66-208, 66-209, 66-210,
 20 66-212, 66-214, 66-215, 66-217, 66-218, and 66-220 through
 21 66-229, R.C.M. 1947, are repealed.

-End-

1 HOUSE BILL NO. 764

2 INTRODUCED BY RAMIREZ, SIVERTSEN

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
5 LAWS RELATING TO AUCTION SALES; RENUMBERING AND AMENDING
6 SECTIONS 66-201 THROUGH 66-203, 66-203.1, 66-204 THROUGH
7 66-207, 66-211, 66-213, 66-216, 66-219, AND 66-230, R.C.M.
8 1947; AMENDING SECTION 87A-2-328, R.C.M. 1947; AND REPEALING
9 SECTIONS 66-208, 66-209, 66-210, 66-212, 66-214, 66-215,
10 66-217, 66-218, AND 66-220 THROUGH 66-229, R.C.M. 1947."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 Section 1. Section 66-213, R.C.M. 1947, is renumbered
14 74-701 and is amended to read as follows:

15 "~~66-213-701~~. Sale by auction defined. A sale by
16 auction is a sale by public outcry to the highest bidder on
17 the spot."

18 Section 2. Section 87A-2-328, R.C.M. 1947, is
19 renumbered 74-702 and is amended to read as follows:

20 "~~87A-2-328-702~~. Sale by auction. (1) In a sale by
21 auction ~~if~~ of goods ~~by lot or put-up-in-lots~~, each lot is
22 the subject of a separate sale.

23 (2) A sale by auction is complete when the auctioneer
24 so announces by the fall of the hammer or in other customary
25 manner. Where a bid is made while the hammer is falling in

1 acceptance of a prior bid the auctioneer may in his
2 discretion reopen the bidding or declare the goods sold
3 under the bid on which the hammer was falling.

4 (3) Such a sale is with reserve unless the goods are
5 in explicit terms put up without reserve. In an auction with
6 reserve the auctioneer may withdraw the goods at any time
7 until he announces completion of the sale. In an auction
8 without reserve, after the auctioneer calls for bids on an
9 article or lot, that article or lot cannot be withdrawn
10 unless no bid is made within a reasonable time. In either
11 case a bidder may retract his bid until the auctioneer's
12 announcement of completion of the sale, but a bidder's
13 retraction does not revive any previous bid.

14 (4) If the auctioneer knowingly receives a bid on the
15 seller's behalf or the seller makes or procures such a bid,
16 and notice has not been given that liberty for such bidding
17 is reserved, the buyer may at his option avoid the sale or
18 take the goods at the price of the last good faith bid prior
19 to the completion of the sale. This subsection ~~shall~~ ~~does~~
20 not apply to any bid at a forced sale."

21 Section 3. Section 66-216, R.C.M. 1947, is renumbered
22 74-703 and is amended to read as follows:

23 "~~66-216-703~~. Sale under written conditions. When a
24 sale by auction is made upon written or printed conditions,
25 ~~then~~ ~~those~~ conditions cannot be modified by any oral

REFERENCE BILL

1 declaration of the auctioneery except ~~so-for-as-they-are~~
 2 ~~those~~ for his own protection."

3 Section 4. Section 66-219, R.C.M. 1947, is renumbered
 4 74-704 and is amended to read as follows:

5 "66-219~~74-704~~. Auctioneer's memorandum of sale. When
 6 property is sold by auction, an entry made by the
 7 auctioneery in his sale book, at the time of the sale,
 8 specifying the name of the person for whom he sells, the
 9 thing sold, the price, the terms of sale, and the name of
 10 the buyer, binds both the parties in the same manner as if
 11 made by themselves."

12 Section 5. Section 66-211, R.C.M. 1947, is renumbered
 13 74-705 and is amended to read as follows:

14 "66-211~~74-705~~. Book of sales. (1) Each auctioneer must
 15 keep a booky-in-which-he-must and enter all salesy showing
 16 the name of the owner of the goods sold, to whom sold, and
 17 the amount paid, and the date of each salesy-which.

18 (2) ~~The~~ book must ~~at-all-times~~ be open for the
 19 inspection of-any-person by interested persons during normal
 20 business hours therein."

21 Section 6. Section 66-201, R.C.M. 1947, is renumbered
 22 74-706 and is amended to read as follows:

23 "66-201~~74-706~~. Auctioneer's authority from the seller.
 24 An auctioneer, in the absence of special authority or usage
 25 to-the-contrary, has authority from the seller only as

1 follows:

- 2 1. ~~to~~ to sell by public auction to the highest bidder;
- 3 2. ~~to~~ to sell for cash only, except ~~such for~~ articles
 4 ~~as-are~~ usually sold on credit at auction;
- 5 3. ~~to~~ to warrant in-like-manner-with-other--agents--to
 6 ~~sell--according as an agent pursuant~~ to section 2-130;
- 7 4. ~~to~~ to prescribe reasonable rules and terms of sale;
- 8 5. ~~to~~ to deliver the thing sold, upon payment of the
 9 price;
- 10 6. ~~to~~ to collect the price; and
- 11 7. ~~to~~ to do whatever else is necessary, or proper, and
 12 usual, in the ordinary course of business, for effecting
 13 these purposes."

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 15 74-707 and is amended to read as follows:

16 "66-202~~74-707~~. Auctioneer's authority from the bidder.
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18 ~~such~~

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