

SENATE BILL 319

Introduced by Hofman, S., et al.

2/02	Introduced
2/02	Referred to Sttae Administration
2/03	Fiscal Note Requested
2/09	Fiscal Note Received
2/10	Fiscal Note Printed
	Died in Committee

1 *State* BILL NO. *319*  
 2 INTRODUCED BY *Hofman, Anderson Spring*  
 3  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR LICENSURE  
 5 AND REGULATION OF AUCTIONEERS; CREATING THE BOARD OF  
 6 AUCTIONEERS TO LICENSE AND REGULATE AUCTIONEERS; PROVIDING  
 7 FOR FEES AND PENALTIES; PROVIDING AN EXEMPTION FROM THE  
 8 SUNRISE AUDIT REQUIREMENT; AND REPEALING SECTIONS 30-11-508  
 9 THROUGH 30-11-510 AND 30-11-513 THROUGH 30-11-515, MCA."

10  
 11 STATEMENT OF INTENT

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

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

19 It is the intent of [section 5] that the board of  
 20 auctioneers have general authority to adopt rules to  
 21 implement and enforce the act, including specific authority  
 22 to adopt rules regarding the procedure for processing  
 23 license applications and issuing licenses, administering  
 24 examinations, setting criteria for grading examinations,  
 25 establishing disciplinary standards for licensees, and

1 investigating complaints against licensees.

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

5  
 6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

7 NEW SECTION. **Section 1.** Short title. [This act] may  
 8 be cited as the "Auctioneer Licensing Act".

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

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

13 (3) (a) At least three of the five members must be  
 14 appointed from nominations submitted by the Montana  
 15 auctioneers association.

16 (b) At least three of the five members must be  
 17 experienced auctioneers who are active in the auctioneering  
 18 profession.

19 (4) Members must be nonpartisan.

20 (5) Members shall serve staggered 3-year terms.

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

23 NEW SECTION. **Section 3.** Definitions. As used in [this  
 24 act], unless the context requires otherwise, the following  
 25 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 by the auctioneer of the highest or most favorable offer. The term includes the sale of goods or real estate by a sheriff or other public official at a public auction.

(2) "Auctioneer" means any person who conducts or offers his services to conduct auctions.

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

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

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

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

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

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

The board shall:

(1) administer, coordinate, and enforce the provisions of [this act];

(2) determine the qualifications of applicants for licensure under [this act] and approve and supervise the examination of the applicants;

(3) adopt, amend, and repeal rules necessary for the implementation and enforcement of [this act];

(4) collect the fees and charges prescribed in [this act];

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

(6) issue, suspend, and revoke licenses for the occupation of auctioneering;

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

(8) issue annually a list of:

(a) the names and addresses of all auctioneers and apprentice auctioneers licensed pursuant to [this act]; and

(b) the names of persons whose licenses have been suspended or revoked by the board within the preceding year.

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

**NEW SECTION. Section 7. Exemptions.** The provisions of

1 [this act] do not apply to:

2 (1) a person who meets the requirements of [section  
3 14];

4 (2) an auction of goods or real estate that is  
5 conducted exclusively by a person who owns the goods or real  
6 estate and who did not acquire the goods or real estate  
7 principally for resale;

8 (3) an auction conducted by or on behalf of a  
9 charitable or religious organization if the person  
10 conducting the auction receives no compensation for  
11 conducting it; and

12 (4) a sale of livestock under the provisions of the  
13 Montana Livestock Marketing Act, 81-8-211 through 81-8-279.

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

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

23 (b) pass an examination as provided in [section 12];  
24 and

25 (c) name a licensed auctioneer to act as supervisor of

1 the apprentice auctioneer.

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

5 (b) A supervisor of an apprentice auctioneer shall  
6 periodically review for accuracy the auction records the  
7 apprentice is required to maintain.

8 NEW SECTION. Section 9. Auctioneer license. (1) An  
9 auctioneer license may be granted only to a person  
10 considered by the board to be trustworthy, of good reputation,  
11 and competent to conduct the business of auctioneering in a  
12 manner that safeguards the public interest.

13 (2) To be eligible for licensure as an auctioneer, an  
14 applicant:

15 (a) must have graduated from an accredited  
16 auctioneering school;

17 (b) (i) must have served as a licensed apprentice  
18 auctioneer under the supervision of a licensed auctioneer  
19 for at least 1 year; or

20 (ii) must have conducted five commercially viable  
21 auctions under the direct supervision of a licensed  
22 auctioneer in the year immediately prior to his application  
23 for licensure;

24 (c) shall submit a written application for licensure  
25 to the board on a form prescribed by the board;

(d) shall pass a written examination approved and supervised by the board; and

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

**NEW SECTION. Section 10. Bond required.** (1) An applicant for licensure under [this act] shall provide a bond in the amount of \$10,000 with his application.

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

(3) If a surety bond, the bond must be:

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

(b) made payable to the board; and

(c) conditioned upon the applicant conducting his business pursuant to the provisions of [this act].

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

**NEW SECTION. Section 11. Insurance required for licensure.** An applicant for licensure shall file and maintain evidence satisfactory to the board of an effective policy of liability insurance issued by an insurance company authorized to do business in this state.

**NEW SECTION. Section 12. Examination.** (1) A person who satisfies the requirements of [section 8 or 9] may apply for examination in the manner prescribed by the board.

(2) The board shall adopt written examinations for apprentice auctioneers and auctioneers and establish standards for acceptable performance.

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

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

(b) ethical practices for auctioneers; and

(c) the mathematics relating to the auction business.

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

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

**NEW SECTION. Section 13. Issuance of license -- renewal.** (1) The board shall issue a license and a pocket card to any person who meets the licensure requirements of [this act] upon payment of the required fee.

(2) (a) The license must include the dates of issuance and renewal of the license.

(b) The licensee shall conspicuously display the license in his principal place of business.

(3) A license issued under [this act] expires each year and must be renewed annually, and a renewal fee must be paid annually. The board may provide for late renewal of a

license upon the payment of a late fee in accordance with its rules, but no late renewal of a license may be granted more than 5 years after its expiration.

**NEW SECTION. Section 14. Reciprocity.** (1) A person holding an auctioneer license in another state may conduct an auction in this state without becoming licensed in this state if he satisfies the requirements of this section.

(2) He shall provide to the board:

(a) evidence of his licensure as an auctioneer in another state;

(b) information concerning the time, date, and place of any auction he plans to conduct in this state; and

(c) any other information the board considers necessary.

(3) In addition, he shall file an irrevocable consent providing that a civil action may be commenced against the applicant in any competent court in this state by the service upon the secretary of state of Montana of any summons, process, or pleading authorized by the laws of this state. The applicant shall stipulate that the service of summons, process, or pleadings upon the secretary of state may be held to be valid and binding as if it had been made upon the applicant in this state. If service is made upon the secretary of state, it must be by duplicate copies of which one copy must be retained in the board's office and

the other must be immediately forwarded by certified mail to the last-known address of the applicant.

**NEW SECTION. Section 15. Principal place of business** -- change in place of business. (1) An auctioneer licensed under [this act] shall maintain a principal place of business in this state unless he is a nonresident.

(2) If a licensee changes his principal place of business, he shall notify the board of the change.

**NEW SECTION. Section 16. Auction agreement required** -- advertising -- records. (1) A person may not conduct an auction in this state unless he first executes a written agreement with the owner of the property to be sold. The agreement must contain the terms and conditions upon which the auctioneer received the goods for sale. The auctioneer shall provide the owner with a copy of the written agreement and retain a copy for his records for at least 2 years from the date of the agreement.

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

(a) the name of the property owner;

(b) the name, address, and telephone number of the auctioneer or firm conducting the auction; and

(c) the auctioneer's license number.

(3) A licensee must maintain accurate records upon the receipt of goods for auction. The records must contain the

1 following:

- 2 (a) the name and address of the person who employed  
3 him to sell the goods at auction;  
4 (b) the name and address of the property owner;  
5 (c) the names and addresses of the purchasers of the  
6 goods sold at auction; and  
7 (d) the total auction records, including clerk sheets  
8 and settlement statements, of each auction.

9 **NEW SECTION. Section 17.** Denial, suspension, or  
10 revocation of license -- grounds -- procedure. (1) The board  
11 may refuse to renew a license or may revoke or suspend the  
12 license of any licensee under [this act] for any of the  
13 following:

- 14 (a) obtaining a license through false or fraudulent  
15 representation;  
16 (b) failing to account for or remit, within a  
17 reasonable time, any money belonging to other persons that  
18 comes into the licensee's possession;  
19 (c) commingling funds of any other person with the  
20 licensee's or failing to keep the funds of another person in  
21 an escrow or trust account;  
22 (d) paying valuable consideration to any other person  
23 to perform services that violate [this act];  
24 (e) being convicted in a court of competent  
25 jurisdiction in this or any other state of a criminal

1 offense involving moral turpitude;

- 2 (f) violating any rule of the board;  
3 (g) using misleading or untruthful advertising; or  
4 (h) committing any act relating to the occupation of  
5 auctioneering that is dishonest, fraudulent, or incompetent.  
6 (2) Denial, suspension, or revocation of a license is  
7 permissible only after a hearing and procedures that comply  
8 with the applicable requirements of the Montana  
9 Administrative Procedure Act.

10 (3) One year after suspension or revocation, a person  
11 may apply for reinstatement of his license. The board in its  
12 discretion may require an examination for reinstatement.

13 **NEW SECTION. Section 18.** Fees -- deposit or fees. (1)  
14 Each person who applies for licensure under [this act] must,  
15 at the time of application, pay a fee prescribed by the  
16 board.

17 (2) Fees collected by the department under [this act]  
18 must be deposited in the state special revenue fund for the  
19 use of the board, subject to 37-1-101(6), and may be used to  
20 pay the compensation of members of the board and other  
21 expenses necessary to administer [this act].

22 **NEW SECTION. Section 19.** Penalty. A person convicted  
23 of violating any of the provisions of [this act] or Title  
24 30, chapter 11, part 5, is guilty of a misdemeanor.

25 **NEW SECTION. Section 20.** Grandfather provision. (1)

1 An applicant for licensure who furnishes proof to the board  
 2 that he has been actively engaged in the business of  
 3 auctioneering for at least 1 year prior to his application  
 4 and has been the principal auctioneer in at least five  
 5 commercially viable auctions during that period may be  
 6 licensed without taking the examination provided for in  
 7 [section 12].

8 (2) The applicant shall file his application no later  
 9 than 6 months after [the effective date of this act]. His  
 10 application must be accompanied by a bond and the license  
 11 fee.

12 NEW SECTION. **Section 21. Repealer.** Sections 30-11-508  
 13 through 30-11-510 and 30-11-513 through 30-11-515, MCA, are  
 14 repealed.

15 NEW SECTION. **Section 22. Exemption from sunrise audit**  
 16 **requirement.** [This act] is exempt from the legislative audit  
 17 committee report provided for in 2-8-203, MCA.

18 NEW SECTION. **Section 23. Codification instruction.**  
 19 [Section 2] is intended to be codified as an integral part  
 20 of Title 2, chapter 15, part 18, and the provisions of Title  
 21 2, chapter 15, part 18, apply to [section 2].

22 NEW SECTION. **Section 24. 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

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 SB319, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

SB319 would provide for the licensure and regulation of auctioneers, creating a Board of Auctioneers, providing for fees and penalties and for an exemption from the sunrise audit requirement.

ASSUMPTIONS:

1. The five-member board will meet at least three times during FY90 and twice during FY91 to develop rules, implement the grandfather clause, develop both an auctioneer and apprentice auctioneer examination and address possible problems concerning the issuance of licenses. The board compensation will be \$1,500 in FY90 and \$1,000 in FY91.
2. Assume an average of 350 miles per board member to attend meetings.
3. It will cost a minimum of \$2,500 to develop the required examinations.
4. There are likely to be three hearings in FY90 requiring two days work at \$25 per hour and at least one hearing in FY91 requiring two days work, plus costs for rules, pocket cards, list of auctioneers.
5. The support staff and overhead costs of the Professional and Occupational Licensing Bureau will equal 41% of the board's budget.
6. Assume a general fund loan will be available for start-up funds. Assume this will be required for both years of the 1991 biennium because the development costs are significant in comparison to the number of licensees.
7. Assume there will be 25 licensees with an initial license fee of \$350 per year, which could possibly be lowered to \$250 per licensee per year after the 1991 biennium start-up loan is repaid.

FISCAL IMPACT:

<u>Expenditures:</u>	<u>FY90</u>			<u>FY91</u>		
	Current	Proposed		Current	Proposed	
Dept. of Commerce, POL	<u>Law</u>	<u>Law</u>	<u>Difference</u>	<u>Law</u>	<u>Law</u>	<u>Difference</u>
Personal Services	\$ -0-	\$ 1,500	\$ 1,500	\$ -0-	\$1,000	\$1,000
Operating Expenses	-0-	11,141	11,141	-0-	3,667	3,667
Total	\$ -0-	\$12,641	\$12,641	\$ -0-	\$4,667	\$4,667
<u>Funding:</u>						
General Fund Loan	\$ -0-	\$12,641	\$12,641	\$ -0-	\$4,667	\$4,667
<u>Revenue:</u>						
State Special License Fees	\$ -0-	\$ 8,750	\$ 8,750	\$ -0-	\$8,750	\$8,750
General Fund	-0-	3,891	3,891	-0-	(3,891)	(3,891)
Total	\$ -0-	\$12,641	\$12,641	\$ -0-	\$4,859	\$4,859

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Due to the number of bills which may increase the duties of the POL Bureau, the entire group of added board responsibilities may require additional staff towards the end of the session when all can be considered together.



DATE 2/9/89

RAY SHACKLEFORD, BUDGET DIRECTOR  
OFFICE OF BUDGET AND PROGRAM PLANNING



DATE 2/9/89

Fiscal Note for SB319, as introduced

5B 319