

2023 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1191

2023 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Room JW327C, State Capitol

HB 1191
01/17/2023

Relating to auctioneers' and clerks' licenses; to provide a penalty; to provide an appropriation; and to provide for application.

Vice Chairman Ostlie called to order 10:02 AM

Members Present: Chairman Louser, Vice Chairman Ostlie, Representatives Boschee, Christy, Dakane, Johnson, Kasper, Koppelman, Ruby, Schauer, Thomas, Tveit, Wagner.
Member Absent: Warrey.

Discussion Topics:

- Industry related board
- Internet auctions
- Licensing
- Bonding insurance.
- Annual Auctioneers meeting
- Buyer's remorse
- Ethics and standards
- Contract terms
- Auction law
- Credit card processors

In favor:

Representative Louser, District 5 is the prime sponsor of the bill (no written testimony)
Randy Christmann, Commissioner, Public Service Commission #13690
Wayne Trottier, Past president of the ND Auctioneers Association (no written testimony)
Julie Fedorchak, Commissioner, Public Service Commission (no written testimony)

Opposed:

Terry Moe, Acting President of the ND Auctioneers Association (no written testimony)
Neil Effertz, Livestock Auctioneer (no written testimony)
Shane Wolff, Wolff Auctioneers, Golden Valley (no written testimony)
Ben Stiegelmeier, Auctioneer licensed in ND and VA #13714

Additional written testimony:

Heather Weishaar, Weishaar Clerking Services, LLC #13397
Larry Schnell, Past President of the ND Auctioneers Association #13552
Yvette VanderBrink, auctioneer #13755

Chairman Louser adjourned the meeting 11:27 AM

Diane Lillis, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Room JW327C, State Capitol

HB 1191
02/07/2023

Relating to auctioneers' and clerks' licenses; to provide a penalty; to provide an appropriation; and to provide for application.

Chairman Louser called to order 10:12 AM

Members Present: Chairman Louser, Vice Chairman Ostlie, Representatives Boschee, Christy, Dakane, Johnson, Koppelman, Ruby, Schauer, Thomas, Tveit, Wagner, Warrey.
Member Absent: Representative Kasper

Discussion Topics:

- Registration
- Sole proprietor
- Insurance
- Eliminating bonding

Terry Moe, President of the ND Auctioneers Association (no written testimony) available to answer questions.

Randy Christmann, Public Service Commissioner (no written testimony) available to answer questions.

Chairman Louser recessed the meeting 10:54 AM

Diane Lillis, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Room JW327C, State Capitol

HB 1191
02/08/2023

Relating to auctioneers' and clerks' licenses; to provide a penalty; to provide an appropriation; and to provide for application.

Chairman Louser called to order 10:09 AM

Members Present: Chairman Louser, Vice Chairman Ostlie, Representatives Boschee, Christy, Dakane, Johnson, Kasper, Koppelman, Ruby, Schauer, Thomas, Tveit, Wagner, Warrey.

Discussion Topics:

- Registration
- Self-regulation
- Insurance requirement
- Proposed amendment

Randy Christmann, Public Service Commissioner proposed amendment, #19888

Chairman Louser adjourned the meeting 10:23 AM

Diane Lillis, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Room JW327C, State Capitol

HB 1191
02/14/2023

Relating to auctioneers' and clerks' licenses; to provide a penalty; to provide an appropriation; and to provide for application.

Chairman Louser called to order 4:01 PM

Members Present: Chairman Louser, Vice Chairman Ostlie, Representatives Boschee, Christy, Dakane, Johnson, Kasper, Koppelman, Ruby, Schauer, Thomas, Tveit, Warrey.

Member Absent: Representative Wagner

Discussion Topics:

- Committee action

Representative Louser proposed amendment LC #23.0560.01001

Representative Ostlie moved to adopt the amendment.
Representative Koppelman seconded.

Roll call vote:

Representatives	Vote
Representative Scott Louser	Y
Representative Mitch Ostlie	Y
Representative Josh Boschee	Y
Representative Josh Christy	Y
Representative Hamida Dakane	Y
Representative Jorin Johnson	N
Representative Jim Kasper	Y
Representative Ben Koppelman	Y
Representative Dan Ruby	Y
Representative Austen Schauer	AB
Representative Paul J. Thomas	Y
Representative Bill Tveit	Y
Representative Scott Wagner	AB
Representative Jonathan Warrey	Y

Motion passed 11-1-2

Representative Ostlie moved a do pass as amended.
Representative Christy seconded.

Roll call vote:

Representatives	Vote
Representative Scott Louser	Y
Representative Mitch Ostlie	Y
Representative Josh Boschee	Y
Representative Josh Christy	Y
Representative Hamida Dakane	Y
Representative Jorin Johnson	N
Representative Jim Kasper	Y
Representative Ben Koppelman	Y
Representative Dan Ruby	Y
Representative Austen Schauer	AB
Representative Paul J. Thomas	Y
Representative Bill Tveit	Y
Representative Scott Wagner	AB
Representative Jonathan Warrey	Y

Motion passed 11-1-2

Representative Ostlie will carry the bill.

Chairman Louser adjourned the meeting 4:06 PM

Diane Lillis, Committee Clerk

4A
2-14-23

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1191

Page 1, line 1, remove "to create and enact a new chapter to title 43 of the North Dakota Century"

Page 1, line 2, remove "Code, relating to regulation of auctioneers and clerks;"

Page 1, line 3, replace the second "section" with "sections"

Page 1, line 3, after "49-07-01.1" insert ", 51-05.1-01, 51-05.1-01.2, 51-05.1-04.1, and 51-05.1-05"

Page 1, line 4, after "licenses" insert ", the registration of auctioneers,"

Page 1, line 4, replace "chapter 51-05.1" with "sections 51-05.1-01.1, 51-05.1-02, 51-05.1-02.1, and 51-05.1-03"

Page 1, line 5, remove "to provide a penalty; to"

Page 1, line 6, replace "provide an appropriation; and to provide for application" with "and to provide an effective date"

Page 9, remove lines 1 through 30

Page 10, remove lines 1 through 31

Page 11, remove lines 1 through 12

Page 11, after line 26, insert:

"SECTION 3. AMENDMENT. Section 51-05.1-01 of the North Dakota Century Code is amended and reenacted as follows:

51-05.1-01. Auctioneering or clerking without a license prohibited-Registration.

~~No~~A person may not conduct a sale as an auctioneer or clerk unless licensed by the ~~public service commission~~registered with the secretary of state.

SECTION 4. AMENDMENT. Section 51-05.1-01.2 of the North Dakota Century Code is amended and reenacted as follows:

51-05.1-01.2. Exemptions.

~~A license~~Registration under this chapter is not required for the following:

1. Sale of an estate by an executor or an administrator.
2. Sale by a sheriff or other person under court order.
3. Sale by a public official acting in an official capacity.
4. Sale of purebred or registered livestock.

~~A bond is not required for a federally insured financial institution to clerk a sale. Persons exempt from licensing or bonding under this section shall comply with all other provisions of this chapter.~~

04
2-14-23

SECTION 5. AMENDMENT. Section 51-05.1-04.1 of the North Dakota Century Code is amended and reenacted as follows:

51-05.1-04.1. Written contracts.

An auctioneer may not sell the property of another at auction without a prior written contract with the seller which sets forth the terms and conditions upon which the auctioneer will sell the property. A similar contract governing the activities of the auction clerk is required between the auction clerk and the seller. ~~The licensee must~~ an auctioneer and clerk shall retain a copy of each contract for at least two years after the auction. This section does not apply to consignment sales when the value of the seller's property is less than five hundred dollars or to livestock markets. The contract must contain:

1. ~~The licensee's~~ an auctioneer's or clerk's name, trade or business name, state license number, business address, and business telephone number.
2. A general description of the property to be sold at auction, any restrictions, and a statement identifying whether ~~or not the licensee~~ an auctioneer or clerk is authorized to purchase at the auction.
3. A description of the services to be provided and the consideration for the services. The description must state which party is responsible for advertising and other expenses.
4. The date or dates when the items will be sold at auction.
5. ~~A disclosure of the amount of bond that the licensee has on file with the commission and the commission's address and telephone number.~~

SECTION 6. AMENDMENT. Section 51-05.1-05 of the North Dakota Century Code is amended and reenacted as follows:

51-05.1-05. Handling of funds by clerk of auction sale.

Every clerk of an auction sale, ~~at all times,~~ shall maintain in the clerk's name or firm name, a separate trust account designated as such in a federally insured bank or other federally insured depository in this state in which the clerk immediately shall deposit all funds not the clerk's own, including funds in which the clerk may have some future interest or claim. A federally insured depository located outside the state ~~but licensed as a clerk in this state~~ is not required to deposit funds in a depository in this state if auction sale funds are deposited in a separate trust account designated ~~as such in the licensee's~~ in the clerk's depository. A clerk may not commingle the clerk's personal funds or other funds in a trust account except that a clerk may deposit and keep a sum of one thousand dollars in ~~such the~~ such the account from the clerk's personal funds, which sum must be specifically identified and deposited to cover service charges related to the trust account. In conjunction with ~~such the~~ such the account, the clerk shall maintain at the clerk's usual place of business books, records, and other documents so that the adequacy of ~~such the~~ such the account may be determined at any time. ~~Trust accounts and other records must be open to inspection by the public service commission and its~~

~~duly authorized agents at all times during regular business hours at the clerk's usual place of business."~~

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2-14-23

Page 11, line 27, replace "Chapter 51-05.1" with "Sections 51-05.1-01.1, 51-05.1-02, 51-05.1-02.1, and 51-05.1-03"

Page 11, line 27, replace "is" with "are"

Page 11, remove lines 28 through 30

Page 12, replace lines 1 through 5 with:

"SECTION 8. EFFECTIVE DATE. This Act becomes effective on January 1, 2024."

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1191: Industry, Business and Labor Committee (Rep. Louser, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 1 NAY, 2 ABSENT AND NOT VOTING). HB 1191 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "to create and enact a new chapter to title 43 of the North Dakota Century"

Page 1, line 2, remove "Code, relating to regulation of auctioneers and clerks;"

Page 1, line 3, replace the second "section" with "sections"

Page 1, line 3, after "49-07-01.1" insert ", 51-05.1-01, 51-05.1-01.2, 51-05.1-04.1, and 51-05.1-05"

Page 1, line 4, after "licenses" insert ", the registration of auctioneers,"

Page 1, line 4, replace "chapter 51-05.1" with "sections 51-05.1-01.1, 51-05.1-02, 51-05.1-02.1, and 51-05.1-03"

Page 1, line 5, remove "to provide a penalty; to"

Page 1, line 6, replace "provide an appropriation; and to provide for application" with "and to provide an effective date"

Page 9, remove lines 1 through 30

Page 10, remove lines 1 through 31

Page 11, remove lines 1 through 12

Page 11, after line 26, insert:

"SECTION 3. AMENDMENT. Section 51-05.1-01 of the North Dakota Century Code is amended and reenacted as follows:

51-05.1-01. Auctioneering or clerking without a license prohibited-Registration.

~~No~~A person may not conduct a sale as an auctioneer or clerk unless licensed by the public service commission registered with the secretary of state.

SECTION 4. AMENDMENT. Section 51-05.1-01.2 of the North Dakota Century Code is amended and reenacted as follows:

51-05.1-01.2. Exemptions.

~~A license~~Registration under this chapter is not required for the following:

1. Sale of an estate by an executor or an administrator.
2. Sale by a sheriff or other person under court order.
3. Sale by a public official acting in an official capacity.
4. Sale of purebred or registered livestock.

~~A bond is not required for a federally insured financial institution to clerk a sale. Persons exempt from licensing or bonding under this section shall comply with all other provisions of this chapter.~~

SECTION 5. AMENDMENT. Section 51-05.1-04.1 of the North Dakota Century Code is amended and reenacted as follows:

51-05.1-04.1. Written contracts.

An auctioneer may not sell the property of another at auction without a prior written contract with the seller which sets forth the terms and conditions upon which the auctioneer will sell the property. A similar contract governing the activities of the auction clerk is required between the auction clerk and the seller. ~~The licensee-~~
~~must~~the auctioneer and clerk shall retain a copy of each contract for at least two years after the auction. This section does not apply to consignment sales when the value of the seller's property is less than five hundred dollars or to livestock markets. The contract must contain:

1. ~~The licensee's~~the auctioneer's or clerk's name, trade or business name, state license number, business address, and business telephone number.
2. A general description of the property to be sold at auction, any restrictions, and a statement identifying whether ~~or not the licensee~~the auctioneer or clerk is authorized to purchase at the auction.
3. A description of the services to be provided and the consideration for the services. The description must state which party is responsible for advertising and other expenses.
4. The date or dates when the items will be sold at auction.
5. ~~A disclosure of the amount of bond that the licensee has on file with the commission and the commission's address and telephone number.~~

SECTION 6. AMENDMENT. Section 51-05.1-05 of the North Dakota Century Code is amended and reenacted as follows:

51-05.1-05. Handling of funds by clerk of auction sale.

Every clerk of an auction sale, ~~at all times,~~ shall maintain in the clerk's name or firm name, a separate trust account designated as such in a federally insured bank or other federally insured depository in this state in which the clerk immediately shall deposit all funds not the clerk's own, including funds in which the clerk may have some future interest or claim. A federally insured depository located outside the state ~~but licensed as a clerk in this state~~ is not required to deposit funds in a depository in this state if auction sale funds are deposited in a separate trust account designated ~~as such in the licensee's~~ in the clerk's depository. A clerk may not commingle the clerk's personal funds or other funds in a trust account except that a clerk may deposit and keep a sum of one thousand dollars in ~~such~~the account from the clerk's personal funds, which sum must be specifically identified and deposited to cover service charges related to the trust account. In conjunction with ~~such~~the account, the clerk shall maintain at the clerk's usual place of business books, records, and other documents so that the adequacy of ~~such~~the account may be determined at any time. ~~Trust accounts and other records must be open to inspection by the public service commission and its duly authorized agents at all times during regular business hours at the clerk's usual place of business."~~

Page 11, line 27, replace "Chapter 51-05.1" with "Sections 51-05.1-01.1, 51-05.1-02, 51-05.1-02.1, and 51-05.1-03"

Page 11, line 27, replace "is" with "are"

Page 11, remove lines 28 through 30

Page 12, replace lines 1 through 5 with:

"SECTION 8. EFFECTIVE DATE. This Act becomes effective on January 1, 2024."

Renumber accordingly

2023 SENATE WORKFORCE DEVELOPMENT

HB 1191

2023 SENATE STANDING COMMITTEE MINUTES

Workforce Development Committee Fort Lincoln Room, State Capitol

HB 1191
3/9/2023

Relating to criminal history record checks of licenses, the registration of auctioneers, and cross-references; and relating to auctioneers' and clerks' licenses; and to provide an effective date.

10:15 AM **Chairman Wobbema** called the hearing to order. **Senators Wobbema, Axtman, Elkin, Larson, Sickler, Piepkorn** were present.

Discussion Topics:

- Licensing board
- Inspecting and safety
- Auctioneer and clerk regulations
- Auctioneers board commission association
- Registration requirements

10:15 AM **Randy Christmann, Chair Public Commissioner**, testified in favor. #23182

10:26 AM **Terry Moe, President, North Dakota Auctioneers Association**, testified in favor verbally.

10:30 AM **Randy Christmann**, provided additional information verbally.

10:35 AM **Michael Monroe, Business Services Director, Office of Secretary of State**, testified neutral. #23354

Senator Wobbema called for discussion.

Senator Axtman moved to adopt amendment on page 10 - strike 11 & 12. #23354

Senator Sickler seconded the motion.

Roll call vote.

Senators	Vote
Senator Michael A. Wobbema	Y
Senator Michelle Axtman	Y
Senator Jay Elkin	Y
Senator Diane Larson	Y
Senator Merrill Piepkorn	Y
Senator Jonathan Sickler	Y

Motion passed 6-0-0.

Senator Axtman moved **DO PASS** as **AMENDED**.

Senator Piepkorn seconded the motion.

Roll call vote.

Senators	Vote
Senator Michael A. Wobbema	Y
Senator Michelle Axtman	Y
Senator Jay Elkin	Y
Senator Diane Larson	Y
Senator Merrill Piepkorn	Y
Senator Jonathan Sickler	Y

Motion passed 6-0-0.

Senator Piepkorn will carry HB 1191.

10:49 AM **Chairman Wobbema** closed the meeting.

Patricia Lahr, Committee Clerk

AG
3-9-23
(1-1)

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1191

Page 10, line 11, overstrike "state license"

Page 10, line 12, overstrike "number,"

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1191, as engrossed: Workforce Development Committee (Sen. Wobbema, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1191 was placed on the Sixth order on the calendar. This bill affects workforce development.

Page 10, line 11, overstrike "state license"

Page 10, line 12, overstrike "number,"

Renumber accordingly

TESTIMONY

HB 1191

**Written Testimony on HB 1191: RELATING TO REGULATION OF AUCTIONEERS
AND CLERKS**

TO: House Industry, Business and Labor Committee

FROM: Heather Weishaar, Weishaar Clerking Services, LLC, Sentinel Butte, ND

Mr. Chairman, and members of the committee, my name is Heather Weishaar from Sentinel Butte. My husband Scott and I own and operate Weishaar Auction Services, an independent, family-owned business started by Scott's family in the 1930's. We conduct livestock, real estate, and equipment auctions throughout North Dakota, South Dakota and Montana.

We are adamantly opposed to HB 1191 as currently written. It is our understanding that the North Dakota Public Service Commission (PSC) wishes to transfer the obligations of licensing auctioneers and clerks to a new five-person Commission appointed by the Governor.

As you are aware, the PSC hosted a meeting in October 2022 to get ideas from auctioneers and clerks on how to take the next step in relieving the PSC from these duties. We were unable to attend that meeting in person, but did participate on the phone-in and listened to the meeting. The meeting was poorly attended. As I listened in, only a few ideas and not many solutions were offered. The issue was tabled in hopes that ideas from the auctioneers and/or from the auctioneer's association would be submitted with the possibility that another meeting could be scheduled. Unfortunately, there were no ideas submitted any time after the October meeting, nor was another meeting scheduled, and my comments and questions remained on my desk and were never shared until now. In the interest of developing a more equitable solution than HB 1191 for auctioneers and the public statewide, I would like to share the following information and thoughts:

HISTORY/PURPOSE OF ND AUCTIONEER LICENSING & BONDING

Licensing: In researching possible solutions, I asked the PSC when they began licensing auctioneers and was told the authority was transferred to the Public Service Commission in 1957 (35th Legislative Session). Prior to 1957, the authority to license auctioneers resided at the county level. I have not been able to find **WHY** the licensing began or the purpose of it. I have asked the PSC and older auctioneers, and no one knows **WHY**. At the PSC meeting in October, an attendee commented that they thought having the license/bond gives us some credibility, but I'm not sure it does or really what it does. Reputation and word of mouth I believe has more to do with credibility than a number behind our name. The Weishaar family auction business has been in business since the 1930's, has three generations of auctioneers, and continues today. In most instances, if an auction company or any business has a continued poor standard of practice, it will catch up to them by word of mouth before the state finds out.

As it stands right now, if our auction service decides to change the way we do personal property sales from live auctions to strictly online (which there are several companies doing), I won't need the state-issued license or bond, and we will be able to continue our business, strictly based on name and reputation, not because I have a state given number behind my name.

Also, to note we also do several livestock auctions, and livestock auctioneers are EXEMPT from the licensing requirements.

Bonds: As we all are completely aware, the auctioneer/clerk bonds we are required to hold are completely inadequate to the dollar amount of what a sale gross is today. I also wonder how much protection if any, does a bond really give us?

If the licensing requirement and bonding stands, then I also believe the standard needs to be determined per auction company and not a "one-size-fits-all." Each company determines their own size bond needed. How do you determine the bond amount for a auctioneer who doesn't sell much, is just hired per sale vs one who owns his own company and has liabilities? If the state licensing is halted, the bonds can be a company's decision as to whether they want continue to carry a bond and or the size they feel necessary.

I also hope each auction company in some capacity carries liability insurance, because they are different than a bond. Each company's decision on how to protect themselves is their responsibility and the safety of doing business in any compacity should not be determined at a state level. If the licensing is dropped, then that also relieves the state of any consequences of the business' wrong-doings.

LICENSING REQUIREMENTS IN OTHER STATES

I also researched how many other states have licensing requirements and found reputable information on the website of Western College of Auctioneering in Montana. They have people from all over the US in attendance to their school and this information would be necessary information after auctioneer school for their own state.

States that require a License:

24 – Yes

11 of the 24 – Yes Online License

26 – No

- **20 of the 24 requiring licenses have Reciprocity with several other states**
- **4 of the 24 licensing have NO Reciprocity (North Dakota, Maine, Vermont & Washington)**
- **North Dakota's border states DO NOT require licensing: Montana, South Dakota & Minnesota***

*There may be county fees/registrations, tax licensing requirements or workman's compensation requirements for these states, but those would also be required for most businesses in those states and are not specific to auctions.

Our company does several auction sales in South Dakota and we hire on occasion South Dakota auctioneers to help with those sales. These auctioneers are established auctioneers/friends in the auction business. Most of them are livestock auctioneers, own a livestock auction market in South Dakota themselves, and/or help other auction companies in the state. When we need help in North Dakota for personal property/equipment sales, **we cannot hire those auctioneers unless they have their ND license.** Some have gone through the process and gotten their ND license, but others refuse to get it for one of the three reasons:

- 1) "If I don't need it in SD, why do I need it in ND, I'm not going to use it that much!"
- 2) Paperwork!!!
- 3) They have gotten the ND license and forgot to renew it.

You could say, "Hire ND auctioneers," and we do. However, for certain sales you need 1 or 2 more auctioneers. You can't hire the unexperienced for certain sales, someone who already has a sale, or hire the competition, which severely limits the availability of help that is both qualified and licensed.

For companies like ours that are not big, and don't have several auctioneers on our payroll waiting to work, we have to hire extra outside help from time to time and in these situations the licensing makes this very difficult.

CONCERNS WITH A GOVERNOR-APPOINTED BOARD

As a small independent auction business, we have grave concerns that if created, this new board will include representatives from only the top 5 largest auction companies in the state, and that small independent businesses will be unrepresented. This will allow the "big 5" to create rules and regulations in their favor and basically weed-out the smaller companies, keeping a close eye on ALL but themselves. Allowing only the largest companies to control who can or can't do auctions in our state will eliminate competition, could make it impossible for a new auctioneer to get started in the business, and may create serious negative impacts to the overall public interest.

The current bill draft proposed three-year terms for appointees to the licensing commission. It is unclear as to whether this will include any term limits which is another critical detail that should be addressed if this bill is allowed to proceed.

We are fully aware that this bill doesn't have a lot of direction yet and there are a lot of other unanswered questions. If allowed to proceed, I ask you all to consider whether the time, expense and administrative overhead required to establish this new board is worth it to the state and the public. How much government control do we need in a business that has a long history of not having many problems to begin with? I realize problems

can and will arise, but as diversified as the auction business has gotten, how much does the state really want to control or be vested?

If the PSC feels it absolutely cannot continue with its current licensing duties, then I urge the PSC and this Committee to simply discontinue licensing requirements altogether rather than creating more red tape with potentially dire consequences for our state's small auction businesses.

If you feel licensing is required to maintain protections for the public, then I ask that in place of HB 1191, you consider a study bill to look at this issue further and propose a more equitable and well-thought-out solution. The North Dakota Auctioneers Association should be allowed time to organize its members (of all sizes) and get those members involved, set standards and practices, share ideas, act as the State's watchdog, and advocate for the auction industry in North Dakota rather than relying on State Government to step in and take control over small independent business.

Respectfully submitted,

Heather Weishaar

PH: 701-872-5299 or 701-876-9023

Written Testimony on HB 1191: RELATING TO REGULATION OF
AUCTIONEERS AND CLERKS

TO: House Industry, Business and Labor Committee

FROM: Larry Schnell, 2537 8th St SE, Dickinson, ND 58601

Chairman Louser and members of the committee:

I write in opposition to HB 1191.

I have been an auctioneer in North Dakota for the past 45 years; I am a past president of the ND Auctioneers Association; recent past president of the (National) Livestock Marketing Association and current Chairman of the Board; current president of the ND Livestock Marketing Association, and recently retired Partner and General Manager of Stockmen's Livestock Exchange in Dickinson.

HB 1191 looks to me to be an attempt by the PSC to shed themselves of the responsibility of the licensing of auctioneers and clerks in the state, and I don't blame them. If I understand correctly, there are about 240 licensed auctioneers and 110 clerks licensed in the state, and each of those would include some from other states who do business in this state.

My opinion is this: Rather than create another unwieldy bureaucratic entity that will only add to the cost of doing business in our state, why not do as all of our bordering states and eighteen other states have done: Stop licensing auctioneers and auction clerks.

The way to do this is to research our neighboring states laws to determine how they handle problems that arise in the auction process, and I think you'll find that the UCC code takes care of those problems, and if it doesn't, the code could be amended, rather than create a whole new and unneeded process. There is no need to reinvent the wheel.

One additional reason to do away with the current and proposed licensing: Internet auctions are excluded from the law, and we all know why: ebay and other entities like them. And if no law is good for ebay, why shouldn't it be good for the rest of us who do business in this state.

Thank you for your consideration.

Larry Schnell

House Bill 1191

Presented by: Randy Christmann, Commissioner
Public Service Commission

Before: House Industry Business and Labor Committee
Honorable Scott Louser, Chair

Date: January 17, 2023

TESTIMONY

Mr. Chair and members of the committee, I'm Randy Christmann, chair of the Public Service Commission (Commission), here to testify in favor of HB 1191.

The jurisdictions vested in the Commission by this body all generally relate to economic and commercial regulation, environmental preservation, and the safety of the public. The programs housed within the Commission generally all have a common nexus and work in relation to each other. The benefit of this is that synergies can be pulled from the multidisciplinary staff maintained by the agency. However, there is one Commission program that is outside the agency's core competencies and administration.

The Commission currently acts as a professional licensing board for the state's auctioneers and auction clerks. This includes issuing licenses, bonding, setting standards for contracts and the handling of funds, and processing complaints against licensed auctioneers and auction clerks. Although we receive very few complaints and the overwhelming majority of our auctioneers and auction clerks serve the public well and have been great to work with, occasionally issues do arise or industry norms change. Due to the organization of the agency, the

same staff that works with inspecting and enforcing the safety of natural gas pipelines also are the ones licensing and monitoring auctioneers.

Like most professions, the business and practices of auctions have advanced quickly with technology. After the use of Ebay and others became prominent, the Commission proposed and the Legislature passed SB 2086 in 2011 which exempted internet auctions from Commission jurisdiction. Today many auctioneers, including many of our licensees, hold auctions that are online only. Those are generally not jurisdictional to us, even when they are held by our licensees. However, at times there are minute differences based on unique practices that determine whether a sale meets the definition of an auction or whether an auction is "internet only." We believe this causes a great deal of confusion among people seeking an auction service to sell their property as well as people who make purchases at the auctions.

This is an example of why we believe licensing and regulation of auctioneers and auction clerks may be better addressed by a professional board invested in the nuances of the business. Such a Board would also be well prepared to adopt Administrative Rules, educate licensees, and assure appropriate bonding levels.

There are 24 states, including North Dakota, that license auctioneers at the state level. Of the 24 states, 15 of the states have, in some form, an auction board. States that do not have a professional board to license auctioneers, like Minnesota and Montana, generally allow local governments to regulate and license auctions

and auctioneers. Others, like South Dakota, have no licensing requirement. As you can see, North Dakota is an outlier.

Due to these circumstances, the commission believes that it is an appropriate time to discuss whether the legislature would like the commission to continue with the program, or whether a different arrangement would be better suited to license and regulate auctioneers and auction clerks.

This concludes my testimony. Thank you for your time and I am available for questions.

Mr. Chairman and Members of the committee,

Ben Stiegelmeier, Harvey, ND.

I am a young auctioneer with my own business based in Harvey, North Dakota. I also help other auctioneers around the state. I have been in the business for 7 years. I am licensed and bonded in ND, and Virginia. I have conducted auctions in ND, SD, VA, and UT. I utilize both online and traditional auction methods and reach buyers across the country and around the globe. HB 1191 will harm the auction industry and will not protect the public as it is intended. If it becomes law, it would prevent some future young, first-generation auctioneers like myself from being part of this great and important profession.

I have spoken with many auctioneers over this last couple of weeks about HB 1191 and these are some of our thoughts and concerns.

1. The PSC has been doing a great job regulating in-person auctions.
2. There are few complaints against auctioneers and less payouts on the bond.
3. The structure of the proposed auctioneers board would not be "self-regulating" the auction industry. Instead, Auctioneers regulating auctioneers is a conflict of interest and would decrease competition.
4. The proposed auctioneers board would increase barriers to entry for people like myself and not represent or protect consumers.
5. The proposed board would cost the taxpayers more with no benefit to the public.
6. The proposed board does not regulate online auctions which are most of the auction industry in our state.
7. Either regulate traditional auctions and online auctions in an equitable way or deregulate the whole industry.

I would be happy to visit with you and share more on the background of the bill and how it will affect the auction industry and the public. Please vote Do Not Pass on HB 1191. Thank you!

Respectfully,

Ben Stiegelmeier
605-850-1330

I am writing in response to HB1191 regarding the background checks and license law with auctioneers. Less than half of the states in the United States have auctioneer's licenses. I personally am licensed in 8 states and over the years many of those states have discontinued their auctioneer's licenses because of low numbers and the cost to maintain the board and licenses, it's not effective or efficient. Also, with the advent of 85% of all auctioneers in the U.S. since 2020, are now Online only auctions/auctioneers, the auctioneer's license doesn't relate or relevant. With the advent of the internet and the boom of online auctions, especially since the 2020 pandemic, more people are doing their own auctions, created auction platforms, or merged to create large auction companies that are online only. There are so many Online platforms that people and auctioneer's use that do not require a license or are not regulated such as, Hemmings Motor news is doing Online auctions, Bring a Trailer, K-Bid, and others. It is this that many states are discontinuing auctioneer's license, also. How can you regulate Ebay and other similar platforms in all states, with multiple sellers and bidders. It's just not possible. Technology and the changing auction atmosphere, as made it difficult and unnecessary for auction personal property license law.

I do agree, that auctioneer's that sell real estate, should work with or be a licensed broker or broker associate. I am a broker in SD and MN and Feel that this is important when dealing with potential million dollar deals apposed to an auctioneer that sells personal property. I also think that auctioneer's that sell personal property being licensed isn't needed when NO ONE else has a license and able to sell with various platforms. I am not sure if a clerk license is needed as with the trend of the majority of auctions being online.

Also, with the advent of many online auctions and platforms, more and more states are discontinuing their license law and education requirements. It just isn't fair to have license law for auctioneer's while ever other state and everyone doesn't regulate online sales. It seems to penalize auctioneers. Ohio, just dropped their Bond requirement for auctioneers and working on not having license law. They have the most auctioneers in the US. They do still require those selling real estate to have a real estate license.

Therefore, I think that auctioneer's that sell real estate at auction should have a Broker's license or work with a broker. But the personal property auctioneer license should be discontinued.

Yvette VanDerBrink- Auctioneer
VanDerBrink Auctions, LLC

**CHAPTER 51-05.1
AUCTIONEERS' AND CLERKS' LICENSES**

**51-05.1-01. Auctioneering or clerking without a license prohibited-
Registration.**

No person may conduct a sale as an auctioneer or clerk unless licensed by the public service commission. registered with the secretary of state as a sole proprietor.

51-05.1-01.1. Auctioneer's license - Clerk's license - Fees - Bonds-

1. ~~The initial and renewal application for an annual auctioneer's or clerk's license must be submitted on forms designated by the commission, and must show the name, residence, and address of the applicant. The fee for the annual license or renewal is fifty dollars and must accompany the application. The name and license number must appear on all advertising of sales conducted by an auctioneer or clerk. Renewals that are not received by December thirty first must be assessed an additional twenty-five dollar fee.~~
2. ~~Before a license is issued to an auctioneer or clerk, the applicant must file a corporate surety bond with the commission. This bond must provide annual coverage of not less than five thousand dollars for an auctioneer or ten thousand dollars for a clerk, must run to the state of North Dakota, and must be for the benefit of any person injured by the licensee's improper conduct. Bonds may not be canceled on less than sixty days' written notice to the commission. When notice of cancellation is received by the commission, the commission, without hearing, shall revoke the license for which the bond was issued effective with the effective date of the cancellation, unless the licensee files a new bond or evidence that the bond will be reinstated before the effective date of the cancellation. The size of the licensee's bond must be clearly and prominently stated in all contracts with sellers.~~

51-05.1-01.2. Exemptions.

A license Registration under this chapter is not required for the following:

1. Sale of an estate by an executor or an administrator.
2. Sale by a sheriff or other person under court order.
3. Sale by a public official acting in an official capacity.
4. Sale of purebred or registered livestock.

~~A bond is not required for a federally insured financial institution to clerk a sale. Persons exempt from licensing or bonding under this section shall comply with all other provisions of this chapter.~~

51-05.1-02. License standards-

1. ~~Licenses may be granted only to persons who bear a good reputation for honesty, truthfulness, and fair dealing and who are competent to transact the business of an auctioneer or a clerk.~~
2. ~~An applicant for a license must be at least eighteen years of age. Every~~

applicant for a license as an auctioneer shall:

- a. Have been actively engaged as a licensed auctioneer for a period of at least one year preceding the date of application; or
 - b. Furnish proof of satisfactory completion of an approved course of study relating to auctioneers.
3. The commission may request a first time applicant for a license to pass a criminal background check. An applicant shall pay the costs associated with the performance of a criminal background check.

51-05.1-02.1. Conviction not bar to licensure – Exceptions.

Conviction of an offense does not disqualify a person from licensure under this chapter unless the public service commission determines that the offense has a direct bearing upon a person's ability to serve the public as an auctioneer, or that, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

51-05.1-03. Investigation – Grounds for refusal, suspension, or revocation of license – Hearing on appeal.

1. The public service commission upon its own motion may, and upon the verified complaint in writing of any person shall, investigate the activities of any licensee or any person who shall assume to act in such capacity within the state and shall have the power to suspend or revoke a license when the licensee, in performing or attempting to perform any of the acts included within the scope of this chapter, has performed one or more of the following:
 - a. Made a material false statement in the licensee's application for a license or in any information furnished to the commission.
 - b. Made a substantial and willful misrepresentation relating to an auction sale which injures the party for which the licensee acts as agent.
 - c. Made any false promise of a character such as to influence, persuade, or induce a party to an auction sale to that party's injury or damage.
 - d. Failed to account for or to remit, within a reasonable time, not exceeding thirty days, any moneys coming into the licensee's possession belonging to another, commingled funds of others with the licensee's own, failed to keep such funds or others in an escrow or trust account with a bank or other recognized depository in this state, or failed to keep records relative to the deposits, which must contain such information as prescribed by the rules of the commission.
 - e. Pled guilty or nolo contendere before, or been convicted by, any federal court or a court of competent jurisdiction in this or any other state of an offense determined by the commission to have a direct bearing upon a person's ability to serve the public as an auctioneer, or the board determines, following conviction of any offense, that the person is not sufficiently rehabilitated under section 12.1-33-02.1.

- ~~f. Failed or refused upon demand to produce any document, book, or records in the licensee's possession or under the licensee's control, concerning any auction sale under investigation by the commission.~~
 - ~~g. Failed to deliver to the seller in every auction sale a complete, detailed closing statement showing all the receipts and disbursements handled by such licensee for the seller and to retain true copies of such statements in the licensee's files for two years.~~
 - ~~h. Violated any provisions of this chapter or chapter 41-02, 51-12, or 51-15, or rule or regulation promulgated by the commission.~~
- ~~2. If the public service commission declines or fails to approve an application submitted to it, it shall immediately give notice of that fact to the applicant, and upon request from such applicant filed within twenty days after the receipt of such notice, shall fix a time and place for a hearing, of which twenty days' notice must be given to such applicant and to other persons interested or protesting, to offer such evidence relating to the application. In such cases the commission shall fix the time for such hearing on a date within sixty days from receipt of the request for the particular hearing, provided the time of hearing may be continued from time to time with the consent of the applicant. As a result of such hearing, the commission may either approve the application if all of the applicable provisions of this chapter have been met, or it may sustain its prior decision refusing to approve the application.~~
- ~~3. No license may be revoked or suspended except after hearing before the public service commission with a copy of the charges having been duly served upon the licensee and upon sustaining the charges for suspension or revocation. The provisions of chapter 28-32, including but not limited to procedures for service of process, hearing, rules, evidence, findings, and appeals, apply to and govern all proceedings for suspension or revocation of license, except when inconsistent with this chapter.~~

51-05.1-04. Definitions - Exceptions.

1. Except as provided in subsection 5, an auctioneer within the meaning of this chapter is a person who, for a compensation or valuable consideration, sells or offers for sale either real or personal property at public auction as a whole or partial vocation.
2. Except as provided in subsection 5, a clerk within the meaning of this chapter is any person, firm, partnership, copartnership, association, corporation, or limited liability company who, for a compensation or valuable consideration, is employed either directly or indirectly by an owner while the sale is in progress to record each item offered for sale, its selling price, and the buyer's name or number; to collect all proceeds of said sale; to pay all expenses connected with the sale; to prepare a full closing statement of all receipts and disbursements; and to make settlement thereon to parties properly entitled thereto within a reasonable length of time.
3. "Internet auction" means the selling or offering for sale either real or

- personal property at public auction exclusively via the internet.
4. "Seller" means the owner or consignor of property to be sold at auction.
 5. A person performing a single act or an isolated transaction in the selling of property at auction for another does not constitute the person performing, offering, or attempting to perform any of the acts enumerated in this section, and that person is not an auctioneer or clerk within the meaning of this chapter. A person conducting, or employed by a person conducting, an internet auction is not an auctioneer or clerk within the meaning of this chapter.
 6. Notwithstanding subsection 5, a person in this state engaged in the auto auction business via the internet must be licensed as a motor vehicle dealer as provided for in section 39-22-23.

51-05.1-04.1. Written contracts.

An auctioneer may not sell the property of another at auction without a prior written contract with the seller which sets forth the terms and conditions upon which the auctioneer will sell the property. A similar contract governing the activities of the auction clerk is required between the auction clerk and the seller. The licensee auctioneer and clerk must retain a copy of each contract for at least two years after the auction. This section does not apply to consignment sales when the value of the seller's property is less than five hundred dollars or to livestock markets. The contract must contain:

1. The licensee's auctioneer and clerk's name, trade or business name, ~~state license number~~, business address, and business telephone number.
2. A general description of the property to be sold at auction, any restrictions, and a statement identifying whether or not the licensee auctioneer and clerk is authorized to purchase at the auction.
3. A description of the services to be provided and the consideration for the services. The description must state which party is responsible for advertising and other expenses.
4. The date or dates when the items will be sold at auction.
5. ~~A disclosure of the amount of bond that the licensee has on file with the commission and the commission's address and telephone number.~~

51-05.1-04.2. Buyer's premium.

A successful bidder may not be required to pay an amount in excess of the successful bid and governmental fees and taxes, unless before bidding the bidder has signed a statement which clearly describes the additional amount and states how the actual amount due will be determined.

51-05.1-05. Handling of funds by clerk of auction sale.

Every clerk of an auction sale, at all times, shall maintain in the clerk's name or firm name, a separate trust account designated as such in a federally insured bank or other federally insured depository in this state in which the clerk

immediately shall deposit all funds not the clerk's own, including funds in which the clerk may have some future interest or claim. A federally insured depository located outside the state ~~but licensed as a clerk in this state~~ is not required to deposit funds in a depository in this state if auction sale funds are deposited in a separate trust account designated ~~as such~~ in the ~~licensee's~~ clerk's depository. A clerk may not commingle the clerk's personal funds or other funds in a trust account except that a clerk may deposit and keep a sum of one thousand dollars in such account from the clerk's personal funds, which sum must be specifically identified and deposited to cover service charges related to the trust account. In conjunction with such account, the clerk shall maintain at the clerk's usual place of business books, records, and other documents so that the adequacy of such account may be determined at any time. ~~Trust accounts and other records must be open to inspection by the public service commission and its duly authorized agents at all times during regular business hours at the clerk's usual place of business.~~

51-05.1-06. License list.

Repealed by S.L. 2001, ch. 440, § 2.

51-05.1-07. Penalty.

Any person violating any of the provisions of this chapter is guilty of a class B misdemeanor.

House Bill 1191

Presented by: Randy Christmann, Chair
Public Service Commission

Before: Senate Workforce Development Committee
Honorable Michael A. Wobbema, Chair

Date: March 9, 2023

TESTIMONY

Mr. Chair and members of the committee, I'm Randy Christmann, Chair of the Public Service Commission (Commission), here to testify in favor of HB 1191.

The jurisdictions vested in the Commission by this body all generally relate to economic and commercial regulation, environmental preservation, and the safety of the public. The programs housed within the Commission generally all have a common nexus and work in relation to each other. The benefit of this is that synergies can be pulled from the multidisciplinary staff maintained by the agency. However, there is one Commission program that is outside the agency's core competencies and administration.

The Commission currently acts as a professional licensing board for the state's auctioneers and auction clerks. This includes issuing licenses, bonding, setting standards for contracts and the handling of funds, and processing complaints against licensees. Although we receive very few complaints and the overwhelming majority of our auctioneers and auction clerks serve the public well and have been great to work with, occasionally issues do arise or industry norms change. Due to the organization of the agency, the same staff that works with inspecting and enforcing the safety of natural gas pipelines are also the ones licensing and regulating auctioneers and auction clerks.

The auctioneering and clerking community have been very good to work with, but we believe licensing and regulation of auctioneers and auction clerks is not a good fit for the Public Service Commission. We worked with Rep. Louser on the original version of HB 1191 to propose a state Board of Auctioneering. However, it came out during the initial committee hearing that the idea of a licensing board was not favored by most auctioneers, the North Dakota Auctioneers Association, or some of the committee members. The Auctioneers Association subsequently discussed this at their annual association meeting and recommended registering with the Secretary of State instead of licensing, despite being very pleased with the service provided by the Public Service Commission. The Commission does not object to this solution.

This bill is deceptively long because the first eight pages make one small substantive change you will find on page 8. That change is the elimination of the Public Service Commission from the long list of agencies for which the Bureau of Criminal Investigation does criminal background checks. Without auction licensing, we will no longer need this designation. That leaves only the last 2.5 pages of the bill.

The engrossed HB 1191 requires auctioneers and auction clerks to be registered with the Secretary of State. It also eliminates the bonding requirement, which has proven to be a very ineffective protection mechanism. But auctioneers and clerks would continue to be governed by many of the same legal requirements they currently operate under. Violations of the statutes would continue to be class B misdemeanors as they are today, and any complainant would be able to take action against an auctioneer for financial related issues through the court system.

Less than half of states license auctioneers at the state level. The Commission agrees that it is time for North Dakota to reduce red tape by shifting to the proposed registration requirement. This concludes my testimony. Thank you for your time and I am available for questions.

MICHAEL C. HOWE
SECRETARY OF STATE

WEBSITE sos.nd.gov



PHONE (701) 328-2900
E-MAIL sos@nd.gov

SECRETARY OF STATE
STATE OF NORTH DAKOTA
600 EAST BOULEVARD AVENUE DEPT 108
BISMARCK ND 58505-0500

SENATE WORKFORCE DEVELOPMENT
SENATOR MIKE WOBBERMA

HOUSE BILL NO. 1191
MARCH 9, 2023

TESTIMONY PRESENTED BY

MICHAEL MONROE, BUSINESS SERVICES DIRECTOR, OFFICE of SECRETARY OF STATE

The Office of Secretary of State respectfully submits neutral testimony on HB 1191. This bill seeks to move licensing of auctioneers from the Public Service Commission to a registration process with the Office of the Secretary of State.

While we don't have information about how this process currently works at the Public Service Commission, we believe based on the language of the bill we could fit auctioneers into our current registration protocols. There are two areas of concern for our agency.

The first, is on page 10, lines 11 – 12. We are proposing an amendment asking that reference to a "state license number" be removed as it is not something we could provide in our registration process.

Also, we have concerns with implementation and the process that would be taken to notify auctioneers of a change in their requirements. Would the Public Service Commission be responsible to notify those who are currently licensed through them? Would this include a transference of data to the Secretary of State from the Public Service Commission to aid in the transition? It would be helpful to have some clearer intentions behind how the transfer would happen for both agencies.

Chairman Wobbema, members of the committee, I hope you will consider our proposed amendment, and this completes my testimony and I'm happy to stand for any questions.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1191

Page 10, line 11, overstrike "state license"

Page 10, line 12, overstrike "number"