

Report on the

# Board of Auctioneers

Montgomery, Alabama



## Department of Examiners of Public Accounts

401 Adams Avenue, Suite 280  
P.O. Box 302251  
Montgomery, Alabama 36130-2251  
Website: [www.examiners.alabama.gov](http://www.examiners.alabama.gov)

*Rachel Laurie Riddle, Chief Examiner*





Rachel Laurie Riddle  
*Chief Examiner*

**State of Alabama**  
Department of  
**Examiners of Public Accounts**

P.O. Box 302251, Montgomery, AL 36130-2251  
401 Adams Avenue, Suite 280  
Montgomery, Alabama 36104-4338  
Telephone (334) 242-9200  
FAX (334) 242-1775

October 2, 2019

Senator Clyde Chambliss  
Chairman, Sunset Committee  
Alabama State House  
Montgomery, AL 36130

Dear Senator Chambliss,

This report was prepared to provide information for use by the Sunset Committee in conducting its review and evaluation of the operations of the Board of Auctioneers in accordance with the *Code of Alabama 1975*, Section 41-20-9.

The report contains unaudited information obtained from the management, staff, and records of the Board of Auctioneers, in addition to information obtained from other sources.

Please contact me if you have any questions concerning this report.

Sincerely,

A handwritten signature in cursive script that reads "Rachel Laurie Riddle".

Rachel Laurie Riddle  
Chief Examiner

**Examiner**  
Janet L. Berry



## CONTENTS

|   |           |
|---|-----------|
| <b>PROFILE .....</b>  | <b>5</b>  |
| Purpose/Authority .....                                     | 5         |
| Characteristics.....  | 5         |
| Operations .....  | 6         |
| Financial.....  | 7         |
| Licensee Information .....                                  | 8         |
| <b>STATUS OF PRIOR FINDINGS/SIGNIFICANT ISSUES .....</b>    | <b>11</b> |
| <b>ORGANIZATION .....</b>                                   | <b>12</b> |
| <b>PERSONNEL.....</b>                                       | <b>13</b> |
| <b>PERFORMANCE CHARACTERISTICS.....</b>                     | <b>13</b> |
| <b>COMPLAINT HANDLING .....</b>                             | <b>14</b> |
| <b>REGULATION IN CONJUNCTION WITH OTHER ENTITIES.....</b>   | <b>15</b> |
| <b>FINANCIAL INFORMATION.....</b>                           | <b>15</b> |
| Schedule of Fees .....                                      | 16        |
| Schedule of Receipts, Disbursements and Balances.....       | 17        |
| Operating Receipts vs. Operating Disbursements (Chart)..... | 18        |
| <b>QUESTIONNAIRES.....</b>                                  | <b>20</b> |
| Board Member Questionnaire.....                             | 20        |
| Apprentice Auctioneer Questionnaire.....                    | 25        |
| Complainant Questionnaire.....                              | 28        |
| <b>APPENDICES.....</b>                                      | <b>29</b> |
| Applicable Statutes.....                                    | 29        |
| Professional Services by Vendor .....                       | 40        |
| Board Members.....  | 41        |
| Board’s Response to Significant Issues .....                | 43        |

# **PROFILE**

## **Purpose/Authority**

The Auctioneers License Act was created by Act No. 811, Acts of Alabama 1973 to establish qualification standards and to regulate persons who engage in “bid calling” for hire to conduct auctions for the purpose of selling real estate, goods, wares, merchandise, automobiles, livestock, or other things of value. Current statutory authority for the Board can be found in the *Code of Alabama 1975*, Sections 34-4-1 through 34-4-54.

The following legislation passed since the last Sunset Review of this Board:

Act No. 63, Acts of Alabama 2016 – Continued the existence and functioning of the Alabama State Board of Auctioneers until October 1, 2020 with certain modifications and amended the *Code of Alabama*, Section 34-4-50(a) to require diversity in the membership of the board. The Act is included in the codification presented in the appendix of this report.

| <b><u>Characteristics</u></b> |   |
|-------------------------------|---|
| <b>Members and Selection</b>  | Eight members appointed by the Governor <ul style="list-style-type: none"><li>• Seven auctioneer members</li><li>• One consumer member</li></ul> <i>Code of Alabama 1975</i> , Section 34-4-50(a)   |
| <b>Term</b>                   | <ul style="list-style-type: none"><li>• Five year terms staggered</li><li>• Limited to two consecutive terms of office</li><li>• Continues to serve until a successor is appointed</li></ul> <i>Code of Alabama 1975</i> , Section 34-4-50(a)   |
| <b>Qualifications</b>         | <ul style="list-style-type: none"><li>• Resident and citizen of this state for at least five years prior to appointment.</li><li>• Auctioneers must be of good moral character and must be licensed and actively engaged in the auction business for at least five years prior to appointment.</li></ul> <i>Code of Alabama 1975</i> , Section 34-4-50(a) & (b) |

|                                       |   |
|---------------------------------------|---|
| <b>Consumer Representation</b>        | <p>One consumer member required by statute.<br/>One consumer member currently serving.</p> <p><i>Code of Alabama 1975</i>, Section 34-4-50(a)</p>   |
| <b>Racial Representation</b>          | <p>No statutory requirement<br/>One black member serving.</p>   |
| <b>Geographical Representation</b>    | <p>One Auctioneer member is appointed from each congressional district.</p> <p>The consumer member is appointed from the state-at-large.</p> <p><i>Code of Alabama 1975</i>, Section 34-4-50(a)</p>   |
| <b>Other Representation</b>           | <p>The membership of the board shall be inclusive and reflect the racial, gender, geographic, urban/rural, and economic diversity of the state.</p> <p><i>Code of Alabama 1975</i>, Section 34-4-50(a)</p>  |
| <b>Compensation</b>                   | <p>Members receive \$300.00 per day and travel expenses are reimbursed at the same rate provided for state employees for each day spent on work for board business.</p> <p><i>Code of Alabama 1975</i>, Section 34-4-53</p>   |
| <b>Attended Board Member Training</b> | <p>Executive Director<br/>Two board members<br/>Five Warren &amp; Company Inc. staff members</p>  |
| <b><u>Operations</u></b>              |   |
| <b>Administrator</b>                  | <p>The Board contracts with Warren &amp; Company, Inc., a private management firm, to provide administrative services, facilities and equipment, investigative services, and logistical support. Keith Warren, president of Warren &amp; Co., serves as the Board's Executive Director. The current annual contract amount through September 30, 2019, is \$108,000.00</p> <p><i>Code of Alabama 1975</i>, Section 34-4-50(e)</p> |

|                               |  |
|-------------------------------|--|
| <b>Location</b>               | 2777 Zelda Road<br>Montgomery, AL 36106<br>Office Hours: Mon. – Fri. 8:30 – 4:30   |
| <b>Employees</b>              | None. Board contracts with Warren & Company, Inc. for administrative and investigative services.   |
| <b>Legal Counsel</b>          | Dana Billingsley, private attorney, Wilkerson & Bryan  |
| <b>Subpoena Power</b>         | None except as provided by the Administrative Procedures Act, <i>Code of Alabama 1975</i> , Section 41-22-12 for hearings and contested cases.   |
| <b>Internet Presence</b>      | <a href="http://www.auctioneer.alabama.gov">www.auctioneer.alabama.gov</a><br>The Board's website includes the following information: <ul style="list-style-type: none"> <li>• Home</li> <li>• Board</li> <li>• Law</li> <li>• Rules and Regulations</li> <li>• Disciplinary Actions</li> <li>• Calendar</li> <li>• Staff</li> <li>• Roster Search</li> <li>• Minutes</li> <li>• Proposed rules</li> <li>• Board</li> <li>• Applicant</li> <li>• Consumer</li> <li>• Licensee</li> </ul> |
| <b><u>Financial</u></b>       |  |
| <b>Source of Funds</b>        | Licensing fees, examination fees, fines and penalties  |
| <b>State Treasury</b>         | Yes, Special Revenue Fund 0541<br><br><i>Code of Alabama 1975</i> , Section 34-4-54  |
| <b>Required Distributions</b> | No required distributions.   |
| <b>Unused Funds</b>           | All funds remaining unexpended and unobligated at the end of the fiscal year are retained by the Board.  |



| <b><u>Licensee Information</u></b> |   |             |     |             |    |           |            |              |            |
|------------------------------------|---|-------------|-----|-------------|----|-----------|------------|--------------|------------|
| <b>Licensees</b>                   | <p>Licensees as of December 3, 2018</p> <table> <tr> <td>Auctioneers</td> <td>576</td> </tr> <tr> <td>Apprentices</td> <td>58</td> </tr> <tr> <td>Companies</td> <td><u>128</u></td> </tr> <tr> <td><b>Total</b></td> <td><b>762</b></td> </tr> </table> <p><i>Source:</i> Executive Director</p>   | Auctioneers | 576 | Apprentices | 58 | Companies | <u>128</u> | <b>Total</b> | <b>762</b> |
| Auctioneers                        | 576   |             |     |             |    |           |            |              |            |
| Apprentices                        | 58  |             |     |             |    |           |            |              |            |
| Companies                          | <u>128</u>  |             |     |             |    |           |            |              |            |
| <b>Total</b>                       | <b>762</b>  |             |     |             |    |           |            |              |            |
| <b>Qualifications</b>              | <p><b>Auctioneers:</b></p> <ul style="list-style-type: none"> <li>• Take and pass a written and oral examination</li> <li>• 19 years or older</li> <li>• Citizen of the United States or legally present</li> <li>• Completed a prescribed course of study at an accredited board approved auctioneering school and furnish proof of: <ul style="list-style-type: none"> <li>➤ Served one year as an apprentice auctioneer,</li> <li>➤ Principal auctioneer in at least five auctions or either real or personal property, and</li> <li>➤ Furnish proof of these requirements to the Board</li> </ul> </li> <li>• Course of study not completed furnish proof of: <ul style="list-style-type: none"> <li>➤ Required to serve two years as an apprentice under a licensed auctioneer and</li> <li>➤ Have been the principal auctioneer in at 10 auctions of real or personal property</li> <li>➤ Present statement signed by his/her sponsoring auctioneer stating the required number of sales during the course of his/her apprenticeship, furnish proof of the sales, and proof that he/she was compensated for these services</li> </ul> </li> </ul> <p><b>Apprentice Auctioneers:</b></p> <ul style="list-style-type: none"> <li>• Take and pass a written and oral examination</li> <li>• 18 years or older</li> <li>• Citizen of the United States or legally present</li> </ul> <p><i>Code of Alabama 1975</i>, Section 34-4-21(b)<br/> <i>Administrative Rule</i> 150-X-1-.02</p> |             |     |             |    |           |            |              |            |

| <p><b>Examinations</b></p>    | <p>Computer based exams are developed by the Board and administered and graded by PROV, Inc. Exam fees are paid directly to the Board. Exams are administered weekly in Birmingham, Huntsville, Mobile, Auburn, Sheffield, Montgomery, Enterprise, and Tuscaloosa.</p> <table border="1" data-bbox="662 386 1411 613"> <thead> <tr> <th colspan="4"><b>Auctioneers</b></th> </tr> <tr> <th><b>Fiscal Year</b></th> <th><b>Total Taken</b></th> <th><b># Passed</b></th> <th><b>% Passed</b></th> </tr> </thead> <tbody> <tr> <td><b>2015</b></td> <td>27</td> <td>16</td> <td>59%</td> </tr> <tr> <td><b>2016</b></td> <td>28</td> <td>19</td> <td>68%</td> </tr> <tr> <td><b>2017</b></td> <td>12</td> <td>10</td> <td>83%</td> </tr> <tr> <td><b>2018</b></td> <td>15</td> <td>11</td> <td>73%</td> </tr> </tbody> </table><br><table border="1" data-bbox="662 674 1411 900"> <thead> <tr> <th colspan="4"><b>Apprentice Auctioneers</b></th> </tr> <tr> <th><b>Fiscal Year</b></th> <th><b>Total Taken</b></th> <th><b># Passed</b></th> <th><b>% Passed</b></th> </tr> </thead> <tbody> <tr> <td><b>2015</b></td> <td>31</td> <td>17</td> <td>55%</td> </tr> <tr> <td><b>2016</b></td> <td>27</td> <td>16</td> <td>59%</td> </tr> <tr> <td><b>2017</b></td> <td>17</td> <td>12</td> <td>71%</td> </tr> <tr> <td><b>2018</b></td> <td>16</td> <td>10</td> <td>63%</td> </tr> </tbody> </table> <p>Troy University- Dothan is the only in-state institution that offers auctioneering courses approved by the Board.</p> <p>For the period October 1, 2014 through September 30, 2018, ten graduates from Troy University sat for the examination. All ten passed the examination on the first attempt.</p> <p><i>Code of Alabama 1975</i>, Section 34-4-21(c)<br/> <i>Source:</i> Executive Director</p> | <b>Auctioneers</b> |                 |  |  | <b>Fiscal Year</b> | <b>Total Taken</b> | <b># Passed</b> | <b>% Passed</b> | <b>2015</b> | 27 | 16 | 59% | <b>2016</b> | 28 | 19 | 68% | <b>2017</b> | 12 | 10 | 83% | <b>2018</b> | 15 | 11 | 73% | <b>Apprentice Auctioneers</b> |  |  |  | <b>Fiscal Year</b> | <b>Total Taken</b> | <b># Passed</b> | <b>% Passed</b> | <b>2015</b> | 31 | 17 | 55% | <b>2016</b> | 27 | 16 | 59% | <b>2017</b> | 17 | 12 | 71% | <b>2018</b> | 16 | 10 | 63% |
|-------------------------------|--|--------------------|-----------------|--|--|--------------------|--------------------|-----------------|-----------------|-------------|----|----|-----|-------------|----|----|-----|-------------|----|----|-----|-------------|----|----|-----|-------------------------------|--|--|--|--------------------|--------------------|-----------------|-----------------|-------------|----|----|-----|-------------|----|----|-----|-------------|----|----|-----|-------------|----|----|-----|
| <b>Auctioneers</b>            |  |                    |                 |  |  |                    |                    |                 |                 |             |    |    |     |             |    |    |     |             |    |    |     |             |    |    |     |                               |  |  |  |                    |                    |                 |                 |             |    |    |     |             |    |    |     |             |    |    |     |             |    |    |     |
| <b>Fiscal Year</b>            | <b>Total Taken</b>   | <b># Passed</b>    | <b>% Passed</b> |  |  |                    |                    |                 |                 |             |    |    |     |             |    |    |     |             |    |    |     |             |    |    |     |                               |  |  |  |                    |                    |                 |                 |             |    |    |     |             |    |    |     |             |    |    |     |             |    |    |     |
| <b>2015</b>                   | 27   | 16                 | 59%             |  |  |                    |                    |                 |                 |             |    |    |     |             |    |    |     |             |    |    |     |             |    |    |     |                               |  |  |  |                    |                    |                 |                 |             |    |    |     |             |    |    |     |             |    |    |     |             |    |    |     |
| <b>2016</b>                   | 28   | 19                 | 68%             |  |  |                    |                    |                 |                 |             |    |    |     |             |    |    |     |             |    |    |     |             |    |    |     |                               |  |  |  |                    |                    |                 |                 |             |    |    |     |             |    |    |     |             |    |    |     |             |    |    |     |
| <b>2017</b>                   | 12   | 10                 | 83%             |  |  |                    |                    |                 |                 |             |    |    |     |             |    |    |     |             |    |    |     |             |    |    |     |                               |  |  |  |                    |                    |                 |                 |             |    |    |     |             |    |    |     |             |    |    |     |             |    |    |     |
| <b>2018</b>                   | 15   | 11                 | 73%             |  |  |                    |                    |                 |                 |             |    |    |     |             |    |    |     |             |    |    |     |             |    |    |     |                               |  |  |  |                    |                    |                 |                 |             |    |    |     |             |    |    |     |             |    |    |     |             |    |    |     |
| <b>Apprentice Auctioneers</b> |  |                    |                 |  |  |                    |                    |                 |                 |             |    |    |     |             |    |    |     |             |    |    |     |             |    |    |     |                               |  |  |  |                    |                    |                 |                 |             |    |    |     |             |    |    |     |             |    |    |     |             |    |    |     |
| <b>Fiscal Year</b>            | <b>Total Taken</b>   | <b># Passed</b>    | <b>% Passed</b> |  |  |                    |                    |                 |                 |             |    |    |     |             |    |    |     |             |    |    |     |             |    |    |     |                               |  |  |  |                    |                    |                 |                 |             |    |    |     |             |    |    |     |             |    |    |     |             |    |    |     |
| <b>2015</b>                   | 31   | 17                 | 55%             |  |  |                    |                    |                 |                 |             |    |    |     |             |    |    |     |             |    |    |     |             |    |    |     |                               |  |  |  |                    |                    |                 |                 |             |    |    |     |             |    |    |     |             |    |    |     |             |    |    |     |
| <b>2016</b>                   | 27   | 16                 | 59%             |  |  |                    |                    |                 |                 |             |    |    |     |             |    |    |     |             |    |    |     |             |    |    |     |                               |  |  |  |                    |                    |                 |                 |             |    |    |     |             |    |    |     |             |    |    |     |             |    |    |     |
| <b>2017</b>                   | 17   | 12                 | 71%             |  |  |                    |                    |                 |                 |             |    |    |     |             |    |    |     |             |    |    |     |             |    |    |     |                               |  |  |  |                    |                    |                 |                 |             |    |    |     |             |    |    |     |             |    |    |     |             |    |    |     |
| <b>2018</b>                   | 16   | 10                 | 63%             |  |  |                    |                    |                 |                 |             |    |    |     |             |    |    |     |             |    |    |     |             |    |    |     |                               |  |  |  |                    |                    |                 |                 |             |    |    |     |             |    |    |     |             |    |    |     |             |    |    |     |
| <p><b>Reciprocity</b></p>     | <p>The Board may recognize a license issued by any other state to a resident of this state or a nonresident auctioneer or apprentice auctioneer if the other state reciprocates with Alabama in like manner and if the licensing requirements of the state include the passing of an examination of equal or higher standards than those require by this state.</p> <p>The Board shall have the authority to impose any fee or licensing requirements on applicants for licenses form a reciprocal state that the reciprocal state imposes on Alabama licenses by rule, regulation, policy, or law.</p> <p>The Board has reciprocal agreements with Arkansas, Georgia, Florida, Illinois, Indiana, Kentucky, Louisiana,</p>  |                    |                 |  |  |                    |                    |                 |                 |             |    |    |     |             |    |    |     |             |    |    |     |             |    |    |     |                               |  |  |  |                    |                    |                 |                 |             |    |    |     |             |    |    |     |             |    |    |     |             |    |    |     |

|                              |  |
|------------------------------|--|
|                              | <p>Mississippi, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, and West Virginia.</p> <p><i>Code of Alabama 1975</i>, Section 34-4-25<br/> <i>Source:</i> Executive Director</p>  |
| <b>Renewals</b>              | <p>Licenses are renewed annually and expire on September 30<sup>th</sup> of each year following issuance. If a licensee fails to renew his or her license by the deadline of each year, he or she may have his or her license renewed within 60 days after the expiration date, upon payment of the required fee and a late fee of \$25.00 for apprentices and \$50.00 for auctioneers.</p> <p><i>Code of Alabama 1975</i>, Section 34-4-21(e)</p> <p>Percentage of on-line renewals for the past four fiscal years:</p> <ul style="list-style-type: none"> <li>• 2015 – 36%</li> <li>• 2016 – 46%</li> <li>• 2017 – 69%</li> <li>• 2018 – 72%</li> </ul> <p><i>Source:</i> Executive Director</p> |
| <b>Licensee Demographics</b> | <p>The Board does not collect licensee demographics information.</p> <p><i>Source:</i> Executive Director</p>  |
| <b>Continuing Education</b>  | <p>Six clock hours of instruction biennially.</p> <p>Licenses 65 years or older are exempt from the continuing education requirement.</p> <p>Four hours of continuing education credit is given to members currently serving on the Board.</p> <p><i>Code of Alabama 1975</i>, Section 34-4-21(f)<br/> <i>Administrative Rule</i> 150-X-1-.13(a) &amp; (e)</p>   |

## **SIGNIFICANT ISSUES**

**Significant Issue 2019-01** - Five of the six Board members responding to our questionnaire stated that the most significant issue currently facing the Board is not having regulatory authority over internet/auctions to protect the public.

According to Attorney General Opinion 2018-040, “Internet auctions do not constitute auction businesses under section 34-4-2(6) of the *Code of Alabama 1975* falling under the jurisdiction of the Board of Auctioneers if they do not involve bid calling present in traditional crying auctions.”

**Board’s Response** – Under current statute, the Board does not have jurisdiction over internet auctions but does feel the need to change this legislatively in order to protect the public. The Attorney General opined in its Opinion 2018-04, that internet auctions do not fall under the definition of traditional bid auctions at public outcry as defined in the statute. During the 2019 Legislative Session, the Board did introduce legislation (HB 495 and SB 389) to update the definition of an auction and expand its jurisdiction to include internet auctions. The legislation was not successful, but the Board fully intends to introduce these bills again during the 2020 Legislative Session.

## **STATUS OF PRIOR FINDINGS/SIGNIFICANT ISSUES**

All prior findings/significant issues have been resolved, except for the following:

**Prior Finding 2016-01** - The Board of Auctioneers has adopted an administrative rule to charge applicants a \$20 fee for a request for conviction/criminal history record. The Board’s statute requires that applicants must disclose their conviction/criminal histories upon application, but the statute does not authorize the Board to charge applicants a fee. The authority to charge fees must be included in the Board’s enabling statutes. The Attorney General has repeatedly opined that without specific statutory authority to charge a fee an agency may not do so by rule or policy.

**Current Status - Partially Resolved.** The Board does not collect the \$20 fee for conviction/criminal histories, but has not amended its Administrative Rule to remove the fee.

**Board’s Response** – Appendix I - Fees, certified on June 28, 2019, reflects the current fees assessed and collected by the board and the \$20 fee for a request for conviction/criminal history records has been removed.

**Prior Finding 2014-02** - The Board by rule continues to charge a \$150.00 fee for processing an application for licensure by reciprocity where such fee no longer exists in the Board’s enabling legislation.

**Current Status – Partially Resolved.** The Board no longer collects the \$150 application fee, but the Board has not amended its Administrative Rule to remove the fee.

**Board's Response** - Appendix I – Fees, published on July 31, 2019, and scheduled for final adoption on October 20, 2019, reflects the current fees assessed and collected by the board and \$150 fee for processing an application for licensure by reciprocity has been removed.

**Prior Finding 2011-04: Unresolved.** In the prior report, we disclosed, “The Board did not publish notice of vacancies in its Board membership on the Secretary of State’s website by the deadline required by statute. Consequently, interested parties were not made aware of the vacancies in a timely manner. The terms of three Board members expired June 30, 2011. The Board did not notify the Secretary of State of the vacancies until August 9, 2012.”

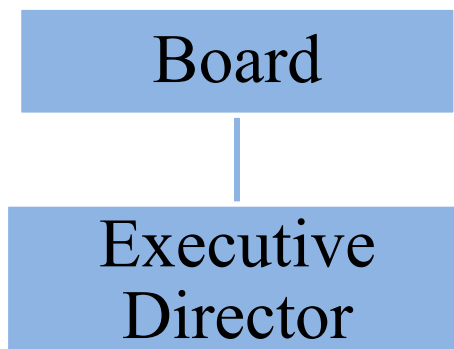
**Current Status 2014 – Unresolved.** The finding continues, the Board failed to timely publish the notice of vacancy in its Board membership on the Secretary of State’s website for a Board member whose term expired on October 31, 2013. The vacancy notice was filed on December 5, 2013, 35 days after the expiration of his term.

**Current Status 2016 – Unresolved.** The finding continues. As of June 2017, the Board had not published the notice of vacancy in its board membership on the Secretary of State’s website for two members whose terms expired on October 31, 2016.

**Current Status 2018 – Unresolved.** As of August 12, 2019, the Board had not published the notice of vacancy in its board membership on the Secretary of State’s website for a member whose term expired October 31, 2018.

**Board's Response** – The reporting of vacancies to the Secretary of State website has been reassigned in the board office and this finding is and will continue to be resolved in future examinations.

## **ORGANIZATION**



## **PERSONNEL**

The Board of Auctioneers contracts with Warren and Company, Inc., of Montgomery, AL to provide administrative and investigative services, as well as an executive director. The current contract compensates Warren and Company, Inc. \$108,000.00 annually to be paid in monthly installments of \$9,000.00. The current contract expires September 30, 2019.

### **Legal Counsel**

The Board contracts with Dana Billingsley, a private attorney, to provide legal services at the rate of \$175.00 per hour, not to exceed \$35,000.00 per year of contract period. Reimbursement of expenses is not to exceed \$3,000.00 per year. The total dollar amount of the contract shall not exceed \$76,000.00 for the two year contract period. The contract expires September 30, 2019.

## **PERFORMANCE CHARACTERISTICS**

### **Number of Persons per Licensee in Alabama and Surrounding States**

|                            | <b>Population<br/>(estimate)*</b> | <b>Number of<br/>Licensees</b> | <b>Persons Per<br/>Licensee</b> |
|----------------------------|-----------------------------------|--------------------------------|---------------------------------|
| <b>Alabama</b>             | <b>4,888,949</b>                  | <b>762</b>                     | <b>6,416</b>                    |
| Florida                    | 21,312,211                        | 2,507                          | 8,501                           |
| Georgia                    | 10,545,138                        | 1,153                          | 9,146                           |
| Mississippi <sup>(1)</sup> | 2,982,785                         | --                             | --                              |
| Tennessee <sup>(1)</sup>   | 6,782,564                         | --                             | --                              |

**\*Source:** U.S. Census, July 1, 2018 Population Estimates

<sup>(1)</sup>Information not provided.

**Operating Disbursements per Licensee FY 2018** - \$213.18

### **Fines/Penalties as a Percentage of Operating Receipts**

|                           | <b>FY 2018</b> | <b>FY 2017</b> | <b>FY 2016</b> | <b>FY 2015</b> |
|---------------------------|----------------|----------------|----------------|----------------|
| Total Receipts less Fines | \$177,570.00   | \$149,745.00   | \$189,915.00   | \$172,195.00   |
| Total Fines               | 4,500.00       | 4,000.00       | 13,730.00      | 19,900.00      |
| <b>Percentage</b>         | <b>2.53%</b>   | <b>2.67%</b>   | <b>7.23%</b>   | <b>11.56%</b>  |

### **Notification of Board decisions to Amend Administrative Rules**

The Board complied with notification procedures prescribed in the Administrative Procedure Act, which includes publication of proposed rules in the Administrative Monthly, and public hearings on proposed rules. Licensees are not specifically notified

of proposed changes. Proposed changes to the rules can be found on the Board’s website.

## **COMPLAINT HANDLING**

The *Code of Alabama 1975*, Sections 34-4-29 through 34-4-33 and *Administrative Rule* 150-X-1-.08 provide for the investigation of written complaints filed with the Board concerning alleged violations of the auctioneer licensing and administrative rules adopted by the Board.

|   |   |
|---|---|
| <b>Initial Contact/Documentation</b>                      | Any person can file a complaint: consumer, licensees, and Board members. The Board receives complaints by mail, email, fax, or hand delivered. All complaints by law must be in writing but do not need to be notarized. No specific form is required; however, one is provided on the Board’s website. The Board notifies the complainant that the complaint has been received by the Board.   |
| <b>Anonymous Complaints Accepted</b>                      | No  |
| <b>Investigative Process/Probable Cause Determination</b> | The complaint is reviewed by the Board’s Executive Director and Legal Counsel to see if complaint is within the jurisdiction of the Board. Once jurisdiction is confirmed, the complaint is submitted to the Board’s Investigator to investigate and submit a report back to the Executive Director. At that time, the Investigative Committee, consisting of Executive Director, Legal Counsel, Investigator, and a Board member, reviews the complaint and investigative report to determine any violations. The Board member on the investigative committee recuses themselves from further actions. |
| <b>Negotiated Settlements</b>                             | Yes   |
| <b>Notification of Resolution to the Complainant</b>      | Once the final order has been issued, the complainant is notified of the resolution of the complaint and the action.  |

*Source:* Executive Director

| <b>Schedule of Complaints Resolved</b> |                             |             |             |                            |
|--|-----------------------------|-------------|-------------|----------------------------|
| Fiscal Years 2015 through 2018         |                             |             |             |                            |
| <b>Year/Number Received</b>            | <b>Year/Number Resolved</b> |             |             |                            |
|  | <b>2015</b>                 | <b>2016</b> | <b>2017</b> | <b>2018 <sup>(1)</sup></b> |
| 2015 /17                               | 12                          | 5           |             |                            |
| 2016 /10                               |                             | 8           | 2           |                            |
| 2017 /9                                |                             |             | 8           | 1                          |
| 2018 / 3                               |                             |             |             | 3                          |
| <b>(1) As of December 7, 2018</b>      |                             |             |             |                            |
| <b>Source:</b> Executive Director      |                             |             |             |                            |

**Average Time to Resolve Complaints** – 66 business days

**Disposition of Resolved Complaints**

| <b># of Complaints</b> | <b>Resolution</b>                         |
|------------------------|---|
| 13                     | Consent Agreements /Final Orders and Fine |
| 12                     | Unfounded                                 |
| 5                      | No Jurisdiction                           |
| 3                      | Warning Letter                            |
| 2                      | No Verified Complaint - Anonymous         |
| 1                      | Letter of Concern                         |
| 1                      | Fine and License Revoked                  |
| 1                      | Resolved – Settled among themselves       |
| 1                      | Withdrawn                                 |

**REGULATION IN CONJUNCTION WITH OTHER ENTITIES**

The *Code of Alabama 1975*, Section 34-27-30(5) requires auctioneers of real estate to be licensed by the Alabama Real Estate Commission.

**FINANCIAL INFORMATION**

**Source of Funds**

Licensing fees, examination fees, and fines/penalties

**Fund**

The Board operates from Special Revenue Fund 0541 maintained in the State Treasury. Year-end unexpended balances are retained by the Board.



**Schedule of Fees**

| Fee  | Code of Alabama       | Administrative Rule         | Amount Authorized           | Amount Collected |
|--|-----------------------|-----------------------------|-----------------------------|------------------|
| Application Processing Fee – Reciprocal Licensure      | None <sup>(1)</sup>   | Appendix I                  | N/A                         | \$150            |
| Apprentice Annual Licensure Fee                        | 34-4-21(d)            | Appendix I                  | ≤ \$100                     | \$100            |
| Auctioneer Individual Annual Licensure Fee             | 34-4-21(d)            | Appendix I                  | ≤ \$250                     | \$200            |
| Auctioneer Company Annual Licensure Fee                | 34-4-21(d)<br>34-4-28 | Appendix I                  | ≤ \$250                     | \$200            |
| Examination Fee  | 34-4-21(a)            | Appendix I                  | ≤ \$100                     | \$100            |
| Change of Address Fee                                  | 34-4-21(i)            | Appendix I<br>150-X-1.14(d) | \$5.00                      | \$5.00           |
| Request for Conviction/Criminal History Record Fee     | None <sup>(2)</sup>   | Appendix I                  | N/A                         | \$20             |
| Fine for Late Renewal of Apprentice Auctioneer License | 34-4-21(e)            | Appendix I                  | \$25                        | \$25             |
| Fine for Late Renewal of Auctioneer License            | 34-4-21(e)            | Appendix I                  | \$50                        | \$50             |
| Administrative Fines                                   | 34-4-29(e)            | 150-X-1-.11(a)              | \$200 - \$500 per violation | Varies           |
| Reciprocal State Licensure Fees                        | 34-4-25               | 150-X-1-.02(c)              | Varies <sup>(3)</sup>       | Varies           |

<sup>(1)</sup>See Prior Finding 2014-02

<sup>(2)</sup>See Prior Findings 2016-01

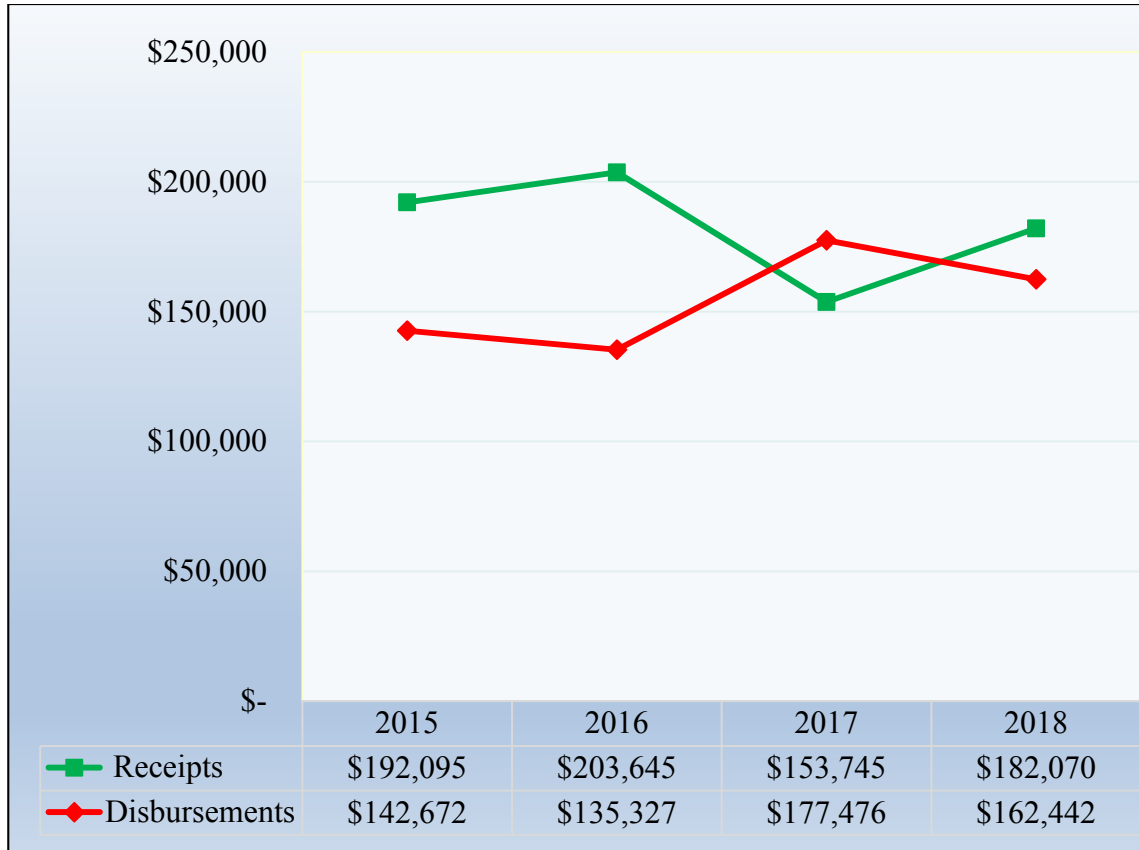
<sup>(3)</sup>**Code of Alabama 1975**, Section 34-4-25 states, “The board shall have the authority to impose any fee or licensing requirements on applicants for licenses from a reciprocal state that the reciprocal state imposes on Alabama licensees by rule, regulation, policy, or law.

**Schedule of Receipts, Disbursements and Balances**

October 1, 2014 through September 30, 2018

|  | <b><u>2017-2018</u></b> | <b><u>2016-2017</u></b> | <b><u>2015-2016</u></b> | <b><u>2014-2015</u></b> |
|--|-------------------------|-------------------------|-------------------------|-------------------------|
| <b><u>Receipts</u></b>                             |                         |                         |                         |                         |
| Licensing Fees                                     | \$ 177,570.00           | \$ 149,745.00           | \$ 189,915.00           | \$ 172,195.00           |
| Penalties  | 4,500.00                | 4,000.00                | 13,730.00               | 19,900.00               |
| Total  | <u>182,070.00</u>       | <u>153,745.00</u>       | <u>203,645.00</u>       | <u>192,095.00</u>       |
| <b><u>Disbursements</u></b>                        |                         |                         |                         |                         |
| Personnel Costs                                    | 8,100.00                | 9,600.00                | 5,400.00                | 7,500.00                |
| Employee Benefits                                  | 637.82                  | 744.76                  | 432.04                  | 597.01                  |
| In-State Travel                                    | 9,085.02                | 5,490.82                | 8,655.03                | 8,290.85                |
| Rentals and Leases                                 | 293.20                  | 98.40                   | 4,853.63                | 2,048.18                |
| Utilities and Communications                       | 1,599.83                | 2,174.61                | 2,410.87                | 3,249.72                |
| Professional Services                              | 136,879.60              | 153,548.88              | 110,513.14              | 117,846.47              |
| Supplies, Materials, and Operating Expenses        | 5,785.62                | 5,818.49                | 3,062.50                | 3,139.71                |
| Other Equipment Purchases                          | 60.59                   | -                       | -                       | -                       |
| Total  | <u>162,441.68</u>       | <u>177,475.96</u>       | <u>135,327.21</u>       | <u>142,671.94</u>       |
| Excess (Deficiency) of Receipts over Disbursements | 19,628.32               | (23,730.96)             | 68,317.79               | 49,423.06               |
| Cash Balance at Beginning of Year                  | <u>291,397.64</u>       | <u>315,128.60</u>       | <u>246,810.81</u>       | <u>197,387.75</u>       |
| Cash Balance at End of Year                        | 311,025.96              | 291,397.64              | 315,128.60              | 246,810.81              |
| Reserved for Year End Obligations                  | <u>(15,846.39)</u>      | <u>(39,016.91)</u>      | <u>(39,919.18)</u>      | <u>(22,872.02)</u>      |
| Unreserved Cash Balance at end of Year             | <u>\$ 295,179.57</u>    | <u>\$ 252,380.73</u>    | <u>\$ 275,209.42</u>    | <u>\$ 223,938.79</u>    |

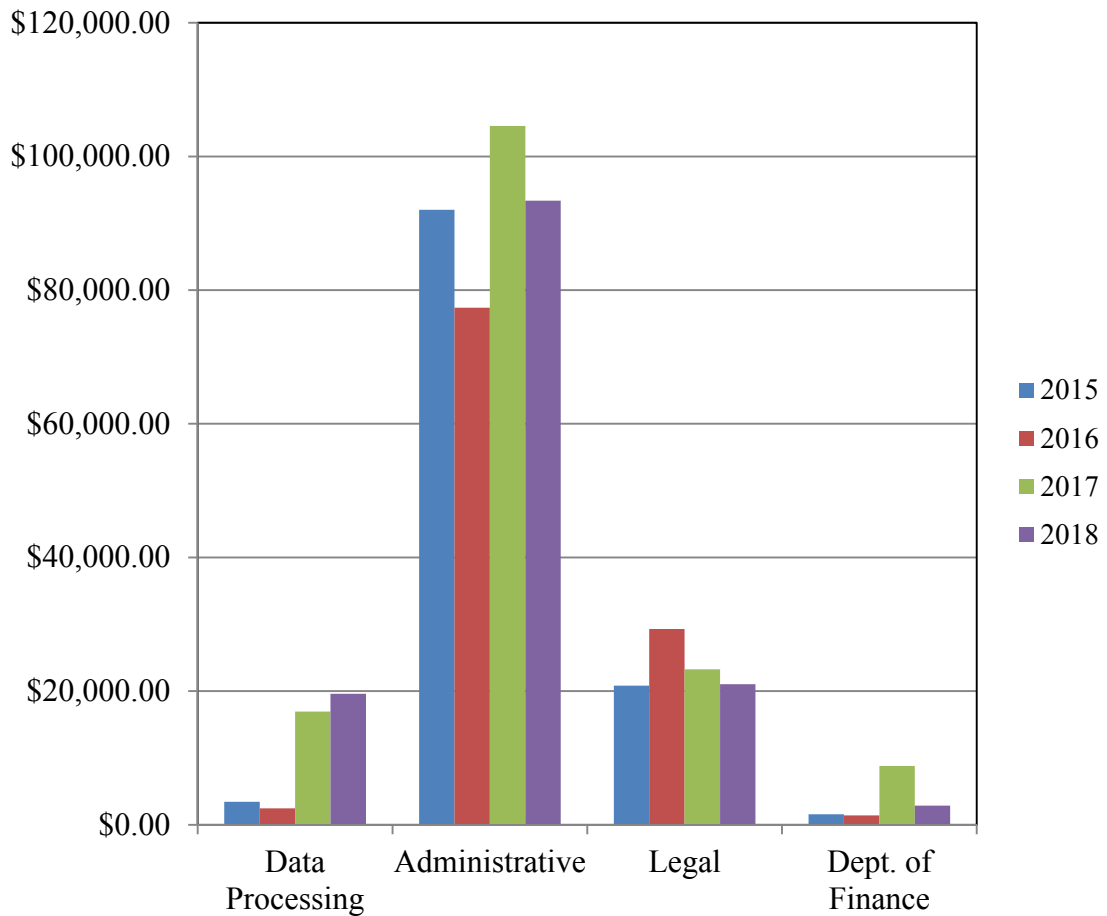
**Operating Receipts vs. Operating Disbursements (Chart)**



| <b>SUMMARY SCHEDULE OF PROFESSIONAL SERVICE DISBURSEMENTS*</b> |                      |                      |                      |                      |
|--|----------------------|----------------------|----------------------|----------------------|
| As of September 30 <sup>th</sup>                               |                      |                      |                      |                      |
| <b>Type of Service</b>   | <b>FY 2015</b>       | <b>FY 2016</b>       | <b>FY 2017</b>       | <b>FY 2018</b>       |
| Administrative   | \$ 92,013.00         | \$ 77,363.45         | \$ 104,554.72        | \$ 93,393.00         |
| Data Processing  | 3,436.95             | 2,457.70             | 16,937.90            | 19,586.50            |
| Dept. of Finance   | 1,574.12             | 1,407.88             | 8,791.40             | 2,861.25             |
| Legal  | 20,822.40            | 29,284.11            | 23,264.86            | 21,038.85            |
| <b>Total</b>   | <b>\$ 117,846.47</b> | <b>\$ 110,513.14</b> | <b>\$ 153,548.88</b> | <b>\$ 136,879.60</b> |

\*Detailed information presented in the appendix

**Professional Service Disbursement Chart**



## **QUESTIONNAIRES**

### **Board Member Questionnaire**

A letter was sent to all eight members of the Board of Auctioneers requesting participation in our survey. Six participated in the survey. The percentages, where shown, are based on the number who responded to the question.

**1. What are the most significant issues currently facing the Board of Auctioneers and how is the Board addressing these issues?**

**Board Member # 1** - “The increased usage of online auctions and our laws do not cover the consumer when items are being sold via online auctions.”

**Board Member # 2** - “Internet auctions and control.”

**Board Member # 3** - “I think the regulation of on line auctions and safe guarding the interest of the general public’s interest that deal with auctioneers. The Board has addressed that we need to have the ability to regulate actions of on line auctions as well as the licensed auctioneers. There should be a firm license for on line auctions.”

**Board Member # 4** - “Unlicensed individuals acting as auctioneers via internet auctions. Unfortunately, our hands are somewhat tied as we have not been able to get legislation passed that would address this.”

**Board Member # 5** - “The Internet Auctions. Trying to change the laws to cover them.”

**Board Member # 6** - “Reciprocation between states”

**2. What changes, if any, to the Board of Auctioneers’ laws are needed?**

**Board Member # 1** - “Attempting to change language in the law in order to provide consumers a safer experience.”

**Board Member # 2** - “The laws are currently under review by the Board.”

**Board Member # 3** - “We need more lead way in regulating on line auctions in order to safe guard the general public.”

**Board Member # 4** - “The Board functions well. I recommend no changes.”

**Board Member # 5** - “need to change the laws to cover the internet auctions. To help with consumer fraud.”

**Board Member # 6** - “none”

**3. Is the Board of Auctioneers adequately funded?**

|            |          |            |
|------------|----------|------------|
| <b>Yes</b> | <b>5</b> | <b>83%</b> |
| No Opinion | 1        | 17%        |

*Board Member Questionnaire*

**Board Member #3** - “The cost of legal fees that we have to incur while trying to get legislation and legal actions against the large on line auction companies is a drain on funds available to the auction board.”

**4. Is the Board of Auctioneers adequately staffed?**

|            |          |            |
|------------|----------|------------|
| <b>Yes</b> | <b>4</b> | <b>67%</b> |
| No Opinion | 2        | 33%        |

**5. Does the Board of Auctioneers receive regular reports on the operations of the Board from the Executive Director?**

|            |          |            |
|------------|----------|------------|
| <b>Yes</b> | <b>5</b> | <b>83%</b> |
| No         | 1        | 17%        |

**6. Are you satisfied with the reports the Board receives from the Executive Director?**

|            |          |            |
|------------|----------|------------|
| <b>Yes</b> | <b>5</b> | <b>83%</b> |
| No         | 1        | 17%        |

**7. Has the Board experienced any significant changes to its operations?**

|           |          |             |
|-----------|----------|-------------|
| <b>No</b> | <b>6</b> | <b>100%</b> |
|-----------|----------|-------------|

**8. Does the Board plan any significant changes in its operations?**

|           |          |            |
|-----------|----------|------------|
| Yes       | 2        | 33%        |
| <b>No</b> | <b>4</b> | <b>67%</b> |

**Board Member #3** -“Our main goal is to safe guard the public interest while dealing with auctioneers and auction companies. We are continually trying to improve in order to meet this goal.”

**Auctioneer Questionnaire**

A letter was sent to one hundred Auctioneer licensees requesting participation in our survey. Seventeen participated in the survey. The percentages, where shown, are based on the number who responded to the question.

**1. Do you think regulation of your profession by the Board of Auctioneers is necessary to protect the public welfare?**

|            |           |            |
|------------|-----------|------------|
| <b>Yes</b> | <b>16</b> | <b>94%</b> |
| No         | 1         | 6%         |

**Respondent # 1** - “Maybe in some cases, but in the case of auctioneers at a livestock auction market posted and bonded by USDA, Packers and Stockyards Administration, we are under Federal guide lines and must operate accordingly. That is why Florida exempts USDA posted and bonded livestock markets.”

**Respondent # 15** - “Because they don’t regulate sellers on internet, or the people have estate sales!!”

**2. Do you think *any* of the Board’s laws, rules, or policies are an unnecessary restriction on the practice of your profession? If yes, please explain.**

|            |           |            |
|------------|-----------|------------|
| Yes        | 2         | 12%        |
| <b>No</b>  | <b>14</b> | <b>82%</b> |
| No Opinion | 1         | 6%         |

**3. Do you think any of the Board’s requirements are irrelevant to the competent practice of your profession?**

|            |           |            |
|------------|-----------|------------|
| Yes        | 3         | 18%        |
| <b>No</b>  | <b>13</b> | <b>76%</b> |
| No Opinion | 1         | 6%         |

**Respondent # 2** - “Same as above, we must operate under USDA guidelines.”

**4. Are you adequately informed by the Board of changes to and interpretations of Board positions, policies, rules, and laws?**

|            |           |            |
|------------|-----------|------------|
| <b>Yes</b> | <b>12</b> | <b>71%</b> |
| No         | 4         | 23%        |
| No Opinion | 1         | 6%         |

**Respondent #11** - “They know how to increase fees to keep funding for their jobs but the auctioneers rarely receive any correspondence. When the board is advised

about an illegal issue the complaint is required to do most all the investigative leg work before the board will dirty their hands. They are practically useless when it comes to police powers unless it is a high profile case that gets public attention. But again, they know how to continue the \$ fee collection increases. What are we getting for our fees????”

**5. Has the Board performed your licensing and renewal in a timely manner?**

|            |           |             |
|------------|-----------|-------------|
| <b>Yes</b> | <b>17</b> | <b>100%</b> |
|------------|-----------|-------------|

**6. Do you consider mandatory continuing education necessary for competent practice?**

|            |           |            |
|------------|-----------|------------|
| <b>Yes</b> | <b>10</b> | <b>59%</b> |
| No         | 6         | 35%        |
| No Opinion | 1         | 6%         |

**Respondent # 7** - “AFTER ATTAINING A CERTAIN AGE AND BEEN AN AUCTIONEER FOR MANY YRS CONTINUING ED SHOULD NOT BE A REQUIREMENT. NEW AUCTIONEERS YES.”

**Respondent # 11** - “The CEU classes are the same old thing year after year.”

**7. Has the Board approved sufficient providers of continuing education to ensure your reasonable access to necessary continuing education hours?**

|            |           |            |
|------------|-----------|------------|
| <b>Yes</b> | <b>15</b> | <b>88%</b> |
| No         | 2         | 12%        |

**Respondent # 11** - “Yes, plenty of courses in plenty of locations but for what training? There again, it’s the same old material year after year and is only a money maker for the training institutions and the political chain.”

**8. What do you think is the most significant issue(s) currently facing your profession in Alabama and what is the Board doing to address the issue(s)?**

**Respondent # 1** - “I do not see any problems.”

**Respondent # 2** - “Assurance that all people that are practicing the profession are licensed.”

**Respondent # 3** - “Internet auctions by unlicensed companies.”

**Respondent # 4** - “In my experience as an auctioneer, practicing primarily in small, rural auction facilities, there are no major issues that the Board needs to address further than the current level of attention.”

**Respondent # 5** - “Excess fees charged to resident Auctioneers. I am a non-resident auctioneer in other states and pay less for their licenses that I do as a resident auctioneer in Alabama.”



*Auctioneer Questionnaire*

**Respondent # 6** - “Unlicensed auctioneers are practicing in the State. I am not willing to provide a signed statement to this fact as it would/could affect my business. It would seem that I could call the board and tell them as it is an ongoing practice for this individual and they could act on it.”

**Respondent # 7** - “I KEEP MY LICENSE AS I HAVE HAD IT FOR SO LONG I DO MOSTLY BENEFIT AUCTION.”

**Respondent # 8** - “We need policies, rules and law landing page or book to help guide us with questions that may arise in our profession from time to time.”

**Respondent # 9** - “People practicing without a license.”

**Respondent # 10** - I am also a real estate broker in Alabama working in Mobile and Baldwin Counties. These local MLS boards continue to be resistant making reasonable accommodations to allow for meaningful auction marketing in the MLS system.”

**Respondent # 11** - “Out of State Auction Companies sending solicitations for Alabama Auctioneers to be involved in illicit auction activities. I question what is the Board doing to stop this type of activity?”

**Respondent # 12** - “Making sure sellers have a clear title to anything sold at an auction.”

**Respondent # 14** - “Keeping professionals up to date and requiring education when no new material is available.”

**Respondent # 15** - “People without licenses. Escrow just having sales all over internet. Just not right!!”

**Respondent # 16** - “N/A”

**Did not respond** 2

**9. Do you think the Board and its staff are satisfactorily performing their duties?**

|            |           |            |
|------------|-----------|------------|
| <b>Yes</b> | <b>16</b> | <b>94%</b> |
| No         | 1         | 6%         |

**Respondent # 8** - “We need policies, rules and law landing page or book to help guide us with questions that may arise in our profession from time to time.”

**10. Has any member of the Board or its staff asked for money (other than normal fees), services, or any other think of value in return for performing a board service for you?**

|           |           |             |
|-----------|-----------|-------------|
| <b>No</b> | <b>17</b> | <b>100%</b> |
|-----------|-----------|-------------|

**Apprentice Auctioneer Questionnaire**

A letter was sent to fifty-seven Apprentice Auctioneer licensees requesting participation in our survey. Sixteen participated in the survey. The percentages, where shown, are based on the number who responded to the question.

**1. Do you think regulation of your profession by the Board of Auctioneers is necessary to protect the public welfare?**

|            |           |            |
|------------|-----------|------------|
| <b>Yes</b> | <b>13</b> | <b>82%</b> |
| No         | 2         | 12%        |
| No Opinion | 1         | 6%         |

**2. Do you think *any* of the Board's laws, rules, or policies are an unnecessary restriction on the practice of your profession? If yes, please explain?**

|            |           |            |
|------------|-----------|------------|
| Yes        | 1         | 6%         |
| <b>No</b>  | <b>12</b> | <b>75%</b> |
| No Opinion | 3         | 19%        |

**Respondent # 11** - "(1) Lift the proof of 5 sales as a requirement for an Apprentice to advance to Auctioneer. After 1 year in the business and successful passing the written test is enough. (2) Renew Licensees biannually instead of annually."

**3. Do you think any of the Board's requirements are irrelevant to the competent practice of your profession?**

|            |           |            |
|------------|-----------|------------|
| <b>No</b>  | <b>14</b> | <b>88%</b> |
| No Opinion | 2         | 12%        |

**4. Are you adequately informed by the Board of changes to and interpretations of the Board's positions, policies, rules, and laws?**

|            |           |            |
|------------|-----------|------------|
| <b>Yes</b> | <b>11</b> | <b>69%</b> |
| No         | 3         | 19%        |
| No Opinion | 2         | 12%        |

**5. Has the Board performed your licensing and renewal in a timely manner?**

|            |           |            |
|------------|-----------|------------|
| <b>Yes</b> | <b>15</b> | <b>94%</b> |
| No         | 1         | 6%         |

**Respondent # 2** - "Sometimes but more often than not have to follow up."

*Apprentice Auctioneer Questionnaire*

**6. Do you consider mandatory continuing education necessary for competent practice?**

|     |    |     |
|-----|----|-----|
| Yes | 11 | 69% |
| No  | 5  | 31% |

**7. Has the Board approved sufficient providers of continuing education to ensure your reasonable access to necessary continuing education hours?**

|     |    |     |
|-----|----|-----|
| Yes | 15 | 94% |
| No  | 1  | 6%  |

**Respondent # 4** - "I have enjoyed the classes and learned a lot from them."

**Respondent # 16** - "I haven't had to participate in this yet."

**8. What do you think is the most significant issue(s) currently facing your profession in Alabama and what is the Board doing to address the issue(s)?**

**Respondent #2** - "Real Estate Auctions are not a part of MLS in the state and are NOT allowed to join Realtor Associations or add auction sales to the MLS systems. Auctioneers are also not allowed to join the National Association of Realtors even though we are licensed agents. This should be addressed and changed."

**Respondent # 3** - "The Board allowing for profit or nonprofit organizations to use unlicensed Auctioneers to conduct auctions. I have seen absolutely nothing being done, or even addressed, by the Board. If it is a "legislative loophole" it need to be closed."

**Respondent # 4** - "Keeping it a clean profession and weeding out wrong doers."

**Respondent # 5** - "Making sure all laws are followed to keep from having more issues or scams and making people pay fines for their false actions."

**Respondent # 8** - "the expanding unlicensed online auction world"

**Respondent # 9** - "EDUCATION OF THE PUBLIC. Not sure what the board is doing."

**Respondent # 10** - "A quarterly report or newsletter would help the auctioneers stay up on what is important to the profession."

**Respondent # 11** - "Unlicensed businesses and individuals conducting estate sales and online sales."

**Respondent # 12** - "Things such as Face Book Market Place. People are able to auction there on things even houses. Don't know if anything is being done."

**Respondent # 14** - "Not helping with giving a person study information for taking the Auctioneers exam. I have failed this Exam twice and the board acts like they really don't care. When you take the exam and miss questions you don't really know what questions you miss etc. I failed 95% of the math questions on my last exam I took in September 2018 and when I got my test results back,

*Apprentice Auctioneer Questionnaire*

it stated I missed them all go figure. And I failed the test again. Another thing is that the some of the information on the website has not revised since 07/2006.”

**Respondent # 15** - “All issues are being addressed.”

**Respondent # 16** - “I don’t know.”

**Did not respond** 4

**9. Do you think the Board and its staff are satisfactorily performing their duties?**

**Yes** 16 100%

**Respondent # 2** - “Sometimes”

**Respondent # 14** - “The Lady that I talk to [REDACTED] when she’s in the office, is not a very nice person to deal with. If you have a question she’s very fast to say “HAVE YOU WENT TO OUR WEB SITE YOU CAN FIND IT THERE”.

**10. Has any member of the Board or its staff asked for money (other than normal fees), services, or any other think of value in return for performing a board service for you?**

**No** 16 100%

**Complainant Questionnaire**

A letter was sent to seven complainants whose complaints had been resolved within the past two years requesting participation in our survey. One participated in the survey.

**1. How was your complaint filed with the Board of Auctioneers by?**

|              |          |             |
|--------------|----------|-------------|
| <b>Other</b> | <b>1</b> | <b>100%</b> |
|--------------|----------|-------------|

**2. Was receipt of your complaint promptly acknowledged?**

|            |          |             |
|------------|----------|-------------|
| <b>Yes</b> | <b>1</b> | <b>100%</b> |
|------------|----------|-------------|

**3. If you answer to Question 2 was “yes”, approximately how long after you filed your complaint were you contacted by the board?**

|                       |          |             |
|-----------------------|----------|-------------|
| <b>Within 10 days</b> | <b>1</b> | <b>100%</b> |
|-----------------------|----------|-------------|

**4. Was the Board employee who responded to your complaint knowledgeable and courteous?**

|  |          |             |
|--|----------|-------------|
| <b>Knowledgeable<br/>and Courteous</b> | <b>1</b> | <b>100%</b> |
|--|----------|-------------|

**5. Did the Board communicate the results of the investigation into your complaint to you?**

|            |          |             |
|------------|----------|-------------|
| <b>Yes</b> | <b>1</b> | <b>100%</b> |
|------------|----------|-------------|

**6. Do you think the Board did everything it could to resolve your complaint?**

|            |          |             |
|------------|----------|-------------|
| <b>Yes</b> | <b>1</b> | <b>100%</b> |
|------------|----------|-------------|

**7. Were you satisfied with your dealings with the Board of Auctioneers?**

|            |          |             |
|------------|----------|-------------|
| <b>Yes</b> | <b>1</b> | <b>100%</b> |
|------------|----------|-------------|

# **APPENDICES**

## **Applicable Statutes**

### **Article 1 General Provisions.**

#### **Section 34-4-1 Short title.**

This chapter shall be known and may be cited as the Auctioneers License Act. (*Acts 1973, No. 811, p. 1236, §1.*)

#### **Section 34-4-2 Definitions.**

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed by this section:

(1) AUCTIONEER. Any person who has graduated from an accredited auction school and has one year's experience as an apprentice auctioneer or has two years' experience as an apprentice auctioneer in bid calling, for a fee, commission or any other valuable consideration, or with the intention or expectation of receiving the same, by the means of or process of an auction or sale at auction, offers, negotiates, or attempts to negotiate a listing contract, sale, purchase, or exchange of goods, chattels, merchandise, real or personal property or of any other commodity which may lawfully be kept or offered for sale by or at public auction.

(2) BOARD. The State Board of Auctioneers.

(3) APPRENTICE AUCTIONEER. Any person who for compensation or valuable consideration or otherwise is employed, directly or indirectly, by an auctioneer to deal or engage in any activity listed in subdivision (1) of this section.

(4) GOODS. Any chattels, goods, merchandise, real or personal property or commodities of any form or type which may lawfully be kept or offered for sale.

(5) PERSONS. Individuals, associations, partnerships, and corporations, and the word "persons" shall also include the officers, directors, and employees of a corporation.

(6) AUCTION BUSINESS or BUSINESS OF AUCTIONEERING. The performing of any of the acts of an auctioneer or apprentice auctioneer as defined in this section.

(*Acts 1973, No. 811, p. 1236, §2.*)

#### **Section 34-4-3 Exemptions from chapter.**

The provisions of this chapter and the terms "auctioneer," "apprentice auctioneer," "auction business or business of auctioneering," as defined in Section 34-4-2, shall not apply to and shall not include any person acting as a receiver, trustee in bankruptcy, guardian, administrator, or executor or any such person acting under order of any court, nor shall they include a trustee acting under a trust agreement, deed of trust or will, nor shall they include sales at auction conducted by or under the direction of any public authority or pursuant to any judicial order or decree.

(*Acts 1973, No. 811, p. 1236, §4.*)

#### **Section 34-4-4 Enforcement of chapter.**

The Board of Auctioneers is hereby authorized and empowered to adopt, fix, and establish all rules and regulations necessary for the proper administration and enforcement of this chapter. (*Acts 1973, No. 811, p. 1236, §7.*)

**Section 34-4-5 Actions for collection of compensation.**

No person engaged in the business of or acting in the capacity of an auctioneer or an apprentice auctioneer shall bring or maintain any action in the courts of this state for the collection of compensation for any services performed as an auctioneer or apprentice auctioneer without first alleging and proving that he or she was a duly licensed auctioneer or apprentice auctioneer at the time the alleged cause of action arose. No apprentice auctioneer shall have the right to institute an action in his or her own name for the recovery of a commission, fee, or compensation for services as an apprentice auctioneer, but any such action shall be instituted and brought by the licensed auctioneer employing the apprentice auctioneer. Nothing contained herein shall be construed so as to prevent a licensed apprentice auctioneer from suing his or her employing auctioneer for any compensation, fees, or commissions due him or her from such auctioneer.

*(Acts 1973, No. 811, p. 1236, §20.)*

**Section 34-4-6 Limitation on authority of political subdivisions.**

No political subdivision of this state shall have the power or authority after September 5, 1973, to levy or collect any license tax from or to require the licensing in any manner of any auctioneer who has been licensed and bonded under this chapter in lieu of the license tax or license fee heretofore imposed by any political subdivision.

*(Acts 1973, No. 811, p. 1236, §24; Act 98-271, p. 440, §1.)*

**Section 34-4-7 Penalties.**

(a) Any person violating this chapter, shall, upon conviction, be guilty of a Class A misdemeanor, subject to a fine or imprisonment, or both.

(b) Any person, having previously been convicted for violating this chapter, who subsequently violates this chapter, shall, upon conviction for the subsequent violation, be guilty of a Class C felony, subject to a fine or imprisonment, or both.

*(Acts 1973, No. 811, p. 1236, §22; Act 98-271, p. 440, §1.)*

**Article 2 Licenses.**

**Section 34-4-20 Required.**

It shall be unlawful for any person, partnership, association, or corporation in any county of this state to act as an auctioneer or apprentice auctioneer, or directly or indirectly to engage or assume to engage in the auction business and act as either without first obtaining a license issued by the State Board of Auctioneers, under the provisions of this chapter.

It shall be unlawful for any person not licensed under the provisions of this chapter to advertise that he or she is in the auction business or to do anything to leave any impression upon the public that he or she is an auctioneer or is so engaged.

*(Acts 1973, No. 811, p. 1236, §§3, 19.)*

**Section 34-4-21 Application and examination; fees; expiration, renewal of licenses; continuing education; discharge of apprentice; change of address.**

(a) Any person desiring to enter into the auction business and obtain a license as an auctioneer or apprentice auctioneer shall make written application for a license to the board. Each application shall be accompanied by an examination fee of an amount not

to exceed one hundred dollars (\$100) which shall be collected from each applicant to defray the expenses of the examination. The application shall be submitted on forms prepared and furnished by the board.

(b) Each applicant for a license as an auctioneer shall be 19 years of age or over, and each applicant for a license as an apprentice auctioneer shall be 18 years of age or over and shall be a citizen of the United States **or legally present in this state**. Each applicant for an auctioneer's license shall: (1) have completed a prescribed course of study at an accredited auctioneering school approved by the board; (2) have served one year as an apprentice auctioneer under a licensed auctioneer in this state; (3) have been the principal auctioneer in at least five auctions of either real or personal property during this period of time; and (4) furnish satisfactory proof of these requirements to the board. An application shall also be accompanied by a recommendation of an employing auctioneer. If an applicant has not completed a course of study at an accredited auctioneering school, then he or she shall be required to serve two years as an apprentice under a licensed auctioneer, and shall have been the principal auctioneer in at least 10 auctions of real or personal property.

(c) Any person who files an application with the board in the proper manner shall be entitled to take an oral and written examination to determine his or her qualifications. The board shall require applicants to take and pass a written and oral examination establishing in a manner satisfactory to the board that the applicant has a general knowledge of ethics, reading, writing, spelling, elementary arithmetic, elementary principles of land economics, and a general knowledge of the statutes of this state relating to the bulk sales, auctions, brokerage, and this chapter. The examination for an auctioneer's license shall be of a more exacting nature and scope than the examination for an apprentice auctioneer. The board shall, through application and examination, determine whether the applicant is of good repute, trustworthy, honest, and competent to transact the business of an auctioneer, or of an apprentice auctioneer, in a manner that safeguards the interest of the public. The board shall require, and it shall be the responsibility of any applicant for an initial, renewal, or reciprocal license to disclose any prior felony conviction, any prior misdemeanor conviction involving moral turpitude, any pending criminal arrest of any nature except misdemeanor traffic violations, and any prior or pending disciplinary proceedings against the applicant before a board of auctioneers or real estate commission in this or any other state. All auctioneers, apprentice auctioneers, and auction firms are under a continuing duty to report to the board any and all such criminal arrests, charges, convictions, or disciplinary proceedings which they may incur, as well as any civil suits involving them. The board must receive notice of any such arrest, charge, criminal conviction, or commencement of disciplinary proceedings within 30 days of its occurrence. Notice of the commencement of any civil suit must be received by the board within 30 days after service of the complaint upon the defendant in the action.

(d) The license fee for each auctioneer shall be an amount to be determined by the board, not to exceed two hundred fifty dollars (\$250), and the license fee for each apprentice auctioneer shall be an amount to be determined by the board, not to exceed one hundred dollars (\$100). The license fees for an auctioneer shall not be increased more than twenty-five dollars (\$25) in any given year.

(e) All licenses shall expire on September 30 of each year following issuance thereof and may be renewed upon payment of the appropriate license fee as required by this chapter. Renewal of a license may be effected at any time during the months preceding the date of expiration. No examination shall be required for the renewal of any license,



unless the license has been revoked or suspended. If a licensee fails to renew his or her license by the deadline of each year, he or she may have his or her license renewed within 60 days after the expiration date, upon payment of the required fee and a late fee of twenty-five dollars (\$25) for apprentices and fifty dollars (\$50) for auctioneers. If a licensee elects not to pay the penalty and renew his or her license, he or she shall submit an application, pay the examination fee, and take the examination required for new licensees.

(f) The board shall adopt a program of continuing education for its licensees. No licensee shall have his or her license renewed unless, in addition to any other requirements of this chapter, the minimum annual continuing education requirements are met. The continuing education program shall not include testing or examination of the licensees in any manner. Any licensee 65 years of age or older shall be exempt from the continuing education requirement.

(g) The board shall prepare and deliver to each licensee a license certificate and pocket card. The certificate shall be displayed openly at all times in the office of the licensee. The certificate and the pocket card of the apprentice auctioneer shall contain his or her name as well as that of the auctioneer under whose supervision he or she is employed.

(h) When any auctioneer discharges an apprentice, or terminates his or her employment with the auctioneer for any reason, the auctioneer shall deliver or mail by registered or certified mail to the board the license of the discharged apprentice auctioneer. It shall be unlawful for any apprentice auctioneer to perform any of the acts contemplated by this chapter, either directly or indirectly under authority of his or her license, until the apprentice auctioneer receives a new license bearing the name and address of his or her new employer. No more than one license shall be issued to any apprentice auctioneer for the same period of time.

(i) Written notice shall be given immediately to the board by each licensee of any change in his or her mailing address and the board shall issue a new license for the unexpired period. A change of mailing address without notification to the board shall automatically cancel the license previously issued. For changing a mailing address and issuance of a new license, the board shall collect a fee of five dollars (\$5). Each prior license shall be returned or accounted for to the board and be canceled before the issuance of the new license. The board may require other proof considered desirable with due regard to the paramount interest of the public in the issuance of the license.

(j) Pursuant to Sections 41-22-1 to 41-22-27, inclusive, the Alabama Administrative Procedure Act, the board may make and enforce any necessary and reasonable rules and regulations pursuant to the application for any license.

*(Acts 1973, No. 811, p. 1236, §11; Acts 1981, No. 81-378, p. 555, §4; Acts 1988, No. 88-138, p. 201, §3; Acts 1992, No. 92-119, p. 197, §3; Act 98-271, p. 440, §1; Act 2004-74, p. 94, §3; Act 2008-81, p. 103, §3; Act 2012-97, p. 168, §3; Act 2014-329, p. 1212, §1.)*

**Section 34-4-22 Register of applicants.**

The secretary of the board shall keep a register of all applicants for license, showing for each the date of application, name, place of business, place of residence, and whether the license was granted or refused.

*(Acts 1973, No. 811, p. 1236, §12.)*

**Section 34-4-23 License as evidence of rights and privileges.**

The issuance of a license by the board shall be evidence that the person, partnership, association, or corporation named therein is entitled to all the rights and privileges of an auctioneer or apprentice auctioneer while the license remains unrevoked or unexpired.

*(Acts 1973, No. 811, p. 1236, §16.)*

**Section 34-4-24 Bond required.**

Each application for an auctioneer's or apprentice auctioneer's license shall be accompanied by a bond in the amount of \$10,000. The bond shall be a cash bond or a surety bond and, if the latter, shall be executed by a surety company authorized to do business in this state. The bond shall be made payable to the board and conditioned upon the applicant conducting his or her business in accordance with the provisions and intent of this chapter. The bond shall be in a form approved by the board. No license may be issued until such a bond has been filed with the board.

*(Acts 1973, No. 811, p. 1236, §17; Acts 1981, No. 81-378, p. 555, §4.)*

**Section 34-4-25 Licensing of nonresidents.**

A nonresident of this state, or a resident of this state who is licensed by another state, may become an auctioneer or apprentice auctioneer in this state by conforming to this chapter, or in the case of a nonresident from a nonlicensing state, such person may be licensed provided an examination is given and passed and the person has at least five years' experience in the auction business. Provided further, that if a nonresident auctioneer or apprentice auctioneer, or a resident who is licensed as an auctioneer or apprentice auctioneer in another state, has a lawsuit or other legal action filed and pending against him or her in this or any other state, the board shall not issue a license to him or her until final disposition of the action, and then only at the discretion of the board. The terms "auctioneer" and "apprentice auctioneer" shall include any individual, firm, company, partnership, association, or corporation by whom the "auctioneer" or "apprentice auctioneer" is employed. The board may recognize a license issued by any other state to a resident of this state or a nonresident auctioneer or apprentice auctioneer if the other state reciprocates with Alabama in like manner and if the licensing requirements of the state include the passing of an examination of equal or higher standards than those required by this state. The nonresident licensee, or resident licensee of another state, shall, however, be required to secure a license from the board which shall be issued upon application therefor, accompanied by payment of the license fee required by this chapter and the filing of a certified copy of the license of the applicant issued by the other state. The board shall have the authority to impose any fee or licensing requirements on applicants for licenses from a reciprocal state that the reciprocal state imposes on Alabama licensees by rule, regulation, policy, or law. Every applicant shall file an irrevocable consent that actions may be commenced against the applicant in the proper court in the county in this state in which a cause of action may

arise, in which the plaintiff may reside, by service of any process or pleadings authorized by laws of this state on the board, or a deputy to be designated by the board, the consent stipulating and agreeing that service of process or pleading shall be begun and held in all courts to be as valid and binding as if due service had been made upon the applicant in this state. The consent shall be duly acknowledged and, if made by a corporation, shall be authenticated by the seal of the corporation. In case of any process or pleadings mentioned in this chapter being served upon the board or upon a deputy to be designated by the board, duplicated copies shall be made, one of which shall be filed in the office of the secretary of the board, and the other immediately forwarded by registered or certified mail to the main office of the applicant against which process or pleadings are directed. No default in the proceedings or action shall be taken unless it shall be made to appear by affidavit of a member of the board, or a deputy designated by the board, that a copy of the process or pleadings was mailed to the defendant as herein required. Judgment by default shall be taken in any action or proceedings within 20 days after the date of the mailing of process or pleadings to the defendant. (*Acts 1973, No. 811, p. 1236, §18; Acts 1981, No. 81-378, p. 555, §4; Act 2004-74, p. 94, §3; Act 2014-329, p. 1216, §1.*)

**Section 34-4-26 Mailing address.**

Each licensee must have a definite mailing address such as street name and number or RFD number. A post office box only will not be sufficient. (*Acts 1973, No. 811, p. 1236, §19.*)

**Section 34-4-27 Privilege licenses.**

Each auctioneer shall annually pay one state license in an amount not to exceed two hundred fifty dollars (\$250). Each auctioneer shall also annually pay a county license of twenty-five dollars (\$25) in each county where he or she sells by auction. No privilege license shall be required for any apprentice auctioneer when he or she is listed as the principal auctioneer. No license shall be required for any auctioneer who conducts an auction, without compensation for himself or herself, where all proceeds from the auction go to the benefit of any charitable organization. The term "auctioneer" shall include any person selling real estate, goods, wares, merchandise, automobiles, livestock, or other things of value at public outcry. Sales at public outcry may be made for compensation without license involving any of the following:

- (1) Sales for the estate of a decedent.
- (2) Sales of property conveyed by deed of trust, mortgage, judgment, or ordered to be sold according to the mortgage, judgment, or order.
- (3) All sales under legal process.

(*Acts 1973, No. 811, p. 1236, §23; Act 98-271, p. 440, §1.*)

**Section 34-4-28 Authority under license not transferable; effect of license issued to corporation, association or partnership.**

Authority to transact business as an auctioneer under any license issued by the board shall be restricted to the person named in such license and shall not inure to the benefit of any other person.

Where an auctioneer's license shall be issued to a corporation or association, authority to transact business thereunder shall be limited to one officer of such corporation or association to be designated in the application and named in the license. Each other

officer of such association or corporation desiring to act as an auctioneer in connection with the business of the association or corporation, or otherwise, shall be required to make application for and take out a separate license in his or her own name individually. Where the licensee is a copartnership, the license issued to such copartnership shall confer authority to act as auctioneer upon one member of such copartnership only, who shall be designated in the application and named in the license. All the other members of the copartnership desiring to act as auctioneers in connection with the business of the partnership or otherwise shall be required to apply for and take out individual licenses in their own names.

*(Acts 1973, No. 811, p. 1236, §25.)*

**Section 34-4-29 Revocation or suspension - Procedure generally; grounds; notice and hearing required before denial, suspension, or revocation; administrative fines.**

- (a) The board may revoke or suspend licenses as provided in this section.
- (b) The board may, upon its own motion, and shall, upon the verified complaint in writing of any person containing evidence, documentary or otherwise, that makes out a prima facie case, investigate the actions of any auctioneer, apprentice auctioneer, or any person who assumes to act in either capacity, and hold a hearing on the complaint.
- (c) The board may suspend or revoke any license which has been issued based on false or fraudulent representations. The board may also suspend or revoke the license of any licensee for any of the following acts:
  - (1) Making any substantial misrepresentation.
  - (2) Pursuing a continued and flagrant course of misrepresentation or making false promises through agents, advertising, or otherwise.
  - (3) Accepting valuable consideration as an apprentice auctioneer for the performance of any of the acts specified in this chapter from any person other than his or her employer auctioneer.
  - (4) Failing to account for or remit, within a reasonable time, any money belonging to others that comes into his or her possession, commingling funds of others with his or her own, or failing to keep funds of others in an escrow or trustee account.
  - (5) Paying valuable consideration to any person for services performed in violation of this chapter.
  - (6) Being convicted in a court of competent jurisdiction of this or any other state of a criminal offense involving moral turpitude or a felony.
  - (7) Violation of any rule or regulation promulgated by the board.
  - (8) Failure to furnish voluntarily at the time of execution copies of all written instruments prepared by the auctioneer or apprentice auctioneer.
  - (9) Any conduct of any auctioneer which demonstrates bad faith, dishonesty, incompetency, or untruthfulness.
  - (10) Any conduct of any auctioneer which demonstrates improper, fraudulent, or dishonest dealings.
  - (11) Failing prior to the sale at public auction to enter into a written contract with the owner or cosignee of any property to be sold containing the terms and conditions upon which the licensee received the property for sale.
  - (12) Failure by the auctioneer conducting an auction to show his or her name and state license number in the advertising of the auction.
  - (13) Presenting a worthless check to the board.

(d) Before denying an application for license or suspending or revoking any license, the board shall hold a hearing and shall, at least 21 days prior to the date set for the hearing, notify in writing the accused licensee of the charges made or the question to be determined, including notice of the time and place of the hearing, and afford the licensee an opportunity to be present, be heard in person or by counsel, and to offer evidence orally, or by affidavit or deposition. Written notice may be served by delivery of the notice personally to the applicant or licensee or by mailing the notice by registered or certified mail to the last known mailing address of the applicant or licensee. If the applicant or licensee is an apprentice auctioneer, the board shall also notify the auctioneer employing him or her, or whose employ he or she is about to enter, by mailing notice by registered or certified mail to the auctioneer's last known address. The hearing shall be held at a time and place prescribed by the board.

(e) In addition to the disciplinary powers granted in this section, the board may levy and collect administrative fines for serious violations of this chapter or the rules and regulations of the board of not less than \$200 or more than \$500 for each violation. (*Acts 1973, No. 811, p. 1236, §13; Acts 1992, No. 92-119, p. 197, §3.*)

**Section 34-4-30 Revocation or suspension - Procedure for hearings; immunity of board.**

(a) The board may administer oaths and prescribe all necessary and reasonable rules for the conduct of a hearing. The board may take testimony of any person by deposition, with the same fees and mileage and in the same manner as prescribed by law in judicial procedure of courts of this state in civil cases. The fees and mileage shall be paid by the party at whose request the witness is subpoenaed.

(b) If the board determines that the licensee is guilty under this chapter, his or her license may be suspended or revoked.

(c) The affirmative vote of a majority of the board shall be necessary to revoke or suspend a license.

(d) The board is declared to be a quasi judicial body, and the members or the employees of the board are granted immunity from civil liability and shall not be liable for damages therefrom when acting in the performance of their duties as described in this chapter.

(*Acts 1973, No. 811, p. 1236, §14; Acts 1981, No. 81-378, p. 555, §4; Act 98-271, p. 440, §1.*)

**Section 34-4-31 Revocation or suspension - Resulting from judgment in damage action.**

Whenever any person, partnership, association or corporation claiming to have been injured or damaged by the gross negligence, incompetency, fraud, dishonesty, or misconduct on the part of any licensee following the calling or engaging in the business herein described shall file an action upon such claim against such licensee in any court of record in this state and shall recover judgment thereon, such court may as part of its judgment in such case, if it deems it a proper case in which to do so, revoke the defendant's license, which shall not be reissued to such licensee except upon unanimous vote of all members of the board in favor of such reissuance and only then after the lapse of a period of 90 days from the date of such revocation.

(*Acts 1973, No. 811, p. 1236, §15.*)

**Section 34-4-32 Effect on license of apprentice auctioneer.**

The revocation of an auctioneer's license shall automatically suspend every apprentice auctioneer's license granted to any person by virtue of his or her employment by the auctioneer whose license has been revoked. The apprentice auctioneer may retain his or her license by transferring to the employment of another licensed auctioneer within 21 days.

*(Acts 1973, No. 811, p. 1236, §21.)*

**Section 34-4-33 Revocation or suspension - Notice of appeal; decision stayed; record and complaint filed; procedures; costs.**

(a) Findings of the board with regard to the suspension or revocation of a license or the imposition of an administrative fine shall be final unless within 30 days after the date of the final order of the board, the applicant, or otherwise known as the accused, whether an individual or a corporation registered in Alabama, files a notice of appeal in the Circuit Court of Montgomery County. A party appealing a decision shall post a two hundred dollar (\$200) appeal bond with the clerk of the circuit court. The circuit clerk shall notify the board of the appeal after the clerk has approved the appellant's bond.

(b) An appeal does not act as supersedeas, but the decision of the board may be stayed by the court pending the appeal.

(c) The board shall within 30 days of service of the notice of appeal, or within the additional time as the court may allow, file the record in the case with the circuit clerk. A complaint setting forth with particularity the issues raised on appeal shall be filed with the court and served on the board by the appealing party within 30 days after the notice of appeal is filed. The action shall be conducted in accordance with the Alabama Rules of Civil Procedure.

(d) The appeal shall be conducted by the court without a jury and shall be confined to the record made before the board. The decision of the board shall be taken as prima facie just and reasonable and the court shall not substitute its judgment for that of the board as to the weight of the evidence on questions of fact. The court shall affirm or reverse, in part or in whole, or modify the decision of the board. The court may remand the case to the board for further proceedings.

(e) If the decision of the board is affirmed in whole or in part, the cost of the appeal shall be taxed against the party taking the appeal. If the decision of the board is not affirmed, the court shall tax the costs of appeal against the board.

*(Act 98-271, p. 440, §2.)*

**Article 3 Board of Auctioneers.**

**Section 34-4-50 Appointment; composition; powers and duties; expenses; seal; public records.**

(a) The Governor shall appoint a State Board of Auctioneers to be comprised of seven auctioneer members and one consumer member. Except as otherwise provided by Act 98-271, all appointments and subsequent appointments by the Governor shall be for a term of five years, with each auctioneer member appointed being a resident of a different congressional district and the consumer member being a resident of and appointed from the state at-large. Within 60 days after July 1, 1998, the Governor shall appoint one additional auctioneer member provided for herein for a term of two years and the other additional auctioneer member provided for in Act 98-271 shall be

appointed by the Governor for a term of four years. Thereafter, subsequent appointments shall be for a term of five years. Appointments shall end on the anniversary date of the original appointments, except appointments to fill a vacancy which shall be for the unexpired term only. No member shall serve more than two consecutive terms of office. Each member of the board and his or her successor shall have been a resident and citizen of this state for at least five years prior to his or her appointment. Each auctioneer member of the board and his or her successor shall have been a licensed auctioneer in this state for at least five years. Each member shall hold office until his or her successor is appointed by the Governor. The membership of the board shall be inclusive and reflect the racial, gender, geographic, urban/rural, and economic diversity of the state.

(b) Each auctioneer member of the board shall be of good moral character and shall have been licensed by the board and actively engaged in the auction business for at least five years prior to the appointment.

(c) On the appointment of a new auctioneer board member, the board shall, at its next meeting, elect one of its members as chair, one member as vice-chair, one member as secretary, and any other officers deemed necessary. The board may do all things necessary and convenient for carrying into effect this chapter. The board may make bylaws, rules, and regulations not inconsistent with this chapter or other general laws of the state.

(d) Except as otherwise provided in Section 34-4-53, members of the board, board staff, and board attorneys shall receive the same per diem and travel allowance paid to state employees for each day they meet to conduct the official business of the board.

(e) The board may employ an administrator who shall be exempt from the classified service of the state, and other staff members necessary to discharge board duties and administer this chapter. The administrator shall be employed on the basis of his or her education, experience, and skills in administration and management. The board shall determine the duties and fix the compensation of the administrator and other staff members, subject to the general laws of the state.

(f) The board shall adopt a seal by which the board shall authenticate records and documents. On the seal shall be the words State Board of Auctioneers. Copies of all records and documents in the office of the board that are duly certified and authenticated by the seal of the board shall be received in evidence in all courts equally and with the same effect as the original. All public records kept in the office of the board shall be open to public inspection during reasonable hours.

*(Acts 1973, No. 811, p. 1236, §6; Acts 1981, No. 81-378, p. 555, §4; Acts 1988, No. 88-138, p. 201, §3; Acts 1992, No. 92-119, p. 197, §3; Act 98-271, p. 440, §1; Act 2004-74, p. 94, §3; Act 2016-63, §3.)*

**Section 34-4-51 Certificates of appointment to board; legal assistance; prosecution of complaints.**

Each member of the board shall receive a certificate of appointment from the Governor before entering upon the discharge of the duties of his or her office. The board, or any committee thereof, shall be entitled to the services of the state Attorney General, in connection with the affairs of the board, or may, on approval of the Attorney General, employ an attorney to assist or represent it in the enforcement of this chapter before any court of competent jurisdiction, and it may take the necessary legal steps through the proper legal officers of the state to enforce the provisions of this chapter and collect the

penalties provided herein. Complaints shall be prosecuted in the name of the State Board of Auctioneers.

*(Acts 1973, No. 811, p. 1236, §5.)*

**Section 34-4-52 Meetings; quorum.**

The board shall meet at least four times each year, in January, April, July, and October, for the purpose of transacting business as may properly come before the board. Special meetings of the board shall be held at such times as the board may provide in the bylaws the board may adopt. Four members shall constitute a quorum at a board meeting. Due notice of each meeting and the time and place thereof shall be given each member in such manner as the bylaws may provide.

*(Acts 1973, No. 811, p. 1236, §8; Act 2004-74, p. 94, §3.)*

**Section 34-4-53 Compensation of members.**

Members of the board shall each receive compensation in an amount of three hundred dollars (\$300) per day and travel allowance as is paid to state employees for each day spent on work made necessary by this chapter.

*(Acts 1973, No. 811, p. 1236, §9; Acts 1988, No. 88-138, p. 201, §3; Act 2004-74, p. 94, §3.)*

**Section 34-4-54 Record of proceedings; funds; audit.**

The executive director of the board shall keep a record of the proceedings of the board. The board shall deposit all the funds received and credited by the board into the State Treasury into an account hereby established to be known as the "Alabama State Board of Auctioneers Fund." All money derived under this chapter shall be deposited into the fund and used only to carry out the requirements of this chapter. No money shall be paid out of the fund except by warrant of the Comptroller upon the State Treasury after approval of itemized vouchers by the executive director of the board or an authorized designee.

*(Acts 1973, No. 811, p. 1236, §10; Acts 1988, No. 88-138, p. 201, §3; Act 2014-329, p. 1215, §1.)*



## Professional Services by Vendor

|                                      | 2015                 | 2016                 | 2017                 | 2018                 |
|--------------------------------------|----------------------|----------------------|----------------------|----------------------|
| <b>Administrative Services</b>       |                      |                      |                      |                      |
| Accounting & Auditing - Professional |                      |                      |                      |                      |
| Warren & Company                     | \$ 81,000.00         | \$ 67,500.00         | \$ 94,500.00         | \$ 81,000.00         |
| John Stephen Proffitt, III           | 1,500.00             | -                    | -                    | -                    |
| Advertising - Professional           |                      |                      |                      |                      |
| Legislative Reference Service        | 810.00               | 450.00               | 440.00               | 1,380.00             |
| Alabama Auctioneers Association      | -                    | -                    | -                    | 7,500.00             |
| Educational/Training Consultants     |                      |                      |                      |                      |
| AL Assoc. of Regulatory Boards       | 175.00               | -                    | -                    | 250.00               |
| PROV Inc.                            | 7,692.00             | 2,800.00             | 2,160.00             | 2,560.00             |
| Brandy & Associates, Inc.            | -                    | 2,000.00             | 2,500.00             | -                    |
| Imaging Services                     |                      |                      |                      |                      |
| Business Systems & Consultants       | -                    | 3,896.45             | 4,403.72             | -                    |
| Information and Research Service     |                      |                      |                      |                      |
| Background Investigations, Inc.      | 836.00               | 717.00               | 551.00               | 703.00               |
| <b>Total Administrative Services</b> | <b>92,013.00</b>     | <b>77,363.45</b>     | <b>104,554.72</b>    | <b>93,393.00</b>     |
| <b>Data Processing</b>               |                      |                      |                      |                      |
| Department of Finance                | 3,436.95             | 2,457.70             | 16,937.90            | 17,445.50            |
| Office of Information Technology     | -                    | -                    | -                    | 2,141.00             |
| <b>Total Data Processing</b>         | <b>3,436.95</b>      | <b>2,457.70</b>      | <b>16,937.90</b>     | <b>19,586.50</b>     |
| <b>Department of Finance</b>         |                      |                      |                      |                      |
| Mailing Services                     | 54.43                | -                    | 9.55                 | 11.00                |
| FRMS Services                        | 559.24               | 536.85               | 161.66               | 48.48                |
| Interfund Contract Program - STAARS  | -                    | -                    | 7,800.00             | 1,950.00             |
| Comptroller Services                 | 960.45               | 871.03               | 820.19               | 851.77               |
| <b>Total Department of Finance</b>   | <b>1,574.12</b>      | <b>1,407.88</b>      | <b>8,791.40</b>      | <b>2,861.25</b>      |
| <b>Legal Professional</b>            |                      |                      |                      |                      |
| Counsel                              |                      |                      |                      |                      |
| Dana Billingsley, Wilkerson & Bryan  | 20,415.30            | 29,209.11            | 23,264.86            | 21,038.85            |
| Court Reporting                      |                      |                      |                      |                      |
| Henderson & Associates               | 407.10               | 75.00                | -                    | -                    |
| <b>Total Legal</b>                   | <b>20,822.40</b>     | <b>29,284.11</b>     | <b>23,264.86</b>     | <b>21,038.85</b>     |
| <b>Total Professional Services</b>   | <b>\$ 117,846.47</b> | <b>\$ 110,513.14</b> | <b>\$ 153,548.88</b> | <b>\$ 136,879.60</b> |

**Board Members**



Alabama State Board of Auctioneers  
2777 Zelda Rd  
Montgomery, AL 36106  
Phone: 334-420-7235  
Fax: 334-263-6115  
Email: [auctioneers@warrenandco.com](mailto:auctioneers@warrenandco.com)  
Website: [www.auctioneer.alabama.gov](http://www.auctioneer.alabama.gov)

Ms. Janet L. Berry  
Examiners of Public Accounts  
Post Office Box 302251  
Montgomery, AL 36130-2251

Dear Ms. Berry,

Listed below are the Board members serving during the audit period with the requested information for the Sunset Report.

Please do not hesitate to contact me regarding any additional questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Keith E. Warren", with a long horizontal flourish extending to the right.

Keith E. Warren  
*Executive Director*

**BOARD MEMBERS**

| <u>NAME</u>                                | <u>TERM<br/>EXPIRATION</u> | <u>DATE OF<br/>APPOINTMENT</u> | <u>POSITION</u> |
|--|----------------------------|--------------------------------|-----------------|
| John "Pete" Horton<br>Gulf Shores, Alabama | 10/31/22                   | 11/21/17                       | Chair           |
| J. Michael Langford<br>Tuscaloosa, Alabama | 10/31/20                   | 05/09/16                       | Member          |
| Chip Pearce<br>Alabaster, Alabama          | 10/31/23                   | 01/31/19                       | Member          |
| Erskine L. Valrie<br>Huntsville, Alabama   | 10/31/22                   | 11/21/17                       | Consumer Member |
| Chad Curvin<br>Alexandria, Alabama         | 10/31/20                   | 05/09/16                       | Member          |
| J. Keith McDaniel<br>Florence, Alabama     | 10/31/20                   | 08/01/16                       | Member          |
| Mike Fisher<br>Rainbow City, Alabama       | 10/31/22                   | 11/21/17                       | Member          |
| John D. Gray<br>Montgomery, Alabama        | 10/31/22                   | 11/21/17                       | Member          |

## Board's Response to Significant Issues



**Alabama State Board of Auctioneers**  
2777 Zelda Rd  
Montgomery, AL 36106  
Phone: 334-420-7235 or 866-873-4664  
Fax: 334-263-6115  
E-mail: [auctioneers@warrenandco.com](mailto:auctioneers@warrenandco.com)  
Website: [www.auctioneer.alabama.gov](http://www.auctioneer.alabama.gov)

August 21, 2019

Maria L. Catledge  
Director, Operational Division  
Examiners of Public Accounts  
Post Office Box 302251  
Montgomery, AL 36130-2251

Dear Ms. Catledge,

Please find the follow responses to the significant issues from the recent examination for the Sunset Committee conducted by your department.

### 2019-01

Under current statute, the Board does not have jurisdiction over internet auctions but does feel the need to change this legislatively in order to protect the public. The Attorney General opined in its Opinion 2018-04, that internet auctions do not fall under the definition of traditional bid auctions at public outcry as defined in the statute. During the 2019 Legislative Session, the Board did introduced legislation (H.B. 495 and S.B. 389) to update the definition of an auction and expand its jurisdiction to include internet auctions. The legislation was not successful, but the Board fully intends to introduce these bills again during the 2020 Legislative Session.

### Prior Finding 2016-01

Appendix I – Fees, certified on June 28, 2019, reflects the current fees assessed and collected by the board and the \$20 fee for a request for conviction/criminal history records has been removed. This prior finding has been resolved.

### Prior Finding 2016-01


Appendix I – Fees, published on July 31, 2019 and scheduled for final adoption on October 20, 2019, reflects the current fees assessed and collected by the board and the \$150 fee for processing an application for licensure by reciprocity has been removed. This prior finding has been resolved.

**Prior Finding 2011-04**

The reporting of vacancies to the Secretary of State website has been reassigned in the board office and this finding is and will continue to be resolved in future examinations.

Please do not hesitate to contact me should you have any questions or need any additional information. Thank you for your assistance and cooperation. The Board and I greatly appreciate the service you provide during this process to ensure compliance of all laws, rules and regulations.

Respectfully submitted,



Keith E. Warren  
*Executive Director*