

Health within three months after the end of the school year during which the payment for the service was made by the school district or joint school board.

(c) Nothing herein contained shall be construed to prohibit any school district or joint school board from expending for health services amounts in excess of the reimbursable amounts.

Section 4. This act shall take effect July 1, 1962. Effective date.

APPROVED—The 29th day of September, A. D. 1961.

DAVID L. LAWRENCE

—
No. 708

AN ACT

To define license and regulate resident and nonresident auctioneers and apprentice auctioneers in this Commonwealth, and revising, consolidating and making the law uniform relative thereto; conferring certain powers and duties on the Secretary of the Commonwealth and on certain departments and officers of the State and local governments; providing for the keeping of records and the inspection thereof; repealing certain inconsistent laws, and providing penalties.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows: The Auctioneers' License Act.

Section 1. Short Title.—This act shall be known and may be cited as “The Auctioneers’ License Act.”

Section 2. Definitions.—As used in this act:

(1) “Goods” shall mean any goods, wares, work of art, commodity, compound or thing, chattels, merchandise or personal property, which may be lawfully kept or offered for sale, including domestic animals and farm products, but shall not include nor apply to sales at auction conducted by or under the direction of any public authority, or pursuant to any judicial order or decree, or in the settlement of any decedent’s estate, or to any sale required by law to be at auction, or to any sale conducted by or on behalf of any charitable corporation or association if the person conducting the sale receives no compensation therefor.

(2) “Person” shall mean and include an individual, firm, copartnership, association or corporation, but as applied to “association” shall mean the partners or members of any partnership, limited partnership, or any form of unincorporated enterprise, owned by two or more persons, and as applied to “corporation” shall mean the officers or directors thereof.

(3) "Auctioneer" shall mean any citizen of the United States and of the Commonwealth of Pennsylvania having two or more years' experience as an active auctioneer in the profession of auctioneering and being duly licensed as provided in this act.

(4) "Apprentice Auctioneer" shall mean any person eighteen years of age or over, being a resident of the Commonwealth of Pennsylvania for one year or upwards, and having completed a prescribed course of study at an accredited auctioneering school approved by the department and one year's apprenticeship under the supervision and control of a duly licensed auctioneer, or at least two years' apprenticeship under the supervision and control of a duly licensed auctioneer and duly licensed as provided in this act.

(5) "Auction" or "Sale at Auction" shall mean the verbal exchanges between an auctioneer or apprentice auctioneer and the members of his audience, constituting a series of invitations for offers for the sale of goods or real estate made by the auctioneer or an apprentice auctioneer, offers by members of the audience, and the acceptance of the highest or most favorable offer by the auctioneer or an apprentice auctioneer.

(6) "Department" shall mean the Department of State who shall administer the provisions of this act.

Section 3. Issuance of Licenses; Supervision and Control.—The department shall issue auctioneers' and apprentice auctioneers' licenses under the provisions of this act. The department shall supervise and control all licenses issued under the provisions of this act.

Section 4. Copies of Department Records as Evidence; Fees for Copies.—(a) Copies of all records and papers or documents filed in the office of the Department of State, and of all proceedings by or before the Secretary of the Commonwealth, or his duly appointed representative, with the secretary's action thereon, and stenographic notes of testimony or other evidence submitted, when certified under the seal of the department, shall be admitted to be read in evidence in all courts in this Commonwealth in all cases where the originals would be admissible in evidence under the provisions of this act. In any proceeding, the court having jurisdiction may, on cause shown, require the production of the original.

(b) For every copy of paper filed with the department in any proceedings before the Secretary of the Commonwealth, the department may charge the fees as it may by general rule or regulation prescribe not exceeding fifty cents (50¢) per folio.

Section 5. Information Not to be Divulged; Penalties; Exceptions; Rulings to be Public Records.—(a) Neither the Secretary of the Commonwealth nor any deputy secretary, representative, clerk or other employe of the department shall, directly or indirectly, wilfully exhibit, publish, divulge or make known to any person or persons any record, report, statement, letter or any other matter, fact or thing contained among the papers, documents or records of the department, or ascertain from any of them or from any investigation or proceedings made or held by or before the department or any of its deputies, members, secretary or representatives, *excepting in the manner as is expressly authorized by this act and excepting when the production of any information in a proceeding in any court is duly required by subpoena issued by special order of the court or other regular process. Any violation of the provisions of this section shall be a misdemeanor, upon conviction whereof, the person so offending shall be sentenced to pay a fine not exceeding one thousand dollars (\$1000).

(b) The provisions of this section shall not apply to any final ruling or decision of the Secretary of State with the record relative thereto, and upon which the same was founded **which final ruling or decision shall have been duly made and entered after investigation and hearing. All records shall, immediately upon the entry of any final ruling or decision, become public records of the department subject to inspection by any person interested.

Section 6. License Required; Restrictions as to Citizenship, Age, Apprenticeship and Examination.—(a) From and after January 1, 1962, it shall be unlawful for any person, copartnership, association or corporation to engage in or carry on the business or act in the capacity of an auctioneer or an apprentice auctioneer within this Commonwealth without first obtaining a license as an auctioneer or an apprentice auctioneer from the department, except that such license need not be obtained by any person conducting an auction or sale at auction of any equipment, livestock, household goods, personal property or real property of any kind or nature if the same is individually owned by said person.

(b) No person, copartnership, association or corporation may be licensed by the department as an auctioneer unless such person and all of the members of any such copartnership or association who are actively engaged in the auctioneering profession and all of the officers of any such corporation who are actively engaged are of the age of twenty-one years and upwards, are citizens of the

* "exceptitng" in original.

** "with" in original.

United States and of the Commonwealth of Pennsylvania, except as provided in sections 6 and 9 of this act, and shall have served as an active auctioneer for two years or more, or shall have served an apprenticeship as a duly licensed apprentice auctioneer of not less than two years in the employ of a duly licensed auctioneer or of not less than one year in the employ of a duly licensed auctioneer after having completed a course of study in auctioneering at an accredited school approved by the department, or upon application, proof of experience equivalent thereto.

(c) Any person engaged in the auctioneering profession for a period of two years or more may be issued an auctioneer's license if he meets all of the prerequisites of applicants for such licenses, except that he shall not be required to have served in the employ of a duly licensed auctioneer, or as a duly licensed apprentice auctioneer for a period of two years: And provided, That such application for license shall be made to the department within ninety days of the effective date of this act.

(d) Any person who remains inactive for a period of seven years without renewing his license shall, prior to having a license reissued to him, submit to and pass an examination.

Section 7. License, Department to Issue.—It shall be the duty of the Department of State upon payment of the license fees required by this act to issue licenses as auctioneer or apprentice auctioneer to all individuals, and as to auctioneers alone, to all copartnerships, associations and corporations who qualify under and comply with the provisions of this act.

Section 8. Applications; Examinations; Expiration Dates.—(a) Applications for licenses as auctioneer shall be made, in writing, to the department upon a blank provided for the purpose by the department, and shall contain such information as to the applicant, or when the application is made by a copartnership, association or corporation as to its members or officers, as the department shall require. The application shall be signed by the applicant, or in the case of a copartnership or corporation by any member or officer thereof, and shall be accompanied by the recommendation of at least two citizens not related to the applicant or to any member or officer of any copartnership or corporation so making application, who shall be owners of real estate within and residents of the county in which the application is made, certifying to the honesty, truthfulness and good repute of the applicant, or in the case of a copartnership or association or corporation, its members or officers by name, and recommending that a license be granted the appli-

cant, and by the recommendation of one licensed auctioneer or licensed member or officer of a copartnership, association or corporation licensed as an auctioneer. If the applicant, or in the case of copartnership or corporation any of its members or officers, shall have resided or shall have engaged in business for less than one year in the county from which the application is made, such application shall also be accompanied by the recommendation of at least two real estate owners not related to the applicant of each of the counties where he or each of such members or officers has formerly resided or engaged in business during the said period of one year prior to the filing of such application, certifying to the honesty, truthfulness and good repute of the applicant, or its members, or officers by name, and recommending that the license be granted. Each application shall be accompanied by two photographs of the applicant, or in the case of a copartnership, association or corporation of the applicant members or officers thereof. Upon the filing of an application, the department may investigate the allegations contained therein and if, upon investigation, it finds such allegations untrue, it may refuse to examine or license the applicant, or may rescind any license issued by it on the basis of materially untrue allegations in the application for license, setting forth in writing its findings and the reasons for its refusal or rescission and furnishing a copy thereof to the applicant.

(b) Application for license as apprentice auctioneer shall be made, in writing, to the department signed by the applicant, setting forth the period of time during which he has been engaged in the profession, stating the name of the last employer or the name of the person, firm, copartnership, association or corporation then employing him or into whose employ he is then about to enter. All applications shall be made upon a blank provided for the purpose by the department and shall contain such information as to the applicant, in addition to the above prescribed, as the department shall require. The application shall be accompanied by the recommendation of his employer or prospective employer, certifying that the applicant is honest, truthful and of good repute and recommending that such license be granted. All such licenses shall expire on the last day of February subsequent to the date of issue, unless sooner revoked or suspended by the department, and renewed annually as hereinafter prescribed.

(c) No person may be licensed as an apprentice auctioneer and no person, copartnership, association or corporation may be licensed as an auctioneer by the department unless such person and all of the members of any such copartnership or association and all of the officers of any such corporation intending to actually engage in

or actually engaging in the auctioneering profession as an auctioneer or apprentice auctioneer, shall first submit to and pass an examination prepared and conducted by the department. The department shall hold examinations on the second Saturday in January, April, July and October, in the cities of Philadelphia, Pittsburgh and Harrisburg, or at such other locations and at such hours and under such rules and regulations as the department shall prescribe. The department may make a special dispensation or exception because of religious scruples of applicants as to the day of the week upon which the examination shall be held. The examination for an auctioneer's license shall include questions on the applicant's ability to read and write English, his knowledge of real estate values and of various goods commonly sold at auction, and of mathematics and other common school branches. The examination for an apprentice auctioneer's license shall be limited to mathematics applicable to the auctioneering profession and to a knowledge of the provisions of "The Auctioneers' License Act." In the event the license of any auctioneer or apprentice auctioneer shall be cancelled by the department subsequent to the enactment of this act, no new license shall be issued to such person unless he complies with the provisions of this act.

Section 9. Temporary Permits for Apprentice Auctioneers.—An individual who fails to pass the examination may apply and receive from the department a temporary permit to operate as an apprentice auctioneer until the next regular examination. An individual who fails to pass the examination at two successive *examinations shall be ineligible for a similar examination until the expiration of six months from the time such individual took the last examination.

Section 10. Authority to Transact Business Not Transferable.—Authority to transact business as an auctioneer or apprentice auctioneer under any license issued by the department 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 said association or corporation, or otherwise, shall be required to make application for and take out a separate license in

* "examination" in original.

his own name individually. Where the *licensee is a copartnership, the license issued to such copartnership shall confer authority to act as an 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.

Section 11. Nonresident Licenses.—A nonresident of this State may be licensed as an auctioneer or apprentice auctioneer upon complying with all the provisions and conditions of this act relative to auctioneers and apprentice auctioneers.

Section 12. Reciprocity with Other States.—In connection with the application of a nonresident of this State for a license as an auctioneer or apprentice auctioneer, the department may accept, in lieu of the recommendations and statements otherwise required to accompany the application for a license, the license as auctioneer or apprentice auctioneer issued to the applicant by the proper authority of the state of his domicile upon the payment by the applicant of the proper license fee and the filing, with the department, of a duly certified copy of the license issued to the applicant by the other state. The provisions of this section shall only apply to licensed auctioneers and apprentice auctioneers of those states under the laws of which similar recognition and courtesies are extended to licensed auctioneers and apprentice auctioneers of this State. Every nonresident applicant shall file an irrevocable consent that suits and actions may be commenced against the applicant in the proper court of any county of this State in which a cause of action may arise in which the plaintiff may reside by the service of any process or pleading authorized by the laws of this State on the Secretary of the Commonwealth, the consent stipulating and agreeing that the service of process or pleadings on the Secretary of the Commonwealth shall be taken and held in all courts to be as valid and binding as if due service had been made upon the applicant personally within the State. The instrument containing the consent shall be authenticated by the seal thereof if a corporation, or by the acknowledged signature of a member or officer thereof if otherwise. All applications, except from individuals, shall be accompanied by the duly certified copy of the resolution of the proper officers or managing board authorizing the proper officer to execute the same. In case any process or pleadings mentioned in the case are served upon the Secretary of the Commonwealth, it shall be by duplicate copies one

* "license" in original.

of which shall be filed in the office of the department and the other immediately forwarded by registered mail to the applicant against whom the process or pleadings is directed.

Section 13. Fees for License and Renewals.—The fees to be charged by and paid to the department by licensees for all licenses and renewals thereof issued shall be as follows:

(1) A fee of twenty-five dollars (\$25) shall accompany an application for examination for an auctioneer's license, and in the event that the applicant successfully passes the examination, no additional fee shall be required for the issuance of certificate of registration.

(2) A fee of ten dollars (\$10) shall accompany an application for examination for an apprentice auctioneer's license, and in the event that the applicant successfully passes the examination, no additional fee shall be required for the issuance of a certificate of registration.

(3) It shall be the duty of all persons licensed to practice as auctioneers or apprentice auctioneers to register, annually, with the department and pay for each such registration the sum of fifteen dollars (\$15) and pay for each annual registration as an apprentice auctioneer the sum of five dollars (\$5). The application for renewal of an auctioneer's or apprentice auctioneer's license shall be made to the department, annually, on or before January first of the next succeeding year.

Section 14. List of Licensees.—The department shall be required to publish, annually, a list of the persons, copartnerships and corporations registered for that particular year.

Section 15. Licensees to Furnish Bond.—An auctioneer's license or an apprentice auctioneer's license shall not be granted or issued to any person, copartnership, association or corporation until the applicant has filed with the department an approved bond payable to the Commonwealth of Pennsylvania in the amount of two thousand dollars (\$2000). Such bond shall have as surety a duly authorized surety company. All the bonds shall be conditioned for the faithful observance of all the laws of the Commonwealth relating to sales at auction and all the laws, rules and regulations, promulgated by or appertaining to any department, board or commission of this Commonwealth. The bonds shall be filed with and retained by the department. Every bond shall be turned over to the Department of Justice to be collected if and when the licensee's license shall have been revoked and his bond forfeited as provided in this act.

Section 16. Records of Sales; Inspection.—(a) Every auctioneer or person engaged in the business of selling goods or real estate at auction whether acting in his own behalf or as the officer, agent or representative of another shall, after the receipt or acceptance by him of any goods or real estate for the purpose of sale at auction and at the time or after offering the same or any part thereof for sale at auction, write or cause to be written in a book to be kept by him for the purpose:

(1) The name and address of the person who employed him to sell the goods or real estate at auction.

(2) The name and address of the person who was the owner, the authorized agent of the owner, or the consignor of the goods or real estate immediately prior to the receipt or acceptance for the purpose of sale at auction of the goods or real estate by the auctioneer.

(3) The terms and conditions upon which the auctioneer receives or accepts the goods or real estate for sale at auction or a copy of the written contract.

(b) The book and the entries therein made as provided by subsection (a) of this section shall, at all reasonable times, be open to the inspection of the department, or any person who shall be duly authorized in writing for that purpose by the department and who shall exhibit the written authorization to the auctioneer.

Section 17. Permit Fee in Lieu of Licensing Fee in Other Political Subdivisions.—(a) No political subdivision of this Commonwealth shall have the power or authority after the effective date of this act to levy or collect any license tax from, or to require the licensing in any manner of, any auctioneer or apprentice auctioneer who has been licensed and bonded under the provisions of this act in lieu of such license tax or license fee heretofore imposed by any political subdivision. Every licensee licensed hereunder shall for each sale conducted for any one owner or person pay a permit fee of two dollars and fifty cents (\$2.50) to the treasurer or corresponding official of the political subdivision wherein such sale is held. The payment of the permit fee, however, must be required by resolution or ordinance duly enacted by the political subdivision.

(b) In any city of the third class, permits shall be issued on or prior to the day of sale by the treasurer thereof. In any other political subdivision, the permits shall be issued on or prior to the day of sale by the officer exercising duties similar to that of city treasurer.

Section 18. Contracts Written; Penalty for Violation.—(a) No person shall act as auctioneer on the sale at public auction of any goods, wares, merchandise or of any property whatsoever until he shall have first entered

into a written contract or agreement in triplicate with the owner or consignee of any property to be sold, containing the terms and conditions upon which the licensee receives or accepts the property for sale at auction. The contracts shall, for a period of two years, be kept on file in the office of every person so licensed and the contract shall be open to inspection as provided in subsection (b) of section 16 of this act.

(b) Any person violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction by a court of record having jurisdiction, shall be sentenced to pay a fine not exceeding fifty dollars (\$50). The person so convicted may also be subject to such other penalties as the commission without a hearing may direct. The fines shall be collected and paid into the State Treasury for the use of the department to aid in the payment of the costs incurred in the administration of this act.

Section 19. Display of Licenses or Facsimiles Thereof; Notice of Change of Employer; Violation.—(a) Every person, copartnership, association or corporation licensed as an auctioneer under the provisions of this act shall be required to have the certificate of registration prominently displayed in their office and the current renewal card or any facsimile thereof available on demand at all sales at auction conducted by any licensee.

(b) All auctioneers shall prominently display in their office the certificate of registration of all apprentice auctioneers employed by them, and the current renewal card or any facsimile thereof of all apprentice auctioneers employed by them, shall be available on demand at any sale in which an apprentice is employed. All licenses issued to apprentices shall designate his employer by name. Prompt notice in writing within ten days shall be given to the department by the apprentice auctioneer of any change of employer and of the name of the new employer into whose service the apprentice auctioneer is about to enter, or has entered, and a new license shall thereupon be issued without charge by the department to the apprentice for the unexpired term of the original license. The new employer shall be a duly licensed auctioneer. The change of employer or employment by any licensed apprentice auctioneer without notice to the department shall automatically cancel the license issued to him, and it shall be the duty of the employer named in the license to notify the department promptly of any change.

(c) The violation of any of the provisions of this section by any licensee shall be sufficient cause for the suspension or revocation of his or its license in the discretion of the department.

Section 20. Investigation of Complaints; Grounds of Suspension or Revocation of Licenses; Hearings.—(a) The department may, upon its own motion and shall promptly upon the verified complaint in writing of any person setting forth specifically the wrongful act or acts complained of, investigate any action or business transaction of any licensed auctioneer or apprentice auctioneer and shall have the power temporarily to suspend or permanently to revoke licenses theretofore issued by the department under the provisions of this act at any time when, after due proceedings as hereinafter provided, it shall find the holder to have been guilty in the performance or attempt to perform any of the acts prohibited to others than licensed auctioneers or apprentice auctioneers under the provisions of this act to wit:

(1) Of knowingly making any substantial misrepresentation; or

(2) Of knowingly making any false promise of a character likely to influence, persuade or induce; or

(3) Of a continued or flagrant course of misrepresentation or making of false promises through agents or apprentice auctioneers; or

(4) When it shall be shown that the licensee within five years prior to the issuance of the license then in force has been convicted in a court of competent jurisdiction of this or any other state of forgery, embezzlement, obtaining money under false pretenses, extortion, conspiracy to defraud, or other like offense or offenses; or

(5) Of any failure to account for or to pay over moneys belonging to others which have come into his or its possession arising out of a sale transaction within a reasonable time; or

(6) Of any misleading or untruthful advertising; or

(7) Of any act or conduct in connection with a sales transaction which demonstrates incompetency, bad faith, or dishonesty; or

(8) Of knowingly using false bidders, cappers or puffers; or

(9) Of knowingly using buzzers, bells or any excessive or continuous sounds produced by mechanical devices for advertising purposes in connection with any auction.

(b) Before refusing, suspending or revoking any license the department shall, in writing, notify the applicant or licensee of the charges against him, accompanying the notice with a copy of the complaint, if any, filed and the department shall accord the applicant or licensee ample opportunity to be heard in person or by counsel. If the applicant or licensee shall desire, the

department shall grant a hearing upon the charges to be held on not less than ten days prior notice in writing to the applicant or licensee given, and shall furnish licensee at the time of giving the notice with copies of any and all communications, reports, affidavits and dispositions in the possession of the department touching or relating to the matter in question. At the hearing, the applicant or licensee shall be entitled to examine, either in person or by counsel, any and all persons complaining against him and as well all other witnesses whose testimony is relied upon to substantiate the charges made. He shall also be entitled to present such evidence, oral and written, as he may see fit and as may be pertinent to the inquiry. The hearings may be held by the department, or any member thereof, or by any of its duly authorized representatives or by any other person duly authorized by the secretary of state for that purpose in any particular case, and they shall be held in Harrisburg, Pennsylvania. At the hearings, all witnesses shall be duly sworn by the duly authorized representative before whom the hearing is held and stenographic notes of the proceedings shall be taken and filed as part of the record in the cause. Any party to the proceedings desiring it shall be furnished with a copy of such stenographic notes upon the payment to the department of a fee as the department shall by general rule or regulation prescribe not exceeding fifty cents (50¢) per folio.

Section 21. Review by Court on Suspension or Revocation of Licenses; Right to Appeal.—(a) The refusal of the Secretary of the Commonwealth, or the department, to issue any license after application properly made and compliance by the applicant with the requirements of this act, shall be subject to review by the Court of Common Pleas of Dauphin County upon petition for writ of mandamus or other appropriate remedy with the right of appeal to the applicant as in similar cases.

(b) The decision of the department in suspending or revoking any license issued under this act shall be subject to review by the court of Common Pleas of Dauphin County.

(c) The ruling or decision of the department shall be final when in favor of the licensee and in dismissal of the complaint filed, if any. If against the licensee or in any way to licensee's injury or prejudice, the licensee may, at any time prior to the date fixed by the department in its said notice as the date it shall become effective, appeal from such decision to the Court of Common Pleas of Dauphin County in accordance with the provisions of the "Administrative Agency Law."

Section 22. Secretary to File Transcript of Record, etc.; Hearing on Appeal, Orders or Rulings.—Within thirty days after the service of notice of appeal, the Secretary of the Commonwealth shall file with the prothonotary of the Court of Common Pleas a transcript of the records of the proceedings in its office, duly certified over the seal of the Department of State, which record shall include all papers on file with the department affecting or relating to the inquiry or investigation conducted by it and all the evidence taken in the hearing, including the stenographic notes of testimony. Notice of the filing of the transcript with the term and number to which filed shall be given by the department to the licensee and as well to the party or parties, if any, upon whose complaint the proceedings before the department were instituted. The cost of the transcript at fifty cents (50¢) per folio and one dollar (\$1) for certification shall be entered as part of the record costs in the cause to be paid as the court may direct. In all proceedings upon appeal, the Department of Justice shall appear for and represent the Commonwealth.

Section 23. Records of Courts to be Evidence; Revocation and Suspension of Licenses; New Licenses Pending Investigation or After Revocation.—(a) In all proceedings before the department and as well in all proceedings upon appeal from any of its decisions, the record, or a duly certified or exemplified copy, in any proceedings at law or in equity in any court of competent jurisdiction in this or any other state in which the applicant or licensee charged or under investigation shall have been a party, shall be admissible where the issue of fact involved in the proceedings are pertinent to the inquiry before the department and the verdict of the jury or judgment of the court in any action at law or the decree of the court in any proceeding in equity shall be prima facie as to the facts at issue in the proceedings and necessarily adjudicated therein. The verdict of the jury in any criminal prosecution in a court of record of this or any other state in which the applicant or licensee charged shall have been the defendant shall be conclusive as to the facts charged and at issue in such prosecution.

(b) Where during the term of any license issued by the department, the licensee shall be convicted in a court of competent jurisdiction in this or any other state of forgery, embezzlement, obtaining money under false pretenses, extortion, criminal conspiracy to defraud, or other like offense and a duly certified or exemplified copy of the record in the proceeding shall be filed with the department and the department shall revoke the license by it issued to the licensee convicted.

(c) In the event that any licensee shall be indicted in this or any other state for forgery, embezzlement, obtaining money under false pretenses, extortion, criminal conspiracy to defraud, or other like offense or offenses and a certificated copy of the indictment be filed with the department or other proper evidence be to it given, the department shall have authority, in its discretion, to suspend the license issued to the licensee pending trial upon an indictment.

(d) In the event of the revocation or suspension of the license issued to any member of a copartnership or to any officer of an association or corporation, the license issued to a copartnership, association or corporation shall be revoked by the department unless within a time fixed by the department where a copartnership the connection of the member whose license has been revoked shall be severed and his interest in the copartnership and his share in its activities brought to an end, or where an association or corporation the offending officer shall be discharged and shall have no further participation in its activities.

(e) Pending an investigation or proceeding before the department affecting any licensee and pending final decision upon any appeal taken by a licensee from the ruling of the department, no new license shall be issued to a licensee or to a copartnership of which he is a member or employee or to an association or corporation of which he shall be an officer or employee except for the period of the investigation or proceeding and subject to the action of the department thereon or therein.

Section 24. Licenses After Revocation or Conviction.—(a) After the revocation of any license, no new license shall be issued to the same licensee within a period of at least one year from and after the date of the revocation nor at any time thereafter except in the sole discretion of the department.

(b) No license shall be issued by the department to any person known by it to have been within five years convicted of forgery, *embezzlement, obtaining money under false pretenses, extortion, criminal conspiracy to defraud or other like offense, or to any copartnership of which any person is a member or to any association or corporation of which any person is an officer or employee or in which as a stockholder any person has or exercises a controlling interest either directly or indirectly.

Section 25. Penalties in Certain Cases.—(a) Any person, copartnership, association or corporation who

* "embezzlement" in original.

shall after January 1, 1962, engage in or carry on the profession or act in the capacity of an auctioneer or apprentice auctioneer within this Commonwealth without a license, or shall carry on or continue the profession after the suspension or revocation of any license to him or it issued or shall employ any person as an apprentice auctioneer to whom a license as an apprentice auctioneer has not been issued, or whose license as such shall have been revoked or suspended, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be sentenced for the first offense to pay a fine of not less than fifty dollars (\$50) nor more than one hundred dollars (\$100), and for a second and subsequent offense shall be sentenced to pay a fine of not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1000) or undergo imprisonment for a period of not more than one year, or both.

(b) Any holder of a certificate of registration who shall fail to apply for a renewal of his or her certificate *of registration on or before the renewal date thereof and who continues the practice of auctioneer or apprentice auctioneer shall, on conviction thereof, be subject to a fine of not more than twenty-five dollars (\$25) to be collected by summary conviction as like fines are collected by law, and in case of nonpayment of fine to undergo an imprisonment for a period not to exceed ten days. Any such person shall have the right of appeal as in other cases of summary conviction.

Section 26. Oaths; Subpoenas; Process; Witness Fees; Enforcing Attendance; Power of Secretary and the Department.—(a) The secretary and each of his duly authorized representatives and any special representative appointed by him to hold a hearing in any particular case shall have power to administer production of books and papers. In any hearing, the process issued by the department shall extend to all parts of the Commonwealth and the process shall be served either in like manner as are served writs of subpoena in the court of common pleas or by any person **designated by the department for that purpose. The person serving the process shall receive such compensation as may be allowed by the department not to exceed the fee prescribed by law for similar services in the courts of common pleas and the fees shall be paid in the same manner as provided in this act for the fees of witnesses subpoenaed at the instance of the department. All witnesses who shall be subpoenaed and who shall appear in any proceeding before the department shall receive the same fees and mileage as allowed by law to witnesses in

* "or" in original.

** "designed" in original.

the court of common pleas, which amount shall be paid by the party at whose instance the subpoena was issued or upon whose behalf the witness has been called. When any witness who has not been subpoenaed at the instance of any party to the proceeding shall be subpoenaed at the instance of the department, the fees and mileage of the witness shall be paid from the funds appropriated to the use of the department in the same manner as other expenses of the department are paid.

(b) Where in any proceeding before the department, any witness shall fail or refuse to attend upon subpoena issued by the department or any of its representatives, or appearing, shall refuse to testify or shall refuse to produce any books and papers the production of which is called for by the subpoena, the attendance of any witness and the giving of his testimony and the production of the books and papers required shall be enforced by any Court of Common Pleas of this Commonwealth in like manner as are enforced the attendance and testimony of witnesses before commissioners appointed by any court of the United States or of any other state to examine or take the testimony of witnesses within this Commonwealth.

(c) The Court of Common Pleas of Dauphin County shall, upon the application of the Secretary of the Commonwealth, issue commissions or letters rogatory to other states for the taking of evidence for use in any proceeding before the department. The department shall make such application at the instance of any party to the proceeding before it unless in its opinion the application is made for the purpose of delay. Any party shall be entitled as of right to subpoenas from *the department directed to witnesses and for the production of books and papers as the party may desire.

Section 27. Grounds for Revocation of Auctioneers' Licenses.—No violation of any of the provisions of this act on the part of any apprentice auctioneer or other employee of any licensed auctioneer shall be grounds for the revocation of the license of the employer of an apprentice auctioneer or employee unless it shall appear upon the hearing had that the employer had guilty knowledge of the violation. A course of dealing shown to have been persistently and consistently followed by an employee shall constitute prima facie evidence of knowledge upon the part of his employer.

Section 28. Unlawful Act.—(a) It shall be unlawful for any licensed auctioneer or apprentice auctioneer to pay any compensation in money or other valuable thing to any person other than a licensed auctioneer or ap-

* "the" not in original.

prentice auctioneer for the rendering of any service or the doing of any of the acts by this act forbidden to be rendered or performed by other than licensees.

(b) No apprentice auctioneer shall accept or receive compensation of any kind from any person other than the licensed auctioneer by whom he is employed for any service rendered or work done by him as an apprentice in the discharge of his duties.

(c) The violation of the provisions of this section by any licensee shall be sufficient cause for the suspension or revocation of his license in the discretion of the department.

Section 29. Actions by Unlicensed Persons Prohibited.—No action or suit shall be instituted nor recovery be had in any court of this Commonwealth by any person, copartnership, association or corporation for compensation for any act done or service rendered the doing or rendering of which is prohibited under the provisions of this act to other than licensed auctioneers unless the person, copartnership, association or corporation was duly licensed as an auctioneer at the time of the doing of the act or the rendering of the service.

Section 30. Enforcement of Act.—The Department of State is hereby authorized and empowered to adopt, fix and establish all rules and regulations necessary for the proper administration of the provisions of this act.

Section 31. Specific Repeals.—The following acts and parts of acts and their amendments and supplements are repealed.

The act of May 4, 1927 (P. L. 519), known as "The Borough Code," reenacted and amended July 10, 1947 (P. L. 1621), in so far as it relates to the licensing and regulation of auctioneers therein.

The act of June 23, 1931 (P. L. 932), known as "The Third Class City Code," reenacted and amended June 28, 1951 (P. L. 662), in so far as it relates to the licensing and regulation of auctioneers therein.

The act of June 24, 1931 (P. L. 1206), known as "The First Class Township Code," reenacted and amended May 27, 1949 (P. L. 1955), in so far as it relates to the licensing and regulation of auctioneers therein.

The act of May 1, 1933 (P. L. 103), known as "The Second Class Township Code," reenacted and amended July 10, 1947 (P. L. 1481), in so far as it relates to the licensing and regulation of auctioneers therein.

Section 32. General Repeal.—All acts and parts of acts are repealed in so far as they are inconsistent herewith.

Section 33. **Effective date.**—This act shall take effect immediately.

APPROVED—The 29th day of September, A. D. 1961.

DAVID L. LAWRENCE

No. 709

AN ACT

Amending the act of June 2, 1915 (P. L. 736), entitled, as amended, "An act defining the liability of an employer to pay damages for injuries received by an employe in the course of employment; establishing an elective schedule of compensation; providing procedure for the determination of liability and compensation thereunder; and prescribing penalties," changing provisions relating to liability of employers and benefits and persons entitled thereto.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

The Pennsylvania Workmen's Compensation Act.

Clauses (a) and (b), the last two paragraphs, clause (c), and clause (f), section 306 and section 307, act of June 2, 1915, P. L. 736, reenacted and amended June 21, 1939, P. L. 520 and amended December 28, 1959, P. L. 2034, further amended. Schedule of compensation.

Total disability.

Section 1. Clauses (a) and (b), the last two paragraphs of clause (c) and clause (f) of section 306 and section 307, act of June 2, 1915 (P. L. 736), known as "The Pennsylvania Workmen's Compensation Act," reenacted and amended June 21, 1939 (P. L. 520) and amended December 28, 1959 (P. L. 2034), are amended to read:

Section 306. The following schedule of compensation is hereby established:

(a) For total disability, sixty-six and two-thirds per centum of the wages of the injured employe as defined in section three hundred and nine beginning after the seventh day of total disability, and payable for the duration of total disability, but the compensation shall not be more than [forty-two dollars and fifty cents] *forty-seven dollars and fifty cents* per week nor less than [twenty-five dollars] *twenty-seven dollars and fifty cents* per week. If at the time of injury, the employe receives wages of [twenty-five dollars] *twenty-seven dollars and fifty cents* per week or less, then he shall receive ninety per centum of the wages per week as compensation, but in no event less than [seventeen dollars and fifty cents] *twenty dollars* per week. Nothing in this clause shall require payment of compensation after disability shall cease.

Partial disability.

(b) For disability partial in character (except the particular cases mentioned in clause (c)) sixty-six and two-thirds per centum of the difference between the wages of the injured employe, as defined in section three hundred and nine, and the earning power of the employe.