

# IT'S THE LAW

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## Recent Amendments to N.C.G.S. 85B

Two years ago, as you will remember, amendments to the Law were passed by the State Legislature which gave the Licensing Board the authority to require fingerprint background checks for new applicants and also the authority to require continuing education for the renewal of a license. After submitting permanent rules to the Rules Review Commission, the Licensing Board was informed that the Law would need to be more specific as it applied to the above two items. On June 13, 2001, Governor Michael F. Easley signed House Bill 1341, which made the needed changes. Below are the amendments as they were written into the Law.

N.C.G.S. 85B-3.2 was amended by adding a new subsection to read: "(g) The Commission shall collect any fees required by the Department of Justice and shall remit the fees to the Department of Justice for expenses associated with conducting the criminal history record check."

N.C.G.S. 85B-4(e1) was amended by adding the following: "The Commission may adopt rules not inconsistent with the provisions of this Chapter to establish continuing education requirements, including rules that govern any of the following: (1) The content and subject matter of continuing education courses. (2) The curriculum of required continuing education courses. (3) The criteria, standards, and procedures for the approval of courses, course sponsors, and course instructors. (4) The methods of instruction for continuing education courses. (5) The computation of course credit. (6) The number of credit hours needed annually. (7) The ability to carry forward course

credit from one year to another. (8) The waiver of the continuing education requirement for hardship or other reasons to be determined by the Commission. (9) The procedures for compliance and noncompliance with continuing education requirements."

Additionally, the following amendments were added to House Bill 1341 to allow the Licensing Board to purchase and/or build an office building and to allow the Licensing Board the ability to purchase insurance. The Licensing Board felt that given the ability to own instead of lease office space would benefit the licensees by building capital assets that would have a return on the money invested. Also, by owning property, payments would eventually be complete, whereas payments on rental property never cease. Eventually, this might help the Licensing Board lower the license renewal fees.

N.C.G.S. 85B-3.1 was amended by adding two new subsections to read: "(c) The Commission shall have the power to acquire, hold, rent, encumber, alienate, and otherwise deal with real property in the same manner as a private person or corporation, subject only to approval of the Governor and the Council of State. Collateral pledged by the Commission for an encumbrance is limited to the assets, income, and revenues of the Commission," and "(d) The Commission may purchase, rent, or lease equipment and supplies and purchase liability insurance or other insurance to cover the activities of the Commission, its operations, or its employees."

# IT'S THE LAW (continued)

## Auction Firm License Requirements

More than 1,000 licensed auctioneers remember that the above topic was presented at all of the AANC satellite continuing education Law and Rules classes this past year. Because of the interest and questions that surrounded the information that was provided, there is a need to briefly readdress the Board's views.

N.C.G.S. 85B-1(6) states, "“Auction Firm” means a sole proprietorship of which the owner is not a licensed auctioneer, or any partnership, association, or corporation, not otherwise exempt from this Chapter, that sells either directly or through agents, real or personal property at auction, or that arranges, sponsors, manages, conducts or advertises auctions, or that in the regular course of business uses or allows the use of its facilities for auctions. This definition applies whether or not an owner or officer of the business acts as an auctioneer.”

It is important to understand that the Board's interpretation of the above is any partnership, association, or corporation, not otherwise exempt from this Chapter..., must apply

for and obtain an auction firm license to sell ...either directly or through agents, real or personal property at auction, or to arrange, sponsor, manage, conduct or advertise auctions, or that in the regular course of business uses or allows the use of its facilities for auctions.

Corporations who have a sole owner are not exempt from this definition. A corporation is a separate entity from the individual who has ownership, thus the need for an auction firm license.

Investigations persist concerning licensed auctioneers and apprentice auctioneers who have called bids for unlicensed auction firms. Violations of N.C.G.S. 85B-4(a), which provides that, “no person who is not exempt under G.S. 85B-2, shall sell, or offer to sell, goods or real estate at auction in this State or perform any act for which an auction firm license is required unless the person holds a currently valid license issued under this Chapter,” and 21 NCAC 4B .0404(a)(5), which provides that, “auctioneering at an unlicensed auction firm sale,” continue to lead all other violations that have come before the Board in the past two years.