

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

TO: House Industry, Business and Labor Committee

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

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

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

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

HISTORY/PURPOSE OF ND AUCTIONEER LICENSING & BONDING

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

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

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

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

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

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

LICENSING REQUIREMENTS IN OTHER STATES

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

States that require a License:

24 – Yes

11 of the 24 – Yes Online License

26 – No

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

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

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

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

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

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

CONCERNS WITH A GOVERNOR-APPOINTED BOARD

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

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

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

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

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

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

Respectfully submitted,

Heather Weishaar

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