

CHAPTER 130.

AUCTIONS AND AUCTIONEERS.

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130.01 Fees in towns; what sales not included. There shall be paid by the auctioneer to the town treasurer, for the use of the town, upon all sales by auction made in any town and outside of a city or village of all goods, wares, and merchandise, except household furniture which has been used as such, such fees as may be fixed by the town board, such fees to be not less than ten dollars nor more than one hundred dollars a day during the continuance of such sales and which may, in the discretion of the town board, also include a percentage on the gross receipts accruing from such sales not exceeding twenty per cent thereof, except this section shall not apply when sale is made by virtue of a chattel mortgage, or of a rule, order or judgment of a court, or of some law of the state or the United States respecting the collection of some tax or duty; or in consequence of a general assignment of property or effects for the benefit of creditors; or when made of property belonging to the state or of the United States; or when made by or on behalf of any executor or administrator; or when made of his farm property by or on behalf of a resident farmer who has paid the taxes lawfully levied on his property; or when made for the purpose of closing up his business by or on behalf of any merchant who shall reside and trade in any town, city or village and who shall have paid the taxes lawfully levied on his stock in trade; provided, that in the last case such sale shall be made in the town, city or village in which such taxes were paid. Whenever the auctioneer or the owner of the property sold or any person employed by them or either of them shall buy anything at any such sale the same duty shall be paid as if any other person were purchaser thereof, and sales on credit shall be liable to duty as if made for cash. Sales at auction or to the highest bidder, within the meaning of this chapter, shall include all sales by auction whether the property is put up to the highest bidder in fact or whether it is sold by what is usually called "dutch auction," or by bidding down the seller thereof, or by adding to the quantity of property first offered for sale at a fixed price, or in any other way if made to evade the provisions hereof. [1937 c. 5]

130.02 Selling without license. No person shall, without the limits of an incorporated city or village, exercise the business of an auctioneer by selling any goods, wares and merchandise at any sale at which the highest bidder is deemed the purchaser, except in cases where no duty is payable therefor under the provisions of this chapter, unless such person shall have a license then in force authorizing the same from the town clerk of the town in which such sale is made; and for every violation hereof the person offending shall forfeit one hundred dollars and pay to the town all the duties required to be paid by this chapter.

130.03 License; bond; fee. The several town clerks may grant, under their hands, license to exercise the business of auctioneer within their respective towns and without the limits of any incorporated city or village for any term, not exceeding one year from the date thereof, to any inhabitant of the state who shall apply for the same; provided, that the applicant shall first file with such clerk a bond to the town in the sum of two hundred and fifty dollars, with surety to be approved by the county judge or chairman of the town, conditioned that such applicant, being licensed, shall duly pay to the town treasurer all the duties imposed by this chapter and render to the town clerk an account in writing, as required by section 130.04, within twenty-four hours after the close of any sale at auction for which any duty shall be payable. The clerk shall be entitled to receive from such applicant one dollar as fees for every such license.

130.04 Report. Every auctioneer shall, within the time mentioned in the preceding section, render to the town clerk a particular account in writing, verified by his affidavit, of the gross amount for which any goods, wares or merchandise liable to duty have been sold by him and of the amount of such duty paid to the town treasurer.

130.05 Town clerk to report. Each town clerk who shall receive any reports on sales at auction agreeably to the provisions of this chapter shall, at the annual town meeting, render an account thereof in writing to said meeting, containing the number of licenses by him granted, the amount of duties reported by him to have been paid to the

town treasurer, from whom paid, with the total amount of sales made by auction in such town.

130.06 Authority of cities and villages. The common council of any city and the board of trustees of any village may regulate by ordinances the sale by auction, within the meaning of this chapter, of goods, wares and merchandise or other property within their respective cities or villages; and thereby may prohibit, under proper fines or penalties, any sales at auction therein by any person without license; require daily reports of any sales made, verified by affidavits, to be made by every auctioneer to the clerk of such city or village, require sufficient bonds from the licensee for compliance with any such ordinance, and the payment of a license fee of not less than ten nor more than twenty-five dollars per day, or when fixed by the year not less than ten nor more than three hundred dollars per year, in addition to any percentage they may fix, which shall not be less than ten nor more than twenty per centum upon the gross amount of sales made; but they shall not require the payment of any per diem or percentage in the cases excepted in section 130.01. The license fee so required may be fixed at a different amount for nonresident of the state than for resident licensees.

130.07 Jewelry auction sales. (1) **SCOPE.** This section in all of its parts solely relates to and regulates sales by auction of gold, silver, plated ware, precious or semi-precious stones, watches, clocks and goods, wares and merchandise commonly classified as jewelry and of any nature or kind whatsoever. Except as to subsection (3) it does not relate to or regulate any such sale by auction permitted by section 130.08, nor any such sale by virtue of a chattel mortgage, nor to any such sale in consequence of a general assignment for the benefit of creditors.

(2) **PROHIBITION.** All such sales by auction are prohibited unless a license be obtained therefor as hereinafter provided for.

(3) **HOURS.** No such sale by auction shall be held or open for business between the hours of six o'clock in the evening and eight o'clock the following morning under any circumstances, and no license shall permit any such thing to be done.

(4) **PERIODS OF SALE.** No such sale by auction shall be licensed or held in the month of December prior to the day after Christmas. No such sale by auction shall be licensed or permitted for a period of more than thirty days, Sundays and legal holidays excepted. Said thirty days shall be consecutive, except as to Sundays and legal holidays, and from December first to December twenty-fifth inclusive, and except as provided in subsection (19).

(5) **RESTRICTIONS OF PERSONS.** No license for any such sale by auction shall under any circumstances be granted to any person, firm or corporation, or to any agent or affiliate or assignee of, or to any person acting for any such person, firm or corporation, within a period of two years after the termination of such a sale by auction by such person, firm or corporation, held or conducted under this section. No person who has been convicted of violating this section shall be granted a license, or act as an auctioneer, or be employed in any manner at or in connection with any sale by auction licensed under this section, for a period of six years after such conviction.

(6) **SHILLS.** No person shall act at any such sale by auction as bidder, or what is commonly known as a "capper", "booster" or "shiller", or offer or make any false bid, or offer any false bid to buy or pretend to buy any article sold or offered for sale at any sale by auction.

(7) **PLACE OF SALE.** No such sale by auction shall be licensed or permitted except it be held at the applicant's existing regularly established place of business and at the place wherein his regular business has been operated for a period of at least one year prior to the application.

(8) **ATTENDANCE.** Wherever any such licensed sale by auction is being conducted, the person to whom the license has been granted shall remain in continuous attendance at all times while such sale by auction is being conducted, and shall be responsible for any violation of this section.

(9) **STOCK.** During any such sale by auction no additions whatsoever shall be made to the stock of merchandise set forth in the inventory attached to the application for license, and nothing shall be offered for sale or sold at any such sale by auction which is an addition to the stock of merchandise described in said inventory, or which has been added to the applicant's stock within a period of sixty days prior to the date the applicant files application for license.

(10) **PREVIOUS SALE.** No license shall be granted for any such sale by auction if it appears that the applicant or any agent or affiliate or assignee or other person for him has, within the period of two years prior to the application, conducted a similar sale by auction under this section either in the same place of business or at any other place.

(11) **COST PRICE.** At all such sales by auction the applicant and all persons participating in the conducting of said sale by auction must truly and correctly represent at all

times to the public attending said auction, the actual facts in respect to the quality and manufacture and if requested by a bidder or prospective bidder the cost to applicant of each article put up for sale.

(12) **INVENTORY.** The applicant shall attach to his application a true and correct detailed inventory, item by item, and article by article, listing each separate article proposed to be sold at said sale by auction, and shall cause each separate article in said inventory to be given a number. He shall also set forth opposite the description of each separate article in said inventory and before presenting the same, the actual cost price thereof to him. The applicant shall thereupon duly verify the said application by his personal oath or affirmation. In case the license is granted, he must before the beginning of such sale by auction attach to each said article a card or ticket with the said number of said article indorsed thereon, so that the number of each article described and set opposite the description of the respective articles corresponds to the card or ticket number aforesaid.

(13) **APPLICATIONS FOR LICENSE.** All applications for license for such a sale by auction shall be filed with the city, village or town clerk within which city, village or town said sale by auction is proposed to be held. Such application shall be addressed to the mayor, president or town chairman as the case may be for hearing and action, according to the provisions of this section.

(14) **CONTENTS OF APPLICATION.** The said application for a license shall set forth the following:

(a) The name, residence, address and business address of the applicant.

(b) The character of business applicant has been engaged in during two years prior to the application.

(c) Whether the proposed auction is to be held at the applicant's existing regularly established place of business, and wherein his regular business has been operated for at least one year prior to the application.

(d) The name and address and occupational history of each person who will participate in conducting the said sale by auction.

(e) Whether the applicant will be present at and in continuous attendance at said proposed sale by auction.

(f) Whether any additions to the stock of merchandise proposed to be sold at said sale by auction have been made within a period of sixty days prior to the date of said application, and if so he shall furnish a separate inventory thereof containing all details as in the regular inventory required.

(g) Whether after filing said application and until the end of said sale by auction applicant will make any additions or permit any additions to be made to the said stock of merchandise described in the required inventory.

(h) Whether he has conducted or caused to be held any sales by auction within a period of five years prior to said application, and if so, a brief description as to the character of such other auctions and a statement of the time or times when held and the place or places where held.

(i) Whether applicant has owned or conducted within one year prior to the said application any other store or place of business than the one mentioned as his regular place of business in the application, and if so, where such store or stores or place or places of business were located and the character of business operated in each.

(j) The purpose or purposes for which such sale by auction is to be held, if permitted.

(k) He shall state whether he will himself, and whether he will require all others participating in the conducting of said proposed sale by auction to, truly and correctly, represent at all times to all persons attending such auction, the actual facts in respect to the quality and manufacture, and if requested by a bidder or prospective bidder, the cost to him of each article put up for sale at the proposed sale by auction.

(l) Whether he has attached to said application a true and correct detailed inventory, item by item, and article by article, of the stock of goods, wares and merchandise proposed to be sold at said sale by auction. Whether he caused each separate article in said inventory to be given a number, and whether he has set forth opposite each such item the actual cost price thereof to him, and whether he agrees in case a license is granted to attach to each article a card or ticket with the number of said article indorsed thereon corresponding to the inventory number.

(m) Whether the applicant or any person he proposes to use as auctioneer or other employe at the proposed auction sale has been convicted of any violation of this section within six years prior to said application.

(15) **HEARING.** (a) The mayor, president or town chairman, as the case may be, shall thereupon set a time and place of hearing said application, which hearing, however, shall not be held less than one week from the time the clerk mails the following notice, to wit:

(b) The clerk shall immediately upon the filing of any such application, mail a notice of the filing of said application to the city, village or town attorney, as the case may be, and to the principal offices of every organization of jewelers in the state whose name and address has been by such organization placed on file with said clerk.

(16) **PROOF AT HEARING.** At the hearing upon said application, the applicant shall attend in person and shall submit to an examination under oath to be conducted by the city, village or town attorney, as the case may be, or any member of his staff, and by any citizen of said city, village or town, and by any representative of any such organization of jewelers who may wish to attend said hearing and participate therein. The applicant may offer other proofs under oath either by verbal testimony or by affidavit as he may choose. Anyone who is opposed to the granting of said application may offer proof either in the form of oral evidence under oath or by filing affidavits. The mayor, president or town chairman, as the case may be, shall thereupon determine whether said license shall be granted.

(17) **FEES.** In case a license shall be granted, the same shall be issued by the clerk when the applicant has complied with all the requirements of this section, and upon the furnishing by the applicant of an undertaking hereinafter specified, and upon the payment of such fee as the clerk shall deem sufficient to reimburse the municipality for the work and expense incident to the hearing, and to the issuing of the license, and for the necessary costs of an inspector for the municipality to attend said sale by auction, and for the necessary costs of special police service during the holding of said sale by auction, which said fee, however, shall not exceed a total of twenty-five dollars per day for the thirty-day period. The undertaking shall be one issued by a bonding company authorized to do business in this state and satisfactory to the clerk. It shall assure that the said sale will be conducted in all things in compliance with the requirements of this section. The said bond shall be in a sum equal to one-half of the cost value of the goods, wares and merchandise inventoried for sale at said sale by auction.

(18) **INSPECTOR.** The mayor, president or town chairman, as the case may be, shall appoint an inspector for the municipality for each such sale by auction. He shall be experienced as to the value and quality of all goods, wares and merchandise inventoried for said sale by auction. He shall not be a person related to or who has at any time been employed by the person licensed. He shall check out on the inventory at the end of each day of the auction all goods sold. He shall be paid out of the fund paid to the clerk as aforesaid such sum per day as may be agreed. He shall attend said sale and take observation and keep careful track of the articles offered for sale and of the changes in inventory. He shall report forthwith to the mayor, president or town chairman, as the case may be, in case of any violation of this section.

(19) **SUSPENSION.** The mayor, president, town chairman, as the case may be, is vested with authority to temporarily suspend said license and the operation of said sale by auction whenever he may believe this section or any part thereof is being violated, and thereupon forthwith appropriate proceedings shall be instituted in some proper court, and in the event the said proceedings result in conviction, the said license shall become permanently null and void. Otherwise the suspension shall be at an end and the license thereupon restored and said sale by auction may proceed until it has been open for an aggregate of thirty days, but such auction shall not proceed any time in the month of December prior to the day after Christmas, but may proceed after December twenty-fifth, to complete the thirty days.

(20) **FALSE DESCRIPTION.** No person shall sell or offer for sale at any such sale by auction, any goods, wares or merchandise which have been falsely described or concerning which any untruthful statement has been made as to character, quality, kind or description or cost.

(21) **PENALTIES.** Any person violating any of the provisions of this section shall upon the conviction thereof be subject to a forfeiture of not less than twenty-five dollars, nor more than five hundred dollars, for each violation, besides the cost of prosecution, and in default of the payment of said forfeiture and costs shall be imprisoned in the county jail of the proper county until such forfeiture and costs and subsequent costs have been paid not to exceed, however, sixty days. Each individual sale at such auction in violation of any provision of this section shall constitute a separate offense. The said forfeiture shall in any event be paid into the treasury of said city, village or town for the exclusive use of the municipality.

(22) **UNCONSTITUTIONALITY.** The holding of any provision of this section invalid, void or unconstitutional, shall not in any manner affect the validity of any other section or provision thereof. [1931 c. 264; 1939 c. 281]

Note: Section 130.07, Stats. 1937, prohibiting auction sales of jewelry between six o'clock in the evening and eight o'clock in the morning is a deliberate declaration of present public policy, is not an unreasonable interference with the freedom of trade, does not go beyond the legitimate field of reasonable regulation, and is a proper exercise of the police power. *Doering v. Swoboda*, 214 W 481, 253 NW 657.

130.08 Compulsory auction sales, conditions. (1) No jewelry auction sales of any kind shall be exempt from the provisions of subsection (1) of section 130.07. Nothing else in this chapter contained, in relation to auction and auctioneers, shall extend to any sale by auction of goods, wares or merchandise under or by virtue of any rule, order or judgment of any court, in relation to judicial sales conducted by court direction or court order only in a pending action before said court, or of any law respecting the collection of any tax or duty, either of state or the United States, or to any sale by auction of property belonging to this state or the United States, or to any sale by any trustee in bankruptcy, or any sale made by any executor, administrator or guardian duly authorized by the court to conduct such sale, personally, or when made by an officer of any court in person, or by an officer of this city, county or state or the United States in person. Provided, however, where an auction sale under the provisions of this section is conducted by virtue of an order or judgment of any state court, in any proceeding pending in said state court, such order shall be granted only upon a verified petition setting forth the purpose of such sale. The petition shall also state the name of the owner of the goods, wares or merchandise, the name of the assignee, the person who is to conduct the auction sale, and shall in addition thereto be accompanied by a detailed inventory of the stock of goods to be sold, the value thereof, and said detailed inventory shall not be supplemented by additional stock not actually on hand at the time the petition is filed. The order of the court shall provide that the sale shall not continue for more than thirty days and that the goods, wares or merchandise listed in the inventory are not to be in any manner supplemented during the course of such sale. The order of the court may be revoked upon a proper showing that the facts set forth in the petition or inventory are untrue or that any of the provisions of the court's order are being violated.

(2) Any person violating any provision of this section, for each such violation, such employer, employe or other person, shall forfeit and pay into the state treasury a sum not less than twenty-five dollars nor more than fifty dollars. [1931 c. 264; 1933 c. 135]