

State of South Dakota

SEVENTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 1998

582B0306

HOUSE COMMERCE COMMITTEE ENGROSSED NO. **HB1139** - 1/28/98

Introduced by: Representatives Napoli, Gabriel, Monroe, Schaunaman, and Windhorst and
Senators Flowers, Benson, Kloucek, Morford, and Staggers

1 FOR AN ACT ENTITLED, An Act to revise the procedures for conducting an auction sale of
2 new merchandise.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 37-14-2 be amended to read as follows:

5 37-14-2. New merchandise as used in §§ 37-14-2 to 37-14-14, inclusive, ~~shall mean all~~
6 means any merchandise not previously sold at retail. "Auction sale", as used in ~~said sections shall~~
7 mean this chapter means the offering for sale or selling of personal property to the highest bidder
8 or offering for sale or selling of personal property at a high price and then offering the ~~same the~~
9 personal property at successive lower prices until a buyer is secured.

10 Section 2. That § 37-14-3 be repealed.

11 ~~— 37-14-3. It is a Class 2 misdemeanor for any person to sell, dispose of, or offer for sale at~~
12 ~~public auction any new merchandise, unless such person and the owners of such merchandise,~~
13 ~~if it is not owned by the vendors, shall have first secured a license as provided in §§ 37-14-6 to~~
14 ~~37-14-12, inclusive, and shall have complied with the regulations set forth in §§ 37-14-12 to~~
15 ~~37-14-14, inclusive.~~

1 Section 3. That § 37-14-4 be amended to read as follows:

2 37-14-4. The provisions of §§ 37-14-2 to 37-14-14, inclusive, ~~shall do~~ not extend to the sale
3 at public auction of livestock, farm machinery, or farm produce or any other items item
4 commonly sold at a farm sales sale, to any auction sales sale held under authority of or under the
5 supervision and direction of ~~the courts~~ any court of this state, or to ~~persons, firms or~~
6 ~~corporations~~ any person, firm, or corporation who ~~have~~ has been engaged in business in the State
7 of South Dakota for a period of at least one year, conducting a closing out or stock reduction
8 sale of ~~said~~ the business.

9 Section 4. That § 37-14-5 be amended to read as follows:

10 37-14-5. ~~The~~ Any requirement of a license under the provisions of §§ 37-14-2 to 37-14-14,
11 inclusive, ~~shall be~~ is in addition to and not in lieu of any other state or local ~~licenses~~ license as
12 required by statute or ordinance.

13 Section 5. That § 37-14-6 be repealed.

14 ~~37-14-6. Any person, firm or corporation desiring such license shall, at least ten days prior~~
15 ~~to such proposed auction sale, file with the board of county commissioners of the county wherein~~
16 ~~it is proposed to hold such auction sale, an application in writing duly verified by the person, firm~~
17 ~~or corporation proposing to sell, dispose of or offer for sale any new merchandise at public~~
18 ~~auction.~~

19 Section 6. That § 37-14-7 be repealed.

20 ~~37-14-7. The application required by § 37-14-6 shall state the following facts:~~

21 ~~(1) The name, residence and post-office address of the person, firm or corporation~~
22 ~~making the application, and if a firm or corporation, the name and address of the~~
23 ~~members of the firm or corporation officers as the case may be;~~

24 ~~(2) The name, residence and post-office address of the auctioneer who will conduct such~~
25 ~~auction sale;~~

1 ~~—(3)— A detailed inventory and description of all such new merchandise to be offered for~~
2 ~~sale at such auction which inventory shall set forth the cost to the applicant of the~~
3 ~~several items contained in such inventory;~~

4 ~~—(4)— Whether or not the sale at public auction shall be with or without reservation.~~

5 Section 7. That § 37-14-8 be repealed.

6 ~~—37-14-8. At the time of filing said application and the bond required by § 37-14-9 the~~
7 ~~applicant shall pay to the county treasurer the license fee in the sum of twenty-five dollars for~~
8 ~~each day it is proposed to hold such auction sale as shown by the application for such license.~~

9 Section 8. That § 37-14-9 be repealed.

10 ~~—37-14-9. At the time of filing said application, and as a part thereof, the applicant shall file~~
11 ~~and deposit with the board of county commissioners, a bond, with sureties to be approved by the~~
12 ~~board of county commissioners, in the penal sum of two times the value of the merchandise~~
13 ~~proposed to be offered for sale at such auction as shown by the inventory filed, running to the~~
14 ~~state of South Dakota, and for the use and benefit of any purchaser of any merchandise at such~~
15 ~~auction who might have a cause of action of any nature arising from or out of such auction sale~~
16 ~~against the auctioneer or applicant; the bond to be further conditioned on the payment by the~~
17 ~~applicant of all taxes that may be payable by, or due from, the applicant to the state of South~~
18 ~~Dakota or any department or subdivision thereof, the payment of any fines that may be assessed~~
19 ~~by any court against the applicant or auctioneer for violation of the provisions of §§ 37-14-2 to~~
20 ~~37-14-14, inclusive, and the satisfaction of all causes of actions commenced within one year from~~
21 ~~date of such auction sale and arising therefrom, provided, however, that the aggregate liability~~
22 ~~of the surety for all said taxes, fines and causes of action shall in no event exceed the sums of~~
23 ~~such bond.~~

24 Section 9. That § 37-14-10 be repealed.

25 ~~—37-14-10. In the bond required by § 37-14-9, the applicant and the surety shall appoint the~~

1 ~~county auditor of the county in which such bond is filed, the agent for the applicant and the~~
2 ~~surety for the service of process. In the event of such service, the agent on whom such service~~
3 ~~is made shall, within five days after the service, mail by ordinary mail a true copy of the process~~
4 ~~served upon him to each party for whom he is served, addressed to the last known address of~~
5 ~~such party. Failure to so mail said copy shall not, however, affect the court's jurisdiction. Such~~
6 ~~bond shall contain the consent of the applicant and surety that the circuit court for the county~~
7 ~~wherein the application and bond is filed shall have jurisdiction of all actions arising against the~~
8 ~~applicant or surety, or both, arising out of said sale.~~

9 Section 10. That § 37-14-11 be repealed.

10 ~~—37-14-11. The State of South Dakota or any subdivision thereof, or any person having a~~
11 ~~cause of action against the applicant arising out of the sale of such new merchandise may join~~
12 ~~the applicant and the surety on the bond required by § 37-14-9 in the same action, or may in such~~
13 ~~action sue either such applicant or the surety alone.~~

14 Section 11. That § 37-14-12 be repealed.

15 ~~—37-14-12. Upon the filing of such application and after the applicant has fully complied with~~
16 ~~all the provisions of §§ 37-14-2 to 37-14-14, inclusive, the board of county commissioners, by~~
17 ~~its chairman, shall issue to the applicant a license authorizing the holding of such auction sale as~~
18 ~~proposed in said application. Such license shall not be transferable, and shall be valid only in the~~
19 ~~county where issued.~~

20 Section 12. That § 37-14-13 be repealed.

21 ~~—37-14-13. Within ten days after the last day of said auction the applicant shall file in duplicate~~
22 ~~with the county auditor an inventory of all merchandise sold at such auction and the price~~
23 ~~received therefor which said inventory shall be verified. The county auditor shall, immediately~~
24 ~~after receiving such report, forward a copy thereof to the secretary of revenue.~~

25 Section 13. That § 37-14-14 be repealed.

1 ~~37-14-14. Any person who offers new merchandise for sale at public auction without first~~
2 ~~securing a license as provided in §§ 37-14-6 to 37-14-12, inclusive, or who offers for sale new~~
3 ~~merchandise different from that shown by, or in excess of the amount and value of, the~~
4 ~~inventories filed with the application for license, is guilty of a Class 2 misdemeanor.~~

5 Section 14. That § 37-14-15 be amended to read as follows:

6 37-14-15. ~~Public auctioneers of any~~ Any public auctioneer of a state which admits any public
7 ~~auctioneers~~ auctioneer of this state to conduct a public auction sales sale in such state ~~without~~
8 ~~license or other regulation shall be~~ is permitted to conduct a public sales sale in this state upon
9 the same terms.

10 Section 15. That § 37-14-16 be repealed.

11 ~~37-14-16. Auctioneers from any state which requires public auctioneers of this state to secure~~
12 ~~a license or imposes other regulations for authority to conduct public sales within such state shall~~
13 ~~be subject to the same requirements as apply to public auctioneers of such foreign states who~~
14 ~~seek to conduct public sales in this state.~~

15 ~~Public auctioneers of such foreign state who desire to conduct public sales in this state, shall,~~
16 ~~before conducting any such sale apply to the county auditor of any county in this state for a~~
17 ~~license so to do. Upon considering such application, the county auditor shall issue a license upon~~
18 ~~the payment of the same fee and compliance with the other requirements as are required of~~
19 ~~auctioneers of this state in such foreign state, and which fee, when collected shall be deposited~~
20 ~~with the county treasurer and credited to the general fund of the county.~~

21 ~~Any public auctioneer, of a foreign state required to be licensed or otherwise subject to~~
22 ~~regulation under the provisions of this section, who fails to secure the license or comply with this~~
23 ~~section is guilty of a Class 1 misdemeanor.~~

24 Section 16. That § 37-14-17 be repealed.

25 ~~37-14-17. It shall be the duty of the county auditor of each county of this state bordering~~

1 ~~upon adjoining states to secure the laws of such adjoining state covering public auctioneers, for~~
2 ~~the purpose of carrying out the provisions of §§ 37-14-15 and 37-14-16.~~

3 Section 17. That § 37-14-18 be amended to read as follows:

4 37-14-18. ~~All of the~~ Any money that an auction ~~clerk~~ cashier receives on behalf of a client
5 from an auction sale shall be deposited in a separate account maintained for auction sale
6 proceeds only.

7 Section 18. That § 37-14-19 be amended to read as follows:

8 37-14-19. ~~All of the~~ Any money that an auction ~~clerk~~ cashier receives on behalf of a client
9 from an auction sale shall be given to ~~such~~ the client within twenty working days of the auction
10 sale. This section does not apply to any bad ~~checks~~ check or if there is a prior written agreement
11 between the client and the ~~clerk~~ cashier.

1 **BILL HISTORY**

2 1/20/98 First read in House and referred to Commerce. H.J. 123

3 1/27/98 Scheduled for Committee hearing on this date.

4 1/27/98 Commerce Do Pass Amended, Passed, AYES 13, NAYS 0. H.J. 252

5 1/27/98 Commerce Place on Consent Calendar.