

Approved Feb. 18, 1992  
Date

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE

The meeting was called to order by Representative Lee Hamm at  
Chairperson

9:13 a.m./p.m. on Tuesday, February 11, 1992 in room 423-S of the Capitol.

All members were present except: Representative Heinemann, excused

Committee staff present: Raney Gilliland, Legislative Research  
Jill Wolters, Revisor of Statutes Office  
Pat Brunton, Committee Secretary

Conferees appearing before the committee: Bob Wilson, President  
Kansas Auctioneers Association  
  
Milton Anderson, Member  
Kansas Auctioneers Association  
  
Larry Theurer, Member  
Kansas Auctioneers Association and  
National Auctioneers Association  
Wellington, Kansas  
  
Don Roche  
Realtor and Auctioneer  
Blue Rapids, Kansas  
  
Charles Macy  
Alta Vista, Kansas  
  
Bob J. Mead  
Representative  
112th District  
Pawnee Rock, Kansas

Chairman Hamm opened hearings on **HB 2725** - licensing and regulating auctioneers.

Bob Wilson, President, Kansas Auctioneers Association, testified before the committee in support of **HB 2725**. Mr. Wilson provided the committee with requested amendments to the bill. Page 1, section 2, line 42, add (i) Livestock means cattle, hogs, sheep, horses, mules, donkeys, and goats. Page 9, section 15, line 24, add (f) any livestock sale conducted for a member of a recognized national or state livestock or breed association and any auctioneer and/or sale manager conducting such sales will be exempt from this act. (Attachment 1).

Milton Anderson, Member, Kansas Auctioneers Association, testified in support of **HB 2725** stating this legislation would provide adequate self-funding to its regulatory board, as well as funds to the State of Kansas. He further stated that because the livelihood of many auctioneers is based on the auction industry, a need for respect and professional standards exist. (Attachment 2).

Larry Theurer, auctioneer and licensed real estate broker, testified in favor of **HB 2725** informing the committee of his concern about the auctioneer who comes into Kansas, has a few auctions, does not pay his clients and then leaves the state. He feels the time has come for Kansas to enact a license law just as numerous other states have already done. The sellers and consumers of Kansas need to be protected from unscrupulous auctioneers. (Attachment 3).

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE,  
room 423-S, Statehouse, at 9:13 a.m./~~p.m.~~ on Tuesday, February 11, 1992

Don Roche, realtor and auctioneer, Blue Rapids, Kansas, testified before the committee in opposition to **HB 2725** questioning why now, when we are trying to cut expenses and budgets, some people want to put more bureaucracy on auctioneers. (Attachment 4).

Charles Macy, Alta Vista, Kansas, appeared before the committee in opposition to **HB 2725**.

Representative Bob J. Mead, 112th District, appeared before the committee in opposition to **HB 2725** giving several reasons for his position. (Attachment 5).

A question and answer period followed each testimony.

Hearings were closed on **HB 2725**.

Representative Minor made a motion to approve minutes of February 4, 5, and 6, 1992. Representative Lloyd seconded the motion. Motion carried.

The meeting adjourned at 10:05 a.m. The next meeting of the House Agriculture Committee will be held on Wednesday, February 12, 1992, in room 423-S of the State Capitol.

GUEST LIST

COMMITTEE: HOUSE AGRICULTURE

DATE: February 11, 1992

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Gene Yockers	TOP.	KREC
Charles M. Macy	RT1 Box 20317	Com Macy Auctions
Greg Krusak	Topeka	KSBA
Joe Rickabaugh	Topeka	KLA
Charles S. Evenson	Wichita	
Don Day	Council Grove	Donald Day
Walter Cole	Goodland Kan	Cole Auction on Real Estate
Loren J. Shiele	Horton, KS	Shiele Auction & Realty
Bob Hummel	Bellevue, KS	Hummel Auction
Vern Lammun	Manhattan, KS	Lamm Auctions
Sherril Lannon	Manhattan, KS	Lannon Auctions
Timothy P. Clusted	Beattie, KS	Clusted Auctions
Dan Horigan	Frankfort, KS	Horigan Auction <sup>KS</sup>
Benjamin Bluff	Seneca Kan	Seneca Auct. Co.
Alfred Jones	Holtov, KS	CKFO
Jacquie Oates	Topeka	Ks. Auctioneers Assoc.
DAN KULL	Topeka	Kull Auction.
Roger L. Porter	Clatshe	Public Auctioneer & Real Estate
Bob Mead	Punee Park	Legislature
David R. Corbin	Towanda	Regis. Latue.
Larry Thumm	Wellington	Ks Auct. Assn
Sherril Thumm	Wellington	Ks Auction Assn.
Milton Anderson	Manhattan, KS	
John Roche	Blue Springs, KS	JR
June Roche	Blue Springs	

HOUSE AGRICULTURE COMMITTEE

TESTIMONY HB 2725

Presented by Bob Wilson on behalf of the  
Kansas Auctioneers Association

My name is Bob Wilson. I am President of the Kansas Auctioneers Association. I would like to bring to your attention the requested amendments to House Bill 2725. I have attached the amendments to my copy of the testimony. Page 1, section 2, line 42, add (i) Livestock means cattle, hogs, sheep, horses, mules, donkeys, and goats. Page 9, section 15, line 24, add (f) any livestock sale conducted for a member of a recognized national or state livestock or breed association and any auctioneer and/or sale manager conducting such sales will be exempt from this act. A national or state livestock or breed association shall be recognized by filing such association bylaws with a Secretary of State. The Kansas Livestock Association has agreed to remain neutral with the inclusion of the amendments.

In 1989 the KAA membership unanimously endorsed Senate Bill 241. During that legislative session, it was suggested the bill be held in committee until a study of auctioneers throughout the state could be conducted. The KAA has held area wide meetings in 1989, 90, & 91, discussing a wide range of topics as well as the license law. Approximately 200 auctioneers attended, most non-members. The KAA membership has grown each year from these meetings.

Auctioneers can and do handle large sums of money, often cash. It is done without regulations prohibiting co-mingling of client's monies with their own, holding such monies in escrow account, or even requiring the return of the money to the individual for whom the sale was conducted. If a garnishment were placed on an auctioneer's account in which a client's monies were co-mingled, the client could be responsible for issues totally unrelated to the client.

Being an auctioneer requires knowledge of products being offered for sale, the appropriate marketplaces, various rules, laws and regulations applicable to possession, sale and transfer of personal property, and knowledge of the general rights and obligations of parties to a legal transaction with regard to personal property. These laws would include the bulk sales law and UCC provisions such as secured transactions, chattel mortgages and lien foreclosures, all of which an auctioneer will be confronted with.

I personally ran a survey of about 20 auctioneers. I kept no record of who the survey included, just a record of responses. Of those answering, there was approximately \$50,000 paid in sales tax, and to others it was not necessary to collect sales tax. I would estimate if all auction firms were collecting sales tax, it would be in excess of \$500,000 in revenue for the state of Kansas.

Opposers to this bill will debate it places a burden upon out-of-state auctioneers. The bill purposefully contains a grandfather clause that will ensure any auctioneer, whether in state or out of state, who is actively engaged in the business of auctioneering for one year prior to the date of this act, is able to become an auctioneer in this state for simple payment of a \$100 fee. In addition, any out of state auctioneer coming from a state which is licensed will, in all probability, be able to reciprocate automatically pursuant to that section as well. Presently 26 states formally regulate auctioneers. Furthermore, Kansas auctioneers will be able to function in other states with no expensive or time consuming regulations.

Auctioneering is a powerful means of enterprise. The entire life-savings of an individual can be liquidated in a few hours. Licensure would protect consumers and would provide an agency which could regulate activities and follow-up on grievances.

I therefore strongly support HB 2725.

HS. AG.  
2/11/92  
ATTACHMENT 1

*From: Yocque Dates*

Session of 1988

## HOUSE BILL No. 2725

By Committee on Agriculture

1-21

8 AN ACT concerning auctioneers; providing for licensure and  
9 regulation.

10

11 *Be it enacted by the Legislature of the State of Kansas:*

12

13 Section 1. From and after July 1, 1992, no person shall act or  
14 presume to act as an auctioneer in this state unless such person has  
15 a current license in good standing issued by the board.

16

17 Sec. 2. (a) "Auctioneer" means a person who knowingly creates  
18 or abets the inference of being available to sell, offer to sell at auction  
19 real or personal property, goods, chattel, merchandise, or commod-  
20 ities of any description by or at public auction or who sells property  
21 at auction.

22

23 (b) "Auction facility" means any business establishment or other  
24 location owned, leased, or controlled by any entity other than a duly  
25 licensed auctioneer where goods are sold or are advertised to be  
26 sold, at auction on any recurring basis.

27

28 (c) "Property" means any chattels, goods or merchandise, real or  
29 personal or commodities of any form or type which may be lawfully  
30 kept or offered for sale.

31

32 (d) "Auction" means the public sale of property real or personal,  
33 or both, in which the sale price of the property offered is increased  
34 by bids until the highest accepted bidder becomes the purchaser.

35

36 (e) "Absolute auction" means an auction where at the time of  
37 advertising and at the time of auction sale, ownership of the goods  
38 to be sold will pass to the highest bidder regardless of the amount  
39 of the highest and last bid.

40

41 (f) "Association" means a voluntary association of licensed auc-  
42 tioneers organized to improve and promote the auction method of  
43 sales.

44

45 (g) "Auction manager" means any person, individual, corporation  
46 or other entity who knowingly represents, creates or abets the in-  
47 ference of being available to manage or operate an auction and who  
48 is responsible for collection and disbursing of auction funds.

49

50 (h) "Board" means the auctioneers board created by section 3  
51 and composed as provided by section 4.

52

53 Sec. 3. (a) There is hereby created the auctioneers board and

1-2  
(i) Livestock means cattle, hogs, sheep, horses,  
mules, donkeys, and goats.

1 (c) An auction manager is exempt from licensing if by contract  
2 the licensed auctioneer accepts the responsibility for distribution of  
3 funds.

4 Sec. 15. The license requirements contained in this act shall not  
5 apply to any of the following types of auction sales:

6 (a) Sales of goods by an individual who personally owns the goods,  
7 and who did not acquire the goods for the purpose of resale. This  
8 exemption applies only to individuals, and not to partnerships, cor-  
9 porations or other entities;

10 (b) sales conducted for any charitable, religious or civic organi-  
11 zation which has tax-exempt status, and for which the auctioneer  
12 receives no compensation;

13 (c) sales required by law to be held at auction, or sales ordered  
14 to be held at auction by a court of competent jurisdiction;

15 (d) any livestock auction facility licensed under federal law re-  
16 lating to packers and stockyards act;

17 (e) any auction facility when utilized for the purposes defined in  
18 subsection (j) of K.S.A. 8-2402, and amendments thereto, and any  
19 auction manager licensed under the vehicle dealers and manufac-  
20 turers licensing act while engaged in performing the duties such  
21 manager is authorized to perform under the vehicle dealers and  
22 manufacturers licensing act, except that a nonmanager auctioneer  
23 performing auctioneer duties shall not be exempt from licensure  
24 requirements under this subsection; and

25 (g) (f) notwithstanding the provisions of this section, no licensee un-  
26 der this act shall be exempted from any of the provisions of this act  
27 by reason of participation in any sale excepted under this section.

28 Sec. 16. Violation of this act is a class C misdemeanor.

29 Sec. 17. No municipality, as defined in K.S.A. 10-1011, and  
30 amendments thereto, shall require a license or impose a fee for any  
31 license from an auctioneer who is required to be licensed under this  
32 act.

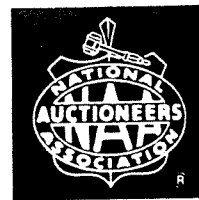
33 Sec. 18. This act shall take effect and be in force from and after  
34 its publication in the statute book.

(f) Any livestock sale conducted for a member of a  
recognized national or state livestock or breed  
association and any auctioneer and/or sale  
manager conducting such sales will be exempt  
from this act.



# National Auctioneers Association

8880 BALLENTINE • OVERLAND PARK, KS 66214-1985 • 913 541-8084 • FAX 913 894-5281



February 7, 1992

Robert Wilson, President  
Kansas Auctioneers Association  
Route 3, Box 276  
St. George, KS 66535


Dear Bob:

National Auctioneers Association (NAA), which represents some 5,200 members across the United States and Canada, is pleased to be headquartered in Kansas and proud of the long and mutually beneficial relationship it has had with Kansas Auctioneers Association.

NAA is dedicated to advancing our profession through educational programs and promotion of the highest ethical standards among auctioneers. In this regard, NAA has endorsed the concept of licensing as a means of elevating the professional status of auctioneers and offering protection to the users of auction marketing services. In addition, enactment of licensing in a state enables its auctioneers to enjoy the benefits of reciprocal agreements that may be implemented with neighboring states.

While advocating passage of license laws that are fair and effective, National Auctioneers Association understands this to be a matter under the jurisdiction of the individual states. NAA does not wish to be seen as dictating policy to Kansas, but trusts that any legislation adopted will be equitable to all parties involved.

Sincerely,

  
Joseph G. Keefhaver  
Executive Vice President

HOUSE COMMITTEE ON AGRICULTURE  
TESTIMONY RE: HB 2725

Presented by Milton Anderson on behalf of  
THE KANSAS AUCTIONEERS ASSOCIATION  
February 11, 1992

Mr. Chairman, members of the committee:

My name is Milton Anderson. I am a member of the Kansas Auctioneers Association and have been a member of the auctioneering profession for 24 years.

House bill 2725 would provide adequate self-funding to its regulatory board, as well as funds to the State of Kansas. An estimated 600 individuals are currently involved in the auction profession. Each of those members would be required to pay a \$100.00 licensure fee. Eighty percent (\$48,000) would be directed to the regulatory board. The remaining 20% (\$12,000) would be deposited in the general fund of the State of Kansas. In addition, licensed professionals would submit monies to provide a \$100,000.00 recovery fund for consumers. Associations comparable to the KAA within the state have indicated these figures will adequately support the regulatory board with no further assistance required. I believe the Kansas Auctioneers Association would be receptive to combining this board with another entity wherever it would be most feasible.

Because the livelihood of many auctioneers is based on the auction industry, a need for respect and professional standards exists. An auctioneer has the potential to handle hundreds of thousands of dollars for consumers, yet the industry remains completely unregulated. We do not believe in the saying if its not broke don't fix it. The same is not said of other industries such as attorneys, bankers, CPA's, plumbers, electricians, etc., who determine the fate of such large sums of money. However we are experiencing deregulation of the banking industry and are aware of these happenings. We strongly feel we need to control and set certain standards for ourselves so we do not have bad experiences. Please be mindful that there are no regulations on the money we collect from any personal property auctions.

If our profession is to serve the needs of Federal and State governmental agencies wishing to foreclose or dispose of surplus, such as Freddie Mac, Fannie Mae, FHA and VA, the industry will imminently be required to provide accountability such as bonding and or licensure. The bankruptcy Trustees and Resolution Trust Corp. recently are requiring bonding and is currently costing a very high dollar per year, there is a reason for that control and protection. It would be wise for an industry to have input on such regulations and requirements that are feasible and realistic within its own profession.

Members of each governing body such as the State of Nebraska and the City of Topeka, have unanimously voted down licensure within their municipality and state, which were unrealistic and damaging to the rights of the seller as well as the auctioneer.

HS. AG.  
2-11-92  
ATTACHMENT 2



A regulatory board can also inform all auctioneers of state laws and regulations so that each auction conducted is consistent and within the boundaries of the legal system. Auctioneers who are not members of the Kansas Auctioneers Association currently do not have access to such information.

This bill is extremely important not only to the Kansas Auctioneers Association but to any auctioneer that has ten or fifteen auctions per year. This bill will serve as a tool for continuing education within the membership and cause for better serving the public properly. The Sales Tax issue is an example. Inconsistent sales tax collections have occurred for years, primarily because of conflicts of regulations within the Department of Revenue. I would estimate if sales tax was paid as would be required the amount collected would be tripled at least we would be uniform in the collections. The auction industry has dramatically changed in the last ten years and will continue to change. Passage of this bill will provide guidelines and regulations for the industry before a crisis occurs. An auctioneer in the State of Kansas should ascertain the right, privilege and obtain the capabilities of serving those deserving citizens of Kansas.

I strongly support House Bill 2725 and ask this committee also to do so.

Re: House Bill 2725  
February 11, 1992  
To: House Agricultural Committee  
Lee Hamm, Chairman  
From: Larry Theurer

Mr. Chairman and Committee Members,

I am Larry Theurer an auctioneer and licensed real estate broker from Wellington, Ks. I am a member of the National and Kansas Auctioneers Associations. I am a graduate of the Certified Auctioneer's Institute (CAI), I also do extensive appraisal work for various estates and area bankers. I am the employed broker by Farm Credit Services to sell properties acquired by Federal Land Bank in Sumner County.

My agriculture background includes being born and raised on a livestock and grain farm, near Wellington. I have a B.S. from Kansas State University and a M.S. from Colorado State University, both degrees being in Animal Science. I owned and operated an extensive grain and livestock business from 1966 to 1985. I still maintain interest in the farm and livestock business.

I have been in the auction profession since 1976, and a full time auctioneer since 1985, conducting over 80 auctions in 1991. I have conducted auctions where the gross sales have ranged from as little as \$500 to those grossing several hundred thousand dollars. Our auction business has grown and prospered because it is operated by the Golden Rule. Much of our business has been conducted by a handshake.

Auctions have been around since days of the Roman Empire. Following the Civil War between the states, the spoils of war accumulated by the North were sold at public auction by the Colonels, thus the name "Colonel" has been given to auctioneers and still used in many parts of the country.

An auction used to be considered as a last resort effort to sell distressed property which no one wanted or for farmers retiring or to settle estates. Today auctions are being used to sell everything from fine arts and antiques to multimillion dollar buildings and shopping centers. Did you know an auction is the method used to establish the weekly government Treasury bill rates? The RTC has selected the auction method to market its mass accumulation of real and personal property.

I am concerned about the vast numbers of people graduating from auction school with the idea of getting rich quick. Today, in Kansas, anyone can profess to be an auctioneer. He does not have to get any formal training. He can take the proceeds from an auction and deposit them in his personal account rather than in an escrow or trust account.

**"Call Theurer  
for Sure"**

Hs. Ac.  
2/11/92  
ATTACHMENT 3

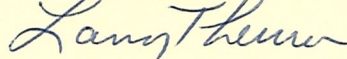


I am concerned about the auctioneer who comes into Kansas, has a few auctions, does not pay his clients and then leaves the state. Recently when we applied to a credit card service to be used as payment for our auctions, the company stated they had encountered problems with "fly-by-night" auction companies. They required several forms of advertising and proof of actual auctions.

I do not want a law which keeps anyone from being an auctioneer nor do I want a license law that keeps other auctioneers from coming into Kansas or keeps me from practicing in other states.

The time has come for Kansas to enact a license law just as numerous other states have already done. The sellers and consumers of Kansas need to be protected from unscrupulous auctioneers. No longer will a handshake and a promise suffice.

Respectively Submitted,

A handwritten signature in cursive script that reads "Larry Theurer".

Larry Theurer, CAI

Honorable Chairman;

Committee Members;

Regard House Bill No. 2725 (License of Auctioneers)

My name is Don Roche and my address is 401 Chestnut Street in Blue Rapids, Kansas. I am a Realtor and Auctioneer and have been in this profession since 1959 in Real Estate and since 1960 as an auctioneer, for a total of 32+ years.

I subscribe to the Kansas City, The Topeka Capitol, the Manhattan Mercury, Grass and Grain, the Marysville Advocate, Waterville Telegraph, Frankfort News and I have never read anything about auctioneers comingling funds or not paying any Seller at an auction, as is brought up by Mr. Wilson in the paper he has put out concerning the tape the Kansas Auctioneers Association has put out.

I would also like to state that any auctioneer that sells real estate in Kansas is governed by the Kansas Real Estate Commission and that any one that even catches bids at real estate auction is required to have at least a Salesmans license. In Mr. Wilsons statement that there are instances where out-of-state auctioneers are selling real estate without regulation of the Real Estate Commission, I presume he must be referring to those who are selling for the RTC and I seriously doubt that you could affect them as even the Real Estate Commission has no control over them. Please understand that I am a firm believer in the Kansas Real Estate Commission having control as they now do.

It is not known how many auctioneers there are in the state of Kansas. The estimate runs to 600 to 800. The membership of the Kansas Auctioneers Association consists of approximately 260+ members which

HS. AG.  
2/11/92  
ATTACHMENT 4

is between 33% and 44% of the estimated auctioneers in Kansas. I am certain that not all of these members are for more regulations and more paper work than we are now saddled with. Again I question if Mr. Wilson speaks for the entire membership or just a few.

Who is to say that once this bill should be passed, if it is, what other regulations, stipulations, and requirements can then be added so that we lose still more of the freedom we have now to do business, without Big Brother looking over our shoulder.

It says that you will have to actively call bids in 5 sales before you will be considered for a license, what if no auctioneer will be willing to give you that chance? Some of you, that have start as I did, without any help from the local auctioneers will be unable to even qualify for a license.

Auctioneering is an ancient and honorable profession dating back, so I am told, to the time of the Bible. Why now do we suddenly have to have all of these regulations saddled on us. I would question that right now, while we are trying to cut expenses and budgets, some people suddenly want to put more bureaucracy on us. It is time that some of us stood up for our rights and try to stop this trend before it topples of it's own weight.

I am not a member of the Kansas Auctioneers Association at the present time, because several years ago, I saw how it was headed and quit. I am however and have been for a long time, a member of the National Auctioneers Association.

THANK YOU FOR LETTING ME ADDRESS THIS COMMITTEE

DON ROCHE, REALTOR & AUCTIONEER  
BLUE RAPIDS, KANSAS  
PHONE 913/226-7485

BOB J. MEAD  
REPRESENTATIVE, 112TH DISTRICT  
P.O. BOX 224  
509 HOUCK  
PAWNEE ROCK, KANSAS 67567



TOPEKA

HOUSE OF  
REPRESENTATIVES

COMMITTEE ASSIGNMENTS  
MEMBER: APPROPRIATIONS  
ECONOMIC DEVELOPMENT  
JOINT COMMITTEE ON  
ECONOMIC DEVELOPMENT  
SPECIAL COMMITTEE ON  
WAYS & MEANS, APPROPRIATIONS  
SPECIAL COMMITTEE ON  
ECONOMIC DEVELOPMENT

HB 2725

February 11, 1992

Testimony Before the  
House Agriculture Committee

by

Bob J. Mead  
Representative, 112th District

Mr. Chairman and members of the committee:

I appear here in opposition to HB 2725 for the following reasons:

1. It is protectionist legislation at its best.
2. It interferes with the free enterprise system.
3. It creates another level of bureaucracy.
4. Of the approximately 600 auctioneers in the state, less than one-half belong to the Kansas Association of Auctioneers, which is the organization asking for this legislation, and 114 of them have signed the petition which is before you.
5. At least 30 members of the Kansas Association of Auctioneers have signed the petition before you in opposition to the licensing of auctioneers indicating that the Association is not speaking for its full membership.

*HS. AG.  
2-11-92  
ATTACHMENT 5*

Testimony before the House Agriculture Committee on HB 2725  
February 11, 1992 Representative Bob J. Mead  
Page 2

6. I am not aware of any public outcry for the licensing of  
auctioneers.

Members of the committee, I urge you to defeat HB 2725.