

# Auctioneers, Stock and Station and Real Estate Agents (Amendment) Bill, 1945.

## EXPLANATORY NOTE.

THE object of the Bill is to clarify existing provisions of the Auctioneers, Stock and Station and Real Estate Agents Act, 1941-1944, provide additional machinery clauses therein, and to give effect to the purposes following, viz.; to provide:—

- (i) for a definition of land used for agricultural and pastoral purposes;
- (ii) for the payment of fees to Councillors for their services in attending meetings of the Council;
- (iii) for the licensing of persons advertising, notifying or stating that they carry on the business of an auctioneer;
- (iv) that application may be made for the restoration of a license after the expiry thereof;
- (v) for additional grounds of objection to the grant of a license;
- (vi) for the preservation of the records of licensees and the inspection and examination thereof during the period they are to be preserved;
- (vii) for the furnishing by a licensee of details of the trust account on which he operates and of particulars of transactions by or with him as a licensee;
- (viii) for the review of alleged overcharges of commission, fees, expenses or charges by licensees;
- (ix) for claims being made against the Fidelity Guarantee Fund where persons suffer loss not only by reason of defalcations of a licensee but also by a partner or employee of a licensee or a person having for the time being the control of the business of a licensee, and for the simplification of the procedure in connection with any claims made;
- (x) for the extension of the amount of £500 which may be paid from the Fidelity Guarantee Fund in respect of any one licensee to £2,000;
- (xi) that the form in which licensee's accounts and records are to be kept may be prescribed by regulation; and
- (xii) for other amendments of a minor nature.**

CALCULATED NOTE

(-ii) for other amendments of a minor nature.



PROOF

No. , 1945.

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## A BILL

To amend the Auctioneers, Stock and Station and Real Estate Agents Act, 1941-1944, in certain respects; and for purposes connected therewith.

[MAJOR C. E. MARTIN;—12 *December*, 1945.]

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**B**E it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of  
5 the same, as follows :—

**1.** (1) This Act may be cited as the "Auctioneers, Stock and Station and Real Estate Agents (Amendment) Act, 1945."

90937

65—A

(2)

Short  
title,  
citation  
and com-  
mencement.



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(2) The Auctioneers, Stock and Station and Real Estate Agents Act, 1941-1944, is in this Act referred to as the Principal Act.

(3) The Auctioneers, Stock and Station and Real Estate Agents Act, 1941, as amended by subsequent Acts and by this Act, may be cited as the Auctioneers, Stock and Station and Real Estate Agents Act, 1941-1945.

(4) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

**2. The Principal Act is amended—**

Amendment of  
Part I of Act  
No. 28, 1941.  
Sec. 3.  
(Definitions.)

(a) by inserting in subsection one of section three next after the definition of "Individual" the following new definition:—

15 "Land used for agricultural or pastoral  
purposes" means any parcel of land  
greater in area than five acres which is  
used or apparently intended to be used  
for gain or profit for grazing of live stock,  
20 dairying, poultry farming, viticulture,  
orcharding, bee-keeping, horticulture, the  
growing of crops of any kind, vegetable  
growing or any other purpose declared  
by the Governor by proclamation  
25 published in the Gazette to be an  
agricultural or pastoral purpose.

(b) by inserting in the same subsection next after the definition of "Live stock" the following new definition:—

30 "Principal place of business" means in  
relation to a corporation which carries  
on business at more than one place the  
place of business specified in the applica-  
tion made by such corporation for a  
35 license on its own behalf to be its principal  
place of business.

**3.**



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**3. The Principal Act is further amended—**

Amendment of  
Part II of Act  
No. 28, 1941.

- (a) by inserting in subsection one of section four-  
teen next after the word "expenses" the words  
"and such fees for attendance at meetings of  
the council, in the case of the chairman not  
exceeding five guineas for each meeting attended  
by him nor in the case of a member two guineas  
for each meeting attended by such member."
- (b) by inserting in subsection one of section seven-  
teen next after the word "registrar" the words  
"and such other officers and employees as may  
be necessary for the administration of this Act."

Sec. 14 (1).  
(Fees and  
expenses.)

Sec. 17 (1).  
(Registrar  
or other  
officer or  
employee.)

**4. The Principal Act is further amended—**

Amendment of  
Part III of Act  
No. 28, 1941.

- (a) by omitting subsection one of section twenty  
and by inserting in lieu thereof the following  
subsection:—
- (1) No person shall act as or carry on or  
advertise, notify or state that he acts as or  
carries on or is willing to act as or carry on the  
business of an auctioneer unless he is the holder  
of an auctioneer's license:

Sec. 20 (1).  
(No person  
or partner  
in a firm to  
act without  
a license.)

Provided that in the case of a partnership  
advertising, notifying or stating that it acts  
as or carries on or is willing to act as or carry  
on the business of an auctioneer it shall be a  
sufficient compliance with the provisions of this  
subsection if one member of such partnership is  
the holder of an auctioneer's license.

- (b) by inserting at the end of section twenty-one  
the following new subsection:—
- (3) No person shall in pursuance of this  
section be in charge at more than one place of  
business.

Sec. 21.  
(Each  
separate  
place  
of business  
to be in  
charge of  
licensee.)

- (c) (i) by inserting in subsection one of section  
twenty-two next after the word "following"  
the word "classes";

Sec. 22.  
(Licenses.)

(ii)



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(ii) by omitting subsection three of the same section and by inserting in lieu thereof the following subsection:—

5 (3) (a) A license shall be in the form prescribed.

10 (b) A license taken out by a person (other than a corporation) shall set forth the name and place of abode of the person taking out the same and the address of the place of business in respect of which it is taken out.

15 (c) (i) A license taken out by a corporation on its own behalf shall set forth the name of the corporation and the address of its sole or principal place of business.

20 (ii) A license taken out by a corporation in respect of an employee shall set forth the name and place of abode of such employee and the name of the corporation and the address of its sole or principal place of business and where the case so requires the address of the place of business at which such employee is to be in charge.

25 (d) (i) by omitting subsection three of section twenty-three and by inserting in lieu thereof the following subsection:— Sec. 23.  
(Pro-  
cedure.)

30 (3) (a) Where the applicant resides in New South Wales the application shall be lodged with the clerk of the court of the petty sessions district within which the place of business of the applicant in respect of which the application is made is situated or proposed to be situated.

35 (b) Where under this subsection there is more than one court with which an application may be lodged such application shall be lodged with the clerk of the court within such district nearest to the place where



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where the place of business to which such application relates is situated or proposed to be situated.

5 (ii) by inserting in paragraph (b) of subsection four of the same section next after the words "general license" the words " or a country license";

10 (iii) (a) by inserting in subsection five of the same section next after the word "police" where thirdly occurring the word "shall";

15 (b) by omitting from the same subsection the words "shall severally" and by inserting in lieu thereof the word "may";

(iv) by inserting at the end of subsection six of the same section the following new paragraph:—

20 (d) The prescribed fees and the prescribed contribution paid under this subsection shall on the refusal or withdrawal of the application in respect of which the same were paid be refunded to the applicant or other  
25 person who may appear entitled thereto.

(v) by omitting subsection seven of the same section and by inserting in lieu thereof the following subsection:—

30 (7) If the officer in charge of police or the council objects to the grant of the application a statement setting out the nature of the objection proposed to be made shall be lodged with the clerk of the court.  
35 Any such statement may be included in any report furnished pursuant to subsection five of this section.

(vi)



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- (vi) by inserting in paragraph (e) of subsection nine of the same section next after the word "force" the words "or the registrar";
- 5 (vii) by omitting from subsection ten of the same section the words "is of bad or doubtful character" wherever occurring and by inserting in lieu thereof the words "is not of good fame and character nor otherwise a fit and proper person to hold a license";
- 10 (viii) by omitting subsection twelve of the same section and by inserting in lieu thereof the following subsection:—
- (12) Notwithstanding anything in the foregoing provisions of this section payment of the prescribed contribution shall not be required in the case of—
- 15 (a) an auctioneer who is the holder of a license under the Farm Produce Agents Act, 1926-1932; or
- 20 (b) a corporation carrying on the business of an auctioneer in respect of a license taken out on its own behalf or taken out in respect of an employee where such corporation is the holder
- 25 of a license issued under the Farm Produce Agents Act, 1926-1932;
- 30 if in any such case such auctioneer or such corporation or the employee of such corporation sells farm produce (as defined in the Farm Produce Agents Act, 1926-1932) by auction, within a radius of ten miles from the General Post Office, Sydney, but does not in any other way whatsoever exercise the trade or business of an auctioneer or
- 35 carry on the business of a stock and station agent or a real estate agent.

Nothing contained in this Act shall be construed as exempting any such auctioneer, corporation or employee of a corporation from



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from the obligation to comply with the requirements of the Farm Produce Agents Act, 1926-1932.

- 5 (e) by inserting next after section twenty-three the following new section:— New sec.  
23A.

10 23A. (1) Where application for renewal of a license is not made before the expiration of the license the person who held such license may make application for the restoration of such license. Restoration  
of license  
not renewed.  
cf. Act No.  
42, 1912,  
s. 131.

The clerk of the court may on payment to him of the like fees and contributions as are payable on the renewal of a license issue to such person a provisional license.

15 Upon the issue of a provisional license under this subsection the applicant shall for all purposes of this Act other than in respect of any proceedings which may have been or may be instituted against him for a contravention of section twenty of this Act be deemed to be and to have been as from the expiration of the license in respect of which the application for restoration is made the holder of a license of the class specified in his application until such time as his license has been restored to him pursuant to this section or until his application for restoration is refused or withdrawn.

20 (2) An application for restoration of a license under this section shall be heard and determined by the court. The court may, if satisfied that such non-renewal is due to inadvertence or that for any reason it is just and equitable that the license should be restored or the result of such inadvertence should be remedied, order that such license be restored and may authorise the issue of a new license for the balance of the term for which the said license would have been available if duly renewed.

(3)



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- 5 (3) The provisions of section twenty-three (paragraphs (a) and (b) of subsection six and subsection eight excepted) of this Act shall, *mutatis mutandis*, apply to and in respect of an application for the restoration of a license under this section in all respects as if the same were an application for a license or a renewal of a license.
- 10 (f) (i) by omitting paragraph (g) of subsection one of section twenty-five; Sec. 25.  
(Fees payable for license.)  
(ii) by omitting from subsection two of the same section the word and symbols "(f) and (g)" and by inserting in lieu thereof the word and symbols "and (f)";
- 15 (iii) by omitting from subsection three of the same section the words "a fee of one pound" and by inserting in lieu thereof the words "such fee not exceeding one pound as may be prescribed";
- 20 (iv) by inserting in paragraph (b) of subsection four of the same section next after the word "expenses" the words "and fees";  
(v) by inserting at the end of paragraph (c) of the same subsection the words "and any other officer or employee appointed under section seventeen of this Act";
- 25 (g) (i) by inserting in paragraph (a) of subsection four of section twenty-six next after the word "resident" where secondly occurring the words "or to a corporation in respect of such resident"; Sec. 26.  
(Power to grant auctioneers' licenses to persons resident in reciprocating States.)  
(ii) by inserting in paragraph (b) of the same subsection next after the words "being a" the words "country license or a";
- 30 (h) (i) by inserting in section twenty-seven next after the word "licenses" where secondly occurring the words "or country licenses"; Sec. 27.  
(Grant of auctioneers' licenses to persons resident in the Australian Capital Territory.)  
(ii) by inserting in the same section next after the words "general license" wherever occurring the words "or a country license";
- 40 (i)



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- 5 (i) by inserting at the end of section twenty-eight the words "nor shall a corporation be entitled to obtain an auctioneer's license or a renewal thereof under this Act in respect of a person who is not a resident of New South Wales;" Sec. 28.  
(Applicant for auctioneer's license to be resident in New South Wales or reciprocating State.)
- (j) by omitting from subsection one of section twenty-nine the word "council" and by inserting in lieu thereof the word "registrar"; Sec. 29.  
(Cancellation of license.)
- 10 (k) (i) by omitting subsection one of section thirty and by inserting in lieu thereof the following subsection:— Sec. 30.  
(Register to be kept by registrar.)
- (1) The clerk of petty sessions shall within seven days after the issue of a license or the renewal of a license or the restoration thereof, or the refusal of an application, or the variation or cancellation of a license under this Act notify the registrar of such issue, renewal, restoration, refusal, variation or cancellation;
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- 20 (ii) by inserting in subsection two of the same section next after the word "renewals" the word "restorations";
- (iii) by inserting in the same subsection next after the words "of licenses" the words
- 25 "and refusals of applications";
- (l) (i) by omitting subsection one of section thirty-one and by inserting in lieu thereof the following subsection:— Sec. 31.  
(Appeal.)
- (1) Where the court—
- 30 (a) refuses any application made under section twenty-three, section 23A, or section twenty-four or makes an order under section twenty-nine of this Act; or
- 35 (b) grants an application under section twenty-three, section 23A, or section twenty-four of this Act to the granting of which the officer in charge



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charge of police or the council has objected; or

(c) dismisses a complaint made under section twenty-nine of this Act;

5 the person making the application, or the licensee, as the case may be, where paragraph (a) of this subsection applies, or the officer in charge of police or the council where paragraph (b) of this subsection  
10 applies, or the complainant where paragraph (c) of this subsection applies, may appeal in accordance with the rules of court of the District Court to the District Court exercising jurisdiction in the district within  
15 which the court refusing such application, making such order, granting such application, or dismissing such complaint is situated.

(ii) by omitting from subsection four of the  
20 same section the word "council" where lastly occurring and by inserting in lieu thereof the word "registrar";

(iii) by inserting at the end of the same section the following new subsection:—

25 (5) Any appeal under this section in any case to which paragraph (b) or paragraph (c) of subsection one of this section applies shall not be made unless the Minister approves.

30 (m) (i) by omitting subsection two of section thirty-four;

(ii) by omitting subsection three of the same section and by inserting in lieu thereof the following subsection:—

35 (3) The address specified in the application as the address at which the applicant proposes to carry on business or in the case of a corporation carrying on business at more than one place the address specified  
40 in the application as its principal place of business

Sec. 34.  
(Registered  
office and  
address.)



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business shall, upon the grant, renewal, restoration or variation of the license, be deemed for the purposes of this Act to be the registered office of the licensee:

5        Provided that where—

- (a) a corporation takes out a license in respect of an employee the place of business of the corporation of which such employee is in charge;
- 10        or
- (b) an auctioneer's license is taken out by a corporation in respect of an employee not in charge of a place of business of such corporation
- 15        the registered office of the corporation,

shall be deemed for the purposes of this Act to be the registered office of such employee.

- 20        (n) (i) by inserting at the end of subsection one of section thirty-five the words "and conforming to the type and size of type prescribed"; Sec. 35.  
(Publication of name of licensee.)
- 25        (ii) by omitting from paragraph (b) of subsection three of the same section the words "after the expiration of three months after the commencement of this Act";
- 30        (iii) by omitting from the same paragraph the words "granted under the Auctioneers' Licensing Act, 1898-1934, or under this Act";
- (o) by inserting in subsection one of section thirty-six after the word "separate" the words "and retained therein"; Sec. 36.  
(Payment into bank.)
- 35        (p) by omitting subsections one and two of section thirty-eight and by inserting in lieu thereof the following subsections:— Sec. 38.  
(Records to be kept.)
  - (1) Every licensee shall in a legible manner make a written record containing full particulars of all transactions by or with him as licensee
  - 40        and



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and shall keep such written record at his registered office.

(2) The written record shall, for a period of three years after the date on which it was made, be preserved—

(a) where such licensee continues to hold a license under this Act or where upon ceasing to hold a license under this Act or ceasing to have as his registered office the place where such written record was kept, such licensee does not authorise some other person to have the possession, custody or control of such written record—by the licensee; or

(b) where any person obtains the possession, custody or control of such written record either by transfer of the business of such licensee or otherwise—by such person.

(q) by inserting next after section thirty-eight the following new sections:—

New ss. 38A and 38B.

38A. (1) Every licensee shall within seven days after service of a requisition in that behalf in the prescribed form furnish to the council in the manner prescribed a statement in writing setting forth full particulars as to—

Furnishing of particulars of trust account or transactions.

(a) the name of the trust account on which such licensee operates in accordance with the provisions of section thirty-six of this Act, the name of the bank on which such account is current, the balance of the moneys standing to the credit of such account as at a date specified in such requisition, and particulars of all cheques drawn on such account as at such date and not presented and duly paid;

(b) any moneys paid by any person to such licensee or received by such licensee for or



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5 or on behalf of any person in connection with his business as a licensee, and if not still held by such licensee the manner and time of disbursement thereof; or

(c) any transaction by or with such licensee as a licensee.

10 (2) No licensee shall be required to furnish to the council any particulars with regard to any of the matters mentioned in subsection one of this section which relate to any transaction by or with such licensee more than three years before the service of such requisition.

15 (3) A licensee shall within fourteen days of demand in writing in the manner prescribed made by a person directly concerned in any transaction by or with such licensee in connection with his business as a licensee, render in  
20 the manner prescribed to the person making such demand an itemised account of such transaction.

(4) No person shall under subsection  
25 three of this section be entitled to demand an itemised account of any transaction which took place more than six months before the making of such demand.

(5) Any licensee who neglects or fails  
30 without reasonable cause, proof whereof shall lie on such licensee, to furnish a statement in writing in accordance with subsection one of this section or an itemised account as required by subsection three of this section or knowingly  
35 furnishes false or incorrect information in any such statement or account shall be guilty of an offence against this Act.

38B. (1) All books of account or other written records relating to the trust account on which any licensee operates in accordance with the provisions

Inspection  
of records.



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5 provisions of section thirty-six of this Act, or  
kept as prescribed, and the written record  
required to be made and kept in accordance with  
the provisions of section thirty-eight of this Act,  
shall at all reasonable times be open to inspection  
by the registrar or other officer of the  
council duly authorised in writing in that behalf  
by the council either generally or in any  
particular case.

10 (2) The registrar or other officer of the  
council duly authorised in writing in that behalf  
and in the case of such authorised officer upon  
production of his written authority, may require  
any licensee or in the absence of such licensee  
15 any servant or agent of such licensee for the  
time being having the apparent control or  
charge of the office or place of business of such  
licensee—

(a) to produce for inspection —

20 (i) all books, papers, accounts or other  
documents relating to the trust  
account of such licensee; or

25 (ii) all written records made and kept  
by the licensee in accordance with  
the provisions of section thirty-  
eight of this Act; or

30 (iii) all contracts, agreements or other  
documents relating to any trans-  
action by or with such licensee in  
connection with his business as a  
licensee, in the possession, custody  
or control of such licensee;

35 (b) to furnish all authorities and orders to  
bankers as may be reasonably required of  
him.

(3) The registrar or officer authorised as  
aforesaid may make notes, copies or extracts of  
or from any such books, papers, accounts,  
written records, contracts, agreements or other  
documents



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documents referred to in subsection two of this section.

5 (4) The registrar or officer authorised as aforesaid shall make a report to the council as to the result of any inspection made under this section.

10 (5) The provisions of subsections one, two, three and four of this section shall apply, mutatis mutandis, to and in respect of any written record preserved in accordance with the provisions of subsection two of section thirty-eight of this Act by a person who has ceased to hold a license under this Act or by any person (other than the licensee who made such written record) who has the possession, custody or control of such written record as required by that subsection.

(6) Any person who—  
20 (a) wilfully delays or obstructs the registrar or officer authorised as aforesaid in the exercise of his powers, authorities, duties and functions under this section; or  
25 (b) on demand refuses or fails to produce any books, papers, accounts, written records, contracts, agreements or other documents required for inspection under this section in his possession, custody, or control; or  
30 (c) on demand refuses or fails to furnish any authorities and orders as may reasonably be required of him under this section,

shall be guilty of an offence against this Act.

35 (r) by inserting next after section forty-two the following new section:—

New sec.  
42A.

42A. (1) No action or suit shall be commenced by any licensee for the recovery of—

Review of  
commissions,  
fees, etc.

(a) any remuneration by way of commission, fee, gain or reward for services done



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done or performed by such licensee in his capacity as such; or

5 (b) any sum as reimbursement for expenses or charges incurred in connection with services done or performed by such licensee in his capacity as such;

10 until the expiration of one month after a statement of claim in writing setting out the amount claimed and containing details of the services done or performed by such licensee in respect of which such commission, fee, gain, reward, expenses or charges are claimed has been served personally or by post on the person to be charged with the same.

15 (2) Notwithstanding anything contained in subsection one of this section proceedings may be taken under the Arrest on Mesne Process Act, 1902, at any time notwithstanding that the statement of claim may not have been served  
20 or that the period of one month has not elapsed.

(3) Where any sum of money has been paid to or is or has been retained by a licensee out of any moneys received by or paid to such licensee in respect of any transaction by or with  
25 him as a licensee such moneys being so paid or so retained as remuneration by way of commission, fee, gain or reward for services done or performed in connection with such transaction or as reimbursement for expenses or charges incurred in connection with such transaction, the  
30 person paying such moneys or the person who would be entitled to the moneys so retained by such licensee had such moneys not been so retained, may, if an itemised account of such  
35 transaction has not been received by such person, require such licensee to furnish him with an itemised account of such transaction under and in accordance with section 38A of this Act.

(4)



(4) The person served with a statement of claim in accordance with subsection one of this section or the person receiving or obtaining an itemised account as provided in subsection three of this section may within one month after service of such statement of claim or receipt or obtaining of such itemised account apply in manner prescribed to the council to review such statement of claim or itemised account.

(5) Where application is made pursuant to subsection four of this section to the council to review a statement of claim or itemised account the council shall proceed to review the same, and notwithstanding the terms or conditions of any agreement or contract entered into by any such licensee or person, may certify what, upon such review, is found to be a reasonable remuneration by way of commission, fee, gain, or reward for the services done or performed by such licensee in connection with the transaction or reimbursement for expenses or charges incurred in connection with the transaction, to which such statement of claim or itemised account relates.

(6) The council may require such evidence to be furnished or require the production of such documents as it thinks necessary or desirable for the purpose of such review and may fix a time within which such evidence shall be furnished or such documents produced.

(7) The licensee or the person making the application pursuant to subsection four of this section shall be entitled to inspect, and on payment of the prescribed fee, obtain a copy of or make an extract from any evidence furnished or document produced to the council pursuant to subsection six of this section.

(8) If any such licensee or person neglects or fails to furnish any evidence or produce any document required to be furnished or



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produced within the time so fixed by the council the council may proceed to review the statement of claim or itemised account without such evidence or document.

5 (9) If any licensee neglects or fails to furnish any such evidence, or without reasonable cause, proof whereof shall lie on such licensee, neglects or fails to produce any document, as required by this section, such licensee shall be  
10 guilty of an offence against this Act.

(10) In the review of such statement of claim or itemised account the council may have regard to the following matters—

15 (a) the evidence furnished or documents produced to the council pursuant to subsection six of this section;

(b) custom and usage amongst licensees and the rate of commission or amount of fee, gain or reward, usually paid to or claimed by licensees in respect of transactions of the class to which the transaction, the subject of such review, belongs;

20 (c) amounts claimed to have been expended by such licensee in respect of advertising, inspecting, or transport or other expenses claimed to have been incurred by such licensee in connection with the services done or performed by him; or

25 (d) any other matter which to the council appears relevant.  
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(11) Where an application for review has been made pursuant to subsection four of this section no action or suit for the recovery of any remuneration or reimbursement as aforesaid to which such review relates shall be commenced until a determination in respect of such application has been made by the council and notwithstanding the terms or conditions of any agreement or contract entered into by the parties to the transaction subject to the review no  
35 such  
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such action or suit shall be brought for the recovery of any sum of money as remuneration or reimbursement as aforesaid in respect of such transaction in excess of that certified by the council on such review to be reasonable.

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(12) Upon the issue of a certificate by the council as prescribed, the person who made application under subsection four of this section may, in any case where any sum of money paid to or retained by a licensee as or for remuneration or reimbursement as aforesaid in respect of the transaction referred to in such certificate is in excess of the amount certified by the council on such review to be reasonable, within one month of the receipt of such certificate cause such certificate to be served on the licensee together with a demand in writing for the payment, at an address to be specified therein, of such excess amount.

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(13) If the licensee fails, within fourteen days after the service of such certificate and such demand in writing, to pay such excess amount, the person who made application under subsection four of this section may notwithstanding the terms or conditions of any agreement or contract entered into in respect of the transaction referred to in such certificate bring proceedings in any court of competent jurisdiction for the recovery of such excess amount as a debt accruing due to him by such licensee as at the date of the issue of such certificate.

25

30

(s) by omitting section forty-three and by inserting in lieu thereof the following section:—

Subst.  
sec. 43.

35

43. Any licensee who publishes (whether in a newspaper or otherwise) any advertisement relating to or in connection with his business without specifying therein the following particulars—

Publication  
of name  
and place  
of business  
in advertisements.

40

(a) where such licensee is an individual carrying on business in his own name, or

a



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a name other than his own name, and is not a member of a partnership, his name and the address of his place of business;

5 (b) where such licensee carries on business as a member of a partnership, then either his name or the name of the partnership of which he is a member, or the name under which the partnership is registered or deemed to be registered under any Act  
10 for the time being in force relating to the registration of business names, and the address of his or its place of business; or

(c) where such licensee is a corporation or employee of a corporation, the name of  
15 the corporation and the address of its place of business;

shall be guilty of an offence against this Act.

Where a licensee carries on business at more than one place of business any such advertise-  
20 ment may specify the address of any one of such places.

(t) by omitting section forty-nine and by inserting in lieu thereof the following section:—

25 49. (1) A sale by auction may be notified in the conditions of sale to be subject to the right by the seller or by any person on behalf of the seller or auctioneer to make a bid or a specified number of bids.

Subst.  
Sec. 49.

Bidding by  
seller or  
auctioneer  
or persons  
on their  
behalf.

(2) It shall not be lawful—

30 (a) for the seller or any person on behalf of the seller or auctioneer—

(i) to bid at a sale by auction unless the right to bid has been notified in the conditions of sale in accordance with subsection one  
35 of this section;

(ii)



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- (ii) to make more than one bid or more than the number of bids, as the case may be, notified in the conditions of sale as aforesaid;
- 5 (b) for the auctioneer knowingly to take from the seller or any person on behalf of the seller or auctioneer—
- (i) any bid unless the right to bid has been notified in the conditions of sale in accordance with subsection one of this section;
- 10 (ii) more than one bid or more than the number of bids, as the case may be, notified in the conditions of sale as aforesaid.
- 15

(3) Whosoever contravenes the provisions of this section shall be guilty of an offence against this Act.

**5.** The Principal Act is further amended—

- 20 (a) by omitting subsection three of section fifty-four;
- (b) (i) by inserting in subsection three of section fifty-five next after the word “by” where firstly occurring the words “the registrar or other officer of the council authorised in writing by the council either generally or in a particular case or;”
- 25
- (ii) by omitting from the same subsection the word “officer” and by inserting in lieu thereof the words “registrar, officer or member of the police force”;
- 30
- (c) (i) by inserting in subsection one of section fifty-seven next after the word “registration” the words “or renewal of registration”;
- 35

Amendment  
of Part IV  
of Act No.  
28, 1941.

Sec. 54.  
(Real estate  
dealer to  
have regis-  
tered place  
of business.)

Sec. 55.  
(Record to  
be kept.)

Sec. 57.  
(Pro-  
cedure.)

(ii)



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- (ii) (a) by inserting in subsection three of the same section next after the word "police" where thirdly occurring the word "shall";
- 5 (b) by omitting from the same subsection the words "shall severally" and by inserting in lieu thereof the word "may";
- (iii) by omitting subsection four of the same section and by inserting in lieu thereof the following subsection:—
- 10 (4) If the officer in charge of police or the council objects to the grant of the application a statement setting out the nature of the objection proposed to be made
- 15 shall be lodged with the clerk of the court. Any such statement may be included in any report furnished pursuant to subsection three of this section.
- (iv) by omitting subsection five of the same section;
- 20 (v) by inserting in paragraph (e) of subsection seven of the same section next after the word "force" the words "or the registrar";
- (vi) by omitting from subsection eight of the same section the words "of bad or doubtful character" and by inserting in lieu thereof the words "not of good fame and character nor otherwise a fit and proper person to hold a certificate of registration";
- 25 (d) by omitting subsection one of section fifty-eight and by inserting in lieu thereof the following subsection:—
- 30 (1) The clerk of petty sessions shall, within seven days after the issue, renewal or cancellation of a certificate of registration as a real estate salesman or after the refusal of an application under section fifty-seven of this Act, notify the registrar of such issue, renewal, cancellation or refusal.
- 35
- (e)
- Sec. 58.  
(Register to be kept by registrar.)



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- (e) by omitting subsection two of section fifty-nine; Sec. 59.  
(Registered address.)
- (f) by omitting from subsection one of section sixty the word "council" and by inserting in lieu thereof the word "registrar"; Sec. 60.  
(Cancellation of certificate of registration.)
- 5 (g) (i) by omitting subsection one of section sixty-one and by inserting in lieu thereof the following subsection:— Sec. 61.  
(Appeal.)
- (1) Where the court—
- 10 (a) refuses any application under section fifty-seven or makes an order under section sixty of this Act; or
- 15 (b) grants an application under section fifty-seven of this Act to the granting of which the officer in charge of police or the council has objected; or
- (c) dismisses a complaint made under section sixty of this Act;
- 20 the person making the application or the real estate salesman, as the case may be, where paragraph (a) of this subsection applies, or the officer in charge of police or the council where paragraph (b) of this subsection applies, or the complainant where
- 25 paragraph (c) of this subsection applies, may appeal in accordance with the rules of court of the District Court to the District Court exercising jurisdiction in the district within which the court refusing such application, granting such application, making such order, or dismissing such complaint is situated;
- 30
- 35 (ii) by omitting from subsection four of the same section the word "council" where lastly occurring and by inserting in lieu thereof the word "registrar";
- (iii)



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(iii) by inserting at the end of the same section the following new subsection:—

5 (5) Any appeal under this section in any case to which paragraph (b) or paragraph (c) of subsection one of this section applies shall not be made unless the Minister approves.

6. The Principal Act is further amended—

Amendment  
of Part  
VI of Act  
No. 28,  
1941.

10 (a) (i) by inserting at the end of subsection one of section seventy-one the following words:— (Contributions to fund.)

15 “Provided that where a corporation holds more than one auctioneer’s license in respect of an employee one contribution only shall be payable under this section in respect of all auctioneer’s licenses held by such corporation in respect of such employee;”

20 (ii) by inserting in subsection three of the same section next after the word “contributions” where firstly occurring the words “an amount of not less than nine pounds”;

(iii) by inserting in the same subsection next after the word “behalf” where firstly occurring the words “an amount of not less than six pounds”;

25 (iv) by omitting from the same subsection the words “any license” and by inserting in lieu thereof the words “each class of license”;

30 (v) by omitting from the same subsection the word “nine” and by inserting in lieu thereof the word “three”;

(vi) by inserting in the same subsection next after the words “such person” where lastly occurring the words “or corporation”;

(vii)



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- 5 (vii) by omitting from the same subsection the words "and such corporation shall not be required to pay any further amount by way of contributions under this section in respect of the license held on its own behalf or of the license held in respect of such employee";
- 10 (b) (i) by omitting subsection three of section seventy-two and by inserting in lieu thereof the following subsection:— Sec. 72.  
(Levies.)
- 15 (3) If a licensee does not after the prescribed notice pay any levy the registrar shall report to the council that such licensee has not paid the levy, and shall upon direction of the council make due record of the fact in the register and so long as the levy remains unpaid the licensee shall be deemed not to be the holder of a license under this Act.
- 20 (ii) by inserting at the end of subsection four of the same section the following words:—
- 25 "Provided that where a corporation has taken out more than one auctioneer's license in respect of an employee such corporation shall be liable to pay the levy imposed under this section in respect only of one such auctioneer's license taken out in respect of such employee."
- 30 (c) (i) by inserting in subsection one of section seventy-four next after the word "licensee" the words— Sec. 74.  
(Application of fund.)
- 35 "or by a partner of a licensee or an employee of a licensee in the course of his employment with such licensee or an agent of such licensee or other person having the apparent control or charge for the time being of the office or business of a licensee";
- (ii)



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5 (ii) by omitting from the same subsection the words "to him or to his employee in the course of his business" and by inserting in lieu thereof the words "to such licensee or to such partner, employee, agent or other person in the course of the business of such licensee";

10 (iii) by omitting subsection four of the same section and by inserting in lieu thereof the following subsection:—

15 (4) No person shall be entitled to claim against the fund in respect of any loss through such theft or fraudulent misapplication unless and until there shall have been a conviction of such licensee, partner, employee, agent or other person for such theft or fraudulent misapplication unless the Supreme Court or a judge thereof, or in any case where the amount of money or the value of the property the subject of the claim does not exceed one hundred pounds a court of petty sessions holden before a police or stipendiary magistrate, for reasons which to such court, judge, or magistrate shall be good and sufficient, shall have by an order certified that the person claiming to have suffered loss should be permitted to claim against the fund notwithstanding that such licensee, partner, employee, agent or other person has not been convicted in respect of such theft or fraudulent misapplication.

35 (d) (i) by inserting in subsection four of section seventy-five after the word "licensee" the words "partner, employee, agent or other person";

Sec. 75.  
(Claim  
against  
the fund.)

(ii).



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- (ii) by inserting at the end of the same section the following new subsection:—
- (6) In respect of any theft or fraudulent misapplication after the commencement of the Auctioneers, Stock and Station and Real Estate Agents (Amendment) Act, 1945, subsections three and four of this section shall be read as though the words “five hundred” were omitted therefrom and the words “two thousand” substituted therefor.
- (e) by omitting from section seventy-six the words “being an auctioneer, is or was residing, or being a stock and station agent or a real estate agent”;
- (f) (i) by omitting from subsection one of section eighty-three the words “the council may” and by inserting in lieu thereof the words “the chairman or any two members of the council may”;
- (ii) by omitting subsection two of the same section and by inserting in lieu thereof the following subsection:—
- (2) Every appointment made under this section shall be in writing signed by the registrar and the chairman or the members of the council who made such appointment.
- (iii) by inserting in subsection three of the same section after the word “licensee” where sixthly occurring the words “or any written record made and kept by such licensee pursuant to section thirty-eight of this Act”;
- (iv) by inserting in subsection four of the same section next after the words “report to the council” the words “or in the like circumstance and to the like extent as a member of the council or any of its officers is permitted under subsection one of section 86A of this Act to publish information”;

Sec. 76.  
(Advertisement relating to defaulting licensee and claims.)

Sec. 83.  
(Examination of account.)

(v).



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*Auctioneers, Stock and Station and Real Estate Agents  
(Amendment).*

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(v) by omitting subsection five of the same section and by inserting in lieu thereof the following subsection:—

5           (5) The provisions of this section shall  
apply mutatis mutandis to and in respect  
of any written record preserved in accord-  
ance with the provisions of subsection two of  
section thirty-eight of this Act by a person  
10           who has ceased to hold a license under  
this Act or by any person (other than the  
licensee who made such written record) who  
has the possession, custody or control of  
such written record as required by that sub-  
section.

15   **7.** The Principal Act is further amended:—

Amendment  
of Part VII  
of Act No.  
28, 1941.

(a) by inserting next after section eighty-six the following new sections:—

New secs.  
86A and 86B.

20           86A. (1) It shall not be lawful for any mem-  
ber of the council or any of its officers or em-  
ployees to publish any information furnished  
to the council pursuant to the provisions of  
section 38A of this Act, or disclosed by an inspec-  
tion made under the provisions of section 38B  
of this Act or section fifty-five of this Act, or in  
25           an accountant's report made pursuant to section  
eighty-three of this Act, except—

Members  
or officers  
of council  
not to  
disclose in-  
formation.

30           (a) to the court before which any proceed-  
ings are pending or being taken in  
connection with any application made  
for the grant of a license to or the  
renewal, restoration, variation or can-  
cellation of a license of the person to  
whom such information is relevant; or  
35           (b) to the court in which proceedings are  
being taken for a breach of this Act  
against the person to whom such infor-  
mation is relevant; or

(c)



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5 (c) to the court which or the judge or  
magistrate who may by order in accord-  
ance with subsection four of section  
seventy-four of this Act certify that any  
person should be permitted to claim  
against the Auctioneers, Stock and  
Station and Real Estate Agents  
Fidelity Guarantee Fund.

10 (2) The registrar at his discretion may  
communicate to any person directly concerned  
in any transaction with a licensee in connection  
with his business as a licensee any information  
furnished to the council in accordance with the  
provisions of this Act, in so far as it relates to  
15 any such transaction and directly concerns any  
such person.

(3) Any person who commits a breach  
of any provision of this section shall, in addition  
to any other proceedings, penalty or punishment  
20 to which he may be liable, be guilty of an offence  
against this Act.

86B. All writs, summonses, notices or other  
documents required or authorised to be served  
on or given to a licensee, real estate dealer or  
25 real estate salesman, shall be deemed to be duly  
served or given if left at his registered office  
with some person apparently in the employ of  
such licensee, real estate dealer, or real estate  
salesman, or apparently in charge of the office  
30 or business of such licensee, real estate dealer  
or real estate salesman, or if sent by registered  
post, postage prepaid, addressed to such  
licensee, real estate dealer or real estate sales-  
man at his registered office registered place of  
35 business or registered address, as the case may  
be.

(b) by inserting next after section eighty-seven the  
following new section:—

87A. An information for an offence against  
40 this Act may be laid at any time within twelve  
months

Service of  
writs, etc.

New sec.  
87A.

Time for  
laying  
information.



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months from the time when the matter of the information arose.

- (c) by omitting section eighty-nine and by inserting in lieu thereof the following new section:—

Subst.  
sec. 89.

5

89. A document purporting to be a certificate under the hand of the registrar and stating that any person is or is not or was or was not on any date or during any period mentioned therein the holder of a license of the class specified therein or the holder of a certificate of registration as a real estate salesman shall in all courts and before all persons and bodies authorised by law to receive evidence be prima facie evidence of the facts alleged.

Document  
under hand  
of registrar  
to be prima  
facie  
evidence.  
cf. Act  
No. 10,  
1934, s.  
19.

10

15

- (d) by omitting subsection one of section ninety-one;

Sec. 91.  
(Corpora-  
tion.)

- (e) by inserting at the end of subsection two of section ninety-two the following new paragraph:—

Sec. 92.  
(Regula-  
tions.)

20

- (f) prescribe the books, accounts and records to be kept by a licensee and the form and mode of keeping the same.







