

# PROPOSED RULEMAKING

## STATE BOARD OF AUCTIONEER EXAMINERS

[ 49 PA. CODE CH. 1 ]

### Licensure by Endorsement

The State Board of Auctioneer Examiners (Board) proposes to amend § 1.3 (relating to definitions) and add §§ 1.27 and 1.28 (relating to licensure by endorsement; and provisional endorsement license) to read as set forth in Annex A.

#### *Effective Date*

This proposed rulemaking will be effective upon publication of the final-form rulemaking in the *Pennsylvania Bulletin*.

#### *Statutory Authority*

The provisions of 63 Pa.C.S. § 3111 (relating to licensure by endorsement) require licensing boards and commissions to issue a license, certificate, registration or permit to an applicant to allow practice in this Commonwealth provided the applicant meets the following criteria: holds a current license, certificate, registration or permit from another state, territory or country whose licensing requirements are substantially equivalent to or exceed the requirements in this Commonwealth; demonstrates competency; has not committed any act that constitutes grounds for refusal, suspension or revocation of a license, certificate, registration or permit to practice that profession or occupation in this Commonwealth, unless the board or commission determines such conduct is not an impediment to granting the license, certificate, registration or permit; is in good standing and has not been disciplined by the jurisdiction that issued the license, certificate, registration or permit, unless the board or commission determines such conduct is not an impediment to granting the license, certificate, registration or permit; and the applicant pays fees, as established by regulation. Additionally, 63 Pa.C.S. § 3111 authorizes boards and commissions to issue a provisional license, certificate, registration or permit while an applicant is satisfying remaining requirements for licensure by endorsement, for which the Board must set by regulation the terms of expiration. Section 32 of the Auctioneer Licensing and Trading Assistant Registration Act (act) (63 P.S. § 734.32), authorizes the Board to adopt rules and regulations necessary for the proper administration and enforcement of the act.

The act of July 1, 2020 (P.L. 575, No. 53) added 63 Pa.C.S. § 3111 as part of the consolidation of the act of July 2, 1993 (P.L. 345, No. 48) (Act 48) into 63 Pa.C.S. Chapter 31 (relating to powers and duties). The text of 63 Pa.C.S. § 3111 was originally added to Act 48 by the act of July 1, 2019 (P.L. 292, No. 41).

#### *Background and Need for the Amendments*

This proposed rulemaking is needed to effectuate 63 Pa.C.S. § 3111, which requires the Board to issue a license, certificate, registration or permit to applicants who meet the requirements for licensure by endorsement as set forth in 63 Pa.C.S. § 3111. Under 63 Pa.C.S. § 3111, the Board must determine whether standards for licensure are substantially equivalent to or exceed those established by the Board. Additionally, 63 Pa.C.S. § 3111

requires the Board to determine the methods of competency, including passing a Board-approved skills examination or experience in the profession or occupation for at least 2 of the 5 years immediately preceding the filing of the application. Under 63 Pa.C.S. § 3111(b)(2), the Board must establish, by regulation, the expiration of provisional endorsement license.

This proposed rulemaking sets forth the criteria for eligibility for licensure by endorsement, including the specific methods required for an applicant to demonstrate competency as well as requirements for granting a provisional endorsement license. Applicants for licensure by endorsement will pay the application fee of \$50 as provided in § 1.41 (relating to schedule of fees).

#### *Description of the Proposed Amendments*

The Board proposes to amend § 1.3 by adding a definition for the term “jurisdiction” consistent with 63 Pa.C.S. § 3111. Proposed § 1.27 requires an applicant to satisfy six criteria required for licensure by endorsement. The first criterion, as set forth in proposed § 1.27(a)(1), requires an applicant to have a current license, certificate, registration or permit in good standing to practice auctioneering in another jurisdiction whose standards are substantially equivalent to or exceed standards under section 3 of the act (63 P.S. § 734.3(e)) and § 1.24 (relating to application for auctioneer license for individuals). Proposed § 1.27(a)(1) further requires an applicant to submit a copy of the current applicable law, regulation or other rule governing licensure, certification, registration or permit requirements and scope of practice in the jurisdiction that issued the license, certificate, registration or permit. This proposed rulemaking would also require that the copy of the applicable law, regulation or other rule include the enactment date. Additionally, because 63 Pa.C.S. § 3111 is applicable to territories and other countries that use languages other than English, where the applicable law, regulation or other rule is in a language other than English, the Board would require, at the applicant's expense, translation of the applicable law, regulation or other rule by a professional translation service.

Proposed § 1.27(a)(2) requires demonstration of competency. Under this provision, an applicant must provide proof of competency by demonstrating experience in the practice of the profession or occupation or passing a Board-approved skills examination. To demonstrate competency by experience, an applicant must demonstrate active engagement in the practice of profession or occupation for at least 2 of the 5 years immediately preceding the filing of the application in the jurisdiction that issued the license, certificate, registration or permit. If an applicant does not have the requisite experience, competency may be demonstrated by passing a Board-approved skills examination, an applicant must achieve a passing score on the Pennsylvania Auctioneer Licensure Examination within the 5 years immediately preceding the filing of the application with the Board.

Proposed subsection (a)(3) and (4) incorporate the statutory prohibitions in 63 Pa.C.S. § 3111 pertaining to conduct that would constitute grounds for refusal, suspension or revocation of a license, certificate, registration or permit to practice the profession or occupation and prior discipline by the jurisdiction that issued the license.

Next, proposed subsection (a)(5) provides for payment of an application fee, as required under 63 Pa.C.S.

§ 3111(a)(5). The applicable fee for licensure by endorsement under 63 Pa.C.S. § 3111 is the application fee for auctioneer license in § 1.41 of the Board's current fee schedule of \$50.

Finally, proposed subsection (a)(6) requires applicants to satisfy application requirements, as set forth in the act and Chapter 1 (relating to State Board of Auctioneer Examiners) in the manner and format prescribed by the Board.

In proposed subsection (b), the Board may require a personal interview or additional information to assist the Board in determining eligibility and competency. When a personal interview is necessary, the applicant may request the interview to be conducted by video teleconference for good cause shown.

Consistent with 63 Pa.C.S. § 3111(a)(3) and (4), proposed subsection (c) authorizes the Board, in its discretion, to determine that an act prohibited under section 20(a) of the act (63 P.S. § 734.20(a)), or disciplinary action by a jurisdiction are not impediments to the granting of a license, certificate, registration or permit by endorsement under 63 Pa.C.S. § 3111.

Consistent with 63 Pa.C.S. § 3111(b), proposed § 1.28 provides that the Board, in its discretion, may issue a provisional endorsement license while an applicant is satisfying remaining requirements under 63 Pa.C.S. § 3111 and proposed § 1.27. Proposed § 1.28 sets the expiration of a provisional endorsement license at 1 year, unless the Board determines that an expiration date of less than 1 year is appropriate. Additionally, upon a written request, the Board may extend the term of the license upon a showing of good cause. Proposed § 1.28 sets forth reasons for which a provisional endorsement license will be terminated by the Board, including when the Board denies or grants a license, or the provisional endorsement license fails to comply with the terms of a provisional endorsement license. Finally, proposed § 1.28 clarifies that while an individual may reapply for a license by endorsement under proposed § 1.27, the Board will not issue a subsequent provisional endorsement license to an applicant who previously held a provisional endorsement license that expired or was terminated.

#### *Fiscal Impact and Paperwork Requirements*

This proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The costs to the Board related to processing applications for licensure by endorsement will be recouped through fees paid by applicants. Applicants who apply for licensure by endorsement will be impacted by the \$50 application fee in § 1.41. Additionally, if an applicant does not have the requisite experience, the applicant would incur the cost of taking the Pennsylvania Auctioneer Licensing Examination which is currently \$200.

#### *Sunset Date*

The Board continuously monitors the cost effectiveness of the Board's regulations. Therefore, no sunset date has been assigned.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on May 11, 2022, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey comments, recommendations or objections to the proposed rulemaking within 30 days from the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor.

#### *Public Comment*

Interested persons are invited to submit written comments, recommendations or objections regarding this proposed rulemaking to Jason McMurry, Board Counsel, P.O. Box 69523, Harrisburg, PA 17106-9523 or RA-STRegulatoryCounsel@pa.gov within 30 days of publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference 16A-6412 (Licensure by Endorsement), when submitting comments.

NEVIN B. RENTZEL,  
*Chairperson*

**Fiscal Note:** 16A-6412. No fiscal impact; (8) recommends adoption. Costs incurred will be recouped through a fee.

### **Annex A**

## **TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**

### **PART I. DEPARTMENT OF STATE**

#### **Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

#### **CHAPTER 1. STATE BOARD OF AUCTIONEER EXAMINERS**

#### **GENERAL PROVISIONS**

#### **§ 1.3. Definitions.**

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

*Act*—The Auctioneer and Auction Licensing Act (63 P.S. §§ 734.1—734.34).

*Board*—The State Board of Auctioneer Examiners.

***Jurisdiction***—A state, territory or country.

*(Editor's Note:* The following sections are proposed to be added and are printed in regular type to enhance readability.)

### **LICENSURE**

#### **§ 1.27. Licensure by endorsement.**

(a) *Requirements for issuance.* To be issued a license by endorsement under 63 Pa.C.S. § 3111 (relating to licensure by endorsement), an applicant must satisfy all of the following conditions:

(1) Have a current license, certification, registration or permit in good standing to practice auctioneering in another jurisdiction whose standards are substantially equivalent to or exceed those established under sections 3(e) and 5(c) of the act (63 P.S. §§ 734.3(e) and 734.5(c)) and § 1.24 (relating to application for auctioneer license for individuals). The following apply:

(i) An applicant must submit a copy of the current applicable law, regulation or other rule governing licensure, certification, registration or permit require-

ments and scope of practice in the jurisdiction that issued the license, certification, registration or permit.

(ii) If the applicable law, regulation or other rule is in a language other than English, at the applicant's expense, the applicable law, regulation or other rule shall be translated by a professional translation service and verified to be complete and accurate.

(iii) The copy of the applicable law, regulation or other rule must include the enactment date.

(2) Demonstrate competency by one of the following:

(i) Experience in the practice of auctioneering by demonstrating, at a minimum, that the applicant has actively engaged in the practice of auctioneering under a license, certificate, registration or permit in a substantially equivalent jurisdiction, or jurisdictions, for at least 2 of the 5 years immediately preceding the filing of the application with the Board.

(ii) If the applicant does not have experience in the practice of auctioneering for at least 2 of the 5 years immediately preceding the filing of the application with the Board as provided in subparagraph (i), achieving a passing score on the Pennsylvania Auctioneer Licensure Examination within the 5 years immediately preceding the filing of the application with the Board.

(3) Have not committed an act that constitutes grounds for refusal, suspension or revocation of a license, certification, registration or permit to practice auctioneering under section 20(a) of the act (63 P.S. § 734.20(a)).

(4) Have not been disciplined by the jurisdiction that issued the license, certificate, registration or permit.

(5) Have paid the application fee for auctioneer license as required under § 1.41 (relating to schedule of fees).

(6) Have applied for licensure in accordance with this chapter in the manner and format prescribed by the Board.

(b) *Interview and additional information.* An applicant may be required to appear before the Board for a personal interview and may be required to submit additional information, including supporting documentation relating

to competency and experience. The applicant may request the interview to be conducted by video teleconference for good cause shown.

(c) *Prohibited acts.* Notwithstanding subsection (a)(3) and (4), the Board may, in its discretion, determine that an act prohibited under section 20(a) of the act or disciplinary action by a jurisdiction is not an impediment to licensure under 63 Pa.C.S. § 3111.

#### § 1.28. Provisional endorsement license.

(a) *Provisional endorsement license.* The Board may, in its discretion, issue a provisional endorsement license to an applicant while the applicant is satisfying remaining requirements for licensure by endorsement under § 1.27 and 63 Pa.C.S. § 3111 (relating to licensure by endorsement).

(b) *Expiration of a provisional endorsement license.*

(1) An individual holding a provisional endorsement license may practice for up to 1 year after issuance of the provisional endorsement license. The Board, in its discretion, may determine that an expiration date of less than 1 year is appropriate.

(2) Upon a written request and a showing of good cause, the Board may grant an extension of no longer than 1 year from the expiration date of the provisional endorsement license.

(c) *Termination of a provisional endorsement license.* A provisional endorsement license terminates if any of the following occurs:

(1) The Board completes its assessment of the applicant and denies or grants the license.

(2) The holder of the provisional license fails to comply with the terms of the provisional endorsement license.

(d) *Reapplication.* An individual may reapply for licensure by endorsement under § 1.27 after expiration or termination of a provisional endorsement license. The individual may not be issued a subsequent provisional endorsement license.

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