

STORAGE NAME: h4091.brc

DATE: March 17, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
BUSINESS REGULATION AND CONSUMER AFFAIRS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 4091

RELATING TO: Auctioneers

SPONSOR(S): Representative Trovillion

COMPANION BILL(S): None.

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) BUSINESS REGULATION AND CONSUMER AFFAIRS
 - (2) CIVIL JUSTICE AND CLAIMS
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

The bill makes a variety of changes to the regulation of auctioneers. It provides that a written contract is required for all auctions. It clarifies that property, as well as money, must be accounted for by an auctioneer. It reduces the total amount of funds that must be maintained in the Auctioneer Recovery Fund. It reduces the amount of money that may be recovered for violations of the auctioneer practice act from \$50,000 per judgment to \$25,000 per judgment and from a lifetime limit of \$100,000 per licensee to \$50,000 per licensee.

An "Auctioneer Recovery Fund" is established in chapter 468, F.S., to reimburse consumers who have been economically damaged in dealing with a licensed auctioneer. The dollar amount of recovery against any auctioneer or auction business in a single claim is now \$50,000. The lifetime limit is \$100,000. The fund is currently required to be maintained at \$500,000 minimum. This law allows one to file for recovery at any time within 6 months after one has made an effort to collect. The present statute states that notwithstanding any other provision of this part, no claim shall be paid until after October 1, 1995. All of the claims which the board has received to date are for *occurrences* before October 1, 1995.

Five claims have been paid from the Auctioneer Recovery Fund to date. Each auctioneer pays \$100 at renewal toward the Recovery Fund. Approximately \$400,000 is in the fund, and the auctioneer licensee's biennial renewal takes place this year (1,400 active licensees x \$100 = \$140,000).

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Presently, any person seeking a license as an auctioneer must pass a written examination prepared and administered by the department which tests his general knowledge of the laws of the state relating to bulk sales, auctions, brokerage and the provisions of this act. A written agreement is not required for all auctions. Also, 468.389(1)(c), F.S., does not include the word "property."

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Five claims have been paid from the Auctioneer Recovery Fund to date. Each auctioneer pays \$100 at renewal into the Recovery Fund. Approximately \$400,000 is in the fund, and the auctioneer licensee's biennial renewal takes place this year (1,400 active licensees x \$100 = \$140,000).

B. EFFECT OF PROPOSED CHANGES:

The bill makes a variety of changes. It provides that a written contract is required for all auctions. It clarifies that property, as well as money, must be accounted for by an auctioneer. It reduces the total amount of funds that must be maintained in the Auctioneer Recovery Fund from \$500,000 to \$250,000. It reduces the amount of money that may be recovered for violations of the auctioneer practice act from \$50,000 to \$25,000 per judgment and from a lifetime limit of \$100,000 to \$50,000 per licensee.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

The bill reduces the maximum recovery against any auctioneer or auction business in a single claim from \$50,000 to \$25,000, and the lifetime aggregate which may be recovered in claims against any single licensee is reduced from \$100,000 to \$50,000.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Sections 468.385, 468.388, 468.389, 468.391, 468.392, 468.393, 468.395, 468.396, and 468.397, F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1. Amends s. 468.385, F.S., to update terminology relating to subjects to be tested on the auctioneer licensing exam.

Section 2. Amends s. 468.388, F.S., to require that a written contract is required for all auctions.

Section 3. Amends s. 468.389, F.S., to clarify that property, as well as money, must be accounted for by an auctioneer.

Section 4. Reenacts ss. 468.385, and 468.391, F.S., for purely technical reasons.

Section 5. Amends s. 468.393, F.S., to reduce the total amount of funds that must be maintained in the Auctioneer Recovery Fund from \$500,000 to \$250,000.

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Section 6. Reenacts subsection (5) of section 468.392, F.S., for purely technical reasons.

Section 7. Amends s. 468.395, F.S., to reduce the amount of money that may be recovered for violations of the auctioneer practice act from \$50,000 to \$25,000 per claim and from a lifetime limit per licensee of \$100,000 to \$50,000.

Section 8. Amends s. 468.396, F.S., to conform to the lower recovery limits, and to eliminate the semiannual identification and reporting of claims.

Section 9. Amends s. 468.397, F.S., to make a grammatical correction.

Section 10. Provides that the act shall take effect July 1, 1998.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

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C. **DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. **FISCAL COMMENTS:**

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. **APPLICABILITY OF THE MANDATES PROVISION:**

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. **REDUCTION OF REVENUE RAISING AUTHORITY:**

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. **REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:**

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

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VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION AND CONSUMER AFFAIRS:

Prepared by:

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