

By Representative Trovillion

1                                   A bill to be entitled  
2           An act relating to auctioneers; amending s.  
3           468.385, F.S.; revising provisions relating to  
4           the written examination required for licensure  
5           as an auctioneer; amending s. 468.388, F.S.;  
6           eliminating exemptions from the requirement  
7           that a written agreement be executed prior to  
8           conducting an auction; amending s. 468.389,  
9           F.S.; revising a ground for disciplinary action  
10          relating to failure to account for or to pay  
11          certain money, to include reference to property  
12          belonging to another; providing penalties;  
13          reenacting ss. 468.385(3)(b) and 468.391, F.S.,  
14          relating to licensure as an auctioneer and to a  
15          criminal penalty, respectively, to incorporate  
16          the amendment to s. 468.389, F.S., in  
17          references thereto; amending s. 468.393, F.S.;  
18          reducing the level at which the Auctioneer  
19          Recovery Fund must be maintained and for which  
20          surcharges are levied; reenacting s.  
21          468.392(5), F.S., relating to moneys in the  
22          Auctioneer Recovery Fund, to incorporate the  
23          amendment to s. 468.393, F.S., in references  
24          thereto; amending s. 468.395, F.S.; revising  
25          circumstances under which recovery from the  
26          Auctioneer Recovery Fund may be obtained;  
27          reducing the amount per claim or claims arising  
28          out of the same transaction or auction and the  
29          aggregate lifetime limit with respect to any  
30          one licensee that may be paid from the fund;  
31          amending s. 468.396, F.S., relating to claims

1           against a single licensee in excess of the  
2           dollar limitation, to conform; eliminating  
3           semiannual identification and payment of  
4           claims; amending s. 468.397, F.S., relating to  
5           payment of claim; correcting language;  
6           providing an effective date.

7

8 Be It Enacted by the Legislature of the State of Florida:

9

10           Section 1. Subsections (4) and (6) of section 468.385,  
11 Florida Statutes, are amended to read:

12           468.385 Licenses required; qualifications;  
13 examination; bond.--

14           (4) Any person seeking a license as an auctioneer  
15 shall pass a written examination approved by the board and  
16 certified ~~prepared and administered~~ by the department which  
17 tests his or her general knowledge of the laws of this state  
18 relating to the Uniform Commercial Code ~~bulk sales~~, auctions,  
19 laws of agency ~~brokerage~~, and the provisions of this act.

20           (6) No person shall be licensed as an auctioneer  
21 unless he or she:

22           (a) Has held an apprentice license and has served as  
23 an apprentice for 1 year or more, or has completed a course of  
24 study, consisting of not less than 80 classroom hours of  
25 instruction, that meets standards adopted by the board;

26           (b) Has passed the required ~~an~~ examination ~~conducted~~  
27 ~~by the department~~; and

28           (c) Is approved by the board.

29           Section 2. Section 468.388, Florida Statutes, is  
30 amended to read:

31           468.388 Conduct of an auction.--

1           (1) Prior to conducting an auction in this state, an  
2 auctioneer or auction business shall execute a written  
3 agreement with the owner, or the agent of the owner, of any  
4 property to be offered for sale, stating:  
5           (a) The name and address of the owner of the property;  
6           (b) The name and address of the person employing the  
7 auctioneer or auction business, if different from the owner;  
8 and  
9           (c) The terms or conditions upon which the auctioneer  
10 or auction business will receive the property for sale and  
11 remit the sales proceeds to the owner.  
12           (2) The auctioneer or auction business shall give the  
13 owner one copy of the agreement and shall keep one copy for 2  
14 years after the date of the auction.  
15           ~~(3) A written agreement shall not be required if:~~  
16           ~~(a) The auction is to be conducted at an auction house~~  
17 ~~or similar place where the public regularly offers property~~  
18 ~~for sale;~~  
19           ~~(b) There has been no prior negotiation between the~~  
20 ~~owner or the owner's agent and the auctioneer or auction~~  
21 ~~business involving terms or conditions pertaining to the~~  
22 ~~property being offered for sale; and~~  
23           ~~(c) The total estimated value of the property is \$500~~  
24 ~~or less. If the actual sale price of the property exceeds~~  
25 ~~\$550, the written agreement required by subsection (1) shall~~  
26 ~~be executed after the sale.~~  
27           (3)~~(4)~~ Each auctioneer or auction business shall  
28 maintain a record book of all sales ~~for which a written~~  
29 ~~agreement is required.~~ The record book shall be open to  
30 inspection by the board at reasonable times.  
31

1           (4)~~(5)~~ Each auctioneer or auction business shall  
2 prominently display his or her license, or make it otherwise  
3 available for inspection, at each auction in which he or she  
4 participates.

5           (5)~~(6)~~ All advertising by an auctioneer or auction  
6 business shall include the name and Florida license number of  
7 such auctioneer and auction business. The term "advertising"  
8 shall not include articles of clothing, directional signs, or  
9 other promotional novelty items.

10           Section 3. Paragraph (c) of subsection (1) of section  
11 468.389, Florida Statutes, is amended to read:

12           468.389 Prohibited acts; penalties.--

13           (1) The following acts shall be grounds for the  
14 disciplinary activities provided in subsections (2) and (3):

15           (c) Failure to account for or to pay or pay for,  
16 within a reasonable time not to exceed 30 days, money or  
17 property belonging to another which has come into the control  
18 of an auctioneer or auction business ~~through an auction~~.

19           Section 4. For the purpose of incorporating the  
20 amendment to section 468.389, Florida Statutes, in references  
21 thereto, paragraph (b) of subsection (3) of section 468.385  
22 and section 468.391, Florida Statutes, are reenacted to read:

23           468.385 Licenses required; qualifications;  
24 examination; bond.--

25           (3) No person shall be licensed as an auctioneer or  
26 apprentice if he or she:

27           (b) Has committed any act or offense in this state or  
28 any other jurisdiction which would constitute a basis for  
29 disciplinary action under s. 468.389.

30           468.391 Penalty.--Any auctioneer, apprentice, or  
31 auction business or any owner or manager thereof, or, in the

1 case of corporate ownership, any substantial stockholder of  
2 the corporation owning the auction business, who operates  
3 without an active license or violates any provision of the  
4 prohibited acts listed under s. 468.389 commits a felony of  
5 the third degree, punishable as provided in s. 775.082 or s.  
6 775.083.

7 Section 5. Subsections (2) and (3) of section 468.393,  
8 Florida Statutes, are amended to read:

9 468.393 Surcharge to license fee; assessments.--

10 (2) If the total amount in the Auctioneer Recovery  
11 Fund, including principal and interest, exceeds \$250,000  
12 ~~\$500,000~~ at the end of the state fiscal year after the payment  
13 of all claims and expenses, the amount in excess of \$250,000  
14 ~~\$500,000~~ shall remain in the fund for benefit of the licensees  
15 in tolling the surcharge until such time as the surcharge  
16 shall need replenishing.

17 (3) After October 1, 1995, if the total amount in the  
18 Auctioneer Recovery Fund, including principal and interest, is  
19 less than \$200,000 at the end of the fiscal year after the  
20 payment of all claims and expenses, the board shall assess, in  
21 addition to any other fees under s. 468.3852, a surcharge  
22 against a licensee at the time of initial licensure or at the  
23 time of license renewal, according to the following formula in  
24 order to maintain the fund at \$250,000 ~~\$500,000~~:

25 (a) Determine the amount remaining in the fund at the  
26 end of the state fiscal year after all expenses and claims  
27 have been paid.

28 (b) Subtract the amount determined under paragraph (a)  
29 from \$250,000 ~~\$500,000~~.

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1 (c) Determine the number of initial licenses and  
2 license renewals in the fiscal year that precedes the current  
3 fiscal year.

4 (d) Divide the amount determined under paragraph (b)  
5 by the number determined under paragraph (c).

6 Section 6. For the purpose of incorporating the  
7 amendment to section 468.393, Florida Statutes, in references  
8 thereto, subsection (5) of section 468.392, Florida Statutes,  
9 is reenacted to read:

10 468.392 Auctioneer Recovery Fund.--There is created  
11 the Auctioneer Recovery Fund as a separate account in the  
12 Professional Regulation Trust Fund. The fund shall be  
13 administered by the Florida Board of Auctioneers.

14 (5) Moneys in the fund at the end of a fiscal year  
15 shall be retained in the fund and shall accrue for the benefit  
16 of auctioneers and auction businesses. When the fund exceeds  
17 the amount as set forth in s. 468.393(2), all surcharges shall  
18 be suspended until such time as the fund is reduced below the  
19 amount as set forth in s. 468.393(3).

20 Section 7. Section 468.395, Florida Statutes, is  
21 amended to read:

22 468.395 Conditions of recovery; eligibility.--

23 (1) Recovery from the Auctioneer Recovery Fund may be  
24 obtained under either of the following circumstances:

25 (a) Any aggrieved person is eligible to receive  
26 recovery from the Auctioneer Recovery Fund if the Florida  
27 Board of Auctioneers has issued a final order directing an  
28 offending licensee to pay restitution to the claimant as the  
29 result of the licensee violating, within this state, any  
30 provision of s. 468.389 or any rule adopted by the board and  
31

1 the board determines that the order of restitution cannot be  
2 enforced; or

3 (b) Any aggrieved person who obtains a final judgment  
4 in any court against any licensee to recover damages for an  
5 actual cash loss resulting from the violation, within this  
6 state, by failure to meet the obligations of a licensee, of  
7 any provision of s. 468.389 or any rule under this part and  
8 the rules adopted by the board, with or without findings by  
9 the board, that results in an actual cash loss to the  
10 aggrieved person may, upon termination of all proceedings,  
11 including appeals and proceedings supplemental to judgment for  
12 collection purposes, file a verified application to the board  
13 in the court in which the judgment was entered for an order  
14 directing payment out of the Auctioneer Recovery Fund of the  
15 amount of actual and direct loss in the transaction that  
16 remains unpaid upon the judgment. Notwithstanding subsection  
17 ~~(3), any application received by the court in which the~~  
18 ~~judgment was entered within 6 months of termination of all~~  
19 ~~proceedings, including appeals and proceedings supplemental to~~  
20 ~~judgment for collection purposes, shall be considered timely~~  
21 ~~filed.~~The amount of actual and direct loss may include court  
22 costs, but shall not include attorney's fees or punitive  
23 damages awarded.

24 (2) The amount paid from the Auctioneer Recovery Fund  
25 may not exceed \$25,000~~\$50,000~~ per claim judgment or claims  
26 judgments arising out of the same transaction or auction nor  
27 and an aggregate lifetime limit of \$50,000~~\$100,000~~ with  
28 respect to any one licensee.

29 ~~(2) At the time the action is commenced, such person~~  
30 ~~shall give notice thereof to the board by certified mail,~~  
31 ~~except that, if no notice is given to the board, the claim may~~

1 ~~still be honored if, in the opinion of the board, the claim is~~  
2 ~~otherwise valid.~~

3 (3) A claim for recovery from the Auctioneer Recovery  
4 Fund shall be made within 2 years from the time of the act  
5 giving rise to the claim or within 2 years from the time the  
6 act is discovered or should have been discovered with the  
7 exercise of due diligence; however, in no event may a claim  
8 for recovery be made more than 4 years after the date of the  
9 act giving rise to the claim.

10 (4) The board ~~court~~ shall not issue an order for  
11 payment of a claim from the Auctioneer Recovery Fund unless  
12 the claimant has reasonably established for the board ~~court~~  
13 that she or he has taken proper and reasonable action to  
14 collect the amount of her or his claim from the licensee  
15 ~~licensed auctioneer~~ responsible for the loss and that any  
16 recovery made has been applied to reduce the amount of the  
17 claim on the Auctioneer Recovery Fund.

18 (5) Notwithstanding any other provision of this part,  
19 no claim based on any act or omission occurring outside this  
20 state or occurring prior to October 1, 1995, shall be payable  
21 ~~submitted for payment to or payment~~ from the Auctioneer  
22 Recovery Fund ~~until after October 1, 1995.~~

23 (6) In case of payment of loss from the Auctioneer  
24 Recovery Fund, the fund shall be subrogated, to the extent of  
25 the amount of the payment, to all the rights of the claimant  
26 against any licensee with respect to the loss.

27 Section 8. Section 468.396, Florida Statutes, is  
28 amended to read:

29 468.396 Claims against a single licensee in excess of  
30 dollar limitation; joinder of claims, ~~payment; insufficient~~  
31 ~~funds.--~~



1           (1) If the payment in full of two or more pending  
2 valid claims that have been filed by aggrieved persons against  
3 a single licensee would exceed the \$25,000~~\$50,000~~ limit as  
4 set forth in s. 468.395, the \$25,000~~\$50,000~~ shall be  
5 distributed among the aggrieved persons in the ratio that  
6 their respective claims bear to the aggregate of all valid  
7 claims or in any other manner that a court of record may  
8 determine to be equitable. Such money shall be distributed  
9 among the persons entitled to share in it without regard to  
10 the order of priority in which their respective judgments have  
11 been obtained or their claims have been filed.

12           (2) Upon petition of the board, the court may require  
13 all claimants and prospective claimants against one licensee  
14 to be joined in one action, to the end that the respective  
15 rights of all the claimants to the board may be equitably  
16 adjudicated and settled.

17           (3) ~~On June 30 and December 31 of each year, The board~~  
18 ~~shall identify each claim that the court orders to be paid and~~  
19 ~~shall pay the claim as provided in s. 468.397 during the~~  
20 ~~6-month period that ended on that day. The board shall pay the~~  
21 ~~part of each claim that is so identified within 15 days after~~  
22 ~~the end of the 6-month period in which the claim is ordered~~  
23 ~~paid. However, if the balance in the fund is insufficient to~~  
24 ~~pay the full payable amount of each claim that is ordered to~~  
25 ~~be paid during a 6-month period, the board shall pay a~~  
26 ~~prorated portion of each claim that is ordered to be paid~~  
27 ~~during the period. Any part of the payable amount of a claim~~  
28 ~~left unpaid due to the prorating of payments under this~~  
29 ~~subsection shall be paid, subject to the \$50,000 limit~~  
30 ~~described in s. 468.395, before the payment of claims ordered~~  
31 ~~to be paid during the following 6 months.~~

1 Section 9. Section 468.397, Florida Statutes, is  
2 amended to read:

3 468.397 Payment of claim.--Upon a final order of the  
4 court directing that payment be made out of the Auctioneer  
5 Recovery Fund, the board shall, subject to the provisions of  
6 this part, make the payment out of ~~to~~ the Auctioneer Recovery  
7 Fund as provided in s. 468.395.

8 Section 10. This act shall take effect July 1, 1998.

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11 HOUSE SUMMARY

12 Amends various provisions of pt. VI, ch. 468, F.S.,  
13 relating to auctioneers. Revises provisions relating to  
14 the written examination required for licensure as an  
15 auctioneer, to revise reference to the laws covered by  
16 such examination and to eliminate the requirement that  
17 the Department of Business and Professional Regulation  
18 prepare and administer the examination. Eliminates  
19 exemptions from the requirement that a written agreement  
20 be executed prior to conducting an auction. Revises a  
21 ground for disciplinary action relating to failure to  
22 account for or to pay certain money, to include reference  
23 to property belonging to another. Reduces the level at  
24 which the Auctioneer Recovery Fund must be maintained and  
25 for which surcharges are levied. Revises circumstances  
26 under which recovery from the Auctioneer Recovery Fund  
27 may be obtained. Reduces the amount per claim or claims  
28 arising out of the same transaction or auction and the  
29 aggregate lifetime limit with respect to any one licensee  
30 that may be paid from the fund. Eliminates semiannual  
31 identification and payment of claims, and provides for  
payment of claims by order of the Florida Board of  
Auctioneers. See bill for details.