

By Senator Gutman

23-1152-99

1 A bill to be entitled
 2 An act relating to auctioneering; amending s.
 3 468.385, F.S.; providing for examination not
 4 prepared or administered by the Board of
 5 Auctioneers; amending s. 468.388, F.S.;
 6 deleting exceptions from a requirement that
 7 auctions be conducted pursuant to a written
 8 agreement; amending s. 468.389, F.S.; providing
 9 for disciplinary action against licensees who
 10 fail to account for certain property; amending
 11 s. 468.395, F.S.; revising provisions relating
 12 to the Auctioneer Recovery Fund; providing for
 13 recovery from the fund pursuant to an order
 14 issued by the board; deleting a requirement
 15 that notice be given to the board before
 16 bringing certain suits; providing limitations
 17 on bringing claims for certain acts; providing
 18 subrogation rights for the fund; providing an
 19 effective date.

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

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

25 468.385 Licenses required; qualifications;
 26 examination; bond.--

27 (4) Any person seeking a license as an auctioneer must
 28 ~~shall~~ pass a written examination approved by the board
 29 ~~prepared and administered by the department~~ which tests his or
 30 her general knowledge of the laws of this state relating to
 31 provisions of the Uniform Commercial Code that are relevant to

1 ~~bulk sales, auctions, the laws of agency brokerage,~~ and the
2 provisions of this act.

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

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

9 (b) Has passed the required ~~an~~ examination ~~conducted~~
10 ~~by the department;~~ and

11 (c) Is approved by the board.

12 Section 2. Section 468.388, Florida Statutes, is
13 amended to read:

14 468.388 Conduct of an auction.--

15 (1) Prior to conducting an auction in this state, an
16 auctioneer or auction business shall execute a written
17 agreement with the owner, or the agent of the owner, of any
18 property to be offered for sale, stating:

19 (a) The name and address of the owner of the property;

20 (b) The name and address of the person employing the
21 auctioneer or auction business, if different from the owner;
22 and

23 (c) The terms or conditions upon which the auctioneer
24 or auction business will receive the property for sale and
25 remit the sales proceeds to the owner.

26 (2) The auctioneer or auction business shall give the
27 owner one copy of the agreement and shall keep one copy for 2
28 years after the date of the auction.

29 ~~(3) A written agreement shall not be required if:~~

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1 ~~(a) The auction is to be conducted at an auction house~~
2 ~~or similar place where the public regularly offers property~~
3 ~~for sale;~~

4 ~~(b) There has been no prior negotiation between the~~
5 ~~owner or the owner's agent and the auctioneer or auction~~
6 ~~business involving terms or conditions pertaining to the~~
7 ~~property being offered for sale; and~~

8 ~~(c) The total estimated value of the property is \$500~~
9 ~~or less. If the actual sale price of the property exceeds~~
10 ~~\$550, the written agreement required by subsection (1) shall~~
11 ~~be executed after the sale.~~

12 (3)~~(4)~~ Each auctioneer or auction business shall
13 maintain a record book of all sales ~~for which a written~~
14 ~~agreement is required.~~ The record book shall be open to
15 inspection by the board at reasonable times.

16 (4)~~(5)~~ Each auctioneer or auction business shall
17 prominently display his or her license, or make it otherwise
18 available for inspection, at each auction in which he or she
19 participates.

20 (5)~~(6)~~ All advertising by an auctioneer or auction
21 business shall include the name and Florida license number of
22 such auctioneer and auction business. The term "advertising"
23 shall not include articles of clothing, directional signs, or
24 other promotional novelty items.

25 Section 3. Paragraph (c) of subsection (1) of section
26 468.389, Florida Statutes, is amended to read:

27 468.389 Prohibited acts; penalties.--

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

30 (c) Failure to account for or to pay, within a
31 reasonable time not to exceed 30 days, money or property

1 belonging to another which has come into the control of an
2 auctioneer or auction business through an auction.

3 Section 4. Section 468.395, Florida Statutes, is
4 amended to read:

5 468.395 Conditions of recovery; eligibility.--

6 (1) Recovery from the Auctioneer Recovery Fund may be
7 obtained as follows:

8 (a) Any aggrieved person is eligible to receive
9 recovery from the Auctioneer Recovery Fund if the Board of
10 Auctioneers has issued a final order directing an offending
11 licensee to pay restitution to the claimant as the result of
12 the licensee violating, within this state, any provision of s.
13 468.389 or any rule adopted by the board and if the board
14 determined that the order of restitution cannot be enforced;
15 or

16 (b)(1) Any aggrieved person who obtains a final
17 judgment in any court against any licensee to recover damages
18 for any actual loss that results from the violation within
19 this state, by failure to meet the obligations of a licensee
20 of any provision of s. 468.389 or any rule under this part and
21 the rules adopted by the board, with or without findings by
22 the board, that results in an actual cash loss to the
23 aggrieved person may, upon termination of all proceedings,
24 including appeals and proceedings supplemental to judgment for
25 collection purposes, file a verified application to the board
26 in the court in which the judgment was entered for an order
27 directing payment out of the Auctioneer Recovery Fund of the
28 amount of actual ~~and direct~~ loss in the transaction that
29 remains unpaid upon the judgment. ~~Notwithstanding subsection~~
30 ~~(3), any application received by the court in which the~~
31 ~~judgment was entered within 6 months of termination of all~~

1 ~~proceedings, including appeals and proceedings supplemental to~~
2 ~~judgment for collection purposes, shall be considered timely~~
3 ~~filed.~~The amount of actual ~~and direct~~ loss may include court
4 costs, but shall not include attorney's fees or punitive
5 damages awarded.

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

11 ~~(2) At the time the action is commenced, such person~~
12 ~~shall give notice thereof to the board by certified mail,~~
13 ~~except that, if no notice is given to the board, the claim may~~
14 ~~still be honored if, in the opinion of the board, the claim is~~
15 ~~otherwise valid.~~

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

23 (4) The board court shall not issue an order for
24 payment of a claim from the Auctioneer Recovery Fund unless
25 the claimant has reasonably established to for the board court
26 that she or he has taken proper and reasonable action to
27 collect the amount of her or his claim from the licensee
28 ~~licensed auctioneer~~ responsible for the loss and that any
29 recovery made has been applied to reduce the amount of the
30 claim on the Auctioneer Recovery Fund.

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