

STORAGE NAME: h1987.brc

DATE: March 30, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
BUSINESS REGULATION AND CONSUMER AFFAIRS
ANALYSIS**

BILL #: HB 1987

RELATING TO: Auctioneers

SPONSOR(S): Representative Cantens

COMPANION BILL(S): SB 1716(s)

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

- (1) BUSINESS REGULATION AND CONSUMER AFFAIRS
 - (2) GENERAL GOVERNMENT APPROPRIATIONS
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

The bill would relieve the Department of Business and Professional Regulation of the burden of preparing and administering the required auctioneer examination by allowing the use of an exam approved by the department. Subject requirements for the exam would be updated. The bill would require written agreements for all auctions and an accounting of property within a reasonable time. It would eliminate provisions that require court judgements and certain notices to allow claimants to go directly to the Board of Auctioneers for payment from the Auctioneer Recovery Fund. It would define a single transaction or auction for purposes of the statute and limit recovery from the fund to claims arising from occurrences happening within the state after October 1, 1991. Upon payment, the fund would be subrogated to the rights of claimants.

There is no expected fiscal impact on state or local government.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Section 468.385, F.S., requires auctioneers to pass a written exam prepared and administered by the Department of Business and Professional Regulation (the department). This section further requires that the exam test knowledge of the laws of bulk sales, auctions, brokerage, and provisions of the act.

Generally, s. 468.388, F.S., requires written agreements for all auctions. However, subsection 3 of this section provides exceptions under certain circumstances.

Section 468.389, F.S., provides for disciplinary actions against auctioneers and auction businesses when they fail to account, within a reasonable time, for money that has come into their control through an auction. The statute does not provide a similar protection for property that has come into an auctioneer's or auction business' control.

The Auctioneer Recovery Fund (the fund) was established to allow persons to recover losses when they otherwise could not collect a court judgement against an auctioneer. Section 468.395, F.S., requires the filing of a notice with the Board of Auctioneers (the board) upon the commencement of a recovery action against an auctioneer that may result in a claim against the fund. Following judgement against an auctioneer on the claim, the person must make reasonable efforts to recover the judgement from the auctioneer. To the extent a judgement is not paid, a person may recover from the fund by filing a verified application in the court in which the judgement was received for an order for payment out of the fund. The payment out of the fund is limited to actual and direct losses and may not include attorney's fees or punitive damages. The payment out of the fund is further limited to \$50,000 per transaction and an aggregate lifetime limit of \$100,000 per licensee.

Under s. 468.395(5), F.S., claims for payment from the fund may not be submitted until after October 1, 1995. However, the board is now receiving application for payments resulting from occurrences prior to this date. Also, there is no limitation that claims must arise from occurrences within Florida.

Current law does not provide for the subrogation of the claimants rights upon payment from the fund.

B. EFFECT OF PROPOSED CHANGES:

The bill would allow the use of a department approved exam. The exam requirements would be updated to test the applicant's knowledge of the laws of Florida relating to the Uniform Commercial Code, auctions, the laws of agency, and the act.

The exceptions to the required written agreement under s. 468.388, F.S., would be eliminated. All auctions would require a written agreement.

The bill would amend s. 468.389, F.S., to expand the circumstances when an auctioneer or auction business could be disciplined under the statute. An auctioneer or auction business could be disciplined for failure to account for property, within a reasonable time, that has come into their control as a result of an auction. This would provide the same protection for property that the statute provides for money. Sections 468.385(3)(b) and 468.391, F.S., are reenacted to incorporate this change into those sections.

Section 468.395, F.S., would be amended to delete the requirement that the an aggrieved person receive a judgement and court order for payment from the fund. The required notice of commencement of action would also be stricken. The bill would allow persons to apply directly to the board for a final order directing a licensee to pay restitution. A claimant could then receive payment from the fund if the board determines that the order is not collectable from the licensee. The bill would define "single transaction or auction" to aide in the payment of claims. Further, recovery would only be allowed for claims that arise from occurrences within Florida after October 1, 1991. Also, the fund would be subrogated to the rights of any claimant against a licensee in the amount of the payment received from the fund.

The bill would correct language in s. 468.397, F.S.

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?

Yes, the Board of Auctioneers would have the authority to issue final orders directing restitution and order payment from the Auctioneer Recovery Fund when those orders are determined uncollectible.

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

Yes, written agreements would be required for all auctions.

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

Yes, aggrieved persons would be entitled to apply to the board for recovery from the fund even though they have not been able to secure a judgement against the licensee.

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?

No

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

No

4. Individual Freedom:

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

Yes, claimants would be permitted to apply for payment from the fund without going through the court system.

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

Yes, written agreements would be required for all auctions, without exception.

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:

Amending s. 468.385, s. 468.388, s. 468.389, s. 468.395, and s. 468.397, F.S., and reenacting s. 468.385(3)(b) and s. 468.391, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 468.385(4) and (6), F.S., requiring licensees to pass a board approved test that is updated to include provisions of the Uniform Commercial Code and the laws of agency, in addition to existing requirements.

Section 2. Amends s. 468.388, F.S., striking subsection 3 of the statute that provided exceptions to the requirement that written agreements be executed prior to conducting an auction. Written agreements would be required for all auctions. The remaining subsections are renumbered.

Section 3. Amends s. 468.389(1)(c), F.S., to provide that failure to deliver, in a reasonable time, property that has come into the control of an auctioneer may be disciplined under the statute. This would make auctioneers responsible for delivery of property as well as money within their control.

Section 4. Reenacts s. 468.385(3)(b), F.S., and s. 468.391, F.S., for purposes of incorporation of references to s. 468.389(1)(c), F.S., a subsection changed by this bill.

Section 5. Amends s. 468.395, F.S., deleting provisions relating to and requiring a judgement and court ordered payment from the fund; permitting application directly to the board for recovery of a loss; limiting recovery only to losses resulting from actions occurring within this state after October 1, 1991; defining a single transaction or auction, for purposes of the subsection; deleting the required notice to the board upon commencement of court action; and, subrogating the fund to the rights of the claimant, to the extent of the payment, upon payment from the fund.

Section 6. Amends s. 468.397, F.S., correcting language.

Section 7. Provides an effective date of July 1, 1999.

III. FISCAL ANALYSIS & 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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Auctioneers would be required to keep written agreements for all auctions, without exception.

2. Direct Private Sector Benefits:

Claimants would be able to avoid the costs of receiving a court judgement while others could receive payment from the fund when they have been unable to secure a judgement.

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

Unknown

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 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.

STORAGE NAME: h1987.brc

DATE: March 30, 1999

PAGE 7

V. COMMENTS:

None

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION AND CONSUMER AFFAIRS:

Prepared by:

Staff Director:

Eric Lloyd

Rebecca R. Everhart