

By Representatives Cantens and Tullis

1 A bill to be entitled
2 An act relating to auctioneering; amending s.
3 468.385, F.S.; revising requirements relating
4 to the conduct, administration, approval, and
5 scope of the examination for licensure as an
6 auctioneer; amending s. 468.388, F.S.; deleting
7 exceptions from a requirement that auctions be
8 conducted pursuant to a written agreement;
9 amending s. 468.389, F.S.; providing for
10 disciplinary action against licensees who fail
11 to account for certain property; providing
12 penalties; reenacting ss. 468.385(3)(b) and
13 468.391, F.S., relating to licensure as an
14 auctioneer and to a criminal penalty,
15 respectively, to incorporate the amendment to
16 s. 468.389, F.S., in references thereto;
17 amending s. 468.395, F.S.; revising conditions
18 of recovery from the Auctioneer Recovery Fund;
19 providing for recovery from the fund pursuant
20 to an order issued by the Florida Board of
21 Auctioneers; deleting a requirement that notice
22 be given to the board at the time action is
23 commenced; providing limitations on bringing
24 claims for certain acts; providing subrogation
25 rights for the fund; amending s. 468.397, F.S.,
26 relating to payment of claim; correcting
27 language; providing an effective date.

28
29 Be It Enacted by the Legislature of the State of Florida:
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31

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

3 468.385 Licenses required; qualifications;
4 examination; bond.--

5 (4) Any person seeking a license as an auctioneer must
6 shall pass a written examination approved by the board
7 ~~prepared and administered by the department~~ which tests his or
8 her general knowledge of the laws of this state relating to
9 provisions of the Uniform Commercial Code that are relevant to
10 ~~bulk sales, auctions, the laws of agency brokerage,~~ and the
11 provisions of this act.

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

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

18 (b) Has passed the required ~~an~~ examination ~~conducted~~
19 ~~by the department~~; and

20 (c) Is approved by the board.

21 Section 2. Section 468.388, Florida Statutes, is
22 amended to read:

23 468.388 Conduct of an auction.--

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

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

29 (b) The name and address of the person employing the
30 auctioneer or auction business, if different from the owner;
31 and

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

4 (2) The auctioneer or auction business shall give the
5 owner one copy of the agreement and shall keep one copy for 2
6 years after the date of the auction.

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

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

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

15 ~~(c) The total estimated value of the property is \$500
16 or less. If the actual sale price of the property exceeds
17 \$550, the written agreement required by subsection (1) shall
18 be executed after the sale.~~

19 (3)~~(4)~~ Each auctioneer or auction business shall
20 maintain a record book of all sales ~~for which a written~~
21 ~~agreement is required.~~ The record book shall be open to
22 inspection by the board at reasonable times.

23 (4)~~(5)~~ Each auctioneer or auction business shall
24 prominently display his or her license, or make it otherwise
25 available for inspection, at each auction in which he or she
26 participates.

27 (5)~~(6)~~ All advertising by an auctioneer or auction
28 business shall include the name and Florida license number of
29 such auctioneer and auction business. The term "advertising"
30 shall not include articles of clothing, directional signs, or
31 other promotional novelty items.

1 Section 3. Paragraph (c) of subsection (1) of section
2 468.389, Florida Statutes, is amended to read:

3 468.389 Prohibited acts; penalties.--

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

6 (c) Failure to account for or to pay, within a
7 reasonable time not to exceed 30 days, money or property
8 belonging to another which has come into the control of an
9 auctioneer or auction business through an auction.

10 Section 4. For the purpose of incorporating the
11 amendment to section 468.389, Florida Statutes, in references
12 thereto, paragraph (b) of subsection (3) of section 468.385
13 and section 468.391, Florida Statutes, are reenacted to read:

14 468.385 Licenses required; qualifications;
15 examination; bond.--

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

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

21 468.391 Penalty.--Any auctioneer, apprentice, or
22 auction business or any owner or manager thereof, or, in the
23 case of corporate ownership, any substantial stockholder of
24 the corporation owning the auction business, who operates
25 without an active license or violates any provision of the
26 prohibited acts listed under s. 468.389 commits a felony of
27 the third degree, punishable as provided in s. 775.082 or s.
28 775.083.

29 Section 5. Section 468.395, Florida Statutes, is
30 amended to read:

31 468.395 Conditions of recovery; eligibility.--

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

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

11 (b)(1) Any aggrieved person who obtains a final
12 judgment in any court against any licensee to recover damages
13 for any actual loss that results from the violation, within
14 this state, by failure to meet the obligations of a licensee
15 of any provision of s. 468.389 or any rule under this part and
16 the rules adopted by the board, with or without findings by
17 the board, that results in an actual cash loss to the
18 aggrieved person may, upon termination of all proceedings,
19 including appeals and proceedings supplemental to judgment for
20 collection purposes, file a verified application to the board
21 in the court in which the judgment was entered for an order
22 directing payment out of the Auctioneer Recovery Fund of the
23 amount of actual and direct loss in the transaction that
24 remains unpaid upon the judgment. Notwithstanding subsection
25 (3), any application received by the court in which the
26 judgment was entered within 6 months of termination of all
27 proceedings, including appeals and proceedings supplemental to
28 judgment for collection purposes, shall be considered timely
29 filed. The amount of actual and direct loss may include court
30 costs, but shall not include attorney's fees or punitive
31 damages awarded.

1 (2) The amount paid from the Auctioneer Recovery Fund
2 may not exceed \$50,000 per claim judgment or claims judgments
3 arising out of the same transaction or auction nor ~~and~~ an
4 aggregate lifetime limit of \$100,000 with respect to any one
5 licensee. For purposes of this subsection, auctions conducted
6 under a single contract, agreement, or consignment shall be
7 considered a single transaction or auction even though
8 conducted at more than one time or place.

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

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

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

29 (5) Notwithstanding any other provision of this part,
30 no claim based on any act or omission that occurred outside
31 this state or that occurred before October 1, 1991, shall be

1 ~~payable submitted for payment to or payment from the~~
2 Auctioneer Recovery Fund ~~until after October 1, 1995.~~

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

7 Section 6. Section 468.397, Florida Statutes, is
8 amended to read:

9 468.397 Payment of claim.--Upon a final order of the
10 court directing that payment be made out of the Auctioneer
11 Recovery Fund, the board shall, subject to the provisions of
12 this part, make the payment out of ~~to~~ the Auctioneer Recovery
13 Fund as provided in s. 468.395.

14 Section 7. This act shall take effect July 1, 1999.

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16 HOUSE SUMMARY

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18 Allows the examination for licensure as an auctioneer to
19 be prepared and conducted by outside parties, if approved
20 by the Florida Board of Auctioneers. Deletes exceptions
21 to the requirement that auctions be conducted pursuant to
22 a written agreement. Provides that failure of an
23 auctioneer or auction business to account for property
24 belonging to another which has come into its control
25 through an auction is a ground for disciplinary action
26 and criminal penalties. Revises conditions of recovery
27 from the Auctioneer Recovery Fund, to provide for
28 recovery from the fund pursuant to an order issued by the
29 board. Deletes the requirement that the board be notified
30 at the time the action is commenced. Limits claims to
31 acts that occur within the state after a specified time.
Provides for subrogation rights. See bill for details.