

By Senator Sebesta

20-767-00

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 s. 468.391, F.S.,
13 relating to a criminal penalty, to incorporate
14 the amendment to s. 468.389, F.S., in
15 references thereto; amending s. 468.392, F.S.;
16 providing for a designee of the Secretary of
17 Business and Professional Regulation to
18 authorize disbursements from the Auctioneer
19 Recovery Fund; amending s. 468.395, F.S.;
20 revising conditions of recovery from the
21 Auctioneer Recovery Fund; providing for
22 recovery from the fund pursuant to an order
23 issued by the Florida Board of Auctioneers;
24 deleting a requirement that notice be given to
25 the board at the time action is commenced;
26 providing limitations on bringing claims for
27 certain acts; providing subrogation rights for
28 the fund; amending s. 468.397, F.S., relating
29 to payment of claim; correcting language;
30 providing an effective date.
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1 Be It Enacted by the Legislature of the State of Florida:

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3 Section 1. Subsections (4) and (6) and paragraph (b)
4 of subsection (3) of section 468.385, Florida Statutes, are
5 amended, present subsection (8) is renumbered as subsection
6 (9), and a new subsection (8) is added to that section to
7 read:

8 468.385 Licenses required; qualifications;
9 examination; bond.--

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

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

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

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

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

28 (b) Has passed the required ~~an~~ examination ~~conducted~~
29 ~~by the department~~; and

30 (c) Is approved by the board.

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1 (8) Any auction that is subject to this part must be
2 conducted by an auctioneer holding an active license issued by
3 this state or by an apprentice holding an active license
4 issued by this state who has received prior written consent
5 from his sponsor.

6 Section 2. Section 468.388, Florida Statutes, is
7 amended to read:

8 468.388 Conduct of an auction.--

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

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

14 (b) The name and address of the person employing the
15 auctioneer or auction business, if different from the owner;
16 and

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

20 (2) The auctioneer or auction business shall give the
21 owner one copy of the agreement and shall keep one copy for 2
22 years after the date of the auction.

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

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

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

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1 ~~(c) The total estimated value of the property is \$500~~
2 ~~or less. If the actual sale price of the property exceeds~~
3 ~~\$550, the written agreement required by subsection (1) shall~~
4 ~~be executed after the sale.~~

5 (3)~~(4)~~ Each auctioneer or auction business shall
6 maintain a record book of all sales for which a written
7 agreement is required. The record book shall be open to
8 inspection by the board at reasonable times.

9 (4)~~(5)~~ Each auctioneer or auction business shall
10 prominently display his or her license, or make it otherwise
11 available for inspection, at each auction in which he or she
12 participates.

13 (5)~~(6)~~ All advertising by an auctioneer or auction
14 business shall include the name and Florida license number of
15 such auctioneer and auction business. The term "advertising"
16 shall not include articles of clothing, directional signs, or
17 other promotional novelty items.

18 Section 3. Paragraph (c) of subsection (1) of section
19 468.389, Florida Statutes, is amended to read:

20 468.389 Prohibited acts; penalties.--

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

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

27 Section 4. For the purpose of incorporating the
28 amendment to section 468.389, Florida Statutes, in references
29 thereto, section 468.391, Florida Statutes, is reenacted to
30 read:

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1 468.391 Penalty.--Any auctioneer, apprentice, or
2 auction business or any owner or manager thereof, or, in the
3 case of corporate ownership, any substantial stockholder of
4 the corporation owning the auction business, who operates
5 without an active license or violates any provision of the
6 prohibited acts listed under s. 468.389 commits a felony of
7 the third degree, punishable as provided in s. 775.082 or s.
8 775.083.

9 Section 5. Subsection (2) of section 468.392, Florida
10 Statutes, is amended to read:

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

15 (2) All payments and disbursements from the Auctioneer
16 Recovery Fund shall be made by the Treasurer upon a voucher
17 signed by the Secretary of Business and Professional
18 Regulation or the secretary's designee. Amounts transferred to
19 the Auctioneer Recovery Fund shall not be subject to any
20 limitation imposed by an appropriation act of the Legislature.

21 Section 6. Section 468.395, Florida Statutes, is
22 amended to read:

23 468.395 Conditions of recovery; eligibility.--

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

26 (a) Any aggrieved person may recover from the
27 Auctioneer Recovery Fund if the Florida Board of Auctioneers
28 has issued a final order directing an offending licensee to
29 pay restitution to the claimant as the result of the licensee
30 violating, within this state, any provision of s. 468.389 or
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1 any rule adopted by the board and if the board determined that
2 the order of restitution cannot be enforced; or

3 (b)(1) Any aggrieved person who obtains a final
4 judgment in any court against any licensee to recover damages
5 for any actual loss that results from the violation, within
6 this state, by failure to meet the obligations of a licensee
7 of 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 \$50,000 per claim judgment or claims judgments
26 arising out of the same transaction or auction nor and an
27 aggregate lifetime limit of \$100,000 with respect to any one
28 licensee. For purposes of this subsection, auctions conducted
29 under a single contract, agreement, or consignment shall be
30 considered a single transaction or auction even though
31 conducted at more than one time or place.

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

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

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

21 (5) Notwithstanding any other provision of this part,
22 no claim based on any act or omission that occurred outside
23 this state or that occurred before October 1, 1991, shall be
24 payable ~~submitted for payment to or payment~~ from the
25 Auctioneer Recovery Fund ~~until after October 1, 1995.~~

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

30 Section 7. Section 468.397, Florida Statutes, is
31 amended to read:

1 468.397 Payment of claim.--Upon a final order of the
2 court directing that payment be made out of the Auctioneer
3 Recovery Fund, the board shall, subject to the provisions of
4 this part, make the payment out of ~~to~~ the Auctioneer Recovery
5 Fund as provided in s. 468.395.

6 Section 8. This act shall take effect July 1, 2000.

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9 SENATE SUMMARY

10 Allows the examination for licensure as an auctioneer to
11 be prepared and conducted by outside parties, if approved
12 by the Florida Board of Auctioneers. Authorizes a
13 designee of the Secretary of Business and Professional
14 Regulation to sign vouchers for payments out of the
15 Auctioneer Recovery Fund. Deletes exceptions to the
16 requirement that auctions be conducted pursuant to a
17 written agreement. Provides that failure of an auctioneer
18 or auction business to account for property belonging to
19 another which has come into its control through an
20 auction is a ground for disciplinary action and criminal
21 penalties. Revises conditions of recovery from the
22 Auctioneer Recovery Fund, to provide for recovery from
23 the fund pursuant to an order issued by the board.
24 Deletes the requirement that the board be notified at the
25 time the action is commenced. Limits claims to acts that
26 occur within the state after a specified time. Provides
27 for subrogation rights. (See bill for details.)
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