

STORAGE NAME: h0665z.brc
DATE: May 24, 2000

****FAILED TO PASS THE LEGISLATURE****

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
BUSINESS REGULATION & CONSUMER AFFAIRS
FINAL ANALYSIS**

BILL #: HB 665
RELATING TO: Auctioneering
SPONSOR(S): Representative Greenstein
TIED BILL(S): None

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

- (1) BUSINESS REGULATION & CONSUMER AFFAIRS YEAS 8 NAYS 0
- (2) JUDICIARY
- (3) GENERAL GOVERNMENT APPROPRIATIONS
- (4)
- (5)

I. SUMMARY:

Provisions substantially similar to this bill passed in CB/SB 1016 (Ch. #00-356, Laws of Florida). See section V.C.

The bill relieves the Department of Business and Professional Regulation of the responsibility of preparing and administering the required auctioneer examination by allowing the use of an exam approved by the department. Subject requirements for the exam are updated. The bill requires written agreements for all auctions and an accounting, payment or return of money and property within a reasonable time. It eliminates provisions requiring court judgements and certain notices to allow claimants to go directly to the Board of Auctioneers for payment from the Auctioneer Recovery Fund. It defines a single transaction or auction for purposes of the statute and limits recovery from the fund to claims arising from occurrences happening within the state after October 1, 1991. Upon payment, the fund is subrogated to the rights of claimants.

Lower barriers to filing claims against the fund may increase disbursements.

On February 21, 2000, the Committee on Business Regulation & Consumer Affairs adopted an amendment that is traveling with the bill.

The bill appears not to have any fiscal impact on state or local government.

The bill shall be effective on July 1, 2000.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1. Less Government Yes No N/A

The Board of Auctioneers is given the authority to issue final orders directing restitution and order payment from the Auctioneer Recovery Fund when those orders are determined uncollectible. A judgement is no longer required prior to filing a claim against the Auctioneer Recovery Fund. Claimants who are unable to secure a judgement are entitled to apply to the Board of Auctioneers for recovery. A written agreement is required for all auctions.

2. Lower Taxes Yes No N/A

3. Individual Freedom Yes No N/A

4. Personal Responsibility Yes No N/A

5. Family Empowerment Yes No N/A

B. 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 for or pay, within a reasonable time, 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. Nor does the statute allow discipline for the failure to return money or property.

The Auctioneer Recovery Fund ("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 ("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.

The Fund's balance has been as follows:

June 1998	\$568,858
June 1999	\$630,505
Dec. 31, 1999	\$568,858

Claims against the fund total \$152,800 from January 1997 to February 2000. As of this date, there are two claims that are pending against the fund in the total amount of approximately \$150,000. The Department currently licenses 2,056 auctioneers. Each license application and renewal requires a \$100 contribution to the Fund. The Department does not anticipate any solvency issues arising out of the claims process created by the bill.

Current law does not give the fund subrogation rights upon payment from the fund.

C. EFFECT OF PROPOSED CHANGES:

The bill allows the use of a department approved exam. The exam requirements are 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., are eliminated. All auctions will require a written agreement.

The bill amends s. 468.389, F.S., to expand the circumstances when an auctioneer or auction business could be disciplined under the statute. Currently, an auctioneer or auction business can be disciplined for failure to account for or pay money, within a reasonable time. The bill allows an auctioneer or auction business to be disciplined for not returning items. The statute is also expanded to include property in addition to money. This provides the same protection for property that the statute provides for money and allows for the discipline of auctioneers who fail to return money or property. Sections 468.385(3)(b) and 468.391, F.S., are reenacted to incorporate this change into those sections.

The secretary of the department receives the authority to designate someone to sign vouchers to the treasurer for payments and disbursements from the fund. The secretary or the designee can sign vouchers.

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

The bill corrects language in s. 468.397, F.S.

D. 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, money or property that has come into the control of an auctioneer may be disciplined under the statute. This makes 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. 468.392(2), F.S., to allow the Secretary of the Department of Business and Professional Regulation to designate a person to sign vouchers for payments and disbursements from the Auctioneer Recovery Fund.

Section 6. 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 7. Amends s. 468.397, F.S., correcting language.

Section 8. Provides an effective date of July 1, 2000.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

Please see Fiscal Comments section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Auctioneers are required to keep written agreements for all auctions, without exception. Claimants can avoid the costs of receiving a court judgement and may be able to receive payment from the fund when they have been unable to secure a judgement.

D. FISCAL COMMENTS:

Lower barriers to filing claims against the fund may increase disbursements. Claimants are not required to secure a court judgement and attempt execution.

The Department of Business and Professional Regulation estimates that the bill will have no fiscal impact on state government. The Department has also indicated that it will not need additional personnel to manage the increase in claims on the Recovery Fund.

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.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None

B. RULE-MAKING AUTHORITY:

The bill gives the Board final order authority with respect to claims against the Auctioneer Recovery Fund. The Board may have to adopt rules ensuring that it complies with the provisions of Chapter 120 in that regard.

C. OTHER COMMENTS:

On April 26, 1999, HB 1987, a bill substantially similar to this one, unanimously passed the House of Representatives. The bill died in the Senate Committee on Regulated Industries on April 30, 1999.

On May 3, 2000, CS/SB 1016 passed the Legislature. CS/SB 1016 included provisions relating to auctioneering substantially similar to HB 665.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On February 21, 2000, the Committee on Business Regulation & Consumer Affairs adopted, without objection, an amendment to HB 665. The amendment clarifies that auctions can only be conducted in this state by auctioneers and apprentice auctioneers holding active licenses in Florida. Apprentice auctioneers are required to have prior written consent of their sponsor. The amendment is traveling with the bill.

VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION & CONSUMER AFFAIRS:

Prepared by:

Staff Director:

Eric Lloyd

Rebecca R. Everhart

AS REVISED BY THE COMMITTEE ON JUDICIARY:

Prepared by:

Staff Director:

Michael W. Carlson, J.D.

P.K. Jameson, J.D.

FINAL ANALYSIS PREPARED BY THE COMMITTEE ON BUSINESS REGULATION & CONSUMER AFFAIRS:

Prepared by:

Staff Director:

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