

By Representative Greenstein

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. 468.392, F.S.; authorizing the
18 designee of the Secretary of Business and
19 Professional Regulation to sign vouchers for
20 payment or disbursement from the Auctioneer
21 Recovery Fund; amending s. 468.395, F.S.;
22 revising conditions of recovery from the
23 Auctioneer Recovery Fund; providing for
24 recovery from the fund pursuant to an order
25 issued by the Florida Board of Auctioneers;
26 deleting a requirement that notice be given to
27 the board at the time action is commenced;
28 providing limitations on bringing claims for
29 certain acts; providing subrogation rights for
30 the fund; amending s. 468.397, F.S., relating
31

1 to payment of claim; correcting language;
2 providing an effective date.

3

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

5

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

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

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

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

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

23 (b) Has passed the required ~~an~~ examination ~~conducted~~
24 ~~by the department~~; and

25 (c) Is approved by the board.

26 Section 2. Section 468.388, Florida Statutes, is
27 amended to read:

28 468.388 Conduct of an auction.--

29 (1) Prior to conducting an auction in this state, an
30 auctioneer or auction business shall execute a written

31

1 agreement with the owner, or the agent of the owner, of any
2 property to be offered for sale, stating:
3 (a) The name and address of the owner of the property;
4 (b) The name and address of the person employing the
5 auctioneer or auction business, if different from the owner;
6 and
7 (c) The terms or conditions upon which the auctioneer
8 or auction business will receive the property for sale and
9 remit the sales proceeds to the owner.
10 (2) The auctioneer or auction business shall give the
11 owner one copy of the agreement and shall keep one copy for 2
12 years after the date of the auction.
13 ~~(3) A written agreement shall not be required if:~~
14 ~~(a) The auction is to be conducted at an auction house~~
15 ~~or similar place where the public regularly offers property~~
16 ~~for sale;~~
17 ~~(b) There has been no prior negotiation between the~~
18 ~~owner or the owner's agent and the auctioneer or auction~~
19 ~~business involving terms or conditions pertaining to the~~
20 ~~property being offered for sale; and~~
21 ~~(c) The total estimated value of the property is \$500~~
22 ~~or less. If the actual sale price of the property exceeds~~
23 ~~\$550, the written agreement required by subsection (1) shall~~
24 ~~be executed after the sale.~~
25 (3)(4) Each auctioneer or auction business shall
26 maintain a record book of all sales for which a written
27 agreement is required. The record book shall be open to
28 inspection by the board at reasonable times.
29 (4)(5) Each auctioneer or auction business shall
30 prominently display his or her license, or make it otherwise
31

1 available for inspection, at each auction in which he or she
2 participates.

3 ~~(5)(6)~~ All advertising by an auctioneer or auction
4 business shall include the name and Florida license number of
5 such auctioneer and auction business. The term "advertising"
6 shall not include articles of clothing, directional signs, or
7 other promotional novelty items.

8 Section 3. Paragraph (c) of subsection (1) of section
9 468.389, Florida Statutes, is amended to read:

10 468.389 Prohibited acts; penalties.--

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

13 (c) Failure to account for or to pay or return, within
14 a reasonable time not to exceed 30 days, money or property
15 belonging to another which has come into the control of an
16 auctioneer or auction business through an auction.

17 Section 4. For the purpose of incorporating the
18 amendment to section 468.389, Florida Statutes, in references
19 thereto, paragraph (b) of subsection (3) of section 468.385
20 and section 468.391, Florida Statutes, are reenacted to read:

21 468.385 Licenses required; qualifications;
22 examination; bond.--

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

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

28 468.391 Penalty.--Any auctioneer, apprentice, or
29 auction business or any owner or manager thereof, or, in the
30 case of corporate ownership, any substantial stockholder of
31 the corporation owning the auction business, who operates

1 without an active license or violates any provision of the
2 prohibited acts listed under s. 468.389 commits a felony of
3 the third degree, punishable as provided in s. 775.082 or s.
4 775.083.

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

7 468.392 Auctioneer Recovery Fund.--There is created
8 the Auctioneer Recovery Fund as a separate account in the
9 Professional Regulation Trust Fund. The fund shall be
10 administered by the Florida Board of Auctioneers.

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

17 Section 6. Section 468.395, Florida Statutes, is
18 amended to read:

19 468.395 Conditions of recovery; eligibility.--

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

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

30 (b)~~(1)~~ Any aggrieved person who obtains a final
31 judgment in any court against any licensee to recover damages

1 for any actual loss that results from the violation, within
2 this state, by failure to meet the obligations of a licensee
3 of any provision of s. 468.389 or any rule under this part and
4 the rules adopted by the board, with or without findings by
5 the board, that results in an actual cash loss to the
6 aggrieved person may, upon termination of all proceedings,
7 including appeals and proceedings supplemental to judgment for
8 collection purposes, file a verified application to the board
9 in the court in which the judgment was entered for an order
10 directing payment out of the Auctioneer Recovery Fund of the
11 amount of actual and direct loss in the transaction that
12 remains unpaid upon the judgment. Notwithstanding subsection
13 (3), any application received by the court in which the
14 judgment was entered within 6 months of termination of all
15 proceedings, including appeals and proceedings supplemental to
16 judgment for collection purposes, shall be considered timely
17 filed. The amount of actual ~~and direct~~ loss may include court
18 costs, but shall not include attorney's fees or punitive
19 damages awarded.

20 (2) The amount paid from the Auctioneer Recovery Fund
21 may not exceed \$50,000 per claim judgment or claims judgments
22 arising out of the same transaction or auction or and an
23 aggregate lifetime limit of \$100,000 with respect to any one
24 licensee. For purposes of this subsection, auctions conducted
25 under a single contract, agreement, or consignment shall be
26 considered a single transaction or auction even though
27 conducted at more than one time or place.

28 ~~(2) At the time the action is commenced, such person~~
29 ~~shall give notice thereof to the board by certified mail,~~
30 ~~except that, if no notice is given to the board, the claim may~~
31

1 ~~still be honored if, in the opinion of the board, the claim is~~
2 ~~otherwise valid.~~

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

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

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

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

27 Section 7. Section 468.397, Florida Statutes, is
28 amended to read:

29 468.397 Payment of claim.--Upon a final order of the
30 court directing that payment be made out of the Auctioneer
31 Recovery Fund, the board shall, subject to the provisions of

1 this part, make the payment out of ~~to~~ the Auctioneer Recovery
2 Fund as provided in s. 468.395.

3 Section 8. This act shall take effect July 1, 2000.
4

5 *****

6 HOUSE SUMMARY

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