

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 711 Auctioneering
SPONSOR(S): Jobs & Entrepreneurship Council and Boyd
TIED BILLS: **IDEN./SIM. BILLS:** SB 1786

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Business Regulation</u>	<u>9 Y, 0 N</u>	<u>Livingston</u>	<u>Liepshutz</u>
2) <u>Jobs & Entrepreneurship Council</u>	<u>13 Y, 0 N, As CS</u>	<u>Livingston</u>	<u>Thorn</u>
3) <u>Policy & Budget Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

Part VI of chapter 468, F.S., provides for the regulation and licensing of auction businesses, auctioneers, and apprentice auctioneers by the Florida Board of Auctioneers (board) within the Department of Business and Professional Regulation (DBPR).

Regulation provides that no business shall auction or offer to auction any property in this state unless it is licensed as an auction business by the board or is exempt from licensure, such as for auctions of livestock. The application for licensure must include the names of the owner and the business, the business mailing address and location, and any other information which the board may require.

The bill requires that applicants for licensure as auctioneers must file a complete set of fingerprints in electronic format for submittal to the Florida Department of Law Enforcement and the Federal Bureau of Investigation, and pay the cost of processing.

The bill requires that a license application identify the owner, and furnish evidence of compliance with fictitious name provisions if the business is a sole proprietorship and uses a fictitious name.

The bill requires that business applicants provide to the board the name of the partnership and its partners, the name of the corporation and its officers, directors, and stockholders who are also officers or directors, the name of the business trust and its trustees.

The bill provides a five-year disqualification from licensure as an auctioneer or apprentice, or for holding an ownership interest in an auction business, for any person whose license has been revoked. The bill requires that the applicant provide to the DBPR a statement of financial responsibility, credit history, and evidence of its business reputation in the auction business.

The bill provides that the DBPR may deny licensure to an applicant if any owner, partner, officer, director, trustee, or member of the applicant has committed an act or offense in any jurisdiction that would constitute a basis for discipline of a licensed auctioneer.

According to the Florida Department of Law Enforcement, the proposed legislation will create recurring revenues of approximately \$7,000 for the department and will cost the private sector about \$14,100 annually. The fees are split between the department's Operating Trust Fund and the Federal Bureau of Investigation and do not impact state revenues.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government - The bill provides for the submittal and processing of fingerprints for background checks of applicants for licensure as an auctioneer, and requires the applicant to bear the cost of processing fingerprints and conducting the background check.

The bill authorizes the board, by rule, to adopt guidelines for the determination of financial stability, credit, and business reputation of the auction business. The bill provides that the board adopt rules to specify grounds for denial of a license based on financial responsibility.

B. EFFECT OF PROPOSED CHANGES:

Present situation

Section 468.382(1), F.S., defines an "auction business" to mean:

a sole proprietorship, partnership, or corporation which in the regular course of business arranges, manages, sponsors, advertises, promotes, or carries out auctions, employs auctioneers to conduct auctions in its facilities, or uses or allows the use of its facilities for auctions.

Section 468.382(2), F.S., defines an "auctioneer" to mean

any person licensed pursuant to this part who holds a valid Florida auctioneer license.

"Apprentice" is defined to mean

any person who is being trained as an auctioneer by a licensed auctioneer.

Section 468.385, F.S., requires a license before a person can auction or offer to auction any property in this state, unless exempt from licensure, such as for auctions of livestock. To qualify for licensure as an auctioneer or apprentice a person must:

- Be 18 years of age or older;
- Not have committed any act or offense in this state or any other jurisdiction which would constitute a basis for disciplinary action under s. 468.389, F.S., relating to prohibited acts.

Additionally, to be licensed as an auctioneer the person must have:

- held an apprentice license and has served as an apprentice for one year or more, or has completed a course of study, consisting of not less than 80 classroom hours of instruction, that meets standards adopted by the board;
- passed the required examination; and
- been approved by the board.

An apprentice must be licensed and serve under a licensed auctioneer who has agreed to serve as the supervisor of the apprentice. An apprentice cannot conduct, or contract to conduct, an auction without the express approval of his or her supervisor. The supervisor must regularly review the apprentice's records, which are required by the board to be maintained, to determine if the records are accurate and current.

Section 468.385(7)(b), F.S., provides that no business shall auction or offer to auction any property in this state unless it is licensed as an auction business by the board or is exempt from licensure under this act. The application for licensure must include the names of the owner and the business, the business mailing address and location, and any other information which the board may require. The owner of an auction business must also report to the board within 30 days of any change in this required information.

Exemptions

Section 468.383, F.S., provides that the following activities are exempt from the licensure requirement:

- (1) Auctions conducted by the owner, or the owner's attorney, of any part of the property being offered, unless the owner acquired the goods to resell.
- (2) Auctions conducted under a judicial or an administrative order, or sales required by law to be at auction.
- (3) Auctions conducted by a charitable, civic, or religious organization, or for such organization by a person who receives no compensation.
- (4) Auctions of livestock if conducted by a person who specializes in the sale of livestock and the auction is conducted under the supervision of a livestock trade association, a governmental agency, or an owner of the livestock. The act does not apply to the auction of agricultural products as defined in s. 618.01(1), F.S., or the equipment or tools used to produce or market such products, if the auction is conducted at a farm or ranch where the products are produced or where the equipment and tools are used or at an auction facility that sells primarily agricultural products.
- (5) Auctions conducted by a trustee pursuant to a power of sale contained in a deed of trust on real property.
- (6) Auctions of collateral, sales conducted to enforce carriers' or warehousemen's liens, sales of the contents of self-contained storage units, bulk sales, sales of goods by a presenting bank following dishonor of a documentary draft, resales of rightfully rejected goods, or resales conducted pursuant to law, if the auction is conducted by the owner or agent of the lien on or interest in such goods.
- (7) Auctions conducted as a part of the sale of real property by a real estate broker, as defined in s. 475.01(1)(a), F.S.
- (8) Auctions of motor vehicles among motor vehicle dealers if conducted by an auctioneer.
- (9) Auctions conducted by a person enrolled in a class at an approved school of auctioneering, for the purpose of training and receiving instruction, under the direct supervision of an auctioneer who is also an instructor in the school and who further assumes full and complete responsibility for the activities of the student.

Fictitious Name Act

The Fictitious Name Act in s. 865.09, F.S., provides that a person may not engage in business under a fictitious name unless the person first registers the name with the Division of Corporations of the Department of State. Section 865.09(2)(a), F.S., defines a "fictitious name" as "any name under which a person transacts business in this state, other than the person's legal name."

A person registers a fictitious name by filing a sworn statement listing the following information along with applicable processing fees:

- The name to be registered.
- The mailing address of the business.
- The name and address of each owner and, if a corporation, its federal employer's identification number and Florida incorporation or registration number.
- Certification by the applicant that the intention to register such fictitious name has been advertised at least once in a newspaper as defined in chapter 50 in the county where the principal place of business of the applicant will be located.

- Any other information the division may deem necessary to adequately inform other governmental agencies and the public as to the persons so conducting business.

Effect of proposed changes

The bill amends s. 468.385(4), F.S., to require that auctioneer applicants submit fingerprints in electronic format, to allow state approved vendors to take fingerprints, to require background review of the prints for compliance with licensure eligibility, and to clarify the fee processing procedures. The fingerprints must be submitted to the Florida Department of Law Enforcement and the Federal Bureau of Investigation. The applicant must bear to the cost of processing.

The bill requires that, if the auction business is a sole proprietorship, the license application must identify the owner. It also provides that, if the business uses a fictitious name, the applicant must furnish evidence of compliance with fictitious name provisions in s. 865.09, F.S.

The bill requires that if an applicant is a partnership, corporation, business trust, or other legal entity other than a sole proprietorship, the application must provide the following information:

- The name of the partnership and its partners;
- The name of the corporation and its officers, directors, and stockholders who are also officers;
- The name of the business trust and its trustees; or
- The name of any other form of legal entity and its members.

If the partnership, corporation, business trust, or other legal entity other than a sole proprietorship uses a fictitious name, the applicant must also furnish evidence of compliance with fictitious-name provisions. Within 45 days after any change relating to information required to be disclosed under this section, the applicant must mail the correct information to the DBPR.

The bill requires that any person licensed as an auctioneer or apprentice whose license has been revoked may not be an owner, partner, officer, director, or trustee of an auction business for five years after revocation. The person may not reapply for licensure for five years following the revocation.

The bill requires that the applicant provide a statement of financial responsibility, credit history, and business reputation in the auction business. The bill authorizes the board to adopt rules that specify the financial-responsibility grounds upon which the board may deny licensure. The rules must also define financial responsibility based upon the applicant's credit history, ability to be bonded, and any history of bankruptcy, insolvency proceedings, or assignment of receivers.

The bill provides that the board may deny licensure to an applicant if any owner, partner, officer, director, trustee, or member of the applicant has committed an act or offense that would constitute a basis for disciplinary action under s. 468.389, F.S., which provides the disciplinary grounds for persons licensed under part VI of chapter 468, F.S. The bill permits the board to deny an application for any acts or offenses that occur in Florida or out-of-state.

C. SECTION DIRECTORY:

Section 1. Amends subsection (4) of section 468.385, F.S., relating to licenses required and qualifications of auctioneers.

Section 2. Effective date - July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The department anticipates recurring revenues of approximately \$7,000 based on 300 criminal history checks a year at a cost of \$47 per history check. The department receives \$23 per check with the remaining \$24 going to the FBI for processing fingerprint files.

(FY 07-08) Amount / FTE	(FY 08-09) Amount / FTE	(FY 09-10) Amount / FTE
\$6,900	\$6,900	\$6,900

Approximately 300 criminal history record checks annually x \$23

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Unknown.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Applicants for an auctioneer license would be required to bear the costs of processing the fingerprints required under this bill to be submitted with the application. The current fingerprinting cost is \$47, which the FDLE estimates will equate to a private sector impact of \$14,100 annually.

D. FISCAL COMMENTS:

The Florida Department of Law Enforcement anticipates an increase in revenues of approximately \$7,000 annually. There may be some costs to the Office of the Attorney General in the Department of Business and Professional Regulation with regard to legal costs for applicants who are denied licensure due to their background checks. These are likely to be minimal costs.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes the board, by rule, to adopt guidelines for the determination of financial stability, credit, and business reputation of the auction business. The bill provides that the board adopt rules to specify grounds for denial of a license based on financial responsibility.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement of the sponsor submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 22, 2007, the Committee on Business Regulation adopted one amendment and passed the bill out of committee by unanimous vote. The amendment clarifies the fingerprint provisions of the bill to reference electronic formatting, to allow state approved vendors to take fingerprints, to require background review of the prints for compliance with licensure eligibility, and to clarify the fee processing procedures.

On March 29, 2007, the Jobs & Entrepreneurship Council adopted a Council Substitute and reported the CS out of Council by a unanimous vote. The JEC adopted a substitute amendment to the amendment approved by the Committee on Business Regulation, noted above. The substitute removed reference to approval of fingerprint vendors by the Department of Management Services and includes approval by the DBPR.