

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Regulated Industries Committee

BILL: SB 2332

INTRODUCER: Senator Posey

SUBJECT: Auctioneering Licensure

DATE: March 25, 2008

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Aubuchon</u>	<u>Imhof</u>	<u>RI</u>	<b>Favorable</b>
2.	_____	_____	<u>CM</u>	_____
3.	_____	_____	<u>GA</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

This bill requires applicants for licensure as auctioneers to file a complete set of fingerprints for submission to the Florida Department of Law Enforcement and the Federal Bureau of Investigation (FBI). It requires that the fingerprints be in an electronic format. It provides that the Department of Law Enforcement will conduct the state processing of the fingerprints and will forward the fingerprints to the FBI for national processing. The bill also requires that the Board of Auctioneers review the background results to determine if an applicant meets licensure requirements.

The vendors and agencies that are authorized by rule of the Department of Business and Professional Regulation (department) to perform the fingerprinting must collect the fee and pay the Department of Law Enforcement for the cost of processing.

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

The bill requires that business applicants provide to the Florida Board of Auctioneers 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 either licensure as an auctioneer or apprentice or holding an ownership interest in an auction business, for any person whose license has been revoked. The bill requires that the applicant provide a statement of financial responsibility, credit history, and business reputation in the auction business to the department.

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

This bill substantially amends section 468.385, Florida Statutes.

## II. Present Situation:

Part VI of ch. 468, F.S., provides for the regulation and licensing of auction businesses, auctioneers, and apprentice auctioneers by the Florida Board of Auctioneers within the department.

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.”

Section 468.385, F.S., requires a license before any person can auction or offer to auction any property in this state, unless exempt from licensure under this act. 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.

A person can not be licensed as an auctioneer unless he or she:

- Has 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;
- Has passed the required examination; and
- Is 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 such 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.

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.

The submission of fingerprints is not required for applicants who wish to be licensed under pt. VI of ch. 468, F.S. Currently the applicants for the following professions are required to submit fingerprints to the department: talent agents,<sup>1</sup> community association managers,<sup>2</sup> athlete agents,<sup>3</sup> employee licensing,<sup>4</sup> real estate brokers and associates,<sup>5</sup> registered trainee appraisers or certified

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<sup>1</sup> Section 468.403, F.S.

<sup>2</sup> Section 468.433, F.S.

<sup>3</sup> Section 468.453, F.S.

<sup>4</sup> Section 468.525, F.S.

<sup>5</sup> Section 475.175, F.S.

appraisers,<sup>6</sup> alarm system agents,<sup>7</sup> fire alarm system agents,<sup>8</sup> pari-mutuel wagering licensees,<sup>9</sup> slot machines licensees,<sup>10</sup> and alcoholic beverage licensees.<sup>11</sup> Fingerprints are also required for other professions that are not regulated by the department.<sup>12</sup> Evidence of financial responsibility is required to obtain a contracting license,<sup>13</sup> and an electrical contracting license.<sup>14</sup>

### III. Effect of Proposed Changes:

#### Fingerprinting Requirement

The bill amends s. 468.385(4), F.S., to require that auctioneer applicants file a complete set of fingerprints taken by an authorized agency or vendor pursuant to department rule. It also requires that the complete set of fingerprints must be in an electronic format. It provides that the Department of Law Enforcement will conduct the state processing of the fingerprints and will forward the fingerprints to the FBI for national processing. The bill also requires that the Board of Auctioneers review the background results to determine if an applicant meets licensure requirements.

The bill requires that vendors and agencies that are authorized by rule of the department to perform the fingerprinting must collect the fee and pay the Department of Law Enforcement for the cost of processing.

#### Disclosure of Fictitious Name and Ownership

The bill amends s. 468.385, F.S., to delete the requirement that the application for licensure as an auction business 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. It also deletes the requirement that the owner of an auction business must report to the board within 30 days of any change in this required information.

The bill creates s. 468.385(8)(a), F.S., to require that, if the auction business is a sole proprietorship, the license application must state the name of the owner. It also provides that, if the auction business uses a fictitious name,<sup>15</sup> the applicant must furnish evidence of compliance with the fingerprint requirements in s. 486.385(4), F.S. within 45 days of a change in any information that is required on the application, and must mail the corrected information to the department.

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<sup>6</sup> Section 475.615, F.S.

<sup>7</sup> Section 489.518, F.S.

<sup>8</sup> Section 489.5185, F.S.

<sup>9</sup> Sections 550.054 and 550.105, F.S.

<sup>10</sup> Section 551.107, F.S.

<sup>11</sup> Sections 561.17 and 561.68 F.S.

<sup>12</sup> See e.g., s. 458.311, F.S., for physicians and s. 459.0055, F.S., for osteopathic physicians.

<sup>13</sup> See e.g., s.489.115, F.S.

<sup>14</sup> See 489.514, F.S.

<sup>15</sup> 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, and provides procedures for the registration of a fictitious name.

The bill creates s. 468.385(8)(b), F.S., to require 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 of each stockholder who is also an officer or director;
- 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 the fingerprint requirement in s. 486.385(4), F.S. 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 department.

### **Disqualification Based on Prior Revocations**

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 such revocation. The bill also provides that a person may not reapply for licensure for five years following the date of revocation.

### **Statement of Financial Responsibility**

The bill requires that the auction business applicant provide a statement of financial responsibility, credit, and business reputation in the auction business to the department. The bill authorizes the department 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.

### **Denial of Applications based on Prior Offenses**

The bill provides that the department may deny licensure to an auction business applicant if any owner, partner, officer, director, trustee, or member commits 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 ch. 468, F.S. The bill permits the department to deny an application for any acts or offenses that occur in Florida or out-of-state.

### **Effective Date**

The bill would take effect July 1, 2008.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

The cost of the fingerprinting will be borne by the applicant. According to the department, the cost for electronic fingerprint submissions for state and national criminal history background checks is \$42.25.

## C. Government Sector Impact:

According to the department, there will be an increase in revenues related to fingerprint fees and a corresponding increase in non-operating expenditures to transfer those revenues to the Florida Department of Law Enforcement to process the fingerprints. There may also be an undetermined increase in the costs related to services from the Attorney General's Office in defending the board against auctioneer applicants who have been denied a license on the basis of their criminal background.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

## A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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