

By the Committee on Regulated Industries; and Senator Baker

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1 A bill to be entitled
 2 An act relating to auctioneers; amending s. 468.385,
 3 F.S.; revising requirements for licensure as an
 4 auctioneer, auctioneer apprentice, and auction
 5 business; requiring the submission of fingerprints for
 6 a criminal records check; requiring that an applicant
 7 for a license bear the cost of fingerprinting and a
 8 criminal records check; prohibiting reissuance of a
 9 license for a specified period following license
 10 revocation; amending s. 468.3855, F.S.; requiring the
 11 sponsor of an auctioneer apprentice to review records
 12 of the apprentice; amending s. 468.389, F.S.;
 13 authorizing the board of auctioneers to impose
 14 penalties on a business that violates laws pertaining
 15 to auctions; providing an effective date.

16
 17 Be It Enacted by the Legislature of the State of Florida:

18
 19 Section 1. Section 468.385, Florida Statutes, is amended to
 20 read:

21 468.385 Licenses required; qualifications; examination.—

22 (1) The department shall license any applicant who the
 23 board certifies is qualified to practice auctioneering.

24 (2) A No person or business must be licensed by the
 25 department as an auctioneer, auctioneer apprentice, or auction
 26 business to shall auction or offer to auction any property in
 27 this state, unless the person or business he or she is licensed
 28 ~~by the department or is exempt from licensure under this act.~~

29 (3) A No person may not shall be licensed as an auctioneer

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30 ~~or apprentice unless if~~ he or she:

31 (a) Is at least under 18 years of age; ~~or~~

32 (b) Has not committed any act or offense in this state or
33 any other jurisdiction which would constitute a basis for
34 disciplinary action under s. 468.389;

35 (c) Has held an apprentice license and has served as an
36 apprentice for 1 year, or has completed a course of study,
37 consisting of at least 80 classroom hours of instruction, which
38 meets standards adopted by the board;

39 (d) Has passed a written examination approved by the board
40 which tests knowledge of the provisions of the Uniform
41 Commercial Code relating to auctions, the laws of agency, and
42 the provisions of this part;

43 (e) Has filed a complete set of fingerprints; and

44 (f) Is approved by the board.

45 (4) A person may not be licensed as an auctioneer
46 apprentice unless he or she:

47 (a) Is at least 18 years of age;

48 (b) Has not committed any act or offense in this state or
49 any other jurisdiction which would constitute a basis for
50 disciplinary action under s. 468.389;

51 (c) Has filed a complete set of fingerprints; and

52 (d) Is approved by the board.

53 ~~(4) Any person seeking a license as an auctioneer must pass~~
54 ~~a written examination approved by the board which tests his or~~
55 ~~her general knowledge of the laws of this state relating to~~
56 ~~provisions of the Uniform Commercial Code that are relevant to~~
57 ~~auctions, the laws of agency, and the provisions of this act.~~

58 (5) Each apprentice application for licensure as an

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59 auctioneer apprentice and each auctioneer apprentice license
60 must be signed by ~~shall name~~ a licensed auctioneer who will ~~has~~
61 ~~agreed to~~ serve as the sponsor ~~supervisor~~ of the apprentice. No
62 apprentice may ~~conduct, or contract to conduct,~~ an auction
63 without the ~~express approval of his or her supervisor.~~ The
64 ~~supervisor shall regularly review the apprentice's records,~~
65 ~~which are required by the board to be maintained, to determine~~
66 ~~if such records are accurate and current.~~

67 ~~(6) No person shall be licensed as an auctioneer unless he~~
68 ~~or she:~~

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

73 ~~(b) Has passed the required examination; and~~

74 ~~(c) Is approved by the board.~~

75 ~~(7)(a) Any auction that is subject to the provisions of~~
76 ~~this part must be conducted by an auctioneer who has an active~~
77 ~~license or an apprentice who has an active apprentice auctioneer~~
78 ~~license and who has received prior written sponsor consent.~~

79 ~~(b) No business shall auction or offer to auction any~~
80 ~~property in this state unless it is licensed as an auction~~
81 ~~business by the board or is exempt from licensure under this~~
82 ~~act.~~

83 (6) An ~~Each~~ application for licensure as an auction
84 business must ~~shall~~ include:

85 (a) The name ~~names~~ of each natural person who, directly or
86 indirectly, owns or controls 20 percent or more of an ownership
87 interest in the business;

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88 (b) The legal name of the business and any fictitious names
89 used by the business;

90 (c) A complete set of fingerprints of each natural person
91 who, directly or indirectly, owns or controls 20 percent or more
92 of an ownership interest in the business; ~~the owner and the~~
93 business;

94 (d) The business mailing address and location;

95 (e) Evidence of financial responsibility; and

96 (f) Any other information required by ~~which~~ the board ~~may~~
97 require. ~~The owner of~~

98 (7) An auction business shall report to the board any
99 change to the facts stated in its application for licensure
100 within ~~45~~ 30 days ~~after the~~ of any change in this required
101 information.

102 (8) A business may not be licensed as an auction business
103 if any natural person who, directly or indirectly, owns or
104 controls 20 percent or more of an ownership interest in the
105 business has committed any act or offense in this state or any
106 other jurisdiction which would constitute a basis for
107 disciplinary action under s. 468.389.

108 (9) Fingerprints required by this section must be taken in
109 electronic format by an authorized agency or vendor pursuant to
110 rules of the department. The department shall submit the
111 fingerprints to the Department of Law Enforcement for a state
112 criminal records check. The Department of Law Enforcement shall
113 forward the fingerprints to the Federal Bureau of Investigation
114 for a national criminal records check. A person subject to a
115 criminal records check shall bear the cost of fingerprinting and
116 the criminal records check. Fees for the criminal records check

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117 shall be collected by the agencies and vendors authorized to
118 take fingerprints and forwarded to the Department of Law
119 Enforcement.

120 (10) The board shall review the results of the state and
121 national criminal records checks to determine whether an
122 applicant has committed acts or offenses that disqualify the
123 applicant from licensure.

124 (11) A person or auction business whose license has been
125 revoked is ineligible for relicensure for 5 years following the
126 date of revocation.

127 (12)~~(8)~~ A license issued by the department to an
128 auctioneer, apprentice, or auction business is not transferable.

129 Section 2. Section 468.3855, Florida Statutes, is amended
130 to read:

131 468.3855 Apprenticeship training requirements.—

132 (1) An auctioneer may not sponsor more than three
133 apprentices at one time. Any auctioneer who serves as a sponsor
134 must have held an active, valid license for 3 consecutive years
135 preceding the date on which that auctioneer is named as sponsor
136 of the apprentice.

137 (2) Any auctioneer who undertakes the sponsorship of an
138 apprentice shall ensure that the apprentice receives training as
139 required by board rule.

140 (3) An apprentice must actively participate in auction
141 sales as required by board rule, and a record of each auction
142 for which participation credit is claimed must be made as
143 required by board rule.

144 (4) The sponsor shall regularly review the records of the
145 apprentice which the board requires that the sponsor maintain in

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146 order to determine if such records are accurate and current.

147 (5)-(4) An apprentice may not conduct ~~Apprentices are~~
148 ~~prohibited from conducting~~ any auction without the prior express
149 written consent of the sponsor. The apprentice's sponsor must be
150 present at the auction site at any time the apprentice is
151 actively participating in the conduct of the auction. If the
152 apprentice's sponsor cannot attend a particular auction, the
153 sponsor may appoint a qualified auctioneer who meets the
154 requirements of board rule to attend the auction in his or her
155 place. Prior written consent must be given by the apprentice's
156 sponsor for each substitution.

157 (6)-(5) Each apprentice and sponsor shall file reports as
158 required by board rule.

159 (7)-(6) A sponsor may not authorize an apprentice to conduct
160 an auction or act as principal auctioneer unless the sponsor has
161 determined that the apprentice has received adequate training to
162 do so.

163 (8)-(7) The sponsor is ~~shall be~~ responsible for any acts or
164 omissions of the apprentice which constitute a violation of law
165 in relation to the conduct of an auction.

166 (9)-(8) All apprentice applications are ~~shall be~~ valid for a
167 period of 6 months after board approval. Any applicant who fails
168 to complete the licensure process within that time shall ~~be~~
169 ~~required to~~ make application as a new applicant.

170 (10)-(9) Any licensed apprentice who wishes to change the
171 sponsor under whom he or she is licensed must submit a new
172 application and application fee. However, a new license fee is
173 ~~shall not be~~ required and credit shall be awarded for training
174 received or any period of apprenticeship served under the

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175 previous sponsor.

176 (11)~~(10)~~ Credit for training received or any period of
177 apprenticeship served is ~~shall~~ not be allowed unless it occurred
178 under the supervision of the sponsor under whose supervision the
179 apprentice is licensed.

180 Section 3. Section 468.389, Florida Statutes, is amended to
181 read:

182 468.389 Prohibited acts; penalties.—

183 (1) The following acts are ~~shall be~~ grounds for the
184 disciplinary activities provided in subsections (2) and (3):

185 (a) A violation of any law relating to trade or commerce of
186 this state or of the state in which an auction is conducted.

187 (b) Misrepresentation of property for sale at auction or
188 making false promises concerning the use, value, or condition of
189 such property by an auctioneer or auction business or by anyone
190 acting as an agent of or with the consent of the auctioneer or
191 auction business.

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

196 (d) False, deceptive, misleading, or untruthful
197 advertising.

198 (e) Any conduct in connection with a sales transaction
199 which demonstrates bad faith or dishonesty.

200 (f) Using or permitting the use of false bidders, cappers,
201 or shells.

202 (g) Making any material false statement on a license
203 application.

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204 (h) Commingling money or property of another person with
205 his or her own. Every auctioneer and auction business shall
206 maintain a separate trust or escrow account in an insured bank
207 or savings and loan association located in this state in which
208 shall be deposited all proceeds received for another person
209 through an auction sale.

210 (i) Refusal or neglect of any auctioneer or other receiver
211 of public moneys to pay the moneys so received into the State
212 Treasury at the times and under the regulations prescribed by
213 law.

214 (j) Violating a statute or administrative rule regulating
215 practice under this part or a lawful disciplinary order of the
216 board or the department.

217 (k) Having a license to practice a comparable profession
218 revoked, suspended, or otherwise acted against by another state,
219 territory, or country.

220 (l) Being convicted or found guilty, regardless of
221 adjudication, of a crime in any jurisdiction which directly
222 relates to the practice or the ability to practice the
223 profession of auctioneering.

224 (2) When the board finds any person or business guilty of
225 any of the prohibited acts set forth in subsection (1), it may
226 enter an order imposing one or more of the following penalties:

227 (a) Refusal to certify to the department an application for
228 licensure.

229 (b) Revocation or suspension of a license.

230 (c) Imposition of an administrative fine not to exceed
231 \$1,000 for each count or separate offense.

232 (d) Issuance of a reprimand.

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233 (e) Placement of the auctioneer on probation for a period
234 of time and subject to conditions as the board may specify,
235 including requiring the auctioneer to successfully complete the
236 licensure examination.

237 (f) Requirement that the person in violation make
238 restitution to each consumer affected by that violation. Proof
239 of such restitution shall be a signed and notarized release
240 executed by the consumer or the consumer's estate.

241 (3) (a) Failure to pay a fine within a reasonable time, as
242 prescribed by board rule, may be grounds for disciplinary
243 action.

244 (b) The department may file for an injunction or bring any
245 other appropriate civil action against anyone who violates this
246 part.

247 Section 4. This act shall take effect July 1, 2009.