

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 63 Auctioneers

SPONSOR(S): Government Operations Appropriations Committee; General Government Policy Council, Boyd and others

TIED BILLS: **IDEN./SIM. BILLS:** SB/HB 482

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|------------------|------------|----------------|
| 1) Insurance, Business & Financial Affairs Policy Committee | 15 Y, 0 N | Livingston | Cooper |
| 2) General Government Policy Council | 14 Y, 0 N, As CS | Livingston | Hamby |
| 3) Government Operations Appropriations Committee | 6 Y, 0 N | Topp | Topp |
| 4) | | | |
| 5) | | | |

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). No business may auction or offer to auction any property unless licensed as an auction business by the board or is exempt from licensure, such as for auctions of livestock.

The bill requires applicants for licensure as auctioneers or auctioneer apprentices to file a complete set of fingerprints for submission to the Florida Department of Law Enforcement (FDLE) and the Federal Bureau of Investigation (FBI). It requires that the fingerprints be in an electronic format. It provides that the FDLE will conduct the state criminal records check and the FBI will conduct a national criminal records check. The board within the DBPR is required to review results of the record checks to determine whether the applicant has committed disqualifying acts or offenses for purposes of licensure.

The vendors and agencies that are authorized by rule of the DBPR to perform the fingerprinting must collect the fee and pay the FDLE for the cost of processing.

The bill requires that both the application for licensure as an auctioneer apprentice and the license itself must be signed by the licensed auctioneer who will serve as the sponsor of the apprentice.

The bill requires auction businesses to be licensed and specifies license application requirements for an auction business, including the disclosure of the business' legal name and fictitious names, a complete set of fingerprints of each natural person who controls 20 percent or more in the business, and evidence of financial responsibility. The bill also makes auction businesses subject to the disciplinary provisions currently applicable to auctioneers and auctioneer apprentices. It provides a 5-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 DBPR is not expected to have a fiscal impact as a result of this bill. FDLE will conduct the state criminal record history for each applicant within current staff and appropriations. The auctioneer applicant will be responsible for paying the \$43.25 fee for fingerprinting submissions for state and national criminal background reviews.

The effective date of the bill is July 1, 2009.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

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 within the Department of Business and Professional Regulation.

Section 468.385(2), 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. Section 468.383, F.S., exempts the following activities from the licensure requirement:

- (1) Owner-conducted auctions, unless the owner acquired the goods to resell;
- (2) Auctions required under a judicial or administrative order, or by law;
- (3) Auctions by or for a charitable, civic, or religious organization;
- (4) Livestock auctions under certain circumstances;
- (5) Trustee-conducted auctions pursuant to a power of sale in a deed of trust on real property;
- (6) Certain auctions conducted by the owner or agent of the lien on or interest in goods;
- (7) Auctions conducted as a part of the sale of real property by a real estate broker;
- (8) Auctions of motor vehicles among motor vehicle dealers if conducted by an auctioneer; and
- (9) Certain auctions conducted for training purposes.

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

[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."

Under section 468.385, F.S., in order to qualify for licensure as an auctioneer, an applicant must:

- be 18 years or older;
- not have committed any act or offense in the state or any other jurisdiction which would constitute a basis for disciplinary action under s. 468.389, F.S.;

- have held an apprentice license and have served as an apprentice for 1 year or more, or have completed a course of study, consisting of not less than 80 classroom hours of instruction, that meets standards adopted by the board;
- pass the required examination; and
- be 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.

Section 468.385(7)(b), F.S., provides that 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.

Submission of fictitious names is not required. A “fictitious name” is defined in section 865.09, F.S., as “any name under which a person transacts business in this state, other than the person’s legal name.” Persons engaging in business under a fictitious name must first register the name with the Division of Corporations of the Department of State. Along with applicable processing fees, registration requires a sworn statement listing 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, F.S., in the county where the principal place of business of the applicant will be located; and any other information the division may deem necessary to adequately inform other governmental agencies and the public as to the persons so conducting business.

Fingerprint submission is not required for the application for licensure. This differs from a number of professions regulated by DBPR, including talent agents, community association managers, employee leasing companies, real estate brokers and associates, registered trainee appraisers or certified appraisers, pari-mutuel wagering licensees, slot machine licensees, and alcoholic beverage licensees.¹

Evidence of financial responsibility is not required to obtain an auctioneer license.

There are no limitations on relicensure if an auctioneer’s license is revoked. In contrast, under the asbestos abatement statute, chapter 469, F.S., licensed persons are ineligible to reapply for licensure, nor are they eligible to be a partner, officer, director, or trustee of, or be employed in a managerial or supervisory capacity by, a business organization licensed under that chapter for a period of five years after the revocation is effective. Five-year licensure impairments are also applicable to certified and registered construction contractors and electrical contractors.²

Effect of Proposed Changes

The bill revises the requirements for licensure as an auctioneer, auctioneer’s apprentice, and an auctioneer business. The bill reorganizes the licensure qualifications by separating the license qualifications for auctioneers, auctioneer apprentices, and auctioneer businesses into separate subsections.

The bill requires that auctioneer applicants file a complete set of fingerprints. The bill requires a complete set of fingerprints of each natural person who, directly or indirectly, owns or controls 20 percent or more of an ownership interest in an auction business.

¹ Sections 468.403, 468.433, 468.525, 475.175, 475.615, 550.054 and 550.105, 551.107, 561.17 and 561.68, F.S., respectively.

² Sections 489.129(9) and 489.514(2)(d), F.S., respectively.

The bill creates s. 468.385(9), F.S., to require that the fingerprints must be taken by an authorized agency or vendor pursuant to DBPR. The fingerprints must be taken in an electronic format.

The bill provides that the FDLE conduct the state criminal records check, and that the FDLE forward the fingerprints to the FBI for a national criminal records check. The bill specifies that the person who is subject to the criminal records check must bear the cost of fingerprinting and the criminal records check. The fees for the criminal records check must be collected by the agencies and vendors that are authorized to take fingerprints and the revenues must be forwarded to the FDLE.

The bill creates s. 468.385(10), F.S., to require that the board review results of the state and national criminal records to determine whether the applicant has committed acts or offenses that disqualify him or her from licensure.

The bill requires that auctioneer apprentice applicants file a complete set of fingerprints. The bill requires that both the application for licensure as an auctioneer apprentice and the license itself must be signed by the licensed auctioneer who will serve as the sponsor of the apprentice. Current law only requires that the application name the supervisor of the auctioneer apprentice.

The bill specifies license application requirements for an auction business. The license application must include:

- The name of each natural person who, directly or indirectly, controls 20 percent or more of an ownership interest in the business;
- The legal name and any fictitious names used by the business;
- A complete set of fingerprints of each natural person who controls 20 percent or more in the business;
- Evidence of financial responsibility; and
- Any other information required by the board.

The bill provides that a business may not be licensed as an auction business if any natural person with control of 20 percent or more of the business has 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., which specifies the prohibited acts by licensees under chapter 468, F.S., that may subject licensees to discipline.

The bill provides that, if an auctioneer's or auction business' license is revoked, the person or auction business is ineligible for relicensure for five years following the date of revocation.

B. SECTION DIRECTORY:

Section 1. Amends s. 468.385, F.S., relating to licenses required and qualifications to conduct an auctioneering activities.

Section 2. Amends s. 468.3855, F.S., to address apprenticeship training requirements.

Section 3. Amends s. 468.389, F.S., to make technical conforming changes.

Section 4. The effective date of the bill is July 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

FDLE anticipates that 2,500 auctioneer applicants annually will submit fingerprints for processing. However, during the last two fiscal years (FY 2007-07 and FY 2007-08) DBPR only received a total of 1,171 applications for auctioneer licensure – an average of 585, per year.

Based on the average number of auctioneer applicants for the most recent two fiscal years, FDLE would be expected to collect \$25,301 per year in fingerprint fees. On each fee paid for fingerprint processing FDLE retains \$24.00 and remits \$19.25 to the FBI for the federal background check.

2. Expenditures:

The DBPR is not anticipated to have any fiscal impact with this bill. FDLE is expected to process the auctioneer fingerprint applications within existing appropriations and staff.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Applicants will have to pay for criminal records checks.

D. FISCAL COMMENTS:

The bill is not anticipated to have a fiscal impact on DBPR. FDLE will retain \$24.00 of the \$43.25 fee paid by the applicant for fingerprint submission for criminal background checks. Based on the average number of auctioneer applications DBPR has received the two most recent fiscal years, FDLE will likely retain annually a total of \$14,040 from fingerprinting fees and remit \$11,261 to the FBI for federal criminal background checks.

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 responsibility of auctioneer applicants. The bill provides that the board adopt rules to specify grounds for denial of a license based on financial responsibility. It also authorizes DBPR, by rule, to approve agencies and vendors to fingerprint applicants and process fee payments.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 1, 2009, the General Government Policy Council took up the bill, adopted a strike all amendment, and passed the bill by a unanimous vote as a Council Substitute.

The CS differs from the bill as filed in the following areas:

- requires a complete set of fingerprints of each natural person who, directly or indirectly, owns or controls 20 percent or more of an ownership interest in an auction business;
- requires that fingerprints be taken by an authorized agency or vendor approved by DBPR and the fingerprints must be taken in an electronic format;
- requires the board to review results of the state and national criminal records to determine whether the applicant has committed acts or offenses that disqualify him or her from licensure; and
- provides that, if an auctioneer's or auction business' license is revoked, the person or auction business is ineligible for relicensure for five years following the date of revocation.