

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 63 Auctioneering

SPONSOR(S): Boyd

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

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Insurance, Business & Financial Affairs Policy Committee	15 Y, 0 N	Livingston	Cooper
2)	General Government Policy Council		Livingston	Hamby
3)	Government Operations Appropriations Committee			
4)	Full Appropriations Council on General Government & Health Care			
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 primarily addresses the licensure application requirements for an auctioneer.

- Information required to be included in an application is changed:
 - The current requirement of the name of the owner and business is expanded to distinguish between sole proprietorships and other legal entities, such as partnerships. The bill requires the names of both the business entity and its owner(s), directors, trustees or members.
 - If fictitious names are used, proof of compliance with a new fingerprint requirement is required.
 - The current requirement to include the business mailing address and location, and any other information which the board may require is deleted.
 - The current 30-day period for reporting changes is extended to 45 days, and the bill calls for these changes to be reported to DBPR by mail, rather than to the board as currently required.
- The bill creates a new requirement that the applicant provide a statement of financial responsibility, credit history, and evidence of its business reputation in the auction business and authorizes DBPR to establish rules defining financial responsibility and specifying grounds for ineligibility.
- The bill creates a new requirement for fingerprinting to be used in background investigations by Florida Department of Law Enforcement and the Federal Bureau of Investigation. The applicant pays the cost of processing, and the procedure and fee collection are handled by DBPR approved vendors.
- The bill permits the board to deny licensure to a business on the sole basis that the business – or any of its owners, partners, officers, directors, trustees or members – has committed any act that is grounds for disciplinary action of a licensed auctioneer.

The bill also 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 DBPR indicates that there will be costs related to defending the DBPR’s denial of some applicants, however, they are expected to be minimal.

Effective date – 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 (board) within the Department of Business and Professional Regulation (DBPR).

Applicability

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."

Eligibility

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.

Special regulations apply to apprentices and require supervision by licensed auctioneers.

Application Requirements

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 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 replaces the application requirements of names of the owner and the business, the business mailing address and location, and “any other information which the board may require” with business-type specific requirements as follows:

Sole proprietorship: Owner’s name.

If using a fictitious name: Proof of compliance with proposed fingerprinting requirement.

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.

Other legal entity (partnership, corporation, trust): Name of partnership and its members; name of corporation and its officers, directors and stockholders who are also directors or officers; name of business trust and its trustees; or name of legal entity and its members.

If using any fictitious names: Proof of compliance with proposed fingerprinting requirement.

The bill replaces the requirement for owners to report to the board within 30 days of any change in required information with a requirement to report changes to DBPR within 45 days by mail.

The bill amends section 468.385(4), F.S., to require submission of fingerprints with a license application. Fingerprints taken by an authorized agency or vendor pursuant to DBPR rule would be submitted in an electronic format. The fingerprints would then be submitted to the Florida Department of Law Enforcement (FDLE) for state processing. FDLE would then submit the fingerprints to the Federal Bureau of Investigations (FBI) for national processing. The board would then review the results of the background investigation in determining whether the applicant met licensure requirements. The cost associated with this requirement would be paid by applicants – the DBPR-authorized agencies and vendors would collect the necessary fees and deliver the funds to FDLE to cover the cost of processing.

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 define financial responsibility based on credit history, history of bankruptcy or any other insolvency proceeding or assignment of receivers, and the ability to be bonded. The board's rules must specify the grounds for determining that a business is ineligible for licensure.

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 permits the board to deny licensure to a business on the sole basis that the business – or any of its owners, partners, officers, directors, trustees or members – has committed any act outlined in section 468.389 as grounds for disciplinary action in this state or elsewhere.

B. SECTION DIRECTORY:

Section 1. Amends subsections (4), (7) and (8) of section 468.385, F.S., relating to licenses required and qualifications to conduct an auctioneering business.

Section 2. Effective date - July 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None anticipated.

2. Expenditures:

The DBPR indicates the costs are indeterminate but likely to be minimal.

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 DBPR anticipates minimal costs associated with the proposed legislation and should not require any new resources. The cost of criminal checks is to be paid by the applicant to the fingerprint vendor directly, so there will be no new revenues to the DBPR.³

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 noted.

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

³ DBPR Office of Legislative Affairs, 2009 Legislative Analysis Form, HB 63, on file with the Insurance, Business, & Financial Affairs Committee.