

ENROLLED
CS/HB 63

2009 Legislature

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

15
16 Be It Enacted by the Legislature of the State of Florida:

17
18 Section 1. Section 468.385, Florida Statutes, is amended
19 to read:

20 468.385 Licenses required; qualifications; examination.--

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

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

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

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

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

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

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

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

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

43 (f) Is approved by the board.

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

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

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

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

51 (d) Is approved by the board.

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

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

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

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

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

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

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

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

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

84 (a) The name ~~names~~ of each natural person who, directly or

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85 indirectly, owns or controls 20 percent or more of an ownership
86 interest in the business;

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

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

93 (d) The business mailing address and location;~~7~~

94 (e) Evidence of financial responsibility; and

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

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

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

107 (9) Fingerprints required by this section must be taken in
108 electronic format by an authorized agency or vendor pursuant to
109 rules of the department. The department shall submit the
110 fingerprints to the Department of Law Enforcement for a state
111 criminal records check. The Department of Law Enforcement shall
112 forward the fingerprints to the Federal Bureau of Investigation

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113 for a national criminal records check. A person subject to a
 114 criminal records check shall bear the cost of fingerprinting and
 115 the criminal records check. Fees for the criminal records check
 116 shall be collected by the agencies and vendors authorized to
 117 take fingerprints and forwarded to the Department of Law
 118 Enforcement.

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

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

126 (12)~~(8)~~ A license issued by the department to an
 127 auctioneer, apprentice, or auction business is not transferable.

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

130 468.3855 Apprenticeship training requirements.--

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

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

139 (3) An apprentice must actively participate in auction
 140 sales as required by board rule, and a record of each auction

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141 for which participation credit is claimed must be made as
142 required by board rule.

143 (4) The sponsor shall regularly review the records of the
144 apprentice which the board requires that the sponsor maintain in
145 order to determine if such records are accurate and current.

146 (5)~~(4)~~ An apprentice may not conduct ~~Apprentices are~~
147 ~~prohibited from conducting~~ any auction without the prior express
148 written consent of the sponsor. The apprentice's sponsor must be
149 present at the auction site at any time the apprentice is
150 actively participating in the conduct of the auction. If the
151 apprentice's sponsor cannot attend a particular auction, the
152 sponsor may appoint a qualified auctioneer who meets the
153 requirements of board rule to attend the auction in his or her
154 place. Prior written consent must be given by the apprentice's
155 sponsor for each substitution.

156 (6)~~(5)~~ Each apprentice and sponsor shall file reports as
157 required by board rule.

158 (7)~~(6)~~ A sponsor may not authorize an apprentice to
159 conduct an auction or act as principal auctioneer unless the
160 sponsor has determined that the apprentice has received adequate
161 training to do so.

162 (8)~~(7)~~ The sponsor is ~~shall be~~ responsible for any acts or
163 omissions of the apprentice which constitute a violation of law
164 in relation to the conduct of an auction.

165 (9)~~(8)~~ All apprentice applications are ~~shall be~~ valid for
166 ~~a period of~~ 6 months after board approval. Any applicant who
167 fails to complete the licensure process within that time shall
168 ~~be required to~~ make application as a new applicant.

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169 ~~(10)~~~~(9)~~ Any licensed apprentice who wishes to change the
170 sponsor under whom he or she is licensed must submit a new
171 application and application fee. However, a new license fee is
172 ~~shall not be~~ required and credit shall be awarded for training
173 received or any period of apprenticeship served under the
174 previous sponsor.

175 ~~(11)~~~~(10)~~ Credit for training received or any period of
176 apprenticeship served is ~~shall not be~~ allowed unless it occurred
177 under the supervision of the sponsor under whose supervision the
178 apprentice is licensed.

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

181 468.389 Prohibited acts; penalties.--

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

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

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

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

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

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

199 (f) Using or permitting the use of false bidders, cappers,
200 or shills.

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

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

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

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

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

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

223 (2) When the board finds any person or business guilty of
224 any of the prohibited acts set forth in subsection (1), it may

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225 enter an order imposing one or more of the following penalties:

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

228 (b) Revocation or suspension of a license.

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

231 (d) Issuance of a reprimand.

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

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

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

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

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