

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 General Government Appropriations Committee

BILL: CS/SB 482

INTRODUCER: Regulated Industries Committee and Senator Baker

SUBJECT: Auctioneers and Apprentices

DATE: April 16, 2009 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Rhea	RI	Fav/CS
2.	Clodfelter	Cannon	CJ	Favorable
3.	Frederick	DeLoach	GA	Favorable
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

This 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 Florida Board of Auctioneers (board) within the Department of Business and Professional Regulation (department) is required 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.

The vendors and agencies that are authorized by rule of the department 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 that the auctioneer apprentice's sponsor regularly review the records of the apprentice, which the board requires the sponsor to maintain, in order to determine if the apprentice's records are accurate and current.

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 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 Department of Business and Professional Regulation indicates that implementation of the bill will result in a staffing workload increase and that additional applications will likely have to be referred to the board for review. However, it is anticipated that these additional activities can be absorbed within existing resources.

The bill provides an effective date of July 1, 2009.

This bill substantially amends the following sections of the Florida Statutes: 468.385, 468.3855, and 468.389.

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 of Business and Professional Regulation.

According to the department, there are 1,864 licensed auctioneers, 67 auctioneer apprentices, and 822 auctioneer businesses.

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 cannot 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.
- 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:

- 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.
- Auctions conducted under a judicial or an administrative order, or sales required by law to be at auction.
- Auctions conducted by a charitable, civic, or religious organization, or for such organization by a person who receives no compensation.
- 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.
- Auctions conducted by a trustee pursuant to a power of sale contained in a deed of trust on real property.
- 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.
- 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.
- Auctions of motor vehicles among motor vehicle dealers if conducted by an auctioneer.

- 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 Part VI of ch. 468, F.S., as an auctioneer or apprentice. Currently the applicants for the following professions are required to submit fingerprints to the department: talent agents,¹ community association managers,² athlete agents,³ employee licensing,⁴ real estate brokers and associates,⁵ registered trainee appraisers or certified appraisers,⁶ alarm system agents,⁷ fire alarm system agents,⁸ pari-mutuel wagering licensees,⁹ slot machines licensees,¹⁰ and alcoholic beverage licensees.¹¹ Fingerprints are also required for other professions that are not regulated by the department.¹² Evidence of financial responsibility is required to obtain a contracting license¹³ and an electrical contracting license.¹⁴

III. Effect of Proposed Changes:

The bill amends s. 468.385, F.S., to revise the requirements for licensure as an auctioneer and auctioneer's apprentice. The bill reorganizes the licensure qualifications in this section by separating the license qualifications for auctioneers and auctioneer apprentices into separate subsections.

Fingerprint and Criminal Records Check Requirement

The bill amends s. 468.385(3), F.S., to require that auctioneer applicants file a complete set of fingerprints.

The bill also amends s. 485.385(6), F.S., to require 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.

The bill creates s. 468.385(9), F.S., to require that the fingerprints required under s. 485.385, F.S., must be taken by an authorized agency or vendor pursuant to department rule. The fingerprints must be taken in an electronic format.

¹ Section 468.403, F.S.

² Section 468.433, F.S.

³ Section 468.453, F.S.

⁴ Section 468.525, F.S.

⁵ Section 475.175, F.S.

⁶ Section 475.615, F.S.

⁷ Section 489.518, F.S.

⁸ Section 489.5185, F.S.

⁹ Sections 550.054 and 550.105, F.S.

¹⁰ Section 551.107, F.S.

¹¹ Sections 561.17 and 561.68, F.S.

¹² See, e.g., s. 458.311, F.S., for physicians and s. 459.0055, F.S., for osteopathic physicians.

¹³ See s. 489.115, F.S.

¹⁴ See, s. 489.514, F.S.

The bill provides that the Florida Department of Law Enforcement will conduct the state criminal records check and will forward the fingerprints to the Federal Bureau of Investigations 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 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.

Auctioneer Apprentices

The bill amends s. 468.385(4), F.S., to also require 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.

Regarding the responsibilities of the auctioneer apprentice's sponsor, the bill transfers from the current s. 468.385(5), F.S., to s. 468.385(4), F.S., the requirement that the sponsor must regularly review the records of the apprentice, which the board requires the sponsor to maintain, in order to determine if the apprentice's records are accurate and current.

Auction Businesses

The bill amends s. 468.385(2), F.S., to require auction businesses to be licensed.

The bill amends s. 468.385(6), F.S., to specify 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.
- Any other information required by the board.

The bill amends s. 468.385(7), F.S., to require that an auction business report to the board any change to factual information stated in the application for licensure within 45 days after the change.

The bill amends s. 468.385(8), F.S., to provide 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 ch. 468, F.S., that may subject licensees to discipline.

The bill amends s. 468.385(8), F.S., to provide that, if an auctioneer's or auction business's license is revoked, the person or auction business is ineligible for relicensure for five years following the date of revocation.

The bill amends s. 468.389, F.S., to include auction businesses within the disciplinary provision of this section. It provides that, when the board finds a business guilty of any of the prohibited acts set forth in s. 468.389(1), F.S., the board may impose the specified penalties on the business, including refusal to certify the applicant for licensure, revocation or suspension of the license, issuance of a reprimand, or placement of the license under a period of probation.

Effective Date

The bill provides an effective date of July 1, 2009.

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 and the FDLE, the cost for electronic fingerprint submissions for state and national criminal history background checks is \$43.25.

C. Government Sector Impact:

According to the department, it estimates a slight increase in workload to review criminal background check results that can be absorbed with existing resources. The department also anticipates that this bill may result in additional applications being referred to the

board for review; but it also anticipates that such review can be absorbed with existing resources.

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.)

CS by Regulated Industries on March 10, 2009:

The committee substitute requires the Florida Board of Auctioneers 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.

- B. **Amendments:**

None.