

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:

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 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

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.~~

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

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

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

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.

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.

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.