

**The Florida Senate**  
**PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Commerce Committee

BILL: CS/SB 1786

INTRODUCER: Regulated Industries Committee and Senator Posey

SUBJECT: Auctioneering/Licensure

DATE: March 26, 2007      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	<b>Fav/CS</b>
2.	Gordon	Cooper	CM	<b>Favorable</b>
3.			GA	
4.				
5.				
6.				

**I. Summary:**

The Committee Substitute (CS) requires that applicants for licensure as auctioneers file a complete set of fingerprints for submittal to the Florida Department of Law Enforcement (FDLE) and the Federal Bureau of Investigation (FBI). It also requires that the complete set of fingerprints must be in an electronic format. According to the CS, FDLE will conduct the state processing of the fingerprints and will forward the fingerprints to the FBI for national processing. The CS also requires that the Board of Auctioneers review the background results to determine if an applicant meets licensure requirements.

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

The CS requires that a license application identify the owner, and furnish evidence of compliance with the fingerprinting requirement if the business is a sole proprietorship and uses a fictitious name.

The CS requires that business applicants provide to the Florida Board of Auctioneers the name of the partnership and its partners, the name of the corporation and its officers, directors, and stockholders who are also officers or directors, as well as the name of the business trust and its trustees.

The CS provides a 5-year disqualification from licensure as an owner, partner, officer, director or trustee of an auction business, for any person whose license has been revoked. The CS requires

that an applicant provide a statement of financial responsibility, credit history, and business reputation in the auction business to the department.

The CS provides that the department may deny licensure to an applicant if any owner, partner, officer, director, trustee, or member of the applicant auction business has committed an act or offense in any jurisdiction that would constitute a basis for discipline of a licensed auctioneer.

This CS substantially amends section 468.385, Florida Statutes.

## **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.

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.”

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; and
- 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 can not be licensed as an auctioneer unless he or she:

- Has held an apprentice license and has served as an apprentice for 1 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; and
- Is approved by the board.

An apprentice must be licensed and must 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:

- (1) 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.
- (2) Auctions conducted under a judicial or an administrative order, or sales required by law to be at auction.
- (3) Auctions conducted by a charitable, civic, or religious organization, or for such organization by a person who receives no compensation.
- (4) 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.
- (5) Auctions conducted by a trustee pursuant to a power of sale contained in a deed of trust on real property.
- (6) 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.
- (7) 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.
- (8) Auctions of motor vehicles among motor vehicle dealers if conducted by an auctioneer.
- (9) 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. Currently, the applicants for the following professions are required to submit fingerprints to the department: talent agents, community association managers, athlete agents, employee licensing, real estate brokers and associates, registered trainee appraisers or certified appraisers, alarm system agents, fire alarm system agents, pari-mutuel wagering licensees, slot

machines licensees, and alcoholic beverage licensees.<sup>1</sup> Fingerprints are also required for other professions not regulated by the department.<sup>2</sup> Evidence of financial responsibility is required to obtain a contracting license,<sup>3</sup> and an electrical contracting license.<sup>4</sup>

Persons licensed under the asbestos abatement statute, ch. 469, F.S., are not eligible 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 5 years after the revocation is effective.<sup>5</sup> Five-year licensure impairments are also applicable to certified and registered construction contractors<sup>6</sup> and electrical contractors.<sup>7</sup>

### **III. Effect of Proposed Changes:**

#### **Fingerprinting Requirement**

The CS amends s. 468.385(4), F.S., to require that auctioneer applicants file a complete set of fingerprints taken by an authorized agency or vendor pursuant to department rule. It also requires that the set of fingerprints be in an electronic format. It provides that the Florida Department of Law Enforcement (FDLE) will conduct the state processing of the fingerprints and will forward the fingerprints to the Federal Bureau of Investigations (FBI) for national processing. The CS also requires that the Board of Auctioneers review the background results to determine if an applicant meets licensure requirements.

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

#### **Disclosure of Fictitious Name and Ownership**

The CS amends s. 468.385(7)(b), F.S., to delete the requirement that the application for licensure as an auction business 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. It also deletes the requirement that the owner of an auction business must report to the board within 30 days of any change in this required information.

The CS requires that, if the auction business is a sole proprietorship, the license application must state the name of the owner. It also provides that, if the auction business uses a fictitious name,<sup>8</sup> the applicant must furnish evidence of compliance with the fingerprint requirements in

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<sup>1</sup> Sections 468.403, 468.433, 468.453, 468.525, 475.175, 475.615, 489.518, 489.5185, 550.054 and 550.105, 551.107, 561.17 and 561.68, F.S., respectively.

<sup>2</sup> See, e.g., s. 458.311, F.S., for physicians and s. 459.0055, F.S., for osteopathic physicians.

<sup>3</sup> See, e.g., s.489.115, F.S.

<sup>4</sup> See, 489.514, F.S.

<sup>5</sup> Section 469.009, F.S.

<sup>6</sup> Section 489.129(9), F.S.

<sup>7</sup> Section 489.514(2)(d), F.S.

<sup>8</sup> The Fictitious Name Act in s. 865.09, F.S., provides that a person may not engage in business under a fictitious name unless the person first registers the name with the Division of Corporations of the Department of State. This section also provides procedures for the registration of a fictitious name.

s. 486.385(4), F.S., within 45 days of a change in any information that is required on the application, and must mail the corrected information to the department.

The CS requires that if an applicant is a partnership, corporation, business trust, or other legal entity other than a sole proprietorship, the application must include the following information:

- The name of the partnership and its partners;
- The name of the corporation and its officers, directors, and of each stockholder who is also an officer or director;
- The name of the business trust and its trustees; or
- The name of any other form of legal entity and its members.

If the partnership, corporation, business trust, or other legal entity other than a sole proprietorship uses a fictitious name, the applicant must also furnish evidence of compliance with the fingerprint requirement in s. 486.385(4), F.S. Within 45 days after any change relating to information required to be disclosed under this section, the applicant must mail the correct information to the department.

### **Disqualification Based on Prior Revocations**

The CS 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 5 years after such revocation. The CS also provides that a person may not reapply for licensure for 5 years following the date of revocation.

### **Statement of Financial Responsibility**

The CS requires that the applicant provide a statement of financial responsibility, credit, and business reputation in the auction business to the department. The CS authorizes DBPR to adopt rules that specify the financial responsibility grounds upon which the board may deny licensure. The rules must also define financial responsibility based upon the applicant's credit history, ability to be bonded, and any history of bankruptcy, insolvency proceedings, or assignment of receivers.

### **Denial of Applications based on Prior Offenses**

The CS provides that DBPR may deny licensure to an auction business applicant if any owner, partner, officer, director, trustee, or member commits an act or offense that would constitute a basis for disciplinary action under s. 468.389, F.S., which provides the disciplinary grounds for persons licensed under part VI of ch. 468, F.S. The CS permits the department to deny an application for any acts or offenses that occur in Florida or out-of-state.

### **Effective Date**

The CS would take effect July 1, 2007.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

The cost of the fingerprinting will be borne by the applicant. According to the department, the cost is \$47 plus a general revenue assessment for a total of \$50.75.

## C. Government Sector Impact:

According to DBPR, there will be a \$12,930 increase in revenues related to fingerprinting fees, and a corresponding increase in non-operating expenditures to transfer those revenues to the Florida Department of Law Enforcement to process the fingerprints. The department also believes that there will be an undetermined increase in costs related to services from the Attorney General's Office in defending the board against auctioneer applicants who have been denied a license on the basis of their criminal background.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

## **VIII. Summary of Amendments:**

None.

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This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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