

AUCTIONEERS: CONTINUING EDUCATION REQUIREMENTS & PRESALE SERVICE REPORTING

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House Bill 4766 (reported without amendment)

Sponsor: Rep. Wayne Schmidt

Committee: Regulatory Reform

First Analysis (12-7-11)

BRIEF SUMMARY: The bill would amend Article 29 of the Occupational Code to provide for, among other things, continuing education requirements for registered auctioneers when seeking to renew their voluntary registration.

FISCAL IMPACT: House Bill 4766 would increase the costs for the Bureau of Commercial Services (Bureau) to administer the auctioneer registration program by an indeterminate amount. The bill would require the Bureau to promulgate rules to establish a program of continuing education for registered auctioneers and determine satisfactory completion of continuing education programs. For additional information, see *Fiscal Information*, later in the analysis.

THE APPARENT PROBLEM:

Public Act 489 of 2006 created a system of voluntary registration for auctioneers and prescribed duties for the Department of Energy, Labor, and Economic Growth (since renamed Licensing and Regulatory Affairs). There appear to be provisions of the registration act that contain errors or simply do not fit the occupation and many believe this has prevented experienced auctioneers from seeking registration. According to the department there are currently 80 auctioneers and 6 firms registered as "registered auctioneers."

As noted above, there appear to be problems with the registration act as originally enacted. For example, graduation from an accredited auction school is required as part of the eligibility criteria for registration. However, there are no auction schools in the nation having accreditation. Additionally, the act prohibits an auctioneer from depositing advance payments in a business or personal account; all money received by a registered auctioneer must be held in trust for the benefit of the person making the payment. This provision does not allow for the accepted practice of clients prepaying for advertisement of the auction or other pre-auction expenses. Many other states, including all the states bordering Michigan, have a registration or licensing requirement for auctioneers. In order to have Michigan's registered auctioneers recognized as such in other states there needs to be established continuing education requirements. By accommodating accepted businesses practices, the changes contained in the bill are expected to encourage new and experienced auctioneers to seek registration.

THE CONTENT OF THE BILL:

The bill would amend Article 29 of the Occupational Code to provide for, among other things, continuing education requirements for registered auctioneers when seeking to renew their voluntary registration.

Public Act 489 of 2006 added Article 29 to the Occupational Code to create a voluntary registration system for auctioneers and prescribed related responsibilities for the Department of Labor and Economic Growth (since renamed LARA). Registration is voluntary, but a person is prohibited from using the title "registered auctioneer" unless registered.

Continuing Education

Specifically, beginning 60 days after the effective date of the bill, the Department of Licensing and Regulatory Affairs, Bureau of Commercial Services, would be prohibited from renewing the registration of an individual or a qualifying member of a legal entity unless he or she demonstrates satisfactory completion of the program of continuing education contained in the bill. LARA would be required, by rule, to establish a program of continuing education, which must include all of the following:

- A requirement for satisfactory completion of 12 hours of continuing education from an auctioneer continuing education course sponsor approved by the department.
- That an individual or qualifying member is not entitled to continuing education credit for any classroom hours required by the department as a condition to initial registration.
- That an individual or qualifying member who attends the same continuing education course more than once in the same registration period is entitled to continuing education credit for that course only once.
- That the department may verify any information concerning continuing education that is submitted by an individual or qualifying member as evidence supporting the completion of the continuing education requirement and may require that he or she provide information regarding the continuing education hours claimed.
- That an individual or qualifying member is responsible for retaining evidence to support satisfactory completion of the continuing education requirement for a period of 24 months after the end of the renewal period for which the renewal application was submitted to the department.

Approved Auction Schools

Currently, as part of the criteria for application for registration, a person must have either two years of apprentice experience with a registered auctioneer or proof of graduation from an "accredited" auction school acceptable to the Board of Auctioneers and one year of apprentice experience with a registered auctioneer. The bill would remove "accredited" to allow graduation from any approved auction school.

Exemption from Continuing Education

Section 2909 of the Occupational Code requires the department to register as an auctioneer, after verifying the experience requirements, any individual that applied not more than two years after the effective date of originally licensing law and submits a completed application and an affidavit that verifies he or she had experience in the conduct of auctions for at least three years before the effective date of the bill. The bill would extend that provision so that it would apply up to two years after House Bill 4766 itself took effect. The bill says an individual eligible for registration under that provision would not be required to meet the continuing education requirements of the bill.

Copies of Contracts to Clients

The act requires registered auctioneers to maintain a regular place of business and keep certain records. Auctioneers are required to have a written contract in place before executing an auction. The bill would require an auctioneer to provide a copy of the contract to the client instead of merely keeping it on file and providing a copy upon request.

Full Accounting to Clients

The act also requires registrants to establish a trust account (or other segregated account) and to deposit all checks, drafts, negotiable instruments, and cash tendered by one or more buyers for the payment of an item sold by auction. The bill would require a registrant to provide a full accounting to a client when a transaction is closed or terminated. The accounting must include any money given to the registrant for resale auction services. However, the auctioneer would not be required to deposit money from a client for presale auction services into a trust account. The auctioneer would be required to provide a complete accounting of all auction service expenses to the client at the closing or termination of the transaction.

Records of Presale Auction Services

Registrants would be required to maintain written records of each auction sale, including any documents relating to presale auction services.

MCL 339.2907 et al.

BACKGROUND INFORMATION:

Public Act 489 of 2006 added Article 29 to the Occupational Code to create a voluntary registration system for auctioneers and prescribed related responsibilities for the Department of Labor and Economic Growth (since renamed LARA). Among other things, the act required:

- Written contracts between registered auctioneers and clients.
- Prohibit a person from using the title "registered auctioneer" unless registered.
- A registered auctioneer to deposit all funds related to the conduct of an auction in a trust account separate from the registrant's own funds.

- Auctioneers to maintain written records about auction sales and employees for at least three years.
- DLEG to register an individual who submitted an affidavit attesting to at least three years' experience in the conduct of auctions before the bill's effective date, if the applicant had conducted at least 12 auctions and applied within two years after the bill's effective date.

Public Act 490 of 2006 amended the State License Fee Act to establish application, examination, and registration fees for registered auctioneers (see: Fiscal Impact).

FISCAL INFORMATION:

As noted earlier, House Bill 4766 would increase the costs for the Bureau of Commercial Services (Bureau) to administer the auctioneer registration program by an indeterminate amount. The bill would require the Bureau to promulgate rules to establish a program of continuing education for registered auctioneers and determine satisfactory completion of continuing education programs.

Individuals and firms providing auctioneering services within Michigan are not required to register with the Bureau and only must do so in order to refer to themselves as a "Registered Auctioneer." The changes made by the bill would only apply to those auctioneers who register with the Bureau.

It is not known how many individuals and firms provide auctioneering services within the state as the US Bureau of Labor and Statistics does not collect employment information for this occupation. However, as of November 7, 2011, 332 individuals and firms are members of the Michigan State Auctioneers Association (MSAA), according to information gathered from its website. According to information provided by LARA, 80 individuals and 6 firms are currently registered with the Bureau as "Registered Auctioneers." If members of the MSAA are the only individuals or firms providing auctioneering services (unlikely since individuals and firms providing these services may not be members of the MSAA), then approximately 26% of auctioneers in the state are registered with the Bureau of Commercial Services as "Registered Auctioneers."

The revenue generated and expenditures disbursed by the Bureau of Commercial Services for the auctioneer registration program since it was implemented is presented here:

| Auctioneer Registration | | | |
|--------------------------------|--------------------|---------------------|----------------------|
| Fiscal Year | Revenue | Expenditures | Balance |
| 2006-07 | \$0.00 | \$85,162.80 | -\$85,162.80 |
| 2007-08 | \$17,650.00 | \$129,380.15 | -\$111,730.15 |
| 2008-09 | \$25,960.00 | \$144,709.00 | -\$118,749.00 |
| 2009-10 | \$12,990.00 | \$167,837.00 | -\$154,847.00 |
| Average | \$14,150.00 | \$131,772.24 | -\$117,622.24 |

Since its implementation, the auctioneer registration program has not generated sufficient revenue to cover the expenditures of administering the program. Currently, the fees collected through the program are \$50 for application, \$50 for examination, and a \$400 biennial registration fee.

ARGUMENTS:

For:

There is a need for uniform standards of performance and financial integrity in the auctioneering profession. Currently, there is no education or training required before beginning work as an auctioneer. However, an individual cannot claim to be a "registered auctioneer" unless going through the registration process with the state. The bill will provide uniform standards for continuing education for those wishing to become registered. The bill would also establish additional financial safeguards by requiring registered auctioneers to provide full accounting to clients, provide written copies of contracts to clients, and require registered auctioneers to maintain written records of each auction sale.

According to testimony, individuals are required to be registered as auctioneers to book jobs in other states. It does not appear that Michigan currently has reciprocity with other states because of its lack of continuing education requirements for registered auctioneers. This lack of reciprocity requires Michigan auctioneers to be registered in the other states. Under the bill, once registered in Michigan (and therefore having met the continuing education requirements), individuals would not have to register in other states before contracting for work.

Against:

There was some concern expressed that registering auctioneers is unnecessary. Some do not feel that individuals wanting to work as auctioneers should be required to register with the state before doing so. Also, questions were raised as to whether laws pertaining to auctioneering change often enough to require continuing education for auctioneers.

POSITIONS:

Michigan State Auctioneers Association supports the bill. (11-30-11)

Michigan Board of Auctioneers supports the bill. (11-30-11)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.