



HOUSE BILL No. 4341

February 24, 1993, Introduced by Rep. Middaugh and referred to the Committee on State Affairs.

A bill to amend Act No. 299 of the Public Acts of 1980,
entitled as amended
"Occupational code,"
as amended, being sections 339.101 to 339.2721 of the Michigan
Compiled Laws, by adding article 28; and to repeal certain acts
and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Act No. 299 of the Public Acts of 1980, as
2 amended, being sections 339.101 to 339.2721 of the Michigan
3 Compiled Laws, is amended by adding article 28 to read as
4 follows:

5 ARTICLE 28

6 SEC. 2801. AS USED IN THIS ARTICLE:

7 (A) "AUCTION" MEANS THE SALE OR OFFER FOR SALE BY BIDDING OF
8 REAL OR PERSONAL PROPERTY AT A PUBLIC OR PRIVATE LOCATION.

1 (B) "AUCTIONEER" MEANS AN INDIVIDUAL WHO, FOR COMPENSATION,
2 IS ENGAGED IN THE BUSINESS OF OR OFFERS TO ENGAGE IN THE BUSINESS
3 OF THE CONDUCT OF AN AUCTION.

4 SEC. 2803. (1) THERE IS CREATED A BOARD OF AUCTIONEERS.

5 (2) NOTWITHSTANDING SECTION 301, 6 MEMBERS OF THE INITIAL
6 BOARD SHALL BE MEMBERS OF ANY STATEWIDE PROFESSIONAL ORGANIZATION
7 IN THIS STATE WHICH HAS FOR ITS PURPOSE THE ESTABLISHING AND
8 MAINTAINING OF STANDARDS OF PROFESSIONAL CONDUCT RELATING TO AUC-
9 TIONEERS AND WHO POSSESS NOT LESS THAN 5 YEARS' EXPERIENCE AS AN
10 AUCTIONEER AS ESTABLISHED BY AFFIDAVIT OF THAT MEMBER AND ARE OF
11 GOOD MORAL CHARACTER.

12 (3) THE BOARD MAY PROMULGATE RULES THAT IT DETERMINES AS
13 BEING NECESSARY FOR THE ADMINISTRATION OF THIS ARTICLE.

14 SEC. 2805. (1) AN INDIVIDUAL SHALL NOT ENGAGE IN THE BUSI-
15 NESS OF THE CONDUCT OF OR OFFERING TO CONDUCT AN AUCTION UNLESS
16 LICENSED OR EXEMPT FROM LICENSURE UNDER THIS ARTICLE.

17 (2) A CORPORATION, PARTNERSHIP, ASSOCIATION, OR OTHER LEGAL
18 ENTITY MAY APPLY FOR LICENSURE UNDER THIS ARTICLE IF NOT LESS
19 THAN 1 OF ITS OFFICERS, PARTNERS, MEMBERS, OR MANAGING AGENTS IS
20 DESIGNATED AS A QUALIFYING OFFICER. THE DEPARTMENT SHALL ISSUE A
21 LICENSE TO THE QUALIFYING OFFICER UPON THAT INDIVIDUAL'S FULFILL-
22 MENT OF THE REQUIREMENTS OF THIS ARTICLE. THE QUALIFYING OFFICER
23 SHALL BE RESPONSIBLE FOR EXERCISING THE SUPERVISION AND CONTROL
24 OF THE ACTIVITIES REGULATED BY THIS ARTICLE SO AS TO ASSURE THE
25 SECURE FULL COMPLIANCE WITH THIS ARTICLE AND ANY RULES PROMUL-
26 GATED UNDER THIS ARTICLE.

1 (3) THE DEPARTMENT SHALL SUSPEND, REVOKE, OR DENY THE
2 LICENSE OF A CORPORATION, PARTNERSHIP, ASSOCIATION, OR OTHER
3 LEGAL ENTITY WHEN THE LICENSE OF THE QUALIFYING OFFICER IS SUS-
4 PENDED, REVOKED, OR DENIED. THE LICENSE ACTION SHALL REMAIN IN
5 FORCE UNTIL THE BOARD DETERMINES THAT THE DISABILITY CREATED BY
6 THE LICENSE ACTION HAS BEEN REMOVED.

7 (4) THE CEASING OF A QUALIFYING OFFICER OF A LICENSEE FROM
8 BEING ITS QUALIFYING OFFICER OPERATES AS AN AUTOMATIC SUSPENSION
9 OF THE ENTITY'S LICENSE. UPON REQUEST, THE DEPARTMENT MAY PERMIT
10 THE LICENSE TO REMAIN IN FORCE FOR A REASONABLE PERIOD OF TIME IN
11 ORDER TO ALLOW THE QUALIFYING OF A NEW QUALIFYING OFFICER.

12 (5) A PERSON SHALL NOT ADVERTISE OR USE THE TERM "AUCTION",
13 "AUCTIONEER", OR ANY OTHER TERM OF SIMILAR MEANING THAT CONNOTES
14 THAT THE PERSON IS LICENSED UNDER THIS ARTICLE UNLESS THAT PERSON
15 OBTAINS A LICENSE UNDER THIS ARTICLE OR IS SPECIFICALLY EXEMPT
16 FROM LICENSURE UNDER THIS ARTICLE.

17 SEC. 2807. THE FOLLOWING ACTIONS ARE EXEMPT FROM LICENSURE
18 UNDER THIS ARTICLE:

19 (A) REAL OR PERSONAL PROPERTY SOLD BY AUCTION BY ITS OWNER
20 WHERE THE OWNER DOES NOT ACQUIRE THE REAL OR PERSONAL PROPERTY
21 SOLELY FOR THE PURPOSE OF RESALE BY AUCTION.

22 (B) REAL OR PERSONAL PROPERTY SOLD BY AUCTION FOR THE BENE-
23 FIT OF A CHARITABLE, RELIGIOUS, OR CIVIC ORGANIZATION WHERE THE
24 AUCTIONEER DOES NOT RECEIVE COMPENSATION.

25 (C) REAL OR PERSONAL PROPERTY SOLD BY AUCTION BY AN AGENT OR
26 EMPLOYEE OF A COURT OF COMPETENT JURISDICTION PURSUANT TO A COURT
27 ORDER; ABANDONED OR SEIZED PROPERTY SOLD BY AUCTION BY A LAW

1 ENFORCEMENT AGENCY; REAL OR PERSONAL PROPERTY SOLD BY AUCTION BY
2 A GOVERNMENTAL UNIT AS THE RESULT OF A TAX SALE; OR SURPLUS OR
3 SALVAGE PERSONAL PROPERTY SOLD BY AUCTION BY A GOVERNMENTAL
4 UNIT.

5 (D) REAL PROPERTY SOLD BY AUCTION BY A PERSON LICENSED UNDER
6 ARTICLE 25 IF NOT MORE THAN 5 OF SUCH SALES OCCUR PER CALENDAR
7 YEAR. THESE SALES MAY INCLUDE THE TOTAL CONTENTS OF A PIECE OF
8 REAL PROPERTY.

9 (E) LIVESTOCK SOLD BY AUCTION BY A PERSON LICENSED UNDER ACT
10 NO. 284 OF THE PUBLIC ACTS OF 1937, BEING SECTIONS 287.121 TO
11 287.131 OF THE MICHIGAN COMPILED LAWS.

12 (F) MOTOR VEHICLES SOLD BY AUCTION BY A DEALER LICENSED
13 UNDER THE MICHIGAN VEHICLE CODE, ACT NO. 300 OF THE PUBLIC ACTS
14 OF 1949, BEING SECTIONS 257.1 TO 257.923 OF THE MICHIGAN COMPILED
15 LAWS.

16 (G) BOATS OR WATERCRAFT REQUIRED TO HAVE A CERTIFICATE OF
17 TITLE UNDER THE MARINE SAFETY ACT, ACT NO. 303 OF THE PUBLIC ACTS
18 OF 1967, BEING SECTIONS 281.1001 TO 281.1199 OF THE MICHIGAN
19 COMPILED LAWS, AND SOLD BY AUCTION BY A DEALER OR MANUFACTURER.

20 SEC. 2809. THE DEPARTMENT SHALL ISSUE A LICENSE AS AN AUC-
21 TIONEER TO AN INDIVIDUAL WHO MEETS ALL OF THE FOLLOWING
22 CONDITIONS:

23 (A) HAS ACTIVELY PARTICIPATED IN THE CONDUCTING OF NOT LESS
24 THAN 5 AUCTIONS. THE EXPERIENCE SHALL BE VERIFIED BY AN AFFIDA-
25 VIT OF AN AUCTIONEER AND SHALL PROVIDE THE NAMES AND ADDRESSES OF
26 THE PARTIES ON WHOSE BEHALF THE AUCTION WAS HELD AND THE DATES OF
27 THE AUCTION.

1 (B) HAS COMPLETED AN EXAMINATION AS DESCRIBED IN
2 SECTION 2815 IN THE CASE OF INITIAL LICENSURE AND HAS COMPLIED
3 WITH THE CONTINUING EDUCATION REQUIREMENTS OF SECTION 2817 IN THE
4 CASE OF A RENEWAL OF A LICENSE.

5 (C) IS OF GOOD MORAL CHARACTER.

6 SEC. 2811. MONEY PAID BY ANY PERSON TO A LICENSEE SHALL BE
7 CONSIDERED TO BE HELD IN TRUST FOR THE BENEFIT OF THE PERSON
8 MAKING THE PAYMENT AND THE LICENSEE SHALL BE CONSIDERED THE
9 TRUSTEE FOR THE MONEY PAID TO HIM OR HER.

10 SEC. 2813. (1) AN AUCTIONEER SHALL MAINTAIN A REGULAR PLACE
11 OF BUSINESS IN THIS STATE. IF MORE THAN 1 PLACE OF BUSINESS IS
12 MAINTAINED, A DUPLICATE LICENSE SHALL BE ISSUED BY THE DEPARTMENT
13 AT NO ADDITIONAL COST.

14 (2) AN AUCTION SHALL NOT OCCUR UNLESS A WRITTEN CONTRACT IS
15 EXECUTED BETWEEN THE PERSON DESIRING AUCTION SERVICES AND A
16 LICENSED AUCTIONEER. A COPY OF THE CONTRACT SHALL BE KEPT AS
17 PART OF THE RECORDS OF THE LICENSEE AND, UPON REQUEST, MAY BE
18 INSPECTED BY THE DEPARTMENT DURING NORMAL BUSINESS HOURS.

19 (3) A LICENSEE UNDER THIS ARTICLE SHALL MAINTAIN WRITTEN
20 RECORDS OF EACH AUCTION SALE FOR A PERIOD OF NOT LESS THAN 1 YEAR
21 FROM THE DATE OF THE AUCTION SALE. THE RECORDS SHALL INCLUDE,
22 BUT NOT BE LIMITED TO, ALL OF THE FOLLOWING:

23 (A) CONSIGNMENT RECEIPTS.

24 (B) BIDDER REGISTRATIONS.

25 (C) DOCUMENTS RELATING TO FINAL SETTLEMENTS WITH
26 CONSIGNORS.

1 (4) A LICENSEE UNDER THIS ARTICLE SHALL MAINTAIN RECORDS ON
2 ALL CURRENT EMPLOYEES AND ON PAST EMPLOYEES FOR NOT LESS THAN 3
3 YEARS AFTER A PAST EMPLOYEE LEAVES THE EMPLOYMENT OF THE LICENS-
4 EE, WHICH RECORDS SHALL INCLUDE THE EMPLOYEE'S NAME, ADDRESS,
5 SOCIAL SECURITY NUMBER, AND DATE OF BIRTH.

6 (5) A LICENSEE UNDER THIS ARTICLE SHALL CONSPICUOUSLY POST
7 AT THE REGULAR PLACE OF BUSINESS A COPY OF THE LICENSE ISSUED
8 UNDER THIS ARTICLE.

9 (6) A LICENSEE UNDER THIS ARTICLE SHALL ESTABLISH A CUSTO-
10 DIAL ACCOUNT IN THE MANNER DESCRIBED IN THIS SECTION. ALL
11 CHECKS, DRAFTS, NEGOTIABLE INSTRUMENTS, AND CASH TENDERED BY A
12 BUYER FOR THE PAYMENT OF AN ITEM SOLD BY AUCTION SHALL BE DEPOS-
13 ITED IN THE CUSTODIAL ACCOUNT. THE LICENSEE SHALL MAKE A DIS-
14 BURSEMENT RELATIVE TO A SALE BY AUCTION THROUGH THAT CUSTODIAL
15 ACCOUNT IN THE TIME PERIOD AND MANNER DESCRIBED IN THIS SECTION.

16 (7) A LICENSEE SHALL NOT PERMIT AN ADVANCE PAYMENT OF MONEY
17 BY A CUSTOMER TO BE DEPOSITED IN THE LICENSEE'S BUSINESS OR PER-
18 SONAL ACCOUNT OR TO BE COMMINGLED IN ANY WAY WITH FUNDS BELONGING
19 TO THE LICENSEE, EXCEPT AS PROVIDED IN THIS SECTION. CUSTOMER
20 MONEY SHALL BE DEPOSITED INTO A SEPARATE CUSTODIAL ACCOUNT UNTIL
21 THE TRANSACTION INVOLVED IS CONSUMMATED OR TERMINATED. DEPOSITS
22 OF CUSTOMER MONEY SHALL BE MADE WITHIN 2 BANKING DAYS AFTER THE
23 AUCTION TRANSACTION, BUT NOT LATER THAN 5 DAYS AFTER ITS RECEIPT
24 BY THE LICENSEE.

25 (8) THE SEPARATE CUSTODIAL ACCOUNT IS SUBJECT TO THE FOLLOW-
26 ING REQUIREMENTS:

1 (A) SHALL BE A NONINTEREST BEARING ACCOUNT MAINTAINED IN A
2 FEDERALLY INSURED BANK, SAVINGS AND LOAN ASSOCIATION, CREDIT
3 UNION, OR RECOGNIZED DEPOSITORY.

4 (B) SHALL DESIGNATE THE LICENSEE AS THE CUSTODIAN OR
5 TRUSTEE.

6 (C) SHALL PROVIDE FOR WITHDRAWAL OF MONEY WITHOUT PREVIOUS
7 NOTICE AND SHALL NOT BE ENCUMBERED IN ANY MANNER.

8 (D) SHALL NOT CONTAIN ANY MONEY OF THE LICENSEE EXCEPT FOR
9 SUCH AMOUNTS AS ARE NECESSARY TO PAY SERVICE CHARGES ON THE
10 ACCOUNT OR TO MAINTAIN THE ACCOUNT WHEN CUSTOMER MONEY IS NOT ON
11 DEPOSIT.

12 (9) DISBURSEMENTS FROM THE SEPARATE CUSTODIAL ACCOUNT SHALL
13 BE MADE ONLY FOR THE FOLLOWING PURPOSES:

14 (A) PAYMENT AS A RESULT OF THE SALE OF AN ITEM BY THE
15 LICENSEE.

16 (B) REFUND OF AN AMOUNT TO THE CUSTOMER UPON TERMINATION OF
17 THE TRANSACTION.

18 (C) PAYMENT TO THE LICENSEE OF A COMMISSION FOLLOWING THE
19 CONSUMMATION OF A TRANSACTION UPON WHICH A COMMISSION IS PAYABLE
20 TO THE LICENSEE.

21 (10) THE LICENSEE SHALL KEEP RECORDS OF MONEY DEPOSITED IN
22 THE SEPARATE CUSTODIAL ACCOUNT, SUBJECT TO INSPECTION BY THE
23 DEPARTMENT. THE RECORDS SHALL SHOW ALL OF THE FOLLOWING:

24 (A) THE DATE OF THE RECEIPT OF MONEY FROM A CUSTOMER AND THE
25 NAME OF THE CUSTOMER ON WHOSE BEHALF THE MONEY WAS PAID.

26 (B) THE PURPOSE FOR WHICH THE MONEY WAS PAID.

1 (C) THE DATE THE MONEY WAS DEPOSITED IN THE SEPARATE
2 CUSTODIAL ACCOUNT.

3 (D) THE DATE OF WITHDRAWAL OF THE MONEY, THE PURPOSE OF THE
4 WITHDRAWAL, AND THE NAME OF THE PERSON TO WHOM THE MONEY WAS PAID
5 UPON WITHDRAWAL.

6 (E) ANY OTHER PERTINENT INFORMATION REGARDING THE
7 TRANSACTION.

8 (11) THE DEPARTMENT AND THE BOARD MAY, UPON NOTICE GIVEN TO
9 A LICENSEE, INSPECT THE RECORDS REQUIRED TO BE KEPT PURSUANT TO
10 THIS SECTION.

11 SEC. 2815. (1) THE DEPARTMENT AND THE BOARD SHALL DEVELOP
12 AN EXAMINATION FOR APPLICANTS FOR LICENSURE UNDER THIS ARTICLE OR
13 MAY ADOPT AN EXAMINATION DEVELOPED BY AN ORGANIZATION INVOLVED IN
14 THE TRAINING OF AUCTIONEERS IF THAT EXAMINATION IS DETERMINED BY
15 THE BOARD TO SUFFICIENTLY TEST THE KNOWLEDGE AND SKILLS RELATIVE
16 TO THE BUSINESS OF THE CONDUCT OF AUCTIONS.

17 (2) THE EXAMINATION DESCRIBED IN SUBSECTION (1) SHALL
18 INCLUDE, BUT NOT BE LIMITED TO, THE FOLLOWING SUBJECT MATTER
19 AREAS:

20 (A) THE PROVISIONS OF THIS ARTICLE.

21 (B) ETHICS AND ETHICAL PRACTICES AS THEY RELATE TO THE BUSI-
22 NESS OF CONDUCTING AUCTIONS.

23 (C) ELEMENTARY MATHEMATICS.

24 (D) ELEMENTARY PRINCIPLES OF LAND ECONOMICS.

25 (E) ELEMENTARY PRINCIPLES OF THE LAW REGARDING BULK SALES,
26 DEEDS, MORTGAGES, CONTRACTS OF SALE, AGENCY, LEASES, AUCTIONS,
27 AND BROKERAGE.

1 (3) THE DEPARTMENT SHALL ADMINISTER THE EXAMINATIONS ON AT
2 LEAST A QUARTERLY BASIS. THE DEPARTMENT MAY ADMINISTER THE EXAM-
3 INATIONS MORE OFTEN THAN ON A QUARTERLY BASIS IF THE BOARD DETER-
4 MINES THAT CIRCUMSTANCES EXIST THAT WARRANT THE FURTHER ADMINIS-
5 TRATION OF THE EXAMINATION.

6 SEC. 2817. THE BOARD SHALL PROMULGATE RULES SETTING STAN-
7 DARDS FOR MANDATORY PROGRAM CONTINUING EDUCATION. THE RULES
8 SHALL PROVIDE FOR NOT LESS THAN 4 CLOCK HOURS OF CONTINUING EDU-
9 CATION PER YEAR.

10 SEC. 2819. (1) THE DEPARTMENT SHALL ISSUE A LICENSE WITHOUT
11 EXAMINATION TO A NONRESIDENT INDIVIDUAL WHO, AT THE TIME OF
12 APPLICATION, IS LICENSED, REGISTERED, CERTIFIED, OR OTHERWISE
13 REGULATED BY ANOTHER STATE IF THE REQUIREMENTS OF THAT STATE, AS
14 DETERMINED BY THE BOARD AND THE DEPARTMENT, ARE SUBSTANTIALLY THE
15 EQUIVALENT OF THE REQUIREMENTS OF THIS ARTICLE AND IF THE OTHER
16 STATE OFFERS LICENSURE, CERTIFICATION, OR REGISTRATION ON A BASIS
17 SIMILAR TO THIS SECTION TO LICENSEES UNDER THIS ARTICLE.

18 (2) A NONRESIDENT SHALL FILE AN IRREVOCABLE CONSENT TO SERV-
19 ICE OF PROCESS WHICH CONSENT SHALL BE SIGNED BY THE LICENSEE. A
20 PROCESS OR PLEADING SERVED UPON THE DEPARTMENT SHALL BE SUFFI-
21 CIENT SERVICE UPON THE LICENSEE. A PROCESS OR PLEADING SERVED
22 UPON THE DEPARTMENT UNDER THIS SECTION SHALL BE IN DUPLICATE.
23 THE DEPARTMENT SHALL IMMEDIATELY SERVE BY FIRST-CLASS MAIL A COPY
24 OF THE PROCESS OR PLEADING TO THE LICENSEE'S LAST KNOWN ADDRESS
25 AS DETERMINED BY THE RECORDS OF THE DEPARTMENT.

26 SEC. 2821. THE DEPARTMENT SHALL LICENSE AS AN AUCTIONEER,
27 AFTER VERIFICATION OF THE EXPERIENCE REQUIREMENTS IMPOSED IN THIS

1 SECTION, AN INDIVIDUAL WHO APPLIES NOT MORE THAN 2 YEARS AFTER
2 THE 1993 AMENDATORY ACT THAT ADDED THIS ARTICLE AND SUBMITS AN
3 AFFIDAVIT ATTESTING TO EXPERIENCE IN THE PRACTICE OF THE CONDUCT
4 OF AUCTIONS FOR NOT LESS THAN 3 YEARS BEFORE THE EFFECTIVE DATE
5 OF THIS ARTICLE, WHICH EXPERIENCE SHALL HAVE INCLUDED THE CONDUCT
6 OF NOT LESS THAN 12 AUCTIONS.

7 SEC. 2823. A LICENSEE WHO COMMITS ANY OF THE FOLLOWING ACTS
8 SHALL BE SUBJECT TO THE PENALTIES CONTAINED IN ARTICLE 6:

9 (A) FAILS TO ENTER INTO A WRITTEN CONTRACT WITH A SELLER OR
10 CONSIGNOR PRIOR TO PLACING OR AUTHORIZING ANY ADVERTISING FOR AN
11 AUCTION.

12 (B) FAILS TO REDUCE TO WRITING OR FAILS TO ISSUE ANY APPRO-
13 PRIATE DOCUMENTATION RELATIVE TO AN AUCTION-RELATED TRANSACTION.

14 (C) FAILS TO APPROPRIATELY USE OR ISSUE PAYMENT FROM A CUS-
15 TODIAL FUND.

16 (D) PERMITS AN UNLICENSED AUCTIONEER TO CONDUCT AN AUCTION.

17 (E) IS INVOLVED IN CAPPING, SHILLING, OR STEERING RELATIVE
18 TO AN AUCTION.

19 (F) HAS AN UNDISCLOSED FINANCIAL INTEREST IN AN AUCTION CON-
20 DUCTED BY THE LICENSEE.

21 (G) KNOWINGLY MISREPRESENTS THE NATURE OR VALUE OF AN ITEM
22 BEING AUCTIONED.

23 (H) VIOLATES THE REQUIREMENTS OF THIS ARTICLE OR A RULE
24 PROMULGATED UNDER THIS ARTICLE.

25 SEC. 2825. (1) ANY PROVISION OF AN ORDINANCE OR LAW OF A
26 LOCAL GOVERNMENTAL UNIT WHICH IS INCONSISTENT OR IN CONFLICT WITH

1 THIS ARTICLE IS SUPERSEDED TO THE EXTENT OF THE INCONSISTENCY OR
2 CONFLICT.

3 (2) A LOCAL GOVERNMENTAL UNIT SHALL NOT CHARGE LICENSURE
4 FEES IN ADDITION TO THE FEES REQUIRED UNDER THIS ARTICLE.

5 (3) A LOCAL GOVERNMENTAL UNIT SHALL NOT IMPOSE A BONDING
6 REQUIREMENT FOR A LICENSEE UNDER THIS ARTICLE.

7 (4) AS USED IN THIS SECTION, "LOCAL GOVERNMENTAL UNIT" MEANS
8 A COUNTY, CITY, TOWNSHIP, OR VILLAGE.

9 Section 2. The following acts and parts of acts are
10 repealed:

11 (a) Act No. 224 of the Public Acts of 1955, being sections
12 446.51 to 446.60 of the Michigan Compiled Laws.

13 (b) Chapter 21 of the Revised Statutes of 1846, being sec-
14 tions 446.26 to 446.35 of the Michigan Compiled Laws.

15 Section 3. This amendatory act shall not take effect unless
16 all of the following bills of the 87th Legislature are enacted
17 into law:

18 (a) Senate Bill No. _____ or House Bill No. 4343
19 (request no. 02622'93 a).

20 (b) Senate Bill No. _____ or House Bill No. 4342
21 (request no. 02622'93 b).

22 (c) Senate Bill No. _____ or House Bill No. 4368
23 (request no. 02622'93 c).