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LICENSE AUCTIONEERS

House Bill 4388 (Substitute H-3)

House Bill 4389 (Substitute H-1)

House Bill 4390 (Substitute H-1)

Sponsor: Rep. Lingg Brewer

House Bill 5874 as introduced

Sponsor: Rep. Judith Scranton

Committee: Regulatory Affairs

First Analysis (5-26-98)

THE APPARENT PROBLEM:

Auctions are used to sell merchandise from bankrupted businesses, livestock, abandoned property, artwork, and estate property, and are used as fundraisers for charity, among other things. At least 750 auctioneers do business in the state of Michigan. Currently, state law provides for auctions and auctioneers to be regulated by local ordinances. Many local governments choose not to regulate auctions or auctioneers, but many do, and the regulations can vary greatly from municipality to municipality. Some local governments require a license for the auctioneer and a permit for the auction; others require only the posting of a \$10 bond. Auctioneers who conduct business in one or two counties may be subject to a dozen or more different local laws. Having to be licensed here but not there, and posting a \$10 bond in one locale and a \$100 bond in another creates a difficult and confusing situation for business people trying to comply with the various local laws. Further, surrounding states, such as Indiana and Wisconsin, require auctioneers to be licensed, and provide reciprocity for auctioneers licensed in other states with similar laws. However, since Michigan doesn't provide for statewide licensing of auctioneers, a situation exists in which auctioneers from other states can freely conduct business in Michigan, but Michigan auctioneers cannot conduct an auction in Indiana, Wisconsin, or many other states unless they are licensed in that state.

Another concern raised in regard to auctions is that the current system affords little enforcement to crack down on unethical or unscrupulous auctioneers. Where industry standards require auctioneers to be trained in how to properly keep accounts, check for liens against real and personal property, verify that a

person selling items at an auction has the legal authority to do so, and so forth, there is little recourse for industry members to weed out unethical practitioners or for individuals injured by an unscrupulous operator to recover damages. Stories abound in the state of auctioneers who do not verify ownership before selling items; of poor record keeping; of not paying sales tax to the state; and of people literally flying in to the state one day, selling poor quality goods such as rugs at auction, and then flying out the next day. Under current local laws, little can be done to stop such auctioneers from continuing to conduct business, or for people to get their money back from defective merchandise.

In one story, a woman had been granted authority to dispose of her parent's estate by her mother's will. Though the woman had made arrangements to do business with one auctioneer, her brothers hired a different auctioneer and conducted the auction without their sister's knowledge or consent. Among the items sold at the auction were personal property belonging to the sister, including her wedding dress, that were not part of the estate and therefore should not have been sold. (According to members of the Michigan State Auctioneers Association, a reputable auctioneer should check a will and obtain all necessary signatures on a contract for auction services. In this case, the sister's permission as executor of the estate should have been obtained and all items not belonging to the estate removed before the auction.) By the time the woman found out about the auction, her personal belongings had been sold, along with sentimental items and family heirlooms. When the woman attempted to press charges against the auctioneer for violating her mother's will and selling what she believed was stolen

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property, she was told by law enforcement officers and local prosecutors that no criminal laws had been broken. Even appeals to the Office of Attorney General brought no relief. The only recourse available to her was to civilly sue her brothers for her share of the auction's proceeds. The auctioneer has reportedly continued to conduct business in the state.

Reportedly, such cases are not isolated incidents. In light of the need to protect the public from unscrupulous auctioneers, and to provide for Michigan auctioneers to conduct business in other states, legislation has been proposed to create a statewide licensure framework for auctioneers.

THE CONTENT OF THE BILLS:

The bill as a package would create a licensure framework for auctioneers, establish license and application fees, and repeal provisions allowing for local governmental units to license auctioneers. More specifically, the bills would do the following:

House Bill 5874 would amend the Occupational Code (MCL 339.303a) to establish a state-wide system of licensure for auctioneers, provide penalties for violation of the bill's provisions, and repeal existing laws pertaining to the regulation of auctioneers. The bill would prohibit a person from conducting an auction unless he or she were licensed as an individual or a firm or exempt from licensure under the bill. An apprentice would not be prohibited from engaging in the conduct of an auction under the supervision and control of a licensed auctioneer. A corporation, partnership, limited liability company, association, or other legal entity could apply for licensure under the bill by designating an officer, partner, member, or managing agent as a qualifying member. The qualifying member would have to be licensed under the bill and the business would lose its license if the qualifying member lost his or her license or ceased to be the qualifying member. ("Qualifying member" is not defined in the bill.) The bill would exempt the following persons from licensure requirements:

--A person auctioning his or her own property (as long as the property was not acquired for the purpose of being auctioned off).

--A person auctioning property for the benefit of a nonprofit charitable, religious, or civic organization where the auctioneer did not receive compensation over \$1,000.

--A person auctioning property under a court order, a law enforcement agency auctioning abandoned or seized property, or a governmental unit auctioning property that was the result of a tax sale or was surplus or salvage personal property.

--An apprentice operating under the supervision and control of a licensed auctioneer.

--A dealer or broker licensed under Public Act 284 of 1937 (MCL 287.121 et al.) to auction livestock.

--A dealer licensed under the Michigan Vehicle Code (MCL 257.1 et al.) to auction motor vehicles.

--A dealer or manufacturer certified under the Natural Resources and Environmental Protection Act (MCL 324.80101 et al.) to auction boats or watercraft.

Auctioneers contracting with or employed by licensed or certified dealers would still have to be licensed under the bill's provisions.

The Department of Consumer and Industry Services would have to license a person as an auctioneer if he or she:

--Had either six months of apprentice experience with a licensed auctioneer (including active participation in at least five auctions), or had graduated from a department-accepted, accredited auction school and had 90 days of apprentice experience with a licensed auctioneer and participation in five auctions.

--Had completed an examination that covered, among other things, the provisions of the bill; ethics and ethical business practices for auctioneers; elementary mathematics; elementary principles of real estate economics; and elementary principles of the law regarding bulk sales, deeds, mortgages, contracts of sale, agency, leases, auctions, and brokerage. The bill would contain a provision for reciprocity so that individuals licensed in another state could conduct business in this state. A nonresident would, however, have to file a signed, irrevocable consent to service of process with the department.

--Was of good moral character.

The bill would "grandfather in" current auctioneers if a person applied for licensure within 12 months of the bill's enactment, had at least two years of experience before the bill's enactment date, and had conducted at

least fifteen auctions. A person committing certain acts as specified by the bill would be subject to penalties under the code.

In addition, the bill would establish record keeping requirements, require that auctioneers maintain separate custodial accounts in a financial institution for collection and disbursements of money relating to auctions, and would establish specific criteria regulating custodial accounts. An auctioneer would have to maintain a performance bond of \$25,000 or face license suspension or denial of a renewal. An auctioneer could not bring an action in a civil suit to collect payment for conducting an auction unless he or she were licensed. The bill would specify that the intent of the legislature was to exempt auctions conducted under any other act allocating powers for local units of government from the bill's licensure requirements. Further, the bill would repeal Public Act 224 of 1955 (MCL 446.51 et al.), which regulates sales at public auctions for villages and cities, and Chapter 21 of the Revised Statutes of 1846 (MCL 446.26 et al.), which, among other things, requires auctioneers to post a bond.

House Bill 4388 would amend the State License Fee Act (MCL 338.2201 et al.) to establish license and examination fees for auctioneers as follows.

--Application processing fee -- \$30.

--Examination fee -- \$35.

--Annual license fee (individual) -- \$100.

--Annual license fee (firm) -- \$100.

House Bill 4389 would amend the General Law Village Act (MCL 67.1), which regulates villages, and House Bill 4390 would amend the Fourth Class City Act (MCL 91.1), which regulates cities incorporated under the act, to prohibit the licensing of auctioneers by the local governmental units. Provisions allowing the municipalities to regulate auctions under local ordinances would not be changed.

The bills are tie-barred to each other.

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

Hundreds, if not thousands, of auctions take place around the state each year. Auctions can generate revenue from several hundred dollars to hundreds of thousands of dollars. Though auctioneers are required under state laws to collect and pay sales tax, some do not. Many fly-by-night operations exist where an auctioneer brings merchandise into the state, sells the merchandise quickly at auction, and then disappears out of state just as quickly without paying the sales tax to the state. House Bill 5874 would give a needed enforcement tool to begin to crack down on such operations. Since auctions must be advertised, it will not be too difficult for state or local officials to monitor auction activity and to check to see if the auctioneer is licensed. If there is no license, proper steps could be taken before the auction was conducted to ensure that the auctioneer was duly qualified for licensure and the business legitimate. Therefore, the bill could provide a necessary deterrent to disreputable auctioneers from targeting Michigan as a place for their operations.

For:

Many people have raised a concern over the practice of some out-of-state businesses of bringing poor quality or defective goods into the state to be sold at auction quickly and then leaving before consumers realize that they have been "had", so to speak. Licensure requirements may not stop such an operation from conducting business once or twice in the state, but it will make it easier for the Department of Consumer and Industry Services to crack down on illegitimate operations. Also, consumers would be able to call the department and verify that an auction they are interested in attending is being conducted by a duly licensed auctioneer. Other consumer protections built into House Bill 5874 are the requirements for an auctioneer to post a performance bond, record keeping requirements, and prohibitions on the practice of shilling, capping, and steering (practices by which auctioneers have "plants" in the crowd to drive up the bidding). The bills would benefit both industry members and consumers.

For:

According to industry members, auctioneers should attempt to verify rightful ownership of property to be auctioned. Often liens exist on land and buildings and on some types of personal property such as

construction equipment. House Bill 5874 would require auctioneers to do a lien or Uniform Commercial Code check against the property to be auctioned.

The Department of Consumer and Industry Services does not support licensure for auctioneers. (5-22-98)

Though the bill does not specifically address the situation mentioned previously in which the auctioneer did not verify the legality of a group of brothers arranging for an auction of their mother's estate in contradiction to their mother's will, at least complaints could be brought to the department and possible license sanctions could be levied against an auctioneer who exhibited such conduct. Also, a person injured through such a situation might have some relief through the performance bond that the auctioneer would be required to post. The bills are not a cure-all, nor would they relieve consumers of responsibility in choosing auctions and auctioneers wisely, but they would protect consumers by establishing some educational requirements and operational guidelines and, through license revocation, could weed out the "bad apples".

Against:

Quite often licensure measures are used by industry members to restrict access to an industry. This flies in the face of encouraging open competition, which in itself often helps to weed out disreputable operators as people do not come back unless they receive good service. Any time goods or services are sought, consumers need to exercise good judgment in making choices and cannot rely on the state to do the decision-making for them.

Response:

For most consumers, hiring an auctioneer is not an everyday occurrence, but a once in a lifetime event. Therefore, the argument that a dissatisfied customer will seek out a reputable dealer the next time around does not hold. Further, though it is true that consumers buying items at auction should exercise judgment as to the quality of an item or to the reputation of the auctioneer, without licensing it is nearly impossible for even the wisest of consumers to obtain information on a particular auctioneer or to determine the quality of merchandise being sold before the purchase.

POSITIONS:

The Michigan State Auctioneers Association supports the bills. (5-22-98)

The Michigan Municipal League is neutral on the bills. (5-21-98)

Analyst: S. Stutzky

■ 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.