

A SUMMARY OF HOUSE BILLS 4119-4122 AS INTRODUCED 1-31-01

Currently, someone may become an auctioneer under a variety of state laws and within a variety of local jurisdictions depending on the law in question. Generally, someone can become an auctioneer in a county under the Revised Statutes of 1846, in a township under Public Act 224 of 1955, or in a village (under the General Law Village Act) or fourth class city (under the Fourth Class City Act) that has an ordinance requiring the licensing of auctioneers.

House Bills 4121 and 4122 would strike provisions currently allowing villages and fourth class cities, respectively, to license auctioneers, while House Bill 4119 would repeal the laws regarding township and county auctioneers and instead require that auctioneers be licensed by the state. House Bill 4140 would create license fees for the proposed state licensure of auctioneers.

More specifically, the bills would do the following:

House Bill 4119. Currently, villages are allowed to enact ordinances to license auctioneers (MCL 67.1) and fourth class cities are allowed to enact ordinances to license, regulate, or prohibit auctioneers, auctions, “and sales by public bids or offers by buyers or sellers in the manner of auctions; and to regulate the fees to be paid by and to auctioneers” (MCL 91.1). However, if someone wishes to auction new merchandise outside of city or village limits, or inside a village that does not have an ordinance requiring the licensing of auctioneers, he or she can become an auctioneer by applying to a township clerk for a license (under Public Act 224 of 1955) or by paying a bond to the county treasurer (under Chapter 446 of the Revised Statutes of 1846).

Public Act 224 of 1955 requires a “person, firm, or corporation” that wants to conduct an auction to apply to the township clerk for a license, post a surety bond amounting to twice the value of the merchandise to be auctioned, and pay a license fee amounting to \$25 for each day the auction sale is to be held. Public Act 224 of 1955 does not apply to the sale at public auction of livestock, farm machinery or farm produce, used homestead goods (or other items commonly sold at farm or homestead sales), nor to certain new merchandise. Violations of the act are misdemeanors punishable by a fine of up to \$100 and imprisonment in the county jail for up to 90 days.

Alternatively, under Chapter 446 of the Revised Statutes of 1846, “any citizen of this state may become an auctioneer within the county he resides” for four years by paying the county treasurer “a bond in the penal sum of 2,500 dollars, with 2 or more sufficient sureties” to be approved by the county treasurer. (MCL 446.26) Anyone who executes and delivers such bond to the county treasurer is thereby an auctioneer in that county, is authorized to carry on and perform the business of an auctioneer, and is required to conform to the requirements in this part of the Revised Statutes.

Anyone who acts as an auctioneer without first having delivered the required bond to the county treasurer is guilty of a misdemeanor punishable by a fine of up to \$500.

The bill would repeal current law governing auctions at the township and county level and instead would add a new Article 28 to the Occupational Code (MCL 339.303a et al.) to establish a system of state-wide licensure for auctioneers. The bill also would create a Board of Auctioneers in the Department of Consumer and Industry Services, create penalties for violating the proposed licensing requirements, and amend the code to establish January 1 as the annual license renewal date for auctioneers. (Note: Article 3 of the code describes the various requirements for occupational boards, including composition and qualification of members. See MCL 339.301 et al.)

Definitions. The bill would define “auction” to mean “the sale or offer for sale by bidding of real or personal property at a public or private location,” and “auctioneer” to mean “an individual who, for compensation, [was] engaged in the business of the conduct of or offers to engage in the conduct of an auction.”

Statutory regulation. The bill would prohibit an individual from conducting or offering to conduct an auction unless licensed or exempted from licensure under the bill. The bill also would prohibit a person from advertising or using the term “auction” or “auctioneer” (or any other term of similar meaning that connoted that the person was licensed under the bill) unless that person obtained a license under the bill or was specifically exempt from licensure under the bill.

License applicants and “qualifying members.” The bill would allow a corporation, partnership, limited liability company, association, or other legal entity to apply for licensure under the bill if at least one of its officers, partners, members, or managing agents were designated as a “qualifying member” (though the bill does not define “qualifying member”). The “qualifying member” would be the individual to whom the DCIS issued a license under the bill, and would be responsible for exercising the supervision and control of the activities regulated by the bill so as to assure full compliance with the bill and any rules promulgated under the bill.

If a “qualifying member’s” license were suspended, revoked, or denied, the DCIS would be required to suspend, revoke, or deny the license of a corporation, partnership, limited liability company, association, or other legal entity. Also, if the “qualifying member” of a licensee stopped being the licensee’s “qualifying member,” the licensee’s license would automatically be suspended. (Note: Although the “qualifying member” apparently would hold the license, apparently the “qualifying member’s” legal entity would be the actual licensee.)

Licensure exemptions. The bill would exempt the following persons from licensure requirements:

- A person auctioning his or her own personal or real 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 charitable, religious, or civic organization where the auctioneer were not compensated;

- An agent of the court auctioning real or personal property under a court order, a law enforcement agency auctioning abandoned or seized property, or a governmental unit auctioning property as the result of a tax sale or as surplus or salvage personal property;
- A dealer or broker licensed under Public Act 284 of 1937 (MCL 287.121 et al.) auctioning livestock (though not auctioneers who contracted with licensed livestock dealers or brokers to conduct an auction);
- A dealer licensed under the Michigan Vehicle Code (MCL 257.1 et al.) to auction motor vehicles (though not auctioneers who contracted with a dealer licensed under the Michigan Vehicle Code to conduct an auction); and
- A dealer or manufacturer auctioning boats or watercraft required to have a certificate of title under Part 801 (Marine Safety) of the Natural Resources and Environmental Protection Act (though not auctioneers who contracted with NREPA-licensed dealers or manufacturers to conduct an auction).

Licenses. The Department of Consumer and Industry Services (DCIS) would be required to issue a license as an auctioneer to an individual who was of good moral character, had completed the required examination, and who had either (a) two years of apprentice experience with a licensed auctioneer or (b) had graduated from a board-accepted, accredited auction school and had one year of apprentice experience with a licensed auctioneer. In addition, the individual would have to verify having had participated in at least ten auctions, verified in an affidavit of a licensed auctioneer, and provide the names and addresses of the parties on whose behalf the auction was held and the dates of the auctions.

The DCIS would be required to issue a license without an examination to a nonresident individual who, at the time of application, were licensed, registered, certified, or otherwise regulated by another state if that state's requirements were substantially equivalent to the bill's requirements and that state offered reciprocal licensure, certification, or registration to Michigan licensees.

Examinations. The Department of Consumer and Industry Services (DCIS) and the board of auctioneers would be required to develop an examination for auctioneer license applicants under section 316 of the code (which, among other things, allows the department and a board to adopt an examination or test prepared by another agency). The test would have to include, but would not be limited to, the following subject areas: the bill's provisions; the ethics and ethical practices of the auction business; elementary mathematics; elementary principles of real estate economics; and elementary principles of the law regarding bulk sales, deeds, mortgages, contracts or sale, agency, leases, auctions, and brokerage.

The DCIS would be required to administer the examinations on at least a quarterly basis, though it could administer them more frequently if the board of auctioneers determined that it were warranted.

"Grandfather" clause. The DCIS would be required to license as an auctioneer, after verifying the three years' required experience in conducting auctions, an individual who applied for a license

not more than two years after the bill took effect and who submitted an affidavit attesting to experience in conducting at least twelve auctions in the three years before the bill took effect.

Custodial accounts. Under the bill, money paid by any person to a licensee would be considered to be held in trust for the benefit of the person making the payment, and the licensee would be considered the trustee for the money. The bill further would require licensees to establish “custodial accounts,” in which to deposit all checks, drafts, negotiable instruments, and cash tendered by a buyer for the payment of an item sold by auction. Licensees could not permit an advance payment of money by a customer to be deposited in the licensee’s business or personal account or to be commingled in any way with funds belonging to the licensee except as allowed by the bill (see below). A licensee would be required to deposit customer money into a separate custodial account until the transaction involved were consummated or terminated within two banking days after the auction transaction, but not later than five days after its receipt.

The separate custodial account would have to be an interest bearing account maintained in a federally insured bank, savings and loan association, credit union, or depository recognized by the DCIS; would have to designate the licensee as the custodian or trustee; would have to provide for withdrawal of money without previous notice and not be encumbered in any way; and could not contain any of the licensee’s money except for what was necessary to pay service charges on the account or to maintain the account when customer money was not on deposit.

The licensee would be required to make disbursements relative to a sale by auction through the custodial account in the time period and manner described in the bill. Disbursements from the separate custodial account could be made only for payment as the result of the sale of an item by the licensee; refund of an amount to the customer upon termination of the transaction; or payment to the licensee of a commission and documented and approved expenses following the consummation of a transaction upon which a commission were payable to the licensee.

The licensee would be required to keep records of money deposited in the separate custodial account that showed all of the following: the date of the receipt of money from a customer and the name of the customer on whose behalf the money was paid; the purpose for which the money was paid; the date the money was deposited in the custodial account; the date of withdrawal of the money, the purpose of the withdrawal, and the name of the person to whom the money was paid; and any other pertinent information regarding the transaction.

Record keeping. Licensed auctioneers would be prohibited from conducting an auction unless a written contract were executed between the person desiring the auction and the licensed auctioneer. Licensees would be required to keep copies of their written contracts as part of their records and, upon request, make them available to the DCIS for inspection during normal business hours. Licensees would have to keep written records of each auction sale for at least three years from the date of the auction, and would have to include at least the following information in these records: consignment receipts, bidder registrations, and documents relating to final settlements with consignors. Licensees also would have to keep records on all current and past employees for at least three years after an employee left their employ, and would have to include in these employee records the employee’s name, address, Social Security number, and date of birth.

Upon notice given to a licensee, the DCIS and the board of auctioneers could inspect any of a licensee's records, including those for the separate custodial accounts.

Place of business, display of license. Auctioneers would be required to maintain a regular place of business in the state, and licensees would be required to conspicuously post a copy of their license at their place of business. If more than one place of business were maintained, the DCIS would be required to issue a duplicate license at no additional cost.

Violations and penalties. If a licensee committed any of the following acts would be subject to the sanctions and penalties contained in Article 6 of the Occupational Code (see MCL 339.602, which refers to license actions, civil fines of up to \$10,000, censure, probation, and restitution):

- Failed to enter into a written contract with a seller or consignor before placing or authorizing any advertising for an auction;
- Failed to reduce to writing or to issue any appropriate documentation relative to an auction-related transaction;
- Failed to appropriately use or issue payment from a custodial fund;
- Permitted an unlicensed auctioneer to conduct an auction;
- Was involved in capping, shilling, or steering relative to an auction;
- Failed to disclose his or her license number on all advertising;
- Knowingly misrepresented the nature of value of an item being auctioned; or
- Violated the requirements of the bill or a rule promulgated under the bill.

Legislative intent. The bill specifies that it is the intent of the legislature that the bill exempt from licensure the conduct of auctions under any other act allocating powers for local units of government.

Repealers. 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 4120 would amend the State Licensing Fee Act (MCL 338.2228) to establish a \$30 application licensing fee, a \$35 examination fee, and a \$100 annual license fee (for both firms and for individuals) for auctioneers.

House Bill 4121 would amend the General Law Village Act (MCL 67.1), which regulates villages, and House Bill 4122 would amend the Fourth Class City Act (MCL 91.1), which regulates cities incorporated under the act, to prohibit villages and fourth class cities from licensing auctioneers (though fourth class cities would continue to be able to pass ordinances regulating or prohibiting auctions).

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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.