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BILL ANALYSIS



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House Bill 5294 (as passed by the House)
House Bill 5295 (Substitute H-1 as passed by the House)
Sponsor: Representative Shelley Taub
House Committee: Regulatory Reform
Senate Committee: Commerce and Labor

Date Completed: 12-7-04

CONTENT

House Bill 5294 would amend Chapter 47 (Forfeiture or Seizure of Certain Property) of the Revised Judicature Act to allow the seizure and forfeiture of the proceeds of a violation of the "Public Auction Licensing Act".

House Bill 5295 (H-1) would amend Public Act 224 of 1955, which regulates sales at public auction, to do all of the following:

- Extend the Act's licensure requirement to auctions held within cities that did not have a similar ordinance (in addition to townships and villages).
- Regulate the sale at public auction of any merchandise, rather than any "new merchandise".
- Exclude from regulation under the Act a regularly scheduled auction sale of motor vehicles held at a permanent location and conducted by a bonded auctioneer.
- Provide that a license issued under the Act would not be valid in any city or village that had enacted an ordinance for the licensing of auctions that was at least as restrictive as the Act.
- Establish posting requirements for license applications and licenses.
- Require a published advertisement or announcement of a sale to show the applicant's license number, date of expiration, and State sales tax number.
- Increase the maximum fine for a violation of the Act from \$100 to \$5,000.
- Specify that a person could bring an action to obtain a declaratory judgment regarding a violation of the Act or to enjoin a person from violating the Act.

The bill also would rename the Act the "Public Auction Licensing Act".

House Bill 5294 is tie-barred to House Bill 5295.

A more detailed description of House Bill 5295 (H-1) follows.

Scope of the Act

Presently, a person, firm, or corporation must have a license under the Act in order to sell, dispose of, or offer for sale at public auction any "new merchandise" at any place outside the limits of any city or village or within the limits of any village that does not have an

ordinance providing for the licensing of auction sales. "New merchandise" means all merchandise not previously sold at retail. The bill, instead, would require a person to be licensed under the Act in order to sell, dispose of, or offer any merchandise for sale at public auction within the limits of any township in the State, or within the limits of any city or village that did not have an auction licensing ordinance at least as restrictive as the Act.

Under the Act, a license is not valid in any village that has enacted an ordinance providing for the licensing of auction sales. The bill provides instead that, if a city or village had enacted an ordinance providing for the licensing of auction sales and the ordinance provided requirements for the regulation of public auctions that were at least as restrictive as the Act, a license issued under the Act would not be valid in that city or village.

The Act does not apply to any of the following:

- A sale at public auction of livestock, farm machinery, farm produce, or used homestead goods or other items commonly sold at farm or homestead sales.
- An auction sale by an individual of merchandise, or of replacement stock of merchandise inventory, for the payment of personal property taxes.
- An auction sale under a mortgage foreclosure or a sale made pursuant to court order in a foreclosure proceeding.

The bill would add to that list a regularly scheduled auction sale of motor vehicles held at a permanent location and conducted by an auctioneer who complied with Sections 26 to 35 of Revised Statute 21 of 1846 (MCL 446.26-446.35). (Those sections require auctioneers to be bonded, take an oath, and pay duties on certain sales.)

Application for Licensure

At least 10 days before a proposed auction sale, an applicant for licensure must file an application with the clerk of the township where the sale is proposed. The bill would require a person seeking a license to apply with the clerk of the city, village, or township where the person proposed to hold the sale.

Under the Act, an application must include all of the following:

- The name, residence, and post office address of the person, firm, or corporation applying and, if a firm or corporation, the name and address of the members of the firm or officers of the corporation.
- The name, residence, and post office address of the auctioneer who will conduct the auction sale.
- A detailed inventory and description of all merchandise to be offered for sale and a valuation of the merchandise.
- A statement as to whether a sale at the public auction is with or without reservation.

The bill would require the name and street address of the applicant and, if applicable, the name and street address of the officers and directors of a corporation, the officers and directors of an association, the partners of a partnership, the manager or managers of a limited liability company, or the manager or other person designated to control the operation of any other legal entity that applied for a license. The bill also would refer to the street address, rather than residence and post office address, of the auctioneer.

At the time of filing, an applicant must file and deposit with the township clerk a bond, with sureties to be approved by the township board, in the amount of two times the value of the merchandise proposed to be offered for sale at the auction. The bill instead would require an applicant to furnish a surety bond to the city, village, or township clerk issued by a surety approved by the clerk. The amount of the surety bond would have to equal or exceed twice the value of the merchandise to be offered for sale.

At the time of filing an application and bond, the applicant must pay to the township clerk a license fee of \$25 for each day the auction sale would be held. The bill would require the payment of the fee to the city, village, or township clerk.

Posting Application/Publishing Advertisement

The bill would require an applicant for a public auction license to post a copy of the application, including the inventory filed with it, in a conspicuous place in the sales room or place where the sale was conducted. The copy would not have to show the purchase price of the goods. The applicant would have to attach a duplicate copy of the license to the front door of the premises where the sale was conducted in a manner that was clearly visible from the street.

Any advertisement or announcement published in connection with a sale would have to show conspicuously on its face the license number and date of expiration, the name and business address of the applicant, and the applicant's State sales tax number.

Penalties & Remedies

A violation of the Act is a misdemeanor, punishable by up to 90 days' imprisonment, a maximum fine of \$100, or both. The bill would increase the maximum fine to \$5,000.

In addition, the bill specifies that, regardless of whether a person had an adequate remedy at law, or whether the Attorney General or a prosecuting attorney took criminal action, a person could bring an action to do either of the following:

- Obtain a declaratory judgment that a practice was in violation of the Act.
- Enjoin by temporary or permanent injunction a person who was engaging or was about to engage in a practice in violation of the Act.

MCL 600.4701 (H.B. 5294)
446.51 et al. (H.B. 5295)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bills would have no impact on State revenue or expenditures. Some local units could experience a minimal increase in revenue from the requirement that auctions within city limits be licensed under the Act, and that auctions within villages be licensed through the village, rather than the township. Some townships could experience a minimal reduction in revenue from the latter change. Local units experiencing revenue increases also could experience a minimal increase in expenditures because House Bill 5295 (H-1) would require those units to perform licensing duties, while local units receiving less revenue could experience minimally decreased expenditures.

By increasing the misdemeanor fine for violating the Act, the bills potentially would increase penal fine revenue constitutionally dedicated to public libraries. To the extent that the bills would allow individuals to bring certain actions regardless of action by the Attorney General or prosecuting attorney, it could increase local court costs.

This analysis is preliminary and will be revised as new information becomes available.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.