

# HOUSE BILL No. 5395

December 30, 2003, Introduced by Reps. Wojno, Byrum, Hopgood, Julian and Caswell and referred to the Committee on Regulatory Reform.

A bill to amend 1980 PA 299, entitled  
"Occupational code,"  
by amending section 303a (MCL 339.303a), as amended by 1995 PA  
183, and by adding article 28; and to repeal acts and parts of  
acts.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 303a. The terms provided for in this act shall  
2 commence on the following dates:

3	Accountancy	July 1
4	Architects	April 1
5	Athletic board of control	April 1
6	<b>Auctioneers</b>	<b>January 1</b>
7	Barbers	October 1
8	Collection agencies	July 1

1	Community planners	July 1
2	Cosmetology	January 1
3	Employment agencies	October 1
4	Foresters	April 1
5	Hearing aid dealers	October 1
6	Land surveyors	April 1
7	Landscape architects	July 1
8	Marriage counselors	October 1
9	Mortuary science	July 1
10	Nursing home administrators	January 1
11	Professional engineers	April 1
12	Real estate appraisers	July 1
13	Real estate brokers and salespersons	July 1
14	Residential builders	April 1
15	Social workers	October 1

## ARTICLE 28

17       **Sec. 2801. As used in this article:**

18       **(a) "Auction" means the sale or offer for sale by bidding of**  
 19 **real or personal property at a public or private location.**

20       **(b) "Auctioneer" means an individual who, for compensation,**  
 21 **is engaged in the business of the conduct of or offers to engage**  
 22 **in the conduct of an auction.**

23       **(c) "Depository" means a state or nationally chartered bank**  
 24 **or state or federally chartered savings and loan association,**  
 25 **savings bank, or credit union whose deposits are insured by an**  
 26 **agency of the United States government under the laws of this**  
 27 **state or the United States.**

1       Sec. 2803. There is created a board of auctioneers.

2       Sec. 2805. (1) An individual shall not conduct or offer to  
3 conduct an auction unless licensed or exempt from licensure under  
4 this article.

5       (2) A corporation, partnership, limited liability company,  
6 association, or other legal entity may apply for licensure under  
7 this article if not less than 1 of its officers, partners,  
8 members, or managing agents is designated as a qualifying  
9 member. The department shall issue a license to the qualifying  
10 member upon that individual's fulfillment of the requirements of  
11 this article. The qualifying member is responsible for  
12 exercising the supervision and control of the activities  
13 regulated by this article so as to assure full compliance with  
14 this article and any rules that may be promulgated under this  
15 article.

16       (3) The department shall suspend, revoke, or deny the license  
17 of a corporation, partnership, limited liability company,  
18 association, or other legal entity when the license of the  
19 qualifying member is suspended, revoked, or denied.

20       (4) If the qualifying member of a licensee stops being its  
21 qualifying member, such circumstance operates as an automatic  
22 suspension of the entity's license. Upon request, the department  
23 may permit the license to remain in force for a reasonable period  
24 of time in order to allow the qualifying of a new qualifying  
25 member.

26       (5) A person shall not advertise or use the term "auction",  
27 "auctioneer", or any other term of similar meaning that connotes

1 that the person is licensed under this article unless that person  
2 obtains a license under this article or is specifically exempt  
3 from licensure under this article.

4 Sec. 2807. The following persons are exempt from licensure  
5 under this article:

6 (a) A person selling by auction his or her own real or  
7 personal property where that owner does not acquire the real or  
8 personal property solely for the purpose of resale by auction.

9 (b) A person selling by auction real or personal property for  
10 the benefit of a charitable, religious, or civic organization  
11 where the auctioneer does not receive compensation.

12 (c) An agent or employee of a court of competent jurisdiction  
13 selling by auction real or personal property pursuant to a court  
14 order; a law enforcement agency selling by auction abandoned or  
15 seized property; or a governmental unit selling by auction real  
16 or personal property as the result of a tax sale or as surplus or  
17 salvage personal property.

18 (d) A dealer or broker licensed under 1937 PA 284, MCL  
19 287.121 to 287.131, selling by auction livestock. This  
20 subdivision does not exempt from licensure under this article an  
21 auctioneer who contracts with a dealer or broker licensed under  
22 1937 PA 284, MCL 287.121 to 287.131, for the conduct of the  
23 auction.

24 (e) A dealer licensed under the Michigan vehicle code, 1949  
25 PA 300, MCL 257.1 to 257.923, selling by auction motor vehicles.  
26 This subdivision does not exempt from licensure under this  
27 article an auctioneer who contracts with a dealer licensed under

1 the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923, for  
2 the conduct of the auction.

3 (f) A dealer or manufacturer selling by auction boats or  
4 watercraft required to have a certificate of title under part 801  
5 of the natural resources and environmental protection act, 1994  
6 PA 451, MCL 324.80101 to 324.80199. This subdivision does not  
7 exempt from licensure under this article an auctioneer who  
8 contracts with a dealer or manufacturer licensed under part 801  
9 of the natural resources and environmental protection act, 1994  
10 PA 451, MCL 324.80101 to 324.80199, for the conduct of the  
11 auction.

12 Sec. 2809. Except as otherwise provided in section 2819,  
13 the department shall issue a license as an auctioneer to an  
14 individual who meets all of the following conditions:

15 (a) Has either 2 years of apprentice experience with a  
16 licensed auctioneer or proof of graduation from an accredited  
17 auction school acceptable to the board and 1 year of apprentice  
18 experience with a licensed auctioneer. Under both circumstances,  
19 the individual shall have actively participated in the conduct of  
20 not less than 10 auctions. The experience shall be verified by  
21 an affidavit of a licensed auctioneer and shall provide the names  
22 and addresses of the parties on whose behalf the auction was held  
23 and the dates of the auction.

24 (b) Has completed an examination as described in  
25 section 2815.

26 (c) Is of good moral character.

27 Sec. 2811. Money paid by any person to a licensee is

1 considered to be held in trust for the benefit of the person  
2 making the payment and the licensee is considered the trustee for  
3 the money.

4       Sec. 2813. (1) An auctioneer shall maintain a regular place  
5 of business in this state. If more than 1 place of business is  
6 maintained, the department shall issue a duplicate license at no  
7 additional cost. A regular place of business does not include a  
8 location used only as a warehouse.

9       (2) A licensed auctioneer shall not conduct an auction unless  
10 a written contract is executed between the person desiring  
11 auction services and the licensed auctioneer. A licensee shall  
12 keep a copy of the contract as part of his or her records and,  
13 upon request, make them available to the department for  
14 inspection during normal business hours.

15       (3) A licensee under this article shall maintain written  
16 records of each auction sale for a period of not less than 3  
17 years from the date of the auction sale. The records shall  
18 include, but not be limited to, all of the following:

19       (a) Consignment receipts.

20       (b) Bidder registrations.

21       (c) Documents relating to final settlements with consignors.

22       (4) A licensee under this article shall maintain records on  
23 all current employees and on past employees for not less than 3  
24 years after a past employee leaves the employment of the  
25 licensee. The records shall include the employee's name,  
26 address, social security number, and date of birth.

27       (5) A licensee under this article shall conspicuously post at

1 the regular place of business a copy of the license issued under  
2 this article.

3 (6) A licensee under this article shall establish a custodial  
4 account in the manner described in this section. The licensee  
5 shall deposit into the custodial account all checks, drafts,  
6 negotiable instruments, and cash tendered by a buyer for the  
7 payment of an item sold by auction. The licensee shall make a  
8 disbursement relative to a sale by auction through that custodial  
9 account in the time period and manner described in this section.

10 (7) A licensee shall not permit an advance payment of money  
11 by a customer to be deposited in the licensee's business or  
12 personal account or to be commingled in any way with funds  
13 belonging to the licensee, except as provided in this section.  
14 The licensee shall deposit customer money into a separate  
15 custodial account until the transaction involved is consummated  
16 or terminated within 2 banking days after the auction  
17 transaction, but not later than 5 days after its receipt.

18 (8) The separate custodial account is subject to the  
19 following requirements:

20 (a) Shall be an interest bearing account maintained in a  
21 depository recognized by the department.

22 (b) Shall designate the licensee as the custodian or  
23 trustee.

24 (c) Shall provide for withdrawal of money without previous  
25 notice and shall not be encumbered in any manner.

26 (d) Shall not contain any money of the licensee except for an  
27 amount sufficient to pay service charges on the account or to

1 maintain the account when customer money is not on deposit.

2 (9) Disbursements from the separate custodial account shall  
3 be made only for the following purposes:

4 (a) Payment as a result of the sale of an item by the  
5 licensee pursuant to the contract.

6 (b) Refund of an amount to the customer upon termination of  
7 the transaction.

8 (c) Payment to the licensee of a commission and documented  
9 and approved expenses following the consummation of a transaction  
10 upon which a commission is payable to the licensee.

11 (10) The licensee shall keep records of money deposited in  
12 the separate custodial account. The records shall show all of  
13 the following:

14 (a) The date of the receipt of money from a customer and the  
15 name of the customer on whose behalf the money was paid.

16 (b) The purpose for which the money was paid.

17 (c) The date the money was deposited in the custodial  
18 account.

19 (d) The date of withdrawal of the money, the purpose of the  
20 withdrawal, and the name of the person to whom the money was paid  
21 upon withdrawal.

22 (e) Any other pertinent information regarding the  
23 transaction.

24 (11) The department and the board may, upon notice given to a  
25 licensee, inspect the records required to be kept pursuant to  
26 this section.

27 Sec. 2815. (1) The department and the board shall develop



1 an examination for applicants for licensure under this article in  
2 the manner provided for in section 316.

3 (2) The examination described in subsection (1) shall  
4 include, but not be limited to, the following subject matter  
5 areas:

6 (a) The provisions of this article.

7 (b) Ethics and ethical practices as they relate to the  
8 business of conducting auctions.

9 (c) Elementary mathematics.

10 (d) Elementary principles of real estate and personal  
11 property economics.

12 (e) Elementary principles of the law regarding bulk sales,  
13 deeds, mortgages, contracts of sale, agency, leases, auctions,  
14 and brokerage.

15 (3) The department shall administer the examinations on at  
16 least a quarterly basis. The department may administer the  
17 examinations more often than on a quarterly basis if the board  
18 determines that circumstances exist that warrant the further  
19 administration of the examination.

20 Sec. 2817. (1) The department shall issue a license without  
21 examination to a nonresident individual who, at the time of  
22 application, is licensed, registered, certified, or otherwise  
23 regulated by another state if the requirements of that state, as  
24 determined by the board, are substantially the equivalent of the  
25 requirements of this article and if the other state offers  
26 licensure, certification, or registration on a reciprocal basis  
27 similar to this section to licensees under this article.

1       (2) A nonresident shall file an irrevocable consent to  
2 service of process, signed by the licensee. A process or  
3 pleading served upon the department shall be sufficient service  
4 upon the licensee. A process or pleading served upon the  
5 department under this section shall be in duplicate. The  
6 department shall immediately serve by first-class mail a copy of  
7 the process or pleading to the licensee's last known address as  
8 determined by the records of the department.

9       Sec. 2819. (1) Notwithstanding section 2809, the department  
10 shall license as an auctioneer, after verification of the  
11 experience requirements imposed in this section, an individual  
12 who applies not more than 2 years after the effective date of  
13 this article and submits an affidavit attesting to experience in  
14 the conduct of auctions for not less than 3 years before the  
15 effective date of this article.

16       (2) The department shall issue a license under this section  
17 only if the applicant's experience includes conducting 12 or more  
18 auctions.

19       Sec. 2821. A licensee who commits any of the following acts  
20 is subject to the sanctions and penalties contained in  
21 article 6:

22       (a) Fails to enter into a written contract with a seller or  
23 consignor before placing or authorizing any advertising for an  
24 auction.

25       (b) Fails to reduce to writing or fails to issue any  
26 appropriate documentation relative to an auction-related  
27 transaction.

1 (c) Fails to appropriately use or issue payment from a  
2 custodial fund.

3 (d) Permits an unlicensed auctioneer to conduct an auction.

4 (e) Is involved in capping, shilling, or steering relative to  
5 an auction.

6 (f) Fails to disclose his or her license number on all  
7 advertising.

8 (g) Knowingly misrepresents the nature or value of an item  
9 being auctioned.

10 (h) Violates the requirements of this article or a rule  
11 promulgated under this article.

12 Enacting section 1. The following acts and parts of acts  
13 are repealed:

14 (a) 1955 PA 224, MCL 446.51 to 446.60.

15 (b) 1846 RS 21, MCL 446.26 to 446.35.

16 Enacting section 2. This amendatory act does not take effect  
17 unless all of the following bills of the 92nd Legislature are  
18 enacted into law:

19 (a) Senate Bill No. \_\_\_\_\_ or House Bill No. 5396 (request  
20 no. 04000'03 a).

21 (b) Senate Bill No. \_\_\_\_\_ or House Bill No. 5397 (request  
22 no. 04000'03 b).

23 (c) Senate Bill No. \_\_\_\_\_ or House Bill No. 5398 (request  
24 no. 04000'03 c).