

Legislative Analysis



REGISTRATION OF AUCTIONEERS

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Senate Bills 603 and 604

Sponsor: Sen. Ron Jelinek

House Committee: Commerce

Senate Committee: Economic Development, Small Business and Regulatory Reform

Complete to 11-27-06

A SUMMARY OF SENATE BILLS 603 & 604 AS PASSED BY THE SENATE 2-15-06

BRIEF SUMMARY: Senate Bill 603 would add Article 28 to the Occupational Code (MCL to do the following:

- Require registration for auctioneers and prescribe related responsibilities for the Department of Labor and Economic Growth (DLEG).
- Create a Board of Auctioneers and require the board and DLEG to develop an examination for applicants.
- Require written contracts between registered auctioneers and clients.
- Require a registered auctioneer to deposit all funds related to the conduct of an auction in a custodial account separate from the registrant's own funds.
- Specify that registrants who commit certain acts be subject to penalties and sanctions under the Occupational Code.
- Require registered auctioneers to maintain written records about auction sales and employees for at least three years.
- Require DLEG to register an individual who submitted an affidavit attesting to at least three years' experience in the conduct of auctions before the bill's effective date, if the applicant had conducted at least 12 auctions (as verified by DLEG) and applied within two years after the bill's effective date.
- Grant reciprocity to a person regulated under similar regulations in another state if that state granted reciprocity to Michigan registrants.

Senate Bill 604 would amend the State License Fee Act to establish application, examination, and registration fees for registered auctioneers. The fees would include a \$50 application processing fee; a \$50 examination fee; a \$200 annual registration fee for individuals; and a \$200 annual registration fee for firms. The two bills are tie-barred to each other, meaning neither could take effect unless both were enacted.

FISCAL IMPACT:

Senate Bill 603 will increase expenditures for the Department of Labor and Economic Growth, which would be required to create a registration program for auctioneers, including administering examinations and enforcement of the bill's provisions. Departmental estimates place the initial number of applicants for the registered

auctioneer designation at 800, at a cost of \$169,000 for the first year. The fees for auctioneer registration are defined in a tie-barred bill, Senate Bill 604.

Senate Bill 604 will increase State restricted revenue by approximately \$205,000 for 800 applicants, according to Department of Labor and Economic Growth (DLEG) estimates. The increased revenue results from auctioneer application, examination, and registration fees specified in this bill. The costs of this new registration program result from a tie-barred bill, Senate Bill 603, which defines additional duties for DLEG.

DETAILED SUMMARY:

Following is a more detailed description of Senate Bill 603.

Registration Requirement. The bill would prohibit a person from using the title "registered auctioneer" unless registered under the new Article 28. ("Auctioneer" would mean an individual who, for compensation, is engaged in the business of the conduct of, or offers to engage in the conduct of, an auction. "Auction" would mean the sale or offer for sale by bidding of real or personal property at a public or private location.) The term of a registration issued under the bill would begin January 1. The bill also would prohibit a person from advertising or using the term "registered auctioneer" or any other similar term that connoted that the person was registered under Article 28 without a registration.

Registration of Firms. A corporation, partnership, limited liability company, association, or other legal entity could apply for registration if at least one of its officers, partners, members, or managing agents were designated as a qualifying member. DLEG could issue a registration to a qualifying member who fulfilled the requirements specified in the bill. The qualifying member would be responsible for supervising and controlling the activities regulated by Article 28 to assure full compliance with it and any rules promulgated under the article.

DLEG would have to suspend, revoke, or deny a company's registration when the qualifying member's registration was suspended, revoked, or denied. If the qualifying member of an entity were no longer a qualifying member, the entity's registration would be automatically suspended. Upon request, DLEG could permit the registration to remain in force for a reasonable period of time to allow the qualifying of a new qualifying member.

Exemptions. The following people would be exempt from Article 28, so long as they did not use the term "registered auctioneer": 1) a dealer or broker licensed under Public Act 284 of 1937 selling livestock by auction; 2) a dealer licensed under the Michigan Vehicle Code selling motor vehicles by auction; and 3) a dealer or manufacturer selling by auction boats or watercraft required to have a certificate of title under Part 801 (Marine Safety) of the Natural Resources and Environmental Protection Act.

Registration Criteria. Except as otherwise provided, the bill would require DLEG to issue a registration to an individual or the qualifying officer of a legal entity who met all

of the following requirements: 1) had either two years of apprentice experience with a registered auctioneer or proof of graduation from an accredited auction school acceptable to the Board of Auctioneers and one year of apprentice experience with a registered auctioneer; 2) had actively participated in the conduct of at least 10 auctions, verified by an affidavit of a registered auctioneer providing the names and addresses of the parties on whose behalf the auction was held and the dates of the auction; 3) had completed the prescribed examination; and 4) was of good moral character.

A registered auctioneer would have to maintain a regular place of business in the state. If the auctioneer maintained more than one place of business, DLEG would issue a duplicate registration at no additional cost. A regular place of business could not include a location used only as a warehouse. A registrant would have to post conspicuously a copy of the registration issued under the bill at the regular place of business.

Written Contract & Records. A registered auctioneer could not conduct an auction without executing a written contract with the person desiring auction services. A registrant would have to keep a written copy of the contract as part of his or her records and, upon request, make them available to DLEG for inspection during normal business hours.

A registrant would have to maintain written records of each auction sale for a period of at least three years from the date of the sale. The records would have to include consignment receipts, bidder registrations, and documents relating to final settlements with consignors. A registrant also would have to maintain employee records, on all current employees and on past employees for at least three years they left employment. Records would have to include the employee's name, address, Social Security number, and date of birth

Custodial Account. Money paid by a person to a registrant in connection with an auction would be considered to be held in trust for the benefit of the person making the payment. The registrant would be considered the trustee for the money. A registrant would have to establish a custodial account and deposit into it all payments from buyers. The registrant would have to make disbursements through that custodial account as specified in the bill.

A registrant could not permit an advance payment of money by a customer to be deposited in the registrant's business or personal account or to be commingled in any way with the registrant's own funds, except as specifically provided. The registrant would have to deposit customer money into a separate custodial account within two days after the auction transaction but not more than five days after its receipt, until the transaction involved was consummated or terminated.

The separate custodial account would have to meet the following requirements: 1) be an interest-bearing account maintained in a depository recognized by DLEG; 2) designate the registrant as the custodian or trustee; 3) provide for withdrawal of money without previous notice and not be encumbered in any manner; and 4) not contain any of the registrant's money except for an amount sufficient to pay service charges on the account

or to maintain the account when customer money was not on deposit. ("Depository" would mean a state- or nationally-chartered bank, savings and loan association, savings bank, or credit union whose deposits are insured by an agency of the United States government.)

Disbursements from the custodial account could be made only for the following purposes: payment as a result of the sale of an item, refund of an amount to the customer upon termination of the transaction, and payment to the auctioneer of a commission and documented and approved expenses following the consummation of a transaction.

The registrant would have to keep records of money deposited in the separate custodial account showing: 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 upon withdrawal; and any other pertinent information regarding the transaction. Upon notice to a registrant, DLEG and the Board of Auctioneers could inspect the records specified above.

Auctioneer Examination. The bill would require DLEG and the Board of Auctioneers to develop an examination for registration applicants in the manner specified in Section 316 of the Occupational code. (That section requires a board and DLEG to develop an examination or test required by an article. The board and department must give special emphasis to an alternative form of testing that permits a person to demonstrate qualifications that may not be evident under a written examination. The board and department may adopt an examination or test prepared by another agency if it serves as a basis for determining whether a person has the knowledge and skills to perform an occupation with competence.)

The examination would have to cover the provisions of Article 28; ethics and ethical practices as they relate to the business of conducting auctions; elementary mathematics; elementary principles of real estate and personal property economics; and elementary principles of law regarding bulk sales, deeds, mortgages, contracts of sale, agency, leases, auctions, and brokerage. DLEG would have to administer the examinations at least quarterly, and could administer them more frequently if the board determined it to be warranted.

Reciprocity. DLEG would have to issue a registration without examination to a nonresident individual who, at the time of application, was licensed, registered, certified, or otherwise regulated by another state, if the board determined that state's requirements were substantially equivalent to the requirements of Article 28 and if that state offered similar registration on a reciprocal basis to Michigan registrants.

A nonresident would have to file an irrevocable consent to service of process, signed by the registrant. A process or pleading served upon DLEG would be sufficient service upon the registrant. The process or pleading would have to be in duplicate, and the department

immediately would have to serve by first-class mail a copy to the registrant's last known address.

Sanctions & Penalties. A registrant who committed any of the following acts would be subject to the sanctions and penalties specified in Article 6:

- ** 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 failed to issue any appropriate documentation relative to an auction-related transaction.
- ** Failed to use or issue payment appropriately from a custodial fund.
- ** Was involved in capping, shilling, or steering relative to an auction.
- ** Failed to disclose his or her registration number on all advertising.
- ** Knowingly misrepresented the nature or value of an item being auctioned.
- ** Violated the requirements of Article 28 or a rule promulgated under it.

(Sanctions under Article 6 include the suspension, denial, or revocation of a license or certificate of registration, the placement of limits on a license or certificate of registration, censure, probation, an administrative fine of up to \$10,000, and payment of restitution.)

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