

Act No. 489
Public Acts of 2006
Approved by the Governor
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STATE OF MICHIGAN
93RD LEGISLATURE
REGULAR SESSION OF 2006

Introduced by Senators Jelinek, Allen and Basham

ENROLLED SENATE BILL No. 603

AN ACT to amend 1980 PA 299, entitled "An act to revise, consolidate, and classify the laws of this state regarding the regulation of certain occupations; to create a board for each of those occupations; to establish the powers and duties of certain departments and agencies and the boards of each occupation; to provide for the promulgation of rules; to provide for certain fees; to provide for penalties and civil fines; to establish rights, relationships, and remedies of certain persons under certain circumstances; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts," by amending section 303a (MCL 339.303a), as amended by 1995 PA 183, and by adding article 29.

The People of the State of Michigan enact:

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

Accountancy	July 1
Architects	April 1
Auctioneers	October 1
Barbers	October 1
Collection agencies	July 1
Community planners	July 1
Cosmetology	January 1
Employment agencies	October 1
Foresters	April 1
Hearing aid dealers	October 1
Land surveyors	April 1
Landscape architects	July 1
Mortuary science	July 1
Professional engineers	April 1
Real estate appraisers	July 1
Real estate brokers and salespersons	July 1
Residential builders	April 1

ARTICLE 29

Sec. 2901. As used in this article:

(a) “Apprentice” means an individual engaged in learning the business of conducting an auction, under the control and supervision of a registered auctioneer.

(b) “Auction” means the sale or offer for sale by bidding of real or personal property at a public or private location.

(c) “Auctioneer” means an individual who, for compensation, is engaged in the business of the conduct of or offers to engage in the conduct of an auction.

(d) “Depository” means a state or nationally chartered bank or state or federally chartered savings and loan association, savings bank, or credit union whose deposits are insured by an agency of the United States government under the laws of this state or the United States.

Sec. 2903. There is created a board of auctioneers.

Sec. 2905. (1) A person shall not use the title “registered auctioneer” unless registered under this article.

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

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

(4) Except as otherwise provided in this subsection, if the qualifying member of a registrant stops being its qualifying member, such circumstance operates as an automatic suspension of the entity’s registration. Upon request, the department may permit the registration to remain in force for 60 days in order to allow the qualifying of a new qualifying member.

Sec. 2907. Except as otherwise provided in section 2917, the department shall issue a registration as a registered auctioneer to an individual or to the qualifying member of a legal entity who meets all of the following conditions:

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

(b) Has completed an examination as described in section 2915.

(c) Is of good moral character.

Sec. 2909. (1) Notwithstanding section 2907, the department shall register as an auctioneer, after verification of the experience requirements imposed in this section, an individual who applies not more than 2 years after the effective date of this article and submits to the department an affidavit attesting to experience in the conduct of auctions for not less than 3 years before the effective date of this article.

(2) The department shall issue a registration under this section only if the applicant’s experience includes conducting 12 or more auctions.

Sec. 2911. Money paid by any person to a registrant in connection with an auction under this article is considered to be held in trust for the benefit of the person making the payment and the registrant is considered the trustee for the money.

Sec. 2913. (1) A registered auctioneer shall maintain a regular place of business in this state. If more than 1 place of business is maintained, the department shall issue a duplicate registration at no additional cost. A regular place of business does not include a location used only as a warehouse. Records required to be kept under this article shall be kept at that regular place of business.

(2) A registered auctioneer shall not conduct an auction unless a written contract is executed between the person desiring auction services and the registered auctioneer. A registrant shall keep a copy of the contract as part of his or her records and, upon request, make them available to the department for inspection or audit, or both, during normal business hours.

(3) A registrant under this article shall conspicuously post at the regular place of business a copy of the registration issued under this article.

(4) A registrant under this article shall establish a trust account, or other segregated type of account, in the manner described in this section. The registrant shall deposit into the trust account all checks, drafts, negotiable instruments, and cash tendered by 1 or more buyers for the payment of an item sold by auction. The registrant shall make a disbursement relative to a sale by auction through that trust account in the time period and manner described in this section.

(5) A registrant shall 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 funds belonging to the registrant, except as provided in this section. The registrant shall deposit customer money into a trust account until the transaction involved is consummated or terminated, within 2 banking days after the auction transaction but not later than 5 days after its receipt.

(6) The trust account is subject to the following requirements:

(a) May be an interest bearing account maintained in a depository recognized by the department. Interest accrued shall be allocated as provided for in the contract between the parties.

(b) Shall designate the registrant as the trustee or custodian.

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

(d) Shall not contain any money of the registrant except for an amount sufficient to pay service charges on the account or to maintain the account when customer money is not on deposit, that amount not to exceed \$500.00.

(7) Disbursements from the trust account shall be made only for the following purposes:

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

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

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

(8) The registrant shall keep records of money deposited in the trust account. The records shall show all of the following:

(a) The date of the receipt of money from a customer, the amount received, and the name of the customer on whose behalf the money was paid.

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

(c) The date the money was deposited in the trust account.

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

(e) Any other pertinent information regarding the transaction.

(9) The department and the board may, upon notice given to a registrant, inspect or audit, or both, the records or other relevant documents required to be kept pursuant to this section.

(10) A registrant shall create, electronically or otherwise, a cash receipts and disbursements journal and ledgers. The ledgers are to be maintained separately for each transaction and shall contain the following:

(a) Names of both parties.

(b) Postings of all transactions.

(c) Date of each transaction, in chronological sequence.

(d) Amount received or disbursed, or both; name of party giving money; name of principal or payee; and purpose of disbursements.

(e) Check numbers of disbursements.

(f) A running balance after each receipt and disbursement.

(g) Description of property being sold.

(11) A registrant shall create, electronically or otherwise, and maintain a personal money ledger to account for personal money maintained in the trust account. The personal money ledger shall include the following:

(a) Chronological sequence of funds received and disbursed.

(b) Running balance after each receipt and disbursement.

(c) Receipt postings to include date of receipt, date of deposit, name of party giving money, name of principal, and amount received.

(d) Disbursement postings to include the date; check number, if applicable; payee; amount; purpose; and a running balance after each receipt and disbursement.

(12) The ledgers and journals, as well as trust account bank statements, deposit tickets, and copies of deposit receipts, canceled checks, and voided checks shall be maintained for not less than 3 years from the date of inception of the records or not less than 3 years from the consummation or termination of the transaction, whichever is later.

(13) A registrant under this article shall maintain written records of each auction sale for a period of not less than 3 years from the date of the auction sale or not less than 3 years from consummation or termination of the transaction, whichever is later. The records shall include, but not be limited to, all of the following:

- (a) Consignment receipts.
- (b) Bidder registrations.
- (c) Documents relating to final settlements with consignors.

Sec. 2915. (1) The department and the board shall develop an examination for applicants for registration under this article in the manner provided for in section 316. In developing the examination, the department and the board shall consult with and accept advice from prominent industry and trade groups. The department may adopt all or part of any existing examinations developed by industry and trade groups.

(2) The examination developed under subsection (1) shall include, but not be limited to, the following subject matter areas:

- (a) The provisions of this article.
- (b) Ethics and ethical practices as they relate to the business of conducting auctions.
- (c) Record keeping.
- (d) Elementary mathematics.
- (e) Elementary principles of real estate and personal property economics.
- (f) Elementary principles of the law regarding bulk sales, deeds, mortgages, contracts of sale, agency, leases, auctions, and brokerage.

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

Sec. 2917. (1) The department shall issue a registration without examination to a nonresident individual who, at the time of application, is licensed, registered, certified, or otherwise regulated by another state if the requirements of that state, as determined by the board, are substantially the equivalent of the requirements of this article and if the other state offers licensure, certification, or registration on a reciprocal basis similar to this section to registrants under this article.

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

Sec. 2919. A registrant who commits any of the following acts is subject to the sanctions and penalties contained in article 6:

- (a) Fails to enter into a written contract with a seller or consignor before placing or authorizing any advertising for an auction.
- (b) Fails to reduce to writing or fails to issue any appropriate documentation relative to an auction-related transaction.
- (c) Fails to appropriately use or issue payment from a trust account.
- (d) Is involved in capping, shilling, or steering relative to an auction.
- (e) Fails to disclose his or her registration number on all advertising.
- (f) Knowingly misrepresents the nature or value of an item being auctioned.
- (g) Fails to account for all money deposited into a trust account.
- (h) Fails to account for or remit money coming into the registrant's possession, which money belongs to others.
- (i) Fails to deposit money belonging to others, in compliance with section 2913.
- (j) Fails to establish and maintain records as required by this article.
- (k) Violates the requirements of this article or a rule promulgated under this article.

Enacting section 1. This amendatory act does not take effect unless Senate Bill No. 604 of the 93rd Legislature is enacted into law.

Enacting section 2. This amendatory act takes effect October 1, 2007.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Sam E. Randall

Clerk of the House of Representatives

Approved _____

Governor