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LICENSE AUCTIONEERS

House Bill 4416

Sponsor: Rep. Raymond Basham

House Bill 4417

Sponsor: Rep. Jack Minore

House Bills 4421 and 4422

Sponsor: Rep. Lingg Brewer

Committee: Regulatory Reform

Complete to 4-9-99

A SUMMARY OF HOUSE BILLS 4416, 4417, 4421 AND 4422 AS INTRODUCED 3-18-99

The bills would amend various laws to establish a state-wide system of licensure for auctioneers, create the Board of Auctioneers within the Department of Consumer and Industry Services, provide penalties for violation of the bill's provisions, repeal existing laws pertaining to the regulation of auctioneers, establish license and examination fees for auctioneers, and prohibit local governments from licensing auctioneers. The bills are tie-barred to each other. More specifically, the bills would do the following:

House Bill 4421 would amend the Occupational Code (MCL 339.303a et al.) to create Article 28, which would establish a system of state-wide licensure for auctioneers. The board of auctioneers would be created within the Department of Consumer and Industry Services under the provisions of Article 3 of the Occupational Code (entitled Boards), with terms of board members commencing on January 1. The bill would prohibit a person from conducting an auction unless he or she were licensed or exempt from licensure under the bill. A corporation, partnership, limited liability company, association, or other legal entity could apply for licensure under the bill by designating an officer, partner, member, or managing agent as a qualifying member. The qualifying member would have to be licensed under the bill and the business would lose its license if the qualifying member lost his or her license or ceased to be the qualifying member. ("Qualifying member" is not defined in the bill.) The bill would exempt the following persons from licensure requirements:

--A person auctioning his or her own 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.

--A person auctioning property under a court order, a law enforcement agency auctioning abandoned or seized property, or a governmental unit auctioning property that was the result of a tax sale or was surplus or salvage personal property.

--A dealer or broker licensed under Public Act 284 of 1937 (MCL 287.121 et al.) to auction livestock.

--A dealer licensed under the Michigan Vehicle Code (MCL 257.1 et al.) to auction motor vehicles, but excluding an auctioneer contracting with a dealer licensed under the Michigan Vehicle Code.

--A dealer or manufacturer certified by the Natural Resources and Environmental Protection Act (MCL 324.80101 et al.) to auction boats or watercraft, but excluding an auctioneer contracting with a certified dealer or manufacturer.

The Department of Consumer and Industry Services would have to license a person as an auctioneer if he or she:

--Had either two years of apprentice experience with a licensed auctioneer or had graduated from a board-accepted, accredited auction school and one year of apprentice experience with a licensed auctioneer. In addition, a person would have to verify having had participated in at least ten auctions.

--Had completed an examination that covered, among other things, the provisions of the bill; ethics and ethical business practices for auctioneers; elementary mathematics; elementary principles of real estate economics; and elementary principles of the law regarding bulk sales, deeds, mortgages, contracts of sale, agency, leases, auctions, and brokerage. The bill would contain a provision for reciprocity so that individuals licensed in another state could conduct business in this state. A nonresident would, however, have to file a signed, irrevocable consent to service of process with the department.

--Was of good moral character.

The bill would "grandfather in" current auctioneers if a person applied for licensure within two years of the bill's enactment, had at least three years of experience before the bill's enactment date, and had conducted at least twelve auctions. A person committing certain acts as specified by the bill would be subject to penalties under the code.

In addition, the bill would establish record keeping requirements, require that auctioneers maintain separate custodial accounts in a financial institution by which collection and disbursements of money relating to auctions would be transacted, and would establish specific criteria regulating custodial accounts. The bill would specify that the intent of the legislature was

to exempt auctions conducted under any other act allocating powers for local units of government from the bill's licensure requirements. Further, 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 4422 would amend the State Licensing Fee Act (MCL 338.2228) to establish licensing fees for auctioneers as follows:

--Application processing fee -- \$30.

--Examination fee -- \$35.

--Annual license fee (individual or firm) -- \$100.

House Bill 4416 would amend the General Law Village Act (MCL 67.1), which regulates villages, and House Bill 4417 would amend the Fourth Class City Act (MCL 91.1), which regulates cities incorporated under the act, to prohibit the licensing of auctioneers by the local governmental units. Provisions allowing the municipalities to regulate auctions under local ordinances would not be changed.

Analyst: S. Stutzky

■ 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.