

HOUSE BILL No. 5367

December 13, 1989, Introduced by Reps. Niederstadt and Hart and referred to the Committee on State Affairs.

A bill to amend Act No. 299 of the Public Acts of 1980,
entitled

"Occupational code,"

as amended, being sections 339.101 to 339.2721 of the Michigan
Compiled Laws, by adding article 32.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Act No. 299 of the Public Acts of 1980, as
2 amended, being sections 339.101 to 339.2721 of the Michigan
3 Compiled Laws, is amended by adding article 32 to read as
4 follows:

5 ARTICLE 32

6 SEC. 3201. AS USED IN THIS ARTICLE:

7 (A) "AUCTION" MEANS THE SALE OR OFFER FOR SALE BY BIDDING OF
8 REAL OR PERSONAL PROPERTY AT A PUBLIC OR PRIVATE LOCATION.

1 (B) "AUCTION GALLERY" MEANS THE PREMISES WHERE AN AUCTION IS
2 REGULARLY CONDUCTED OR OFFERED TO BE CONDUCTED.

3 (C) "AUCTIONEER" MEANS AN INDIVIDUAL WHO, FOR COMPENSATION,
4 IS ENGAGED IN THE BUSINESS OF OR OFFERS TO ENGAGE IN THE BUSINESS
5 OF THE CONDUCT OF AN AUCTION.

6 SEC. 3203. (1) THERE IS CREATED A BOARD OF AUCTIONEERS.

7 (2) NOTWITHSTANDING SECTION 301, 6 MEMBERS OF THE INITIAL
8 BOARD SHALL BE MEMBERS OF A PROFESSIONAL ORGANIZATION IN THIS
9 STATE WHICH HAS FOR ITS PURPOSE THE ESTABLISHING AND MAINTAINING
10 OF STANDARDS OF PROFESSIONAL CONDUCT RELATING TO AUCTIONEERS AND
11 WHO FULFILL ALL OF THE FOLLOWING CONDITIONS:

12 (A) POSSESS NOT LESS THAN 5 YEARS' EXPERIENCE AS AN AUCTION-
13 EER AS ESTABLISHED BY AFFIDAVIT OF THAT MEMBER.

14 (B) ESTABLISH NOT LESS THAN 1 YEAR OF RESIDENCY IN THIS
15 STATE BASED UPON INFORMATION PROVIDED TO THE DEPARTMENT.

16 (C) ARE OF GOOD MORAL CHARACTER.

17 (3) THE BOARD MAY PROMULGATE RULES THAT IT DETERMINES AS
18 BEING NECESSARY FOR THE ADMINISTRATION OF THIS ARTICLE.

19 SEC. 3205. (1) AN INDIVIDUAL SHALL NOT ENGAGE IN THE BUSI-
20 NESS OF THE CONDUCT OF OR OFFERING TO CONDUCT AN AUCTION UNLESS
21 LICENSED OR EXEMPT FROM LICENSURE UNDER THIS ARTICLE.

22 (2) AN INDIVIDUAL CONDUCTING AN AUCTION UNDER THE FOLLOWING
23 CIRCUMSTANCES IS EXEMPT FROM LICENSURE UNDER THIS ARTICLE:

24 (A) THE REAL OR PERSONAL PROPERTY BEING AUCTIONED IS OWNED
25 BY THE INDIVIDUAL CONDUCTING THE SALE AND THE INDIVIDUAL DOES NOT
26 ACQUIRE THE REAL OR PERSONAL PROPERTY SOLELY FOR THE PURPOSE OF
27 RESALE BY AUCTION.

1 (B) THE SALE OF REAL OR PERSONAL PROPERTY BY AUCTION IS
2 CONDUCTED FOR THE BENEFIT OF A CHARITABLE, RELIGIOUS, OR CIVIC
3 ORGANIZATION AND THE AUCTIONEER CONDUCTING THE AUCTION RECEIVES
4 NO COMPENSATION.

5 (C) THE SALE OF REAL OR PERSONAL PROPERTY BY AUCTION IS CON-
6 DUCTED BY AN AGENT OR EMPLOYEE OF A COURT OF COMPETENT JURISDIC-
7 TION PURSUANT TO A COURT ORDER.

8 SEC. 3207. THE DEPARTMENT SHALL ISSUE A LICENSE AS AN
9 APPRENTICE AUCTIONEER TO AN INDIVIDUAL WHO MEETS ALL OF THE FOL-
10 LOWING CONDITIONS:

11 (A) IS NOT LESS THAN 18 YEARS OF AGE.

12 (B) IS OF GOOD MORAL CHARACTER.

13 (C) HAS HAD AN EDUCATION EQUIVALENT TO THE COMPLETION OF
14 HIGH SCHOOL.

15 (D) HAS COMPLETED NOT LESS THAN 40 CLOCK HOURS OF CLASSROOM
16 STUDY RELATED TO THE BUSINESS OF THE CONDUCT OF AN AUCTION. THE
17 CLASSROOM STUDY SHALL BE APPROVED BY THE BOARD AND THE
18 DEPARTMENT.

19 (E) HAS COMPLETED AN EXAMINATION AS DESCRIBED IN
20 SECTION 3215 IN THE CASE OF INITIAL LICENSURE AND HAS COMPLIED
21 WITH THE CONTINUING EDUCATION REQUIREMENTS OF SECTION 3217 IN THE
22 CASE OF A RENEWAL OF A LICENSE.

23 (F) HAS OBTAINED A BOND AS DESCRIBED IN SECTION 3219, IF A
24 BOND IS REQUIRED.

25 (G) HAS FURNISHED TO THE DEPARTMENT A STATEMENT FROM A
26 LICENSED PRINCIPAL AUCTIONEER CONFIRMING EMPLOYMENT OF THE

1 APPLICANT AS AN APPRENTICE AUCTIONEER UNDER THE DIRECT
2 SUPERVISION OF THAT PRINCIPAL AUCTIONEER.

3 SEC. 3209. THE DEPARTMENT SHALL ISSUE A LICENSE AS A PRIN-
4 CIPAL AUCTIONEER TO AN INDIVIDUAL WHO MEETS ALL OF THE FOLLOWING
5 CONDITIONS:

6 (A) HAS BEEN LICENSED AS AN APPRENTICE AUCTIONEER FOR A
7 PERIOD OF NOT LESS THAN 1 YEAR, DURING WHICH TIME HE OR SHE HAS
8 ACTIVELY PARTICIPATED IN THE CONDUCTING OF NOT LESS THAN 5
9 AUCTIONS. THE EXPERIENCE SHALL BE VERIFIED BY AN AFFIDAVIT OF A
10 PRINCIPAL AUCTIONEER AND SHALL PROVIDE THE NAMES AND ADDRESSES OF
11 THE PARTIES ON WHOSE BEHALF THE AUCTION WAS HELD AND THE DATES OF
12 THE AUCTION.

13 (B) HAS OBTAINED A BOND AS DESCRIBED IN SECTION 3219, IF A
14 BOND IS REQUIRED.

15 (C) HAS COMPLETED AN EXAMINATION AS DESCRIBED IN
16 SECTION 3215 IN THE CASE OF INITIAL LICENSURE AND HAS COMPLIED
17 WITH THE CONTINUING EDUCATION REQUIREMENTS OF SECTION 3217 IN THE
18 CASE OF A RENEWAL OF A LICENSE.

19 (D) IS OF GOOD MORAL CHARACTER.

20 SEC. 3211. (1) THE DEPARTMENT SHALL ISSUE A LICENSE TO A
21 PERSON FOR THE OPERATION OF AN AUCTION GALLERY IF ALL OF THE FOL-
22 LOWING REQUIREMENTS ARE MET:

23 (A) AN APPLICATION IS MADE BY THE OWNERS OR MANAGERS OF THE
24 AUCTION GALLERY.

25 (B) THE APPLICATION INCLUDES A DRAWING OR DIAGRAM INDICATING
26 THE PREMISES TO BE LICENSED AND THE LOCATION OF ANY FACILITIES OR
27 EQUIPMENT REQUIRED BY ANY RULES PROMULGATED BY THE BOARD.

1 (C) THE APPLICATION PROVIDES FOR OTHER INFORMATION
2 CONCERNING THE PREMISES INCLUDING, BUT NOT LIMITED TO, WHETHER
3 THE PREMISES ARE OWNED OR LEASED AND ANY ZONING AND USE RESTRIC-
4 TIONS IN EFFECT IN THE AREA WHERE THE PREMISES ARE LOCATED.

5 (D) A BOND OF THE TYPE DESCRIBED IN SECTION 3219 IS
6 OBTAINED, IF A BOND IS REQUIRED.

7 (2) IN THE CASE OF THE OWNERSHIP OF MORE THAN 1 AUCTION GAL-
8 LERY BY A PERSON, THE DEPARTMENT SHALL ISSUE A SEPARATE LICENSE
9 FOR EACH LOCATION UPON APPLICATION OF THE OWNER OR MANAGER FOR
10 LICENSURE OF EACH LOCATION IN THE MANNER DESCRIBED IN
11 SUBSECTION (1).

12 SEC. 3213. (1) AN AUCTION GALLERY LICENSED UNDER THIS ARTI-
13 CLE SHALL NOT ALLOW AN AUCTION TO BE CONDUCTED ON ITS PREMISES
14 UNLESS A WRITTEN CONTRACT IS EXECUTED BETWEEN THE AUCTION GALLERY
15 AND A LICENSED PRINCIPAL AUCTIONEER. A COPY OF THE CONTRACT
16 SHALL BE KEPT AS PART OF THE RECORDS OF THE AUCTION GALLERY AND,
17 UPON REQUEST, MAY BE INSPECTED BY A MEMBER OF THE GENERAL PUBLIC
18 DURING NORMAL BUSINESS HOURS.

19 (2) AN AUCTION GALLERY LICENSED UNDER THIS ARTICLE SHALL
20 MAINTAIN WRITTEN RECORDS OF EACH AUCTION SALE FOR A PERIOD OF NOT
21 LESS THAN 1 YEAR FROM THE DATE OF THE AUCTION SALE. THE RECORDS
22 SHALL INCLUDE, BUT NOT BE LIMITED TO, ALL OF THE FOLLOWING:

23 (A) CONSIGNMENT RECEIPTS.

24 (B) BIDDER REGISTRATIONS.

25 (C) DOCUMENTS RELATING TO FINAL SETTLEMENTS WITH
26 CONSIGNORS.

1 (3) AN AUCTION GALLERY LICENSED UNDER THIS ARTICLE SHALL
2 MAINTAIN RECORDS ON ALL CURRENT EMPLOYEES AND ON PAST EMPLOYEES
3 FOR NOT LESS THAN 3 YEARS AFTER A PAST EMPLOYEE LEAVES THE
4 EMPLOYMENT OF THE AUCTION GALLERY, WHICH RECORDS SHALL INCLUDE
5 THE EMPLOYEE'S NAME, ADDRESS, SOCIAL SECURITY NUMBER, AND DATE OF
6 BIRTH.

7 (4) AN AUCTION GALLERY LICENSED UNDER THIS ARTICLE SHALL
8 CONSPICUOUSLY POST ON THE LICENSED PREMISES A COPY OF THE LICENSE
9 ISSUED UNDER THIS ARTICLE.

10 (5) AN AUCTION GALLERY LICENSED UNDER THIS ARTICLE SHALL
11 ESTABLISH AN ESCROW ACCOUNT IN THE MANNER DESCRIBED BY RULES
12 PROMULGATED BY THE DEPARTMENT AND BOARD. ALL CHECKS, DRAFTS,
13 NEGOTIABLE INSTRUMENTS, AND CASH TENDERED BY A BUYER FOR THE PAY-
14 MENT OF AN ITEM THE AUCTION GALLERY SOLD BY AUCTION SHALL BE
15 DEPOSITED IN THE ESCROW ACCOUNT. THE AUCTION GALLERY SHALL MAKE
16 A DISBURSEMENT RELATIVE TO A SALE BY AUCTION THROUGH THAT ESCROW
17 ACCOUNT IN THE TIME PERIOD AND MANNER DESCRIBED BY THOSE RULES.

18 (6) THE DEPARTMENT AND THE BOARD MAY, UPON NOTICE GIVEN TO A
19 LICENSED AUCTION GALLERY, INSPECT THE RECORDS REQUIRED TO BE KEPT
20 PURSUANT TO THIS SECTION.

21 SEC. 3215. (1) THE DEPARTMENT AND THE BOARD SHALL DEVELOP
22 AN EXAMINATION FOR APPLICANTS FOR LICENSURE UNDER THIS ARTICLE OR
23 MAY ADOPT AN EXAMINATION DEVELOPED BY AN ORGANIZATION INVOLVED IN
24 THE TRAINING OF AUCTIONEERS IF THAT EXAMINATION IS DETERMINED BY
25 THE BOARD TO SUFFICIENTLY TEST THE KNOWLEDGE AND SKILLS RELATIVE
26 TO THE BUSINESS OF THE CONDUCT OF AUCTIONS. A SEPARATE

1 EXAMINATION SHALL BE USED FOR EACH CLASS OF LICENSE UNDER THIS
2 ARTICLE.

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 BUSI-
8 NESS OF CONDUCTING AUCTIONS.

9 (C) ELEMENTARY MATHEMATICS.

10 (D) ELEMENTARY PRINCIPLES OF LAND ECONOMICS.

11 (E) ELEMENTARY PRINCIPLES OF THE LAW REGARDING BULK SALES,
12 DEEDS, MORTGAGES, CONTRACTS OF SALE, AGENCY, LEASES, AUCTIONS,
13 AND BROKERAGE.

14 (3) THE DEPARTMENT SHALL ADMINISTER THE EXAMINATIONS ON AT
15 LEAST A QUARTERLY BASIS. THE DEPARTMENT MAY ADMINISTER THE EXAM-
16 INATIONS MORE OFTEN THAN ON A QUARTERLY BASIS IF THE BOARD DETER-
17 MINES THAT CIRCUMSTANCES EXIST THAT WARRANT THE FURTHER ADMINIS-
18 TRATION OF THE EXAMINATION.

19 SEC. 3217. (1) THE BOARD SHALL PROMULGATE RULES SETTING
20 STANDARDS FOR MANDATORY PROGRAM CONTINUING EDUCATION. THE RULES
21 SHALL PROVIDE FOR NOT LESS THAN 4 CLOCK HOURS OF CONTINUING EDU-
22 CATION FOR EACH CLASS OF LICENSURE PER YEAR.

23 (2) THE BOARD SHALL PROMULGATE RULES CONCERNING RECORDS TO
24 BE MAINTAINED BY A PRINCIPAL AUCTIONEER AND THE REQUIREMENTS CON-
25 CERNING AN ESCROW ACCOUNT USED BY AN AUCTION GALLERY.

26 SEC. 3219. THE DEPARTMENT AND BOARD MAY PROMULGATE RULES
27 FOR A BOND TO BE OBTAINED AS A CONDITION OF INITIAL LICENSURE OR

1 RENEWAL OF LICENSURE BY LICENSEES UNDER THIS ARTICLE OR
2 APPLICANTS FOR LICENSURE. THE RULES SHALL DESCRIBE THE AMOUNT
3 AND TYPE OF COVERAGE FOR EACH CLASS OF LICENSEE.

4 SEC. 3221. (1) THE DEPARTMENT SHALL ISSUE A LICENSE WITHOUT
5 EXAMINATION TO A NONRESIDENT INDIVIDUAL WHO, AT THE TIME OF
6 APPLICATION, IS LICENSED, REGISTERED, CERTIFIED, OR OTHERWISE
7 REGULATED BY ANOTHER STATE IF THE REQUIREMENTS OF THAT STATE, AS
8 DETERMINED BY THE BOARD AND THE DEPARTMENT, ARE SUBSTANTIALLY THE
9 EQUIVALENT OF THE REQUIREMENTS OF THIS ARTICLE AND IF THE OTHER
10 STATE OFFERS LICENSURE, CERTIFICATION, OR REGISTRATION ON A BASIS
11 SIMILAR TO THIS SECTION TO LICENSEES UNDER THIS ARTICLE.

12 (2) A NONRESIDENT SHALL FILE AN IRREVOCABLE CONSENT TO SERV-
13 ICE OF PROCESS WHICH CONSENT SHALL BE SIGNED BY THE LICENSEE. A
14 PROCESS OR PLEADING SERVED UPON THE DEPARTMENT SHALL BE SUFFI-
15 CIENT SERVICE UPON THE LICENSEE. A PROCESS OR PLEADING SERVED
16 UPON THE DEPARTMENT UNDER THIS SECTION SHALL BE IN DUPLICATE.
17 THE DEPARTMENT SHALL IMMEDIATELY SERVE BY REGISTERED OR CERTIFIED
18 MAIL A COPY OF THE PROCESS OR PLEADING TO THE LICENSEE'S LAST
19 KNOWN ADDRESS AS DETERMINED BY THE RECORDS OF THE DEPARTMENT.

20 SEC. 3223. THE DEPARTMENT SHALL LICENSE AS A PRINCIPAL AUC-
21 TIONEER, AFTER VERIFICATION OF THE EXPERIENCE REQUIREMENTS
22 IMPOSED IN SUBDIVISION (A), AN INDIVIDUAL WHO APPLIES NOT MORE
23 THAN 2 YEARS AFTER THE AMENDATORY ACT THAT ADDED THIS ARTICLE AND
24 WHO FULFILLS ALL OF THE FOLLOWING CONDITIONS:

25 (A) SUBMITS AN AFFIDAVIT ATTESTING TO EXPERIENCE IN THE
26 PRACTICE OF THE CONDUCT OF AUCTIONS FOR NOT LESS THAN 3 YEARS

1 BEFORE THE EFFECTIVE DATE OF THIS ARTICLE, WHICH EXPERIENCE SHALL
2 HAVE INCLUDED THE CONDUCT OF NOT LESS THAN 12 AUCTIONS.

3 (B) SUBMITS PROOF OF RESIDENCY IN THIS STATE.

4 (C) SUBMITS PROOF OF OBTAINING THE APPROPRIATE BOND AS
5 DESCRIBED IN SECTION 3219, IF A BOND IS REQUIRED.

6 SEC. 3225. A LICENSEE WHO COMMITS ANY OF THE FOLLOWING ACTS
7 SHALL BE SUBJECT TO THE PENALTIES CONTAINED IN ARTICLE 6:

8 (A) FAILS TO ENTER INTO A WRITTEN CONTRACT WITH A SELLER OR
9 CONSIGNOR PRIOR TO PLACING OR AUTHORIZING ANY ADVERTISING FOR AN
10 AUCTION.

11 (B) FAILS TO REDUCE TO WRITING OR FAILS TO ISSUE ANY APPRO-
12 PRIATE DOCUMENTATION RELATIVE TO AN AUCTION-RELATED TRANSACTION.

13 (C) FAILS TO APPROPRIATELY USE OR ISSUE PAYMENT FROM AN
14 ESCROW FUND.

15 (D) IN THE CASE OF AN AUCTION GALLERY, PERMITS AN UNLICENSED
16 AUCTIONEER TO CONDUCT AN AUCTION ON THE LICENSED PREMISES.

17 (E) IN THE CASE OF A PRINCIPAL AUCTIONEER, FAILS TO PROPERLY
18 SUPERVISE AN APPRENTICE AUCTIONEER IN HIS OR HER EMPLOY.

19 (F) IN THE CASE OF AN APPRENTICE AUCTIONEER, ACCEPTS PAYMENT
20 OR COMPENSATION FROM A PERSON OTHER THAN THE PRINCIPAL AUCTIONEER
21 BY WHOM HE OR SHE IS EMPLOYED.

22 (G) VIOLATES THE REQUIREMENTS OF THIS ARTICLE OR A RULE
23 PROMULGATED UNDER THIS ARTICLE.

24 SEC. 3227. (1) ANY PROVISION OF AN ORDINANCE OR LAW OF A
25 LOCAL GOVERNMENTAL UNIT WHICH IS INCONSISTENT OR IN CONFLICT WITH
26 THIS ARTICLE IS SUPERSEDED TO THE EXTENT OF THE INCONSISTENCY OR
27 CONFLICT.

1 (2) A LOCAL GOVERNMENTAL UNIT SHALL NOT CHARGE LICENSURE
2 FEES IN ADDITION TO THE FEES REQUIRED UNDER THIS ARTICLE.

3 (3) AS USED IN THIS SECTION, "LOCAL GOVERNMENTAL UNIT" MEANS
4 A COUNTY, CITY, TOWNSHIP, OR VILLAGE.

5 Section 2. This amendatory act shall not take effect unless
6 Senate Bill No. ____ or House Bill No. 5368 (request
7 no. 04380'89 a) of the 85th Legislature is enacted into law.