

# Legislative Analysis

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## AUCTIONEER REGULATION

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**Senate Bill 1413 as passed by the Senate**

**Sponsor: Sen. Jason E. Allen**

**House Committee: Regulatory Reform**

**Senate Committee: Commerce and Tourism**

**Complete to 12-1-10**

## A SUMMARY OF SENATE BILL 1413 AS REPORTED FROM HOUSE COMMITTEE

Senate Bill 1413 would:

- Allow an applicant for registration as an auctioneer to graduate from any auction school.
- Require a registered auctioneer to give a client a full accounting at the end of a transaction.
- Require a copy of the contract to be given to the client.
- Specify that money given to a registered auctioneer for presale auction services would not have to be placed in trust.
- Require a registered auctioneer's records to include presale auction services.

## BACKGROUND INFORMATION:

Public Act 489 of 2006 created a system of voluntary registration for auctioneers and prescribed duties for the Department of Energy, Labor, and Economic Growth. According to representatives of the state Board of Auctioneers and the Michigan State Auction Association, a few provisions of the registration act contain errors or simply do not "fit" the occupation. For instance, graduation from an accredited auction school is required as part of the eligibility criteria for registration. However, there are no auction schools in the nation having accreditation. Further, Public Act 489 prohibits an auctioneer from depositing advance payments in a business or personal account; all money received by a registered auctioneer must be held in trust for the benefit of the person making the payment. This provision does not allow for the accepted practice of clients prepaying for advertisement of the auction and other pre-auction expenses. In addition, several other amendments of a technical nature are needed to move the registration process forward and ensure appropriate recordkeeping by registered auctioneers. By accommodating accepted business practices, the changes are also expected to encourage new and experienced auctioneers to seek registration.

## CONTENT:

Senate Bill 1413 would amend Article 29 of the Occupational Code pertaining to the registration of auctioneers. Currently, as part of the criteria for application for registration, a person must have 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. The bill would strike "accredited" and so accept graduation from any approved auction school.

Under the act, money paid by any person to a registrant in connection with an auction 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. In addition, a registrant cannot deposit an advance payment of money by a customer in his or her business or personal account or commingle it with any of his or her funds, except as lawfully provided. The bill would strike "advance" and specify that money given to an auctioneer by a client or other person for presale auction services would not have to be deposited in the trust account. However, a complete accounting of all auction service expenses would have to be given by the auctioneer to the client or other person at the closing or termination of the transaction; this would include any money given for presale auction services.

In addition, a registered auctioneer would have to give a copy of the written contract to the client. A registered auctioneer would also have to include documents relating to presale auction services in the written records required to be kept under the act.

MCL 339.2907 et al.

#### **FISCAL IMPACT:**

By striking a requirement in the bill that applicants for registration as an auctioneer graduate from an *accredited* auctioneer school, the bill would ease the requirements necessary to be registered by the state as there apparently is no accrediting body for auctioneer education programs. In doing so, the bill could encourage more auctioneers to register with the state. (Registration is optional and does not serve to restrict entry into the field.) The Bureau of Commercial Services' licensing database (<https://www2.dleg.state.mi.us/colaLicVerify/>) indicates that there are currently 73 active registered auctioneers and another 15 auctioneers whose registration has lapsed. In addition, the bureau's database lists 6 active registered auctioneer companies. In comparison, the membership list of the Michigan State Auctioneers Association (<http://www.msaa.org/>) lists 356 auctioneer members. It isn't immediately known, however, how many of the MSAA members have less than two years of experience and would be eligible for registration with the state under the bill's revised pre-registration education requirements.

Under Article 29 of the Occupational Code and the State License Fee Act, the initial biennial registration fee is \$450 for individual auctioneer and another \$450 for auctioneer firms. (Registrations expire on September 30th in odd-numbered years.) To the extent the bill results in an increase in the number of registered individuals and firms, the bill would increase Licensing and Regulation Fees revenue to the bureau, which would offset the bureau's costs in processing the additional applications for registration.

**POSITIONS:**

Representatives of the Michigan Board of Auctioneers and Michigan State Auctioneers Association testified in support of the bill. (12-1-10)

The Department of Energy, Labor, and Economic Growth is neutral on the bill. (12-1-10)

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