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BILL



ANALYSIS

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Senate Bill 1413 (as reported without amendment)
Sponsor: Senator Jason E. Allen
Committee: Commerce and Tourism

Date Completed: 10-8-10

RATIONALE

Article 29 of the Occupational Code provides for the voluntary registration of auctioneers and the regulation of those who register. Among other things, Article 29 requires money paid by any person to a registered auctioneer in connection with an auction to be held in trust for the benefit of the person making the payment. Auctioneers often receive advance money from their clients, however, to pay for expenses incurred before an auction for such things as advertisement and set-up costs. It has been suggested that money given to an auctioneer by a client for these kinds of presale services should not have to be placed in trust, but the auctioneer should be required to give the client a full accounting of presale auction services.

CONTENT

The bill would amend Article 29 (Auctioneers) of the Occupational Code to do all of the following:

- **Require an auctioneer to give a client a full accounting at the end of a transaction.**
- **Specify that money given to an auctioneer for presale auction services would not have to be placed in trust.**
- **Require an auctioneer's written records to include presale auction services.**
- **Require a registered auctioneer to give a copy of a contract to his or her client.**

The bill also would require the Department of Energy, Labor, and

Economic Growth (DELEG) to register a person as an auctioneer if he or she submitted a completed application and an affidavit attesting to having had at least three years of experience before the effective date of Article 29.

Presale Auction Services

Trust Account. Article 29 specifies that money paid by any person to a registrant (a registered auctioneer) 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.

Under the bill, a registrant would have to give a client a full accounting upon the closing or termination of any transaction, including any money given to the registrant for presale auction services.

Money given to an auctioneer by a client or other person for presale auction services would not have to be placed in the trust account. An auctioneer, however, would have to provide a complete accounting of all auction service expenses to the client or other person at the closing or termination of the transaction.

Written Records. Article 29 requires a registrant to maintain written records of each auction sale for a period of at least three years from the date of the auction or at least three years from consummation or termination of the transaction, whichever is later. Under the bill, the written records would include presale auction services.

The records must include consignment receipts, bidder registrations, and documents relating to final settlements with consignors. Under the bill, the records also would have to include documents relating to presale auction services.

Contract

The Code prohibits a registered auctioneer from conducting an auction unless he or she executes a written contract with the person desiring auction services. A registrant must keep a written copy of the contract as part of his or her records. The bill also would require the registrant to give a copy of the contract to the client.

Registration

Article 29 requires DELEG to issue a registration to an individual who meets certain educational and experience requirements. Notwithstanding these requirements, DELEG must register as an auctioneer an individual who applies within two years of the effective date of Article 29 (October 1, 2007) and submits to the Department an affidavit attesting to at least three years' experience in the conduct of auctions before that date, if the individual has conducted at least 12 auctions. The Department must verify the applicant's experience.

The bill would delete the requirement that the individual apply within two years after the effective date. The bill would require DELEG to register an individual who submitted a completed application and an affidavit attesting to having had at least three years' experience in the conduct of auctions before that date, if he or she had conducted at least 12 auctions.

MCL 339.2909-339.2913

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Registered auctioneers are required to place in trust money received from a client in connection with an auction. This can pose a burden to some auctioneers, however, because they can incur significant presale

costs for setting up and planning an auction, and advertising and promoting the sale, especially when real estate or large equipment is involved. Rather than forcing auctioneers to absorb these costs and be reimbursed for them later, the bill would authorize auctioneers to withhold from the trust account money given to them for presale auction services, so the funds could be used for those early expenses. At the same time, the bill would protect the interests of auctioneers' clients, by requiring auctioneers to give them a full accounting of all auction service expenses after a transaction, keep records of presale auction services for at least three years, and give clients a copy of their contract.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Elizabeth Pratt

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.