

SENATE BILL No. 1413

July 1, 2010, Introduced by Senator ALLEN and referred to the Committee on Commerce and Tourism.

A bill to amend 1980 PA 299, entitled
 "Occupational code,"
 by amending sections 2909, 2911, and 2913 (MCL 339.2909, 339.2911,
 and 339.2913), as added by 2006 PA 489.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2909. (1) Notwithstanding section 2907, the department
 2 shall register as an auctioneer, after verification of the
 3 experience requirements imposed in this section, an individual who
 4 ~~applies not more than 2 years after the effective date of this~~
 5 ~~article and~~ submits to the department **A COMPLETED APPLICATION AND**
 6 an affidavit attesting to **HAVING HAD** experience in the conduct of
 7 auctions for not less than 3 years before ~~the effective date of~~
 8 ~~this article~~ **OCTOBER 1, 2007.**

9 (2) The department shall issue a registration under this

1 section only if the applicant's experience includes conducting 12
2 or more auctions.

3 Sec. 2911. (1) Money paid by any person to a registrant in
4 connection with an auction under this article is considered to be
5 held in trust for the benefit of the person making the payment and
6 the registrant is considered the trustee for the money.

7 (2) **A REGISTRANT SHALL PROVIDE TO A CLIENT A FULL ACCOUNTING**
8 **UPON THE CLOSING OR TERMINATION OF ANY TRANSACTION, INCLUDING ANY**
9 **MONEY GIVEN TO THE REGISTRANT FOR PRESALE AUCTION SERVICES.**

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

17 (2) A registered auctioneer shall not conduct an auction
18 unless a written contract is executed between the person desiring
19 auction services and the registered auctioneer. A registrant shall
20 **PROVIDE A COPY OF THE CONTRACT TO THE CLIENT,** keep a copy of the
21 contract as part of his or her records, and, upon request, make
22 them available to the department for inspection or audit, or both,
23 during normal business hours.

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

27 (4) A registrant under this article shall establish a trust

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

8 (5) A registrant shall not permit ~~an advance~~ payment of money
9 by a customer to be deposited in the registrant's business or
10 personal account or to be commingled in any way with funds
11 belonging to the registrant, except as provided in this section.
12 The registrant shall deposit customer money into a ~~THE~~ trust
13 account until the transaction involved is consummated or
14 terminated, within 2 banking days after the auction transaction but
15 not later than 5 days after ~~its~~ receipt **OF THE MONEY**.

16 (6) **MONEY GIVEN TO AN AUCTIONEER BY A CLIENT OR OTHER PERSON**
17 **FOR PRESALE AUCTION SERVICES IS NOT REQUIRED TO BE PLACED IN THE**
18 **TRUST ACCOUNT. HOWEVER, AN AUCTIONEER SHALL PROVIDE A COMPLETE**
19 **ACCOUNTING OF ALL AUCTION SERVICE EXPENSES TO THE CLIENT OR OTHER**
20 **PERSON AT THE CLOSING OR TERMINATION OF THE TRANSACTION.**

21 (7) ~~(6)~~The trust account is subject to the following
22 requirements:

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

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

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

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

7 (8) ~~(7)~~—Disbursements from the trust account shall be made
8 only for the following purposes:

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

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

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

16 (9) ~~(8)~~—The registrant shall keep records of money deposited
17 in the trust account. The records shall show all of the following:

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

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

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

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

26 (e) Any other pertinent information regarding the transaction.

27 (10) ~~(9)~~—The department and the board may, upon notice given

1 to a registrant, inspect or audit, or both, the records or other
2 relevant documents required to be kept pursuant to this section.

3 (11) ~~(10)~~—A registrant shall create, electronically or
4 otherwise, a cash receipts and disbursements journal and ledgers.
5 The ledgers are to be maintained separately for each transaction
6 and shall contain the following:

7 (a) Names of both parties.

8 (b) Postings of all transactions.

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

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

13 (e) Check numbers of disbursements.

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

15 (g) Description of property being sold.

16 (12) ~~(11)~~—A registrant shall create, electronically or
17 otherwise, and maintain a personal money ledger to account for
18 personal money maintained in the trust account. The personal money
19 ledger shall include the following:

20 (a) Chronological sequence of funds received and disbursed.

21 (b) Running balance after each receipt and disbursement.

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

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

1 (13) ~~(12)~~The ledgers and journals, as well as trust account
2 bank statements, deposit tickets, and copies of deposit receipts,
3 canceled checks, and voided checks shall be maintained for not less
4 than 3 years from the date of inception of the records or not less
5 than 3 years from the consummation or termination of the
6 transaction, whichever is later.

7 (14) ~~(13)~~A registrant under this article shall maintain
8 written records of each auction sale, **INCLUDING PRESALE AUCTION**
9 **SERVICES**, for a period of not less than 3 years from the date of
10 the auction sale or not less than 3 years from consummation or
11 termination of the transaction, whichever is later. The records
12 shall include, but not be limited to, all of the following:

13 (a) Consignment receipts.

14 (b) Bidder registrations.

15 (c) **DOCUMENTS RELATING TO PRESALE AUCTION SERVICES.**

16 (d) ~~(e)~~Documents relating to final settlements with
17 consignors.