

HOUSE BILL No. 4766

June 16, 2011, Introduced by Rep. Wayne Schmidt and referred to the Committee on Regulatory Reform.

A bill to amend 1980 PA 299, entitled "Occupational code," by amending sections 2907, 2909, 2911, and 2913 (MCL 339.2907, 339.2909, 339.2911, and 339.2913), as added by 2006 PA 489.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2907. (1) Except as otherwise provided in section 2909 OR
2 2917, the department shall issue a registration as a registered
3 auctioneer to an individual or to the qualifying member of a legal
4 entity who meets all of the following conditions:

5 (a) Has either 2 years of apprentice experience with a
6 registered auctioneer or proof of graduation from an ~~accredited~~
7 auction school acceptable to the board and 1 year of apprentice

1 experience with a registered auctioneer. ~~Under both circumstances,~~
2 ~~the individual shall have~~

3 (B) HAS actively participated in the conduct of ~~not less than~~
4 AT LEAST 10 auctions. ~~The experience shall be verified by AN~~
5 APPLICANT SHALL INCLUDE WITH THE APPLICATION an affidavit of a
6 registered auctioneer ~~and shall provide THAT VERIFIES THAT~~
7 EXPERIENCE AND PROVIDES the names and addresses of the parties on
8 whose behalf the auction was held and the dates of the auction.

9 (C) ~~(b)~~ Has completed an examination ~~as described in section~~
10 2915.

11 (D) ~~(e)~~ Is of good moral character.

12 (2) BEGINNING 60 DAYS AFTER THE EFFECTIVE DATE OF THE RULES
13 DESCRIBED IN SUBSECTION (3), THE DEPARTMENT SHALL NOT RENEW THE
14 REGISTRATION OF AN INDIVIDUAL OR A QUALIFYING MEMBER OF A LEGAL
15 ENTITY UNDER THIS ARTICLE UNLESS HE OR SHE DEMONSTRATES
16 SATISFACTORY COMPLETION OF THE PROGRAM OF CONTINUING EDUCATION
17 DESCRIBED IN SUBSECTION (3).

18 (3) FOR PURPOSES OF SUBSECTION (2), THE DEPARTMENT BY RULE
19 SHALL ESTABLISH A PROGRAM OF CONTINUING EDUCATION FOR EACH
20 INDIVIDUAL AND EACH QUALIFYING MEMBER OF A LEGAL ENTITY REGISTERED
21 UNDER THIS ARTICLE. THE RULES PROMULGATED UNDER THIS SUBSECTION
22 SHALL INCLUDE ALL OF THE FOLLOWING:

23 (A) A REQUIREMENT FOR SATISFACTORY COMPLETION OF 12 HOURS OF
24 CONTINUING EDUCATION FROM AN AUCTIONEER CONTINUING EDUCATION COURSE
25 SPONSOR APPROVED BY THE DEPARTMENT.

26 (B) THAT AN INDIVIDUAL OR QUALIFYING MEMBER IS NOT ENTITLED TO
27 CONTINUING EDUCATION CREDIT FOR ANY CLASSROOM HOURS REQUIRED BY THE

1 DEPARTMENT AS A CONDITION TO HIS OR HER INITIAL REGISTRATION.

2 (C) THAT AN INDIVIDUAL OR QUALIFYING MEMBER WHO ATTENDS THE
3 SAME CONTINUING EDUCATION COURSE MORE THAN ONCE IN THE SAME
4 REGISTRATION PERIOD IS ENTITLED TO CONTINUING EDUCATION CREDIT FOR
5 THAT COURSE ONLY ONCE.

6 (D) THAT THE DEPARTMENT MAY VERIFY ANY INFORMATION CONCERNING
7 CONTINUING EDUCATION THAT IS SUBMITTED BY AN INDIVIDUAL OR
8 QUALIFYING MEMBER AS EVIDENCE SUPPORTING THE COMPLETION OF THE
9 CONTINUING EDUCATION REQUIREMENT AND MAY REQUIRE THAT HE OR SHE
10 PROVIDE INFORMATION REGARDING THE CONTINUING EDUCATION HOURS HE OR
11 SHE CLAIMS.

12 (E) THAT AN INDIVIDUAL OR QUALIFYING MEMBER IS RESPONSIBLE FOR
13 RETAINING EVIDENCE TO SUPPORT HIS OR HER SATISFACTORY COMPLETION OF
14 THE CONTINUING EDUCATION REQUIREMENT FOR A PERIOD OF 24 MONTHS
15 AFTER THE END OF THE RENEWAL PERIOD FOR WHICH THE RENEWAL
16 APPLICATION WAS SUBMITTED TO THE DEPARTMENT.

17 Sec. 2909. (1) ~~Notwithstanding section 2907, the~~ **THE**
18 department shall register as an auctioneer, after verification of
19 the experience requirements imposed in this section, an individual
20 who applies not more than 2 years after the effective date of ~~this~~
21 ~~article~~ **THE AMENDATORY ACT THAT ADDED SUBSECTION (3)** and submits to
22 the department **A COMPLETED APPLICATION AND** an affidavit ~~attesting~~
23 ~~to~~ **THAT VERIFIES THAT HE OR SHE HAD** experience in the conduct of
24 auctions for ~~not less than~~ **AT LEAST** 3 years before the effective
25 date of ~~this article~~. **THE AMENDATORY ACT THAT ADDED SUBSECTION (3)**.

26 (2) The department shall issue a registration under this
27 section only if the applicant's experience includes conducting 12

1 or more auctions.

2 (3) AN INDIVIDUAL ELIGIBLE FOR REGISTRATION UNDER THIS SECTION
3 IS NOT REQUIRED TO MEET THE REQUIREMENTS OF SECTION 2907.

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

8 (2) A REGISTRANT SHALL PROVIDE A FULL ACCOUNTING TO A CLIENT
9 WHEN A TRANSACTION IS CLOSED OR TERMINATED. THE ACCOUNTING SHALL
10 INCLUDE ANY MONEY GIVEN TO THE REGISTRANT FOR PRESALE AUCTION
11 SERVICES.

12 Sec. 2913. (1) A registered auctioneer shall maintain a
13 regular place of business in this state. If A REGISTERED AUCTIONEER
14 MAINTAINS more than 1 place of business ~~is maintained~~ IN THIS
15 STATE, the department shall issue a duplicate registration FOR EACH
16 PLACE OF BUSINESS at no additional cost. A regular place of
17 business does not include a location used only as a warehouse.
18 ~~Records required to be kept~~ A REGISTERED AUCTIONEER SHALL KEEP ANY
19 RECORDS THE AUCTIONEER IS REQUIRED TO KEEP under this article ~~shall~~
20 ~~be kept~~ at that regular place of business.

21 (2) A registered auctioneer shall not conduct an auction
22 unless a written contract is executed between the AUCTIONEER AND
23 THE person ~~desiring~~ ENGAGING THE AUCTIONEER TO PROVIDE auction
24 services. ~~and the registered auctioneer.~~ A registrant shall PROVIDE
25 A COPY OF THE CONTRACT TO THE CLIENT, keep a copy of the contract
26 as part of ~~his or her~~ THE REGISTRANT'S records, and, upon request,
27 make ~~them~~ ANY OF ITS CONTRACTS available to the department for

1 inspection or audit, or both, during normal business hours.

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

5 (4) A registrant under this article shall establish a trust
6 account, or other segregated type of account, in the manner
7 described in this section. The registrant shall deposit into the
8 trust account all checks, drafts, negotiable instruments, and cash
9 tendered by 1 or more buyers for the payment of an item sold by
10 auction. The registrant shall make ~~a disbursement relative to a~~ **ANY**
11 **DISBURSEMENTS RELATED TO THE** sale by auction through that trust
12 account, in the time period and manner described in this section.

13 (5) A registrant shall not permit ~~an advance payment of money~~
14 **THE DEPOSIT OF ANY MONEY PAID** by a customer ~~to be deposited in~~ **INTO**
15 the registrant's business or personal account or ~~to be commingled~~
16 **THE COMMINGLING OF THAT MONEY** in any way with funds belonging to
17 the registrant, except as provided in this section. The registrant
18 shall deposit ~~customer~~ **THE CUSTOMER'S** money into a ~~THE~~ trust
19 account until the transaction involved is consummated or
20 terminated, within 2 banking days after the auction transaction but
21 not later than 5 days after ~~its receipt~~ **IT RECEIVES THE MONEY**.

22 (6) **AN AUCTIONEER IS NOT REQUIRED TO DEPOSIT MONEY GIVEN TO**
23 **THE AUCTIONEER BY A CLIENT OR OTHER PERSON FOR PRESALE AUCTION**
24 **SERVICES INTO A TRUST ACCOUNT. HOWEVER, AN AUCTIONEER SHALL PROVIDE**
25 **A COMPLETE ACCOUNTING OF ALL AUCTION SERVICE EXPENSES TO THE CLIENT**
26 **OR OTHER PERSON AT THE CLOSING OR TERMINATION OF THE TRANSACTION.**

27 (7) ~~(6) The~~ **A** trust account **ESTABLISHED UNDER THIS SECTION** is

1 subject to the following requirements:

2 (a) ~~May~~ **IT MAY** be an interest bearing account maintained in a
3 depository recognized by the department. Interest accrued shall be
4 allocated ~~as~~ **IN THE MANNER** provided ~~for~~ in the contract between the
5 parties.

6 (b) ~~Shall~~ **IT SHALL** designate the registrant as the trustee or
7 custodian **OF THE ACCOUNT**.

8 (c) ~~Shall provide for~~ **IT SHALL ALLOW** withdrawal of money
9 without ~~previous~~ **PRIOR** notice and ~~shall not be encumbered in any~~
10 ~~manner~~ **WITHOUT ANY ENCUMBRANCE**.

11 (d) ~~Shall~~ **IT SHALL** not contain any money of the registrant,
12 except ~~for~~ **THAT THE ACCOUNT MAY CONTAIN** an amount **THAT IS**
13 sufficient to pay service charges on the account or to maintain the
14 account when customer money is not on deposit, **IF** that amount ~~not~~
15 ~~to~~ **DOES NOT** exceed \$500.00.

16 (8) ~~(7) Disbursements~~ **A REGISTRANT SHALL MAKE DISBURSEMENTS**
17 from ~~the~~ **A** trust account ~~shall be made only~~ for the following
18 purposes:

19 (a) Payment as a result of the sale of an item by the
20 registrant ~~pursuant to~~ **UNDER** the contract.

21 (b) Refund of an amount to the customer ~~upon~~ **ON** termination of
22 the transaction.

23 (c) Payment to the registrant of a commission and documented
24 and approved expenses following the consummation of a transaction
25 ~~upon~~ **ON** which a commission is payable to the registrant.

26 (9) ~~(8) The~~ **A** registrant shall keep records of money deposited
27 in ~~the~~ **A** trust account. The records shall show all of the

1 following:

2 (a) The date ~~of the receipt of~~ **THE REGISTRANT RECEIVES THE**
3 money from a customer, the amount received, and the name of the
4 customer on whose behalf the money was paid.

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

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

7 (d) The date of disbursement of the money, the purpose of the
8 ~~withdrawal~~ **DISBURSEMENT**, and the name of the person to whom the
9 money was paid. ~~upon disbursement.~~

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

11 **(10)** ~~(9)~~ The department and the board may, ~~upon~~ **AFTER** notice
12 given to a registrant, inspect or audit, or both, the records or
13 other relevant documents ~~required to be kept pursuant to~~ **THE**
14 **REGISTRANT IS REQUIRED TO KEEP UNDER** this section.

15 **(11)** ~~(10)~~ A registrant shall create, electronically or
16 otherwise, a cash receipts and disbursements journal and ledgers.
17 The **REGISTRANT SHALL MAINTAIN SEPARATE** ledgers ~~are to be maintained~~
18 ~~separately~~ for each transaction. ~~and~~ **THE LEDGERS** shall contain the
19 following:

20 (a) ~~Names~~ **THE NAMES** of both parties **TO THE CONTRACT**.

21 (b) ~~Postings~~ **A POSTING** of all ~~transactions~~ **EACH TRANSACTION**.

22 (c) ~~Date~~ **THE DATE** of each transaction, in chronological
23 sequence.

24 (d) ~~Amount~~ **EACH AMOUNT** received or disbursed; ~~, or both,~~ **THE**
25 name of ~~party~~ **EACH PERSON** giving money; **THE** name of **THE** principal
26 or payee; and **THE** purpose of ~~disbursements~~ **EACH DISBURSEMENT**.

27 (e) ~~Check numbers of disbursements~~ **THE CHECK NUMBER OF EACH**

1 **DISBURSEMENT.**

2 (f) A running balance after each receipt ~~and~~**OR** disbursement.

3 (g) ~~Description~~**A DESCRIPTION** of **THE** property being sold.

4 **(12)** ~~(11)~~A registrant shall create, electronically or
5 otherwise, and maintain a personal money ledger to account for
6 personal money maintained in the trust account. The personal money
7 ledger shall include the following:

8 (a) ~~Chronological~~**A CHRONOLOGICAL** sequence of funds received
9 and disbursed.

10 (b) ~~Running~~**A RUNNING** balance after each receipt ~~and~~**OR**
11 disbursement.

12 (c) ~~Receipt postings to include~~**A POSTING OF EACH RECEIPT OF**
13 **MONEY THAT INCLUDES THE** date of receipt, **THE** date of deposit, **THE**
14 name of **THE** party ~~giving~~**PAYING THE** money, **THE** name of **THE**
15 principal, and **THE** amount received.

16 (d) ~~Disbursement postings to include~~**A POSTING OF EACH**
17 **DISBURSEMENT THAT INCLUDES** the date; **THE** check number, if
18 applicable; **THE** payee; **THE** amount; **THE** purpose; and a running
19 balance after each receipt ~~and~~**OR** disbursement.

20 **(13)** ~~(12)~~~~The~~**A REGISTRANT SHALL RETAIN THE** ledgers and
21 journals ~~, as well as~~**DESCRIBED IN SUBSECTION (12), AND RETAIN ALL**
22 trust account bank statements, deposit tickets, and copies of
23 deposit receipts, canceled checks, and voided checks, ~~shall be~~
24 ~~maintained for not less than~~**AT LEAST** 3 years from the date of
25 inception of the records ~~THAT RECORD~~ or ~~not less than~~**AT LEAST** 3
26 years ~~from~~**AFTER** the consummation or termination of the transaction
27 **FOR WHICH THAT RECORD WAS MAINTAINED**, whichever is later.

1 (14) ~~(13)~~A registrant under this article shall maintain
2 written records of each auction sale, **INCLUDING PRESALE AUCTION**
3 **SERVICES RELATED TO THAT AUCTION SALE**, for a period of ~~not less~~
4 ~~than~~**AT LEAST** 3 years from the date of the auction sale, or ~~not~~
5 ~~less than~~**AT LEAST** 3 years ~~from~~**AFTER** consummation or termination
6 of the transaction **FOR WHICH THAT RECORD WAS MAINTAINED**, whichever
7 is later. The records shall include ~~, but not be limited to,~~**AT**
8 **LEAST** all of the following:

9 (a) ~~Consignment~~**ANY CONSIGNMENT** receipts.

10 (b) ~~Bidder~~**ANY BIDDER** registrations.

11 (c) **ANY DOCUMENTS RELATING TO PRESALE AUCTION SERVICES.**

12 (d) ~~(e) Documents~~**ANY DOCUMENTS** relating to final settlements
13 with consignors.