

"AN ACT Relating to legal representation of the legislature."

The Attorney General presently represents all the branches of government in Washington State — the Legislature, the Executive and the Judiciary. This bill would allow the Legislature, the House, the Senate, or any committee or entity which hires its own staff to retain council of their own choosing to represent them in judicial and administrative proceedings. This is a substantial policy change.

The portion of section 1 which I am vetoing results in limiting the authority to retain counsel to the House of Representatives and the Senate together. This allows the Legislature as an institution to retain counsel. Without this limitation, I believe this authority to hire counsel would be too broad.

With the exception of the language in section 1 granting the House, the Senate and the committees or entities of the Legislature which hire their own staff the authority to retain separately legal counsel, I am signing Substitute Senate Bill No. 4525."

CHAPTER 324

[Substitute Senate Bill No. 4779]

AUCTIONS

AN ACT Relating to auctions; amending RCW 18.11.050, 18.11.060, 18.11.070, 18.11.100, 18.11.130, 18.11.140, 18.11.150, 18.11.160, 18.11.170, 18.11.180, 18.11.190, 18.11.200, and 18.11.210; adding new sections to chapter 18.11 RCW; creating a new section; repealing RCW 18.11.080, 18.11.090, 18.11.110, 18.11.120, 18.11.900, 18.11.910, 18.12.010, 18.12.020, 18.12.030, 18.12.040, 18.12.050, 18.12.060, 18.12.070, 18.12.080, 18.12.090, 18.12.100, 18.12.110, 18.12.120, 18.12.130, 18.12.140, 18.12.150, 18.12.160, 18.12.170, 18.12.180, 18.12.190, 18.12.200, and 18.12.900; prescribing penalties; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. This chapter may be known and cited as the "auctioneer registration act."

Sec. 2. Section 5, chapter 205, Laws of 1982 and RCW 18.11.050 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Auctioneer" means (~~a person who sells goods or real estate at public auction for another on commission or for recompense, or one who conducts an auction for another on commission or for recompense~~) an individual who calls bids at an auction.

(2) "Auction" (~~(or "sale at auction")~~) means (~~(the verbal)~~) a transaction conducted by means of exchanges between an auctioneer and the members of his or her audience, constituting a series of invitations for offers for the ((sale)) purchase of goods or real property made by the auctioneer, offers by members of the audience, and the acceptance of the highest or most favorable offer ((by the auctioneer)).

(3) "Auction mart" means any fixed or established place designed, intended, or used for the conduct of auctions ((sales)).

(4) "Auction company" means a sole proprietorship, partnership, corporation, or other legal or commercial entity that sells or offers to sell goods

or real estate at auction or arranges, sponsors, or manages auctions. The term "auction company" shall exclude any sole proprietorship owned by an auctioneer licensed under this chapter whose gross annual sales do not exceed twenty-five thousand dollars.

(5) "Department" means the department of licensing.

~~((5))~~ (6) "Director" means the director of licensing.

~~((6))~~ (7) "Person" means an individual, ~~((or a partner or member of a firm,))~~ partnership, ~~((or))~~ association, ~~((or an officer, director, or employee of a))~~ corporation, or any other form of business enterprise.

~~((7))~~ (8) "Goods" mean wares, chattels, merchandise, or personal property owned or consigned, which may be lawfully kept or offered for sale, ~~((including domestic animals and farm products)).~~

~~((8))~~ "Qualified public depository" means a depository defined by RCW 39.58.010, a credit union as governed by chapter 31.12 RCW, a mutual savings bank as governed by Title 32 RCW, a savings and loan association as governed by Title 33 RCW, or a federal credit union or a federal savings and loan association organized, operated, and governed by any act of Congress.)

(9) "License" means state authority to operate as an auctioneer or auction company, which authority is conferred by issuance of a certificate of registration subject to annual renewal.

(10) "Licensee" means an auctioneer or auction company registered under this chapter.

Sec. 3. Section 2, chapter 205, Laws of 1982 and RCW 18.11.060 are each amended to read as follows:

This chapter shall be administered under chapter 43.24 RCW. The director shall set registration and renewal fees in accordance with RCW 43.24.086. If an auctioneer or auction company does not renew a license before it expires, the renewal shall be subject to payment of a penalty fee.

Sec. 4. Section 6, chapter 205, Laws of 1982 and RCW 18.11.070 are each amended to read as follows:

(1) ~~((On and after June 10, 1982,))~~ It is unlawful for any person to act as an auctioneer~~((:))~~ or for an auction company to engage in ~~((the))~~ any business ~~((of an auctioneer))~~ in this state without a license. ~~((A person conducting an auction or sale at auction of equipment, livestock, household goods, personal property, or real estate individually owned by that person is not required to obtain a license.))~~

(2) This ~~((section))~~ chapter does not apply to ~~((an auction or a sale at auction))~~:

(a) An auction of goods conducted by an individual who personally owns those goods and who did not acquire those goods for resale;

(b) An auction conducted by or under the direction of a public authority;

~~((b))~~ (c) An auction held under judicial order in the settlement of a decedent's estate;

~~((c))~~ (d) An auction which is required by law to be at auction;

~~((d))~~ (e) An auction conducted by or on behalf of a political organization or a charitable corporation or association if the person conducting the sale receives no compensation;

~~((e) Conducted by or under the auspices of national, state, or county livestock breeder or producer associations,))~~ or

(f) An auction of livestock or agricultural products which is conducted ((by a person licensed by the federal government; or

~~(g) Conducted by or under the auspices of the Future Farmers of America, the 4-H Club, or a county or district fair))~~ under chapter 16.65 or 20.01 RCW. Auctions not regulated under chapter 16.65 or 20.01 RCW shall be fully subject to the provisions of this chapter.

NEW SECTION. Sec. 5. Every individual, before acting as an auctioneer, shall obtain an auctioneer certificate of registration. To be licensed as an auctioneer, an individual shall meet all of the following requirements:

(1) Be at least eighteen years of age or sponsored by a licensed auctioneer.

(2) File with the department a completed application on a form prescribed by the director.

(3) Show that the proper tax registration certificate required by RCW 82.32.030 has been obtained from the department of revenue.

(4) Pay the auctioneer registration fee required under the agency rules adopted pursuant to this chapter.

(5) File with the department an auctioneer surety bond in the amount and form required by section 8 of this act and the agency rules adopted pursuant to this chapter.

(6) Have no disqualifications under RCW 18.11.160.

NEW SECTION. Sec. 6. Every person, before operating an auction company as defined in RCW 18.11.050, shall obtain an auction company certificate of registration. To be licensed as an auction company, a person shall meet all of the following requirements:

(1) File with the department a completed application on a form prescribed by the director.

(2) Sign a notarized statement included on the application form that all auctioneers hired by the auction company to do business in the state shall be properly registered under this chapter.

(3) Show that the proper tax registration certificate required by RCW 82.32.030 has been obtained from the department of revenue.

(4) Pay the auction company registration fee required under the agency rules adopted pursuant to this chapter.

(5) File with the department an auction company surety bond in the amount and form required by section 8 of this act and the agency rules adopted pursuant to this chapter.

(6) Have no disqualifications under RCW 18.11.160.

Sec. 7. Section 8, chapter 205, Laws of 1982 as amended by section 9, chapter 7, Laws of 1985 and RCW 18.11.100 are each amended to read as follows:

(1) ~~((A nonresident of this state may be licensed as an auctioneer upon complying with the rules of the department and this chapter))~~ Nonresident auctioneers and auction companies are required to comply with the provisions of this chapter and the rules of the department as a condition of conducting business in the state.

(2) ~~((The department may accept, in lieu of the recommendations and statements otherwise required to accompany the application for a license, an auctioneer's license issued to the applicant by the state of his or her domicile upon the payment by the applicant of the proper license fee and filing with the department of a certified copy of the license issued by the other state. This section shall only apply to licensed auctioneers of those states under the laws of which similar recognition and courtesies are extended to licensed auctioneers of this state.~~

~~(3))~~ The application of ~~((a person for))~~ a nonresident ~~((auctioneer's license))~~ under this chapter shall constitute the appointment of the secretary of state as the applicant's agent upon whom process may be served in any action or proceeding against the applicant arising out of a transaction or operation connected with or incidental to the business of an auctioneer or an auction company.

~~((4) Nonresidents must pay the issuance fee, annual renewal fees, and such other fees as prescribed by the director under RCW 43.24.086, and file the bond or proof of the establishment of a trust account as required by this chapter.))~~

NEW SECTION. Sec. 8. (1) Each auctioneer and each auction company shall as a condition to the granting and retention of a license have on file with the department an approved surety bond or other security in lieu of a bond. The bond or other security of an auctioneer shall be in the amount of five thousand dollars.

(2) The bond or other security of an auction company shall be in an amount not less than five thousand dollars and not more than twenty-five thousand dollars. The amount shall be based on the value of the goods and real estate sold at auctions conducted, supervised, arranged, sponsored, or managed by the auction company during the previous calendar year or, for a new auction company, the estimated value of the goods and real estate to be sold at auction during the current calendar year. The director shall establish by rule the procedures to be used for determining the amount of auction company bonds or other security.

(3) In lieu of a surety bond, an auctioneer or auction company may deposit with the department any of the following:

- (a) Savings accounts assigned to the director;
- (b) Certificates of deposit payable to the director;
- (c) Investment certificates or share accounts assigned to the director;

or

- (d) Any other security acceptable to the director.

All obligations and remedies relating to surety bonds authorized by this section shall apply to deposits filed with the director.

(4) Each bond shall comply with all of the following:

(a) Be executed by the person seeking the license as principal and by a corporate surety licensed to do business in the state;

(b) Be payable to the state;

(c) Be conditioned on compliance with all provisions of this chapter and the agency rules adopted pursuant to this chapter, including payment of any administrative fines assessed against the licensee; and

(d) Remain in effect for one year after expiration, revocation, or suspension of the license.

(5) If any licensee fails or is alleged to have failed to comply with the provisions of this chapter or the agency rules adopted pursuant to this chapter, the director may hold a hearing in accordance with chapter 34.04 RCW, determine those persons who are proven claimants under the bond, and, if appropriate, distribute the bond proceeds to the proven claimants. The state or an injured person may also bring an action against the bond in superior court. The liability of the surety shall be only for actual damages and shall not exceed the amount of the bond.

(6) Damages that exceed the amount of the bond may be remedied by actions against the auctioneer or the auction company under section 25 of this act or other available remedies at law.

Sec. 9. Section 11, chapter 205, Laws of 1982 and RCW 18.11.130 are each amended to read as follows:

~~No ((person may act as auctioneer in the sale at public auction of any)) goods or real estate shall be sold at auction until ((he or she)) the auctioneer or auction company has entered into a written contract or agreement with the owner or consignor in duplicate which contains the terms and conditions upon which the licensee receives or accepts the property for sale at auction. ((Auction marts shall not be subject to this section:))~~

A person who violates this section shall be ~~((guilty of a misdemeanor and, upon conviction, shall be fined))~~ subject to an administrative fine in a sum not exceeding five hundred dollars for each violation.

Sec. 10. Section 12, chapter 205, Laws of 1982 and RCW 18.11.140 are each amended to read as follows:

Every person engaged in the business of selling goods or real estate at auction shall keep ~~((permanent))~~ written records for a period of three years available for inspection which indicate clearly the name and address of the owner ~~((, employer,))~~ or consignor of the goods or real estate, the terms of acceptance and sale, and a copy of the signed written contract ~~((of the auctioneer))~~ required by RCW 18.11.130. A person who violates this section shall be subject to an administrative fine in a sum not exceeding five hundred dollars for each violation.

Sec. 11. Section 13, chapter 205, Laws of 1982 and RCW 18.11.150 are each amended to read as follows:

All ~~((persons, partnerships, associations, and corporations licensed as auctioneers under this chapter))~~ auctioneers and auction companies shall ~~((be required to))~~ have their certificates of registration prominently displayed in their offices and the current renewal card or a facsimile available on demand at all ~~((sales at))~~ auctions conducted or supervised by the licensee.

~~((The violation of this section by any licensee shall be, in the discretion of the department sufficient cause for license suspension or revocation))~~ A person who violates this section shall be subject to an administrative fine in a sum not exceeding one hundred dollars for each violation.

Sec. 12. Section 14, chapter 205, Laws of 1982 and RCW 18.11.160 are each amended to read as follows:

(1) ~~((If an auctioneer's license is revoked by the department after June 10, 1982, no new license may be issued to the person unless he or she complies with this chapter.~~

(2) ~~After the revocation of any license, no new license may be issued to the same licensee within a period of at least one year from the date of the revocation nor at any time thereafter except in the sole discretion of the department.~~

~~((3))~~ No license ~~((may))~~ shall be issued by the department to any person who has been convicted of forgery, embezzlement, obtaining money under false pretenses, extortion, criminal conspiracy, fraud, theft, receiving stolen goods, unlawful issuance of checks or drafts, or other similar offense, or to any partnership of which the person is a member, or to any association or corporation of which the person is an officer ~~((or employee))~~ or in which as a stockholder the person has or exercises a controlling interest either directly or indirectly.

(2) The following shall be grounds for denial, suspension, or revocation of a license, or imposition of an administrative fine by the department:

(a) Misrepresentation or concealment of material facts in obtaining a license;

(b) Underreporting to the department of sales figures so that the auctioneer or auction company surety bond is in a lower amount than required by law;

- (c) Revocation of a license by another state;
- (d) Misleading or false advertising;
- (e) A pattern of substantial misrepresentations related to auctioneering or auction company business;
- (f) Failure to cooperate with the department in any investigation or disciplinary action;
- (g) Nonpayment of an administrative fine prior to renewal of a license;
- (h) Aiding an unlicensed person to practice as an auctioneer or as an auction company; and
- (i) Any other violations of this chapter.

Sec. 13. Section 15, chapter 205, Laws of 1982 and RCW 18.11.170 are each amended to read as follows:

Any ((person, partnership, association, or corporation who after June 10, 1982, engages in the profession, or acts in the capacity of an)) auctioneer and any auction company that conducts business within this state without a license or after the suspension or revocation of his or her license ((is guilty of a misdemeanor. Upon conviction, the person shall be fined for the first offense not less than one hundred dollars, nor more than five hundred dollars. For a second offense, the person shall be fined not less than five hundred dollars nor more than one thousand dollars, or be imprisoned for a period of not more than one year, or both)) shall be fined by the department five hundred dollars for the first offense and one thousand dollars for the second or subsequent offense.

Sec. 14. Section 16, chapter 205, Laws of 1982 and RCW 18.11.180 are each amended to read as follows:

It shall be unlawful for a licensed auctioneer or licensed auction company to pay compensation in money or otherwise to anyone not licensed under this chapter to render any service or to do any act forbidden under this chapter to be rendered or performed except by licensees. The department shall fine any person who violates this section five hundred dollars for the first offense and one thousand dollars for the second or subsequent offense. Furthermore, the violation of this section by any licensee shall be, in the discretion of the department, sufficient cause for license suspension or revocation.

Sec. 15. Section 17, chapter 205, Laws of 1982 and RCW 18.11.190 are each amended to read as follows:

No action or suit may be instituted in any court of this state by any person, partnership, association, or corporation not licensed as an auctioneer and as an auction company to recover compensation for an act done or service rendered which is prohibited under this chapter.

Sec. 16. Section 18, chapter 205, Laws of 1982 and RCW 18.11.200 are each amended to read as follows:

The director (~~((may prescribe))~~) shall adopt rules for the purpose of carrying out and developing this chapter, including rules governing the conduct of investigations and inspections and the imposition of administrative penalties. (~~((Upon finding that any provision of this chapter has been violated, the director may deny issuance or renewal of any license authorized under this chapter or suspend or revoke any such license.))~~)

NEW SECTION. Sec. 17. The director shall impose and collect the administrative fines authorized by this chapter. Any administrative fine imposed under this chapter or the agency rules adopted pursuant to this chapter may be appealed under chapter 34.04 RCW, the administrative procedure act. Assessment of an administrative fine shall not preclude the initiation of any disciplinary, civil, or criminal action for the same or similar violations.

***NEW SECTION.** Sec. 18. (1) *There is created within the department a disciplinary review committee composed of two licensees and three public members to be appointed by the director. Members shall be residents of the state, and no member shall be an employee of the department. Each member shall receive reimbursement for travel expenses in accordance with RCW 43.03.050 and 43.03.060.*

(2) *The director shall appoint members for terms of two years, except that two of the initial members shall be appointed for one-year terms. No member shall serve more than two consecutive terms. Vacancies shall be filled by the director for the remainder of the unexpired term. The committee shall elect a chairperson from among its members for a term of one year or until a successor has been elected.*

(3) *The committee shall meet four times a year or as often as necessary with the department staff responsible for administration of the auctioneer registration program. The committee may (a) advise the department on all matters pertaining to the auctioneer registration program, and (b) review administrative fines and other disciplinary actions under this chapter and make appropriate recommendations to the director.*

*Sec. 18 was vetoed, see message at end of chapter.

Sec. 19. Section 1, chapter 189, Laws of 1984 and RCW 18.11.210 are each amended to read as follows:

All newspaper advertising regarding auctions that is purchased by an auctioneer or an auction company licensed under this chapter shall include the auctioneer's or auction company's name and license number. Any auctioneer or auction company that violates this section is subject to an administrative fine of one hundred dollars per violation.

NEW SECTION. Sec. 20. The client of an auctioneer or auction company has a right to (1) an accounting for any money that the auctioneer or auction company receives from the sale of the client's goods, and (2) payment of all money due to the client within twenty-one calendar days

unless the parties have mutually agreed in writing to another time of payment.

NEW SECTION. Sec. 21. Auction proceeds due to the client that are received by the auctioneer or auction company and not paid to the client within twenty-four hours of the sale shall be deposited by the auctioneer or auction company in a trust account for the client in a bank, savings and loan association, mutual savings bank, or licensed escrow agent located in the state. The auctioneer or auction company shall draw on the trust account only to pay proceeds to the client, or such other persons who are legally entitled to such proceeds, and to obtain the sums due to the auctioneer or auction company for services as set out in the written contract required under RCW 18.11.130. Funds in the trust account shall not be subject to the debt of the auctioneer or auction company and shall not be used for personal reasons or other business reasons.

NEW SECTION. Sec. 22. The following requirements shall apply to bidding at auctions:

(1) An auctioneer conducting an auction and an auction company where an auction is being held shall not bid on or offer to buy any goods or real property at the auction unless the auctioneer or the auction company discloses the name of the person on whose behalf the bid or offer is being made.

(2) An auctioneer and an auction company shall not use any method of bidding at an auction that will allow goods or real property to be purchased in an undisclosed manner on behalf of the auctioneer or auction company.

(3) At a public auction conducted or supervised by an auctioneer or auction company, the auctioneer or auction company shall not fictitiously raise any bid, knowingly permit any person to make a fictitious bid, or employ or use another person to act as a bidder or buyer.

(4) All goods or real property offered for sale at an auction shall be subject to a reserve or a confirmation from the owner or consignor unless otherwise indicated by the auctioneer or auction company. Except as provided in this subsection, an auctioneer or auction company shall not use any method of bidding at an auction that allows the auctioneer or auction company to avoid selling any property offered for sale at auction.

(5) A licensee who violates any provision of this section shall be subject to an administrative fine in a sum not exceeding five hundred dollars for each violation.

NEW SECTION. Sec. 23. Auctioneers and auction companies may call for bids on real estate but only persons licensed under chapter 18.85 RCW may perform activities regulated under that chapter.

***NEW SECTION.** *Sec. 24. No city and no county shall license auctioneers or auction companies or require auctioneers or auction companies to obtain surety bonding.*

**Sec. 24 was vetoed, see message at end of chapter.*

NEW SECTION. *Sec. 25. A violation of this chapter is hereby declared to affect the public interest and to offend public policy. Any violation, act, or practice by an auctioneer or auction company which is unfair or deceptive, shall constitute an unfair or deceptive act or practice in violation of RCW 19.86.020. The remedies and sanctions provided in this section shall not preclude application of other available remedies and sanctions.*

NEW SECTION. *Sec. 26. The following acts or parts of acts are each repealed:*

(1) Section 3, chapter 205, Laws of 1982, section 8, chapter 7, Laws of 1985 and RCW 18.11.080;

(2) Section 7, chapter 205, Laws of 1982 and RCW 18.11.090;

(3) Section 9, chapter 205, Laws of 1982, section 10, chapter 7, Laws of 1985 and RCW 18.11.110;

(4) Section 10, chapter 205, Laws of 1982, section 3, chapter 189, Laws of 1984 and RCW 18.11.120;

(5) Section 1, chapter 205, Laws of 1982 and RCW 18.11.900;

(6) Section 19, chapter 205, Laws of 1982 and RCW 18.11.910;

(7) Section 1, chapter 239, Laws of 1953 and RCW 18.12.010;

(8) Section 2, chapter 239, Laws of 1953 and RCW 18.12.020;

(9) Section 3, chapter 239, Laws of 1953 and RCW 18.12.030;

(10) Section 7, chapter 239, Laws of 1953 and RCW 18.12.040;

(11) Section 4, chapter 239, Laws of 1953 and RCW 18.12.050;

(12) Section 5, chapter 239, Laws of 1953 and RCW 18.12.060;

(13) Section 6, chapter 239, Laws of 1953 and RCW 18.12.070;

(14) Section 8, chapter 239, Laws of 1953 and RCW 18.12.080;

(15) Section 19, chapter 239, Laws of 1953 and RCW 18.12.090;

(16) Section 14, chapter 239, Laws of 1953 and RCW 18.12.100;

(17) Section 16, chapter 239, Laws of 1953 and RCW 18.12.110;

(18) Section 17, chapter 239, Laws of 1953 and RCW 18.12.120;

(19) Section 9, chapter 239, Laws of 1953 and RCW 18.12.130;

(20) Section 10, chapter 239, Laws of 1953 and RCW 18.12.140;

(21) Section 11, chapter 239, Laws of 1953 and RCW 18.12.150;

(22) Section 12, chapter 239, Laws of 1953 and RCW 18.12.160;

(23) Section 13, chapter 239, Laws of 1953 and RCW 18.12.170;

(24) Section 15, chapter 239, Laws of 1953 and RCW 18.12.180;

(25) Section 18, chapter 239, Laws of 1953 and RCW 18.12.190;

(26) Section 20, chapter 239, Laws of 1953 and RCW 18.12.200; and

(27) Section 21, chapter 239, Laws of 1953 and RCW 18.12.900.

NEW SECTION. Sec. 27. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 28. Sections 5, 6, 8, 17, 18, 20 through 25, and 27 of this act are each added to chapter 18.11 RCW.

NEW SECTION. Sec. 29. This act shall take effect on July 1, 1986.

Passed the Senate March 12, 1986.

Passed the House March 4, 1986.

Approved by the Governor April 4, 1986, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State April 4, 1986.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval of sections 18 and 24, Substitute Senate Bill No. 4779, entitled:

"AN ACT Relating to auctions."

The intent of this legislation is to retain the current licensing and bonding and trust accounts systems for auctioneers and add consumer protection by establishing standards for certain business practices and declaring that deviations from these practices constitute violations of the Consumers Protection Act.

Auctioneering is a growing industry in this state. The rapid growth of such service industries in which the service provider has substantial responsibilities for handling the merchandise and cash flow of clients frequently creates the potential for abuse. This legislation is intended to put in place appropriate protections for consumers before such abuses become a serious problem.

Section 18 of this legislation would establish a new Disciplinary Review Committee. This disciplinary committee is premature and would have no enforcement powers.

Section 24 of this legislation would forbid any regulation of auctioneers by cities and counties. This may interfere with the power of local governments to require business licenses and the payment of business taxes.

For the above reasons, sections 18 and 24 are vetoed.

With the exception of sections 18 and 24, Substitute Senate Bill No. 4779 is approved."

CHAPTER 325

[Second Substitute Senate Bill No. 3487]

ENERGY CONSERVATION IN STATE BUILDINGS

AN ACT Relating to energy consumption in state agencies; amending RCW 43.19.680; adding new sections to chapter 43.41 RCW; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds that:

(1) Capital investments in energy conservation in buildings can produce significant reductions in energy use, reducing the need to import or extract fossil fuels and lowering the cost of operating buildings.