

House Bill 3267

Sponsored by Representative HOLVEY

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires person who conducts estate sale to provide notice, to refrain from certain practices and to hold moneys received from sale in trust account if person does not pay moneys to client immediately. Exempts certain types of sales from application of Act.

A BILL FOR AN ACT

1
2 Relating to estate sales; amending ORS 698.635, 698.640 and 698.650.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1.** ORS 698.635 is amended to read:

5 698.635. As used in ORS 698.640 and 698.650:

6 (1) "Auction" or "auction sale" means [*the sale of or offer*] **selling or offering** to sell real or
7 personal property [*by public outcry or*] to the highest [*bidders*] **bidder**.

8 (2) "Auctioneer" means [*any*] **a** person who sells or offers to sell property at auction, either on
9 the person's own behalf or for another person.

10 (3) "Auction mart" means [*any*] **a** fixed or established place designed, intended or used [*for the*
11 *conduct of*] **to conduct** auction sales where more than one sale has [*been held in any one*] **occurred**
12 **during a** calendar year.

13 (4)(a) **"Estate sale" means a sale of all or a portion of the personal property of a deceased**
14 **individual.**

15 (b) **"Estate sale" does not include a sale of real property.**

16 **SECTION 2.** ORS 698.640 is amended to read:

17 698.640. Except as provided in ORS 698.650, this section establishes requirements for auction
18 sales, **estate sales**, auctioneers and auction marts. The requirements under this section are in ad-
19 dition to [*any provisions relating to auctions under*] **the provisions of** ORS 72.3280 **that relate to**
20 **auctions**. A person who violates [*any*] **a** requirement under this section commits an unlawful prac-
21 tice as described in ORS 646.608 (1)(v). The requirements under this section are subject to enforce-
22 ment and penalty as provided under ORS 646.605 to 646.652. The following requirements are
23 established for auction sales, **estate sales**, auctioneers and auction marts as described:

24 (1) [*Any*] **An** advertisement of an auction sale **or an estate sale** [*shall*] **must** include the name
25 of the auctioneer who will conduct the auction sale or the person responsible for [*the conduct of*]
26 **conducting** the auction sale **or estate sale**.

27 (2) An auctioneer and the operator of an auction mart [*shall*] **may** not use [*any*] **a** method of
28 bidding at an auction that will allow property to be purchased in an undisclosed manner on behalf
29 of the auctioneer or auction mart operator.

30 (3) An auctioneer, **a person who conducts an estate sale** or **an** auction mart operator [*shall*]
31 **may** not use [*any*] **a** method of bidding at an auction **or selling at an estate sale** that allows the

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 auctioneer, **the person who conducts an estate sale** or **an** auction mart operator to avoid selling
 2 *[any]* property offered for sale at auction **or at an estate sale.**

3 (4) An auctioneer, **person who conducts an estate sale** or **an** auction mart operator *[shall]*
 4 **may** not employ or use another person to act as a bidder or buyer at the auction **or estate sale**
 5 on behalf of the auctioneer, **the person who conducts the estate sale** or **the** operator of the
 6 auction mart.

7 (5) *[Any time]* **If** an auctioneer, **a person who conducts an estate sale** or **an** auction mart
 8 operator receives money that **the auctioneer, person or auction mart operator owes to the**
 9 **auctioneer’s, person’s or auction mart operator’s clients** *[is owed to clients of the auctioneer or*
 10 *auction mart operator]* from the sale of the client’s goods **or personal property**, the auctioneer,
 11 **person** or auction mart operator *[must]* **shall** comply with all of the following if the **auctioneer,**
 12 **person or auction mart operator does not pay the money** *[is not]* immediately *[paid]* to the client
 13 at the time of auction:

14 (a) *[Any such money maintained in an account must be kept in a trust account where the money*
 15 *is held in trust for the client and identified and accounted for]* **The auctioneer, person or auction**
 16 **mart operator must maintain the money for the client in a trust account and identify and**
 17 **account for the money** separately in a manner that will allow the money to be distinguished from
 18 the moneys of the auctioneer, **person** or operator that are subject to the debts of the auctioneer,
 19 **person** or operator. The account required by this paragraph must be separate from *[any]* **an** account
 20 *[used by]* **that** the auctioneer, **person** or operator **uses** for personal reasons or other business rea-
 21 sons.

22 (b) The client has a right to an accounting from the auctioneer, **person** or auction mart opera-
 23 tor for *[any]* money that the auctioneer, **person** or auction mart operator received in payment for
 24 the client’s goods that is not paid to the client.

25 (c) The auctioneer, **person** or auction mart operator must pay the client the money owed to the
 26 client before the end of 21 calendar days after the auction **or estate sale** at which the client’s goods
 27 were sold unless the parties have mutually agreed **in writing** to another time of payment *[in*
 28 *writing]*.

29 **SECTION 3.** ORS 698.650 is amended to read:

30 698.650. *[This section establishes exemptions from the requirements for auctions, auction marts and*
 31 *auctioneers established under ORS 698.640. The exemptions are as described in the following]* **ORS**
 32 **698.640 does not apply to:**

33 (1) *[Nothing in ORS 698.640 applies to any]* **An** auction, auctioneer or auction mart regulated
 34 under ORS chapter 599.

35 (2) *[Nothing in ORS 698.640 applies to]* The sale of timber at *[any]* **an** auction or auction mart
 36 or by *[any]* **an** auctioneer. In addition, the sale of timber at auction is with reserve unless the timber
 37 is in explicit terms put up without reserve.

38 (3) **An estate sale conducted under the authority of a court, or in accordance with pro-**
 39 **cedures specified in ORS chapter 113, if the provisions of ORS 698.640 conflict with the orders**
 40 **of the court or procedures set forth in ORS chapter 113.**

41 (4) **A going out of business sale or liquidation sale regulated under ORS 646A.100 to**
 42 **646A.110.**