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# OHIO LEGISLATIVE SERVICE COMMISSION

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Office

**H.B. 321\***  
**134<sup>th</sup> General Assembly**

## Occupational Regulation Report

[Click here for H.B. 321's Bill Analysis/Fiscal Note](#)

**Primary Sponsor:** Reps. Kick and Young

**Impacted Professions:** Auctioneers

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LSC is required by law to issue a report for each introduced bill that substantially changes or enacts an occupational regulation. The report must: (1) explain the bill's regulatory framework in the context of Ohio's statutory policy of using the least restrictive regulation necessary to protect consumers, (2) compare the regulatory schemes governing the same occupation in other states, and (3) examine the bill's potential impact on employment, consumer choice, market competition, and cost to government.<sup>1</sup>

## LEAST RESTRICTIVE REGULATION COMPARISON

### Ohio's general regulatory policy

The general policy of the state is reliance on market competition and private remedies to protect the interests of consumers in commercial transactions involving the sale of goods or services. For circumstances in which the General Assembly determines that additional safeguards are necessary to protect consumers from "present, significant, and substantiated harms that threaten health, safety, or welfare," the state's expressed intent is to enact the "least restrictive regulation that will adequately protect consumers from such harms."<sup>2</sup>

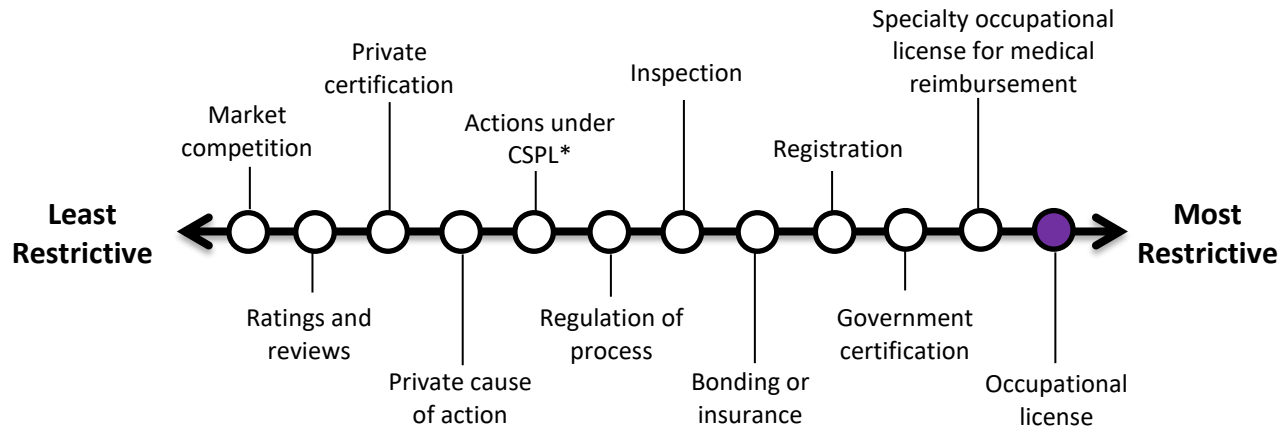
The degree of "restrictiveness" of an occupational regulation is prescribed by statute. The following graphic identifies each type of occupational regulation expressly mentioned in the state's policy by least to most restrictive:

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\* This report addresses the "As Introduced" version of H.B. 321. It does not account for changes that may have been adopted after the bill's introduction.

<sup>1</sup> R.C. 103.26, not in the bill.

<sup>2</sup> R.C. 4798.01 and 4798.02, neither in the bill.



\*CSPL – The Consumer Sales Practices Law

## Necessity of regulations

Representative Kick, one of the bill’s primary sponsors, testified that the purposes of H.B. 321 are to modernize the process for becoming a licensed auctioneer, eliminate unnecessary barriers to obtaining the license, and protect the “standard of excellence” in the profession. According to sponsor testimony, requiring aspiring auctioneers to undergo an apprenticeship program that consists of live auction experience, an examination, and completion of an approved course of study at an auction school is a significant barrier for entry into the profession. The sponsors assert that the bill’s removal of the apprenticeship requirements will make the auctioneer licensing process less burdensome.<sup>3</sup> Proponent testimony suggests that the bill’s modified licensing standard will reduce the time required to obtain an auctioneer’s license from 14 months to as few as two months.<sup>4</sup>

Based on committee testimony, consumer protection appears to be the impetus for the bill’s extension of the auctioneer law, and the associated license requirements, to internet auctions. According to the Ohio Auctioneers Association, it will add another layer of consumer protection by educating practitioners on basic auction business practices, ethics, law, contracts, and trust accounts.<sup>5</sup>

The rationale for the bill’s reciprocity provision was not addressed in committee testimony.

## Restrictiveness of regulations

Licensure is the most restrictive of all regulatory options identified within the state’s general policy on occupational regulations. Accordingly, the policy prescribes a narrow range of situations in which it is appropriate. Specifically, when all of the following circumstances are

<sup>3</sup> Representative Darrell Kick, *H.B. 321 Sponsor Testimony*, June 15, 2021.

<sup>4</sup> Wade Baer, Ohio Auctioneers Association, *H.B. 321 Proponent Testimony*, June 22, 2021.

<sup>5</sup> Wade Baer, Ohio Auctioneers Association, *H.B. 321 Proponent Testimony*, June 22, 2021.

present: (1) the occupation involves providing a service regulated by both state and federal law, (2) the licensing framework allows individuals licensed in other states and territories to practice in Ohio, and (3) the licensing requirement is based on uniform national laws, practices, and examinations that have been adopted by at least 50 U.S. states and territories.<sup>6</sup>

There is no federal regulatory framework governing auctions or auctioneers. However, according to the National Auctioneer License Law Officials Association, about half of the states require auctioneers to obtain a state license.<sup>7</sup> The state does not allow out-of-state licensees to conduct auctions in Ohio but the Department is permitted to waive the testing and schooling requirements for nonresident auctioneers who are licensed in one of the 16 states with which Ohio has a reciprocal agreement. Notably, the bill eliminates a similar waiver provision that applies to Ohio residents who are licensed out-of-state.<sup>8</sup> Ohio's auctioneer licensing laws do not appear to be based on a uniform national law or practice.

Ohio's auctioneer license does not appear to be entirely consistent with the state's general occupational regulation policy. It is, however, a policy judgment as to whether the bill's provisions, which modify an existing license, should be subjected to the same scrutiny as legislation that creates new licenses. The bill decreases the restrictiveness of the state's auctioneer regulations in several respects; for instance, by eliminating apprenticeship and oral examination requirements.

It is also a policy judgment as to whether extending the licensure requirement to internet auctioneers is the least restrictive means by which to protect consumers from negligent or deceptive practitioners. The state's general policy on occupational regulation suggests that protecting consumers from fraud, damages from transient vendors, and damages to third parties might be adequately accomplished through strengthening powers under the deceptive practices act, instituting a registration requirement, or requiring the auctioneer to remit a surety bond or to carry liability insurance.<sup>9</sup> The existing auctioneer license comes with some built-in consumer protection measures such as surety bonding and extending those licensing requirements to internet auctioneers certainly appears to level the playing field between in-person and internet auctions. However, it is unclear whether the enhanced consumer protection and competitive fairness in the auctioneering profession that may result from the bill's license requirement outweigh the state policy's general preference for less restrictive occupational regulations.

## **Other regulatory policies**

The bill modifies an established regulatory framework that applies to auctioneers operating in Ohio. The Department of Agriculture currently administers five auction related licenses: auctioneer, apprentice auctioneer, special auctioneer, auctioneer firm, and auctioneer corporation, partnership, or association. There are more than 3,200 active licensees among those

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<sup>6</sup> R.C. 4798.02, not in the bill.

<sup>7</sup> National Auctioneer License Law Officials Association, [States with no License Law](#).

<sup>8</sup> R.C. 4707.07(D) and 4707.12.

<sup>9</sup> R.C. 4798.02, not in the bill.

categories.<sup>10</sup> The law does not contain a general statement explaining the state's intent in regulating auctioneers.

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## IMPACT STATEMENT

### Opportunities for employment

In FY 2020, there were over 2,500 auctioneers licensed in Ohio, not including 100 active apprentice auctioneer licenses and two active special auctioneer licenses. The bill's requirement that auctioneers participate in eight hours of continuing education every two years may make it somewhat more costly for these auctioneers to maintain their licenses. This would be true for new auctioneers also. However, the bill's removal of the requirements that a person serve as an apprentice auctioneer and pass an oral examination before obtaining licensure as an auctioneer make initial entry into the field somewhat easier.

### Market competition and consumer choices and costs

The bill's elimination of the current exemption of sales of real or personal property conducted over the internet from the law governing auctioneers (including licensure requirements) may reduce the number of people authorized to perform on-line auctions in Ohio. According to the Department of Agriculture, consumers of live auctions are more sensitive than consumers of online auctions to changes in the number of available auctioneers due to the skill and training required to perform a live auction. The bill is unlikely to have a significant impact on the number of auctioneers conducting live auctions in Ohio. Therefore, it is unlikely that the bill would have a significant impact on market competition or consumer choices and costs.

### Cost to government

For the costs of the bill to the government, please see the [LBO fiscal note](#).

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## SUMMARY OF PROPOSED REGULATIONS

H.B. 321 has three provisions that appear to increase the restrictiveness of occupational regulations governing auctioneers. The first institutes a continuing education requirement for licensed auctioneers, the second eliminates the authority of the Department of Agriculture to waive schooling requirements for out-of-state licensees who are residents of Ohio, and the third requires licensure to conduct auctions over the internet. The bill also includes several provisions that relax or eliminate regulations – such as eliminating the apprentice and special auctioneer licenses or removing the oral examination requirement for new licensees.

For a full explanation of the bill's provisions, see [H.B. 321's Bill Analysis](#).

### Continuing education

The bill requires a licensed auctioneer or auction firm manager to complete eight continuing education hours prior to renewing their biennial license. Three hours must consist of course instruction in the law governing auctioneers, contract law, the Uniform Commercial Code, auction ethics, or trust or escrow accounts. The remaining five hours must consist of course

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<sup>10</sup> Ohio Department of Agriculture, [Auctioneers: About Us](#).

instruction in advertising and marketing, business math and accounting, insurance and liability, federal firearms law, business management, or motor vehicle, real estate, or personal property auctions. The bill requires auctioneers and auction firm managers to include with their license renewal application an affidavit attesting that the applicant has completed the required number of hours of continuing education.<sup>11</sup>

## **Reciprocity**

The bill eliminates the Department of Agriculture’s authority to waive “schooling and apprenticeship” requirements for Ohio residents who hold an auctioneer’s license from another state. The apprenticeship requirement is eliminated altogether by the bill so the Department’s authority to waive it is rendered moot. However, the waiver provision remains meaningful with respect to the schooling requirement. Ohio residents who are licensed in a state with which Ohio has a reciprocal agreement are permitted to skip the (generally) required course of study under current law. But the bill eradicates this potential shortcut to obtaining licensure.

In contrast, the bill retains a similar waiver provision that applies to “testing and schooling” requirements for nonresident out-of-state licensees.<sup>12</sup>

## **Internet auctions**

The bill eliminates the current exemption of sales of real or personal property conducted over the internet from the law governing auctioneers (including licensure requirements). The current exemption applies unless the internet auction is conducted in conjunction with a live auction.

Continuing law, unchanged by the bill, exempts all sales conducted at auction (in person or over the internet) by the property owner so long as the property was not acquired for resale purposes. Auction mediation companies – which provide an internet forum for silent, electronic auctions of real and personal property – are also exempt. Therefore, it does not appear that the bill would subject personal use of internet auction websites (like eBay) or the sites themselves to the state’s auctioneer law. The bill also clarifies that auction firms may provide auction services for online or live auctions. Current law does not stipulate the type of auctions for which services may be provided by an auction firm. An online auction is an auction or sale at auction of real or personal property that is conducted via a website or similar interactive communication media in which the website or communication media accepts or rejects bids and declares items, parcels, or lots sold. A live auction is an auction that is hosted by an auctioneer with the audience of bidders and the auctioneer in the same physical location.

The bill clarifies that an auction firm license is not required when personal property is taken on consignment for free for subsequent sale at auction. Further, the bill clarifies that a person who takes personal property on consignment for sale at auction is not a consignee if the person does not take such property in the regular course of business.<sup>13</sup>

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<sup>11</sup> R.C. 4707.07(B) and 4707.10(C).

<sup>12</sup> R.C. 4707.07(D).

<sup>13</sup> R.C. 4707.01 and 4707.02(B).

## Provisions that relax or eliminate regulations

The bill removes the requirement that a person serve as an apprentice auctioneer for at least 12 months, and participate (under supervision) as a bid caller in at least 12 auctions prior to becoming a licensed auctioneer. The bill also relaxes examination requirements for prospective auctioneers by:

- Eliminating the oral examination requirement;
- Requiring the Department of Agriculture to hold the written examination 12 times per year, rather than four times per year; and
- Eliminating the requirement that a suspended auctioneer retake the examination as a condition of license reinstatement.

The bill eliminates the apprentice auctioneer license (which is rendered moot due to the removal of the apprenticeship requirement) and the special auctioneer license (which, according to an official from the Department of Agriculture, is used by only three persons).<sup>14</sup>

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## COMPARISON TO OTHER STATES

The table below describes the laws of the surrounding states governing auctioneer continuing education, reciprocity for residents holding an out-of-state license, and application of auctioneer law to internet auctions. Michigan does not license auctioneers at the state level but local governments are authorized to issue licenses.<sup>15</sup> None of the other surrounding states grant reciprocity to resident out-of-state licensees or fully exempt internet sales from auctioneer law.

Auctioneer Licensing in Surrounding States			
State	Continuing Education	State Resident Operating Under Out-of-State License	Exemption for Internet Auctions
Indiana <sup>16</sup>	Generally, requires a licensee to complete 16 hours of continuing education every four years.  Six hours must be in core areas and ten hours in elective areas (criteria for core and elective areas are established by statute).	No provision.	No exemption.

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<sup>14</sup> R.C. 4707.04(C) and 4707.08(A), amended; R.C. 4707.071 and 4707.09, repealed.

<sup>15</sup> Mich. Comp. Laws 67.1 and 91.1.

<sup>16</sup> Ind. Code Ann. 25-6.1-9-1, 25-6.1-1-2, and 25-6.1-3-1.

Auctioneer Licensing in Surrounding States			
State	Continuing Education	State Resident Operating Under Out-of-State License	Exemption for Internet Auctions
Kentucky <sup>17</sup>	<p>Authorizes the Board of Auctioneers to require all licensees, except for individuals licensed before 1980, to complete up to ten hours of continuing education each year.</p> <p>Authorizes the Board to require all licensees to take a six-hour Board-approved core course every four years.</p> <p>Exempts from the core course requirement a licensee with at least 25 years of continuous licensure.</p>	No provision.	No exemption.
Michigan	N/A	N/A	N/A
Pennsylvania <sup>18</sup>	No provision.	No provision.	No exemption.
West Virginia <sup>19</sup>	Requires a licensee to complete six hours of continuing education each calendar year chosen from a list of courses approved by the Commissioner of Agriculture.	No provision.	Internet auctions that establish a fixed time for conclusion of the sale without a possibility of extension are exempt from the auctioneer licensing laws. Otherwise, internet auctions are subject to the same standards as in-person auctions.

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<sup>17</sup> Ky. Rev. Stat. 330.020, 330.030, 330.032, 330.040, and 330.070(7).

<sup>18</sup> 63 Pa. Stat. Ann. 734.3 and 734.5(c).

<sup>19</sup> W. Va. Code 19-2C-2 and 3a; W. Va. Code R. § 61-11B-6.