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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

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

## Bill Analysis

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**Version:** As Passed by the House

**Primary Sponsors:** Reps. Kick and B. Young

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## SUMMARY

### Elimination of licenses

- Eliminates the requirement that a person serve as an apprentice auctioneer prior to becoming an auctioneer.
- As a result of the elimination of the apprentice auction program, requires applicants for an auctioneer's license to successfully complete a course of study in auctioneering at an institution approved by the Ohio Auctioneers Commission.
- Eliminates the special auctioneer license and requires a special auctioneer to apply for an auction firm license.

### Regulatory authority

- Eliminates the exemption for online auctions from the law governing auctioneers.
- If a person auctions real or personal property via the internet, requires the person to be licensed as an auctioneer or auction firm.
- Clarifies that auction firms may provide auction services *for online or live auctions*.
- Clarifies that an auction firm license is not required when personal property is taken on consignment for free for sale at auction.
- 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.

### Auctioneer licensure

- Revises the requirements regarding examinations for auctioneer license applicants, including doing both of the following:

- Eliminating the requirement that an applicant pass an oral examination administered by the Ohio Auctioneers Commission; and
- Requiring the Department of Agriculture to hold written examinations 12 times a year, rather than four times a year as under current law.
- Eliminates the authorization for an Ohio resident to conduct auctions in Ohio under authority of a license issued by another state with a reciprocal agreement with Ohio.
- Establishes requirements and procedures regarding an incomplete application for an auctioneer license, including a requirement that the Director of Agriculture deny an application if an applicant fails to submit required information within 90 days.

### **Auction firm licensure validity period**

- Extends the validity of an auction firm license from one to two years and requires the Director to adopt procedures to effectuate this change.

### **Continuing education**

- Requires a licensed auctioneer and an auction firm manager of a licensed auction firm, at the time of renewal, to submit an affidavit stating that the auctioneer or auction firm manager has completed the required continuing education (C.E.).
- Establishes general requirements for licensed auctioneers and auction firm managers of licensed auction firms to complete eight hours of C.E. prior to the renewal of a license.
- Requires a licensed auctioneer and auction firm manager to complete C.E. in specific hours of instruction and in specific subjects, including contract law, auction ethics, and business math and accounting.
- Specifies that an auctioneer license or auction firm license is automatically suspended if the Director determines that a licensed auctioneer or the auction firm manager of a licensed auction firm has failed to complete the C.E. requirements.
- Establishes procedures for lifting the suspension and establishes procedures to revoke a license if the licensed auctioneer or auction firm manager fails to submit proof of completion of C.E. in a specified time.
- Expands the authority of the Ohio Auctioneers Commission to include oversight of C.E. courses of study and providers of those courses.

### **Miscellaneous**

- Eliminates a required transfer of money in the Auctioneers Fund to the Auction Recovery Fund if the Auctioneers Fund exceeds \$300,000.
- Allows a seller of property to withdraw the property from an absolute auction after the auction is opened and there is public solicitation or calling for bids if no bid is made within a reasonable time.

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## DETAILED ANALYSIS

### Overview

In Ohio, the Ohio Department of Agriculture regulates auctions. A person who wishes to act as an auctioneer, apprentice auctioneer, special auctioneer, or manage a personal property auction (auction firm) must obtain a license to do so from the Department.<sup>1</sup> An auctioneer, apprentice auctioneer, special auctioneer, or auction firm must comply with requirements governing auction contracts, advertising, records, and sales. The Department may deny, refuse to renew, suspend, or revoke a license for certain causes, including failure to display proper signs relating to an auction.

The bill eliminates the apprentice and special auctioneer licenses. It also revises the Department's regulatory authority regarding internet auctions and consignment sales. It modifies and expands continuing education requirements for auction firm managers and licensed auctioneers. Finally, it makes changes to the laws governing auctioneer licensure and transfers of money from the Auctioneers Fund to the Auction Recovery Fund.

### Elimination of licenses

#### Apprentice auctioneer license

The bill eliminates the requirement that a person serve as an apprentice auctioneer prior to becoming a licensed auctioneer. Consequently, it eliminates the annual apprentice auctioneer license. Under current law, in order for a person to become a licensed auctioneer, the person must first serve as a licensed apprentice auctioneer for at least 12 months. The person also must participate as a bid caller in at least 12 auctions under the direct supervision of the apprentice auctioneer's sponsoring auctioneer.

An applicant for an apprentice auctioneer license must meet certain qualifications, including:

1. Providing proof of financial responsibility in an irrevocable letter of credit or a cash or surety bond of \$25,000;
2. Successfully completing a course of study at an institution approved by the State Auctioneers Commission; and
3. Passing oral and written examinations.<sup>2</sup>

Because of the elimination of the apprentice auctioneer program, the bill requires all applicants for an auctioneer's license to complete a course of study in auctioneering at an institution approved by the Commission prior to licensure.<sup>3</sup>

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<sup>1</sup> An auction firm also takes and advertises personal property on consignment to be sold at auction by a licensed auctioneer (R.C. 4707.01).

<sup>2</sup> R.C. 4707.09, repealed.

<sup>3</sup> R.C. 4707.07 and Section 5.

## Special auctioneer license

The bill eliminates the special auctioneer license and instead requires any previously licensed special auctioneer to apply for an auction firm license.<sup>4</sup> Under current law, the Department issues a special auctioneer's license to the principal owner of an auction company that has been in operation on or before May 1, 1991. According to an official from the Department, S.B. 146 (enacted in the 118<sup>th</sup> General Assembly) created the special auctioneer license as a transition from the previously issued auction company license to either an auctioneer or auction firm license, depending on the activity to be licensed. However, the official stated that the Department still issues special auctioneer licenses to three recipients.<sup>5</sup>

## Regulatory authority

### Internet auctions

Current law exempts sales of real or personal property conducted over the internet from the law governing auctioneers, provided that they are not conducted in conjunction with a live auction. The bill eliminates this exemption. The bill retains the exemption for an auction mediation company. An auction mediation company is a company that provides a forum through the internet for a person to sell the person's real or personal property via submission of silent bids using a computer or other electronic device.<sup>6</sup> For example, eBay is an auction mediation company.

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.<sup>7</sup>

### Consignment sales

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>8</sup> For example, according to a spokesperson for the Department, a person who takes (not for a fee or other

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<sup>4</sup> The licensing statute for special auctioneers, R.C. 4707.071, states that it is an annual license. However, the renewal statute, R.C. 4707.10(B)(1), states that the special auctioneer license is renewed biennially.

<sup>5</sup> Phone conversation with an official from the Department of Agriculture, August 2019.

<sup>6</sup> R.C. 4707.01 and 4707.02(B).

<sup>7</sup> R.C. 4707.01.

<sup>8</sup> R.C. 4707.01.

consideration) the personal property of a parent, neighbor, or friend for sale online is not a consignee. Thus, the person would not fall within the scope of the law governing auctioneers.<sup>9</sup>

## **Auctioneer licensure**

### **Examinations**

The bill revises the requirements regarding oral and written examinations for auctioneer license applicants by doing all of the following:

1. Eliminating the requirement that an applicant pass an oral examination administered by the Commission (thus, also eliminating the requirement that the Commission administer the oral examination);
2. Requiring the Department to hold written examinations 12 times a year, rather than four times a year as under current law; and
3. Eliminating the requirement that a person retake an examination after the Department suspends their license. A Department official stated that a suspension is not of a length of time that is long enough to warrant a reexamination.<sup>10</sup>

### **Reciprocity**

The bill eliminates the authorization for an Ohio resident to conduct auctions in Ohio under the authority of a license issued by another state. Consequently, the bill eliminates the Department's authority to waive schooling and apprenticeship requirements for an Ohio resident who holds a valid auctioneer license in another state that has a reciprocity agreement with Ohio. Under current law, the Department may waive those requirements if the resident:

1. Holds a valid auctioneer license issued by a state with which the Department has entered into a reciprocal licensing agreement; and
2. Is in good standing with that state.

Currently, the applicant must provide proof to the Department's satisfaction that the applicant has had two years of experience as an auctioneer immediately prior to the date of application. The experience must include at least 12 auctions in which the applicant was a bid caller in the reciprocal state.<sup>11</sup>

### **Incomplete application**

The bill establishes procedures regarding an incomplete application for an auctioneer license. If the Department determines that an application is incomplete, it must notify the applicant that the application is incomplete and inform the applicant of the missing information. An applicant must submit the additional information within 90 days of being

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<sup>9</sup> Email dated December 16, 2019.

<sup>10</sup> R.C. 4707.04(C) and 4707.08(A). Phone conversation with an official from the Department of Agriculture, August 2019.

<sup>11</sup> R.C. 4707.07(D).

notified by the Department. If an applicant fails to submit the required information within that 90-day period, the Department must deny the application and the applicant forfeits the application fee.<sup>12</sup>

## **Auction firm licensure validity period**

The bill extends the validity of an auction firm license from one to two years. It also requires the Director to adopt procedures to effectuate the transition of the license from an annual license to a biennial license. The bill maintains the current license fee (\$200 biennially rather than \$100 annually).<sup>13</sup>

## **Continuing education**

### **Requirements for auctioneers and auction firm managers**

The bill requires a licensed auctioneer, prior to renewal of the license, to include with a renewal application an affidavit stating that the licensee has completed eight hours of continuing education (C.E.) in accordance with the bill during the two years immediately preceding renewal of the auctioneer's license. Similarly, prior to renewing an auction firm's license, the auction firm manager of the licensed auction firm must include with a renewal application an affidavit stating that the auction firm manager has completed eight hours of C.E. in accordance with the bill during the two years immediately preceding renewal of the auction firm's license. The bill prohibits the Director from renewing an auctioneer or auction firm license unless the applicant demonstrates that all C.E. requirements have been completed.<sup>14</sup>

### **Subjects**

Except as specified below, the bill requires a licensed auctioneer and an auction firm manager to complete the eight hours of C.E. as follows:

1. Three of the hours must include areas of instruction in any of the following: an overview of the law governing auctioneers; contract law; the Uniform Commercial Code; auction ethics; or trust or escrow accounts;
2. Five of the hours must include areas of instruction in any of the following areas: advertising and marketing; business math and accounting; insurance and liability; federal firearms law; business management; or motor vehicle, real estate, or personal property auctions.

If a licensed auctioneer has been issued a license with a validity period of 12 months or less, the auctioneer must complete four hours of C.E. as follows:

1. One hour in the areas of instruction described in (1) above;
2. Three hours in the areas of instruction described in (2) above.

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

<sup>13</sup> R.C. 4707.10(A) and Section 6.

<sup>14</sup> R.C. 4707.10(B).

A licensed auctioneer or an auction firm manager of a licensed auction firm may complete an area of instruction for C.E. hours in another state if both of the following apply:

1. The area of instruction has been approved by the appropriate state governing body in the other state;
2. The Ohio Auctioneers Commission approves the completion of the area of instruction by the auctioneer or auction firm manager in the other state.<sup>15</sup>

### **License suspension**

The bill specifies that an auctioneer license or auction firm license is automatically suspended if the Director determines that a licensed auctioneer or the auction firm manager of a licensed auction firm has failed to complete the C.E. requirements.

An auctioneer license or auction firm license is automatically suspended on the date on which the Director makes the determination. The Director must provide the offending licensee with an opportunity for an administrative hearing on the suspension in accordance with the Administrative Procedure Act.

If a license is suspended, both of the following apply:

1. The auctioneer or auction firm manager of the auction firm must provide proof of completion of the C.E. requirements within 180 days after the suspension is issued; and
2. If the auctioneer or auction firm manager fails to submit the proof within that time period, the license is automatically revoked. The Director must provide the former licensee with an opportunity for an administrative hearing on the revocation in accordance with the Administrative Procedure Act.

If an auctioneer or auction firm license is revoked, the bill prohibits the former licensee from applying for a new license earlier than one year after the revocation. The applicant must comply with all requirements for the issuance of a new auctioneer or auction firm license.<sup>16</sup>

### **Continuing education providers**

The bill requires the Ohio Auctioneers Commission to oversee C.E. courses of study that are offered by C.E. providers. Specifically, the bill requires the Commission to do all of the following:

1. Establish requirements and standards for courses of study;
2. Triennially review the courses offered by C.E. providers to determine if the courses comply with the bill's requirements and standards; and
3. Approve or deny approval to C.E. providers. (The Commission must approve providers that comply with the bill's requirements and standards.)

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<sup>15</sup> R.C. 4707.101.

<sup>16</sup> R.C. 4707.153.

Current law grants similar oversight to the Commission over courses of study in auctioneering and the institutions that offer those courses.<sup>17</sup>

## Miscellaneous

### Auctioneers Fund

The bill eliminates a required transfer of a portion of the Auctioneers Fund (used to fund the auctioneers program) to the Auction Recovery Fund (used to compensate persons damaged by unethical conduct of an auctioneer). Under current law, at the end of each fiscal year, if the balance of the Auctioneers Fund exceeds \$300,000, the Director of Agriculture must request the Director of Budget and Management to, and the Director of Budget and Management must, transfer 25% of the excess balance to the Auction Recovery Fund.<sup>18</sup>

### Absolute auctions

The bill allows a seller of property to withdraw the property from an absolute auction after the auction is opened and there is public solicitation or calling for bids if no bid is made within a reasonable time. Under current law, an absolute auction is an auction of real or personal property to which all of the following apply:

1. The property is sold to the highest bidder without reserve;
2. The auction does not require a minimum bid;
3. The auction does not require competing bids of any type by the seller or the seller's agent; and
4. The seller of the property cannot withdraw the property from auction after the auction is opened and there is public solicitation or calling for bids.

The bill makes the above change for purposes of consistency with the Uniform Commercial Code.<sup>19</sup>

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## HISTORY

Action	Date
Introduced	05-25-21
Reported, H. Agriculture & Conservation	11-18-21
Passed House (87-4)	12-09-21

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<sup>17</sup> R.C. 4707.04(B).

<sup>18</sup> R.C. 4707.05 and 4707.25(A).

<sup>19</sup> R.C. 4707.01.