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H.B. 373
133rd General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsor: Rep. Ginter

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CORRECTED VERSION*

SUMMARY

- 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 State Auctioneers Commission.
- Eliminates the special auctioneer license and requires a special auctioneer to apply for an auction firm license.
- 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 sale at auction for free.
- 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.
- Revises the requirements regarding examinations for auctioneer license applicants, including doing both of the following:

* The corrected version of the analysis corrects inaccurate descriptions of the bill's effect regarding internet auctions, the change to the definition of "consignee," and reciprocity for Ohio residents licensed as an auctioneer in another state.

- Eliminating the requirement that an applicant pass an oral examination administered by the Ohio Auctioneers Commission; and
- Requiring the Department to hold written examinations 12 times a year, rather than four times a year as under current law.
- Requires a licensed auctioneer to complete, to the Director's satisfaction, eight continuing education hours prior to renewing the auctioneer's biennial license.
- Requires the Director to adopt rules governing continuing education that include:
 - A requirement that three hours of course instruction be in core areas, as determined by the Director; and
 - A requirement that an auctioneer keep records regarding continuing education course instruction for three years after the auctioneer renews a license.
- 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.
- Establishes requirements and procedures regarding an incomplete application for an auctioneer license, including a requirement that the Director deny an application if an applicant fails to submit required information within 90 days.
- Eliminates a required transfer of money in the Auctioneers Fund to the Auction Recovery Fund if the Auctioneers Fund exceeds \$300,000.

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.¹ 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. Finally, it makes changes to the law governing auctioneer licensure, including requiring continuing education, and the law governing transfers of money from the Auctioneers Fund to the Auction Recovery Fund.

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

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

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.³

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.⁴ 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 118th 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.⁵

² R.C. 4707.09, repealed.

³ R.C. 4707.07 and Section 5.

⁴ 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.

⁵ Phone conversation with an official from the Department of Agriculture, August 2019.

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, but retains an 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.⁶

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. 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.⁷

Consignment sales

The bill clarifies that an auction firm license is not required when personal property is taken on consignment for sale at auction for free. 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.⁸ For example, according to a spokesperson for the Department, a person who takes (not for a fee or other 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.⁹

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 administers 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

⁶ R.C. 4707.01 and 4707.02(B).

⁷ R.C. 4707.01.

⁸ R.C. 4707.01.

⁹ Email dated December 16, 2019.

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 long enough to require a reexamination.¹⁰

Continuing education

The bill requires a licensed auctioneer to complete, to the Director's satisfaction, eight continuing education hours prior to renewing the auctioneer's biennial license. The licensee must complete the continuing education in accordance with rules adopted by the Director.¹¹

The eight hours of continuing education must be completed as follows:

- Four hours during each of the two licensure years;
- Three of the hours consisting of course instruction in core areas, as determined by the Director; and
- Five of the hours consisting of course instruction in elective areas.

The rules also must require an auctioneer to keep records regarding continuing education course instruction for three years after the auctioneer renews a license. An auctioneer must allow the Director to inspect the records during normal business hours. However, the Director may inspect the records of up to 10% of all licensees per biennium.¹²

Reciprocity

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.¹³

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

¹¹ R.C. 4707.10(C). The rules are adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119).

¹² R.C. 4707.19(C).

¹³ R.C. 4707.07(D).

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 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.¹⁴

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.¹⁵

HISTORY

Action	Date
Introduced	10-22-19

H0373-Corrected-I-133/ts

¹⁴ R.C. 4707.07(B).

¹⁵ R.C. 4707.05 and 4707.25(A).