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Representative Hill

**Cosponsors: Representatives Scherer, Seitz, Anielski, Dever, Green, Hambley,
Koehler, Miller, Perales, Rezabek, Riedel, Rogers, Schaffer, Wiggam, Wilkin,
Speaker Smith**

A BILL

To amend sections 4707.01, 4707.023, 4707.15, 1
4707.20, and 4707.22 of the Revised Code to 2
establish requirements governing multi-parcel 3
auctions. 4

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 4707.01, 4707.023, 4707.15, 5
4707.20, and 4707.22 of the Revised Code be amended to read as 6
follows: 7

Sec. 4707.01. As used in this chapter: 8

(A) "Auction" means a method of sale of real or personal 9
property, goods, or chattels, at a predetermined date and time, 10
by means of a verbal exchange, regular mail, telecommunications, 11
the internet, an electronic transmission, or a physical gesture 12
between an auctioneer or apprentice auctioneer and members of 13
the audience or prospective purchasers, the exchanges and 14
gestures consisting of a series of invitations for offers made 15
by the auctioneer and offers by members of the audience or 16

prospective purchasers, with the right to acceptance of offers 17
with the auctioneer or apprentice auctioneer. "Auction" includes 18
a sale of real or personal property, goods, or chattels in which 19
there has been a solicitation or invitation by advertisement to 20
the public for an advance in bidding using sealed bidding, 21
provided that the bids are opened and there is a call for an 22
advancement of the bids. 23

(B) "Auctioneer" means any person who engages, or who by 24
advertising or otherwise holds the person out as being able to 25
engage, in the calling for, recognition of, and the acceptance 26
of, offers for the purchase of real or personal property, goods, 27
or chattels at auction either directly or through the use of 28
other licensed auctioneers or apprentice auctioneers. 29

(C) "Apprentice auctioneer" means any individual who is 30
sponsored by an auctioneer to deal or engage in any activities 31
mentioned in division (A) of this section. 32

(D) "Special auctioneer" means any person who currently is 33
subject to section 4707.071 of the Revised Code. 34

(E) "Absolute auction" means an auction of real or 35
personal property to which all of the following apply: 36

(1) The property is sold to the highest bidder without 37
reserve. 38

(2) The auction does not require a minimum bid. 39

(3) The auction does not require competing bids of any 40
type by the seller or an agent of the seller. 41

(4) The seller of the property cannot withdraw the 42
property from auction after the auction is opened and there is 43
public solicitation or calling for bids. 44

(F) "Reserve auction" means an auction in which the seller 45
or an agent of the seller reserves the right to establish a 46
stated minimum bid, the right to reject or accept any or all 47
bids, or the right to withdraw the real or personal property at 48
any time prior to the completion of the auction by the 49
auctioneer. 50

(G) "Auction mediation company" means a company that 51
provides a forum through the internet for a person to sell the 52
person's real or personal property via the submission of silent 53
bids using a computer or other electronic device. 54

(H) "Public authority" means any board or commission of 55
the state or any officer of such a board or commission, or any 56
political subdivision of the state. 57

(I) "Estate auction" means the auction of real or personal 58
property of a deceased person. 59

(J) "Absentee bidding" means a method by which a potential 60
purchaser authorizes a proxy to place on behalf of the potential 61
purchaser a written or oral bid to an auctioneer or auction firm 62
or an agent of an auctioneer or auction firm. 63

(K) "Person" means an individual, sole proprietor, 64
corporation, limited liability company, association, or 65
partnership. 66

(L) "Auction firm" means a person who provides auction 67
services. 68

(M) "Auction services" means arranging, managing, and 69
sponsoring a personal property auction. "Auction services" 70
includes the taking and advertising of personal property on 71
consignment to be sold at auction by a licensed auctioneer. 72

(N) "Consignee" means a person or auction firm that takes 73
personal property on consignment to be sold at auction by a 74
licensed auctioneer. 75

(O) "Firm manager" means the individual designated by an 76
auction firm who is responsible for ensuring that the auction 77
firm complies with this chapter. 78

(P) "Sealed bidding" means a method of submitting a bid in 79
writing by one or more persons following which the bids are 80
opened at an advertised, predetermined time and place, and, 81
after a review of all the bids received, the real or personal 82
property is awarded to the highest and most responsive bidder. 83

(Q) "Multi-parcel auction" means any auction of real or 84
personal property in which multiple parcels or lots are offered 85
for sale in various amalgamations, including as individual 86
parcels or lots, combinations of parcels or lots, and all 87
parcels or lots as a whole. 88

Sec. 4707.023. (A) No person licensed under this chapter 89
shall advertise, offer for sale, or sell real or personal 90
property by absolute auction unless all of the following apply: 91

(1) One of the following applies: 92

(a) Except for current tax obligations, easements, or 93
restrictions of record of the seller, there are no liens or 94
encumbrances on the property in favor of any other person. 95

(b) Every holder of a lien or encumbrance, by execution of 96
the auction contract or other written agreement provided to the 97
auctioneer, agrees to the absolute auction without regard to the 98
amount of the highest bid or to the identity of the highest 99
bidder. 100

(c) A financially sound person, firm, trust, or estate, by 101
execution of the auction contract or other written agreement 102
provided to the auctioneer, guarantees the complete discharge 103
and satisfaction of all liens and encumbrances, as applicable, 104
immediately after the absolute auction or at the closing without 105
regard to the amount of the highest bid or to the identity of 106
the highest bidder. 107

(2) The seller of the real or personal property at the 108
time of advertising and at the time of the absolute auction has 109
a bona fide intention to transfer ownership of the property to 110
the highest bidder regardless of the amount of the highest bid 111
and without reliance on any agreement that a particular bid or 112
bid level be attained in order to transfer the property. 113

(3) The auction contract requires that the auction be 114
conducted as an absolute auction, specifies that the auction is 115
not a reserve auction, and prohibits the seller or anyone acting 116
on behalf of the seller to bid or participate in the bidding 117
process of the auction. 118

(B) Division (A) of this section does not prohibit any of 119
the following: 120

(1) The bidding of a secured party or lien holder, other 121
than the seller, at an absolute auction, provided that the bids 122
are bona fide offers, that the bidding does not constitute bid 123
rigging or a reserve for the seller, and that the bidding is not 124
for the purpose of aiding or assisting or on behalf of the 125
seller or the auctioneer; 126

(2) The bidding by an individual or a party to a 127
dissolution of marriage, partnership, or corporation on real or 128
personal property being sold at auction pursuant to the 129

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| dissolution; | 130 |
| (3) The advertising of real or personal property to be | 131 |
| sold by absolute auction and by reserve auction within the same | 132 |
| advertisement or for auction on the same date and at the same | 133 |
| place, provided that the advertisement is not misleading and | 134 |
| clearly identifies the property that is to be sold by absolute | 135 |
| auction and the property that is to be sold by reserve auction. | 136 |
| (C) A person licensed under this chapter may make a bona | 137 |
| fide bid on the licensee's own behalf at an absolute auction and | 138 |
| at a reserve auction, provided that the licensee provides full | 139 |
| disclosure that the licensee may make a bona fide bid to the | 140 |
| seller and at the auction. | 141 |
| (D) A seller or a person on behalf of a seller may make a | 142 |
| bid if the auction is a reserve auction and the auctioneer | 143 |
| provides full disclosure before bidding begins that the seller | 144 |
| retains the right to bid. No person licensed under this chapter | 145 |
| knowingly shall receive such a bid in the absence of full | 146 |
| disclosure. | 147 |
| (E) Except in the case of a dissolution as provided in | 148 |
| division (B) (2) of this section, a person licensed under this | 149 |
| chapter shall not knowingly receive a bid by a seller or a | 150 |
| person on the seller's behalf at an absolute auction. | 151 |
| <u>(F) A person licensed under this chapter may advertise an</u> | 152 |
| <u>absolute auction as a multi-parcel auction if the person</u> | 153 |
| <u>licensed complies with this section and section 4707.22 of the</u> | 154 |
| <u>Revised Code.</u> | 155 |
| Sec. 4707.15. The department of agriculture may deny, | 156 |
| refuse to renew, suspend, or revoke the license of any auction | 157 |
| firm, auctioneer, apprentice auctioneer, or special auctioneer | 158 |

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| for any of the following causes: | 159 |
| (A) Obtaining a license through false or fraudulent representation; | 160 161 |
| (B) Making any substantial misrepresentation in an application for a license; | 162 163 |
| (C) A continued course of misrepresentation or for making false promises through agents, advertising, or otherwise; | 164 165 |
| (D) Specifying that an auction is a reserve auction, absolute auction, <u>multi-parcel auction</u> , or estate auction, but not conducting the auction as specified; | 166 167 168 |
| (E) Failing to account for or remit, within a reasonable time, any money or property belonging to others that comes into the licensee's possession, and for commingling funds of others with the licensee's own, or failing to keep funds of others in an escrow or trust account, except that in the case of a transaction involving real estate, such funds shall be maintained in accordance with division (A)(26) of section 4735.18 of the Revised Code; | 169 170 171 172 173 174 175 176 |
| (F) Paying valuable consideration to any person who has violated this chapter; | 177 178 |
| (G) Conviction in a court of competent jurisdiction of this state or any other state of a criminal offense involving fraud, forgery, embezzlement, false pretenses, extortion, conspiracy to defraud, or another similar offense or a felony; | 179 180 181 182 |
| (H) Violation of this chapter or rules adopted under it; | 183 |
| (I) Failure to furnish voluntarily at the time of execution, copies of all written instruments prepared by the auctioneer or auction firm; | 184 185 186 |

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| (J) Any conduct of a person that is licensed under this chapter that demonstrates bad faith, dishonesty, incompetency, or untruthfulness; | 187 188 189 |
| (K) Any other conduct that constitutes improper, fraudulent, or dishonest dealings; | 190 191 |
| (L) Failing prior to the sale at public auction to enter into a written contract with the owner or consignee of any property to be sold, containing the terms and conditions upon which the licensee received the property for auction; | 192 193 194 195 |
| (M) The use of any power of attorney to circumvent this chapter; | 196 197 |
| (N) Failure to display the <u>either of the following:</u> | 198 |
| <u>(1) The sign</u> required under section 4707.22 of the Revised Code and a ; <u>or</u> | 199 200 |
| <u>(2) A notice conspicuously at the clerk's desk or on a bid card that clearly states the terms and conditions of the auction and, if applicable, an explanation of the multi-parcel auction process;</u> | 201 202 203 204 |
| (O) Failure to notify the department of any conviction of a felony or crime involving fraud within fifteen days of conviction; | 205 206 207 |
| (P) Aiding an unlicensed person in the performance of services or acts that require a license under this chapter; | 208 209 |
| (Q) The suspension or revocation of a license to engage in auctioneering or other disciplinary action by the licensing authority of another state; | 210 211 212 |
| (R) The refusal or disapproval by the licensing authority | 213 |

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| of another state of an application for a license to engage in auctioneering; | 214 215 |
| (S) Failure of a licensee to notify the department of agriculture within fifteen days of a disciplinary action against the licensee by another state's applicable governing authority; | 216 217 218 |
| (T) Engaging in auctioneering or providing auction services without a license or during the suspension of a license; | 219 220 221 |
| (U) Attempting to cheat or cheating on an auctioneer examination or aiding another to cheat on an examination. | 222 223 |
| Sec. 4707.20. (A) Except when conducting an auction under division (B) (5) (b) of section 4707.02 of the Revised Code, no person shall act as an auction firm, auctioneer, or special auctioneer until the person has first entered into a written contract or agreement in duplicate with the owner or consignee of any property to be sold, containing the terms and conditions upon which the licensee receives or accepts the property for sale at auction. The contracts or agreements shall, for a period of two years, be kept on file in the office of every person so licensed. No apprentice auctioneer shall be authorized to enter into such a contract or agreement without the written consent of the apprentice auctioneer's sponsoring auctioneer, and all contracts or agreements shall be made in the name of and on behalf of the sponsoring auctioneer. In addition, an apprentice auctioneer shall not enter into an auction contract for the sale of real property in the name of the sponsoring auctioneer regardless of whether the apprentice auctioneer is licensed as a real estate broker or salesperson. | 224 225 226 227 228 229 230 231 232 233 234 235 236 237 238 239 240 241 |
| (B) On all contracts or agreements between an auction | 242 |

firm, auctioneer, or special auctioneer and the owner or 243
consignee, there shall appear a prominent statement indicating 244
that the auction firm, auctioneer, or special auctioneer is 245
licensed by the department of agriculture, and either that the 246
licensee is bonded in favor of the state or that an aggrieved 247
person may initiate a claim against the auction recovery fund 248
created in section 4707.25 of the Revised Code as a result of 249
the licensee's actions, whichever is applicable. 250

(C) The auction firm, auctioneer, or special auctioneer 251
who contracts with the owner is liable for the settlement of all 252
money received, including the payment of all expenses incurred 253
only by the licensee and the distribution of all funds, in 254
connection with an auction. 255

(D) For purposes of this section, a contract or agreement 256
shall specify all of the following: 257

(1) The owner of the property to be sold or the owner's 258
agent or the consignee; 259

(2) The date of the auction or a termination date of the 260
contract or agreement; 261

(3) The location of the auction; 262

(4) The terms and conditions of the auction; 263

(5) All of the fees to be charged by the auctioneer or the 264
auction firm, which shall include commissions, rentals, 265
advertising, and labor; 266

(6) An explanation of the settlement of the auction that 267
includes the disbursement of interest money, if applicable; 268

(7) A statement establishing the responsibility for bad 269
checks, debts, and unpaid auction items; 270

(8) A statement indicating whether the auction is a reserve auction or an absolute auction. In addition, the statement shall include the definition of reserve auction or absolute auction from section 4707.01 of the Revised Code, as applicable.

(9) A statement of the auctioneer's or auction firm's policy regarding absentee bidding;

(10) A brief description of the real or personal property to be sold;

(11) If the sale is of real or personal property at absolute auction, a statement affirming that the seller of the real or personal property has a bona fide intention to transfer ownership of the property to the highest bidder.

(12) If the sale is a multi-parcel auction, a statement between the owner or owners of the real or personal property and the auctioneer, auction firm, or special auctioneer attesting that the type of auction will be a multi-parcel auction.

Sec. 4707.22. (A) Any person licensed under this chapter who advertises, by linear advertisements or otherwise, to hold or conduct an auction shall indicate in the advertisement the licensee's name or the name registered with the department of agriculture and that the licensee is an auctioneer or apprentice auctioneer. Any apprentice auctioneer who advertises, as provided in this section, also shall indicate in the apprentice's advertisement the name of the auctioneer under whom the apprentice is licensed. The name of the auctioneer shall be displayed in equal prominence with the name of the apprentice auctioneer in the advertisement. Any such licensee who advertises in a manner other than as provided in this section is

guilty of violating division (C) of section 4707.15 of the Revised Code.

(B) An auction firm licensed under this chapter that advertises, by linear advertisements or otherwise, to solicit or receive consignments or to provide auction services shall indicate in the advertisement the name of the auction firm. In addition, an advertisement of an auction of consignments or an advertisement by an auction firm of an auction for which the auction firm will provide auction services shall comply with divisions (A) and (D) of this section.

(C) If an auction to be advertised is an absolute auction, all advertisements for the auction shall unequivocally state that the auction is an absolute auction.

(D) If an advertisement for an auction contains the words "estate auction," or words to that effect, the person licensed under this chapter who advertises shall do both of the following:

(1) Enter into an agreement directly with the executor, administrator, or court appointed designee of the estate property;

(2) List prominently in the advertisement the county in which the estate is located and the probate court case number of the estate.

(E) All persons licensed under this chapter that conduct or are involved in an auction jointly are responsible for the posting of a sign at the auction. The sign shall contain all of the following:

(1) The name of all licensed persons involved in the auction;

(2) A statement that the persons are licensed by the 329
department of agriculture; 330

(3) The address of the department of agriculture. 331

The sign shall be posted at the main entrance of the 332
auction, at the place of registration for the auction, or by the 333
cashier for the auction. The sign shall be of a size not smaller 334
than eight and one-half inches by eleven inches. The letters and 335
numbers on the sign shall be of adequate size to be readily seen 336
by an individual with normal vision when viewing it. 337

(F) An advertisement for the sale of real property at 338
auction shall contain the name of the licensed auctioneer who is 339
entering into the auction contract and the name of the real 340
estate broker licensed under Chapter 4735. of the Revised Code 341
who is involved in the sale. Compliance with this section shall 342
not require a real estate broker licensed under Chapter 4735. of 343
the Revised Code to obtain a license under section 4707.073 of 344
the Revised Code. 345

(G) If an auction to be advertised is a multi-parcel 346
auction, all advertisements for the auction, excluding road 347
signs, shall state that the auction will be offered in various 348
amalgamations, including as individual parcels or lots, 349
combinations of parcels or lots, and all parcels or lots as a 350
whole. 351

Section 2. That existing sections 4707.01, 4707.023, 352
4707.15, 4707.20, and 4707.22 of the Revised Code are hereby 353
repealed. 354