



Interested Party Testimony on Am. Sub. SB 238
Chairwoman Marilyn John
House State and Local Government Committee
December 6, 2023

Chairwoman John, Vice-Chair Dean, Ranking Member Brennan and members of the House State and Local Government Committee,

My name is Brian Davis. I am the owner of Auction Ohio and I serve as the Chair of the Legislative Committee of the Ohio Auctioneers Association. I wanted to be here today on behalf of the Ohio Auctioneers to comment on the Construction Equipment Auction License that was originally removed in Substitute House Bill 238, but which was subsequently replaced as part of the omnibus amendment that was adopted in committee yesterday.

By way of background, in 2011, as part of the transportation budget bill during the 129th General Assembly, a new license was put in place called the Construction Equipment Auctioneer license. The purpose of the is new license was to be able to hold auctions for construction or transportation equipment over 10,000 pounds. The Auctioneers Association was not a part of 2011 deliberations, but we think it was put in place for auction companies who were selling equipment on consignment for which titles were held, not by the auction company, but by their customers. A license was created so that an auction company did not have to get a motor vehicle dealers license.

The Ohio Auctioneers Association supports that concept, however, also included in the 2011 language was eligibility requirements for this new license that were so out of reach that they have only ever benefited one company in Ohio.

The eligibility requirements to hold a construction equipment auction license contained in ORC Section 4517.16 requires that a person must:

1. Maintain a primary permanent auction site that is at least **90 acres** in size;
2. Maintain over **60,000 square feet** of total facility space;
3. Receives more than **one million dollars in gross annual sales** in this state'
4. Be engaged primarily in the business of selling large equipment at auction; and
5. Derive not more than 10% of the person's gross annual sales revenue in Ohio from the sale of large vehicles.

The law contains a general prohibition against engaging in the business of holding auctions for large construction equipment if you don't hold this license.

These nearly unobtainable eligibility requirements, we would argue, not only create barriers to entry, they outright deny entry for every other Ohio auctioneer. I attached the survey this committee sent to the Bureau of Motor Vehicles that shows only one company has ever received this license, yet, without it, Ohio law prohibits the auction of large construction and farm vehicles.

The Ohio Auctioneers Association respectfully requests the removal of the eligibility requirements contained in ORC Section 4517.16 which we have pasted below.

Thank you for your attention to this matter. I'm happy to answer any questions at this time.

Section 4517.16 | Eligibility for construction equipment auction license.

[Ohio Revised Code](#)

[Title 45 Motor Vehicles-Aeronautics-Watercraft](#)

[Chapter 4517 Motor Vehicle Dealers, Auction Owners, and Salespersons](#)

Effective:

June 29, 2011

Latest Legislation:

House Bill 114 - 129th General Assembly

PDF:

[Download Authenticated PDF](#)

~~A person is eligible for a construction equipment auction license under section 4517.17 of the Revised Code if the person meets all of the following requirements:~~

~~(A) Maintains a permanent auction site within this state that is at least ninety acres in size and maintains over sixty thousand square feet of total facility space;~~

~~(B) Is engaged primarily in the business of selling large construction and transportation equipment at auction, receives more than one million dollars in gross annual sales in this state, and derives not more than ten per cent of the person's gross annual sales revenue in this state from the sale of motor vehicles having a gross vehicle weight rating of ten thousand pounds or less.~~

Motor Vehicle Salesperson's License						
	Ohio	Indiana	Kentucky	Michigan	Pennsylvania	West Virginia
Renewal fee	\$10 (<i>R.C. 4517.10</i>).	N/A	\$40 (<i>Ky. Rev. Stat. 190.030; 605 Ky. Admin. Regs. 1:215</i>).	N/A	\$90 (<i>63 Pa. Stat. 818.330; 49 Pa. Code 19.4</i>).	N/A

Construction equipment auction

Survey responses (BMV)

Description
A person who holds both a valid auction firm license issued under Chapter 4707. of the Revised Code and a valid construction equipment auction license issued under this chapter.
Type (<i>License, specialty license for medical reimbursement, government certification, registration, bonding or insurance, inspection, or process regulation. See R.C. 4798.01 for relevant definitions.</i>)
License, registration, inspection, occupational regulation.

If the regulation is a registration, certification, or license requirement, please complete the following:	
Number issued annually	2021: 0 Construction Equipment Auction licenses issued
Number renewed annually	Construction Equipment Auction License is renewed every <i>five (5) years</i> . 2021: 1 Construction Equipment Auction License renewed
Have there been significant increases or decreases in active registrations, certifications or licenses in the preceding six years?	2016: 0 Construction Equipment Auction licenses issued 2017: 0 Construction Equipment Auction licenses issued 2018: 0 Construction Equipment Auction licenses issued 2019: 0 Construction Equipment Auction licenses issued 2020: 0 Construction Equipment Auction licenses issued
Education or training requirements	No.
Experience requirements	Must obtain an auction firm license from the Department of Agricultural prior to applying for a Construction Equipment Auction license.
Examination requirements (Who administers the exam? How is the exam and administrator selected? What fees are charged? Does the Bureau receive any proceeds of those fees? If so, how are the proceeds used?)	No.
Continuing education requirements (Including a description of the curriculum and the process of setting it.)	No.

If the regulation is a registration, certification, or license requirement, please complete the following:

Initial fee	\$7,500 for the license.
Duration	5 Years.
Renewal fee (If different from initial fee, please explain why.)	\$7,500 for renewal.
Does the Bureau recognize uniform licensure requirements or allow for reciprocity?	No. Each state varies in their requirements for such license.
Are there any similar national registrations, certifications, or licenses? Could they be used as a substitute for the state regulation?	No.
Are there any circumstances in which an individual may practice elements of the occupation without being regulated by the Bureau?	No.
Is the Bureau permitted to exercise discretion in determining whether to register, certify, or license an individual?	Yes.
Other information (Significant attributes or prerequisites to licensure not addressed in this chart.)	<p>Must obtain an auction firm license from the Department of Agriculture prior to applying for a Construction Equipment Auction license.</p> <p>Licensee must report annually certification stating the gross proceeds generated from auctions held at the auction sight.</p>

Oversight and disciplinary authority of the Bureau respecting individuals engaged in the occupation.

Section 4517.171 of the Revised Code lists the reasons for the denial of a construction equipment auction application by the Registrar.

Section 4517.33 of the Revised Code gives authority to the Motor Vehicle Dealer's Board (Board) to hear appeals from an order of the Registrar refusing to issue a license. The Board may suspend or revoke any license if the licensee has in any manner violated the rules issued pursuant to sections 4517.01 to 4517.65 of the Revised Code, or has violated section 4501.02 of the Revised Code, or has been convicted of committing a felony or violating any law that in any way relates to the selling, taxing, licensing, or regulation of sales of motor vehicles.

How much revenue is derived from fees charged by the Bureau to individuals engaged in the occupation (such as license and renewal fees)? How is that revenue used?

All license fees required to be paid to the registrar of motor vehicles, who shall pay the same into the state treasury to the credit of the public safety - highway purposes fund established by section 4501.06 of the Revised Code.

Each applicant whose residence is out-of-state is assessed an additional fee of \$22 to pay the costs of obtaining a record of any arrests and convictions of the applicant from the Ohio bureau of identification and investigation (*Fingerprint Card*).

Describe any federal regulations that apply to the occupation. Does federal law require the state to regulate the occupation?

Odometer Disclosure Requirements: **49 CFR 580**

Odometer Tampering/Violations: **49 USC 327**

Buyers Guides: **16 CFR 455.2**

Gramm Leach Biley Privacy Protection Act (GLBPA): **15 USC 6801 - 6809**

Standards of Safeguarding Customer Information: **16 CFR 314**

Federal Trade Commission (FTC)/Used Motor Vehicle Trade Regulation Rule: **16 CFR 455**

- *FTC regulates the federal laws for the Unfair or Deceptive Acts or Practices by Motor Vehicle Dealers.*

Office of Foreign Asset Control (OFAC): **31 CFR 501**

Granting a credit to a deputy registrar for replacing a damaged license plate or validation sticker

The act requires the Bureau of Motor Vehicles to grant a deputy registrar, as a daily adjustment, a credit of \$3.50 for each damaged license plate or validation sticker the deputy registrar replaces as a service to a member of the public.

Allowing deputy registrars to accept reinstatement fees

The act requires the Registrar to adopt rules establishing procedures under which a deputy registrar who requests the authority from the Registrar may collect the fees due for restoring any operating privileges or permit or reissuing a driver's license, probationary driver's license, restricted license, commercial driver's license, or probationary commercial driver's license that has been suspended. Besides collecting a reinstatement or reissuance fee, the deputy registrar must collect a service fee of \$10, of which \$8 is to be retained by the deputy registrar and \$2 is to be transmitted to the Registrar. The \$2 the Registrar receives from each service fee is to be credited to the State Bureau of Motor Vehicles Fund and used for deputy registrar equipment necessary in connection with accepting reinstatement fees. The act also requires the Registrar, not later than January 1, 2012, to ensure that at least one deputy registrar in each county has the necessary equipment and is able to accept the fees.

Deputy registrar vending machine business

The act allows a deputy registrar, in accordance with guidelines that the Director of Public Safety must establish, to operate or contract for the operation of a vending machine at a deputy registrar location if products of the vending machine are consistent with the functions of a deputy registrar.

Construction equipment auction license

(R.C. 4517.01, 4517.02, 4517.16, 4517.17, 4517.171, 4517.18, and 4517.33)

Overview

The act establishes a five-year construction equipment auction license to be administered by the Registrar of Motor Vehicles in the same general manner as motor vehicle dealer licenses. The license allows a person to sell, at auction, "large construction or transportation equipment" (vehicles having a gross vehicle weight rating of more than 10,000 pounds, including road rollers, traction engines, power shovels, power cranes, commercial cars and trucks, or farm trucks, and other similar vehicles obtained primarily from the construction, mining, transportation, or farming industries). Under limited conditions, a licensee also is able to sell smaller motor vehicles. The act establishes that a person who has a construction equipment auction

license is not in violation of the general prohibition against selling used motor vehicles without a license issued by the Registrar.

Eligibility

4517.16

To be eligible for a construction equipment auction license, a person must:

(1) Maintain a permanent auction site in Ohio that is at least 90 acres in size and also maintain over 60,000 square feet of total facility space;

(2) Be engaged primarily in the business of selling large construction and transportation equipment at auction;

(3) Receive more than \$1 million in gross annual sales in Ohio; and

(4) Derive not more than 10% of the person's gross annual sales revenue in Ohio from the sale of motor vehicles having a gross vehicle weight rating of 10,000 pounds or less.

Licensing

The act establishes procedures governing the application for the license and also gives the Registrar rule-making authority governing the application process and the regulation of construction equipment auction sales and licensees. The rules must be specific to construction equipment auction sales and licensees and must be separate and distinct for other motor vehicle dealer rules. The license fee is \$7,500 (deposited into the State Bureau of Motor Vehicles Fund) and the license expires five years after it is issued, unless it is revoked before that time.

The act requires the Registrar to deny or revoke a license if the person: (1) is not eligible for the license, (2) has made any false statement of a material fact in the application, (3) is of bad business repute or has habitually defaulted on financial obligations, (4) has been guilty of a fraudulent act in connection with auctions, vehicles, or equipment, (5) is insolvent, or (6) is of insufficient financial responsibility related to payment of judgments against the applicant because of construction equipment auction business transactions. A person who has been denied a license or has a license revoked may appeal to the Motor Vehicle Dealers Board.

When the Registrar grants an application, the licensee must keep the license (or a certified copy) posted in a conspicuous place in each place of its business. Also, the licensee's business records must be open for reasonable inspection by the Registrar.

Conditions for operation

When the licensee holds an auction, the licensee must have title present for all vehicles being sold. In order to verify eligibility requirements related to sales revenue, the act requires a licensee to file with the Bureau of Motor Vehicles on an annual basis a certification stating the gross proceeds generated from auctions held at the auction site during the prior calendar year and the gross proceeds generated from the sale of motor vehicles having a gross vehicle weight rating of 10,000 pounds or less during the year.

Special restrictions apply when a construction equipment auctioneer sells a motor vehicle with a gross vehicle weight of 10,000 pounds or less. For those vehicles, the auctioneer specifically must comply with titling, sales tax, and commercial activity tax provisions in the same manner as a motor vehicle dealer, including transferring title to the licensee's name prior to the auction.

Prohibitions

The act contains a general prohibition against engaging in the business of auctioning large construction or transportation equipment unless a person is a construction equipment auctioneer (a construction equipment licensee who also holds an auctioneer's license) or is licensed as a motor vehicle auction owner and uses a licensed auctioneer. Violation of this is a minor misdemeanor with a mandatory \$100 fine, and on subsequent offenses it is a first degree misdemeanor with a mandatory \$1,000 fine.

Additionally, the act specifically prohibits a construction equipment auction licensee from doing any of the following:

- (1) Selling vehicles with a manufacturer's statement of origin;
- (2) Holding any motor vehicle dealer licenses issued by this state at the same time as holding a construction equipment auction license, which must be separate and distinct from motor vehicle dealer and sales licenses the Registrar issues;
- (3) Selling at auction a motor vehicle having a gross vehicle weight rating of 10,000 pounds or less unless the motor vehicle owner also sells large construction or transportation equipment through the construction equipment auction licensee.

A violation of these provisions is a minor misdemeanor on a first offense and a fourth degree misdemeanor on subsequent offenses. In addition, a court is required to impose a fine of up to \$10,000.