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OHIO LEGISLATIVE SERVICE COMMISSION

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Office of Research
and Drafting

Legislative Budget
Office

H.B. 373*
133rd General Assembly

Occupational Regulation Report

[Click here for H.B. 373's Bill Analysis](#)

Primary Sponsor: Rep. Ginter

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.¹

SUMMARY OF PROPOSED REGULATIONS

H.B. 373 has three provisions that 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 the [H.B. 373 Bill Analysis](#).

* This report addresses the "As Introduced" version of H.B. 373. It does not account for changes that may have been adopted after the bill's introduction.

¹ R.C. 103.26, not in the bill.

Continuing education

The bill requires a licensed auctioneer to complete eight continuing education hours prior to renewing their biennial license. Three hours must consist of course instruction in core areas (designated by rule of the Director of Agriculture) and the remaining five hours consist of course instruction in elective areas. The bill requires auctioneers to keep records documenting their continuing education for three years after the license is renewed.²

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.³

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. In contrast, consignees who sell personal property “in the regular course of business” would be subject to the state’s auctioneer laws with respect to internet auctions.⁴

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:

² R.C. 4707.10(C) and 4707.19.

³ R.C. 4707.07(D) and 4707.12.

⁴ R.C. 4707.01 and 4707.02(B).

- 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.

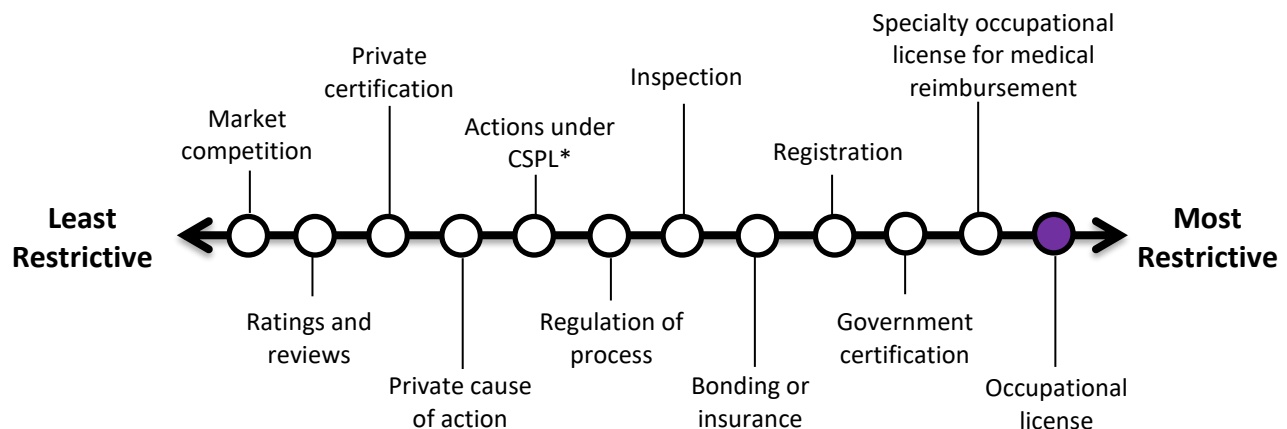
The bill eliminates the apprentice auctioneer license (which is rendered moot due to the removal of the apprenticeship requirement) and the special auctioneer license (which, according to an official from the Department of Agriculture, is used by only three persons).⁵

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.”⁶

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:



*CSPL – The Consumer Sales Practices Law

⁵ R.C. 4707.04(C) and 4707.08(A), amended; R.C. 4707.071 and 4707.09, repealed.

⁶ Section 3 of the bill and R.C. 4798.01 and 4798.02, neither in the bill.

Necessity of regulations

Representative Ginter, the bill's primary sponsor, testified that the purposes of H.B. 373 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.⁷ The Department of Agriculture reports that changes in the state's approach to regulating auctioneers are necessitated by the growth of the industry and the increasing complexity of transactions conducted at auction. Due to this complexity and the expansion of the financial interests involved, the Department states that continuing education is needed to ensure that licensed auctioneers "receive current and relevant education regarding Ohio law and changes within the profession."⁸

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 Department, bad practices like shill bidding, bid rigging, misrepresentation of lots, misuse of legal terms, failure to remit funds, and failure to ship items are prevalent in internet auctions. Data obtained by LSC from the Ohio Attorney General's Consumer Complaints Division indicates that 28 complaints involving internet auctions were filed in 2018. (A total of 22,780 complaints were filed that year.)

The Department asserts that internet auctioneers are less likely to be familiar with the intricacies of the Consumer Sales Practices Law. Furthermore, consumers might mistakenly believe that individuals conducting auctions over the internet are subject to the same standards as licensed auctioneers. A consumer who incurs damages due to malfeasance by an unlicensed internet auctioneer does not have the same assurances for recourse – through a surety bond or the auction recovery fund – as a consumer whose sale is covered by the state's auctioneer law.

The rationale for the bill's reciprocity provision is not addressed in committee testimony or in the additional information provided to LSC by the bill's sponsor. However, the Department notes that Ohio has reciprocal agreements with 16 states that allow auctioneers licensed in those states to apply for waiver of the testing and schooling requirements associated with an Ohio license as long as they are not an Ohio resident.⁹

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 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

⁷ Representative Tim Ginter, *H.B. 373 Sponsor Testimony*, November 12, 2019.

⁸ See, **INFORMATION FROM SPONSOR** below.

⁹ *Id.*, see also, Wade Baer, Ohio Auctioneers Association, *H.B. 373 Proponent Testimony*, November 19, 2019.

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.¹⁰

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.¹¹ 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.¹² 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 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. It also might be relevant that the bill decreases the restrictiveness of the state's auctioneer regulations in several respects; for instance, by eliminating apprenticeship and oral examination requirements.

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 categories.¹³ The law does not contain a general statement explaining the state's intent in regulating auctioneers.

IMPACT STATEMENT

Opportunities for employment

In FY 2019, there were over 2,400 auctioneers licensed in Ohio. 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 serves as an apprentice auctioneer and pass an oral examination before obtaining licensure as an auctioneer make initial entry into the field somewhat easier.

¹⁰ R.C. 4798.02, not in the bill.

¹¹ National Auctioneer License Law Officials Association, [States with no License Law](#), July 1, 2016.

¹² R.C. 4707.07(D) and 4707.12.

¹³ Ohio Department of Agriculture, [Auctioneers: About Us](#), February 23, 2018.

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](#).

STATE-BY-STATE COMPARISON

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.¹⁴ 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 ¹⁵	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.

¹⁴ Mich. Comp. Laws Serv. §§ 67.1 and 91.1.

¹⁵ 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 ¹⁶	<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 ¹⁷	No provision.	No provision.	No exemption.
West Virginia ¹⁸	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.

¹⁶ Ky. Rev. Stat. §§ 330.020, 330.030, 330.032, 330.040, and 330.070(7).

¹⁷ 63 Pa. Stat. Ann. §§ 734.3 and 734.5(c).

¹⁸ W. Va. Code §§ 19-2C-2 and 3a; W. Va. Code R. § 61-11B-6.

INFORMATION FROM SPONSOR

Sponsors of bills involving occupational regulations are expressly permitted by law to provide LSC with information that may be relevant to this report.¹⁹ The information below was submitted by Representative Ginter on behalf of the Ohio Department of Agriculture and the Ohio Auctioneers Association. It has been reformatted to fit the structure of the report but is otherwise reproduced in its entirety. Inclusion of sponsor provided information in this section of the report is not an endorsement or affirmation of accuracy by LSC.

Department of Agriculture

Least restrictive regulation necessary to protect consumers

The auction profession has grown in the last 20 years from disbursal of personal property and forced sales to a method of choice for large commercial transactions and real estate. The opportunity for greater financial harm has increased as the profession has grown into more complicated transactions. An auctioneer is more than just a bid caller at an auction. The auctioneer will enter into contracts with the seller, manage, arrange, conduct the auction and handle large commercial transactions. There are provisions within the statute that require proper handling of client's moneys into a client trust account. These measures are in place to protect the consumer.

Currently, unless an online auction is conducted in conjunction with a live auction, the online auction is exempt from the licensure requirement, and thus exempt from regulation by ODA. There is not a state agency that currently regulates online auctions in Ohio. Many online auction companies are unaware of the state law in regard to the auction law and the provisions under R.C. 1302.41, the uniform commercial code. It is confusing for consumers regarding which entities are regulated and which are not. Most consumers find out too late that the online auction is not regulated.

Shill bidding, bid rigging, misrepresentation of lots, misuse of legal terms such as absolute, the failure to remit funds, and the failure to ship items are prevalent in online only auctions with little recourse for the consumer. Most law enforcement agencies will not involve themselves in what they deem to be a civil issue.

Licenses are covered under the auction recovery fund or a surety bond which gives the consumer recourse in event of an actual and direct loss that is caused by a violation of the auction law. Currently, purchasers in an online auction do not have the recourse through the recovery fund or a surety bond. That protection to consumers would extend to include purchasers at online auctions through the proposed amendments to the regulatory scheme.

¹⁹ R.C. 103.26(D), not in the bill.

Bill's potential impact on employment, consumer choice, market competition, and cost to government

This bill will equal the playing field for all who are in the auction profession whether it is online or a live auctioneer. It will also ensure that all who are in the profession, whether it is an online auctioneer or a live auctioneer, will have the same educational requirements and understanding of Ohio law which will be beneficial to the auction public.

Passage of H.B. 373 will increase the number of licensees under R.C. Chapter 4707 by extending regulatory protection to online auction, consumer choice will grow, and more consumers would have access to the protections and recovery the program provides. With increased oversight and market competition, auctioneers will be forced to deliver better services to their customers.

H.B. 373 will ease the barriers to entry for persons interested in becoming a licensed auctioneer. It will eliminate the apprentice auctioneer requirement thus speeding up the time frame for licensure. One of the many complaints that the Ohio Department of Agriculture receives is that a person is unable to find a sponsor that is willing to commit to training them for a 12-month period. Many licensees are unwilling to train what they consider their competition. The bill still requires a written examination for licensure; however, in consideration for the changing needs of the profession, the verbal exam is eliminated. It also increases the frequency in which the examination is offered; it will now be available monthly versus quarterly. As the profession changes and with new technology, online auctions are becoming more prevalent. The addition of continuing education requirements ensures that licensees will continue to receive current and relevant education regarding Ohio law and changes within the profession.

There is little to minimal cost to the government to run the program as it is not dependent on general revenue funds. It is funded entirely through license fees. There has not been an increase in license fees since 1991. \$7.50 of every \$100 license fee collected is deposited in the auction education fund. Education is provided to all licensees in the state of Ohio. It is available at no charge to licensees and the auction going public to education and promote the profession. No other licensing state has an auction education fund that is dedicated exclusively to the licensees and public. The funds are available to those who request the moneys and are approved by the Ohio Auctioneer Commission. The addition of the continuing education requirement would not be overly burdensome financially to licensees as educational opportunities will be available through the auction education fund.

Comparison with other states' auctioneer programs

Under H.B. 373, Ohio will require applicants for an auctioneer license to attend an 80-hour course at an approved auction school, provide proof of financial responsibility in the form of a bond or irrevocable letter of credit for a period of three licensing years before entering the auction recovery fund, proof of good character in the form of a police background check, and a passing score of 75% on the written exam.

Ohio currently has reciprocal agreements with 16 states (Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Mississippi, North Carolina, Pennsylvania,

Tennessee, Texas, South Carolina, Virginia, and West Virginia). All the reciprocal states have similar or comparable licensing laws to Ohio. These states require auction school and/or an apprenticeship and testing to obtain a license in the home state.

The reciprocal agreements permit an applicant from a reciprocal state to make application in Ohio with a waiver of the apprenticeship and the testing requirement if they have been licensed in the reciprocal state for at least one year. Of the reciprocal states, only West Virginia requires the verbal examination. Only five (Alabama, Kentucky, Pennsylvania, Tennessee, and West Virginia) require an apprenticeship. The change in the requirements licensure will ease the ability for those who are not licensed in a reciprocal state to obtain a license to operate in Ohio. Currently, Pennsylvania, Kentucky, Mississippi, Louisiana, South Carolina, Tennessee, Georgia, and West Virginia regulate online auctions.

Ohio Auctioneers Association

The Ohio Auctioneers Association submitted direct responses to the statutory examples of the types of information that a sponsor may provide for inclusion in an occupational regulation report. The statutory examples are summarized in bold italics below, with the Association's response following each example in plain text.

An explanation of why a less restrictive regulation is not proposed.

This is a less restrictive regulation as it relates to barrier to entry which, according to Senator McColley, S.B. 255 sponsor, the intent of S.B. 255 was to relieve barriers to entry in all industries.

The names of associations, organizations, or other groups representing the occupation and the approximate number of Ohio members in each.

Ohio Auctioneers Association - 406 members.

The functions typically performed by members of the occupation and a list of any other occupations that perform the same or similar functions.

Auctioneers have many functions. We market and sell assets from real estate to household goods at auction, collect the proceeds from that auction, hold the funds in our trust accounts and disburse that money to the seller/consignors.

An indication of whether or not specialized training, education, or experience is required to engage in the profession and a description of how that training, education, or experience is acquired by current practitioners.

To engage in the auction profession you must attend a certified auction school for 80 hours of education, take an Apprentice Auctioneer exam (which will be removed by H.B. 373), go through an apprenticeship for 12 months, call bids at no less than 12 auctions (which will be removed by H.B. 373), and sit for the Auctioneer Exam.

A description of any way in which the bill would change how practitioners of the occupation acquire necessary specialized training, education, or experience.

No change in the specialized training. All auctioneers will be required to attend a certified auction school.

An indication of whether or not current practitioners in Ohio lack necessary training, education, or experience and a description of how the bill addresses that deficiency.

This bill will force license holders to take classes that will update them on the current law, any changes that have been made to the law, as well as a list of other subjects that will help them to succeed in the industry.

An indication of whether or not new entrants into the occupation or current practitioners would be required to provide evidence of training, education or experience, or to pass an examination.

They will still have to go to auction school and pass a written exam.

The expected impact of the bill on the supply of practitioners of the occupation and on the cost of services or goods provided by the occupation.

This bill should have the number of licenses initially increase while the cost of goods and services stays flat.