



www.lsc.ohio.gov

# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

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

## Final Analysis

[Click here for H.B. 321's Fiscal Note](#)

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

**Effective date:** September 13, 2022

Jeff Grim, Research Analyst

Nick Thomas, Research Analyst

## SUMMARY

### Auction law

#### Elimination of licenses

- Eliminates the requirement that a person serve as an apprentice auctioneer prior to becoming an auctioneer.
- As a result of eliminating the apprentice auction program, requires applicants for an auctioneer's license to successfully complete a course 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, but retains an exemption for auction mediation companies (companies, such as eBay, that provide a forum through the internet for persons to sell their real or personal property via silent bids using a computer or other electronic device).
- If a person auctions real or personal property via the internet, requires the person to be licensed as an auctioneer or auction firm, provided the person is not otherwise exempt from licensure.
- 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 the property in the regular course of business.

### **Auctioneer licensure**

- Revises the requirements regarding examinations for auctioneer license applicants, including by:
  - Eliminating the requirement that an applicant pass an oral examination administered by the Ohio Auctioneers Commission; and
  - Increasing the frequency that the Department of Agriculture must hold written examinations to 12 times a year, rather than four times a year.
- 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 term of an auction firm license from one to two years and requires the Director to adopt transition procedures.

### **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 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 renewing a license.
- Prescribes the hours of instruction and the subjects for C.E., 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.
- Specifies that a suspended license is automatically revoked if the licensed auctioneer or auction firm manager fails to submit proof of completion of C.E. in 180 days.
- Grants the Ohio Auctioneers Commission oversight of C.E. courses of study and providers.

### **Miscellaneous**

- Eliminates a required transfer of money from 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.

## **Self-service storage facilities**

### **Lien enforcement notices**

- Removes the requirement that lien enforcement notices sent by email also be sent by certified or first-class mail.
- Allows a lien enforcement notice to be sent by email to an occupant, but to no other parties and only if certain conditions apply.
- Requires, if successful delivery cannot be established, the owner to resend the notice via certified mail, first-class mail, or private delivery service.
- Replaces a provision deeming an email notice delivered when it is properly addressed and sent with a provision deeming it delivered when the owner receives a response or return receipt.

### **Towing**

- Grants self-service storage facility owners discretion in deciding whether and when to have motor vehicles, trailers, and watercraft removed from self-service storage spaces when an occupant is in default or when other personal property in the space will be or was sold to collect amounts due.
- Adds trailers to the property for which a 30-day notice is required prior to towing it due to default.
- Removes a provision requiring a response to a facility owner's lien enforcement notice from a person holding a lien on a motor vehicle or watercraft prior to a facility owner towing it.
- Adds trailers to the property for which a facility owner is not liable for damages following towing.
- Requires a lien enforcement notice to include the name of the towing service or storage facility.
- Requires the name and street address of the towing service or storage facility to be made available to the occupant or lienholder upon presentation of proof of an interest in the motor vehicle, trailer, or watercraft.

---

## TABLE OF CONTENTS

Auction Law – overview .....	4
Elimination of licenses.....	5
Apprentice auctioneer license.....	5
Special auctioneer license .....	5
Regulatory authority .....	6
Internet auctions .....	6
Consignment sales.....	6
Auctioneer licensure .....	7
Examinations .....	7
Reciprocity .....	7
Incomplete application.....	7
Auction firm licensure validity period .....	7
Continuing education .....	8
Requirements for auctioneers and auction firm managers .....	8
Subjects.....	8
License suspension .....	8
Continuing education providers.....	9
Auctioneers Fund .....	9
Absolute auctions.....	10
Self-service storage facilities.....	10
Lien enforcement notices.....	10
Towing.....	11

---

## DETAILED ANALYSIS

### **Auction Law – overview**

In Ohio, the Ohio Department of Agriculture regulates auctions and auctioneers. The act modifies the licensure requirements for a person who wishes to act as an auctioneer and a firm that wishes to manage a personal property online or live auction (auction firm).<sup>1</sup> It also eliminates the position of apprentice auctioneer and special auctioneer. Finally, the act revises the Department’s regulatory authority regarding internet auctions and consignment sales; modifies and expands continuing education requirements for auction firm managers and

---

<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).

licensed auctioneers; and makes changes to the law governing transfers of money from the Auctioneers Fund to the Auction Recovery Fund.

## **Elimination of licenses**

### **Apprentice auctioneer license**

The act 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 former law, in order for a person to become a licensed auctioneer, the person first had to serve as a licensed apprentice auctioneer for at least 12 months. The person also had to participate as a bid caller in at least 12 auctions under the direct supervision of the apprentice's sponsoring auctioneer.

An applicant for an apprentice auctioneer license had to 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 it eliminates the apprentice auctioneer program, the act requires all applicants for an auctioneer's license to successfully complete a course in auctioneering at an institution approved by the Commission prior to licensure.<sup>3</sup>

### **Special auctioneer license**

The act eliminates the special auctioneer license and instead requires any previously licensed special auctioneer to apply for an auction firm license.<sup>4</sup>

Under former law, the Department issued a special auctioneer's license to the principal owner of an auction company that had been in operation on or before May 1, 1991. According to an official from the Department, S.B. 146 (enacted in 1990 by 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.<sup>5</sup>

---

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

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

<sup>4</sup> R.C. 4707.071, repealed.

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

## **Regulatory authority**

### **Internet auctions**

The act eliminates a provision of law that exempted certain internet auctions from the auctioneers law, specifically internet auctions that applied to sales of real or personal property conducted over the internet that were not conducted in conjunction with a live auction. However, it 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.<sup>6</sup> For example, eBay is an auction mediation company.

It also retains an exemption from the auctioneer's law that applies to the owner of any real or personal property desiring to sell the property at auction, provided the property was not acquired for purpose of resale.<sup>7</sup> Thus, if a person qualifies for this exemption, the person may conduct an online auction without obtaining an auctioneer's license.

The act clarifies that a person providing auction services for *online or live auctions* is considered an auction firm and must obtain an auction firm license. Under prior law, a person that provided auction services for an exempt internet auction (see description above) was not considered an auction firm and, thus, did not require a license. 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 in real time.<sup>8</sup>

### **Consignment sales**

The act alters the definition of "consignee." Generally, a consignee is a person or auction firm that takes personal property on consignment to be sold at an auction by a licensed auctioneer. The act adds that in order to qualify as a consignee, the person must take the personal property in the regular course of business. Further, it clarifies that the definition applies to both online and live auctions. Prior to the act's enactment, there was an understanding that the amendments to the definition of consignee would operate to exempt from the auctioneer's law a person who takes (not for a fee or other consideration) the personal property of a parent, neighbor, or friend for sale at an online auction. However, subsequent to enactment, it is not clear that the act achieved this desired result. Thus, follow-up legislation may be necessary to clarify this issue.<sup>9</sup>

---

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

<sup>7</sup> R.C. 4707.02(B)(2).

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

<sup>9</sup> R.C. 4707.01.

## **Auctioneer licensure**

### **Examinations**

The act revises the requirements regarding oral and written examinations for auctioneer license applicants by:

1. Eliminating the requirement that an applicant pass an oral examination administered by the Commission;
2. Increasing the frequency that the Department must hold written examinations to 12 times a year, rather than four times a year; 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 long enough to warrant a reexamination.<sup>10</sup>

### **Reciprocity**

The act eliminates the authorization for an Ohio resident to conduct auctions in Ohio under the authority of a license issued by another state. Consequently, it eliminates the Department's authority to waive schooling requirements for an Ohio resident with a valid auctioneer license from a state that has a reciprocity agreement with Ohio. Under the former law, the applicant had to provide proof of having two years of experience as an auctioneer immediately prior to applying. The experience had to include at least 12 auctions in which the applicant was a bid caller in the reciprocal state.<sup>11</sup>

### **Incomplete application**

The act establishes procedures regarding an incomplete application for an auctioneer license. If the Department determines that an application is incomplete, it must inform the applicant of the missing information. The applicant must submit the additional information within 90 days of being notified by the Department. If the 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 act extends the term of an auction firm license from one to two years. It also requires the Director to adopt procedures to transition the licenses from annual to biennial. The act maintains the license fee (\$200 biennially rather than \$100 annually).<sup>13</sup>

---

<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).

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

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

## Continuing education

### Requirements for auctioneers and auction firm managers

The act requires a licensed auctioneer to include with a license renewal application an affidavit stating that the licensee has completed eight hours of continuing education (C.E.) during the two years preceding renewal of the license. Similarly, prior to renewing an auction firm's license, the auction firm manager must include with a renewal application an affidavit stating that the manager has completed eight hours of C.E. during that two-year period. The Director cannot renew an auctioneer or auction firm license unless the applicant demonstrates that all C.E. requirements have been completed.<sup>14</sup>

### Subjects

The eight hours of C.E. required of a licensed auctioneer and an auction firm manager must include the following topical areas:

1. Three of the hours must include 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; and
2. Five of the hours must include instruction in any of the following: 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 valid for 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; and
2. Three hours in the areas of instruction described in (2) above.

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; and
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 act 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.

---

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

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



An auctioneer license or auction firm license is automatically suspended on the date 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 must provide proof of completion of the C.E. requirements within 180 days after the suspension starts; and
2. If the auctioneer or 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 act 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 act requires the Ohio Auctioneers Commission to oversee C.E. courses of study that are offered by C.E. providers. Specifically, it requires the Commission to do the following:

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

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

### **Auctioneers Fund**

The act 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 the former law, if the balance of the Auctioneers Fund exceeded \$300,000 at the end of a fiscal year, the Director of Agriculture had to request the Director of Budget and Management to, and the Director of Budget and Management had to, transfer 25% of the excess to the Auction Recovery Fund.<sup>18</sup>

---

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

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

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

## **Absolute auctions**

The act 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. It makes this change for purposes of consistency with the Uniform Commercial Code. Under continuing law, an absolute auction is an auction of real or personal property at which:

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. Except as the act now permits when there are no bids, the seller of the property otherwise cannot withdraw the property from auction after the auction is opened and there is public solicitation or calling for bids.<sup>19</sup>

## **Self-service storage facilities**

### **Lien enforcement notices**

Continuing law, unchanged by the act, gives the owner of a self-service storage facility a lien on an occupant's personal property stored at the facility, or on the proceeds of the personal property, for certain charges that have become due and for expenses necessary for the preservation of the property or enforcement of the lien. The law also requires a notice be sent to the occupant and any person with an interest in the property if the owner enforces the lien. The act revises the lien enforcement notice requirements as follows.

The act removes the requirement that notices sent by email also be sent by certified or first-class mail. But it stipulates that the owner may send the notice by email to an occupant and to no other party, and only if both of the following apply:

- The occupant agreed to receive email notices and provided their email address in the agreement.
- The owner emails the notice in such a way as to establish, with a response or return receipt, that delivery was successful.

If successful delivery cannot be established, the act requires the owner to resend the notice via certified mail, first-class mail, or private delivery service.

The act also replaces a provision deeming an email notice delivered when it is properly addressed and sent with a provision deeming it delivered when the owner receives a response or return receipt.<sup>20</sup>

---

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

<sup>20</sup> R.C. 5322.03(B) and (D)(2), with a conforming change in R.C. 5322.01(G).

## Towing

Continuing law requires a facility owner to have a motor vehicle or watercraft that is subject to a lien towed from the premises if certain circumstances apply. The act makes several changes to these provisions.

First, in addition to motor vehicles and watercraft, these provisions apply to trailers.

Second, instead of *requiring* the owner to tow a vehicle, it gives the owner *discretion* to do so.

Third, it modifies the circumstances that trigger the option to tow as follows:

- Whereas one circumstance under former law was when 30 days had elapsed since a lien enforcement notice was delivered or sent *without a response*, the act no longer requires the absence of a response.
- Whereas another circumstance under former law was when the owner was planning to hold a sale “at auction” for personal property that was stored in the “unit” with the vehicles, the act additionally allows towing when the owner has already held a sale. The act also removes the term “at auction” and changes “unit” to “space.”

Fourth, whereas former law exempted a facility owner from liability for the vehicle or any damages to it once the “tower” takes possession, the act instead refers to the “towing service or storage facility,” which it defines as any for-hire motor carrier that removes a motor vehicle, trailer, or watercraft from a self-service storage facility and any place to which that carrier delivers the motor vehicle, trailer, or watercraft.

And fifth, the act clarifies that the address the owner must provide to the occupant or lienholder following the towing of a vehicle is the *street* address of the towing service or storage facility.<sup>21</sup>

---

## HISTORY

Action	Date
Introduced	05-25-21
Reported, H. Agriculture & Conservation	11-18-21
Passed House (87-4)	12-09-21
Reported, S. Agriculture & Natural Resources	03-16-22
Passed Senate (30-1)	05-18-22
House concurs in Senate changes (92-0)	05-25-22

ANHB0321EN-134/ts

---

<sup>21</sup> R.C. 5322.03(K).