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Bill Analysis

Legislative Service Commission

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Sen. Mumper

BILL SUMMARY

Licensure requirements for auction firms and various auctioneers

- Extends the current prohibition against acting as an auctioneer, apprentice auctioneer, or special auctioneer without a license to include acting as an auction firm without a license, adds several exemptions from the licensing requirement, and increases the criminal penalties for violating the prohibition.
- Applies the current licensure requirements for auctioneers to individuals, and establishes a separate auctioneer's license and licensure requirements for corporations, general or limited partnerships, and unincorporated associations.
- Revises the licensure requirements for apprentice auctioneers and the requirements governing apprentice auctioneers and their sponsoring auctioneers.
- Establishes licensure requirements for auction firms, including a requirement that an auction firm have a firm manager, specifies the duties of the firm manager, establishes reasons for the termination of a license and procedures for the issuance of a new license, and prohibits an auction firm from conducting the bid calling for the sale of real or personal property at auction.
- Eliminates the definition of "auction company," except as used in the special auctioneer's licensure provisions, and removes all references to an auction company in the Auctioneers Law.
- Limits one-auction licenses to individuals.

- Retains the fees and license renewal deadlines and procedures for apprentice auctioneers and special auctioneers, applies those existing fees, deadlines, and procedures to auctioneers who are individuals, and establishes generally parallel provisions governing licenses for auction firms and auctioneers that are corporations, general or limited partnerships, or unincorporated associations.
- Revises the requirements governing the specified portion of license fees that must be credited to the Auction Education Fund.
- Establishes financial responsibility requirements for auction firms that differ from the requirements established under existing law for other persons licensed under the Auctioneers Law.
- Requires the Department to hold examinations 12 times a year to test the qualifications of unlicensed auction firm managers, establishes an examination fee for those managers, authorizes the Department to establish examination fees for auctioneers, apprentice auctioneers, and unlicensed auction firm managers in rules, and establishes the procedures that an auctioneer or apprentice auctioneer license applicant or unlicensed auction firm manager applicant must follow after each successive examination failure.
- Authorizes licensed auctioneers and apprentice auctioneers to place their licenses on deposit with the Department, and requires those licensees to follow certain procedures to place their licenses on deposit and to reacquire their licenses.
- Modifies the requirements governing the licensure of nonresident auctioneers who are licensed in a state with which Ohio has a reciprocity agreement, and establishes requirements governing the licensure of auctioneers who are Ohio residents and who are licensed in a state with which Ohio has a reciprocity agreement.
- Authorizes the Department to take specified actions against the license of a nonresident auction firm, auctioneer, apprentice auctioneer, or special auctioneer in response to certain disciplinary actions taken by the licensing authority of the licensee's home state.

Requirements governing auctions

- Revises the provisions governing real estate auctions, including adding a provision that allows a real estate salesperson who is licensed under the Real Estate Brokers Law and who is licensed as an auctioneer under the Auctioneers Law to sell real property at auction.
- Eliminates the authority to allow a real estate broker who is licensed under the Real Estate Brokers Law, but not licensed as an auctioneer under the Auctioneers Law, to contract for the sale of real property under certain conditions.
- Defines "reserve auction," and requires an auction to be a reserve auction unless explicitly stated otherwise.
- Defines "absolute auction," prohibits a person licensed under the Auctioneers Law from offering or advertising for sale real or personal property by absolute auction unless certain conditions apply, and exempts specified activities from the prohibition.
- Authorizes a person licensed under the Auctioneers Law to make a bid on his own behalf at both a reserve auction and an absolute auction if certain conditions are met.
- Applies the requirements governing contracts and agreements for the sale of property at auction to auction firms, precludes an apprentice auctioneer from entering into an auction contract for the sale of real property in the name of the sponsoring auctioneer, and requires contracts and agreements to include specified information.
- Revises requirements governing advertisements for auctions, and applies those requirements to auction firms.
- Establishes trust and escrow account requirements for persons licensed under the Auctioneers Law, including a requirement that the money received for an owner's or consignee's property at auction be kept separate from the licensee's personal or business money.
- Precludes a person licensed under the Auctioneers Law from using absentee bidding unless the owner of the real or personal property being sold provides prior written permission to use absentee bidding, and requires a person licensed under that Law to be an agent of the

owner or consignee of the real or personal property for purposes of all aspects of the auction.

Administration and enforcement

- Expands the Department's authority to suspend or revoke the license of an auctioneer, apprentice auctioneer, or special auctioneer for specified causes to include denying or refusing to renew such a license, adds that the Department also may take such actions against the license of an auction firm for those causes, and revises several of those causes and adds new causes.
- Revises the definition of "bid rigging," and increases the penalty for violating the prohibition against bid rigging.
- Extends the Department's investigative and enforcement authority regarding persons licensed under the Auctioneers Law to include auction firms.
- Authorizes the Department to apply for an injunction or other appropriate relief for continued violations of the Auctioneers Law.
- Requires the Director of Agriculture to adopt rules that establish a schedule of civil penalties for violations of the Auctioneers Law and rules adopted and orders issued under it.

Recovery of losses caused by actions of persons licensed under Auctioneers Law

- Specifies that a person aggrieved solely by the actions of an auction firm cannot seek recovery from the Auction Recovery Fund, and requires rules to be adopted establishing procedures by which such a person may recover the losses under the firm's financial responsibility.
- Establishes procedures to be followed for recovery of losses by a person aggrieved by the actions of both an auction firm and a licensed auctioneer.

State Auctioneers Commission

- Increases from three to five the membership of the State Auctioneers Commission, revises the qualifications for members, and expands the

powers and duties of the Commission, including requiring that each member receive a per diem salary for each meeting attended.

State preemption

- Extends the current state preemption of the regulation of auctioneers and auction sales to include auction firms.

Licensee's action for compensation

- Applies to auction firms the existing provision regarding a licensee's actions to collect compensation.

Technical and conforming changes

- Makes several technical and conforming changes.

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CONTENT AND OPERATION

Overview

Current law generally requires a person who wishes to auction real or personal property to be licensed to do so by the Department of Agriculture as an auctioneer, special auctioneer, apprentice auctioneer, or single-auction auctioneer. A licensed auctioneer may be an individual, partnership, association, or corporation. A licensed special auctioneer is a person who is licensed as an auction company by the Department as of May 1, 1991, and who is governed by specific requirements for special auctioneers. A licensed apprentice auctioneer is an individual who is sponsored by an auctioneer for a specified number of auctions to deal or engage in auction activities. A licensed one-auction auctioneer is a nonresident auctioneer who wishes to conduct an auction in Ohio and who is deemed to be qualified to do so by the Department.

The bill applies the current requirements to be licensed as auctioneers to individuals only and creates a separate license for and requirements governing auctioneers that are corporations, general or limited partnerships, or unincorporated associations. It also establishes a new license for auction firms. In addition, it revises several existing, and adds several new, requirements and restrictions governing licensees and the conduct of auctions.

Finally, current law defines "auction" as a sale of real or personal property, goods, or chattels by means of verbal exchange or physical gesture between an auctioneer or apprentice auctioneer and members of the audience, the exchanges and gestures consisting of a series of invitations for offers made by the auctioneer and offers by members of the audience, with the right to acceptance of offers with the auctioneer or apprentice auctioneer. The bill makes three changes to the definition. First, it includes a sale by regular mail, telecommunications, the Internet, and an electronic transmission. Second, it expands those who have communication with an auctioneer or apprentice auctioneer to include prospective purchasers. Third, it includes a sale of real or personal property, goods, or chattels in which there is solicitation or invitation for an advance in bidding using sealed bidding. (Sec. 4707.01(A).) The bill defines "sealed bidding" to mean a method of submitting a bid in writing by one or more undisclosed persons and then the bids are opened at a predetermined time and place, and, after a review of all the bids received, the real or personal property is awarded to the highest and most responsive bidder (sec. 4707.01(J)).

Licensure requirements for auction firms and various auctioneers

Requirement to have license to act as auction firm, auctioneer, apprentice auctioneer, or special auctioneer; exceptions

Existing law prohibits a person from acting as an auctioneer, apprentice auctioneer, or special auctioneer in Ohio without a license issued by the Department of Agriculture.¹ The bill adds that a person cannot act as an auction firm in Ohio without a license (see "**Licensure of auction firms**," below). (Sec. 4707.02.) Under the general provisions of the Revised Code, "person" includes an individual, corporation, business trust, estate, trust, partnership, and association (sec. 1.59(C), not in the bill). The bill instead defines "person" for purposes of the Auctioneers Law as an individual, sole proprietor, corporation, limited liability company, association, or partnership (sec. 4707.01(L)).

Under current law, the Department cannot issue or renew a license under the Auctioneers Law if the applicant or licensee has been convicted of a felony or crime involving fraud in Ohio or another state at any time during the ten years

¹ Under law retained by the bill, "auctioneer" means any person who engages, or who by advertising or otherwise holds the person out as being able to engage, in the calling for, recognition of, and the acceptance of, offers for the purchase of real or personal property, goods, or chattels at auction either directly or through the use of other licensed auctioneers or apprentice auctioneers (sec. 4707.01(B)). Law also retained by the bill defines "apprentice auctioneer" as any individual who is sponsored by an auctioneer to deal or engage in any auction activities (sec. 4707.01(C)).

immediately preceding application or renewal. The bill adds that the Department cannot issue or renew a license if the applicant or licensee has been convicted of a felony or crime involving theft in Ohio or another state at any time during those ten years. (Sec. 4707.02.)

Under existing law, whoever acts as an auctioneer, apprentice auctioneer, or special auctioneer, without first obtaining a license, upon conviction, must be fined between \$100 and \$1,000, imprisoned not more than 90 days, or both. The bill first extends the penalty to apply to a person who acts as an auction firm without a license. It then eliminates the specified fine and term of imprisonment and provides instead that a violation is a misdemeanor of the first degree on the first offense and a felony of the fifth degree on each subsequent offense. (Sec. 4707.99(A).) Under current law, the penalty for a misdemeanor of the first degree is a maximum of 180 days of imprisonment, a maximum fine of \$1,000, or both if the violator is an individual and a maximum fine of \$5,000 if the violator is an organization (secs. 2929.24(A)(1), 2929.28(A)(2)(a)(i), and 2929.31(A)(8), not in the bill). The penalty for a felony of the fifth degree is imprisonment between six and twelve months, a maximum fine of \$2,500, or both if the violator is an individual and a maximum fine of \$7,500 if the violator is an organization (secs. 2929.14(A)(5), 2929.18(A)(3)(e), and 2929.31(A)(7), not in the bill).

Existing law establishes several exemptions from the above licensing requirement. One of those is sales at auction conducted by or under the direction of any public authority. However, current law does not define "public authority." The bill addresses this omission by defining "public authority" to mean any board or commission of the state or any officer of such a board or commission, or any political subdivision of the state. (Sec. 4707.01(H).)

The bill also exempts the following:

(1) An auction mediation company, which the bill defines to mean a company that provides a forum through the Internet for a person to sell the person's real or personal property that was not originally acquired for the purpose of resale via the submission of silent bids using a computer or other electronic device (sec. 4707.01(G));

(2) An auction that is conducted in a course of study for auctioneers that is approved by the State Auctioneers Commission for purposes of student training and is supervised by a licensed auctioneer;

(3) An auction that is sponsored by a nonprofit or charitable organization that is registered in Ohio under existing law if the auction only involves the property of the members of the organization and the auction is part of a fair that is

organized by an agricultural society or the Ohio Expositions Commission under existing law at which a licensed auctioneer physically conducts the auction; and

(4) A person licensed as a livestock dealer under the Livestock Dealers Law who exclusively sells livestock and uses a licensed auctioneer to conduct the auction. (Sec. 4707.02(C), (D), (E), and (F).)

Licensure of auctioneers--individuals

Existing law authorizes the Department to grant auctioneers' licenses to those persons deemed qualified by the Department. The bill limits the granting of an auctioneer's license under the existing provisions to individuals and makes several substantive as well as conforming changes in those provisions. (Sec. 4707.07(A).)

Current law requires a person who applies for an auctioneer's license to furnish to the Department, on forms provided by the Department, satisfactory proof that the applicant possesses specified qualifications and has met specified requirements. The bill adds two requirements to these qualifications and requirements. First, it requires an applicant to provide proof that he has at least a high school diploma or its equivalent, or holds a valid license issued under the Auctioneers Law prior to June 30, 2004, and seeks to timely renew the license, if applicable. Second, it requires an applicant to provide proof that he has a general knowledge of any local and federal laws regarding the occupation of auctioneering. (Sec. 4707.07(A).)

Under current law, if an applicant applies to the Department to do business under more than two names, the Department may charge a \$10 fee for the third name and each additional name. The bill instead authorizes the Department to charge a fee that is established in rules adopted by the Director of Agriculture for the third name. (Sec. 4707.07(C).)

Licensure of auctioneers--corporations, general or limited partnerships, and unincorporated associations

Under existing law, the Department may issue an auctioneer's license to a partnership, association, or corporation if all of its partners, members, or officers who are authorized to perform the functions of an auctioneer as agents of the applicant are themselves licensed as auctioneers under the Auctioneers Law. An application for an auctioneer's license filed by a partnership or association must contain a listing of the names of all of the licensed partners, members, or other persons who are authorized to perform the functions of an auctioneer as agents of the applicant. An application filed by a corporation must contain the names of its president and of each of its licensed officers and any other person who is

authorized to perform the functions of an auctioneer as an agent of the applicant. (Sec. 4707.07(C).) The bill creates a separate auctioneer's license for corporations, general or limited partnerships, and unincorporated associations, relocates these provisions with modifications to apply to that license, and establishes additional licensure requirements.

Under the bill, no corporation, general or limited partnership, or unincorporated association can act or hold itself out as an auctioneer without a valid auctioneer's license issued under the new licensure requirements. This prohibition does not apply to a person who is issued a special auctioneer license (see "*Licensure of special auctioneers*," below). (Sec. 4707.073(A).)

The bill authorizes the Department to grant an auctioneer's license to a corporation, general or limited partnership, or unincorporated association that is determined to be qualified by the Department. Every applicant for a license must furnish to the Department, on forms provided by the Department, satisfactory proof that the applicant: (1) is in good standing with the Secretary of State if the applicant is a corporation, (2) is of trustworthy character, (3) has provided proof of financial responsibility as required under the bill (see "*Financial responsibility requirements for licensees*," below), (4) is registered with the Secretary of State or a local authority, as applicable, to do business in Ohio, and (5) has complied with any other requirement that the Director establishes in rules. (Sec. 4707.073(B).)

As indicated above, the bill applies with changes some of the current requirements governing licensure of partnerships, associations, and corporations as auctioneers to the issuance of a separate auctioneer's license for such entities under the bill. The bill requires an application to list the names of all of the owners, directors, partners, or members of the applicant, as applicable, and to indicate those that have an auctioneer's license for an individual issued under the bill. (Sec. 4707.073(C).)

Under the bill, the Department cannot issue a license unless one of the following applies, as applicable:

(1) If the applicant is a general or limited partnership, at least 50% of the general partners have a current auctioneer's license for an individual issued under the bill;

(2) If the applicant is a corporation, at least 50% of the directors and the president or chief executive have a current auctioneer's license for an individual issued under the bill; or

(3) If the applicant is an unincorporated association, at least 50% of the members have a current auctioneer's license for an individual issued under the bill.

Failure of a corporation, partnership, or unincorporated association to maintain the above requirements, as applicable, after the issuance of a license may be sufficient cause for the revocation of the license by the Department. (Sec. 4707.073(D)(1).)

Not later than two years after the bill's effective date, a corporation, partnership, or unincorporated association that was issued an auctioneer's license on or before the bill's effective date must comply with the requirements discussed in item (1), (2), or (3), above, as applicable. If such a corporation, partnership, or unincorporated association fails to comply with those requirements, the license of the corporation, partnership, or unincorporated association immediately must terminate. (Sec. 4707.073(D)(2).)

Under the bill, upon the issuance of a license, a corporation, partnership, or unincorporated association must designate an individual from among its directors, partners, or members who is issued an auctioneer's license for an individual under the bill as its agent for purposes of communication with the Department. If that individual ceases to be the agent, the corporation, partnership, or unincorporated association must notify the Department within ten days after the day on which the individual ceases to be the agent. Upon notification to the Department, the license of the corporation, partnership, or unincorporated association, as applicable, immediately must terminate. If the corporation, partnership, or unincorporated association notifies the Department of the designation of a new agent in accordance with the above requirements and pays the fee established by the Director in rules, the Department must issue the corporation, partnership, or unincorporated association a new license. (Sec. 4707.073(E).)

The bill states that the requirements governing the licensure of corporations, partnerships, or unincorporated associations as auctioneers do not preclude those entities from selling real property at auction, provided that those requirements, the requirements for real estate auctions established under the bill (see "*Real estate auctions*," below), and the requirements of the Real Estate Brokers Law are satisfied. (Sec. 4707.073(G).)

Licensure of apprentice auctioneers

Current law requires an applicant for an apprentice auctioneer's license to furnish to the Department satisfactory proof that the applicant possesses specified qualifications and has met specified requirements. The bill adds to these qualifications and requirements a requirement that the applicant prove that he has at least a high school diploma or its equivalent, or holds a valid license issued

under the Auctioneers Law prior to June 30, 2004, and seeks to timely renew the license, if applicable. (Sec. 4707.09(D).)

Under existing law, an auctioneer that sponsors an apprentice auctioneer may terminate the sponsorship at any time by following certain procedures. If a sponsorship is terminated, the apprentice auctioneer must find a new sponsoring auctioneer before performing any acts as an auctioneer. The apprentice may begin performing such acts again once he receives a new license bearing the name and address of his new sponsor. The bill eliminates the requirement that the new license bear the name and address of the apprentice's new sponsor.

The bill prohibits an auctioneer from sponsoring an apprentice auctioneer if the auctioneer has not been licensed and in good standing for at least two years immediately before sponsoring the apprentice auctioneer. A sponsoring auctioneer whose license is suspended or revoked must send to the Department the apprentice auctioneer's license not later than 14 days after the suspension or revocation. If a sponsoring auctioneer's license is suspended or revoked, the apprentice auctioneer must obtain a written promise of sponsorship from another licensed auctioneer before performing any acts under the authority of an apprentice auctioneer's license. The apprentice auctioneer must send a copy of the written promise of sponsorship of another auctioneer to the Department. If the Department receives a copy of such a written promise of sponsorship and the apprentice pays the fee established by the Department, the Department must issue a new license to the apprentice. (Sec. 4707.09.)

Licensure of auction firms

Under the bill, no person who is otherwise licensed under the Auctioneers Law and who only provides auction services or holds the person's self out as providing auction services can do so without a valid auction firm license issued under the bill. "Auction firm" means a person who provides auction services (sec. 4707.01(M)). "Auction services" means arranging, managing, and sponsoring an auction and includes the taking and advertising of personal property on consignment to be sold at auction by a licensed auctioneer (sec. 4707.01(N)). The above prohibition regarding auction firm licenses does not apply to a person licensed as a livestock dealer under the Livestock Dealers Law who exclusively sells livestock and uses a licensed auctioneer to conduct the auction. (Sec. 4707.074(A).)

Under the bill, the Department may grant an auction firm license to an auction firm that is determined to be qualified by the Department. An applicant for an auction firm license must furnish to the Department, on forms provided by the Department, satisfactory proof that the applicant: (1) is in good standing with the Secretary of State if the applicant is a corporation, (2) is of trustworthy

character, (3) is registered with the Secretary of State or a local authority, as applicable, to do business in Ohio, (4) has complied with any other requirement that the Director establishes in rules, (5) has a general knowledge of the statutory requirements and the general principles regarding auctions and auctioneering, and (6) has provided proof of financial responsibility as required under the bill (see "**Financial responsibility requirements for licensees**," below). (Sec. 4707.074(B).) The bill requires an application submitted for an auction firm license to list the names of all of the owners, directors, partners, or members of the applicant, as applicable (sec. 4707.074(C)).

Under the bill, an auction firm must designate a firm manager. "Firm manager" means the individual designated by an auction firm who is responsible for ensuring that the auction firm complies with the Auctioneers Law (sec. 4707.01(P)). The firm manager must have sufficient authority in the operation of the auction firm to ensure compliance with that Law and rules adopted under it. If the firm manager does not have a current auctioneer license issued for an individual under the bill, the firm manager must pass the written examination that is required to be held for firm managers under the bill (see "**Examinations for apprentice auctioneers, auctioneers, and auction firm managers**," below) before the Department may issue a license to the auction firm. (Sec. 4707.074(D).)

The bill requires an auction firm license to terminate immediately if any of the following occurs: (1) the auction firm incorporates, (2) the auction firm ceases to operate as a corporation, (3) the auction firm changes ownership, (4) if the auction firm is a partnership, the firm changes the number of partners in the partnership or changes the partners comprising the partnership, (5) the auction firm changes the firm manager, (6) the auction firm changes the name under which the firm conducts business, or (7) the auction firm changes its permanent business location. If a license terminates, the licensee immediately must cease auction services, notify the Department of the termination, and return the terminated license to the Department. (Sec. 4707.074(E)(1).)

Under the bill, not later than ten days prior to the date on which an auction firm license will terminate pursuant to any of the first four reasons discussed above, the auction firm may submit an application for a new auction firm license. If the auction firm submits the application, returns the terminated license, and pays the fee established in rules adopted by the Director (see "**Fees and license deadlines and procedures**," below), the Department may issue a new license. (Sec. 4707.074(E)(2).) If a license terminates pursuant to any of the last three reasons discussed above and the formerly licensed auction firm notifies the Department, returns the terminated license, and pays the fee established in rules adopted by the Director (see below), the Department must issue a new license (sec. 4707.074(E)(3)).

The bill precludes a licensed auction firm from conducting the bid calling for the sale of real or personal property at auction (sec. 4707.074(H)).

Under existing law, the Department may require other proof of the honesty, truthfulness, and good reputation of any person named in the application for an auctioneer's, apprentice auctioneer's, or special auctioneer's license before admitting the applicant to an examination or issuing a license. The bill extends this requirement to include any person applying for an auction firm license. (Sec. 4707.19(C).)

Licensure of special auctioneers

Existing law requires the principal owner of an auction company that was licensed as such as of May 1, 1991, to obtain instead a special auctioneer's license. That license may be renewed annually upon application and payment of the appropriate renewal fee. With certain exceptions, the holder of a special auctioneer's license must comply with all provisions of the Auctioneers Law that are applicable to auctioneers. A special auctioneer's license allows a former auction company to sell personal property, but not real property, only at the definite place of business that each person licensed under the Auctioneers Law is required to have. (Sec. 4707.071.)

Current law defines "auction company" as any person, excluding licensed auctioneers, who does business solely in the auctioneer's individual name, who sells, either directly or through agents, real or personal property, goods, or chattels at auction, or who arranges, sponsors, manages, conducts, or advertises auctions and who was licensed as an auction company by the Department as of May 1, 1991. "Auction company" does not mean either of the following:

(1) A sale barn or livestock auction market that is used exclusively for the auctioneering of livestock and is licensed by the Department under the Livestock Dealers Law; or

(2) A business that is licensed by the Bureau of Motor Vehicles under the Dealers, Auction Owners, and Salespersons Law and is exclusively engaged in the auction sale of motor vehicles to dealers licensed by either the Bureau or a Bureau of Motor Vehicles of another jurisdiction or its equivalent.

The bill eliminates the definition of "auction company" for general use in the Auctioneers Law. (Sec. 4707.01(D).) However, it retains the definition for use in the special auctioneer's licensure provisions (sec. 4707.071(E)).

Under existing law, "special auctioneer" means any person who is licensed as an auction company by the Department as of May 1, 1991 and currently is

subject to the statute pertaining to the licensure of special auctioneers. The bill eliminates the reference to auction companies, thus defining the term as any person who currently is subject to the statute pertaining to the licensure of special auctioneers. (Sec. 4707.01(D).)

Issuance of one-auction licenses

Current law authorizes the Department to grant one-auction licenses to any nonresident person deemed to be qualified by the Department. An applicant for such a license must furnish satisfactory proof that the applicant or any auctioneer affiliated with the applicant complies with specified requirements.

The bill makes several changes to these provisions. First, it limits the issuance of one-auction licenses to an individual. Second, because of that limitation, it requires that an applicant furnish proof that the applicant, and not also any auctioneer affiliated with the applicant, complies with the specified requirements. Finally, it adds to those requirements a requirement that the applicant have at least a high school diploma or its equivalent. (Sec. 4707.072.)

Fees and license deadlines and procedures

Current law requires the Department to adopt rules prescribing fee schedules and license renewal deadlines and procedures for auctioneers, apprentice auctioneers, and special auctioneers. Until those rules are adopted, licensees must pay the fees established in statute and comply with statutory license renewal deadlines and procedures. (Sec. 4707.10(A) and (B).)

The bill retains the existing provisions regarding fees and license renewal deadlines and procedures and applies them to auctioneers who are individuals, apprentice auctioneers, and special auctioneers (sec. 4707.10). It enacts parallel provisions governing auctioneers that are corporations, general or limited partnerships, or unincorporated associations and governing auction firms, but with two exceptions concerning renewal of a license. Those provisions are discussed below.

The bill authorizes the Director to adopt rules establishing license fees that auctioneers that are corporations, general or limited partnerships, or unincorporated associations and auction firms must pay and license procedures and deadlines with which those licensees must comply. Until the Director adopts those rules, a corporation, general or limited partnership, or unincorporated association auctioneer license and an auction firm license must take effect on July 1 of one year and expire on June 30 of the following year, and the fee for an initial and renewal license must be \$100. The bill does not require a corporation, general or limited partnership, or unincorporated association auctioneer license or an

auction firm license to be renewed in accordance with the Standard Renewal License Procedure Law as current law, revised by the bill, does for an individual auctioneer license, apprentice auctioneer license, and special auctioneer license.

Under the bill, a corporation, general or limited partnership, or unincorporated association auctioneer license and an auction firm license must be renewed before July 1 of each year, except that a license may be renewed before September 1 of the year of expiration if the licensee pays the renewal fee and an additional fee of \$100. Unlike existing law discussed above, the bill does not require a corporation, general or limited partnership, or unincorporated association licensee or an auction firm licensee to reapply for licensure in the same manner and pursuant to the same requirements as for initial licensure if the licensee renews the licensee's license after the July 1 deadline. (Secs. 4707.073(F) and 4707.074(F).)

Current law creates in the state treasury the Auction Education Fund. Seven dollars and fifty cents of each fee collected for an initial or renewed auctioneer's license must be credited to the Fund. The bill specifies that \$7.50 of each fee collected for an initial or renewed auction firm's, apprentice auctioneer's, or special auctioneer's license also must be credited to the Fund. In addition, it authorizes the Director to establish in rules a different amount to be so credited. (Sec. 4707.171.)

Existing law specifies that for each new auctioneer or apprentice auctioneer license issued upon the occasion of a change in business location or a change in or an addition of names under which business is conducted, the Department may collect a fee of \$10 for each change in location or name or each added name unless the notification of the change occurs concurrently with the renewal application. The bill adds that the Department may collect the \$10 fee unless the Department charges a fee that is established in rules that the bill authorizes the Director to adopt for the third name (see above). (Sec. 4707.10(E).)

Financial responsibility requirements for licensees

Under current law, each application for a license issued under the Auctioneers Law must be accompanied by proof of financial responsibility in the form of either an irrevocable letter of credit or a cash bond or a surety bond in the amount of \$25,000. A bond must meet specified requirements. A licensee must maintain proof of financial responsibility for three years following the date of initial licensure. After the three-year period, if certain conditions are met, a licensee is no longer required to maintain proof of financial responsibility. (Sec. 4707.11(A).)

Current law generally exempts licensees whose licenses were issued prior to July 1, 2003, from the existing financial responsibility requirements. The bill also exempts an auction firm that is issued a license under the bill. (Sec. 4707.11(B).) It instead requires an applicant for an auction firm license to provide proof of financial responsibility in the amount of \$50,000 in the form of a surety bond, an irrevocable letter of credit, or cash (sec. 4707.074(B)(6)). If a person provides a surety bond, the bond must be executed by a surety company that is authorized to do business in Ohio. The bond must be made payable to the Department and must include a condition that requires the applicant to comply with the Auctioneers Law and rules adopted under it, including a requirement that the applicant refrain from conduct that could result in denial, refusal to renew, suspension, or revocation of the license. A bond must be on a form that is approved by the Director. These requirements parallel those in existing law governing surety bonds for other licensees. However, the bill requires a person who is issued an auction firm license to maintain the financial responsibility for as long as the person is licensed. (Sec. 4707.074(G).)

Examinations for auctioneers, apprentice auctioneers, and auction firm managers

Under existing law, the Department must hold written examinations four times a year to test the qualifications required for obtaining an auctioneer's license and 12 times a year for obtaining an apprentice auctioneer's license. The bill adds that the Department also must hold written examinations 12 times a year to test the qualifications of unlicensed auction firm managers. It also requires all of the examinations to be held at the Department or at an alternative location determined by the Department. Finally, through operation of the bill, the requirement governing examinations for auctioneers' licenses applies only to individuals who are applying for those licenses. (Sec. 4707.08(A).)

Current law establishes a \$25 fee for the auctioneer examination and a \$15 fee for the apprentice auctioneer examination. The bill adds that the examination fee for an unlicensed firm manager is \$15. It also authorizes the Director to establish different fees in rules. (Sec. 4707.08(A).) The bill requires that in order to be seated for an examination, an applicant must have a complete application on file with the Department not later than 14 days prior to the examination date (sec. 4707.08(B)).

Under the bill, if a court of competent jurisdiction or the Department, at an administrative hearing, has found that an applicant conducted an auction, provided auction services, or acted as an auctioneer without a license issued under the Auctioneers Law, the Department may refuse to allow the applicant to take an examination or may deny the issuance of a license to the applicant for a period of two years (sec. 4707.08(C)).

If an applicant for an auctioneer's or apprentice auctioneer's license fails to pass the examination, the applicant may take the examination on the examination's next scheduled date. If an applicant fails to pass the examination on the second consecutive attempt, the applicant cannot take the examination on the examination's next scheduled date. If an applicant fails to pass the examination on the third attempt, the applicant must attend auction school a second time before the applicant may take the examination. If an applicant fails to pass the examination on the fourth attempt, the applicant cannot take the examination for at least one year from the date of the last failed attempt. (Sec. 4707.08(D)(1) and (2).)

The bill specifies that if an individual who is taking the examination for an auction firm manager fails to pass the examination on the third attempt, the individual cannot take the examination for one year from the date of the last failed attempt (sec. 4707.08(D)(3)).

Under the bill, the Department may deny, refuse to renew, suspend, or revoke the license of any auction firm, auctioneer, apprentice auctioneer, or special auctioneer for attempting to cheat or cheating on an auctioneer examination or aiding another to cheat on an examination (sec. 4707.15(U)).

Auctioneers' and apprentice auctioneers' licenses on deposit

The bill establishes procedures by which licensed auctioneers and apprentice auctioneers may place their licenses on deposit with the Department. Prior to the expiration of an auctioneer's or apprentice auctioneer's license, an auctioneer or apprentice auctioneer may submit an application to the Department, on forms provided by the Department, to place the license on deposit with the Department for a period not to exceed two years. Not later than 14 days after receipt of an application, the Department must accept or deny the application. (Sec. 4707.091(A).)

If the Department accepts the application, an auctioneer or apprentice auctioneer who has a license on deposit with the Department cannot act as an auctioneer or apprentice auctioneer while the license is on deposit. In addition, such an auctioneer cannot be required to earn continuing education credits, if applicable, and cannot be required to pay an assessment levied by the Director for the purposes of the Auction Recovery Fund created under current law. (Sec. 4707.091(B).)

An auctioneer or apprentice auctioneer may reacquire a license on deposit from the Department if the auctioneer or apprentice auctioneer does all of the following: (1) submits a written request to the Department that contains the business address and telephone number of the auctioneer or apprentice auctioneer, as applicable, (2) pays the reactivation fee for the license that is established in

rules adopted by the Director, (3) pays the assessment that is levied by the Director for the purposes of the Auction Recovery Fund for the current year, if applicable, (4) provides proof of financial responsibility, if applicable, and (5) complies with any other requirement established in rules adopted by the Director (sec. 4707.091(C)).

Reciprocity

Under existing law, the Department, in its discretion, may waive the testing and schooling requirements for nonresident auctioneers and apprentice auctioneers, provided a nonresident holds a valid auctioneer or apprentice auctioneer license issued by a state with which the Department has entered into a reciprocal licensing agreement. Nonresidents wishing to so operate in Ohio must apply to the Department in writing and furnish the Department with proof of their ability to conduct an auction, proof of license and bond if they reside in a state with those requirements, as well as other information that the Department may request. Instead of requiring nonresidents to provide proof of bond if they reside in a state with that requirement, the bill requires a nonresident to provide proof of financial responsibility regardless of whether the state of residence requires it. In addition, under the bill, if a state with which the Department has a reciprocity licensing agreement does not require an apprenticeship, the applicant must provide proof of license for a period of at least one year prior to receipt of the application. (Sec. 4707.12.)

Current law specifies that the above provisions do not apply to nonresident auctioneers who reside in states under the laws of which similar recognition and courtesies are not extended to licensed Ohio auctioneers. The bill instead specifies that the above provisions do not apply to nonresident auctioneers who do not have a license from a state with which the Department has entered into a reciprocal licensing agreement. (Sec. 4707.12.)

The bill also addresses the issuance of individual auctioneers' licenses to Ohio residents who are licensed in another state that has a reciprocal agreement with Ohio. The Department, in its discretion, may waive the education and apprenticeship requirements for an Ohio resident, provided that the resident holds a valid auctioneer license that was issued by a state with which the Department has entered into a reciprocal licensing agreement and the resident is in good standing with that state. The applicant must provide proof that is satisfactory to the Department that the applicant has had two years of experience as an auctioneer immediately preceding the date of application that includes at a minimum 12 auctions in which the applicant was a bid caller in the reciprocal state. (Sec. 4707.07(D).)

The bill authorizes the Department to deny, refuse to renew, suspend, or revoke the license of any auction firm, auctioneer, apprentice auctioneer, or special auctioneer for the suspension or revocation of a license to engage in auctioneering or other disciplinary action by the licensing authority of another state, the refusal or disapproval by the licensing authority of another state of an application for a license to engage in auctioneering, or the failure of a licensee to notify the Department within 15 days of a disciplinary action against the licensee by another state's applicable governing authority (sec. 4707.15(Q), (R), and (S)).

Requirements governing auctions

Real estate auctions

Under current law, only a real estate broker who is licensed under the Real Estate Brokers Law and who is licensed as an auctioneer under the Auctioneers Law may contract for the sale of real property at auction. The bill instead provides that only an auctioneer who is licensed under the Auctioneers Law and who is licensed as a real estate broker or a real estate salesperson under the Real Estate Brokers Law can contract for the sale of real property at auction. (Sec. 4707.021.)

Current law authorizes a real estate broker who is licensed under the Real Estate Brokers Law, but who is not licensed as an auctioneer under the Auctioneers Law to contract for the sale of real property only if the auctioneer who conducts the auction is a salesperson licensed under the Real Estate Brokers Law and is associated with the broker who contracts for the sale of real property or the real estate broker enters into a cooperative agreement with another real estate broker licensed under the Real Estate Brokers Law with whom an auctioneer licensed under the Auctioneers Law is associated and the auctioneer conducts the auction. The bill eliminates these provisions. (Sec. 4707.021(A) and (B).)

Under the bill, an apprentice auctioneer who is licensed as a real estate broker or real estate salesperson under the Real Estate Brokers Law may act as a bid caller in the sale of real property at auction if the sponsoring auctioneer is licensed as a real estate broker or real estate salesperson under that Law. The bill states that nothing in any of the above real estate auction provisions can be construed to permit a business to contract for the sale of real property at auction through an individual who is not licensed under the Auctioneers Law and the Real Estate Brokers Law. (Sec. 4707.021.)

Reserve auctions

The bill defines "reserve auction" as an auction in which the seller or an agent of the seller reserves the right to establish a stated minimum bid, the right to reject or accept any or all bids, or the right to withdraw the real or personal

property at any time prior to the completion of the auction by the auctioneer (sec. 4707.01(F)). It then requires an auction to be a reserve auction unless explicitly stated otherwise in the contract for the auction and in the terms and conditions governing the auction. For purposes of a reserve auction, there need not be an announcement or indication that the reserve is attained. (Sec. 4707.022(A).)

The bill authorizes a seller or a person on behalf of a seller to make a bid if the auction is a reserve auction and the seller or person on behalf of the seller provides full disclosure before bidding begins that the seller retains the ability to bid. It prohibits any person licensed under the Auctioneers Law from knowingly receiving such a bid in the absence of full disclosure. (Sec. 4707.023(D).)

Absolute auctions

The bill defines "absolute auction" as an auction of real or personal property to which all of the following apply: (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 an agent of the seller, and (4) the seller of the property cannot withdraw the property from auction after the auction is opened and there is public solicitation or calling for bids (sec. 4707.01(E)).

Under the bill, no person licensed under the Auctioneers Law can offer or advertise for sale or sell real or personal property by absolute auction unless all of the following apply:

(1) One of the following applies:

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

(b) Every holder of a lien or encumbrance, by execution of the auction listing contract or other written agreement provided to the auctioneer, agrees to the absolute auction without regard to the amount of the highest bid or to the identity of the highest bidder; or

(c) A financially sound person, firm, trust, or estate, by execution of the auction listing contract or other written agreement provided to the auctioneer, guarantees the complete discharge and satisfaction of all liens and encumbrances, as applicable, immediately after the absolute auction or at the closing without regard to the amount of the highest bid or to the identity of the highest bidder. (Sec. 4707.023(A)(1).)

(2) The seller of the real or personal property at the time of advertising and at the time of the absolute auction has a bona fide intention to transfer ownership of the property to the highest bidder regardless of the amount of the last bid and without reliance on any agreement that a particular bid or bid level be obtained in order to transfer the property (sec. 4707.023(A)(2)); and

(3) The auction listing contract requires that the auction be conducted as an absolute auction, specifies that the auction is not a reserve auction, and prohibits the seller or anyone acting on behalf of the seller to bid or participate in the bidding process of the auction (sec. 4707.023(A)(3)).

The bill specifies that the above provisions do not prohibit any of the following:

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

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

(3) The advertising of real or personal property to be sold by absolute auction and by reserve auction within the same advertisement or for auction on the same date and at the same place, provided that the advertisement is not misleading and clearly identifies the property that is to be sold by absolute auction and the property that is to be sold by reserve auction (sec. 4707.023(B)).

The bill authorizes a person licensed under the Auctioneers Law to make a bona fide bid on the licensee's own behalf at an absolute auction and at a reserve auction, provided that the licensee provides full disclosure that the licensee may make a bona fide bid to the seller and at the auction (sec. 4707.023(C)). Finally, under the bill, except in the case of dissolution as discussed above, a person licensed under the Auctioneers Law cannot knowingly receive a bid by a seller or a person on the seller's behalf at an absolute auction (sec. 4707.023(E)).

Contracts and agreements

Current law prohibits a person from acting as an auctioneer or special auctioneer on a sale at auction 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 bill adds to the prohibition that a

person cannot act as an auction firm without first entering into a written contract or agreement. (Sec. 4707.20(A).) It defines "consignee" as a person or auction firm that takes personal property on consignment to be sold at auction by a licensed auctioneer (sec. 4707.01(O)).

Under existing law, no apprentice auctioneer can be authorized to enter into a contract or agreement on a sale at auction without the written consent of the apprentice auctioneer's sponsoring auctioneer, and all contracts or agreements must be made in the name of and on behalf of the sponsoring auctioneer. The bill adds that an apprentice auctioneer cannot 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. (Sec. 4707.20(A).)

Under current law, all contracts or agreements between an auctioneer or special auctioneer and the owner or consignee must contain a prominent statement indicating that the auctioneer or special auctioneer is licensed by the Department of Agriculture and is bonded in favor of the state. The bill makes two changes in this requirement. First, it adds that an auction firm also must include the statement in its contracts or agreements with owners or consignees. Second, it requires that all contracts or agreements contain a statement indicating either that the licensee is bonded in favor of the state, as required in current law, or that an aggrieved person may initiate a claim against the existing Auction Recovery Fund as a result of the licensee's actions, whichever is applicable. (Sec. 4707.20(B).)

Existing law specifies that the auctioneer or special auctioneer who contracts with the owner is liable for the settlement of all money received, including the payment of all expenses incurred only by the licensee and the distribution of all funds, in connection with an auction. The bill adds that an auction firm that contracts with an owner also is liable for the settlement of all money received. (Sec. 4707.20(C).)

The bill requires a contract or agreement to specify all of the following:

- (1) The owner of the property to be sold or the owner's agent or the consignee;
- (2) The date of the auction or a termination date of the contract or agreement;
- (3) The location of the auction;
- (4) The terms and conditions of the auction;

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

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

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

(8) A statement indicating whether the auction is a reserve auction or an absolute auction. In addition, the statement must include the definition of reserve auction or absolute auction from the bill, 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; and

(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. (Sec. 4707.20(D).)

Advertisements

Under current law, any auctioneer, apprentice auctioneer, or special auctioneer licensed under the Auctioneers Law who advertises, by linear advertisements or otherwise, to hold or conduct an auction must indicate in the advertisement his name and that he is an auctioneer or apprentice auctioneer. The bill instead requires any person licensed under the Auctioneers Law who advertises, by linear advertisements or otherwise, to hold or conduct an auction to indicate in the advertisement the licensee's name or the name registered with the Department and that the licensee is an auctioneer or apprentice auctioneer. (Sec. 4707.22(A).)

Under the bill, an auction firm licensed under the Auctioneers Law that advertises, by linear advertisements or otherwise, to solicit or receive consignments or to provide auction services must 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 must comply with current advertisement requirements as well as requirements being added by the bill. (Sec. 4707.22(B).)

The bill requires that if an auction to be advertised is an absolute auction, all advertisements for the auction unequivocally state that the auction is an

absolute auction (sec. 4707.22(C)). Additionally, it requires that if an advertisement for an auction contains the words "estate auction," the person licensed under the Auctioneers Law who advertises do both of the following: (1) enter into an agreement directly with the executor, administrator, or court appointed designee of the estate property, and (2) list prominently in the advertisement the county in which the estate is located and the probate court case number of the estate (sec. 4707.22(D)). "Estate auction" means the auction of real or personal property of a deceased person (sec. 4707.01(I)).

The bill specifies that all persons licensed under the Auctioneers Law that conduct or are involved in an auction jointly are responsible for the posting of a sign at the auction. The sign must contain the name of all licensed persons involved in the auction, a statement that the persons are licensed by the Department, and the address of the Department. The sign must be posted at the main entrance of the auction, at the place of registration for the auction, or by the cashier for the auction. It must be of a size no smaller than eight and one-half inches by eleven inches. The letters and numbers on the sign must be of adequate size to be readily seen by an individual with normal vision when viewing it. (Sec. 4707.22(E).)

Under existing law, the Department may suspend or revoke a licensee's license for failure to display a notice conspicuously at the clerk's desk or on a bid card that clearly states the terms and conditions of the sale, the name of the auctioneer or special auctioneer conducting the sale, and that the auctioneer or special auctioneer is licensed by the Department and has filed a bond. The bill instead authorizes the Department to deny, refuse to renew, suspend, or revoke a license for a licensee's failure to display the sign that is required under the bill. (Sec. 4707.15(N).)

Trust and escrow accounts

The bill establishes trust and escrow account requirements for persons licensed under the Auctioneers Law. Not later than 72 hours after the end of an auction, a person licensed under that Law must deposit in one or more trust or escrow accounts all money received from the sale of an owner's or consignee's personal property at auction unless the licensee pays the money to the owner or consignee immediately after the end of the auction (sec. 4707.024(A)).

A person licensed under the Auctioneers Law must designate a trust or escrow account that contains an owner's or consignee's money as "client trust account" or with words of similar meaning. In addition, a trust or escrow account only must contain money received from the sale of personal property at auction that has not been disbursed and money for expenses regarding the auction,

including commission and advertisement fees, that are specifically delineated in the auction listing contract (sec. 4707.024(B)).

Except for the payment of money to the owner or consignee immediately after the end of the auction, a person licensed under the Auctioneers Law must pay the owner or consignee with money from the client's trust or escrow account. In addition, the licensee may pay expenses, including commission and advertisement fees, that are specifically delineated in the auction listing contract with money from the trust or escrow account. Money in the trust or escrow account cannot be disbursed for any purpose that is inconsistent with these provisions. In addition, the money cannot be commingled with the licensee's personal or business money. In administering the trust or escrow account, the licensee must keep detailed records that show deposits, withdrawals, and interest accrued, if applicable. Unless otherwise agreed to by the parties in the auction listing contract or by the direction of a court of law, all money deposited into a trust or escrow account must be disbursed to the seller within 15 days after the initial deposit. (Sec. 4707.024(C).)

Under the bill, money from the sale of personal property at auction may be deposited in an interest bearing account if the parties to the auction listing contract specifically agree to such a deposit. Interest earned in the account must be credited to the seller unless otherwise agreed to by the parties in the auction listing contract. The interest credited to the account may remain in the account for a period of 60 days after the seller receives the money from the account. The interest money then must be disbursed according to the terms of the auction listing contract. (Sec. 4707.024(D).)

The bill requires the proceeds from the sale of real property at auction to be deposited in a special or trust bank account in a depository located in this state that is noninterest-bearing, is separate and distinct from any personal or other account of the licensee, and is used for the deposit and maintenance of all escrow funds and other money received by the licensee in a fiduciary capacity (sec. 4707.024(E)).

Miscellaneous requirements

The bill precludes a person licensed under the Auctioneers Law from using absentee bidding unless the owner of the real or personal property being sold provides prior written permission to use absentee bidding (sec. 4707.022(B)). "Absentee bidding" is defined as a method by which a potential purchaser authorizes a proxy to place on behalf of the potential purchaser a written or oral bid to an auctioneer or auction firm or an agent of an auctioneer or auction firm (sec. 4707.01(K)).

Under the bill, a person licensed under the Auctioneers Law is required to be an agent of the owner or consignee of the real or personal property for purposes of all aspects of the auction (sec. 4707.022(C)).

Administration and enforcement

Department's authority to deny, refuse to renew, suspend, or revoke licenses

Under current law, the Department may suspend or revoke the license of any auctioneer, apprentice auctioneer, or special auctioneer for specified causes. The bill makes several changes in those provisions. First, it expands the Department's authority to include denying or refusing to renew a license. Second, it adds that the Department also may take such actions against the license of an auction firm for the specified causes. Finally, it modifies several of those causes, adds new causes, and eliminates one cause. (Sec. 4707.15.)

Under existing law, the Department may suspend or revoke a licensee's license for failing to account for or remit, within a reasonable time, any money belonging to others that comes into the licensee's possession. The bill adds that the Department may take action for failure to account for or remit any property belonging to others that comes into a licensee's possession. (Sec. 4707.15(E).)

Current law authorizes the Department to suspend or revoke a licensee's license for conviction in a court of competent jurisdiction of this state or any other state of a criminal offense involving fraud or a felony. The bill adds that the Department may take action for conviction involving forgery, embezzlement, false pretenses, extortion, conspiracy to defraud, or another similar offense. (Sec. 4707.15(G).)

Existing law authorizes a licensee's license to be suspended or revoked for violation of the Auctioneers Law. The bill adds that it also may be denied, refused for renewal, suspended, or revoked for violation of rules adopted under that Law. (Sec. 4707.15(H).)

Under the bill, the Department may deny, refuse to renew, suspend, or revoke a license for any of the following:

- (1) Specifying that an auction is a reserve auction, absolute auction, or estate auction, but not conducting the auction as specified;
- (2) Aiding an unlicensed person in the performance of services or acts that require a license under the Auctioneers Law; or

(3) Engaging in auctioneering or providing auction services without a license or during the suspension of a license (sec. 4707.15(D), (P), and (T)).

Finally, current law specifies that a license may be suspended or revoked for acting in the capacity of an auctioneer, whether for valuable consideration or not, for any special auctioneer that is not licensed under the Auctioneers Law. The bill eliminates this cause for suspension or revocation. (Sec. 4707.15(O).)

Bid rigging

Existing law prohibits a person from engaging in bid rigging. "Bid rigging" is defined as a conspiracy between auctioneers, apprentice auctioneers, special auctioneers, any participants in an auction, or any other persons who agree not to bid against each other at an auction or who otherwise conspire to decrease the number or amounts of bids offered at auction. The bill retains the definition of "bid rigging" with one change. It includes conspiring to increase the number or amounts of bids offered at auction in addition to conspiring to decrease the number or amounts of bids. (Sec. 4707.151.)

Under existing law, whoever violates the prohibition against bid rigging must be fined a maximum of \$50,000, imprisoned a maximum of one year, or both. The bill eliminates the specified fine and term of imprisonment and provides instead that a violation is a felony of the fifth degree on the first offense and a felony of the fourth degree on each subsequent offense. (Sec. 4707.99(C).) Under current law, the penalty for a felony of the fifth degree is imprisonment between six and twelve months, a maximum fine of \$2,500, or both if the violator is an individual and a maximum fine of \$7,500 if the violator is an organization (secs. 2929.14(A)(5), 2929.18(A)(3)(e), and 2929.31(A)(7), not in the bill). The penalty for a felony of the fourth degree is imprisonment between six and eighteen months, a maximum fine of \$5,000, or both if the violator is an individual and a maximum fine of \$10,000 if the violator is an organization (secs. 2929.14(A)(4), 2929.18(A)(3)(d), and 2929.31(A)(6), not in the bill).

Investigation of complaints

Under current law, the Department may, upon its own motion, and must, upon the verified written complaint of any person, investigate the actions of any auctioneer, apprentice auctioneer, or special auctioneer, any applicant for an auctioneer's, apprentice auctioneer's, or special auctioneer's license, or any person who assumes to act in that capacity if the complaint, together with other evidence presented in connection with it, makes a prima facie case. If the Department determines that any such applicant is not entitled to receive a license, a license cannot be granted to the applicant. The Department may suspend or revoke the license of an auctioneer, apprentice auctioneer, or special auctioneer for specified

causes (see above) or if it determines that any licensee fails to comply with the statutory requirement that the licensee have a definite place of business in Ohio, if applicable. Any auctioneer, apprentice auctioneer, or special auctioneer who has had a license revoked cannot be issued another such license for a period of two years from the date of revocation. The bill extends the Department's investigative and enforcement authority to include auction firms and applicants for auction firm licenses. (Sec. 4707.16(A).)

Existing law authorizes the Department to investigate complaints concerning a person's violation of the requirement that the person have a license to act as an auctioneer, apprentice auctioneer, or special auctioneer and concerning actions by a licensed auctioneer, apprentice auctioneer, or special auctioneer that could result in the licensee's license being revoked or suspended by the Department (see above). The Department may subpoena witnesses in connection with such investigations and may apply to a court of common pleas for an order enjoining those violations or actions. If the Department shows that a violation or action by a licensee leading to suspension or revocation has occurred or is about to occur, the court must grant an injunction, restraining order, or other order as may be appropriate. The bill extends those provisions to apply to an auction firm. (Sec. 4707.16(B).)

Under the bill, in addition to the remedies discussed above and irrespective of whether an adequate remedy at law exists, the Department may apply to a court of common pleas for a temporary or permanent injunction or other appropriate relief for continued violations of the Auctioneers Law. The court of common pleas must be the court of common pleas of Licking County or the court of common pleas of the county where the violation occurs. (Sec. 4707.16(E).)

The bill specifies that the investigative costs incurred by the Department are recoverable either by the issuance of an administrative order of the Department or by an order of a court of competent jurisdiction (sec. 4707.16(F)).

Requirement for licensees to furnish information and answer questions

Existing law prohibits an auctioneer, apprentice auctioneer, or special auctioneer from doing all of the following: (1) willfully neglecting or refusing to furnish the Department statistics or other information in the applicable auctioneer's possession or under the applicable auctioneer's control that the auctioneer is authorized to collect, (2) neglecting or refusing, for more than 30 days, to answer questions submitted on circulars, (3) knowingly answering any such questions falsely, and (4) refusing to obey subpoenas and giving testimony. The bill adds auction firms to the list of persons that are prohibited from doing any of the above. (Sec. 4707.21.)

Rules adopted by Director of Agriculture

Current law authorizes the Director to adopt reasonable rules in accordance with the Administrative Procedure Act that are necessary for the implementation of the Auctioneers Law. In addition, the Director must adopt rules in accordance with that Act that establish the portion of license fees collected under the Auctioneers Law that are to be deposited into the existing Auction Recovery Fund. The bill retains the Director's rule-making authority and prohibits a person from failing to comply with a rule adopted under the Auctioneers Law. (Sec. 4707.19(A).)

Under the bill, the Director also must adopt rules that establish a schedule of civil penalties for violations of the Auctioneers Law, rules adopted under it, or orders issued under it. The rules must provide that the civil penalty for the first violation of the Auctioneers Law, rule, or order cannot exceed \$5,000 and the civil penalty for each subsequent offense cannot exceed \$10,000. In addition, the Director, in establishing the schedule of civil penalties in the rules, must consider past violations of the Auctioneers Law and rules adopted under it, the severity of a violation, and the amount of actual or potential damage to the public or the auction profession. (Sec. 4707.19(B).)

Requirement for Department of Agriculture to maintain records

Under current law, the Department must maintain a record of the names and addresses of all auctioneers, apprentice auctioneers, and special auctioneers licensed by it. The bill adds that the Department must maintain a record of the names and addresses of all auction firms licensed by it as well. (Sec. 4707.06.)

Additional criminal penalties

Current law specifies that whoever violates the Auctioneers Law or any rule adopted by the Department in the administration of that Law, for the violation of which no penalty is provided, must be fined between \$50 and \$200. The bill eliminates the specified fine as the default penalty for such a violation and provides instead that such a violation is a misdemeanor of the first degree. (Sec. 4707.99(B).) Under existing law, the penalty for a misdemeanor of the first degree is a maximum of 180 days of imprisonment, a maximum fine of \$1,000, or both if the violator is an individual and a maximum fine of \$5,000 if the violator is an organization (secs. 2929.24(A)(1), 2929.28(A)(2)(a)(i), and 2929.31(A)(8), not in the bill).

The bill specifies that notwithstanding the normal distribution of fines to the county treasury under state law, the clerk of the court must transmit to the

Treasurer of State for deposit into the existing Auction Education Fund 50% of any fine from criminal penalties imposed under the bill (sec. 4707.99(D)).

Recovery of losses caused by actions of persons licensed under Auctioneers Law

Claims against Auction Recovery Fund

Under existing law, a person who asserts that he has been aggrieved by the actions of a person licensed under the Auctioneers Law that resulted in actual and direct losses to the aggrieved person may initiate a claim against the Auction Recovery Fund by filing a claim with the Director or in a court of competent jurisdiction. However, an aggrieved person only may initiate a claim against the Auction Recovery Fund if certain conditions are met. The bill adds to these conditions that a claim only may be filed if the licensee whose actions aggrieved the person is not an auction firm. (Sec. 4707.26(A)(2).)

Recovery from auction firms

The bill establishes procedures by which a person aggrieved solely by the actions of an auction firm may recover his actual and direct losses under the firm's financial responsibility that is required by the bill (see above). The Director must adopt rules that do all of the following:

- (1) Establish procedures for filing a claim against an auction firm's financial responsibility;
- (2) Establish procedures that provide for the equitable disbursement of money for multiple claims against the auction firm that resulted from the same circumstances;
- (3) Establish procedures for providing notice to the Department from a person seeking recovery under these provisions; and
- (4) Limit an aggrieved person's recovery to the actual and direct losses caused by the auction firm (sec. 4707.32(A)).

The bill authorizes a person who asserts that he has been aggrieved by the actions of both an auction firm and a licensed auctioneer related to an auction that resulted in actual and direct losses to him to file a cause of action with a court of competent jurisdiction claiming that a violation of the Auctioneers Law or rules adopted under it resulted in the actual and direct losses (sec. 4707.32(B)). The person immediately must send written notice to the Department (sec. 4707.32(C)). The court must determine if there was a violation of that Law or rules adopted under it that resulted in those losses. If the court determines that the auction firm, the licensed auctioneer, or both violated the Auctioneers Law or rules adopted

under it and that the violation resulted in the aggrieved person's actual and direct losses, the court must determine the percentage of culpability, in relation to 100%, that is attributable to each party to the action from whom the complainant seeks recovery.

If the court finds that the percentage of culpability that is attributable to the licensed auctioneer is greater than zero, the aggrieved person may initiate a claim against the Auction Recovery Fund in accordance with existing law to recover that percentage of the actual and direct losses sustained by the person. If the court finds that the percentage of culpability that is attributable to the auction firm is greater than zero, the aggrieved person may recover that percentage of the actual and direct losses sustained by the person under the auction firm's financial responsibility.

Under the bill, the total aggregate amount that is paid to the aggrieved person from the Auction Recovery Fund and the auction firm's financial responsibility cannot exceed the actual and direct losses sustained by the person. In addition, the total aggregate amount that is paid from the Fund cannot exceed the dollar limitations on the amount recoverable from the Auction Recovery Fund established in current law, and the total aggregate amount that is paid from the auction firm's financial responsibility cannot exceed the dollar limitations established in the bill for that financial responsibility. (Sec. 4707.32(B).)

State Auctioneers Commission

Establishment and membership

Existing law requires the Governor, with the advice and consent of the Senate, to appoint a State Auctioneers Commission within the Department consisting of three members, each of whom immediately prior to the date of appointment has been an Ohio resident for five years and whose vocation for a period of at least five years has been that of an auctioneer. The bill increases the membership from three to five individuals and requires each of the members to have been an Ohio resident for at least five years. Additionally, it requires four of the members to have been auctioneers for at least five years prior to their appointment. One member must be a member of the public who represents the interests of consumers, is not licensed under the Auctioneers Law, does not have any management responsibility in the auctioneering industry, does not formulate any policy of the auctioneering industry, does not have a financial interest in the auctioneering industry, and does not have any other connection with the auctioneering profession. (Sec. 4707.03(A).)

Under current law, terms of office must be for three years, commencing on October 10 and ending on October 9. The bill eliminates the October 9 reference

to when a term of office ends. It also specifies that of the two additional appointments made after the bill's effective date, one must be for a term ending on October 9 in the first year following the appointment, and one must be for a term ending on October 9 in the second year following the appointment. Thereafter, each term of office must be for three years, commencing on October 10. The bill further states that a member appointed for a term commencing on or after October 10, 2004, cannot serve more than three consecutive terms. (Sec. 4707.03(B).)

Under existing law, at no time can there be more than two members of the same political party serving on the Commission. Because of the addition of two new members, the bill increases the number of members from the same political party allowed on the Committee from two to three. (Sec. 4707.03(C).)

Powers and duties

Current law establishes specific powers and duties of the Commission. The bill adds to these powers and duties. Under the bill, the Commission triennially must review and approve institutions that provide an approved course of study in auctioneering (sec. 4707.04(B)). In addition, members of the Commission who are licensed auctioneers under the Auctioneers Law must administer the oral licensing examination required for licensure as an auctioneer (sec. 4707.04(C)).

Under existing law, each Commissioner must receive his actual and necessary expenses incurred in the discharge of his duties. The bill adds that each Commissioner also must receive a per diem salary from the existing Auctioneers Fund for each meeting attended. The Director must adopt rules in accordance with the Administrative Procedure Act establishing the per diem salary. (Sec. 4707.04(D).)

The bill authorizes the Commission to form subcommittees for purposes of research, education, and promotion of the auctioneering profession. If a majority of the members of the Commission approves, the members of a subcommittee may be reimbursed from the existing Auction Education Fund for the actual and necessary expenses incurred in the discharge of their duties. (Sec. 4707.04(E).)

The bill states that serving as a member of the Commission does not constitute holding a public office or position of employment under Ohio laws and does not constitute grounds for removal of public officers or employees from their offices or positions of employment (sec. 4707.04(F)).

State preemption

Current law specifies that the state, through the Department of Agriculture and in accordance with the Auctioneers Law, must solely regulate auctioneers and

the conduct of auction sales. It states that by enactment of the Auctioneers Law, it is the intent of the General Assembly to preempt municipal corporations and other political subdivisions from the regulation and licensing of auctioneers and auction sales. The bill retains current law and expands it. It extends the Department's sole regulatory authority and the General Assembly's intent to preempt municipal corporations and other political subdivisions described above to include auction firms. It further states that an ordinance, resolution, or other enactment by a municipal corporation or other political subdivision that directly or indirectly regulates auctioneers, auction firms, or auction sales is preempted. (Sec. 4707.111.)

Existing law requires the person licensed under the Auctioneers Law to conduct an auction, at least 24 hours prior to the auction, to notify the chief of police of the municipal corporation in which the auction site is located, or if the site is in the unincorporated area of a county, the county sheriff as to the location and time of the auction and give to that officer a general description of the items offered for sale. The bill eliminates that requirement. (Sec. 4707.111.)

Licensee's action for compensation

Existing law prohibits a person engaged in the business of, or acting in the capacity of, an auctioneer or special auctioneer from bringing or maintaining any action in Ohio courts for the collection of compensation for any services performed as an auctioneer without first alleging and proving that the person was a duly licensed auctioneer or special auctioneer at the time the alleged cause of action arose. The bill extends the prohibition to include a person engaged in the business of, or acting in the capacity of, an auction firm. (Sec. 4707.18.)

Technical and conforming changes

The bill makes several technical and conforming changes (secs. 505.94, 2925.01, 4707.04(A), 4707.06, 4707.07(B), 4707.071(B), 4707.08(B), 4707.09, 4707.11(A), 4707.14, 4707.15(B), (E), and (J), 4707.171, 4707.21, and 4707.22(A)).

HISTORY

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