



H.B. 517

126th General Assembly
(As Introduced)

Reps. Gibbs, D. Evans, Williams, Wagoner, J. McGregor, Miller, Wagner, Calvert, Setzer, Seitz, Combs, D. Stewart, Reidelbach, Brown, Garrison, Hood, C. Evans, Trakas, Coley, Fende, Cassell, Martin, Latta, Faber

BILL SUMMARY

- Exempts a nonprofit organization that sells at auction items donated to it and that complies with certain advertising requirements regarding those items from the requirement that the organization be licensed as an auctioneer or retain a licensed auctioneer for that auction.
- Exempts a recognized Amish sect that sponsors an auction for charitable purposes from the requirement that it be licensed as an auctioneer or retain a licensed auctioneer for that auction.

CONTENT AND OPERATION

Current law

Overview

Current law (unaffected by the bill) generally provides that a person may not act as an auction firm, auctioneer, apprentice auctioneer, or special auctioneer within Ohio without a license issued by the Department of Agriculture and that, conversely, an auction may not be conducted in Ohio except by a licensed auctioneer (R.C. 4707.02). (See **COMMENT** for definitions.) Thus, any individual or entity that wishes to conduct or sponsor an auction generally must be licensed as an auctioneer or retain a licensed auctioneer to conduct that auction.

Exemptions

Under current law, certain individuals or entities and certain types of auctions are exempt from these auction license-related requirements--i.e., an auctioneer's license need not be secured and/or a licensed auctioneer generally

need not be retained to conduct the auction in those instances. For example, the requirements to do not apply if the sales at auction are conducted by or under the direction of a public authority, if the sales at auction are required by law to be at auction (other than sales pursuant to a judicial order or decree), if a real or personal property owner sells *his or her own property* (not acquired for purposes of resale) at auction, or if a person is selling real or personal property by means of the Internet. (R.C. 4707.02(A) and (H).)

Changes proposed by the bill

The bill expands the list of exemptions to the auction license-related requirements outlined above. Specifically, an auctioneer's license need not be secured and/or a licensed auctioneer need not be retained to conduct an auction in the following instances (R.C. 4707.02(E)(2) and (I)):

(1) The auction is sponsored by a state-registered *nonprofit organization* that is selling *items donated* to it--other than one that is currently exempt from the auction license-related requirements for an auction that is sponsored by and involves only *the property of the members* of a state-registered nonprofit or charitable organization and that is part of the Ohio State Fair or a county or independent agricultural society fair.¹ The bill's new exemption applies regardless of whether a licensed auctioneer conducts the auction (see distinction in Footnote 1), but, in order for the exemption to apply, the nonprofit organization must advertise (a) the items for sale at the auction are sold with no guarantee of quality or authenticity and (b) all sales at the auction are final.

(2) The auction is sponsored by a recognized Amish sect and is for charitable purposes.

COMMENT

The following are key definitions of the Auctioneers Law that are relevant to the bill's provisions (R.C. 4707.01--not in the bill):

(1) "Auction" generally means a method of sale of real or personal property, goods, or chattels, at a predetermined date and time, by means of a verbal exchange, regular mail, telecommunications, the Internet, an electronic transmission, or a physical gesture between an auctioneer or apprentice auctioneer

¹ Under current law, the exemption referred to requires a licensed auctioneer to be present and "physically conduct" the auction. Thus, that exemption apparently means that the nonprofit or charitable organization itself does not have to have an auctioneer's license.

and members of the audience or prospective purchasers, the exchanges and gestures consisting of a series of invitations for offers made by the auctioneer and offers by members of the audience or prospective purchasers, with the right to acceptance of offers with the auctioneer or apprentice auctioneer.

(2) "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.

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

(a) The property is sold to the highest bidder without reserve.

(b) The auction does not require a minimum bid.

(c) The auction does not required competing bids of any type by the seller or an agent of the seller.

(d) 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.

(4) "Reserve auction" means 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.

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

(6) "Person" means an individual, sole proprietor, corporation, limited liability company, association, or partnership.

HISTORY

ACTION	DATE
Introduced	02-14-06

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