



Sub. H.B. 48

127th General Assembly
(As Passed by the General Assembly)

Reps. Gibbs, Fessler, Seitz, J. McGregor, Setzer, Brown, Collier, Wagner, Wagoner, Combs, Aslanides, Bacon, Bolon, Chandler, Driehaus, Evans, Flowers, R. Hagan, Hite, Schlichter, Batchelder, Blessing, Domenick, Gardner, J. Hagan, Hughes, Luckie, Mecklenborg, Patton, Raussen, Schindel, Schneider, D. Stewart, Wachtmann, B. Williams, Zehringer

Sens. Amstutz, Stivers, D. Miller, Kearney, Sawyer, Spada, Schaffer, Schuler, Carey, Faber, Grendell, Harris, Mason, Mumper, Niehaus, Seitz, Smith, R. Miller

Effective date: *

ACT SUMMARY

- Exempts certain nonprofit organizations and schools that sell donated items at an auction from the licensing and contract requirements governing auctions, if no person in the business of organizing, arranging, or conducting an auction for compensation, and no consignor of items sold at the auction, except the organization or school, receives compensation from the auction's proceeds.
- Prohibits any person from advertising or holding oneself out as an auctioneer, apprentice auctioneer, special auctioneer, or auction firm without a license issued by the Department of Agriculture, but the prohibition does not apply to an individual who is the subject of an advertisement regarding these types of auctions sponsored by a nonprofit organization or school.
- Requires these nonprofit organizations and schools to maintain records of the auction for two years.

* The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.

- Precludes claims against the Auction Recovery Fund for any loss associated with these types of auctions.
- Reduces from 15 to 10 days the minimum bidding period for Internet auctions of a township's or county's obsolete personal property.

CONTENT AND OPERATION

Auctioneers Law

Overview

The Auctioneers Law (R.C. Chapter 4707.) 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

The Auctioneers Law exempts certain individuals or entities and certain types of auctions 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 certain auctions. For example, the licensing requirements 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), (B), and (H).)

Exemption for auctions sponsored by nonprofit organizations or schools

The act expands the list of exemptions to the auction license-related requirements outlined above so that they do not apply to sales at an auction sponsored by (1) a charitable, religious, or civic organization that is tax exempt under subsection 501(c)(3) of the Internal Revenue Code,¹ (2) a public school, (3)

¹ 26 U.S.C. 501(c)(3) exempts from the federal income tax nonprofit corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition, or for the prevention of

a chartered nonpublic school, or (4) a community school, if, in any of those cases, no person in the business of organizing, arranging, or conducting auctions for compensation, and no consignor of consigned items sold at the auction, except such organization or school, receives compensation from the auction proceeds. (R.C. 4707.02(B)(5)(b).)

Additionally, the act prohibits any person from advertising or holding oneself out as an auctioneer, apprentice auctioneer, special auctioneer, or auction firm without a license issued by the Department of Agriculture (R.C. 4707.02(C)). (Violation of this provision is a first degree misdemeanor on the first offense, and a fifth degree felony for each subsequent offense (R.C. 4707.99, not in the act).) But the act provides that this prohibition does not apply to an individual who is the subject of an advertisement regarding an auction that is exempt from the auction license-related requirements because the auction is sponsored by a nonprofit organization or school under the act.

Contracts and recordkeeping

The Auctioneers Law prohibits any person from acting as an auction firm, auctioneer, or special auctioneer until the person has first entered into a written contract or agreement 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 act exempts from this prohibition a person that conducts the type of auction that the act authorizes for a nonprofit organization or a school. (R.C. 4707.20(A).)

Continuing law requires licensed auction firms, auctioneers, apprentice auctioneers, and special auctioneers to keep records relative to any auction sale, including settlement sheets, written contracts, and copies of any advertising that lists the items for auction, for at least two years from the auction's date. The act applies this requirement to nonprofit organizations and schools that sponsor the type of auction that the act exempts from licensing requirements. (R.C. 4707.21.)

Auction Recovery Fund

Under continuing law, a person who asserts that the person suffered actual and direct losses as a result of the actions of a person licensed under the

cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in, or intervene in, any political campaign on behalf of or in opposition to any candidate for public office.

Auctioneers Law may initiate a claim against the Auction Recovery Fund. However, all of the following conditions must apply concerning the claim:

- The loss was associated with an act or transaction that only a person licensed under the Auctioneers Law may perform.
- The licensee's actions are described in the law that lists causes for which the Department of Agriculture may deny, refuse to renew, suspend, or revoke the license of any auction firm, auctioneer, apprentice auctioneer, or special auctioneer, or are actions that otherwise violate the Auctioneers Law or rules adopted under it.
- The licensee is not an auction firm.

The act adds to this list a fourth condition, that the loss was not associated with a school- or nonprofit organization-sponsored auction of the kind that the act exempts from auction licensing requirements. Thus, a person who asserts losses due to such an auction is not eligible to file a claim against the Auction Recovery Fund. (R.C. 4707.26(A).)

Internet auctions of obsolete personal property

Boards of county commissioners and boards of township trustees are authorized to sell by Internet auction any personal property that is not needed for public use, is obsolete, or is unfit for the use for which it was acquired. Former law specified that the minimum bidding period for auctioning such property was 15 days, including Saturdays, Sundays, and legal holidays. (R.C. 307.12(E) and 505.10(D).)

The act decreases the minimum bidding period for auctioning such property on the Internet from 15 to 10 days.

COMMENT

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

(1) "Auction" generally means a method of selling 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 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) "Auction firm" is a person that provides the services of arranging, managing, and sponsoring a personal property auction.

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

HISTORY

ACTION	DATE
Introduced	02-20-07
Reported, H. Finance & Appropriations	01-30-08
Passed House (90-0)	02-05-08
Reported, S. Ways & Means & Economic Development	05-21-08
Passed Senate (33-0)	05-22-08
House concurred in Senate amendments (96-0)	05-28-08

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