



H.B. 48

127th General Assembly

(As Reported by H. Finance and Appropriations)

Reps. Gibbs, Fessler, Seitz, J. McGregor, Setzer, Brown, Collier, Wagner, Wagoner, Combs, Aslanides, Bacon, Bolon, Chandler, Driehaus, Evans, Flowers, R. Hagan, Hite, Schlichter

BILL SUMMARY

- Exempts certain nonprofit organizations and schools that sell donated items at an auction from the licensing and contract requirements governing auctions.
- Requires these organizations and schools to maintain records of the auction for two years.
- Precludes claims against the Auction Recovery Fund for any loss associated with these types of auctions.

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), (B), and (H).)

Changes proposed by the bill

The bill 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) a chartered nonpublic school, or (4) a community school, if the auction is conducted by a licensed auctioneer, no person is compensated for organizing, arranging, or conducting the auction, and all the items sold at the auction are donated. (R.C. 4707.02(E).)

Present 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.² The bill exempts from this prohibition a person that conducts the type of auction that the bill authorizes for an organization or school. (R.C. 4707.20(A).)

Existing 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 bill

¹ *Subsection 501(c)(3)* concerns 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 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.

² An "auction firm" means a person that provides the services of arranging, managing, and sponsoring a personal property auction.

applies this requirement to organizations and schools that sponsor the type of auction that the bill authorizes. (R.C. 4707.21.)

Under current law a person who asserts that the person 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 and who has not obtained a final judgment in a court of competent jurisdiction against the licensee 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 provision of the Auctioneers Law that list 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 bill adds to the list a fourth condition, that the loss was not associated with an auction of the type that the bill authorizes. 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. 4704.26(A).)

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 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) "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 |

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