

## TN Task Force on Auction Law Modernization

After much review, following are some suggestions for changes to the auction law to address these primary issues:

- Ease of entry into the auction profession
- Addressing online auction activities
- Bringing T.C.A. 62-19 up to date with current industry practices
- Selling of certain vehicles using the auction method of marketing

### **Ease of Entry**

Ease of entry can best be achieved by a combination of making access to education easier and establishing qualitative competence guidelines in place of the current time requirements. At the same time, we have to consider the importance and the value of the reciprocal license process as the auction industry as a whole is transitioning from a 'local' avocation to a 'national' or 'global' profession.

To address these issues, I am suggesting license tracks:

- Class C. Caller of Bids Track
- Class B. Business Track
- Class A. Public Automobile Auction Track

### Bid-calling Licensure

This license track would be for contract auctioneers whose only interest in the auction profession is 'for-hire' bid-calling for auction companies, auto auctions, livestock markets or auction businesses.

Education: A Basic Core Education Program of 16 hours in the classroom or online that includes:

- TN Auction Law
- Contracts
- The Uniform Commercial Code
- Ethics
- Professionalism
- Personal Insurance & Finance

\* Bid-calling instruction would be entirely optional.

Out-of-state auctioneers would be eligible for this license with:

1. A reciprocal auctioneer license from another state
2. Proof of Basic Core education from an approved provider

Testing: None

Apprenticeship: None

CE: None

### Restrictions

A holder of a bid-calling license cannot:

- Negotiate or enter into an auction contract to sell real property or personal property
- Take possession of seller assets
- Take possession of auction proceeds
- Put themselves out as being available to conduct an auction

A holder of a bid-calling license must:

- Act as a bid-caller only for a properly licensed auction business
- Abide by the auction laws of the State of Tennessee

### **Business Track**

The Business License Track would allow for a higher level of entry into the profession that is equivalent to the higher level of responsibility granted to these licensees. This track would combine the auctioneer license and the firm license.

### Education:

Completion of a mandatory auction and business education program available in the classroom or online that combines the current 80 hour and 30 hour programs without bid-calling instruction into a 50 hour program that includes the 16 hour Basic Core Education plus 34 hours of:

- Asset specific instruction (livestock, autos, real estate, antiques, equipment, etc.
- Auction processes: contract negotiating and writing, auction set-up, clerking, cashing, seller management, auction settlement and closing
- Advertising and promotion
- Technology in Auctioneering
- Live Auctions and Online Auctions
- Auction Math
- Escrow Accounting
- Sales Tax
- Business Basics
- Bankruptcy
- Estates
- Personal Property & Appraisals

Testing: Yes (current testing process)

Apprenticeship: Change this to Affiliate Auctioneer that is experienced based with participation in a certain number of auctions and auction related activities as

determined by the Tennessee Auctioneer Commission – for a period of no less than six months.

CE: Yes – 6 hours each renewal period

#### Reciprocity

- This license would meet the reciprocity requirements with other states as long as the name included Auctioneer (e.g. Auctioneer/Auction Business) and included at least 30 hours of bid-calling instruction to meet the educational requirements for reciprocity.

Out of state auctioneers would be eligible for this license with:

1. A reciprocal auctioneer license from another state
2. Proof of Basic Core education from an approved provider AND Sufficient proof of recent active auction experience that satisfies the requirement of the affiliate license

#### Restrictions:

A holder of an Auction Business license must:

- Only use properly licensed individuals to call bids at a live auction or simulcast event (auction business license holder or a licensed bid-caller)
- Be identified as the Auctioneer/Responsible Person who is responsible to the TAC for the legal compliance, contract, escrow and the conduct of all employees, contractors or bid-callers associated with any sale – live or online - conducted by the auction business.
- The Responsible Person can be a non-auctioneer.
- The Responsible Person must be registered with the TAC (similar to a principal auctioneer).

The Business License is equivalent to an auctioneer owned Firm license and can engage in:

- Live auctions onsite in TN
- Online and simulcast auctions
- Gallery and fixed location auctions
- Non-licensed employees can work under their Responsible Person/Auctioneer as their agent; provided, the Responsible Person/Auctioneer accepts full responsibility for the legal compliance and conduct. Non-licensed employees may solicit auction sales, but the Responsible Party must be the one to sign the contract.

## Public Automobile Auction Track:

This track would require a higher entry-level requirement relevant to the higher level of trust and responsibility granted to these license holders when selling consigned motor vehicles from the public to the public.

Education: Completion of the mandatory 50 hour education program (classroom or online) required for an Auction Business license PLUS and additional 15 hours of education (classroom or online) of specific instruction in:

- TN Motor Vehicle Law
- MV Titles
- Insurance and Liability
- Auction processes (e.g. safety, record-keeping, etc.)
- Sales Tax and Escrow

Testing: No

CE: No

Reciprocity: N/A

Restrictions:

A holder of a Public Auto Auction license must:

- Hold a valid Auction Business License with identified Responsible Person
- Meet the current license requirements related to: location, bonds, MV dealer license, signage, etc.
- Use only licensed individuals (class A or B) to sell from the block.

Exemptions from the Public Auto Auction License:

- Bona Fide Business Liquidations
- Business Fleet Reduction with notification of VIN# to Motor Vehicle Commission (MVC)
- Selling repossessed vehicles
- Selling vehicles in estate sales – does the task force wish to make this an unlimited number per estate or codify the existing motor v rule of 5 vehicles per estate in the auction code?

Online Auctions:

- Define “Timed Listings” for purposes of the exemption in 62-19-103(9) as: “Timed Listings” means offering good for sale with a fixed ending time and date which does not extend based on bidding activity.
- Exempt online auctions of automobiles by companies primarily engaged in the auction industry holding a motor vehicle license.

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Additional suggestions:

- Switching from a Recovery Fund to a \$20,000 Surety Bond would provide a process to protect the public against unscrupulous persons/actions. The license applicant would be responsible for meeting bonding requirements.
- Advertising: Remove the requirement for a firm license # on auction related advertising but require the name of the Business, the name of the Responsible Person and a telephone number.
- Removing the gallery license.
- All education can be conducted online.
- Current licensees would be grandfathered in to match the new standards.