

TN Task Force on Auction Law Modernization Recommendations
Nashville Auction School

After much review, following are some suggestions for changes to the auction law to address the three 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

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:

- A. Bid-calling Track
- B. Business Track
- C. Public Automobile Auction Track

Bid-calling License

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 cashiering, 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 (no time limitation on the Affiliate license).

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 event (another 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
- The auction sale of estate vehicles, vehicles in a bona fide business liquidation, repossessed vehicles, antique automobiles, and any sale of automobiles that are incidental.

- 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

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

Apprenticeship: Must have successfully completed the **Affiliate Auctioneer** requirements as specified for the Auctioneer Business license

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. for the sale of any consigned vehicles.
- Use only licensed bid-callers 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).
- Remove the 5 vehicle limitation on estates with notification of VIN # to MVC so that an auctioneer can sell vehicles for an estate with more than 5 vehicles provided the MVC is properly notified.
- Classic car sales of qualified vehicles 25 years or older.

Additional suggestions:

- Switching from the 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/Principal Auctioneer and a telephone number.

Points to Consider:

- Changes to the Auctioneer license requirements may have a direct bearing on our reciprocal agreements with other states and would require some research into how to best preserve those requirements. The key standards for reciprocity generally indicate an equivalency of standards (e.g. education and experience) and testing. These must be considered carefully before any changes to the Auctioneer license are made.
- Grandfathering of Auction Galleries and Online Auctions: while it may appear that grandfathering provides an easy solution to address businesses already engaged in online auctions, strict criteria must be adapted to prevent serious issues. We have to address:
 - an unlicensed seller holding competitive bid Facebook auctions regularly or even once last year;
 - unlicensed estate sale companies conducting auctions on estatesales.net;
 - licensed galleries under the current gallery license standard; and
 - unlicensed galleries conducting auctions across the state.

Respectfully submitted for review and discussion by the Task Force,



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