

TN Task Force on Auction Law Modernization

The task force voted on and recommended the following changes to Tennessee auction law to address these primary issues:

- Ease of entry into the auction profession
- Addressing online auction activities
- Bringing T.C.A. 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, the task force adopted these license tracks:

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

Caller of Bids 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

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

These licensees can market themselves as a bid-caller for auctions, but cannot market themselves as being able to perform any functions requiring a Class B license.

Business Track Licensure

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

A licensee may sponsor affiliates after having a Class B license for a period of 1 year. There shall be no restriction on the amount of affiliates a licensee can sponsor.

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. These individuals would not be required to have completed the additional 15 hour course if just calling bids for the automobile auction.

Exemptions from a Motor Vehicle License:

- Bona Fide Business Liquidations
 - Vehicles must be owned at least 1 year prior to sale.
 - Must give 14 days' notice of sale to the motor vehicle commission.
 - T.C.A 55-17-120 is amended by adding a new subsection:

() Notwithstanding this part, when motor vehicles are sold incidentally at a bona fide going out of business sale in compliance with T.C.A. 47-18-104(11)(17) and (29), no license as a motor vehicle dealer shall be required to sell such vehicles at auction, provided that all vehicles for sale were owned and titled in the name of the business for at least one year prior to the going out of business sale and the auctioneer gives fourteen (14) day prior written notification to the

Tennessee Motor Vehicle Commission providing the time and place of such sale as well as a list of items to be sold.

Online Auctions:

- Add in the word “Electronic” to the statutory definition of “auction.”
- Define “Timed Listings” for purposes of the exemption in TCA 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 by companies primarily engaged in the auction industry holding an automobile auction license pursuant to TCA 55-17-120(d) – nonrepairable and salvage vehicles. Any simulcast or live auction held in Tennessee by such companies would have to engage with a licensed individual (class A or B) to sell from the block.

Additional recommendations:

- Advertising: update and revise advertising guidelines to mirror TREC’s one click away rule where a consumer can find information for the responsible party. A license number would no longer be required on any advertising.
- Removing the gallery license, but grandfathering in existing licensees.
- All education can be conducted online, except the bidcalling component.
- Current licensees would be grandfathered in to match the new standards effective immediately upon passage of the law.
- All current exemptions remain intact, including sales directed by the Government.
- Work with County Officials Association of Tennessee and other interested parties to modernize court ordered and judicial auction sales – including amending the statute to allow for online auctions.