

Senate Commerce and Labor Committee 1

Amendment No. 1 to SB1361

**Bailey
Signature of Sponsor**

AMEND Senate Bill No. 1361

House Bill No. 797*

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 35-5-109, is amended by deleting the section and substituting instead the following:

The published ending time for auctions conducted under this chapter on an internet-based bidding platform and the published start time for an in-person auction must be between the hours of nine o'clock a.m. (9:00 a.m.) and seven o'clock p.m. (7:00 p.m.) of the day fixed in the notice or advertisement. The day fixed may be any day Monday through Saturday, but must not be fixed on a state or federal legal holiday. However, this section does not apply to sales of parcels pursuant to title 67, chapter 5.

SECTION 2. Tennessee Code Annotated, Section 35-5-112(b), is amended by deleting the subsection and substituting instead the following:

(b) Whenever real property is sold at a public sale conducted by an auctioneer, the manner and method of sale is at the discretion of the court. As used in this section, "public sale" includes auctions on internet-based bidding platforms, in-person, on-site, or off-site auctions, and other accepted auction methods, so long as the auctions are open for participation by the public at large. The court, in its discretion, may impose additional conditions or procedures upon the sale of property as are reasonably necessary.

SECTION 3. Tennessee Code Annotated, Section 55-17-120, is amended by adding the following as a new subsection:

When motor vehicles are sold incidentally at a bona fide going-out-of-business sale, no license as a motor vehicle dealer is required to sell the vehicles at auction if:

Amendment No. 1 to SB1361

Bailey
Signature of Sponsor

AMEND Senate Bill No. 1361

House Bill No. 797*

(1) All vehicles for sale were owned and titled in the name of the business for at least one (1) year prior to the going-out-of-business sale;

(2) The auctioneer gives a fourteen-day prior written notification to the motor vehicle commission providing the time and place of the sale and a list of items to be sold; and

(3) The sale does not violate the Tennessee Consumer Protection Act of 1977, compiled in title 47, chapter 18, part 1.

SECTION 4. Tennessee Code Annotated, Section 62-19-101, is amended by deleting the section and substituting instead the following:

As used in this chapter:

(1) "Affiliate auctioneer" means an individual who, for compensation or valuable consideration, or otherwise, is employed, directly or indirectly, by a principal auctioneer to deal or engage in any activity described in subdivision (9);

(2) "Auction" means a sales transaction conducted by oral, written, or electronic exchange between an auctioneer and members of the audience, consisting of a series of invitations by the auctioneer for offers to members of the audience to purchase goods or real estate, culminating in the acceptance by the auctioneer of the highest or most favorable offer made by a member of the participating audience;

(3) "Auctioneer" means a principal auctioneer, bid caller auctioneer, or public automobile auctioneer;

(4) "Bid caller auctioneer" means an individual who, for compensation or valuable consideration, or otherwise, is hired by a principal auctioneer, public automobile auction, or public automobile auctioneer to solicit bids for the purchase of goods at an auction;

(5) "Commission" means the Tennessee auctioneer commission;

(6) "Continuing education" means six (6) hours each renewal period;

(7) "Goods" means chattels, merchandise, real or personal property, or commodities of any form or type that may lawfully be kept or offered for sale;

(8) "Person" includes an individual, association, partnership, corporation, and the officers, directors, and employees of a corporation;

(9) "Principal auctioneer" means an individual who, for a fee, commission, or any other valuable consideration, or with the intention or expectation of receiving a fee, commission, or any other valuable consideration by the means or process of auction or sale at auction, offers and executes a listing contract, sale, purchase, or exchange of goods, and is responsible for the management and supervision of an auction company, including its wholly owned subsidiary or affiliate company;

(10) "Public automobile auction" means offering motor vehicles for sale to the highest bidder, where buyers are members of the public, by a motor vehicle dealer licensed to sell used motor vehicles and licensed as an auctioneer by the commission. However, no public automobile auction may otherwise limit the auctioning of used motor vehicles exclusively to licensed motor vehicle dealers or their duly authorized agents;

(11) "Public automobile auctioneer" means an individual who, for a fee, commission, or any other valuable consideration, or with the intention or expectation of receiving a fee, commission, or any other valuable consideration

at an auction or sale at auction, offers, negotiates, or attempts to negotiate a listing contract, sale, purchase, or exchange of goods, including motor vehicles; and

(12) "Timed listing" means offering goods for sale with a fixed ending time and date that does not extend based on bidding activity.

SECTION 5. Tennessee Code Annotated, Section 62-19-102, is amended by deleting the section and substituting instead the following:

(a) It is unlawful for a person to:

(1) Act as, advertise as, or represent to be an auctioneer without holding a valid license issued by the commission;

(2) Conduct or offer to conduct an auction of real property unless the person is duly licensed as an auctioneer or affiliate auctioneer and as a broker or affiliate broker under chapter 13 of this title. However, with respect to the authority of an affiliate auctioneer to conduct or offer to conduct an auction of real property, the auctioneer for whom the affiliate auctioneer is employed for such purposes must be on the premises of the property during the auction. This subdivision (a)(2) does not require ringpersons or other persons not vocally conducting an auction to be duly licensed as auctioneers, nor duly licensed under chapter 13 of this title, unless the ringpersons or other persons act as an affiliate broker or broker within the meaning of chapter 13 of this title; or

(3) Act as, advertise as, or represent to be a public automobile auctioneer unless the person is duly licensed as a public automobile auctioneer and as a motor vehicle dealer under title 55, chapter 17, part 1.

(b) All auctions arranged by or through a principal auctioneer must be conducted exclusively by individuals licensed under this chapter.

SECTION 6. Tennessee Code Annotated, Section 62-19-103, is amended by deleting the section and substituting instead the following:

This chapter does not apply to:

(1) A person acting as a receiver, trustee in bankruptcy, guardian, administrator, executor, or other person acting under order of a court;

(2) A trustee acting under a trust agreement, deed of trust or will, or a secured party selling collateral after default by a debtor in accordance with title 47, chapter 9;

(3) An auction conducted by or under the direction of a governmental entity or pursuant to a judicial order or decree;

(4) An auction conducted by or on behalf of a political party, church, or charitable corporation or association, if the individual conducting the sale receives no compensation and does not, by advertising or otherwise, hold their self out as available to engage in the sale of goods at auction;

(5) A person performing acts in the regular course of or as an incident to the management of and investment in property owned or leased by the person, if the property was not acquired for the purpose of resale. When a sales tax, as prescribed in title 67, is not levied upon the sale of personal property, there is a presumption that the personal property was purchased for the purpose of resale;

(6) An auction conducted for the sale of livestock sponsored through or in cooperation with the state department of agriculture or the University of Tennessee extension, or both;

(7) An auction sale of tobacco at or for a warehouse operated pursuant to title 43, chapter 19;

(8) A livestock auction sale regulated by the United States department of agriculture packers and stockyards administration, if the sale uses:

(A) The shipper's proceeds account required by federal regulations; and

(B) An auctioneer licensed under this chapter;

(9) Any fixed price or timed listings that allow bidding on an internet website, but do not constitute a simulcast of a live auction;

(10) An exclusive online auction whose primary business activity is selling nonrepairable or salvage vehicles in this state and holds the appropriate license issued by the Tennessee motor vehicle commission; and

(11) An in-person or simulcast auction whose primary business activity is selling nonrepairable or salvage vehicles in this state, and holds the appropriate license issued by the Tennessee motor vehicle commission and that uses a licensed auctioneer.

SECTION 7. Tennessee Code Annotated, Sections 62-19-104, 62-19-119, 62-19-120, and 62-19-124 are amended by deleting the word "apprentice" wherever it appears and substituting instead the word "affiliate".

SECTION 8. Tennessee Code Annotated, Section 62-19-106(e)(2), is amended by adding the following as a new subdivision:

The auctioneer holds only a bid caller license.

SECTION 9. Tennessee Code Annotated, Section 62-19-106(e), is amended by deleting subdivision (3) and substituting instead the following:

(3) No affiliate auctioneer is exempt from continuing education requirements.

SECTION 10. Tennessee Code Annotated, Section 62-19-111, is amended by deleting the section and substituting instead the following:

(a)

(1) An individual applying for a license as a bid caller auctioneer must submit an application to the commission on the prescribed form. The application must be accompanied by satisfactory proof that the applicant:

(A) Is at least eighteen (18) years of age; and

(B) Has successfully completed sixteen (16) hours of classroom or online instruction on the basic fundamentals of auctioneering at an auction school accredited by the commission; and

(2) Auction chant instruction is optional and is not to be included in the basic fundamentals of auctioneering, nor may auction chant instruction be completed online.

(b) An individual applying for a license as an affiliate auctioneer must submit an application to the commission on the prescribed form. The application must be accompanied by a nonrefundable examination fee as set by the commission and must prove that the applicant:

(1) Is at least eighteen (18) years of age; and

(2) Has successfully completed, in addition to the education requirements under subdivision (a)(1)(B), thirty-four (34) hours of classroom or online instruction in the fundamentals of auctioneering at an auction school accredited by the commission.

(c) An individual applying for a license as a principal auctioneer must submit an application to the commission on the prescribed form. The application must be accompanied by a nonrefundable examination fee as set by the commission and must prove that the applicant:

(1) Is at least eighteen (18) years of age;

(2) Has served as an affiliate auctioneer under the supervision of a licensed, full-time principal or public automobile auctioneer for a period of six (6) months; and

(3) Has obtained a high school diploma, general equivalency diploma (GED), or HiSET® diploma.

(d) The commission may require other proof as necessary, through the application or otherwise, to assess the honesty, trustworthiness, integrity, reputation, and competency of the auctioneer applicant.

(e) An individual who meets the requirements of subsections (b)-(d) may take an examination prescribed by the commission to determine the individual's qualifications. The examination must include, but not be limited to, reading, writing, spelling, elementary arithmetic, elementary principles of land economics, ethics, the law of this state relating to bulk sales, auctions and brokerage, and the provisions of this chapter. The examination for a principal auctioneer's license must be more specific in nature and scope than the examination for an affiliate auctioneer's license.

(f) An applicant who fails an examination shall pay a fee as set by the commission for each reexamination.

(g) The commission shall issue a license and pocket card, upon receipt of the appropriate fee as set by the commission, to an applicant who meets the requirements for licensure under this chapter. The license must be conspicuously displayed at all times in the office of the licensee.

(h) Except as provided in § 62-19-117, every auctioneer licensed under this chapter shall maintain a place of business in this state. A bid caller licensee may list their home address as their place of business with the commission.

(i) All licenses issued by the commission expire two (2) years from the original date the license was issued. Each license must be renewed on or before its expiration date.

(j) If a licensee fails to renew a license on or before its expiration date, the commission may, in its discretion, renew the license upon application within two (2) months of the expiration date. The application must be accompanied by the prescribed fee and payment of a monetary penalty as set by the commission. A person seeking to renew a license later than two (2) months after its expiration must reapply for licensure. The commission may, in its discretion:

(1) Waive reexamination or additional education requirements for the applicant; or

(2) Reinstate a license subject to the applicant's compliance with reasonable conditions that the commission may prescribe, including payment of an additional reasonable fee to be set by the commission.

(k) When fees are remitted by mail to the commission, the date of payment is determined by the official postmark of the mail.

(l) When an affiliate auctioneer's employment with an auctioneer is terminated for any reason, the auctioneer shall immediately deliver, or send by registered mail, the affiliate auctioneer's license to the commission. The affiliate auctioneer shall not engage in the business of an auctioneer until the affiliate auctioneer receives a new license and pocket card for the unexpired term bearing the name and address of the new employer. The fee for the new license and pocket card is set by the commission.

(m) No more than one (1) license may be issued to an affiliate auctioneer to be in effect at any one (1) time.

(n) No license issued by the commission may authorize the licensee to engage in business at a location other than what is stated on the license. A licensee shall

immediately notify the commission in writing in the event of a change of business location. The written notice must be accompanied by the current license and pocket card and a fee as set by the commission.

(o) Auctions for the sale of registered livestock must be conducted by a licensed auctioneer. The auctioneer is exempt from issuing closing statements and disbursing funds if such responsibilities are performed by a duly chartered livestock association or livestock breed association.

(p) An affiliate auctioneer may be employed by a licensed auctioneer who is not designated as the affiliate's sponsor upon receiving written permission from the affiliate's sponsor and notifying the commission of the employment in the proper form and manner as prescribed by rules promulgated by the commission. An auctioneer employing an affiliate who is not under the auctioneer's sponsorship is responsible for the actions of the affiliate while under that auctioneer's employment. The sponsor is responsible for the actions of the affiliate at all other times.

(q) The commission may deny an applicant for an affiliate auctioneer or auctioneer the right to take an examination for a period of up to two (2) years if the applicant is found by the commission to have conducted business within this state as an affiliate auctioneer or auctioneer without being licensed.

(r) An individual applying for a license as a public automobile auctioneer must submit an application to the commission on the prescribed form. The application must be accompanied by a nonrefundable examination fee as set by the commission and satisfactory proof that the applicant:

- (1) Is at least twenty-one (21) years of age;
- (2) Has served as a principal auctioneer for a period of two (2) years; and

(3) Has successfully completed, in addition to the education required by subdivision (b)(2), fifteen (15) hours of more rigorous classroom or online instruction in automobile auctioneering as approved by the commission.

(s) An individual who receives a public automobile auctioneer license may exercise all activities authorized under a principal auctioneer license or bid caller license without having to meet additional licensure requirements.

SECTION 11. Tennessee Code Annotated, Section 62-19-112, is amended by deleting the word "apprentice" wherever it appears and substituting instead the word "affiliate".

SECTION 12. Tennessee Code Annotated, Section 62-19-112(b)(1), is amended by adding the following language before the semicolon:

including, but not limited to, individuals licensed solely as bid caller auctioneers who hold themselves out to others as principal auctioneers or public automobile auctioneers

SECTION 13. Tennessee Code Annotated, Section 62-19-112(b), is amended by adding the following as a new subdivision:

Negotiating or executing an auction contract to sell goods, take possession of seller assets, or take possession of auction proceeds as a bid caller auctioneer licensee.

SECTION 14. Tennessee Code Annotated, Section 62-19-115, is amended by designating the existing language as subsection (a) and adding the following as a new subsection (b):

A principal auctioneer may sponsor an affiliate auctioneer after one (1) year of licensure. There is no limit as to how many affiliate auctioneers a principal auctioneer or public automobile auctioneer may sponsor.

SECTION 15. Tennessee Code Annotated, Section 62-19-116, is amended by deleting the language "apprentice auctioneer or firm" wherever it appears and substituting instead the language "or affiliate auctioneer".

SECTION 16. Tennessee Code Annotated, Section 62-19-116, is amended by deleting the word "apprentice" wherever it appears and substituting instead the word "affiliate".

SECTION 17. Tennessee Code Annotated, Section 62-19-117, is amended by deleting the word "apprentice" wherever it appears and substituting instead the word "affiliate".

SECTION 18. Tennessee Code Annotated, Section 62-19-117(c), is amended by deleting the language "shall obtain a firm license as provided in § 62-19-111 and".

SECTION 19. Tennessee Code Annotated, Section 62-19-125, is amended by deleting the section in its entirety.

SECTION 20. This act shall take effect July 1, 2019, the public welfare requiring it.