

NewsLine

The Official Publication of the Tennessee Auctioneer Commission

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Commissioners

	Term Expiration
Randy Lowe, Chairman East Tennessee	TBD
Kimball Sterling, Vice Chair At-Large	08/31/22
Dwayne Rogers Consumer Member	12/31/22
Jeff Morris West Tennessee	TBD
John Thorpe Middle Tennessee	TBD

Mission Statement

The Mission of the Tennessee Auctioneer Commission is to protect the public through the establishment and administration of minimum requirements for candidates and licensees, effective professional education of licensees, and enforcement of professional conduct.

State of Tennessee
Department of Commerce & Insurance
500 James Robertson Parkway
Nashville, Tennessee 37243-1152
Phone: 615-741-3600
Fax: 615-253-1179
www.tn.gov/commerce/regboards/auctioneers

IMPORTANT LEGAL REMINDER

The Tennessee Auctioneer Commission has noted many auctioneers continue to include an inactive firm license number in their auction advertising. While the Commission understands this is likely a matter of habit, they have requested a prominent legal reminder to all licensees. The firm license was eliminated in 2019. In 2020, the rules and regulations were updated to reflect this change. Below is the current rule regarding the publication of name and license number. Please check your auction advertising to ensure compliance with this rule.

Tenn. Comp. R. & Regs. 0160-01-.05 PUBLICATION OF NAME.

- (1) All advertising of an auction sale must be made in the name and license number of the licensee who shall bear responsibility of the sale to the seller, general public and auctioneer commission.
- (2) All advertising shall include the name of the principal or public automobile auctioneer, and the principal or public automobile auctioneer shall attend all auction sales.

Authority: T.C.A. §§ 62-19-102, 62-19-106, 62-19-111, and 62-19-125. Administrative History: Original rule certified June 7, 1974. Amendment filed August 18, 1976; effective September 17, 1976. Amendment filed March 15, 1993; effective April 29, 1993. Amendments filed September 6, 2016; effective December 5, 2016. However, the Government Operations Committee filed an 11-day stay of the rule; new effective date December 16, 2016. Amendments filed April 13, 2020; effective July 12, 2020.

Summary: All auction advertising must include the name and principal or public automobile auctioneer's license number of the licensee(s) responsible for the auction. The principal or public automobile auctioneer identified in the auction advertisement must attend the auction.

The Tennessee Department of Commerce & Insurance is committed to the principles of equal opportunity, equal access and affirmative action. Contact the EEO Coordinator or ADA Coordinator 615-741-2177 (TDD).

Cyber Security Issues, Risks, and Resources



During the FY2021 continuing education seminars, presenter Marshall Fuson spoke about liability issues facing the auction industry and the importance of being properly insured. Mr. Fuson emphasized the value of cyber insurance to protect against the growth of cyber-attacks aimed at individuals and small businesses.

According to the 2020 FBI Internet Crime Report, Tennessee ranked 21st of 57 states, territories, and the District of Columbia, with 8,527 victim complaints of internet crime filed. Tennessee ranked 23rd in losses to internet crime with over forty (40) million dollars lost in 2020 alone.

Types of internet crimes include a variety of financial scams, assorted virus attacks, identity theft, denial of service (DoS)

attacks with ransom demands, data breaches, the unauthorized wire transfer of funds, and more.

As cyber-criminals continue to evolve in their tactics, auctioneers should be aware of the most common cyberthreats facing the auction industry today. DoS attacks are on the rise, identity theft is increasing, and social media accounts are being hacked every day. No one is too small to be exempt from cyber-criminals.

Malware is the term used to refer to computer viruses and malicious software designed to damage a person, a computer, a server, or a network, through access to sensitive information. Malware can enter your computer by visiting a hacked website, clicking on a pop-up window, or advertisement that has been infected, downloading infected files, installing an app from an unknown source, or opening an email attachment. When a computer is infected, all the data stored on that computer is vulnerable to a data breach, leaving the owner vulnerable to a ransom demand.

T.C.A. § 47-18-2107 is referred to as the “Identity Theft Deterrence Act” and specifies a forty-five (45) day notification period in the event of a breach through written notification, electronic notification (email), and under certain circumstances, adding a notice on the company website and through media outlets. For a small business, identifying, correcting, and notifying clients of a data breach can create a legal and financial burden.

To help prevent a cyber attack, always make sure your computer updates are current, install and regularly update your security software, and stay aware of potential threats through attachments, websites, links, and social media accounts. In addition to these preventative measures, exercise care in the collection and electronic storage of sensitive personal information, properly train your staff on safe computing practices, and talk with your insurance agent about insurance options to protect you and your customers. The Federal Trade Commission offers “Protecting Personal Information” and “Copier Data Security: A Guide for Businesses”,

Legislative Update

During the 2021/2022 legislative session, the Tennessee General Assembly passed HB0780/SB0771 to amend **T.C.A. § 62-19-111(r)(1)**, lowering the age requirement for a public automobile auctioneer license from twenty-one (21) years of age to eighteen (18) years of age. This change became effective October 1, 2021.

Tenn. Comp. R. & Regs. 0160-01-.25 PUBLIC AUTOMOBILE AUCTION AND PUBLIC AUTOMOBILE AUCTIONEER will be amended to reflect this legislative change.

All other requirements for a public automobile auctioneer license are unchanged.

Disciplinary Action Report

December 2020	Mark Culbreath Portland, TN	Unlicensed Activity \$1000 Civil Penalty
July 2021	Jackie Kittrell Spring Hill, TN	Escrow Violation \$2000 Civil Penalty
August 2021	Agee & Johnson Lebanon, TN	Advertising Violation \$250 Civil Penalty
September 2021	Greg Grimes Linden, TN	CE Audit Failure \$100 Civil Penalty
	Chad Frederick Harris Jonesborough, TN	CE Audit Failure \$100 Civil Penalty

Sales & Use Tax Updates for Auctioneers

In the 2018 case of [South Dakota v. Wayfair](#), the United States Supreme Court (SCOTUS) ruled that states can require sellers to collect and remit sales or use tax on sales delivered to locations within their state, even if the seller was in another state.

At the time, this ruling had little to no effect on the majority of Tennessee auctioneers; however, as the COVID-19 pandemic took a toll on auction businesses, many auctioneers began changing their business models and the methods used to bring assets to the buying public. As a result, auctioneers previously unaffected by the [Wayfair](#) ruling may now find themselves struggling through interstate sales tax issues. Complicating this issue further, more and more states have passed legislation to promote sales tax collection from out-of-state sellers.

Valuable resources for auctioneers facing these changing regulations are available from the Streamlined Sales Tax Governing Board, Inc. (SSTGB) at www.streamlinedsalestax.org. This organization was born out of the Streamlined Sales Tax Project, organized in 2000 to simplify interstate sales and use tax collections. To date, twenty-four (24) states have signed onto the Streamlined Sales Tax Agreement as Member states. Tennessee is an Associate Member state of the SSTGB. Following the [Wayfair](#) decision, SSTGB has begun providing valuable guidance to businesses as they evaluate whether they are a Remote Seller, a Marketplace Seller, or a Marketplace Facilitator.

Per SSTGB, “a Remote Seller is generally a seller that does not have a physical presence in a state but who sells products or services for delivery into that state...a Marketplace Seller is generally a seller who sells products through a physical or electronic marketplace operated by a Marketplace Facilitator/Provider... a Marketplace Facilitator is generally a business or person who owns, operates or otherwise controls a physical or electronic marketplace and facilitates the sale of a third-party Seller’s products. The Marketplace Facilitator/Provider, either directly or indirectly through contracts, agreements, or other arrangements with third parties, collects the payment from the purchaser and transmits all or part of the payment to the Seller. A Remote Seller can also be a Marketplace Seller or Facilitator”. Keep in mind, each individual state may define these sellers differently. Most importantly, Tennessee auctioneers may easily find themselves in need of reporting and remitting sales tax to states other than Tennessee. It is up to the auctioneer to determine if they are a Remote Seller, a Marketplace Seller, or a Marketplace Facilitator in their auction buyer’s states.

In a recent article by the Atlanta Business Chronicle, author Brandon McCafferty noted that most states maintain a three (3) year statute of limitations for sales and use tax audits. With a June 2021 three (3) year anniversary of the [Wayfair](#) decision passage, McCafferty and other business analysts anticipate increased sales tax audits of Remote Sellers, Marketplace Sellers, and Remote Facilitators.

The National Auctioneers Association continues to advocate for auctioneer exemption. In the meantime, all auctioneers are encouraged to verify their status and sales tax obligations to any state in which they have conducted remote transactions.

Association News

The **National Auctioneers Association** Designation Academy will be held live from December 5-11, 2021 at Planet Hollywood, Las Vegas, Nevada. In-person offerings will be the Accredited Auctioneer of Real Estate (AARE), Auction Marketing Manager (AMM), Auction Marketing Manager Next, Benefit Auction Specialist (BAS), and a Hybrid Real Estate Workshop. For more information, Visit www.auctioneers.org.

The **Tennessee Auctioneers Association** offers a complimentary membership to new auctioneers their first year of membership to encourage participation and to provide networking opportunities for those starting out in the industry. Visit tnauctioneers.com to learn more about this opportunity.

Commission Calendar

2022 Commission Meetings

Meetings are held at 9:00 a.m. at 500 James Robertson Parkway Nashville, TN 37243 or REMOTELY with connecting information at <https://www.tn.gov/commerce/regboards/auctioneers/public-meeting-information.html>

February 28, 2022
August 15, 2022

May 16, 2022
November 14, 2022

Upcoming Continuing Education Seminars:

The upcoming CE Seminars for FY2022 will feature National Auctioneers Association Chairman of the Board, Terri Walker, CAI, BAS, CES.

Program: The Internet Office: From Advertising to Organizing Clients (6 hours)

This program will be offered live, simulcast, and on-demand afterwards.

Pre-registration is required to attend virtually at

<https://attendee.gotowebinar.com/register/3981131911667255568>

November 19, 2021 **The Venue at Lenoir City**
7690 Creekwood Park Blvd. Lenoir City, TN 37772

March 1, 2022 **Franklin Marriott Cool Springs**
700 Cool Springs Blvd., Franklin, TN 37067



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