

## CHAPTER 44

## ( HB 100 )

AN ACT relating to auctions.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

➔Section 1. KRS 330.220 is amended to read as follows:

- (1) If real or personal property is offered in lots or parcels in a sale by auction, each lot or parcel shall be the subject of a separate sale. This subsection shall not preclude real or personal property from being offered for bidding individually or in some form or combination.
- (2) Unless otherwise provided in the conditions of sale for auctions regarding horses or any interests therein, a sale by auction is complete when the auctioneer so announces by the fall of the hammer, announcing the item sold, and the successful bidder's identification or in other customary manner. If it becomes immediately apparent at the close of the bidding that the auctioneer and a bid assistant or ringman have acknowledged the same bid from different bidders, the auctioneer may continue the bidding between the disputed bidders. When a bid is made while the auctioneer is in the process of completing the sale by auction, the auctioneer may continue the bidding or declare the real or personal property sold under the bid on which the hammer was falling.
- (3) No auction shall be advertised as "absolute" nor shall any advertising contain the words "absolute auction" or the word "absolute" or words with similar meaning nor shall any licensee offer or sell any real or personal property at absolute auction unless:
  - (a) There are no liens or encumbrances on the real or personal property, except property tax obligations, easements, or restrictions of record, in favor of any person, firm, or corporation other than the seller, or unless each and every holder of each and every lien and encumbrance, by execution of the auction listing contract, or otherwise furnishing to the auctioneer written evidence of a binding commitment therefor, shall have agreed to the unqualified acceptance of the highest bid for the property, without regard to the amount of the highest bid or the identity of the high bidder; or, alternatively, that a financially responsible person, firm, or corporation, by execution of the auction listing contract or by otherwise furnishing to the auctioneer written evidence of a binding commitment therefor, shall have absolutely guaranteed the forthwith and complete discharge and satisfaction of any and all liens and encumbrances immediately after the sale or at the closing, without regard to the amount of the highest bid received, or the identity of the high bidder; and
  - (b) There is the bona fide intention at the time of the advertising and at the time of the auction to transfer ownership of the real or personal property, regardless of the amount of the highest and last bid, to the high bidder, that intent existing without reliance on any agreement that any particular bid or bid level must be made or be reached, below which level the real or personal property would not be transferred to the high bidder; and
  - (c) The auction listing contract contains a binding requirement that the auction be conducted without reserve, and includes an acknowledgment that the seller, or anyone acting upon behalf of the seller, shall not bid at the absolute auction, or otherwise participate in the bidding process.
- (4) Compliance with subsection (3) of this section shall not prohibit:
  - (a) A secured party or other lienholder who is not the seller from bidding at an absolute auction, providing that such bidding does not constitute, nor is it tantamount to the direct or indirect establishment or agreement to the establishment of a reserve price on the real or personal property by the seller or by the auctioneer, or by anyone aiding or assisting, or acting upon behalf of, the seller or the auctioneer; or
  - (b) Any individual party to the dissolution of any marriage, partnership, *trust, limited liability company*, or corporation from bidding as an individual entity apart from the selling entity, on real or personal property being sold at auction pursuant to that dissolution; or
  - (c) Any individual party or heir of a deceased person's bona fide estate from bidding as an individual entity, apart from the selling entity, on real or personal property being offered at auction pursuant to that estate settlement; or
  - (d) The inclusion of nonmisleading advertising of certain real or personal property to be sold at "absolute auction" and the nonmisleading advertising of certain real or personal property to be offered at auction

with reserve, within the same advertisement, or for sale at the same date and place, providing that advertisement shall make clearly apparent through equal or appropriate emphasis, which real or personal property is being offered by each method.

- (5) Any auction sale is, without requirement of announcement at any time, presumed to be with reserve unless the real or personal property is in explicit terms offered at absolute auction. An auction without reserve means an absolute auction. An auction with reserve means the real or personal property may be offered subject to the seller's confirmation or subject to a certain reserve price. In an auction with reserve, the auctioneer may withdraw the real or personal property at any time until he or she announces completion of the sale. In an absolute auction, after the auctioneer calls for bids on an article, lot, or parcel, that article, lot, or parcel shall not be withdrawn unless no bid is made within a reasonable time. At both reserve auctions and without reserve auctions, the auctioneer may establish reasonable bid increments once an opening bid has been offered.
- (6) (a) The provisions of this chapter shall not prohibit any licensee from bidding on his or her own behalf at any auction sale, whether absolute or with reserve, if his or her option to do so has been fully disclosed, including disclosure to the seller.
- (b) Except as provided in subsection (4) of this section, the seller may not bid at an absolute auction, nor may anyone bid upon his or her behalf. No licensee shall knowingly receive a bid by or on behalf of the seller at an absolute auction.
- (c) Bids may be made by the seller, or upon the seller's behalf, at any auction with reserve, provided that full disclosure has clearly been made that liberty for bidding is retained. No licensee shall knowingly receive a bid in the absence of full disclosure. If the auctioneer knowingly receives a bid on the seller's behalf or the seller makes or procures a bid and notice has not been clearly given that liberty for bidding is reserved, the buyer may avoid the sale or take the real or personal property at the price of the last good faith bid prior to the completion of the sale.
- (d) There shall be no requirement that the reserve be announced when it is attained.
- (e) Nothing in this subsection shall be construed to alter or diminish the provisions of KRS 330.210.
- (7) (a) At any absolute auction, any advertisement or representation of a minimum or suggested starting bid is prohibited.
- (b) At any reserve auction, any advertisement or representation of a minimum or suggested starting bid is prohibited unless:
1. The minimum or suggested starting bid advertised or represented is sufficient to satisfy the auction listing contract stated reserve or confirmation amount; and
  2. The auction listing contract contains a binding acknowledgment by the seller that permission has been granted for disclosure.

➔Section 2. KRS 45A.365 is amended to read as follows:

- (1) All contracts or purchases shall be awarded by competitive sealed bidding, which may include the use of a reverse auction, except as otherwise provided by KRS 45A.370 to 45A.385 and for the purchase of wholesale electric power by municipal utilities as provided in KRS 96.901(1).
- (2) The invitation for bids shall state that the award shall be made on the basis of the lowest bid price or the lowest evaluated bid price. If the latter is used, the objective measurable criteria to be utilized shall be set forth in the invitation for bids. The invitation for bids shall include the reciprocal preference for resident bidders described in KRS 45A.494.
- (3) Adequate public notice of the invitation for bids and any reverse auction shall be given prior to the date set forth for the opening of bids. The notice may include posting on the Internet or publication in a newspaper of general circulation in the local jurisdiction *at least*~~[not less than]~~ seven (7) days before the date set for the opening of the bids and any reverse auction. ***Nothing in this section shall prohibit additional notice, posting, or publication, nor shall additional notification, posting, or publication extend the required notice period.*** The public notice shall include the time and place the bids will be opened and the time and place where the specifications may be obtained.
- (4) The bids shall be opened publicly or entered through a reverse auction at the time and place designated in the invitation for bids. Each written or reverse auction bid, together with the name of the bidder, shall be recorded

and be open to public inspection. Electronic bid opening and posting of the required information for public viewing shall satisfy the requirements of this subsection.

- (5) A contract shall be awarded with reasonable promptness by written notice to the responsive and responsible bidder whose bid is either the lowest bid price or the lowest evaluated bid price after the application of any reciprocal preference for resident bidders required by KRS 45A.494.
- (6) The local public agency may allow the withdrawal of a bid where there is a patent error on the face of the bid document, or where the bidder presents sufficient evidence, substantiated by bid worksheets, that the bid was based upon an error in the formulation of the bid price.

**Signed by Governor March 21, 2013.**