

AN ACT

To amend sections 4707.05, 4707.07, 4707.072, 4707.09, and 4707.19, to enact new section 4707.11 and sections 4707.25, 4707.26, 4707.261, 4707.262, 4707.27, 4707.28, 4707.29, 4707.30, and 4707.31, and to repeal section 4707.11 of the Revised Code and to amend Section 17 of Am. Sub. H.B. 94 of the 124th General Assembly as amended by Am. Sub. H.B. 3 of the 124th General Assembly to create the Auction Recovery Fund, to establish criteria and procedures for using it to reimburse persons who have sustained losses involving an auctioneer who violated the Auctioneers Law, to delay the effective date of specified provisions until July 1, 2003, and to make an appropriation.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 4707.05, 4707.07, 4707.072, 4707.09, and 4707.19 be amended and new section 4707.11 and sections 4707.25, 4707.26, 4707.261, 4707.262, 4707.27, 4707.28, 4707.29, 4707.30, and 4707.31 of the Revised Code be enacted to read as follows:

Sec. 4707.05. ~~All~~ Except as otherwise provided in section 4707.25 of the Revised Code, all fees and charges collected by the department of agriculture pursuant to this chapter shall be paid into the state treasury to the credit of the auctioneers fund, which is hereby created. All expenses incurred by the department in administering this chapter shall be paid out of the fund. The total expenses incurred by the department in the administration of this chapter shall not exceed the total fees, charges, fines, and penalties imposed under sections 4707.08, 4707.10, and 4707.99 of the Revised Code and paid to the treasurer of state. The department may conduct education programs for the enlightenment and benefit of all auctioneers who have paid fees pursuant to sections 4707.08 and 4707.10 of the Revised Code.

Out of the moneys credited pursuant to this section, the fund shall be assessed a proportionate share of the administrative costs of the department in accordance with procedures prescribed by the director of agriculture and approved by the director of budget and management. The assessment shall be paid from the auctioneers fund to the division of administration fund.

At the end of each fiscal year, if the balance of the fund is greater than three hundred thousand dollars, the director of agriculture shall request the director of budget and management to, and the director of budget and management shall, transfer twenty-five per cent of the balance to the auction recovery fund created in section 4707.25 of the Revised Code.

Sec. 4707.07. (A) The department of agriculture may grant auctioneers' licenses to those persons deemed qualified by the department. Each person who applies for an auctioneer's license shall furnish to the department, on forms provided by the department, satisfactory proof that the applicant:

- (1) Has a good reputation;
- (2) Is of trustworthy character;
- (3) Has attained the age of at least eighteen years;
- (4) Has done one of the following:

(a) Met the apprenticeship requirements set forth in section 4707.09 of the Revised Code;

(b) Met the requirements of section 4707.12 of the Revised Code.

(5) Has a general knowledge of the following:

- (a) The requirements of the Revised Code relative to auctioneers;
- (b) The auction profession;
- (c) The principles involved in conducting an auction.

(6) Has satisfied the financial responsibility requirements established under section 4707.11 of the Revised Code if applicable.

(B) Auctioneers who served apprenticeships and who hold licenses issued before May 1, 1991, and who seek renewal of their licenses, are not subject to the additional apprenticeship requirements imposed by section 4707.08 of the Revised Code.

(C) The department may issue an auctioneer's license to a partnership, association, or corporation if all the partners, members, or officers thereof who are authorized to perform the functions of an auctioneer as agents of the applicant are themselves licensed as auctioneers under this chapter.

An application for an auctioneer's license filed by a partnership or association shall contain a listing of the names of all of the licensed partners, members, or other persons who are authorized to perform the functions of an auctioneer as agents of the applicant. An application filed by a corporation shall contain the names of its president and of each of its licensed officers

and any other person who is authorized to perform the functions of an auctioneer as an agent of the applicant.

(D) A licensee may do business under more than one registered name if the names have been approved by the department. The department may reject the application of any person seeking licensure under this chapter if the name or names to be used by the applicant are likely to mislead the public, or if the name or names do not distinguish the applicant from the name or names of any existing person licensed under this chapter. If an applicant applies to the department to do business under more than two names, the department may charge a fee of ten dollars for the third name and each additional name.

Sec. 4707.072. The department of agriculture may grant one-auction licenses to any nonresident person deemed qualified by the department. Any person who applies for a one-auction license shall attest, on forms provided by the department, and furnish to the department, satisfactory proof that the license applicant or any auctioneer affiliated with the applicant meets the following requirements:

(A) Has a good reputation;

(B) Is of trustworthy character;

(C) Has attained the age of at least eighteen years;

(D) Has a general knowledge of the requirements of the Revised Code relative to auctioneers, the auction profession, and the principles involved in conducting an auction;

(E) Has two years of professional auctioneering experience immediately preceding the date of application and the experience includes the personal conduct by the applicant of at least twelve auction sales in any state, or has met the requirements of section 4707.12 of the Revised Code;

(F) Has paid a fee of one hundred dollars, which shall be credited to the auctioneers fund;

(G) Has provided proof of ~~the bond~~ financial responsibility as required under section 4707.11 of the Revised Code.

Sec. 4707.09. The department of agriculture may grant apprentice auctioneers' licenses to those persons deemed qualified by the department. Every applicant for an apprentice auctioneer's license ~~must~~ shall pass an examination relating to the skills, knowledge, and statutes and ~~regulations~~ rules governing auctioneers. Every applicant for an apprentice auctioneer's license shall furnish to the department, on forms provided by the department, satisfactory proof that the applicant:

(A) Has a good reputation;

(B) Is of trustworthy character;

(C) Has attained the age of at least eighteen years;

(D) Has obtained a written promise of a licensed auctioneer to sponsor the applicant during the applicant's apprenticeship;

(E) Has satisfied the financial responsibility requirements established under section 4707.11 of the Revised Code if applicable.

Before an apprentice may take the auctioneer's license examination, the apprentice shall serve an apprenticeship of at least twelve months, successfully complete a course of study in auctioneering at an institution that is approved every three years by the state auctioneers commission, and conduct, as a bid caller, at least twelve auction sales under the direct supervision of the sponsoring licensed auctioneer, which sales shall be certified by the licensed auctioneer on the apprentice's application for an auctioneer's license.

If an auctioneer intends to terminate sponsorship of an apprentice auctioneer, the sponsoring auctioneer shall notify the apprentice auctioneer of the sponsoring auctioneer's intention by certified mail, return receipt requested, at least ten days prior to the effective date of termination and, at the same time, shall deliver or mail by certified mail to the department of agriculture a copy of the termination notice and the license of the apprentice auctioneer. No apprentice auctioneer shall perform any acts under authority of the apprentice's license after the effective date of the termination until the apprentice receives a new license bearing the name and address of the apprentice's new sponsor. No more than one license shall be issued to any apprentice auctioneer for the same period of time.

No licensed auctioneer shall have under the licensed auctioneer's sponsorship more than two apprentice auctioneers at one time.

An apprentice auctioneer may terminate the apprentice's sponsorship with an auctioneer by notifying the auctioneer of the apprentice's intention by certified mail, return receipt requested, at least ten days prior to the effective date of termination. At the same time, the apprentice shall deliver or mail by certified mail to the department of agriculture a copy of the termination notice. Upon receiving the termination notice, the sponsoring auctioneer shall promptly deliver or mail by certified mail to the department the license of the apprentice auctioneer.

The termination of a sponsorship, regardless of who initiates the termination, shall not be cause for an apprentice auctioneer to lose credit for any certified sales the apprentice conducted or apprenticeship time the apprentice served under the direct supervision of the former sponsor.

Sec. 4707.11. (A) Except as provided in division (B) of this section, each application for a license issued under this chapter shall be accompanied

by proof of financial responsibility in the form of either an irrevocable letter of credit or a cash bond or a surety bond in the amount of twenty-five thousand dollars. If the applicant gives a surety bond, the bond shall be executed by a surety company authorized to do business in this state.

A bond shall be made to the department of agriculture and shall be conditioned that the applicant shall comply with this chapter and rules adopted under it, including refraining from conduct described in section 4707.15 of the Revised Code. All bonds shall be on a form approved by the director of agriculture.

A licensee shall maintain proof of financial responsibility for three years following the date of initial licensure. After the three-year period, a licensee who has not engaged in conduct described in section 4707.15 of the Revised Code and has not otherwise violated this chapter or rules adopted under it during that period shall no longer be required to maintain proof of financial responsibility except as otherwise provided in this section.

A licensee whose license expires without being renewed under section 4707.10 of the Revised Code or is suspended under section 4707.30 of the Revised Code shall give proof of financial responsibility in accordance with this section in order to obtain reinstatement or reactivation of the license.

(B) Division (A) of this section does not apply to either of the following:

(1) A licensee whose license was issued prior to July 1, 2003, provided that the license continues to be renewed under section 4707.10 of the Revised Code and is not suspended under section 4707.15 or 4707.30 of the Revised Code;

(2) An apprentice auctioneer licensee whose license was issued under section 4707.09 of the Revised Code prior to July 1, 2003, and who applies for an auctioneer's license under section 4707.07 of the Revised Code on or after July 1, 2003, provided that the apprentice auctioneer's license is not suspended under section 4707.15 or 4707.30 of the Revised Code, and, if necessary, continues to be renewed under section 4707.10 of the Revised Code, prior to the issuance of the auctioneer's license to the applicant.

Sec. 4707.19. The ~~department~~ director of agriculture may ~~make~~ adopt reasonable rules necessary for the implementation of ~~the provisions~~ of this chapter ~~pursuant to~~ in accordance with Chapter 119. of the Revised Code. In addition, the director shall adopt rules in accordance with Chapter 119. of the Revised Code that establish the portion of license fees collected under this chapter that are to be deposited into the auction recovery fund under section 4707.25 of the Revised Code. The department of agriculture may hear testimony in matters relating to the duties imposed on it, and any

person authorized by the director of ~~agriculture~~ may administer oaths. The department may require other proof of the honesty, truthfulness, and good reputation of any person named in the application for an auctioneer's, apprentice auctioneer's, or special auctioneer's license before admitting the applicant to an examination or issuing a license.

Sec. 4707.25. (A) The auction recovery fund is hereby created in the state treasury. The fund shall be administered by the director of agriculture. The treasurer of state shall credit all of the following to the fund: any moneys transferred to it from the auctioneers fund created under section 4707.05 of the Revised Code; except as otherwise provided in this section, a portion, in an amount specified in rules adopted under section 4707.19 of the Revised Code, of license fees collected under this chapter; any assessments levied under this section; repayments made to the auction recovery fund under section 4707.30 of the Revised Code by persons licensed under this chapter; and interest earned on the assets of the fund.

Moneys credited to the fund shall be used to make payments to persons in accordance with sections 4707.26 and 4707.31 of the Revised Code and to persons who obtain a final judgment in accordance with section 4707.261 and sections 4707.27 to 4707.30 of the Revised Code in a court of competent jurisdiction against a person licensed under this chapter on the grounds of conduct by the licensee that is described in section 4707.15 of the Revised Code or that otherwise violates this chapter or rules adopted under it and that is associated with an act or transaction that only a licensee lawfully may perform. In the case of a final judgment, the amount of the payments shall be limited to any portion of the final judgment that remains unpaid. In all cases, the amount of the payments is subject to the dollar limitations established in section 4707.29 of the Revised Code.

(B) The director shall ascertain the balance of the fund on the first day of July each year. If the balance of the fund is greater than two million dollars, the director may utilize, during the fiscal year beginning on that first day of July, the portion of the fund that is greater than two million dollars to sponsor educational programs or to underwrite research that is beneficial to persons licensed under this chapter and to the public. If the balance of the fund is at least four million dollars, the portion of license fees collected under this chapter that otherwise would be credited to the fund under this section shall be credited to the auctioneers fund during the fiscal year beginning on that first day of July.

If the balance of the fund is less than four hundred thousand dollars, the director shall levy an assessment against each person who holds a valid license issued under this chapter. The amount of the assessment shall be

determined by subtracting the balance of the fund from five hundred thousand dollars and dividing the resulting total by the number of persons recorded under section 4707.06 of the Revised Code as holding a valid license issued under this chapter. All assessments that are collected shall be credited to the fund.

(C) The director shall collect from the fund a service fee in an amount equal to the interest rate specified in division (A) of section 1343.03 of the Revised Code multiplied by the annual interest earned on the assets of the fund to defray the expenses incurred by the department of agriculture in the administration of the fund.

Sec. 4707.26. (A)(1) A person who asserts that they have been aggrieved by the actions of a person licensed under this chapter that resulted in actual and direct losses to the aggrieved person may initiate a claim against the auction recovery fund either under this section or section 4707.261 of the Revised Code. If an aggrieved person who wishes to seek recovery from the auction recovery fund has obtained a final judgment in a court of competent jurisdiction against the licensee, the aggrieved person shall initiate the claim in accordance with section 4707.261 of the Revised Code. If an aggrieved person who wishes to seek recovery from the auction recovery fund has not obtained a final judgment in a court of competent jurisdiction against the licensee, the aggrieved person shall initiate the claim in accordance with this section.

(2) An aggrieved person may initiate a claim against the auction recovery fund under this section if both of the following apply:

(a) The loss was associated with an act or transaction that only a person licensed under this chapter lawfully may perform.

(b) The licensee's actions are described in section 4707.15 of the Revised Code or otherwise violate this chapter or rules adopted under it.

To initiate a claim against the fund, an aggrieved person shall file a verified complaint with the department of agriculture in accordance with section 4707.16 of the Revised Code. The verified complaint shall include an application to the department that requests recovery of the applicant's actual and direct losses and that is made on forms that the department provides. The application for recovery shall specify the nature of the act or transaction on which the applicant's claim is based, the actual and direct losses sustained by the applicant, and any activities that the applicant has pursued as a remedy for the losses.

(B) Upon receipt of a verified complaint and application, the department shall conduct an investigation in accordance with section 4707.16 of the Revised Code. After the investigation, if the department determines that the

licensee has engaged in conduct described in section 4707.15 of the Revised Code or otherwise has violated this chapter or rules adopted under it, the department shall propose to take action to suspend or revoke the licensee's license under section 4707.15 of the Revised Code or to initiate a criminal action against the licensee under section 4707.99 of the Revised Code, or both. The department shall issue a letter to the applicant indicating the department's proposed action and the date of any hearing that the department has scheduled regarding the matter.

(C) Upon exhaustion of administrative remedies or criminal proceedings that results in a finding that the licensee has engaged in conduct described in section 4707.15 of the Revised Code or otherwise has violated this chapter or rules adopted under it, the department shall issue a notice in accordance with Chapter 119. of the Revised Code via certified mail to the applicant indicating that the applicant may request a hearing for relief from the auction recovery fund. An applicant who seeks recovery from the fund of any actual and direct losses suffered as a result of a licensee's conduct shall submit, not later than thirty days following receipt of the notice, a request for a hearing to the department.

Upon the timely receipt of a request for a hearing, the department shall provide the applicant with the opportunity to appear at an adjudication hearing to offer proof and evidence of the actual and direct losses. Whenever possible, the department shall require all applicants whose claims to the fund arose from an underlying transaction involving the same licensee to be joined in one adjudication under this section so that the rights of all applicants may be equitably adjudicated and settled. On behalf of the fund, the department may defend claims against the fund and shall have recourse to all appropriate means of defense and review, including examination of witnesses, and verification of actual losses.

(D) Upon the conclusion of the adjudication hearing, the hearing officer shall issue a report and recommendation in favor of making payment to an applicant from the fund if, during the course of the adjudication hearing, all of the following have been shown:

(1) The licensee has engaged in conduct described in section 4707.15 of the Revised Code or otherwise has violated this chapter or rules adopted under it.

(2) The licensee's conduct or violation is associated with an act that only a person licensed under this chapter lawfully may perform and the act resulted in direct and actual losses to the applicant.

(3) The applicant filed a verified complaint and application with the department as required by this section.

(4) The applicant is not the spouse of the licensee nor the personal representative of the licensee's spouse.

(5) If the licensee either provided an irrevocable letter of credit or gave bond in accordance with section 4707.11 of the Revised Code, the applicant first sought recovery under the irrevocable letter of credit or bond before applying for payment from the fund.

The amount of any payment from the fund to the applicant shall consist of an amount that is equal to the portion of the actual and direct losses incurred by the applicant that remain unpaid. The amount of the payment is subject to the dollar limitation established in section 4707.29 of the Revised Code.

If the hearing officer determines that not all of the items described in divisions (D)(1) to (5) of this section have been shown during the course of the adjudication hearing, the hearing officer shall issue a report and recommendation against making payment from the fund to the applicant.

(E) Pursuant to section 119.09 of the Revised Code, a hearing officer or the hearing officer's representative shall forward by certified mail a copy of the hearing officer's written report and recommendation to the applicant or the applicant's attorney or other representative not later than five days after the date on which the report and recommendation are filed.

Not later than ten days after receiving such a copy, the applicant may file with the department written objections to the report and recommendation. The department may grant extensions of time to the applicant within which to file objections.

The objections shall be considered by the department before it approves, modifies, or disapproves the recommendation. The department may order additional testimony to be taken or permit the introduction of further documentary evidence.

The recommendation of the hearing officer may be approved, modified, or disapproved by order of the director of agriculture. The order shall not be issued until more than ten days have elapsed following the applicant's receipt of the report and recommendation as provided by this section. The director's approval, modification, or disapproval of the hearing officer's recommendation shall have the same effect as if the hearing had been conducted by the director.

No recommendation shall be final until approved, modified, or disapproved by the director as indicated by the order entered on the record of proceedings of the department. If the director modifies or disapproves the recommendations of the hearing officer, the director shall include in the record of the proceedings the reasons for the modification or disapproval.

After an order is entered on its journal, the department shall make payment, if applicable, to the applicant from the auction recovery fund in accordance with the order and shall provide to the applicant by certified mail, return receipt requested, a copy of the order and a statement of the time and method by which an appeal may be perfected. In addition, the department shall mail a copy of the order to the attorney or other representative of the applicant.

(F) An order of the director issued under this section constitutes a final determination of the director for purposes of appeal. An applicant who is denied compensation from the auction recovery fund or who receives an award less than the award requested may appeal the order of the director. Notices of appeal shall be filed in the manner provided in section 119.12 of the Revised Code.

Sec. 4707.261. A person who obtains a final judgment in a court of competent jurisdiction against a person licensed under this chapter, on the grounds of conduct by the licensee that is described in section 4707.15 of the Revised Code or that otherwise violates this chapter or rules adopted under it and that is associated with an act or transaction that only a licensee lawfully may perform, may file a verified application in a court of common pleas for an order directing payment from the auction recovery fund. The application shall be accompanied by the judgment entry and may seek payment in an amount that is equal to the portion of the judgment that remains unpaid.

The application shall specify the nature of the act or transaction on which the underlying judgment was based, the activities of the applicant in pursuit of remedies available under the law for the collection of judgments, and the actual and direct losses sustained by the applicant. The applicant shall attach to the application a copy of each pleading and order in the underlying court action. In addition, the application shall include proof of the applicant's actual and direct loss.

Whenever possible, the court shall require all applicants and prospective applicants whose claims to the fund arose from an underlying judgment against the same licensee to be joined in one action under this section so that the rights of all applicants may be equitably adjudicated and settled.

Sec. 4707.262. A person who has sustained actual and direct losses in the course of a real estate auction transaction and who believes that they may qualify to seek recovery for the losses from the real estate recovery fund in accordance with section 4735.12 of the Revised Code or from the auction recovery fund shall apply to a court of competent jurisdiction for a determination of the fund from which the person should seek recovery if

either or both of the following apply:

(A) The transaction involves both of the following:

(1) A violation of Chapter 4735. of the Revised Code;

(2) A violation of this chapter or rules adopted under it or conduct that is described in section 4707.15 of the Revised Code.

(B) The person is unclear as to the fund from which recovery should be sought.

Upon receipt of an application under this section, the court shall determine whether it appears that conduct or a violation described in division (A) of this section occurred and also shall determine, in its discretion, the appropriate fund from which the person should seek recovery and notify the person of the determination.

In the event that the court determines the person is able to recover from both the real estate recovery fund and the auction recovery fund, the total aggregate amount that is paid to the person from both the funds shall not exceed the actual and direct losses sustained by the person. In addition, the total aggregate amount that is paid to the person from both the funds shall not exceed the dollar limitations established in section 4707.29 of the Revised Code, and the portion of that total aggregate amount that is paid from the real estate recovery fund shall not exceed the dollar limitations established in division (D) of section 4735.12 of the Revised Code.

For purposes of division (B)(4)(d) of section 4735.12 of the Revised Code, with respect to recovery from the real estate recovery fund, a person shall not be required first to seek recovery from the auction recovery fund in order to be considered to have diligently pursued the person's remedies.

Sec. 4707.27. A person who applies to a court of common pleas for an order directing payment from the auction recovery fund under section 4707.261 of the Revised Code shall file notice of the application with the director of agriculture. The director may defend any such action on behalf of the fund and shall have recourse to all appropriate means of defense and review, including examination of witnesses, verification of actual and direct losses, and challenges to the underlying judgment obtained from a court of competent jurisdiction to determine whether the underlying judgment is based on activity that only a person holding a valid license issued under this chapter is authorized to perform. The director may move the court of common pleas at any time to dismiss the application when it appears that there are no triable issues and the application is without merit, provided that the director shall give written notice to the applicant not fewer than ten days before the motion is made. The motion may be supported by affidavit of any person having knowledge of the facts and may be made on the basis that the

application, including the underlying judgment referred to in it, does not form the basis for a meritorious recovery claim. Subject to court approval, the director may compromise a claim based on the application of the aggrieved party. The director shall not be bound by any prior compromise or stipulation of the licensee who is the judgment debtor.

Sec. 4707.28. (A) After receipt of an application that is filed under section 4707.261 of the Revised Code and that satisfies the requirements established under that section, a court of common pleas shall issue an order directing the director of agriculture to make payment from the auction recovery fund to an applicant who satisfies the criteria established under this section. The payment shall consist of an amount that is equal to the portion of the final judgment that was obtained by the applicant against a person licensed under this chapter and that remains unpaid. The amount of the payment is subject to the dollar limitations established in section 4707.29 of the Revised Code.

The court shall issue an order directing payment to the applicant from the fund when the applicant has shown all of the following:

(1) The applicant has obtained a judgment in a court of competent jurisdiction against a person licensed under this chapter on the grounds of conduct that is described in section 4707.15 of the Revised Code or that otherwise violates this chapter or rules adopted under it and that is associated with an act or transaction that only a licensee lawfully may perform.

(2) All appeals from the judgment have been exhausted, and the applicant has filed notice with the director in accordance with section 4707.27 of the Revised Code and has otherwise complied with that section.

(3) The applicant is not either the spouse of the licensee who is the judgment debtor or the personal representative of the spouse.

(4) The applicant has diligently pursued the applicant's remedies against all judgment debtors and all other persons who are liable to the applicant in the underlying auction transaction for which the applicant seeks recovery from the fund.

(5) The applicant filed the application not later than six months following the termination of all proceedings, including appeals, in connection with the judgment.

(6) If the judgment debtor either provided an irrevocable letter of credit or gave bond in accordance with section 4707.11 of the Revised Code, the applicant first sought recovery under the irrevocable letter of credit or the bond before applying for payment from the fund.

(B) All of the following are prohibited from receiving payment under

section 4707.26 or 4707.261 of the Revised Code from the auction recovery fund:

(1) A bonding company that was not a party in the underlying auction transaction:

(2) A person holding a valid license issued under either this chapter or Chapter 4735. of the Revised Code:

(3) A person who, under division (B)(5) of section 4735.12 of the Revised Code, would be ineligible to receive payment from the real estate recovery fund:

(4) A person who obtained a final judgment that arose from an act or transaction that only a licensed real estate broker or real estate salesperson is authorized to perform under Chapter 4735. of the Revised Code and that did not involve a violation of this chapter or rules adopted under it.

(C) Punitive damages, attorney's fees, court costs, and interest on a judgment are not recoverable from the auction recovery fund.

Sec. 4707.29. The liability of the auction recovery fund shall not exceed fifty thousand dollars for losses involving violations committed by any one licensee, except that with respect to any one licensee who provides either an irrevocable letter of credit or a bond in order to maintain proof of financial responsibility under section 4707.11 of the Revised Code, the liability of the fund shall not exceed twenty-five thousand dollars for losses involving violations committed by the licensee. If a licensee's license is reactivated as provided in section 4707.30 of the Revised Code, the liability of the fund for the licensee shall again be fifty thousand dollars, or twenty-five thousand dollars if applicable, but only for transactions that occur subsequent to the time of reactivation.

If fifty thousand dollars, or twenty-five thousand dollars if applicable, are insufficient to pay the valid claims of all persons who have applied for payment from the fund with respect to losses involving violations committed by the same licensee, the money shall be distributed among the persons in the ratio that their respective claims bear to the aggregate of valid claims or in another manner that the court or, if all the claims involve applications filed under section 4707.26 or 4707.31 of the Revised Code, the director of agriculture determines to be equitable. Distribution of the money shall be among the persons entitled to share in it without regard to the order of priority in which their respective claims may have been decided or their applications for payment from the fund may have been filed.

Sec. 4707.30. (A) As used in this section:

(1) "Aggrieved party" means a person who has sustained actual and direct losses in an auction transaction involving a person licensed under this

chapter due to conduct by the licensee that is described in section 4707.15 of the Revised Code or that otherwise violates this chapter or rules adopted under it and that is associated with an act or transaction that only a licensee lawfully may perform.

(2) "Offending licensee" means a person licensed under this chapter who fits either of the following descriptions:

(a) Against whom an aggrieved party has obtained a final judgment in a court of competent jurisdiction and whose failure to pay all or a portion of the judgment results in a payment to the aggrieved party from the auction recovery fund;

(b) Whose conduct has resulted in a payment from the auction recovery fund to an aggrieved party under section 4707.26 or 4707.31 of the Revised Code.

(B) If the director of agriculture makes a payment from the auction recovery fund to an aggrieved party and the license of the offending licensee has not been suspended or revoked under section 4707.15 of the Revised Code, the license automatically is suspended on the date on which the payment is made. The director shall provide the offending licensee an opportunity for an administrative hearing on the suspension in accordance with Chapter 119. of the Revised Code. The director shall not reactivate the suspended license until the offending licensee has repaid in full, plus interest per annum at the rate specified in division (A) of section 1343.01 of the Revised Code, the amount paid from the fund to the aggrieved party. A discharge in bankruptcy does not relieve an offending licensee from the suspension provisions and requirements for reactivation of a license that are established in this section.

When the director has paid from the fund any sum to an aggrieved party, the director shall be subrogated to all of the rights of the aggrieved party to the extent of the amount of the payment that the aggrieved party received from the fund. If the aggrieved party obtained a final judgment against the offending licensee in a court of competent jurisdiction, the aggrieved party shall assign all of the aggrieved party's right, title, and interest in the judgment to the director to the extent of the amount of the payment that the aggrieved party received from the fund. The director shall deposit into the fund any amount and interest recovered by the director from the offending licensee.

With respect to the amount of a payment that the director has paid to an aggrieved party from the fund and has not recovered, the director shall have a priority lien in front of all other interested creditors against the assets of an offending licensee who files bankruptcy. The lien shall be deemed to have

taken effect on the date that the offending licensee entered into a contract in accordance with section 4707.20 of the Revised Code with respect to the auction transaction out of which the payment from the fund arose.

Disciplinary action taken under this section against an offending licensee and the recovery of moneys from an offending licensee for deposit into the fund shall not excuse the offending licensee from any other disciplinary action to which the offending licensee may be subject under this chapter or any other provision of the Revised Code or rules adopted under it.

Sec. 4707.31. Notwithstanding any other provision of this chapter to the contrary, the director of agriculture may, within the director's discretion, make a payment out of the auction recovery fund to a person without first requiring the person to obtain a prior order issued by the director or by a court of competent jurisdiction if all of the following apply:

(A) The person claims to have sustained total actual and direct losses in the amount of one thousand dollars or less.

(B) The losses are associated with an act or transaction that only a person licensed under this chapter lawfully may perform.

(C) The licensee allegedly has engaged in actions that are described in section 4707.15 of the Revised Code or that otherwise violate this chapter or rules adopted under it.

(D) The amount of the alleged loss is readily ascertainable rather than speculative in nature.

(E) The claimant filed a properly notarized complaint with supporting documentation to the department not later than one year following the date of the alleged wrongful actions of the licensee.

(F) The department, within its discretion, determines that, based upon the evidence presented, justice would be better served by allowing compensation to be paid without first requiring the aggrieved party to obtain a judgment from a court of competent jurisdiction or an order of the department.

SECTION 2. That existing sections 4707.05, 4707.07, 4707.072, 4707.09, and 4707.19 of the Revised Code are hereby repealed.

SECTION 3. That section 4707.11 of the Revised Code is hereby repealed, effective July 1, 2003.

SECTION 4. Sections 4707.07, 4707.072, 4707.09, 4707.11, 4707.26,

7.261, 4707.262, 4707.27, 4707.28, 4707.29, 4707.30, and 4707.31 of the Revised Code, as amended or enacted by this act, shall take effect on July 1, 2003.

SECTION 5. That Section 17 of Am. Sub. H.B. 94 of the 124th General Assembly, as amended by Am. Sub. H.B. 3 of the 124th General Assembly, be amended to read as follows:

" Sec. 17. AGR DEPARTMENT OF AGRICULTURE

General Revenue Fund

GRF 700-321	Operating Expenses	\$	3,160,884	\$	3,334,073
GRF 700-401	Animal Disease Control	\$	4,340,887	\$	4,385,108
GRF 700-402	Amusement Ride Safety	\$	226,451	\$	230,769
GRF 700-403	Dairy Division	\$	1,569,097	\$	1,707,877
GRF 700-404	Ohio Proud	\$	222,856	\$	228,266
GRF 700-405	Animal Damage Control	\$	86,780	\$	84,358
GRF 700-406	Consumer Analytical Lab	\$	889,058	\$	900,001
GRF 700-407	Food Safety	\$	1,422,998	\$	1,377,956
GRF 700-409	Farmland Preservation	\$	150,000	\$	320,000
GRF 700-410	Plant Industry	\$	1,517,969	\$	1,561,620
GRF 700-411	International Trade and Market Development	\$	789,620	\$	598,062
GRF 700-412	Weights and Measures	\$	991,136	\$	996,634
GRF 700-413	Gypsy Moth Prevention	\$	633,214	\$	634,279
GRF 700-414	Concentrated Animal Feeding Facilities Advisory Committee	\$	23,275	\$	22,663
GRF 700-415	Poultry Inspection	\$	322,256	\$	320,960
GRF 700-418	Livestock Regulation Program	\$	1,357,487	\$	1,563,898
GRF 700-424	Livestock Testing and Inspections	\$	229,996	\$	228,438
GRF 700-499	Meat Inspection Program - State Share	\$	4,654,566	\$	4,977,168
GRF 700-501	County Agricultural Societies	\$	466,842	\$	466,842
GRF 700-503	Swine and Cattle Breeder Awards	\$	113,160	\$	107,076
TOTAL GRF General Revenue Fund		\$	23,168,532	\$	24,046,048

Federal Special Revenue Fund Group

3J4 700-607	Indirect Cost	\$	1,380,026	\$	1,314,020
3R2 700-614	Federal Plant Industry	\$	1,607,887	\$	1,682,330
326 700-618	Meat Inspection Service - Federal Share	\$	4,401,707	\$	4,959,973
336 700-617	Ohio Farm Loan Revolving Fund	\$	181,774	\$	181,774
382 700-601	Cooperative Contracts	\$	1,027,692	\$	1,091,347
TOTAL FED Federal Special Revenue Fund Group		\$	8,599,086	\$	9,229,444

State Special Revenue Fund Group

4C9 700-605	Feed, Fertilizer, and Lime Inspection	\$	909,033	\$	975,244
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4D2	700-609	Auction Education	\$	30,476	\$	30,476
4E4	700-606	Utility Radiological Safety	\$	69,016	\$	73,059
4P7	700-610	Food Safety Inspection	\$	559,611	\$	575,797
4R0	700-636	Ohio Proud Marketing	\$	125,297	\$	133,614
4R2	700-637	Dairy Inspection Fund	\$	1,183,358	\$	1,174,591
4T6	700-611	Poultry and Meat Inspection	\$	47,294	\$	47,294
4T7	700-613	International Trade and Market Development Rotary	\$	161,991	\$	166,356
4V5	700-615	Animal Industry Lab Fees	\$	626,633	\$	633,097
493	700-603	Fruits and Vegetables Inspection Fees	\$	212,764	\$	171,772
494	700-612	Agricultural Commodity Marketing Program	\$	166,536	\$	169,867
496	700-626	Ohio Grape Industries	\$	1,048,667	\$	1,071,099
497	700-627	Commodity Handlers Regulatory Program	\$	566,862	\$	648,616
5B8	700-628	Auctioneers	\$	286,769	\$	365,390
5H2	700-608	Metrology Lab	\$	74,674	\$	138,624
5L8	700-604	Livestock Management Program	\$	250,000	\$	250,000
<u>5U1</u>	<u>700-624</u>	<u>Auction Recovery Fund</u>	<u>\$</u>	<u>0</u>	<u>\$</u>	<u>500,000</u>
578	700-620	Ride Inspection Fees	\$	634,099	\$	650,774
579	700-630	Scale Certification	\$	230,047	\$	230,047
652	700-634	Laboratory Services	\$	1,179,560	\$	1,144,766
669	700-635	Pesticide Program	\$	2,108,049	\$	2,181,491
TOTAL SSR State Special Revenue Fund Group			\$	10,470,236	\$	10,831,974 <u>11,331,974</u>
TOTAL ALL BUDGET FUND GROUPS			\$	42,238,354	\$	44,107,466 <u>44,607,466</u>

ANIMAL DISEASE CONTROL

The funds in appropriation item 700-401, Animal Disease Control, may be used for the detection, prevention, and emergency management of, and the education of the public regarding, Foot and Mouth disease, Mad Cow disease, and West Nile virus.

REIMBURSEMENT TO THE GENERAL REVENUE FUND

(A) On or before June 30, 2003, the Director of Budget and Management shall determine the following:

(1) The total amount disbursed from the foregoing appropriation item, 700-409, Farmland Preservation, in the 2002-2003 biennium; and

(2) The amount of interest earnings that have been credited to the Clean Ohio Conservation Fund (Fund 056) that are in excess of what is needed for other purposes.

(B) If the Director determines under division (A)(2) of this section that there are excess interest earnings, the Director shall, on or before June 30, 2003, transfer them in an amount not to exceed \$60,000 less than the amount of disbursements determined under division (A)(1) of this section from the Clean Ohio Conservation Fund to the General Revenue Fund.

THE AUCTION FUND

On October 1, 2001, the Auction Education Fund (Fund 4D2) and the Auction Licensing Fund (Fund 5B8) shall be transferred from the Department of Commerce to the Department of Agriculture. At the request of the Director of Commerce, the Director of Budget and Management may cancel encumbrances in these funds from the Department of Commerce's appropriation item 800-605, Auctioneer Education, and appropriation item 800-628, Auctioneers, and reestablish such encumbrances or parts of encumbrances in fiscal year 2002 for the same purpose and to the same vendor in the Department of Agriculture's appropriation item 700-609, Auction Education, and appropriation item 700-628, Auctioneers. The Director of Budget and Management shall reduce the appropriation balances in fiscal year 2001 by the amount of the encumbrances canceled in the funds. As determined by the Director of Budget and Management, the appropriation authority necessary to reestablish such encumbrances or parts of encumbrances in fiscal year 2002 for the Department of Agriculture is hereby appropriated.

THE DAIRY INDUSTRY FUND

On July 1, 2001, or as soon thereafter as possible, the Director of Budget and Management shall transfer the cash balance in the License Fees (Fund 4V0) to the Dairy Inspection Fund (Fund 4R2). The director shall cancel any existing encumbrances against appropriation item 700-602, License Fees (Fund 4V0), and reestablish them against appropriation item 700-637, Dairy Inspection (Fund 4R2). The amounts of the reestablished encumbrances are appropriated."

SECTION 6. That existing Section 17 of Am. Sub. H.B. 94 of the 124th General Assembly, as amended by Am. Sub. H.B. 3 of the 124th General Assembly, is hereby repealed.

SECTION 7. As soon as possible prior to June 30, 2003, the Director of Budget and Management shall make a one-time cash transfer of \$500,000 from Fund 5B8, Auctioneers, to Fund 5U1, Auction Recovery Fund. The Auction Recovery Fund is to be administered by the Department of Agriculture under sections 4707.25 to 4707.30 of the Revised Code as enacted by this act.

SECTION 8. Sections 5 to 8 of this act are not subject to the referendum. Therefore, under the Ohio Constitution, Article II, Section 1d and section 1.471 of the Revised Code, Sections 5 to 8 of this act go into immediate effect when this act becomes law.

Speaker _____ of the House of Representatives.

President _____ of the Senate.

Passed _____, 20____

Approved _____, 20____

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ___ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____