

**As Reported by the House Finance and Appropriations
Committee**

**124th General Assembly
Regular Session
2001-2002**

Sub. S. B. No. 262

**SENATORS Mumper, White, Carnes, Harris, Armbruster, Randy Gardner,
Spada
REPRESENTATIVES Core, Barrett**

A B I L L

To amend sections 4707.05, 4707.07, 4707.072, 4707.09, 1
and 4707.19, to enact new section 4707.11 and 2
sections 4707.25, 4707.26, 4707.261, 4707.262, 3
4707.27, 4707.28, 4707.29, 4707.30, and 4707.31, 4
and to repeal section 4707.11 of the Revised Code 5
and to amend Section 17 of Am. Sub. H.B. 94 of the 6
124th General Assembly as amended by Am. Sub. H.B. 7
3 of the 124th General Assembly to create the 8
Auction Recovery Fund, to establish criteria and 9
procedures for using it to reimburse persons who 10
have sustained losses involving an auctioneer who 11
violated the Auctioneers Law, to delay the 12
effective date of specified provisions until July 13
1, 2003, and to make an appropriation. 14

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 4707.05, 4707.07, 4707.072, 4707.09, 15
and 4707.19 be amended and new section 4707.11 and sections 16
4707.25, 4707.26, 4707.261, 4707.262, 4707.27, 4707.28, 4707.29, 17
4707.30, and 4707.31 of the Revised Code be enacted to read as 18

follows: 19

Sec. 4707.05. All Except as otherwise provided in section 20
4707.25 of the Revised Code, all fees and charges collected by the 21
department of agriculture pursuant to this chapter shall be paid 22
into the state treasury to the credit of the auctioneers fund, 23
which is hereby created. All expenses incurred by the department 24
in administering this chapter shall be paid out of the fund. The 25
total expenses incurred by the department in the administration of 26
this chapter shall not exceed the total fees, charges, fines, and 27
penalties imposed under sections 4707.08, 4707.10, and 4707.99 of 28
the Revised Code and paid to the treasurer of state. The 29
department may conduct education programs for the enlightenment 30
and benefit of all auctioneers who have paid fees pursuant to 31
sections 4707.08 and 4707.10 of the Revised Code. 32

Out of the moneys credited pursuant to this section, the fund 33
shall be assessed a proportionate share of the administrative 34
costs of the department in accordance with procedures prescribed 35
by the director of agriculture and approved by the director of 36
budget and management. The assessment shall be paid from the 37
auctioneers fund to the division of administration fund. 38

At the end of each fiscal year, if the balance of the fund is 39
greater than three hundred thousand dollars, the director of 40
agriculture shall request the director of budget and management 41
to, and the director of budget and management shall, transfer 42
twenty-five per cent of the balance to the auction recovery fund 43
created in section 4707.25 of the Revised Code. 44

Sec. 4707.07. (A) The department of agriculture may grant 45
auctioneers' licenses to those persons deemed qualified by the 46
department. Each person who applies for an auctioneer's license 47
shall furnish to the department, on forms provided by the 48

| | |
|---|----------------------------|
| department, satisfactory proof that the applicant: | 49 |
| (1) Has a good reputation; | 50 |
| (2) Is of trustworthy character; | 51 |
| (3) Has attained the age of at least eighteen years; | 52 |
| (4) Has done one of the following: | 53 |
| (a) Met the apprenticeship requirements set forth in section 4707.09 of the Revised Code; | 54 55 |
| (b) Met the requirements of section 4707.12 of the Revised Code. | 56 57 |
| (5) Has a general knowledge of the following: | 58 |
| (a) The requirements of the Revised Code relative to auctioneers; | 59 60 |
| (b) The auction profession; | 61 |
| (c) The principles involved in conducting an auction. | 62 |
| <u>(6) Has satisfied the financial responsibility requirements established under section 4707.11 of the Revised Code if applicable.</u> | 63 64 65 |
| (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. | 66 67 68 69 |
| (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. | 70 71 72 73 74 |
| 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 | 75 76 77 |

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

78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107

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.

137
138
139

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.

140
141
142
143
144
145
146
147
148
149
150
151
152

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

153
154
155

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.

156
157
158
159
160
161
162
163
164
165

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

166
167
168

apprenticeship time the apprentice served under the direct
supervision of the former sponsor.

169
170

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.

171
172
173
174
175
176
177

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.

178
179
180
181
182

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.

183
184
185
186
187
188
189
190

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.

191
192
193
194
195

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

196
197

(1) A licensee whose license was issued prior to July 1,

198

2003, provided that the license continues to be renewed under 199
section 4707.10 of the Revised Code and is not suspended under 200
section 4707.15 or 4707.30 of the Revised Code; 201

(2) An apprentice auctioneer licensee whose license was 202
issued under section 4707.09 of the Revised Code prior to July 1, 203
2003, and who applies for an auctioneer's license under section 204
4707.07 of the Revised Code on or after July 1, 2003, provided 205
that the apprentice auctioneer's license is not suspended under 206
section 4707.15 or 4707.30 of the Revised Code, and, if necessary, 207
continues to be renewed under section 4707.10 of the Revised Code, 208
prior to the issuance of the auctioneer's license to the 209
applicant. 210

Sec. 4707.19. The department director of agriculture may make 211
adopt reasonable rules necessary for the implementation of the 212
provisions of this chapter pursuant to in accordance with Chapter 213
119. of the Revised Code. In addition, the director shall adopt 214
rules in accordance with Chapter 119. of the Revised Code that 215
establish the portion of license fees collected under this chapter 216
that are to be deposited into the auction recovery fund under 217
section 4707.25 of the Revised Code. The department of agriculture 218
may hear testimony in matters relating to the duties imposed on 219
it, and any person authorized by the director of agriculture may 220
administer oaths. The department may require other proof of the 221
honesty, truthfulness, and good reputation of any person named in 222
the application for an auctioneer's, apprentice auctioneer's, or 223
special auctioneer's license before admitting the applicant to an 224
examination or issuing a license. 225

Sec. 4707.25. (A) The auction recovery fund is hereby created 226
in the state treasury. The fund shall be administered by the 227
director of agriculture. The treasurer of state shall credit all 228
of the following to the fund: any moneys transferred to it from 229

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.

230
231
232
233
234
235
236
237

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.

238
239
240
241
242
243
244
245
246
247
248
249
250
251

(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

252
253
254
255
256
257
258
259
260
261

the auctioneers fund during the fiscal year beginning on that 262
first day of July. 263

If the balance of the fund is less than four hundred thousand 264
dollars, the director shall levy an assessment against each person 265
who holds a valid license issued under this chapter. The amount of 266
the assessment shall be determined by subtracting the balance of 267
the fund from five hundred thousand dollars and dividing the 268
resulting total by the number of persons recorded under section 269
4707.06 of the Revised Code as holding a valid license issued 270
under this chapter. All assessments that are collected shall be 271
credited to the fund. 272

(C) The director shall collect from the fund a service fee in 273
an amount equal to the interest rate specified in division (A) of 274
section 1343.03 of the Revised Code multiplied by the annual 275
interest earned on the assets of the fund to defray the expenses 276
incurred by the department of agriculture in the administration of 277
the fund. 278

Sec. 4707.26. (A)(1) A person who asserts that they have been 279
aggrieved by the actions of a person licensed under this chapter 280
that resulted in actual and direct losses to the aggrieved person 281
may initiate a claim against the auction recovery fund either 282
under this section or section 4707.261 of the Revised Code. If an 283
aggrieved person who wishes to seek recovery from the auction 284
recovery fund has obtained a final judgment in a court of 285
competent jurisdiction against the licensee, the aggrieved person 286
shall initiate the claim in accordance with section 4707.261 of 287
the Revised Code. If an aggrieved person who wishes to seek 288
recovery from the auction recovery fund has not obtained a final 289
judgment in a court of competent jurisdiction against the 290
licensee, the aggrieved person shall initiate the claim in 291
accordance with this section. 292

(2) An aggrieved person may initiate a claim against the 293
auction recovery fund under this section if both of the following 294
apply: 295

(a) The loss was associated with an act or transaction that 296
only a person licensed under this chapter lawfully may perform. 297

(b) The licensee's actions are described in section 4707.15 298
of the Revised Code or otherwise violate this chapter or rules 299
adopted under it. 300

To initiate a claim against the fund, an aggrieved person 301
shall file a verified complaint with the department of agriculture 302
in accordance with section 4707.16 of the Revised Code. The 303
verified complaint shall include an application to the department 304
that requests recovery of the applicant's actual and direct losses 305
and that is made on forms that the department provides. The 306
application for recovery shall specify the nature of the act or 307
transaction on which the applicant's claim is based, the actual 308
and direct losses sustained by the applicant, and any activities 309
that the applicant has pursued as a remedy for the losses. 310

(B) Upon receipt of a verified compliant and application, the 311
department shall conduct an investigation in accordance with 312
section 4707.16 of the Revised Code. After the investigation, if 313
the department determines that the licensee has engaged in conduct 314
described in section 4707.15 of the Revised Code or otherwise has 315
violated this chapter or rules adopted under it, the department 316
shall propose to take action to suspend or revoke the licensee's 317
license under section 4707.15 of the Revised Code or to initiate a 318
criminal action against the licensee under section 4707.99 of the 319
Revised Code, or both. The department shall issue a letter to the 320
applicant indicating the department's proposed action and the date 321
of any hearing that the department has scheduled regarding the 322
matter. 323

(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. 324
325
326
327
328
329
330
331
332
333
334
335

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. 336
337
338
339
340
341
342
343
344
345
346
347

(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: 348
349
350
351
352

(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. 353
354
355

(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. 356
357
358
359

(3) The applicant filed a verified complaint and application with the department as required by this section. 360
361

(4) The applicant is not the spouse of the licensee nor the personal representative of the licensee's spouse. 362
363

(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. 364
365
366
367
368

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. 369
370
371
372
373

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. 374
375
376
377
378

(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. 379
380
381
382
383
384

Not later than ten days after receiving such a copy, the applicant may file with the department written objections to the 385
386

report and recommendation. The department may grant extensions of
time to the applicant within which to file objections.

387
388

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.

389
390
391
392

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.

393
394
395
396
397
398
399
400

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.

401
402
403
404
405
406

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.

407
408
409
410
411
412
413
414

(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

415
416
417

recovery fund or who receives an award less than the award 418
requested may appeal the order of the director. Notices of appeal 419
shall be filed in the manner provided in section 119.12 of the 420
Revised Code. 421

Sec. 4707.261. A person who obtains a final judgment in a 422
court of competent jurisdiction against a person licensed under 423
this chapter, on the grounds of conduct by the licensee that is 424
described in section 4707.15 of the Revised Code or that otherwise 425
violates this chapter or rules adopted under it and that is 426
associated with an act or transaction that only a licensee 427
lawfully may perform, may file a verified application in a court 428
of common pleas for an order directing payment from the auction 429
recovery fund. The application shall be accompanied by the 430
judgment entry and may seek payment in an amount that is equal to 431
the portion of the judgment that remains unpaid. 432

The application shall specify the nature of the act or 433
transaction on which the underlying judgment was based, the 434
activities of the applicant in pursuit of remedies available under 435
the law for the collection of judgments, and the actual and direct 436
losses sustained by the applicant. The applicant shall attach to 437
the application a copy of each pleading and order in the 438
underlying court action. In addition, the application shall 439
include proof of the applicant's actual and direct loss. 440

Whenever possible, the court shall require all applicants and 441
prospective applicants whose claims to the fund arose from an 442
underlying judgment against the same licensee to be joined in one 443
action under this section so that the rights of all applicants may 444
be equitably adjudicated and settled. 445

Sec. 4707.262. A person who has sustained actual and direct 446
losses in the course of a real estate auction transaction and who 447

believes that they may qualify to seek recovery for the losses 448
from the real estate recovery fund in accordance with section 449
4735.12 of the Revised Code or from the auction recovery fund 450
shall apply to a court of competent jurisdiction for a 451
determination of the fund from which the person should seek 452
recovery if either or both of the following apply: 453

(A) The transaction involves both of the following: 454

(1) A violation of Chapter 4735. of the Revised Code; 455

(2) A violation of this chapter or rules adopted under it or 456
conduct that is described in section 4707.15 of the Revised Code. 457

(B) The person is unclear as to the fund from which recovery 458
should be sought. 459

Upon receipt of an application under this section, the court 460
shall determine whether it appears that conduct or a violation 461
described in division (A) of this section occurred and also shall 462
determine, in its discretion, the appropriate fund from which the 463
person should seek recovery and notify the person of the 464
determination. 465

In the event that the court determines the person is able to 466
recover from both the real estate recovery fund and the auction 467
recovery fund, the total aggregate amount that is paid to the 468
person from both the funds shall not exceed the actual and direct 469
losses sustained by the person. In addition, the total aggregate 470
amount that is paid to the person from both the funds shall not 471
exceed the dollar limitations established in section 4707.29 of 472
the Revised Code, and the portion of that total aggregate amount 473
that is paid from the real estate recovery fund shall not exceed 474
the dollar limitations established in division (D) of section 475
4735.12 of the Revised Code. 476

For purposes of division (B)(4)(d) of section 4735.12 of the 477
Revised Code, with respect to recovery from the real estate 478

recovery fund, a person shall not be required first to seek 479
recovery from the auction recovery fund in order to be considered 480
to have diligently pursued the person's remedies. 481

Sec. 4707.27. A person who applies to a court of common pleas 482
for an order directing payment from the auction recovery fund 483
under section 4707.261 of the Revised Code shall file notice of 484
the application with the director of agriculture. The director may 485
defend any such action on behalf of the fund and shall have 486
recourse to all appropriate means of defense and review, including 487
examination of witnesses, verification of actual and direct 488
losses, and challenges to the underlying judgment obtained from a 489
court of competent jurisdiction to determine whether the 490
underlying judgment is based on activity that only a person 491
holding a valid license issued under this chapter is authorized to 492
perform. The director may move the court of common pleas at any 493
time to dismiss the application when it appears that there are no 494
triable issues and the application is without merit, provided that 495
the director shall give written notice to the applicant not fewer 496
than ten days before the motion is made. The motion may be 497
supported by affidavit of any person having knowledge of the facts 498
and may be made on the basis that the application, including the 499
underlying judgment referred to in it, does not form the basis for 500
a meritorious recovery claim. Subject to court approval, the 501
director may compromise a claim based on the application of the 502
aggrieved party. The director shall not be bound by any prior 503
compromise or stipulation of the licensee who is the judgment 504
debtor. 505

Sec. 4707.28. (A) After receipt of an application that is 506
filed under section 4707.261 of the Revised Code and that 507
satisfies the requirements established under that section, a court 508
of common pleas shall issue an order directing the director of 509

agriculture to make payment from the auction recovery fund to an 510
applicant who satisfies the criteria established under this 511
section. The payment shall consist of an amount that is equal to 512
the portion of the final judgment that was obtained by the 513
applicant against a person licensed under this chapter and that 514
remains unpaid. The amount of the payment is subject to the dollar 515
limitations established in section 4707.29 of the Revised Code. 516
517

The court shall issue an order directing payment to the 518
applicant from the fund when the applicant has shown all of the 519
following: 520

(1) The applicant has obtained a judgment in a court of 521
competent jurisdiction against a person licensed under this 522
chapter on the grounds of conduct that is described in section 523
4707.15 of the Revised Code or that otherwise violates this 524
chapter or rules adopted under it and that is associated with an 525
act or transaction that only a licensee lawfully may perform. 526

(2) All appeals from the judgment have been exhausted, and 527
the applicant has filed notice with the director in accordance 528
with section 4707.27 of the Revised Code and has otherwise 529
complied with that section. 530

(3) The applicant is not either the spouse of the licensee 531
who is the judgment debtor or the personal representative of the 532
spouse. 533

(4) The applicant has diligently pursued the applicant's 534
remedies against all judgment debtors and all other persons who 535
are liable to the applicant in the underlying auction transaction 536
for which the applicant seeks recovery from the fund. 537

(5) The applicant filed the application not later than six 538
months following the termination of all proceedings, including 539
appeals, in connection with the judgment. 540

(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. 541
542
543
544
545

(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: 546
547
548

(1) A bonding company that was not a party in the underlying auction transaction; 549
550

(2) A person holding a valid license issued under either this chapter or Chapter 4735. of the Revised Code; 551
552

(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; 553
554
555

(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. 556
557
558
559
560

(C) Punitive damages, attorney's fees, court costs, and interest on a judgment are not recoverable from the auction recovery fund. 561
562
563

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 564
565
566
567
568
569
570

dollars for losses involving violations committed by the licensee. 571
If a licensee's license is reactivated as provided in section 572
4707.30 of the Revised Code, the liability of the fund for the 573
licensee shall again be fifty thousand dollars, or twenty-five 574
thousand dollars if applicable, but only for transactions that 575
occur subsequent to the time of reactivation. 576

If fifty thousand dollars, or twenty-five thousand dollars if 577
applicable, are insufficient to pay the valid claims of all 578
persons who have applied for payment from the fund with respect to 579
losses involving violations committed by the same licensee, the 580
money shall be distributed among the persons in the ratio that 581
their respective claims bear to the aggregate of valid claims or 582
in another manner that the court or, if all the claims involve 583
applications filed under section 4707.26 or 4707.31 of the Revised 584
Code, the director of agriculture determines to be equitable. 585
Distribution of the money shall be among the persons entitled to 586
share in it without regard to the order of priority in which their 587
respective claims may have been decided or their applications for 588
payment from the fund may have been filed. 589

Sec. 4707.30. (A) As used in this section: 590

(1) "Aggrieved party" means a person who has sustained actual 591
and direct losses in an auction transaction involving a person 592
licensed under this chapter due to conduct by the licensee that is 593
described in section 4707.15 of the Revised Code or that otherwise 594
violates this chapter or rules adopted under it and that is 595
associated with an act or transaction that only a licensee 596
lawfully may perform. 597

(2) "Offending licensee" means a person licensed under this 598
chapter who fits either of the following descriptions: 599

(a) Against whom an aggrieved party has obtained a final 600
judgment in a court of competent jurisdiction and whose failure to 601

pay all or a portion of the judgment results in a payment to the
aggrieved party from the auction recovery fund;

602
603

(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.

604
605
606

(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.

607
608
609
610
611
612
613
614
615
616
617
618
619
620
621

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.

622
623
624
625
626
627
628
629
630
631
632

With respect to the amount of a payment that the director has

633

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.

634
635
636
637
638
639
640
641

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.

642
643
644
645
646
647

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:

648
649
650
651
652
653

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

654
655

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

656
657

(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.

658
659
660
661

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

662
663

(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. 664
665
666
667

(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. 668
669
670
671
672

Section 2. That existing sections 4707.05, 4707.07, 4707.072, 4707.09, and 4707.19 of the Revised Code are hereby repealed. 673
674

Section 3. That section 4707.11 of the Revised Code is hereby repealed, effective July 1, 2003. 675
676

Section 4. Sections 4707.07, 4707.072, 4707.09, 4707.11, 4707.26, 4707.261, 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. 677
678
679
680

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: 681
682
683

"Sec. 17. AGR DEPARTMENT OF AGRICULTURE 684

General Revenue Fund 685

| | | | | | |
|------------------------------------|----|-----------|----|-----------|-----|
| GRF 700-321 Operating Expenses | \$ | 3,160,884 | \$ | 3,334,073 | 686 |
| GRF 700-401 Animal Disease Control | \$ | 4,340,887 | \$ | 4,385,108 | 687 |
| GRF 700-402 Amusement Ride Safety | \$ | 226,451 | \$ | 230,769 | 688 |
| GRF 700-403 Dairy Division | \$ | 1,569,097 | \$ | 1,707,877 | 689 |
| GRF 700-404 Ohio Proud | \$ | 222,856 | \$ | 228,266 | 690 |
| GRF 700-405 Animal Damage Control | \$ | 86,780 | \$ | 84,358 | 691 |

As Reported by the House Finance and Appropriations Committee

| | | | | | | |
|-------------|---|----|------------|----|------------|-----|
| GRF 700-406 | Consumer Analytical Lab | \$ | 889,058 | \$ | 900,001 | 692 |
| GRF 700-407 | Food Safety | \$ | 1,422,998 | \$ | 1,377,956 | 693 |
| GRF 700-409 | Farmland Preservation | \$ | 150,000 | \$ | 320,000 | 694 |
| GRF 700-410 | Plant Industry | \$ | 1,517,969 | \$ | 1,561,620 | 695 |
| GRF 700-411 | International Trade and Market Development | \$ | 789,620 | \$ | 598,062 | 696 |
| GRF 700-412 | Weights and Measures | \$ | 991,136 | \$ | 996,634 | 697 |
| GRF 700-413 | Gypsy Moth Prevention | \$ | 633,214 | \$ | 634,279 | 698 |
| GRF 700-414 | Concentrated Animal Feeding Facilities Advisory Committee | \$ | 23,275 | \$ | 22,663 | 699 |
| GRF 700-415 | Poultry Inspection | \$ | 322,256 | \$ | 320,960 | 700 |
| GRF 700-418 | Livestock Regulation Program | \$ | 1,357,487 | \$ | 1,563,898 | 701 |
| GRF 700-424 | Livestock Testing and Inspections | \$ | 229,996 | \$ | 228,438 | 702 |
| GRF 700-499 | Meat Inspection Program - State Share | \$ | 4,654,566 | \$ | 4,977,168 | 703 |
| GRF 700-501 | County Agricultural Societies | \$ | 466,842 | \$ | 466,842 | 704 |
| GRF 700-503 | Swine and Cattle Breeder Awards | \$ | 113,160 | \$ | 107,076 | 705 |
| TOTAL GRF | General Revenue Fund | \$ | 23,168,532 | \$ | 24,046,048 | 706 |
| | Federal Special Revenue Fund Group | | | | | 707 |
| 3J4 700-607 | Indirect Cost | \$ | 1,380,026 | \$ | 1,314,020 | 708 |
| 3R2 700-614 | Federal Plant Industry | \$ | 1,607,887 | \$ | 1,682,330 | 709 |
| 326 700-618 | Meat Inspection Service - Federal Share | \$ | 4,401,707 | \$ | 4,959,973 | 710 |
| 336 700-617 | Ohio Farm Loan Revolving Fund | \$ | 181,774 | \$ | 181,774 | 711 |
| 382 700-601 | Cooperative Contracts | \$ | 1,027,692 | \$ | 1,091,347 | 712 |

As Reported by the House Finance and Appropriations Committee

| | | | | |
|---|-----------|-----------|-------------------|-----|
| TOTAL FED Federal Special Revenue | | | | 713 |
| Fund Group | \$ | 8,599,086 | \$ 9,229,444 | 714 |
| State Special Revenue Fund Group | | | | 715 |
| 4C9 700-605 Feed, Fertilizer, and Lime Inspection | \$ | 909,033 | \$ 975,244 | 716 |
| 4D2 700-609 Auction Education | \$ | 30,476 | \$ 30,476 | 717 |
| 4E4 700-606 Utility Radiological Safety | \$ | 69,016 | \$ 73,059 | 718 |
| 4P7 700-610 Food Safety Inspection | \$ | 559,611 | \$ 575,797 | 719 |
| 4R0 700-636 Ohio Proud Marketing | \$ | 125,297 | \$ 133,614 | 720 |
| 4R2 700-637 Dairy Inspection Fund | \$ | 1,183,358 | \$ 1,174,591 | 721 |
| 4T6 700-611 Poultry and Meat Inspection | \$ | 47,294 | \$ 47,294 | 722 |
| 4T7 700-613 International Trade and Market Development Rotary | \$ | 161,991 | \$ 166,356 | 723 |
| 4V5 700-615 Animal Industry Lab Fees | \$ | 626,633 | \$ 633,097 | 724 |
| 493 700-603 Fruits and Vegetables Inspection Fees | \$ | 212,764 | \$ 171,772 | 725 |
| 494 700-612 Agricultural Commodity Marketing Program | \$ | 166,536 | \$ 169,867 | 726 |
| 496 700-626 Ohio Grape Industries | \$ | 1,048,667 | \$ 1,071,099 | 727 |
| 497 700-627 Commodity Handlers Regulatory Program | \$ | 566,862 | \$ 648,616 | 728 |
| 5B8 700-628 Auctioneers | \$ | 286,769 | \$ 365,390 | 729 |
| 5H2 700-608 Metrology Lab | \$ | 74,674 | \$ 138,624 | 730 |
| 5L8 700-604 Livestock Management Program | \$ | 250,000 | \$ 250,000 | 731 |
| <u>5U1 700-624 Auction Recovery Fund</u> | <u>\$</u> | <u>0</u> | <u>\$ 500,000</u> | 732 |
| 578 700-620 Ride Inspection Fees | \$ | 634,099 | \$ 650,774 | 733 |
| 579 700-630 Scale Certification | \$ | 230,047 | \$ 230,047 | 734 |
| 652 700-634 Laboratory Services | \$ | 1,179,560 | \$ 1,144,766 | 735 |

As Reported by the House Finance and Appropriations Committee

| | | | | | |
|---------------------------------|----|------------|----|-----------------------|-----|
| 669 700-635 Pesticide Program | \$ | 2,108,049 | \$ | 2,181,491 | 736 |
| TOTAL SSR State Special Revenue | | | | | 737 |
| Fund Group | \$ | 10,470,236 | \$ | 10,831,974 | 738 |
| | | | | <u>11,331,974</u> | 739 |
| TOTAL ALL BUDGET FUND GROUPS | \$ | 42,238,354 | \$ | 44,107,466 | 740 |
| | | | | <u>44,607,466</u> | 741 |

ANIMAL DISEASE CONTROL 742

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. 743-746

REIMBURSEMENT TO THE GENERAL REVENUE FUND 747

(A) On or before June 30, 2003, the Director of Budget and Management shall determine the following: 748-749

(1) The total amount disbursed from the foregoing appropriation item, 700-409, Farmland Preservation, in the 2002-2003 biennium; and 750-752

(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. 753-755

(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. 756-761

THE AUCTION FUND 762

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 763-765

As Reported by the House Finance and Appropriations Committee

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

As Reported by the House Finance and Appropriations Committee

administered by the Department of Agriculture under sections 797
4707.25 to 4707.30 of the Revised Code as enacted by this act. 798

Section 8. Sections 5 to 8 of this act are not subject to the 799
referendum. Therefore, under the Ohio Constitution, Article II, 800
Section 1d and section 1.471 of the Revised Code, Sections 5 to 8 801
of this act go into immediate effect when this act becomes law. 802