

AN ACT

To amend sections 307.12, 505.10, 4707.02, 4707.20, 4707.21, and 4707.26 of the Revised Code to exempt certain tax exempt organizations and schools that sell donated items at auction from license and contract requirements for the auction, to require those organizations and schools to maintain auction records for two years, to preclude claims against the Auction Recovery Fund for any loss associated with those types of auctions, and to reduce from fifteen to ten days the minimum bidding period for internet auctions of certain township or county personal property.

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

SECTION 1. That sections 307.12, 505.10, 4707.02, 4707.20, 4707.21, and 4707.26 of the Revised Code be amended to read as follows:

Sec. 307.12. (A) Except as otherwise provided in divisions (D), (E), and (G) of this section, when the board of county commissioners finds, by resolution, that the county has personal property, including motor vehicles acquired for the use of county officers and departments, and road machinery, equipment, tools, or supplies, ~~which~~ that is not needed for public use, is obsolete, or is unfit for the use for which it was acquired, and when the fair market value of the property to be sold or donated under this division is, in the opinion of the board, in excess of two thousand five hundred dollars, the board may do either of the following:

(1) Sell the property at public auction or by sealed bid to the highest bidder. Notice of the time, place, and manner of the sale shall be published in a newspaper of general circulation in the county at least ten days prior to the sale, and a typewritten or printed notice of the time, place, and manner of the sale shall be posted at least ten days before the sale in the offices of the county auditor and the board of county commissioners.

If a board conducts a sale of property by sealed bid, the form of the bid

shall be as prescribed by the board, and each bid shall contain the name of the person submitting it. Bids received shall be opened and tabulated at the time stated in the notice. The property shall be sold to the highest bidder, except that the board may reject all bids and hold another sale, by public auction or sealed bid, in the manner prescribed by this section.

(2) Donate any motor vehicle that does not exceed four thousand five hundred dollars in value to a nonprofit organization exempt from federal income taxation pursuant to 26 U.S.C. 501(a) and (c)(3) for the purpose of meeting the transportation needs of participants in the Ohio works first program established under Chapter 5107. of the Revised Code and participants in the prevention, retention, and contingency program established under Chapter 5108. of the Revised Code.

(B) When the board of county commissioners finds, by resolution, that the county has personal property, including motor vehicles acquired for the use of county officers and departments, and road machinery, equipment, tools, or supplies, ~~which that~~ is not needed for public use, is obsolete, or is unfit for the use for which it was acquired, and when the fair market value of the property to be sold or donated under this division is, in the opinion of the board, two thousand five hundred dollars or less, the board may do either of the following:

(1) Sell the property by private sale, without advertisement or public notification;

(2) Donate the property to an eligible nonprofit organization that is located in this state and is exempt from federal income taxation pursuant to 26 U.S.C. 501(a) and (c)(3). Before donating any property under this division, the board shall adopt a resolution expressing its intent to make unneeded, obsolete, or unfit-for-use county personal property available to these organizations. The resolution shall include guidelines and procedures the board considers necessary to implement a donation program under this division and shall indicate whether the county will conduct the donation program or the board will contract with a representative to conduct it. If a representative is known when the resolution is adopted, the resolution shall provide contact information such as the representative's name, address, and telephone number.

The resolution shall include within its procedures a requirement that any nonprofit organization desiring to obtain donated property under this division shall submit a written notice to the board or its representative. The written notice shall include evidence that the organization is a nonprofit organization that is located in this state and is exempt from federal income taxation pursuant to 26 U.S.C. 501(a) and (c)(3); a description of the

organization's primary purpose; a description of the type or types of property the organization needs; and the name, address, and telephone number of a person designated by the organization's governing board to receive donated property and to serve as its agent.

After adoption of the resolution, the board shall publish, in a newspaper of general circulation in the county, notice of its intent to donate unneeded, obsolete, or unfit-for-use county personal property to eligible nonprofit organizations. The notice shall include a summary of the information provided in the resolution and shall be published at least twice. The second and any subsequent notice shall be published not less than ten nor more than twenty days after the previous notice. A similar notice also shall be posted continually in a conspicuous place in the offices of the county auditor and the board of county commissioners, and, if the county maintains a web site on the internet, the notice shall be posted continually at that web site.

The board or its representative shall maintain a list of all nonprofit organizations that notify the board or its representative of their desire to obtain donated property under this division and that the board or its representative determines to be eligible, in accordance with the requirements set forth in this section and in the donation program's guidelines and procedures, to receive donated property.

The board or its representatives also shall maintain a list of all county personal property the board finds to be unneeded, obsolete, or unfit for use and to be available for donation under this division. The list shall be posted continually in a conspicuous location in the offices of the county auditor and the board of county commissioners, and, if the county maintains a web site on the internet, the list shall be posted continually at that web site. An item of property on the list shall be donated to the eligible nonprofit organization that first declares to the board or its representative its desire to obtain the item unless the board previously has established, by resolution, a list of eligible nonprofit organizations that shall be given priority with respect to the item's donation. Priority may be given on the basis that the purposes of a nonprofit organization have a direct relationship to specific public purposes of programs provided or administered by the board. A resolution giving priority to certain nonprofit organizations with respect to the donation of an item of property shall specify the reasons why the organizations are given that priority.

(C) Members of the board of county commissioners shall consult with the Ohio ethics commission, and comply with the provisions of Chapters 102. and 2921. of the Revised Code, with respect to any sale or donation under division (A) or (B) of this section to a nonprofit organization of which

a county commissioner, any member of the county commissioner's family, or any business associate of the county commissioner is a trustee, officer, board member, or employee.

(D) Notwithstanding anything to the contrary in division (A), (B), or (E) of this section and regardless of the property's value, the board of county commissioners may sell or donate county personal property, including motor vehicles, to the federal government, the state, or any political subdivision of the state without advertisement or public notification.

(E) Notwithstanding anything to the contrary in division (A), (B), or (G) of this section and regardless of the property's value, the board of county commissioners may sell personal property, including motor vehicles acquired for the use of county officers and departments, and road machinery, equipment, tools, or supplies, ~~which~~ that is not needed for public use, is obsolete, or is unfit for the use for which it was acquired, by internet auction. The board shall adopt, during each calendar year, a resolution expressing its intent to sell that property by internet auction. The resolution shall include a description of how the auctions will be conducted and shall specify the number of days for bidding on the property, which shall be no less than ~~fifteen~~ ten days, including Saturdays, Sundays, and legal holidays. The resolution shall indicate whether the county will conduct the auction or the board will contract with a representative to conduct the auction and shall establish the general terms and conditions of sale. If a representative is known when the resolution is adopted, the resolution shall provide contact information such as the representative's name, address, and telephone number.

After adoption of the resolution, the board shall publish, in a newspaper of general circulation in the county, notice of its intent to sell unneeded, obsolete, or unfit-for-use county personal property by internet auction. The notice shall include a summary of the information provided in the resolution and shall be published at least twice. The second and any subsequent notice shall be published not less than ten nor more than twenty days after the previous notice. A similar notice also shall be posted continually throughout the calendar year in a conspicuous place in the offices of the county auditor and the board of county commissioners, and, if the county maintains a web site on the internet, the notice shall be posted continually throughout the calendar year at that web site.

When property is to be sold by internet auction, the board or its representative may establish a minimum price that will be accepted for specific items and may establish any other terms and conditions for the particular sale, including requirements for pick-up or delivery, method of

payment, and sales tax. This type of information shall be provided on the internet at the time of the auction and may be provided before that time upon request after the terms and conditions have been determined by the board or its representative.

(F) When a county officer or department head determines that county-owned personal property under the jurisdiction of the officer or department head, including motor vehicles, road machinery, equipment, tools, or supplies, is not of immediate need, the county officer or department head may notify the board of county commissioners, and the board may lease that personal property to any municipal corporation, township, or other political subdivision of the state. The lease shall require the county to be reimbursed under terms, conditions, and fees established by the board, or under contracts executed by the board.

(G) If the board of county commissioners finds, by resolution, that the county has vehicles, equipment, or machinery ~~which~~ that is not needed, or is unfit for public use, and the board desires to sell the vehicles, equipment, or machinery to the person or firm from which it proposes to purchase other vehicles, equipment, or machinery, the board may offer to sell the vehicles, equipment, or machinery to that person or firm, and to have the selling price credited to the person or firm against the purchase price of other vehicles, equipment, or machinery.

(H) If the board of county commissioners advertises for bids for the sale of new vehicles, equipment, or machinery to the county, it may include in the same advertisement a notice of the willingness of the board to accept bids for the purchase of county-owned vehicles, equipment, or machinery ~~which~~ that is obsolete or not needed for public use, and to have the amount of those bids subtracted from the selling price of the other vehicles, equipment, or machinery as a means of determining the lowest responsible bidder.

(I) If a board of county commissioners determines that county personal property is not needed for public use, or is obsolete or unfit for the use for which it was acquired, and that the property has no value, the board may discard or salvage that property.

(J) A county engineer, in the engineer's discretion, may dispose of scrap construction materials on such terms as the engineer determines reasonable, including disposal without recovery of costs, if the total value of the materials does not exceed twenty-five thousand dollars. The engineer shall maintain records of all dispositions made under this division, including identification of the origin of the materials, the final disposition, and copies of all receipts resulting from the dispositions.

As used in division (I) of this section, "scrap construction materials" means construction materials that result from a road or bridge improvement, remain after the improvement is completed, and are not reusable. Construction material that is metal and that results from a road or bridge improvement and remains after the improvement is completed is scrap construction material only if it cannot be used in any other road or bridge improvement or other project in its current state.

Sec. 505.10. (A) The board of township trustees may accept, on behalf of the township, the donation by bequest, devise, deed of gift, or otherwise, of any real or personal property for any township use. When the township has property, including motor vehicles, road machinery, equipment, and tools, ~~which~~ that the board, by resolution, finds is not needed for public use, is obsolete, or is unfit for the use for which it was acquired, the board may sell and convey that property or otherwise dispose of it in accordance with this section. Except as otherwise provided in sections 505.08, 505.101, and 505.102 of the Revised Code, the sale or other disposition of unneeded, obsolete, or unfit-for-use property shall be made in accordance with one of the following:

(1) If the fair market value of property to be sold is, in the opinion of the board, in excess of two thousand five hundred dollars, the sale shall be by public auction or by sealed bid to the highest bidder. The board shall publish notice of the time, place, and manner of the sale once a week for three weeks in a newspaper published, or of general circulation, in the township, the last of those publications to be at least five days before the date of sale, and shall post a typewritten or printed notice of the time, place, and manner of the sale in the office of the board for at least ten days prior to the sale.

If the board conducts the sale of the property by sealed bid, the form of the bid shall be as prescribed by the board, and each bid shall contain the name of the person submitting it. Bids received shall be opened and tabulated at the time stated in the published and posted notices. The property shall be sold to the highest bidder, except that the board may reject all bids and hold another sale, by public auction or sealed bid, in the manner prescribed by this section.

(2) If the fair market value of property to be sold is, in the opinion of the board, two thousand five hundred dollars or less, the board may do either of the following:

(a) Sell the property by private sale, without advertisement or public notification;

(b) Donate the property to an eligible nonprofit organization that is located in this state and is exempt from federal income taxation pursuant to

26 U.S.C. 501(a) and (c)(3). Before donating any property under this division, the board shall adopt a resolution expressing its intent to make unneeded, obsolete, or unfit-for-use township property available to these organizations. The resolution shall include guidelines and procedures the board considers to be necessary to implement the donation program and shall indicate whether the township will conduct the donation program or the board will contract with a representative to conduct it. If a representative is known when the resolution is adopted, the resolution shall provide contact information such as the representative's name, address, and telephone number.

The resolution shall include within its procedures a requirement that any nonprofit organization desiring to obtain donated property under this division shall submit a written notice to the board or its representative. The written notice shall include evidence that the organization is a nonprofit organization that is located in this state and is exempt from federal income taxation pursuant to 26 U.S.C. 501(a) and (c)(3); a description of the organization's primary purpose; a description of the type or types of property the organization needs; and the name, address, and telephone number of a person designated by the organization's governing board to receive donated property and to serve as its agent.

After adoption of the resolution, the board shall publish, in a newspaper of general circulation in the township, notice of its intent to donate unneeded, obsolete, or unfit-for-use township property to eligible nonprofit organizations. The notice shall include a summary of the information provided in the resolution and shall be published at least twice. The second and any subsequent notice shall be published not less than ten nor more than twenty days after the previous notice. A similar notice also shall be posted continually in the board's office, and, if the township maintains a web site on the internet, the notice shall be posted continually at that web site.

The board or its representatives shall maintain a list of all nonprofit organizations that notify the board or its representative of their desire to obtain donated property under this division and that the board or its representative determines to be eligible, in accordance with the requirements set forth in this section and in the donation program's guidelines and procedures, to receive donated property.

The board or its representative also shall maintain a list of all township property the board finds to be unneeded, obsolete, or unfit for use and to be available for donation under this division. The list shall be posted continually in a conspicuous location in the board's office, and, if the township maintains a web site on the internet, the list shall be posted

continually at that web site. An item of property on the list shall be donated to the eligible nonprofit organization that first declares to the board or its representative its desire to obtain the item unless the board previously has established, by resolution, a list of eligible nonprofit organizations that shall be given priority with respect to the item's donation. Priority may be given on the basis that the purposes of a nonprofit organization have a direct relationship to specific public purposes of programs provided or administered by the board. A resolution giving priority to certain nonprofit organizations with respect to the donation of an item of property shall specify the reasons why the organizations are given that priority.

(3) If the board finds, by resolution, that the township has motor vehicles, road machinery, equipment, or tools ~~which that~~ are not needed or are unfit for public use, and the board wishes to sell the motor vehicles, road machinery, equipment, or tools to the person or firm from which it proposes to purchase other motor vehicles, road machinery, equipment, or tools, the board may offer to sell the motor vehicles, road machinery, equipment, or tools to that person or firm, and to have the selling price credited to the person or firm against the purchase price of other motor vehicles, road machinery, equipment, or tools.

(4) If the board advertises for bids for the sale of new motor vehicles, road machinery, equipment, or tools to the township, it may include in the same advertisement a notice of the willingness of the board to accept bids for the purchase of township-owned motor vehicles, road machinery, equipment, or tools ~~which that~~ are obsolete or not needed for public use, and to have the amount of those bids subtracted from the selling price of the new motor vehicles, road machinery, equipment, or tools, as a means of determining the lowest responsible bidder.

(5) When a township has title to real property, the board of township trustees, by resolution, may authorize the transfer and conveyance of that property to any other political subdivision of the state upon such terms as are agreed to between the board and the legislative authority of that political subdivision.

(6) When a township has title to real property and the board of township trustees wishes to sell or otherwise transfer the property, the board, upon a unanimous vote of its members and by resolution, may authorize the transfer and conveyance of that real property to any person upon whatever terms are agreed to between the board and that person.

(7) If the board of township trustees determines that township personal property is not needed for public use, or is obsolete or unfit for the use for which it was acquired, and that the property has no value, the board may

discard or salvage that property.

(B) When the board has offered property at public auction under this section and has not received an acceptable offer, the board, by resolution, may enter into a contract, without advertising or bidding, for the sale of that property. The resolution shall specify a minimum acceptable price and the minimum acceptable terms for the contract. The minimum acceptable price shall not be lower than the minimum price established for the public auction.

(C) Members of the board shall consult with the Ohio ethics commission and comply with the provisions of Chapters 102. and 2921. of the Revised Code, with respect to any sale or donation under division (A)(2) of this section to a nonprofit organization of which a township trustee, any member of the township trustee's family, or any business associate of the township trustee is a trustee, officer, board member, or employee.

(D) Notwithstanding anything to the contrary in division (A) or (B) of this section and regardless of the property's value, the board may sell personal property, including motor vehicles, road machinery, equipment, tools, or supplies, ~~which that~~ is not needed for public use, is obsolete, or is unfit for the use for which it was acquired, by internet auction. The board shall adopt, during each calendar year, a resolution expressing its intent to sell that property by internet auction. The resolution shall include a description of how the auctions will be conducted and shall specify the number of days for bidding on the property, which shall be no less than ~~fifteen~~ ten days, including Saturdays, Sundays, and legal holidays. The resolution shall indicate whether the township will conduct the auction or the board will contract with a representative to conduct the auction and shall establish the general terms and conditions of sale. If a representative is known when the resolution is adopted, the resolution shall provide contact information such as the representative's name, address, and telephone number.

After adoption of the resolution, the board shall publish, in a newspaper of general circulation in the township, notice of its intent to sell unneeded, obsolete, or unfit-for-use township personal property by internet auction. The notice shall include a summary of the information provided in the resolution and shall be published at least twice. The second and any subsequent notice shall be published not less than ten nor more than twenty days after the previous notice. A similar notice also shall be posted continually throughout the calendar year in a conspicuous place in the board's office, and, if the township maintains a web site on the internet, the notice shall be posted continually throughout the calendar year at that web site.

When property is to be sold by internet auction, the board or its representative may establish a minimum price that will be accepted for specific items and may establish any other terms and conditions for the particular sale, including requirements for pick-up or delivery, method of payment, and sales tax. This type of information shall be provided on the internet at the time of the auction and may be provided before that time upon request, after the terms and conditions have been determined by the board or its representative.

Sec. 4707.02. (A) No person shall act as an auction firm, auctioneer, apprentice auctioneer, or special auctioneer within this state without a license issued by the department of agriculture. No auction shall be conducted in this state except by an auctioneer licensed by the department.

The department shall not issue or renew a license if the applicant or licensee has been convicted of a felony or crime involving fraud or theft in this or another state at any time during the ten years immediately preceding application or renewal.

~~This (B) Division (A) of this~~ section does not apply to any of the following:

~~(A)~~(1) Sales at auction that either are required by law to be at auction, other than sales pursuant to a judicial order or decree, or ~~that~~ are conducted by or under the direction of a public authority;

~~(B)~~(2) The owner of any real or personal property desiring to sell the property at auction, provided that the property was not acquired for the purpose of resale;

~~(C)~~(3) An auction mediation company;

~~(D)~~(4) An auction that is conducted in a course of study for auctioneers that is approved by the state auctioneers commission created under section 4707.03 of the Revised Code for purposes of student training and is supervised by a licensed auctioneer;

~~(E)~~(5)(a) An auction that is sponsored by a nonprofit or charitable organization that is registered in this state under Chapter 1702. or Chapter 1716. of the Revised Code, respectively, if the auction only involves the property of the members of the organization and the auction is part of a fair that is organized by an agricultural society under Chapter 1711. of the Revised Code or by the Ohio expositions commission under Chapter 991. of the Revised Code at which an auctioneer who is licensed under this chapter physically conducts the auction; or

(b) Sales at an auction sponsored by a charitable, religious, or civic organization that is tax exempt under subsection 501(c)(3) of the Internal Revenue Code, or by a public school, chartered nonpublic school, or

community school, if no person in the business of organizing, arranging, or conducting an auction for compensation and no consignor of consigned items sold at the auction, except such organization or school, receives compensation from the proceeds of the auction. As used in division (B)(5)(b) of this section, "compensation" means money, a thing of value other than participation in a charitable event, or a financial benefit.

~~(F)(6)~~ A person licensed as a livestock dealer under Chapter 943. of the Revised Code who exclusively sells livestock and uses an auctioneer who is licensed under this chapter to conduct the auction;

~~(G)(7)~~ A person licensed as a motor vehicle auction owner under Chapter 4517. of the Revised Code who exclusively sells motor vehicles to a person licensed under Chapter 4517. of the Revised Code and who uses an auctioneer who is licensed under this chapter to conduct the auction;

~~(H)(8)~~ A person who sells real or personal property by means of the internet.

(C)(1) No person shall advertise or hold oneself out as an auction firm, auctioneer, apprentice auctioneer, or special auctioneer without a license issued by the department of agriculture.

(2) Division (C)(1) of this section does not apply to an individual who is the subject of an advertisement regarding an auction conducted under division (B)(5)(b) of this section.

Sec. 4707.20. (A) ~~No~~ Except when conducting an auction under division (B)(5)(b) of section 4707.02 of the Revised Code, no person shall act as an auction firm, auctioneer, or special auctioneer until the person has first entered into a written contract or agreement in duplicate with the owner or consignee of any property to be sold, containing the terms and conditions upon which the licensee receives or accepts the property for sale at auction. The contracts or agreements shall, for a period of two years, be kept on file in the office of every person so licensed. No apprentice auctioneer shall be authorized to enter into such a contract or agreement without the written consent of the apprentice auctioneer's sponsoring auctioneer, and all contracts or agreements shall be made in the name of and on behalf of the sponsoring auctioneer. In addition, an apprentice auctioneer shall not enter into an auction contract for the sale of real property in the name of the sponsoring auctioneer regardless of whether the apprentice auctioneer is licensed as a real estate broker or salesperson.

(B) On all contracts or agreements between an auction firm, auctioneer, or special auctioneer and the owner or consignee, there shall appear a prominent statement indicating that the auction firm, auctioneer, or special auctioneer is licensed by the department of agriculture, and either that the

licensee is bonded in favor of the state or that an aggrieved person may initiate a claim against the auction recovery fund created in section 4707.25 of the Revised Code as a result of the licensee's actions, whichever is applicable.

(C) The auction firm, auctioneer, or special auctioneer who contracts with the owner is liable for the settlement of all money received, including the payment of all expenses incurred only by the licensee and the distribution of all funds, in connection with an auction.

(D) For purposes of this section, a contract or agreement shall specify all of the following:

(1) The owner of the property to be sold or the owner's agent or the consignee;

(2) The date of the auction or a termination date of the contract or agreement;

(3) The location of the auction;

(4) The terms and conditions of the auction;

(5) All of the fees to be charged by the auctioneer or the auction firm, which shall include commissions, rentals, advertising, and labor;

(6) An explanation of the settlement of the auction that includes the disbursement of interest money, if applicable;

(7) A statement establishing the responsibility for bad checks, debts, and unpaid auction items;

(8) A statement indicating whether the auction is a reserve auction or an absolute auction. In addition, the statement shall include the definition of reserve auction or absolute auction from section 4707.01 of the Revised Code, as applicable.

(9) A statement of the auctioneer's or auction firm's policy regarding absentee bidding;

(10) A brief description of the real or personal property to be sold;

(11) If the sale is of real or personal property at absolute auction, a statement affirming that the seller of the real or personal property has a bona fide intention to transfer ownership of the property to the highest bidder.

Sec. 4707.21. No auction firm, auctioneer, apprentice auctioneer, or special auctioneer shall willfully neglect or refuse to furnish the department of agriculture statistics or other information in the auction firm's, auctioneer's, apprentice auctioneer's, or special auctioneer's possession or under the auction firm's, auctioneer's, apprentice auctioneer's, or special auctioneer's control that the auction firm, auctioneer, apprentice auctioneer, or special auctioneer is authorized to collect; nor shall the auction firm, auctioneer, apprentice auctioneer, or special auctioneer neglect or refuse, for

more than thirty days, to answer questions submitted on circulars; nor shall the auction firm, auctioneer, apprentice auctioneer, or special auctioneer knowingly answer any such questions falsely; and nor shall the auction firm, auctioneer, apprentice auctioneer, or special auctioneer refuse to obey subpoenas and give testimony. Licensees, as well as charitable, religious, or civic organizations and schools that sponsor an auction under division (B)(5)(b) of section 4707.02 of the Revised Code, shall keep records relative to any auction sale for at least two years from ~~the~~ its date ~~of auction~~. These records shall include settlement sheets, written contracts, and copies of any advertising that lists the items for auction, as applicable.

Sec. 4707.26. (A)(1) A person who asserts that the person has 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 all 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.

(c) The licensee is not an auction firm.

(d) The loss was not associated with an auction conducted under division (B)(5)(b) of section 4707.02 of the Revised Code.

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~~ or 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.

SECTION 2. That existing sections 307.12, 505.10, 4707.02, 4707.20, 4707.21, and 4707.26 of the Revised Code are hereby repealed.

SECTION 3. Section 505.10 of the Revised Code is presented in this act as a composite of the section as amended by both Sub. H.B. 204 and Sub. H.B. 323 of the 125th General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

Sub. H. B. No. 48

127th G.A.

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 _____