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Representative Gibbs

**Cosponsors: Representatives Fessler, Seitz, McGregor, J., Setzer, Brown,
Collier, Wagner, Wagoner, Combs, Aslanides, Bacon, Bolon, Chandler,
Driehaus, Evans, Flowers, Hagan, R., Hite, Schlichter, Batchelder, Blessing,
Domenick, Gardner, Hagan, J., Hughes, Luckie, Mecklenborg, Patton,
Raussen, Schindel, Schneider, Stewart, D., Wachtmann, Williams, B.,
Zehringer**

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A B I L L

To amend sections 4707.02, 4707.20, 4707.21, and 1
4707.26 of the Revised Code to exempt certain tax 2
exempt organizations and schools that sell at 3
auction items donated to them from license and 4
contract requirements for such an auction, to 5
require those organizations and schools to 6
maintain records of the auction for two years, and 7
to preclude claims against the Auction Recovery 8
Fund for any loss associated with those types of 9
auctions. 10

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

Section 1. That sections 4707.02, 4707.20, 4707.21, and 11
4707.26 of the Revised Code be amended to read as follows: 12

Sec. 4707.02. No person shall act as an auction firm, 13
auctioneer, apprentice auctioneer, or special auctioneer within 14

this state without a license issued by the department of 15
agriculture. No auction shall be conducted in this state except by 16
an auctioneer licensed by the department. 17

The department shall not issue or renew a license if the 18
applicant or licensee has been convicted of a felony or crime 19
involving fraud or theft in this or another state at any time 20
during the ten years immediately preceding application or renewal. 21

This section does not apply to any of the following: 22

(A) Sales at auction that either are required by law to be at 23
auction, other than sales pursuant to a judicial order or decree, 24
or ~~that~~ are conducted by or under the direction of a public 25
authority; 26

(B) The owner of any real or personal property desiring to 27
sell the property at auction, provided that the property was not 28
acquired for the purpose of resale; 29

(C) An auction mediation company; 30

(D) An auction that is conducted in a course of study for 31
auctioneers that is approved by the state auctioneers commission 32
created under section 4707.03 of the Revised Code for purposes of 33
student training and is supervised by a licensed auctioneer; 34

(E)(1) An auction that is sponsored by a nonprofit or 35
charitable organization that is registered in this state under 36
Chapter 1702. or Chapter 1716. of the Revised Code, respectively, 37
if the auction only involves the property of the members of the 38
organization and the auction is part of a fair that is organized 39
by an agricultural society under Chapter 1711. of the Revised Code 40
or by the Ohio expositions commission under Chapter 991. of the 41
Revised Code at which an auctioneer who is licensed under this 42
chapter physically conducts the auction; 43

(2) Sales at an auction sponsored by a charitable, religious, 44

or civic organization that is tax exempt under subsection 45
501(c)(3) of the Internal Revenue Code, or by a public school, 46
chartered nonpublic school, or community school, if the auction is 47
conducted by a licensed auctioneer, no person is compensated for 48
organizing, arranging, or conducting the auction, and all the 49
items sold at the auction are donated. 50

(F) A person licensed as a livestock dealer under Chapter 51
943. of the Revised Code who exclusively sells livestock and uses 52
an auctioneer who is licensed under this chapter to conduct the 53
auction; 54

(G) A person licensed as a motor vehicle auction owner under 55
Chapter 4517. of the Revised Code who exclusively sells motor 56
vehicles and who uses an auctioneer who is licensed under this 57
chapter to conduct the auction; 58

(H) A person who sells real or personal property by means of 59
the internet. 60

Sec. 4707.20. (A) ~~No~~ Except when conducting an auction under 61
division (E)(2) of section 4707.02 of the Revised Code, no person 62
shall act as an auction firm, auctioneer, or special auctioneer 63
until the person has first entered into a written contract or 64
agreement in duplicate with the owner or consignee of any property 65
to be sold, containing the terms and conditions upon which the 66
licensee receives or accepts the property for sale at auction. The 67
contracts or agreements shall, for a period of two years, be kept 68
on file in the office of every person so licensed. No apprentice 69
auctioneer shall be authorized to enter into such a contract or 70
agreement without the written consent of the apprentice 71
auctioneer's sponsoring auctioneer, and all contracts or 72
agreements shall be made in the name of and on behalf of the 73
sponsoring auctioneer. In addition, an apprentice auctioneer shall 74
not enter into an auction contract for the sale of real property 75

in the name of the sponsoring auctioneer regardless of whether the 76
apprentice auctioneer is licensed as a real estate broker or 77
salesperson. 78

(B) On all contracts or agreements between an auction firm, 79
auctioneer, or special auctioneer and the owner or consignee, 80
there shall appear a prominent statement indicating that the 81
auction firm, auctioneer, or special auctioneer is licensed by the 82
department of agriculture, and either that the licensee is bonded 83
in favor of the state or that an aggrieved person may initiate a 84
claim against the auction recovery fund created in section 4707.25 85
of the Revised Code as a result of the licensee's actions, 86
whichever is applicable. 87

(C) The auction firm, auctioneer, or special auctioneer who 88
contracts with the owner is liable for the settlement of all money 89
received, including the payment of all expenses incurred only by 90
the licensee and the distribution of all funds, in connection with 91
an auction. 92

(D) For purposes of this section, a contract or agreement 93
shall specify all of the following: 94

(1) The owner of the property to be sold or the owner's agent 95
or the consignee; 96

(2) The date of the auction or a termination date of the 97
contract or agreement; 98

(3) The location of the auction; 99

(4) The terms and conditions of the auction; 100

(5) All of the fees to be charged by the auctioneer or the 101
auction firm, which shall include commissions, rentals, 102
advertising, and labor; 103

(6) An explanation of the settlement of the auction that 104
includes the disbursement of interest money, if applicable; 105

(7) A statement establishing the responsibility for bad checks, debts, and unpaid auction items;	106 107
(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.	108 109 110 111
(9) A statement of the auctioneer's or auction firm's policy regarding absentee bidding;	112 113
(10) A brief description of the real or personal property to be sold;	114 115
(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.	116 117 118 119
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; <u>and</u> nor shall the auction firm, auctioneer, apprentice auctioneer, or special auctioneer refuse to obey subpoenas and give testimony. Licensees, <u>as well as charitable, religious, or civic organizations and schools that sponsor an auction under division (E)(2) of section</u>	120 121 122 123 124 125 126 127 128 129 130 131 132 133 134 135 136

4707.02 of the Revised Code, shall keep records relative to any 137
auction sale for at least two years from the its date of ~~of auction~~. 138
These records shall include settlement sheets, written contracts, 139
and copies of any advertising that lists the items for auction, as 140
applicable. 141

Sec. 4707.26. (A)(1) A person who asserts that the person has 142
been aggrieved by the actions of a person licensed under this 143
chapter that resulted in actual and direct losses to the aggrieved 144
person may initiate a claim against the auction recovery fund 145
either under this section or section 4707.261 of the Revised Code. 146
If an aggrieved person who wishes to seek recovery from the 147
auction recovery fund has obtained a final judgment in a court of 148
competent jurisdiction against the licensee, the aggrieved person 149
shall initiate the claim in accordance with section 4707.261 of 150
the Revised Code. If an aggrieved person who wishes to seek 151
recovery from the auction recovery fund has not obtained a final 152
judgment in a court of competent jurisdiction against the 153
licensee, the aggrieved person shall initiate the claim in 154
accordance with this section. 155

(2) An aggrieved person may initiate a claim against the 156
auction recovery fund under this section if all of the following 157
apply: 158

(a) The loss was associated with an act or transaction that 159
only a person licensed under this chapter lawfully may perform. 160

(b) The licensee's actions are described in section 4707.15 161
of the Revised Code or otherwise violate this chapter or rules 162
adopted under it. 163

(c) The licensee is not an auction firm. 164

(d) The loss was not associated with an auction conducted 165
under division (E)(2) of section 4707.02 of the Revised Code. 166

To initiate a claim against the fund, an aggrieved person 167
shall file a verified complaint with the department of agriculture 168
in accordance with section 4707.16 of the Revised Code. The 169
verified complaint shall include an application to the department 170
that requests recovery of the applicant's actual and direct losses 171
and that is made on forms that the department provides. The 172
application for recovery shall specify the nature of the act or 173
transaction on which the applicant's claim is based, the actual 174
and direct losses sustained by the applicant, and any activities 175
that the applicant has pursued as a remedy for the losses. 176

(B) Upon receipt of a verified complaint and application, the 177
department shall conduct an investigation in accordance with 178
section 4707.16 of the Revised Code. After the investigation, if 179
the department determines that the licensee has engaged in conduct 180
described in section 4707.15 of the Revised Code or otherwise has 181
violated this chapter or rules adopted under it, the department 182
shall propose to take action to suspend or revoke the licensee's 183
license under section 4707.15 of the Revised Code or to initiate a 184
criminal action against the licensee under section 4707.99 of the 185
Revised Code, or both. The department shall issue a letter to the 186
applicant indicating the department's proposed action and the date 187
of any hearing that the department has scheduled regarding the 188
matter. 189

(C) Upon exhaustion of administrative remedies or criminal 190
proceedings that results in a finding that the licensee has 191
engaged in conduct described in section 4707.15 of the Revised 192
Code or otherwise has violated this chapter or rules adopted under 193
it, the department shall issue a notice in accordance with Chapter 194
119. of the Revised Code via certified mail to the applicant 195
indicating that the applicant may request a hearing for relief 196
from the auction recovery fund. An applicant who seeks recovery 197
from the fund of any actual and direct losses suffered as a result 198

of a licensee's conduct shall submit, not later than thirty days 199
following receipt of the notice, a request for a hearing to the 200
department. 201

Upon the timely receipt of a request for a hearing, the 202
department shall provide the applicant with the opportunity to 203
appear at an adjudication hearing to offer proof and evidence of 204
the actual and direct losses. Whenever possible, the department 205
shall require all applicants whose claims to the fund arose from 206
an underlying transaction involving the same licensee to be joined 207
in one adjudication under this section so that the rights of all 208
applicants may be equitably adjudicated and settled. On behalf of 209
the fund, the department may defend claims against the fund and 210
shall have recourse to all appropriate means of defense and 211
review, including examination of witnesses, and verification of 212
actual losses. 213

(D) Upon the conclusion of the adjudication hearing, the 214
hearing officer shall issue a report and recommendation in favor 215
of making payment to an applicant from the fund if, during the 216
course of the adjudication hearing, all of the following have been 217
shown: 218

(1) The licensee has engaged in conduct described in section 219
4707.15 of the Revised Code or otherwise has violated this chapter 220
or rules adopted under it. 221

(2) The licensee's conduct or violation is associated with an 222
act that only a person licensed under this chapter lawfully may 223
perform and the act resulted in direct and actual losses to the 224
applicant. 225

(3) The applicant filed a verified complaint and application 226
with the department as required by this section. 227

(4) The applicant is not the spouse of the licensee ~~nor~~ or 228
the personal representative of the licensee's spouse. 229

(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 261
elapsed following the applicant's receipt of the report and 262
recommendation as provided by this section. The director's 263
approval, modification, or disapproval of the hearing officer's 264
recommendation shall have the same effect as if the hearing had 265
been conducted by the director. 266

No recommendation shall be final until approved, modified, or 267
disapproved by the director as indicated by the order entered on 268
the record of proceedings of the department. If the director 269
modifies or disapproves the recommendations of the hearing 270
officer, the director shall include in the record of the 271
proceedings the reasons for the modification or disapproval. 272

After an order is entered on its journal, the department 273
shall make payment, if applicable, to the applicant from the 274
auction recovery fund in accordance with the order and shall 275
provide to the applicant by certified mail, return receipt 276
requested, a copy of the order and a statement of the time and 277
method by which an appeal may be perfected. In addition, the 278
department shall mail a copy of the order to the attorney or other 279
representative of the applicant. 280

(F) An order of the director issued under this section 281
constitutes a final determination of the director for purposes of 282
appeal. An applicant who is denied compensation from the auction 283
recovery fund or who receives an award less than the award 284
requested may appeal the order of the director. Notices of appeal 285
shall be filed in the manner provided in section 119.12 of the 286
Revised Code. 287

Section 2. That existing sections 4707.02, 4707.20, 4707.21, 288
and 4707.26 of the Revised Code are hereby repealed. 289