

**As Passed by the Senate**

**127th General Assembly**

**Regular Session**

**2007-2008**

**Sub. H. B. No. 48**

**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**

**Senators Amstutz, Stivers, Miller, D., Kearney, Sawyer, Spada, Schaffer,  
Schuler, Carey, Faber, Grendell, Harris, Mason, Mumper, Niehaus, Seitz,  
Smith, Miller, R.**

**—**

**A B I L L**

To amend sections 307.12, 505.10, 4707.02, 4707.20, 1  
4707.21, and 4707.26 of the Revised Code to exempt 2  
certain tax exempt organizations and schools that 3  
sell donated items at auction from license and 4  
contract requirements for the auction, to require 5  
those organizations and schools to maintain 6  
auction records for two years, to preclude claims 7  
against the Auction Recovery Fund for any loss 8  
associated with those types of auctions, and to 9  
reduce from fifteen to ten days the minimum 10  
bidding period for internet auctions of certain 11  
township or county personal property. 12  
13

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

**Section 1.** That sections 307.12, 505.10, 4707.02, 4707.20, 14  
4707.21, and 4707.26 of the Revised Code be amended to read as 15  
follows: 16

**Sec. 307.12.** (A) Except as otherwise provided in divisions 17  
(D), (E), and (G) of this section, when the board of county 18  
commissioners finds, by resolution, that the county has personal 19  
property, including motor vehicles acquired for the use of county 20  
officers and departments, and road machinery, equipment, tools, or 21  
supplies, ~~which~~ that is not needed for public use, is obsolete, or 22  
is unfit for the use for which it was acquired, and when the fair 23  
market value of the property to be sold or donated under this 24  
division is, in the opinion of the board, in excess of two 25  
thousand five hundred dollars, the board may do either of the 26  
following: 27

(1) Sell the property at public auction or by sealed bid to 28  
the highest bidder. Notice of the time, place, and manner of the 29  
sale shall be published in a newspaper of general circulation in 30  
the county at least ten days prior to the sale, and a typewritten 31  
or printed notice of the time, place, and manner of the sale shall 32  
be posted at least ten days before the sale in the offices of the 33  
county auditor and the board of county commissioners. 34

If a board conducts a sale of property by sealed bid, the 35  
form of the bid shall be as prescribed by the board, and each bid 36  
shall contain the name of the person submitting it. Bids received 37  
shall be opened and tabulated at the time stated in the notice. 38  
The property shall be sold to the highest bidder, except that the 39  
board may reject all bids and hold another sale, by public auction 40  
or sealed bid, in the manner prescribed by this section. 41

(2) Donate any motor vehicle that does not exceed four 42  
thousand five hundred dollars in value to a nonprofit organization 43

exempt from federal income taxation pursuant to 26 U.S.C. 501(a) 44  
and (c)(3) for the purpose of meeting the transportation needs of 45  
participants in the Ohio works first program established under 46  
Chapter 5107. of the Revised Code and participants in the 47  
prevention, retention, and contingency program established under 48  
Chapter 5108. of the Revised Code. 49

(B) When the board of county commissioners finds, by 50  
resolution, that the county has personal property, including motor 51  
vehicles acquired for the use of county officers and departments, 52  
and road machinery, equipment, tools, or supplies, ~~which~~ that is 53  
not needed for public use, is obsolete, or is unfit for the use 54  
for which it was acquired, and when the fair market value of the 55  
property to be sold or donated under this division is, in the 56  
opinion of the board, two thousand five hundred dollars or less, 57  
the board may do either of the following: 58

(1) Sell the property by private sale, without advertisement 59  
or public notification; 60

(2) Donate the property to an eligible nonprofit organization 61  
that is located in this state and is exempt from federal income 62  
taxation pursuant to 26 U.S.C. 501(a) and (c)(3). Before donating 63  
any property under this division, the board shall adopt a 64  
resolution expressing its intent to make unneeded, obsolete, or 65  
unfit-for-use county personal property available to these 66  
organizations. The resolution shall include guidelines and 67  
procedures the board considers necessary to implement a donation 68  
program under this division and shall indicate whether the county 69  
will conduct the donation program or the board will contract with 70  
a representative to conduct it. If a representative is known when 71  
the resolution is adopted, the resolution shall provide contact 72  
information such as the representative's name, address, and 73  
telephone number. 74

The resolution shall include within its procedures a 75

requirement that any nonprofit organization desiring to obtain 76  
donated property under this division shall submit a written notice 77  
to the board or its representative. The written notice shall 78  
include evidence that the organization is a nonprofit organization 79  
that is located in this state and is exempt from federal income 80  
taxation pursuant to 26 U.S.C. 501(a) and (c)(3); a description of 81  
the organization's primary purpose; a description of the type or 82  
types of property the organization needs; and the name, address, 83  
and telephone number of a person designated by the organization's 84  
governing board to receive donated property and to serve as its 85  
agent. 86

After adoption of the resolution, the board shall publish, in 87  
a newspaper of general circulation in the county, notice of its 88  
intent to donate unneeded, obsolete, or unfit-for-use county 89  
personal property to eligible nonprofit organizations. The notice 90  
shall include a summary of the information provided in the 91  
resolution and shall be published at least twice. The second and 92  
any subsequent notice shall be published not less than ten nor 93  
more than twenty days after the previous notice. A similar notice 94  
also shall be posted continually in a conspicuous place in the 95  
offices of the county auditor and the board of county 96  
commissioners, and, if the county maintains a web site on the 97  
internet, the notice shall be posted continually at that web site. 98

The board or its representative shall maintain a list of all 99  
nonprofit organizations that notify the board or its 100  
representative of their desire to obtain donated property under 101  
this division and that the board or its representative determines 102  
to be eligible, in accordance with the requirements set forth in 103  
this section and in the donation program's guidelines and 104  
procedures, to receive donated property. 105

The board or its representatives also shall maintain a list 106  
of all county personal property the board finds to be unneeded, 107

obsolete, or unfit for use and to be available for donation under 108  
this division. The list shall be posted continually in a 109  
conspicuous location in the offices of the county auditor and the 110  
board of county commissioners, and, if the county maintains a web 111  
site on the internet, the list shall be posted continually at that 112  
web site. An item of property on the list shall be donated to the 113  
eligible nonprofit organization that first declares to the board 114  
or its representative its desire to obtain the item unless the 115  
board previously has established, by resolution, a list of 116  
eligible nonprofit organizations that shall be given priority with 117  
respect to the item's donation. Priority may be given on the basis 118  
that the purposes of a nonprofit organization have a direct 119  
relationship to specific public purposes of programs provided or 120  
administered by the board. A resolution giving priority to certain 121  
nonprofit organizations with respect to the donation of an item of 122  
property shall specify the reasons why the organizations are given 123  
that priority. 124

(C) Members of the board of county commissioners shall 125  
consult with the Ohio ethics commission, and comply with the 126  
provisions of Chapters 102. and 2921. of the Revised Code, with 127  
respect to any sale or donation under division (A) or (B) of this 128  
section to a nonprofit organization of which a county 129  
commissioner, any member of the county commissioner's family, or 130  
any business associate of the county commissioner is a trustee, 131  
officer, board member, or employee. 132

(D) Notwithstanding anything to the contrary in division (A), 133  
(B), or (E) of this section and regardless of the property's 134  
value, the board of county commissioners may sell or donate county 135  
personal property, including motor vehicles, to the federal 136  
government, the state, or any political subdivision of the state 137  
without advertisement or public notification. 138

(E) Notwithstanding anything to the contrary in division (A), 139

(B), or (G) of this section and regardless of the property's 140  
value, the board of county commissioners may sell personal 141  
property, including motor vehicles acquired for the use of county 142  
officers and departments, and road machinery, equipment, tools, or 143  
supplies, ~~which~~ that is not needed for public use, is obsolete, or 144  
is unfit for the use for which it was acquired, by internet 145  
auction. The board shall adopt, during each calendar year, a 146  
resolution expressing its intent to sell that property by internet 147  
auction. The resolution shall include a description of how the 148  
auctions will be conducted and shall specify the number of days 149  
for bidding on the property, which shall be no less than ~~fifteen~~ 150  
ten days, including Saturdays, Sundays, and legal holidays. The 151  
resolution shall indicate whether the county will conduct the 152  
auction or the board will contract with a representative to 153  
conduct the auction and shall establish the general terms and 154  
conditions of sale. If a representative is known when the 155  
resolution is adopted, the resolution shall provide contact 156  
information such as the representative's name, address, and 157  
telephone number. 158

After adoption of the resolution, the board shall publish, in 159  
a newspaper of general circulation in the county, notice of its 160  
intent to sell unneeded, obsolete, or unfit-for-use county 161  
personal property by internet auction. The notice shall include a 162  
summary of the information provided in the resolution and shall be 163  
published at least twice. The second and any subsequent notice 164  
shall be published not less than ten nor more than twenty days 165  
after the previous notice. A similar notice also shall be posted 166  
continually throughout the calendar year in a conspicuous place in 167  
the offices of the county auditor and the board of county 168  
commissioners, and, if the county maintains a web site on the 169  
internet, the notice shall be posted continually throughout the 170  
calendar year at that web site. 171

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 204  
county-owned vehicles, equipment, or machinery ~~which~~ that is 205  
obsolete or not needed for public use, and to have the amount of 206  
those bids subtracted from the selling price of the other 207  
vehicles, equipment, or machinery as a means of determining the 208  
lowest responsible bidder. 209

(I) If a board of county commissioners determines that county 210  
personal property is not needed for public use, or is obsolete or 211  
unfit for the use for which it was acquired, and that the property 212  
has no value, the board may discard or salvage that property. 213

(J) A county engineer, in the engineer's discretion, may 214  
dispose of scrap construction materials on such terms as the 215  
engineer determines reasonable, including disposal without 216  
recovery of costs, if the total value of the materials does not 217  
exceed twenty-five thousand dollars. The engineer shall maintain 218  
records of all dispositions made under this division, including 219  
identification of the origin of the materials, the final 220  
disposition, and copies of all receipts resulting from the 221  
dispositions. 222

As used in division (I) of this section, "scrap construction 223  
materials" means construction materials that result from a road or 224  
bridge improvement, remain after the improvement is completed, and 225  
are not reusable. Construction material that is metal and that 226  
results from a road or bridge improvement and remains after the 227  
improvement is completed is scrap construction material only if it 228  
cannot be used in any other road or bridge improvement or other 229  
project in its current state. 230

**Sec. 505.10.** (A) The board of township trustees may accept, 231  
on behalf of the township, the donation by bequest, devise, deed 232  
of gift, or otherwise, of any real or personal property for any 233  
township use. When the township has property, including motor 234



vehicles, road machinery, equipment, and tools, ~~which~~ that the 235  
board, by resolution, finds is not needed for public use, is 236  
obsolete, or is unfit for the use for which it was acquired, the 237  
board may sell and convey that property or otherwise dispose of it 238  
in accordance with this section. Except as otherwise provided in 239  
sections 505.08, 505.101, and 505.102 of the Revised Code, the 240  
sale or other disposition of unneeded, obsolete, or unfit-for-use 241  
property shall be made in accordance with one of the following: 242

(1) If the fair market value of property to be sold is, in 243  
the opinion of the board, in excess of two thousand five hundred 244  
dollars, the sale shall be by public auction or by sealed bid to 245  
the highest bidder. The board shall publish notice of the time, 246  
place, and manner of the sale once a week for three weeks in a 247  
newspaper published, or of general circulation, in the township, 248  
the last of those publications to be at least five days before the 249  
date of sale, and shall post a typewritten or printed notice of 250  
the time, place, and manner of the sale in the office of the board 251  
for at least ten days prior to the sale. 252

If the board conducts the sale of the property by sealed bid, 253  
the form of the bid shall be as prescribed by the board, and each 254  
bid shall contain the name of the person submitting it. Bids 255  
received shall be opened and tabulated at the time stated in the 256  
published and posted notices. The property shall be sold to the 257  
highest bidder, except that the board may reject all bids and hold 258  
another sale, by public auction or sealed bid, in the manner 259  
prescribed by this section. 260

(2) If the fair market value of property to be sold is, in 261  
the opinion of the board, two thousand five hundred dollars or 262  
less, the board may do either of the following: 263

(a) Sell the property by private sale, without advertisement 264  
or public notification; 265

(b) Donate the property to an eligible nonprofit organization 266  
that is located in this state and is exempt from federal income 267  
taxation pursuant to 26 U.S.C. 501(a) and (c)(3). Before donating 268  
any property under this division, the board shall adopt a 269  
resolution expressing its intent to make unneeded, obsolete, or 270  
unfit-for-use township property available to these organizations. 271  
The resolution shall include guidelines and procedures the board 272  
considers to be necessary to implement the donation program and 273  
shall indicate whether the township will conduct the donation 274  
program or the board will contract with a representative to 275  
conduct it. If a representative is known when the resolution is 276  
adopted, the resolution shall provide contact information such as 277  
the representative's name, address, and telephone number. 278

The resolution shall include within its procedures a 279  
requirement that any nonprofit organization desiring to obtain 280  
donated property under this division shall submit a written notice 281  
to the board or its representative. The written notice shall 282  
include evidence that the organization is a nonprofit organization 283  
that is located in this state and is exempt from federal income 284  
taxation pursuant to 26 U.S.C. 501(a) and (c)(3); a description of 285  
the organization's primary purpose; a description of the type or 286  
types of property the organization needs; and the name, address, 287  
and telephone number of a person designated by the organization's 288  
governing board to receive donated property and to serve as its 289  
agent. 290

After adoption of the resolution, the board shall publish, in 291  
a newspaper of general circulation in the township, notice of its 292  
intent to donate unneeded, obsolete, or unfit-for-use township 293  
property to eligible nonprofit organizations. The notice shall 294  
include a summary of the information provided in the resolution 295  
and shall be published at least twice. The second and any 296  
subsequent notice shall be published not less than ten nor more 297

than twenty days after the previous notice. A similar notice also 298  
shall be posted continually in the board's office, and, if the 299  
township maintains a web site on the internet, the notice shall be 300  
posted continually at that web site. 301

The board or its representatives shall maintain a list of all 302  
nonprofit organizations that notify the board or its 303  
representative of their desire to obtain donated property under 304  
this division and that the board or its representative determines 305  
to be eligible, in accordance with the requirements set forth in 306  
this section and in the donation program's guidelines and 307  
procedures, to receive donated property. 308

The board or its representative also shall maintain a list of 309  
all township property the board finds to be unneeded, obsolete, or 310  
unfit for use and to be available for donation under this 311  
division. The list shall be posted continually in a conspicuous 312  
location in the board's office, and, if the township maintains a 313  
web site on the internet, the list shall be posted continually at 314  
that web site. An item of property on the list shall be donated to 315  
the eligible nonprofit organization that first declares to the 316  
board or its representative its desire to obtain the item unless 317  
the board previously has established, by resolution, a list of 318  
eligible nonprofit organizations that shall be given priority with 319  
respect to the item's donation. Priority may be given on the basis 320  
that the purposes of a nonprofit organization have a direct 321  
relationship to specific public purposes of programs provided or 322  
administered by the board. A resolution giving priority to certain 323  
nonprofit organizations with respect to the donation of an item of 324  
property shall specify the reasons why the organizations are given 325  
that priority. 326

(3) If the board finds, by resolution, that the township has 327  
motor vehicles, road machinery, equipment, or tools ~~which~~ that are 328  
not needed or are unfit for public use, and the board wishes to 329

sell the motor vehicles, road machinery, equipment, or tools to 330  
the person or firm from which it proposes to purchase other motor 331  
vehicles, road machinery, equipment, or tools, the board may offer 332  
to sell the motor vehicles, road machinery, equipment, or tools to 333  
that person or firm, and to have the selling price credited to the 334  
person or firm against the purchase price of other motor vehicles, 335  
road machinery, equipment, or tools. 336

(4) If the board advertises for bids for the sale of new 337  
motor vehicles, road machinery, equipment, or tools to the 338  
township, it may include in the same advertisement a notice of the 339  
willingness of the board to accept bids for the purchase of 340  
township-owned motor vehicles, road machinery, equipment, or tools 341  
~~which~~ that are obsolete or not needed for public use, and to have 342  
the amount of those bids subtracted from the selling price of the 343  
new motor vehicles, road machinery, equipment, or tools, as a 344  
means of determining the lowest responsible bidder. 345

(5) When a township has title to real property, the board of 346  
township trustees, by resolution, may authorize the transfer and 347  
conveyance of that property to any other political subdivision of 348  
the state upon such terms as are agreed to between the board and 349  
the legislative authority of that political subdivision. 350

(6) When a township has title to real property and the board 351  
of township trustees wishes to sell or otherwise transfer the 352  
property, the board, upon a unanimous vote of its members and by 353  
resolution, may authorize the transfer and conveyance of that real 354  
property to any person upon whatever terms are agreed to between 355  
the board and that person. 356

(7) If the board of township trustees determines that 357  
township personal property is not needed for public use, or is 358  
obsolete or unfit for the use for which it was acquired, and that 359  
the property has no value, the board may discard or salvage that 360  
property. 361

(B) When the board has offered property at public auction 362  
under this section and has not received an acceptable offer, the 363  
board, by resolution, may enter into a contract, without 364  
advertising or bidding, for the sale of that property. The 365  
resolution shall specify a minimum acceptable price and the 366  
minimum acceptable terms for the contract. The minimum acceptable 367  
price shall not be lower than the minimum price established for 368  
the public auction. 369

(C) Members of the board shall consult with the Ohio ethics 370  
commission and comply with the provisions of Chapters 102. and 371  
2921. of the Revised Code, with respect to any sale or donation 372  
under division (A)(2) of this section to a nonprofit organization 373  
of which a township trustee, any member of the township trustee's 374  
family, or any business associate of the township trustee is a 375  
trustee, officer, board member, or employee. 376

(D) Notwithstanding anything to the contrary in division (A) 377  
or (B) of this section and regardless of the property's value, the 378  
board may sell personal property, including motor vehicles, road 379  
machinery, equipment, tools, or supplies, ~~which~~ that is not needed 380  
for public use, is obsolete, or is unfit for the use for which it 381  
was acquired, by internet auction. The board shall adopt, during 382  
each calendar year, a resolution expressing its intent to sell 383  
that property by internet auction. The resolution shall include a 384  
description of how the auctions will be conducted and shall 385  
specify the number of days for bidding on the property, which 386  
shall be no less than ~~fifteen~~ ten days, including Saturdays, 387  
Sundays, and legal holidays. The resolution shall indicate whether 388  
the township will conduct the auction or the board will contract 389  
with a representative to conduct the auction and shall establish 390  
the general terms and conditions of sale. If a representative is 391  
known when the resolution is adopted, the resolution shall provide 392  
contact information such as the representative's name, address, 393

and telephone number. 394

After adoption of the resolution, the board shall publish, in 395  
a newspaper of general circulation in the township, notice of its 396  
intent to sell unneeded, obsolete, or unfit-for-use township 397  
personal property by internet auction. The notice shall include a 398  
summary of the information provided in the resolution and shall be 399  
published at least twice. The second and any subsequent notice 400  
shall be published not less than ten nor more than twenty days 401  
after the previous notice. A similar notice also shall be posted 402  
continually throughout the calendar year in a conspicuous place in 403  
the board's office, and, if the township maintains a web site on 404  
the internet, the notice shall be posted continually throughout 405  
the calendar year at that web site. 406

When property is to be sold by internet auction, the board or 407  
its representative may establish a minimum price that will be 408  
accepted for specific items and may establish any other terms and 409  
conditions for the particular sale, including requirements for 410  
pick-up or delivery, method of payment, and sales tax. This type 411  
of information shall be provided on the internet at the time of 412  
the auction and may be provided before that time upon request, 413  
after the terms and conditions have been determined by the board 414  
or its representative. 415

**Sec. 4707.02. (A)** No person shall act as an auction firm, 416  
auctioneer, apprentice auctioneer, or special auctioneer within 417  
this state without a license issued by the department of 418  
agriculture. No auction shall be conducted in this state except by 419  
an auctioneer licensed by the department. 420

The department shall not issue or renew a license if the 421  
applicant or licensee has been convicted of a felony or crime 422  
involving fraud or theft in this or another state at any time 423  
during the ten years immediately preceding application or renewal. 424

~~This (B) Division (A) of this~~ section does not apply to any 425  
of the following: 426

~~(A)(1)~~ Sales at auction that either are required by law to be 427  
at auction, other than sales pursuant to a judicial order or 428  
decree, or ~~that~~ are conducted by or under the direction of a 429  
public authority; 430

~~(B)(2)~~ The owner of any real or personal property desiring to 431  
sell the property at auction, provided that the property was not 432  
acquired for the purpose of resale; 433

~~(C)(3)~~ An auction mediation company; 434

~~(D)(4)~~ An auction that is conducted in a course of study for 435  
auctioneers that is approved by the state auctioneers commission 436  
created under section 4707.03 of the Revised Code for purposes of 437  
student training and is supervised by a licensed auctioneer; 438

~~(E)(5)(a)~~ An auction that is sponsored by a nonprofit or 439  
charitable organization that is registered in this state under 440  
Chapter 1702. or Chapter 1716. of the Revised Code, respectively, 441  
if the auction only involves the property of the members of the 442  
organization and the auction is part of a fair that is organized 443  
by an agricultural society under Chapter 1711. of the Revised Code 444  
or by the Ohio expositions commission under Chapter 991. of the 445  
Revised Code at which an auctioneer who is licensed under this 446  
chapter physically conducts the auction; or 447

(b) Sales at an auction sponsored by a charitable, religious, 448  
or civic organization that is tax exempt under subsection 449  
501(c)(3) of the Internal Revenue Code, or by a public school, 450  
chartered nonpublic school, or community school, if no person in 451  
the business of organizing, arranging, or conducting an auction 452  
for compensation and no consignor of consigned items sold at the 453  
auction, except such organization or school, receives compensation 454  
from the proceeds of the auction. As used in division (B)(5)(b) of 455

this section, "compensation" means money, a thing of value other than participation in a charitable event, or a financial benefit.

456  
457  
458

~~(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;

459  
460  
461  
462

~~(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;

463  
464  
465  
466  
467

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

468  
469

(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.

470  
471  
472  
473

(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.

474  
475  
476

**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.

477  
478  
479  
480  
481  
482  
483  
484  
485



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;	517 518 519
(6) An explanation of the settlement of the auction that includes the disbursement of interest money, if applicable;	520 521
(7) A statement establishing the responsibility for bad checks, debts, and unpaid auction items;	522 523
(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.	524 525 526 527
(9) A statement of the auctioneer's or auction firm's policy regarding absentee bidding;	528 529
(10) A brief description of the real or personal property to be sold;	530 531
(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.	532 533 534 535
<b>Sec. 4707.21.</b> 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	536 537 538 539 540 541 542 543 544 545 546

firm, auctioneer, apprentice auctioneer, or special auctioneer 547  
knowingly answer any such questions falsely; and nor shall the 548  
auction firm, auctioneer, apprentice auctioneer, or special 549  
auctioneer refuse to obey subpoenas and give testimony. Licensees, 550  
as well as charitable, religious, or civic organizations and 551  
schools that sponsor an auction under division (B)(5)(b) of 552  
section 4707.02 of the Revised Code, shall keep records relative 553  
to any auction ~~sale~~ for at least two years from ~~the~~ its date ~~of~~ 554  
~~auction~~. These records shall include settlement sheets, written 555  
contracts, and copies of any advertising that lists the items for 556  
auction, as applicable. 557

**Sec. 4707.26.** (A)(1) A person who asserts that the person has 558  
been aggrieved by the actions of a person licensed under this 559  
chapter that resulted in actual and direct losses to the aggrieved 560  
person may initiate a claim against the auction recovery fund 561  
either under this section or section 4707.261 of the Revised Code. 562  
If an aggrieved person who wishes to seek recovery from the 563  
auction recovery fund has obtained a final judgment in a court of 564  
competent jurisdiction against the licensee, the aggrieved person 565  
shall initiate the claim in accordance with section 4707.261 of 566  
the Revised Code. If an aggrieved person who wishes to seek 567  
recovery from the auction recovery fund has not obtained a final 568  
judgment in a court of competent jurisdiction against the 569  
licensee, the aggrieved person shall initiate the claim in 570  
accordance with this section. 571

(2) An aggrieved person may initiate a claim against the 572  
auction recovery fund under this section if all of the following 573  
apply: 574

(a) The loss was associated with an act or transaction that 575  
only a person licensed under this chapter lawfully may perform. 576

(b) The licensee's actions are described in section 4707.15 577

of the Revised Code or otherwise violate this chapter or rules 578  
adopted under it. 579

(c) The licensee is not an auction firm. 580

(d) The loss was not associated with an auction conducted 581  
under division (B)(5)(b) of section 4707.02 of the Revised Code. 582

To initiate a claim against the fund, an aggrieved person 583  
shall file a verified complaint with the department of agriculture 584  
in accordance with section 4707.16 of the Revised Code. The 585  
verified complaint shall include an application to the department 586  
that requests recovery of the applicant's actual and direct losses 587  
and that is made on forms that the department provides. The 588  
application for recovery shall specify the nature of the act or 589  
transaction on which the applicant's claim is based, the actual 590  
and direct losses sustained by the applicant, and any activities 591  
that the applicant has pursued as a remedy for the losses. 592

(B) Upon receipt of a verified complaint and application, the 593  
department shall conduct an investigation in accordance with 594  
section 4707.16 of the Revised Code. After the investigation, if 595  
the department determines that the licensee has engaged in conduct 596  
described in section 4707.15 of the Revised Code or otherwise has 597  
violated this chapter or rules adopted under it, the department 598  
shall propose to take action to suspend or revoke the licensee's 599  
license under section 4707.15 of the Revised Code or to initiate a 600  
criminal action against the licensee under section 4707.99 of the 601  
Revised Code, or both. The department shall issue a letter to the 602  
applicant indicating the department's proposed action and the date 603  
of any hearing that the department has scheduled regarding the 604  
matter. 605

(C) Upon exhaustion of administrative remedies or criminal 606  
proceedings that results in a finding that the licensee has 607  
engaged in conduct described in section 4707.15 of the Revised 608

Code or otherwise has violated this chapter or rules adopted under 609  
it, the department shall issue a notice in accordance with Chapter 610  
119. of the Revised Code via certified mail to the applicant 611  
indicating that the applicant may request a hearing for relief 612  
from the auction recovery fund. An applicant who seeks recovery 613  
from the fund of any actual and direct losses suffered as a result 614  
of a licensee's conduct shall submit, not later than thirty days 615  
following receipt of the notice, a request for a hearing to the 616  
department. 617

Upon the timely receipt of a request for a hearing, the 618  
department shall provide the applicant with the opportunity to 619  
appear at an adjudication hearing to offer proof and evidence of 620  
the actual and direct losses. Whenever possible, the department 621  
shall require all applicants whose claims to the fund arose from 622  
an underlying transaction involving the same licensee to be joined 623  
in one adjudication under this section so that the rights of all 624  
applicants may be equitably adjudicated and settled. On behalf of 625  
the fund, the department may defend claims against the fund and 626  
shall have recourse to all appropriate means of defense and 627  
review, including examination of witnesses, and verification of 628  
actual losses. 629

(D) Upon the conclusion of the adjudication hearing, the 630  
hearing officer shall issue a report and recommendation in favor 631  
of making payment to an applicant from the fund if, during the 632  
course of the adjudication hearing, all of the following have been 633  
shown: 634

(1) The licensee has engaged in conduct described in section 635  
4707.15 of the Revised Code or otherwise has violated this chapter 636  
or rules adopted under it. 637

(2) The licensee's conduct or violation is associated with an 638  
act that only a person licensed under this chapter lawfully may 639  
perform and the act resulted in direct and actual losses to the 640

applicant. 641

(3) The applicant filed a verified complaint and application 642  
with the department as required by this section. 643

(4) The applicant is not the spouse of the licensee ~~nor~~ or 644  
the personal representative of the licensee's spouse. 645

(5) If the licensee either provided an irrevocable letter of 646  
credit or gave bond in accordance with section 4707.11 of the 647  
Revised Code, the applicant first sought recovery under the 648  
irrevocable letter of credit or bond before applying for payment 649  
from the fund. 650

The amount of any payment from the fund to the applicant 651  
shall consist of an amount that is equal to the portion of the 652  
actual and direct losses incurred by the applicant that remain 653  
unpaid. The amount of the payment is subject to the dollar 654  
limitation established in section 4707.29 of the Revised Code. 655

If the hearing officer determines that not all of the items 656  
described in divisions (D)(1) to (5) of this section have been 657  
shown during the course of the adjudication hearing, the hearing 658  
officer shall issue a report and recommendation against making 659  
payment from the fund to the applicant. 660

(E) Pursuant to section 119.09 of the Revised Code, a hearing 661  
officer or the hearing officer's representative shall forward by 662  
certified mail a copy of the hearing officer's written report and 663  
recommendation to the applicant or the applicant's attorney or 664  
other representative not later than five days after the date on 665  
which the report and recommendation are filed. 666

Not later than ten days after receiving such a copy, the 667  
applicant may file with the department written objections to the 668  
report and recommendation. The department may grant extensions of 669  
time to the applicant within which to file objections. 670

The objections shall be considered by the department before 671  
it approves, modifies, or disapproves the recommendation. The 672  
department may order additional testimony to be taken or permit 673  
the introduction of further documentary evidence. 674

The recommendation of the hearing officer may be approved, 675  
modified, or disapproved by order of the director of agriculture. 676  
The order shall not be issued until more than ten days have 677  
elapsed following the applicant's receipt of the report and 678  
recommendation as provided by this section. The director's 679  
approval, modification, or disapproval of the hearing officer's 680  
recommendation shall have the same effect as if the hearing had 681  
been conducted by the director. 682

No recommendation shall be final until approved, modified, or 683  
disapproved by the director as indicated by the order entered on 684  
the record of proceedings of the department. If the director 685  
modifies or disapproves the recommendations of the hearing 686  
officer, the director shall include in the record of the 687  
proceedings the reasons for the modification or disapproval. 688

After an order is entered on its journal, the department 689  
shall make payment, if applicable, to the applicant from the 690  
auction recovery fund in accordance with the order and shall 691  
provide to the applicant by certified mail, return receipt 692  
requested, a copy of the order and a statement of the time and 693  
method by which an appeal may be perfected. In addition, the 694  
department shall mail a copy of the order to the attorney or other 695  
representative of the applicant. 696

(F) An order of the director issued under this section 697  
constitutes a final determination of the director for purposes of 698  
appeal. An applicant who is denied compensation from the auction 699  
recovery fund or who receives an award less than the award 700  
requested may appeal the order of the director. Notices of appeal 701  
shall be filed in the manner provided in section 119.12 of the 702

Revised Code. 703

**Section 2.** That existing sections 307.12, 505.10, 4707.02, 704  
4707.20, 4707.21, and 4707.26 of the Revised Code are hereby 705  
repealed. 706

**Section 3.** Section 505.10 of the Revised Code is presented in 707  
this act as a composite of the section as amended by both Sub. 708  
H.B. 204 and Sub. H.B. 323 of the 125th General Assembly. The 709  
General Assembly, applying the principle stated in division (B) of 710  
section 1.52 of the Revised Code that amendments are to be 711  
harmonized if reasonably capable of simultaneous operation, finds 712  
that the composite is the resulting version of the section in 713  
effect prior to the effective date of the section as presented in 714  
this act. 715