

As Reported by the Committee of Conference

127th General Assembly

Regular Session

2007-2008

Am. Sub. S. B. No. 171

Senator Stivers

Cosponsors: Senators Jacobson, Schuring, Schuler, Mumper, Amstutz,
Buehrer, Harris, Schaffer, Wagoner, Padgett, Goodman, Faber
Representatives Daniels, Hite, Domenick, Flowers, Carmichael, Boyd,
Chandler, Collier, DeBose, DeGeeter, Dodd, Dyer, Evans, Fende, Garrison,
Hagan, J., Hagan, R., Hottinger, Koziura, Letson, Luckie, Mallory,
McGregor, J., Oelslager, Okey, Sayre, Stewart, J., Szollosi, Ujvagi,
Williams, B., Williams, S., Yuko, Zehringer

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A B I L L

To amend sections 1333.99, 4737.01, 4737.04, and 1
4737.99 and to enact sections 1333.71, 4737.041, 2
4737.042, 4737.043, and 4737.044 of the Revised 3
Code to make certain changes to the laws 4
regulating secondhand dealers and scrap metal 5
dealers. 6

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

Section 1. That sections 1333.99, 4737.01, 4737.04, and 7
4737.99 be amended and sections 1333.71, 4737.041, 4737.042, 8
4737.043, and 4737.044 of the Revised Code be enacted to read as 9
follows: 10

Sec. 1333.71. No person shall sell or purchase a plastic 11
crate or tray that is used for the carrying of retail containers 12
of milk or baked goods and that has embossed upon it a company 13

<u>logo.</u>	14
Sec. 1333.99. (A) Whoever violates sections 1333.01 to 1333.04 of the Revised Code is guilty of a minor misdemeanor.	15 16
(B) Whoever violates section 1333.12 <u>or 1333.71</u> of the Revised Code is guilty of a misdemeanor of the fourth degree.	17 18
(C) Whoever violates section 1333.36 of the Revised Code is guilty of a misdemeanor of the third degree.	19 20
(D) A prosecuting attorney may file an action to restrain any person found in violation of section 1333.36 of the Revised Code. Upon the filing of such an action, the common pleas court may receive evidence of such violation and forthwith grant a temporary restraining order as may be prayed for, pending a hearing on the merits of said cause.	21 22 23 24 25 26
(E) Whoever violates division (A)(1) of section 1333.52 or section 1333.81 of the Revised Code is guilty of a misdemeanor of the first degree.	27 28 29
(F) Whoever violates division (A)(2) or (B) of section 1333.52 of the Revised Code is guilty of a misdemeanor of the second degree.	30 31 32
(G) Except as otherwise provided in this division, whoever violates section 1333.92 of the Revised Code is guilty of a misdemeanor of the first degree. If the value of the compensation is five hundred dollars or more and less than five thousand dollars, whoever violates section 1333.92 of the Revised Code is guilty of a felony of the fifth degree. If the value of the compensation is five thousand dollars or more and less than one hundred thousand dollars, whoever violates section 1333.92 of the Revised Code is guilty of a felony of the fourth degree. If the value of the compensation is one hundred thousand dollars or more, whoever violates section 1333.92 of the Revised Code is guilty of	33 34 35 36 37 38 39 40 41 42 43

a felony of the third degree. 44

Sec. 4737.01. (A) "Personal identification card" means a 45
current and valid driver's license, military identification card, 46
state identification card issued under sections 4507.50 to 4507.52 47
of the Revised Code, or a state identification card issued by 48
another state on the condition that that card contains information 49
substantially similar to the information contained on a state 50
identification card issued under sections 4507.50 to 4507.52 of 51
the Revised Code and also contains a photograph of the person to 52
whom the card is issued. 53

(B) A person other than a scrap metal dealer, as defined in 54
section 4737.04 of the Revised Code, purchasing, selling, 55
exchanging, or receiving secondhand articles of any kind other 56
than special purchase articles as defined in section 4737.04 of 57
the Revised Code, scrap iron, old and scrap metal, canvas, rope, 58
branded bottles, junk or lead pipe, except plow irons, old stoves, 59
and furniture, shall post in a conspicuous place in or upon his 60
the person's shop, store, wagon, boat, or other place of business, 61
a sign having his the person's name and occupation legibly 62
inscribed thereon, and shall keep a separate record book, open to 63
inspection by any law enforcement officer, or electronic file in 64
which shall be written, in the English language, at the time of 65
the purchase or exchange of such articles, a description thereof, 66
the name, description, and residence of the person from whom 67
purchased and received, and the day and hour time when such 68
purchase or exchange was made, and shall make and keep a copy of 69
the person's personal identification card. Every entry shall be 70
numbered consecutively, commencing with number one. 71

~~(B) Any person, prior to purchasing any secondhand article of~~ 72
~~furniture or secondhand electrical or gas appliance or equipment~~ 73
~~for the purpose of resale to the general public, shall demand to~~ 74

~~examine the seller's driver's or commercial driver's license or 75
identification card issued under sections 4507.50 to 4507.52 of 76
the Revised Code and one additional type of card typically used 77
for identification purposes. 78~~

~~The purchaser shall keep a written record of the number of 79
the license or identification card and the type and number of the 80
other identification card accepted together with the date of 81
purchase, the name and address of the seller, and a description of 82
the article purchased. The purchaser shall retain the written 83
record book or electronic file and copies of personal 84
identification cards for at least one year after the purchase or 85
exchange date and shall make the record or file and copies 86
available for inspection by any law enforcement officer at all 87
reasonable times. For the purposes of this division, the purchaser 88
may utilize the written record he is required to keep where 89
applicable under division (A) of this section and add to it the 90
information required by this division. 91~~

**Sec. 4737.04. (A) As used in this section and sections 92
4737.041, 4737.042, and 4737.043 of the Revised Code: 93**

(1) "Scrap metal dealer" means the owner or operator of a 94
business that purchases or receives scrap metal. 95

(2) "Special purchase article" means all of the following: 96

(a) Beer kegs; 97

(b) Cable, wire, electrical components, and other equipment 98
used in providing cable service or any utility service, including, 99
but not limited to, copper or aluminum coverings, housings, or 100
enclosures related thereto; 101

(c) Grave markers, sculptures, plaques, and vases made out of 102
metal, the appearance of which suggest that the articles have been 103
obtained from a cemetery; 104

(d) Guard rails for bridges, highways, and roads; highway and street signs; street light poles and fixtures; manhole covers, water meter covers, and other similar types of utility access covers; traffic directional and control signs and light signals, metal marked with the name of a political subdivision of the state, and other metal articles that are purchased and installed for use upon authorization of the state or any political subdivision of the state; 105
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(e) Historical, commemorative, and memorial markers and plaques made out of metal; 113
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(f) Four-wheel metal carts, commonly referred to as "grocery carts," that are generally used by individuals to collect and transport consumer goods while shopping; 115
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(g) Four-wheel metal carts, commonly referred to as "metal bossies," that are used to transport or merchandise food products that are stored in crates, shells, or trays. 118
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(3) "Common recycled matter" means bottles and other containers made out of steel, tin, or aluminum and other consumer goods that are metal that are recycled by individual consumers and not in the bulk or quantity that could be supplied or recycled by large business establishments. "Common recycled matter" does not include a metal tray used by a product producer, distributor, retailer, or agent of a product producer, distributor, or retailer as a means for the bulk transportation, storage, or carrying of retail containers of milk, baked goods, eggs, or bottled beverage products. 121
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(4) "Consumer goods" has the same meaning as in section 1309.102 of the Revised Code. 131
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(5) "Recyclable materials" means the metal materials described in division (B)(5) of this section, on the condition that those metal materials are not special purchase articles. 133
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(6) "Motor vehicle" has the same meaning as in section 136
4501.01 of the Revised Code. 137

(B) Every scrap metal dealer in scrap iron, metal, and waste 138
materials shall maintain a record book of records or electronic 139
file, in which he the dealer shall keep an accurate and complete 140
record of all articles purchased or received by him the dealer in 141
the course of his the dealer's daily business. On and after the 142
effective date of this amendment, every entry in the record book 143
or electronic file shall be numbered consecutively. Every dealer 144
shall maintain the record for each article purchased or received 145
for a minimum period of one year after the date the dealer 146
purchased or received the article. Said records shall contain all 147
of the name, description, following: 148

(1) Name and residence of the person from whom said articles 149
were purchased or received and the a copy of that person's 150
personal identification card; 151

(2) The date and hour when such purchases or exchange were 152
made time the scrap metal dealer purchased or received the 153
articles; 154

(3) If the seller or provider of the articles arrives at the 155
dealer's place of business in a motor vehicle, the license plate 156
number of that motor vehicle along with the state that issued the 157
license plate; 158

(4) For metal articles that are not recyclable materials, a 159
full and accurate description of each article purchased or 160
received by the dealer that includes identifying letters or marks 161
written, inscribed, or otherwise included on the article and the 162
name and maker of the article if known; 163

(5) For recyclable materials that are not special purchase 164
articles, a scrap metal dealer shall use the following category 165
codes to identify the recyclable materials that the dealer 166

<u>receives:</u>	167
<u>(a) "Number one copper," which includes clean copper pipe,</u>	168
<u>clean copper wire, or other number one copper that does not have</u>	169
<u>solder, paint, or coating;</u>	170
<u>(b) "Number two copper," which includes unclean copper pipe,</u>	171
<u>unclean copper wire, or other number two copper;</u>	172
<u>(c) "Sheet copper," which includes copper roofing, copper</u>	173
<u>gutters, copper downspouts, and other sheet copper;</u>	174
<u>(d) "Insulated copper wire";</u>	175
<u>(e) "Aluminum or copper radiators," which includes aluminum</u>	176
<u>radiators, aluminum copper radiators, and copper radiators;</u>	177
<u>(f) "Red brass," which includes red brass valves and other</u>	178
<u>red brass;</u>	179
<u>(g) "Yellow brass," which includes yellow brass fixtures,</u>	180
<u>yellow brass valve and fitting, ornamental brass, and other yellow</u>	181
<u>brass;</u>	182
<u>(h) "Aluminum sheet";</u>	183
<u>(i) "Aluminum extrusions," which includes aluminum bleachers,</u>	184
<u>aluminum benches, aluminum frames, aluminum pipe, and other</u>	185
<u>aluminum extrusions;</u>	186
<u>(j) "Cast aluminum," which includes aluminum grills,</u>	187
<u>lawnmower decks made of aluminum, aluminum motor vehicle parts and</u>	188
<u>rims, and other cast aluminum;</u>	189
<u>(k) "Clean aluminum wire";</u>	190
<u>(l) "Unclean aluminum wire";</u>	191
<u>(m) "Aluminum exteriors," which includes aluminum siding,</u>	192
<u>aluminum gutters and downspouts, aluminum shutters, aluminum trim,</u>	193
<u>and other aluminum exterior items;</u>	194
<u>(n) "Contaminated aluminum";</u>	195

<u>(o) "Stainless steel," which includes, sinks, appliance</u>	196
<u>housing, dishes, pots, pans, pipe, and other items made out of</u>	197
<u>stainless steel;</u>	198
<u>(p) "Large appliances," which includes consumer and other</u>	199
<u>appliances;</u>	200
<u>(q) "Miscellaneous steel," which includes steel grates, steel</u>	201
<u>farm machinery, steel industrial machinery, steel motor vehicle</u>	202
<u>frames, and other items made out of steel;</u>	203
<u>(r) "Sheet irons," which includes bicycles, motor vehicle</u>	204
<u>body parts made of iron, and other items made using sheet iron;</u>	205
<u>(s) "Motor vehicle nonbody parts," which includes motor</u>	206
<u>vehicle batteries, radiators, and other nonbody motor vehicle</u>	207
<u>parts;</u>	208
<u>(t) "Catalytic converters";</u>	209
<u>(u) "Lead";</u>	210
<u>(v) "Electric motors."</u>	211
<u>(C) All journal brasses, and other railroad metals, other</u>	212
<u>than purchases and sales under sections 4973.13 to 4973.167</u>	213
<u>inclusive, of the Revised Code, shall be held by the dealer for a</u>	214
<u>period of thirty days after being purchased or acquired.</u>	215
Such <u>(D) The records required under division (B) of this</u>	216
<u>section shall be open for inspection by the representative of any</u>	217
<u>law enforcement agency at and the director of public safety or the</u>	218
<u>director's designated representative during all business hours. A</u>	219
<u>scrap metal dealer shall provide a copy of those records to any</u>	220
<u>law enforcement agency that requests the records or to the</u>	221
<u>director or director's representative, upon request. Records</u>	222
<u>submitted to any law enforcement agency pursuant to this section</u>	223
<u>are not public records for purposes of section 149.43 of the</u>	224
<u>Revised Code. A person who claims to own a stolen article that may</u>	225

be identified in those records, or an agent of that person, who 226
provides proof of having filed a stolen property report with the 227
appropriate law enforcement agency, may request those records. The 228
law enforcement agency shall provide those records upon a request 229
made by such a person or that person's agent, but the law 230
enforcement agency shall redact information that reveals the name 231
of the seller of any article and the price the dealer paid for any 232
article the dealer purchased or the estimated value of any article 233
the dealer received. The law enforcement agency shall determine 234
which records to provide, based upon the time period that the 235
alleged theft is reported to have taken place. A law enforcement 236
agency may charge or collect a fee for providing records as 237
required by this section. 238

(E)(1) No scrap metal dealer shall purchase or receive any 239
metal articles from a person who refuses to show the dealer the 240
person's personal identification card. 241

(2) The law enforcement agency that serves the jurisdiction 242
in which a scrap metal dealer is located shall provide a list, as 243
that agency determines appropriate, of the names and descriptions 244
of persons known to be or who are suspected to be thieves or 245
receivers of stolen property. No scrap metal dealer shall purchase 246
or receive articles from any person identified on the list the 247
dealer receives from the law enforcement agency. 248

(3) No scrap metal dealer shall purchase or receive any 249
special purchase articles from any person who is under eighteen 250
years of age. 251

(4) No scrap metal dealer shall purchase or receive any 252
special purchase article without complying with division (B) of 253
this section and division (B), (C), or (D) of section 4737.041 of 254
the Revised Code. 255

(5) No scrap metal dealer shall purchase or receive more than 256

one catalytic converter per day from the same person except from a 257
motor vehicle dealer as defined in section 4517.01 of the Revised 258
Code. 259

(6) No scrap metal dealer shall treat a transaction as exempt 260
from section 4737.04 or 4737.041 of the Revised Code unless the 261
seller provides evidence of satisfying division (D)(3) of section 262
4737.043 of the Revised Code. 263

(F) Every scrap metal dealer shall post a notice in a 264
conspicuous place on the dealer's premises notifying persons who 265
may wish to transact business with the dealer of the penalties 266
applicable to any person who does any of the following: 267

(1) Provides a false personal identification card to the 268
dealer; 269

(2) With purpose to defraud, provides any other false 270
information to the dealer in connection with the dealer's duty to 271
maintain the records required under division (B) of this section; 272

(3) Violates section 2913.02 of the Revised Code. 273

(G)(1) Except as otherwise provided in the second paragraph 274
of division (E) of this section, a chief of police, marshal, or 275
other chief law enforcement officer, a sheriff, constable, or 276
chief of police of a township police department or police district 277
police force, and a deputy, officer, or employee of the law 278
enforcement agency served by the marshal or the municipal or 279
township chief, the office of the sheriff, or the constable is 280
immune from liability in a civil action, including an action for 281
defamation, libel, or slander, to recover damages for injury, 282
death, or loss to persons or property or reputation allegedly 283
caused by an act or omission in connection with compiling and 284
providing the list required by division (E) of this section. 285

(2) The immunity described in division (G)(1) of this section 286
does not apply to a person described in that division if, in 287

<u>relation to the act or omission in question, any of the following</u>	288
<u>applies:</u>	289
<u>(a) The act or omission was manifestly outside the scope of</u>	290
<u>the person's employment or official responsibilities.</u>	291
<u>(b) The act or omission was with malicious purpose, in bad</u>	292
<u>faith, or in a wanton or reckless manner.</u>	293
<u>(c) Liability for the act or omission is expressly imposed by</u>	294
<u>a section of the Revised Code.</u>	295
<u>Sec. 4737.041. A scrap metal dealer shall do all of the</u>	296
<u>following with respect to each special purchase article the scrap</u>	297
<u>metal dealer purchases or receives:</u>	298
<u>(A) Comply with the requirements of this section in addition</u>	299
<u>to complying with the requirements of section 4737.04 of the</u>	300
<u>Revised Code;</u>	301
<u>(B) Take a photograph of each special purchase article;</u>	302
<u>(C) Obtain from the seller or provider of the special</u>	303
<u>purchase article proof that the seller or provider owns the</u>	304
<u>special purchase article;</u>	305
<u>(D) If payment is rendered for the special purchase articles,</u>	306
<u>issue a check for the purchase of the special purchase articles;</u>	307
	308
<u>(E) Withhold payment for the purchase of the special purchase</u>	309
<u>articles for a period of two days after the day the special</u>	310
<u>purchase articles are purchased;</u>	311
<u>(F) If an asserted owner of stolen special purchase articles</u>	312
<u>or that owner's agent provides proof of having filed a stolen</u>	313
<u>property report with the appropriate law enforcement agency, make</u>	314
<u>records describing special purchase articles the scrap metal</u>	315
<u>dealer purchased or received after the alleged date of theft</u>	316

available for inspection to the asserted owner or owner's agent 317
for a period of six months after the alleged date of theft of the 318
articles, except that the scrap metal dealer shall withhold the 319
name of the person from whom the special purchase articles were 320
purchased or received and the amount paid for the special purchase 321
articles. 322

Sec. 4737.042. A scrap metal dealer and a person who 323
purchases, sells, exchanges, or receives secondhand articles may 324
use an electronic device that decodes and records information 325
contained in the metallic strip on a personal identification card 326
to record a person's name, address, and photograph in lieu of 327
making a copy of a person's personal identification card to comply 328
with the requirements of sections 4737.01, 4737.04, and 4737.041 329
of the Revised Code, on the condition that the dealer or person 330
retains that recorded information and makes it available in 331
accordance with the requirements to make copies available under 332
those sections. 333

Sec. 4737.043. Sections 4737.04 and 4737.041 of the Revised 334
Code do not apply with respect to any of the following: 335

(A) The donation of articles to nonprofit organizations or to 336
any other person, on the condition that the person donating the 337
articles receives no payment or any other valuable consideration 338
in exchange for or due to donating the articles; 339

(B) The sale or donation of common recycled matter; 340

(C) Sales transacted between a scrap metal dealer and an 341
organization that is exempt from federal taxation under section 342
501(c)(3) of the "Internal Revenue Code of 1986," 100 Stat. 285, 343
26 U.S.C. 501(c)(3), as amended, and that collects, for its own 344
fundraising purposes, scrap ferrous and nonferrous metals for 345
recycling rather than disposal; 346

(D) Sales transacted between a scrap metal dealer and a 347
government unit or another business, including a demolition 348
company, public utility company, or another scrap metal dealer, on 349
the condition that the government unit or business satisfies the 350
following criteria: 351

(1) In the course of providing the government unit's or 352
business's services to others or maintaining the government unit's 353
or business's property, whether onsite or offsite, the government 354
unit or business generates scrap ferrous and nonferrous metals for 355
recycling rather than disposal. 356

(2) If the sales transaction involves a government unit, 357
reference to the government unit as a bona fide unit of government 358
can be readily found by the public. 359

(3) If the sales transaction involves a business, the 360
business satisfies one of the following criteria: 361

(a) The business is registered with the secretary of state. 362

(b) The business has been issued a license under section 363
5739.17 of the Revised Code. 364

(c) The business advertises its services in a newspaper of 365
general circulation once a week for not less than six consecutive 366
months or provides a receipt showing payment for such advertising, 367
a telephone book, electronic media that is available to the 368
public, or some other type of media that is owned and operated by 369
a person other than the business and, if an individual operates 370
the business, the individual advertising the business has a 371
specific place of business that is not the individual's permanent 372
home residence. 373

(4) The government unit provides proof of compliance with 374
division (D)(2) of this section or the business provides proof of 375
compliance with division (D)(3) of this section to the scrap metal 376
dealer with whom the government unit or business transacts 377

business. 378

(E) Sales transacted between a scrap metal dealer and a 379
person whose primary business is to create products that result in 380
bulk quantities of ferrous and nonferrous metal used for recycling 381
rather than disposal. 382

(F) Sales of catalytic converters transacted between a scrap 383
metal dealer and a motor vehicle dealer as defined in section 384
4517.01 of the Revised Code. 385

Sec. 4737.044. No municipal corporation or other political 386
subdivision shall enforce any regulation that is in conflict with 387
sections 4737.01 to 4737.043 of the Revised Code. Consistent with 388
the power of municipal corporations to exercise their rights under 389
Article XVIII, Section 3 of the Ohio Constitution and recognizing 390
the need for uniform commercial practices across this state, by 391
analogy to *Am. Financial Servs. Assn et al. v. Cleveland*, 112 Ohio 392
St. 3d 170, 2006-Ohio-6043, citing *Canton v. State*, 95 Ohio St. 3d 393
149, 2002-Ohio-2005, syllabus, no municipal corporation or other 394
political subdivision shall enact or enforce a regulation or 395
ordinance applicable to a scrap metal dealer requiring a scrap 396
metal dealer to individually identify and retain any scrap metal 397
purchased or received, a practice otherwise known as "tag and 398
hold." 399

Sec. 4737.99. (A) Except as specified in ~~division~~ divisions 400
(B) and (C) of this section, whoever violates sections 4737.01 to 401
4737.11 of the Revised Code, shall be fined not less than 402
twenty-five nor more than one thousand dollars and the costs of 403
prosecution. 404

(B) Whoever violates division (F)(2) of section 4737.10 of 405
the Revised Code is guilty of a misdemeanor of the fourth degree. 406

(C) Whoever fails to comply with or violates section 4737.01 407

or 4737.041 or division (B), (C), (E), or (F) of section 4737.04 408
of the Revised Code is guilty of a misdemeanor of the third 409
degree. If the offender one time previously has violated or failed 410
to comply with section 4737.01 or 4737.041 or division (B), (C), 411
(D), (E), or (F) of section 4737.04 of the Revised Code, the 412
violation or failure is a misdemeanor of the second degree. If the 413
offender two or more times previously has violated or failed to 414
comply with section 4737.01 or 4737.041 or division (B), (C), (D), 415
(E), or (F) of section 4737.04 of the Revised Code, the violation 416
or failure is a misdemeanor of the first degree. 417

Section 2. That existing sections 1333.99, 4737.01, 4737.04, 418
and 4737.99 of the Revised Code are hereby repealed. 419

Section 3. During the first year of the 129th General 420
Assembly, the President of the Senate or Speaker of the House of 421
Representatives shall initiate creation of a joint select 422
committee of the Senate and House of Representatives for the 423
purpose of considering the effectiveness of this act in deterring 424
crime and the costs of complying with this act to industries 425
affected by this act. The President of the Senate and Speaker of 426
the House of Representatives shall create the joint select 427
committee in accordance with the Joint Rules of the Senate and 428
House of Representatives for the 129th General Assembly for 429
creation of a joint select committee. 430

The joint select committee shall hold public hearings at 431
which time representatives of the Ohio Municipal League, the Ohio 432
Prosecuting Attorneys Association, and the Ohio Sheriff's 433
Association; representatives of the scrap metal recycling 434
industry; and other interested parties may present testimony on 435
the affect of this act on metals theft rates, theft deterrence, 436
criminal enforcement and prosecution, and economic and 437
administrative burdens on industry. The joint select committee 438

shall provide advance notice of its hearings to, and shall solicit 439
comments in advance of those hearings from, the Ohio Municipal 440
League, Ohio Prosecuting Attorneys Association, Ohio Sheriff's 441
Association, representatives of the scrap metal recycling 442
industry, and other interested parties that the joint select 443
committee determines should receive notice. 444

The joint select committee shall issue a report summarizing 445
the effectiveness and impacts of this act and submit the report to 446
the President of the Senate and Speaker of the House of 447
Representatives. The Legislative Service Commission shall assist 448
the joint select committee in preparing and finalizing the report 449
required by this section. 450

Section 4. The provisions of law contained in this act, and 451
their applications, are severable. If any provision of law 452
contained in this act, or if any application of any provision of 453
law contained in this act, is held invalid, the invalidity does 454
not affect other provisions of law contained in this act and their 455
applications that can be given effect without the invalid 456
provision or application. 457