Sub. S.B. 262*

124th General Assembly
(As Reported by H. Finance and Appropriations)

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BILL SUMMARY

Financial responsibility of licensed auctioneers

- Revises the financial responsibility requirements, beginning July 1, 2003, for persons who are licensed under the Auctioneer's Law.
- Exempts certain persons who were licensed under that Law prior to that date from the new requirements.

Creation of Auction Recovery Fund

- Creates the Auction Recovery Fund to be administered by the Director of Agriculture, and, on and after July 1, 2003, requires moneys in the Fund to be used to make payments to persons who have incurred financial losses as a result of persons licensed under the Auctioneer's Law who violate specified provisions of that Law.
- Revises the requirement that all fees and charges collected under the Auctioneers Law be deposited into the Auctioneers Fund to require that a portion of the license fees be deposited into the Auction Recovery Fund; provides other funding sources, including a possible assessment on licensees, for the new Fund; and requires the Director of Budget and Management to make a one-time transfer of $500,000 from the Auctioneers Fund to the Auction Recovery Fund by June 30, 2003.

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* *This analysis was prepared before the report of the House Finance and Appropriations Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

Procedures for obtaining payment from Auction Recovery Fund

- Specifies that the procedures established under the bill for obtaining payment from the Fund take effect on July 1, 2003.

- Specifies that a person who asserts that they have been aggrieved by the actions of an individual licensed under the Auctioneers Law that resulted in financial losses may initiate a claim against the Fund in accordance with either an administrative procedure or a judicial procedure.

- Establishes an administrative adjudication procedure in the Department of Agriculture by which a person aggrieved by an individual licensed under the Auctioneers Law may seek recovery from the Fund.

- With respect to the judicial procedures established in the bill, authorizes a person who obtains a final judgment in a court of competent jurisdiction against a person licensed under the Auctioneers Law, on specified grounds, to file an application in a court of common pleas for an order for a direct payment from the Auction Recovery Fund, requires the application to include specified information, and establishes procedures for payment from the Fund.

- Authorizes the Director of Agriculture to make payments from the Fund without an administrative or judicial adjudication procedure when the claim against the Fund is $1,000 or less and other requirements are met.

- Establishes limits on the amount of money that may be paid from the Fund for losses involving violations committed by any one licensee.

- Requires the license of the person who is the subject of an application for payment from the Fund to be automatically suspended when payment from the Fund is made, requires the Director to provide the offending licensee an opportunity for an administrative hearing on the suspension, and prohibits the Director from reactivating the suspended license until the offending licensee satisfies specified criteria.

- Establishes other means by which the Director may recover payment from the offending licensee.

- Establishes procedures for claims that involve both the Auction Recovery Fund and the Real Estate Recovery Fund.

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CONTENT AND OPERATION

Effective dates

Various provisions of the bill become effective at different times. The provisions discussed under "***Auction Recovery Fund***," below, become effective 91 days after the act is filed with the Secretary of State. The provisions requiring the Director of Budget and Management to make a one-time transfer from the Auctioneers Fund to the Auction Recovery Fund created under the bill take immediate effect (see "***Auctioneers Fund***," below) (Section 8). All other provisions of the bill become effective on July 1, 2003 (Sections 3 and 4).

Proof of financial responsibility

Under current law, each application for an auctioneer's, apprentice auctioneer's, or auction company license must be accompanied by a $10,000 bond except under specified circumstances. The Department of Agriculture is prohibited from issuing an auctioneer's, apprentice auctioneer's, or auction company license until a bond has been filed. (Sec. 4707.11.)

The bill repeals these provisions and instead requires that each application for a license issued under the Auctioneers Law be accompanied by proof of financial responsibility if applicable (see below) (secs. 4707.07(A), 4707.072(G), 4707.09(E), and 4707.11). The financial responsibility must be in the form of either an irrevocable letter of credit or a cash bond or a surety bond in the amount

of $25,000. If the applicant gives a surety bond, it must be executed by a surety company authorized to do business in Ohio. A bond must be made to the Department and must be conditioned that the applicant must comply with the Auctioneers Law and rules adopted under it, including refraining from conduct described in current law that is grounds for license suspension or revocation. All bonds must be on a form approved by the Director of Agriculture. (Sec. 4707.11(A).)

The bill requires a licensee to maintain proof of financial responsibility for three years following the date of initial licensure. After the three years, a licensee who has not engaged in conduct that could cause the licensee's license to be suspended or revoked and has not otherwise violated the Auctioneers Law or rules adopted under it during that period is no longer required to maintain proof of financial responsibility. However, a licensee whose license expires without being renewed under current law or is suspended under the bill (see "***Repayment to Auction Recovery Fund***," below) must give proof of financial responsibility in order to obtain reinstatement or reactivation of the license. (Sec. 4707.11(A).)

The bill establishes two exceptions to the new financial responsibility requirements. First, a licensee whose license was issued prior to July 1, 2003, is not required to furnish the new financial responsibility if the licensee's license continues to be renewed under the existing Auctioneers Law and is not suspended under that Law or the bill (see "***Repayment to Auction Recovery Fund***," below). Similarly, an apprentice auctioneer licensee whose license was issued prior to July 1, 2003, and who applies for an auctioneer's license on or after July 1, 2003, is not required to comply with the new requirements if the apprentice auctioneer's license is not suspended under the existing Auctioneers Law or the bill and, if necessary, continues to be renewed under that Law. (Sec. 4707.11(B).)

Auction Recovery Fund

Creation and purpose

The bill creates in the state treasury the Auction Recovery Fund, which must be administered by the Director of Agriculture. The Treasurer of State must credit all of the following to the Fund: any moneys transferred to it from the Auctioneers Fund created under current law (see below); except as otherwise provided under the bill, a portion, in an amount specified in rules adopted by the Director under the bill, of license fees collected under the Auctioneers Law (see below); any assessments levied under the bill (see below); repayments made to the Auction Recovery Fund under the bill by persons licensed under the Auctioneers Law (see below); and interest earned on the assets of the Fund. (Sec. 4707.25(A).)

Under the bill, moneys credited to the Fund must be used to make payments to compensate persons in accordance with procedures established under the bill for losses resulting from conduct by a the licensee that could cause the licensee's license to be suspended or revoked or that otherwise violates the Auctioneers Law or rules adopted under it and that is associated with an act or transaction that only a licensee lawfully may perform. The amount of the payments is subject to the dollar limitations established under the bill (see "***Liability of Fund***," below). (Sec. 4707.25(A).)

Director's administrative responsibilities

The bill requires the Director to adopt rules in accordance with the Administrative Procedure Act that establish the portion of license fees collected under the Auctioneers Law that are to be deposited into the new Fund rather than into the existing Auctioneers Fund (see below) (sec. 4707.19). The Director also is required to ascertain the balance of the new Fund on the first day of July each year. If the balance of the Fund is greater than $2 million, the Director may utilize, during the fiscal year beginning on that first day of July, the portion of the Fund that is greater than $2 million to sponsor educational programs or to underwrite research that is beneficial to persons licensed under the Auctioneers Law and to the public. If the balance of the Fund is at least $4 million, the portion of license fees collected under the Auctioneers Law that otherwise would be credited to the Auction Recovery Fund under the bill must be credited to the Auctioneers Fund during the fiscal year beginning on that first day of July. (Sec. 4707.25(B).)

However, if the balance of the Auction Recovery Fund is less than $400,000, the Director must levy an assessment against each person who holds a valid license issued under the Auctioneers Law. The amount of the assessment must be determined by subtracting the balance of the Fund from $500,000 and dividing the resulting total by the number of persons recorded under current law as holding a valid license issued under the Auctioneers Law. All assessments that are collected must be credited to the Fund. (Sec. 4707.25(B).)

The bill requires the Director to collect from the Fund a service fee in an amount equal to an interest rate established under the Commercial Transactions Law multiplied by the annual interest earned on the assets of the Fund, to defray the expenses incurred by the Department in the administration of the Fund (sec. 4707.25(C)). The interest rate is currently 10% per year (sec. 1343.03, not in the bill).

Auctioneers Fund

Under current law, all fees and charges collected by the Department under the Auctioneers Law must be paid into the state treasury to the credit of the Auctioneers Fund. As discussed above, the bill requires that a portion of the license fees collected under that Law, as established by rule, be deposited into the Auction Recovery Fund. In addition, at the end of each fiscal year, if the balance of the Auctioneers Fund is greater than $300,000, the Director of Agriculture must request the Director of Budget and Management to, and the Director of Budget and Management must, transfer 25% of the balance to the Auction Recovery Fund. (Sec. 4707.05.)

The bill states that, as soon as possible prior to June 30, 2003, the Director of Budget and Management must make a one-time cash transfer of $500,000 from the Auctioneers Fund to the Auction Recovery Fund (Sections 5, 6, and 7).

Procedures for obtaining payment from the Auction Recovery Fund

Under the bill, a person who asserts that they have been aggrieved by the actions of a person licensed under the Auctioneers Law that resulted in actual and direct losses to the aggrieved person may initiate a daim against the Auction Recovery Fund either in accordance with an administrative procedure established in the bill or through a judicial procedure in a court of competent jurisdiction. If an aggrieved person who wishes to seek recovery from the Fund has obtained a final judgment in a court of competent jurisdiction against a licensee, the aggrieved person must initiate the claim in accordance with the judicial procedures established in the bill (see below). If an aggrieved person who wishes to seek recovery from the auction recovery fund has not obtained such a final judgment, the aggrieved person must initiate the claim in accordance with the administrative procedures established in the bill. (Sec. 4707.26(A)(1).)

Recovery from the Fund through an administrative adjudication hearing

To initiate a claim administratively against the Auction Recovery Fund an aggrieved person must show: (1) the loss was associated with an act or transaction that only a person licensed under the Auctioneers Law may lawfully perform, and (2) the licensee's conduct is such that could cause the licensee's license to be suspended or revoked or that otherwise violates the Auctioneers Law or rules adopted under it (sec. 4707.26(A)(2)).

A claim against the Fund is initiated under the bill when an aggrieved person files a verified complaint with the Department of Agriculture in accordance with procedures for filing such a complaint established in the Auctioneers Law. The verified complaint must include an application to the Department, on forms

the Department provides, requesting recovery of the applicant's actual and direct losses. The application must specify the nature of the act or transaction on which the applicant's claim is based, the actual and direct losses sustained by the applicant, and any activities that the applicant has pursued as a remedy for the losses. (Sec. 4707.26(A)(2).)

Upon receipt of a verified compliant and application, the Department must conduct an investigation in accordance with procedures established in current law. After the investigation, if the Department determines that the licensee has engaged in conduct that could cause the licensee's license to be suspended or revoked or that otherwise violates the Auctioneers Law or rules adopted under it, the Department is required to propose to take action to suspend or revoke the licensee's license or initiate a criminal action against the licensee, or both. The Department must issue a letter to the applicant indicating the Department's proposed action and the date of any hearing that the Department has scheduled regarding the matter. (Sec. 4707.26(B).)

Upon exhaustion of administrative remedies or criminal proceedings that results in a finding that the licensee has engaged in conduct that could cause the licensee's license to be suspended or revoked or that otherwise violates the Auctioneers Law or rules adopted under it, the Department must issue a notice in accordance with the Administrative Procedure Act via certified mail to the applicant indicating that the applicant may request a hearing for relief from the Auction Recovery Fund. An applicant who seeks recovery from the Fund of any actual and direct losses suffered as a result of a licensee's conduct must submit, not later than 30 days following receipt of the notice, a request for a hearing to the Department. (Sec. 4707.26(C).)

Upon the timely receipt of a request for a hearing, the Department must provide the applicant with the opportunity to appear at an adjudication hearing to offer proof and evidence of the actual and direct losses. Whenever possible, the Department must require all applicants whose claims to the Fund arose from an underlying transaction involving the same licensee to be joined in one adjudication so that the rights of all applicants may be equitably adjudicated and settled. The bill provides that the Department may defend claims against the Fund and is required to have recourse to all appropriate means of defense and review, including examination of witnesses and verification of actual losses.

Upon the conclusion of the adjudication hearing, the hearing officer must issue a report and recommendation in favor of making payment to an applicant from the Fund if, during the course of the hearing, all of the following have been shown:

(1) The licensee has engaged in conduct that could cause the licensee's license to be suspended or revoked or that otherwise violates the Auctioneers Law or rules adopted under it;

(2) The licensee's conduct or violation is associated with an act that only a person licensed under the Auctioneer's Law lawfully may perform, and the act resulted in direct and actual losses to the applicant;

(3) The applicant filed a verified complaint and application with the Department as required by the bill;

(4) The applicant is not the spouse of the licensee nor the personal representative of the licensee's spouse; and

(5) If the licensee either provided an irrevocable letter of credit or gave bond in accordance with the Auctioneer's Law, the applicant first sought recovery under the letter of credit or bond before applying for payment from the Fund. (Sec. 4707.26(D).)

The payment from the Fund is required to consist of an amount that is equal to the portion of the actual and direct losses incurred by the applicant that remain unpaid. In addition, the amount of the payment is subject to the dollar limitation established in the bill (see "***Liability of Fund***," below). If the hearing officer determines that not all of the five items described above have been shown during the course of the adjudication hearing, the hearing officer must issue a report and recommendation against making payment from the Fund to the applicant. (Sec. 4707.26(D).)

The bill provides that the hearing officer or the hearing officer's representative must 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 are required to 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. (Sec. 4707.26(E).)

The recommendation of the hearing officer may be approved, modified, or disapproved by order of the Director of Agriculture. The order must not be issued until more than ten days have elapsed following the applicant's receipt of the report and recommendation. The Director's approval, modification, or disapproval

of the hearing officer's recommendation has the same effect as if the hearing had been conducted by the Director. Under the bill, no recommendation is final until approved, modified, or disapproved by the Director as indicated by an order entered on the record of proceedings of the Department. If the Director modifies or disapproves the recommendations of the hearing officer, the record of the proceedings must include the reasons for the modification or disapproval.

After an order is entered on its journal, the Department must make payment, if applicable, to the applicant from the Auction Recovery Fund in accordance with the order. In addition, the Department must provide to the applicant by certified mail, return receipt requested, a copy of the order and a statement of the time and method by which an appeal may be made. The Department also must mail a copy of the order to the attorney or other representative of the applicant. An order of the Director issued under the bill constitutes a final determination of the Director for purposes of appeal. An applicant who is denied compensation from the Auction Recovery Fund or who receives an award less than the award requested may appeal the order of the Director in accordance with the Administrative Procedure Act. (Sec. 4707.26(E) and (F).)

Recovery from the Fund through a judicial proceeding

Under the bill, a person who obtains a final judgment in a court of competent jurisdiction against a person licensed under the Auctioneer's Law, on the grounds of conduct by the licensee that could cause the licensee's license to be suspended or revoked or that otherwise violates the Auctioneer's Law or rules adopted under it and that is associated with an act or transaction that only a licensee lawfully may perform, may file a verified application in a court of common pleas for an order directing payment from the Auction Recovery Fund. The application must be accompanied by the judgment entry and may seek payment in an amount that is equal to the portion of the judgment that remains unpaid. (Sec. 4707.261.)

The bill requires the application to specify the nature of the act or transaction on which the underlying judgment was based, the activities of the applicant in pursuit of remedies available under the law for the collection of judgments, and the actual and direct losses sustained by the applicant. The applicant must attach to the application a copy of each pleading and order in the underlying court action. In addition, the application must include proof of the applicant's actual and direct loss. (Sec. 4707.261.)

Whenever possible, the court must require all applicants and prospective applicants whose claims to the Fund arose from an underlying judgment against

the same licensee to be joined in one action so that the rights of all applicants may be equitably adjudicated and settled (sec. 4707.261).

A person who applies to a court of common pleas for an order directing payment from the Auction Recovery Fund must file notice of the application with the Director of Agriculture. The Director may defend any such action on behalf of the Fund and must have recourse to all appropriate means of defense and review, including examination of witnesses, verification of actual and direct losses, and challenges to the underlying judgment obtained from a court of competent jurisdiction to determine whether the underlying judgment is based on activity that only a person holding a valid license issued under the Auctioneer's Law is authorized to perform. The Director may move the court of common pleas at any time to dismiss the application when it appears that there are no triable issues and the application is without merit, provided that the Director must give written notice to the applicant not fewer than ten days before the motion is made. The motion may be supported by affidavit of any person having knowledge of the facts and may be made on the basis that the application, including the underlying judgment referred to in it, does not form the basis for a meritorious recovery claim. Subject to court approval, the Director may compromise a claim based on the application of the aggrieved party. The Director cannot be bound by any prior compromise or stipulation of the licensee who is the judgment debtor. (Sec. 4707.27.)

After receiving an application for payment from the Auction Recovery Fund that satisfies the requirements established under the bill, a court of common pleas must issue an order directing the Director to make payment from the Fund to an applicant who satisfies specified criteria (see below). The payment must consist of an amount that is equal to the portion of the final judgment that was obtained by the applicant against a person licensed under the Auctioneer's Law and that remains unpaid. The amount of the payment is subject to the dollar limitations established under the bill (see "***Liability of Fund***," below). (Sec. 4707.28(A).)

The bill requires the court to issue an order directing payment to the applicant from the Auction Recovery Fund when the applicant has shown all of the following:

(1) The applicant has obtained a judgment in a court of competent jurisdiction against a person licensed under the Auctioneer's Law on grounds of conduct that could cause the person's license to be suspended or revoked or that otherwise violates the Auctioneer's Law or rules adopted under it and that is associated with an act or transaction that only a licensee lawfully may perform;

(2) All appeals from the judgment have been exhausted, and the applicant has filed notice with the Director in accordance with the bill's provisions and has otherwise complied with those provisions;

(3) The applicant is not the spouse of the licensee who is the judgment debtor or the personal representative of the spouse;

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

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

(6) If the judgment debtor either provided an irrevocable letter of credit or gave bond in accordance with the bill, the applicant first sought recovery under the irrevocable letter of credit or the bond before applying for payment from the Fund. (Sec. 4707.28(A).)

Persons prohibited from receiving payment from the Auction Recovery Fund

The bill prohibits all of the following from receiving payment from the Fund through the administrative or judicial adjudication procedures:

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

(2) A person holding a valid license issued under either the Auctioneer's Law or the Real Estate Brokers Law;

(3) A person who would be ineligible to receive payment from the Real Estate Recovery Fund under the Real Estate Brokers Law; and

(4) A person who obtained a final judgment that arose from an act or transaction that only a licensed real estate broker or real estate salesperson is authorized to perform under the Real Estate Brokers Law and that did not involve a violation of the Auctioneer's Law or rules adopted under it (sec. 4707.28(B)).

Under the bill, punitive damages, attorney's fees, court costs, and interest on a judgment are not recoverable from the Auction Recovery Fund (sec. 4707.28(C)).

Claims of $1,000 or less

(sec. 4707.31)

The bill authorizes the Director of Agriculture, within the Director's discretion, to make a payment out of the Auction Recovery Fund to a person without first requiring the person to obtain a prior order issued by the Director or by a court of competent jurisdiction if all of the following apply:

(1) The person claims to have sustained total actual and direct losses in the amount of $1,000 or less;

(2) The losses are associated with an act or transaction that only a person licensed under the Auctioneer Law lawfully may perform;

(3) The licensee allegedly has engaged in conduct that could cause the licensee's license to be suspended or revoked or that otherwise violates the Auctioneer's Law or rules adopted under it;

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

(5) The claimant filed a properly notarized complaint with supporting documentation to the Department not later than one year following the date of the alleged wrongful actions of the licensee; and

(6) The Department, within its discretion, determines that, based upon the evidence presented, justice would be better served by allowing compensation to be paid without first requiring the aggrieved party to obtain a judgment from a court of competent jurisdiction or an order of the Department.

Liability of Fund

The bill precludes the liability of the Auction Recovery Fund from exceeding $50,000 for losses involving violations committed by any one licensee, except with respect to a licensee who provides either an irrevocable letter of credit or a bond in order to maintain proof of financial responsibility under the bill. In such an instance, the liability of the Fund cannot exceed $25,000 for losses involving violations committed by the licensee. If a licensee's license is reactivated as provided under the bill (see "***Repayment to Auction Recovery Fund***," below), the liability of the Fund for the licensee must again be $50,000, or $25,000 if applicable, but only for transactions that occur subsequent to the time of reactivation. (Sec. 4707.29.)

If $50,000, or $25,000 if applicable, are insufficient to pay the valid claims of all persons who have applied for payment from the Fund with respect to losses involving violations committed by the same licensee, the money must be distributed among the persons in the ratio that their respective claims bear to the aggregate of valid claims or in another manner that the court or the Director of Agriculture, as applicable, determines to be equitable. Distribution of the money must be among the persons entitled to share in it without regard to the order of priority in which their respective claims may have been decided or their applications for payment from the Fund may have been filed. (Sec. 4707.29.)

Repayment to Auction Recovery Fund

Under the bill, if the Director makes a payment from the Auction Recovery Fund to an aggrieved party and the license of the offending licensee has not been suspended or revoked under the existing statute that establishes grounds for license suspension or revocation, the license automatically is suspended on the date on which the payment is made. The Director must provide the offending licensee an opportunity for an administrative hearing on the suspension in accordance with the Administrative Procedure Act. (Sec. 4707.30(B).) The bill defines "aggrieved party" as a person who has sustained actual and direct losses in an auction transaction involving a person licensed under the Auctioneer's Law due to conduct by the licensee that could cause the licensee's license to be suspended or revoked or that otherwise violates the Auctioneer's Law or rules adopted under it and that is associated with an act or transaction that only a licensee lawfully may perform (sec. 4707.30(A)(1)).

"Offending licensee" means a person licensed under the Auctioneer's Law who fits either of the following descriptions:

(1) Against whom an aggrieved party has obtained a final judgment in a court of competent jurisdiction and whose failure to pay all or a portion of the judgment results in a payment to the aggrieved party from the Auction Recovery Fund;

(2) Whose conduct has resulted in a payment from the Auction recovery Fund to an aggrieved party by order of the Director of Agriculture. (Sec. 4707.30(A)(2)).

The bill prohibits the Director from reactivating the suspended license until the offending licensee has repaid in full, plus 8% interest annually as established in the Commercial Transactions Law, the amount paid from the Fund to the aggrieved party. A discharge in bankruptcy does not relieve an offending licensee from these suspension provisions and requirements for reactivation of a license. (Sec. 4707.30(B) and sec. 1343.01, not in the bill.)

Under the bill, when the Director has paid from the Fund any sum to an aggrieved party, the Director must be subrogated to all of the rights of the aggrieved party to the extent of the amount of the payment that the aggrieved party received from the Fund. If the aggrieved party obtained a final judgment against the offending licensee in a court of competent jurisdiction, the aggrieved party must assign all of the aggrieved party's right, title, and interest in the judgment to the Director to the extent of the amount of the payment that the aggrieved party received from the Fund. The Director must deposit into the Fund any amount and interest recovered by him from the offending licensee. (Sec. 4707.30(B).)

With respect to the amount of a payment that the Director has paid to an aggrieved party from the Fund and has not recovered, the bill requires the Director to have a priority lien in front of all other interested creditors against the assets of an offending licensee who files bankruptcy. The lien is deemed to have taken effect on the date that the offending licensee entered into a contract with respect to the auction transaction out of which the payment from the Fund arose. (Sec. 4707.30(B).)

Disciplinary action taken under the bill against an offending licensee and the recovery of moneys from an offending licensee for deposit into the Fund do not excuse the offending licensee from any other disciplinary action to which the offending licensee may be subject under the Auctioneer's Law or any other provision of the Revised Code or rules adopted under it (sec. 4707.30(B)).

Claims against both the Auction Recovery and Real Estate Recovery Funds

(sec. 4707.262)

Current law establishes the Real Estate Recovery Fund. The purpose of the Fund is to provide compensation to individuals that have suffered financial losses as a result of violations of the Real Estate Brokers Law by persons licensed under that law. The bill requires a person who has sustained actual and direct losses in the course of a real estate auction transaction and who believes that they may qualify to seek recovery for the losses from the Real Estate Recovery Fund or from the Auction Recovery Fund to apply to a court of competent jurisdiction for a determination of the fund from which the person should seek recovery if either or both of the following apply:

(1) The transaction involves both a violation of the Real Estate Brokers Law and a violation of the Auctioneer's Law; or

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

Upon receipt of an application, the court must determine whether it appears that a violation occurred and also must determine, in its discretion, the appropriate fund from which the person should seek recovery and notify the person of the determination.

In the event that the court determines the person is able to recover from both the Real Estate Recovery Fund and the Auction Recovery Fund, the total aggregate amount that is paid to the person from both the funds may not exceed the actual and direct losses sustained by the person. In addition, the total aggregate amount that is paid to the person from both the funds must not exceed the dollar limitations established in the bill for payments from the Auction Recovery Fund, and the dollar limitations established in current law for payments from the Real Estate Recovery Fund.

The bill also specifies that, with respect to recovery from the Real Estate Recovery Fund, a person is not required first to seek recovery from the Auction Recovery Fund in order to be considered to have diligently pursued the person's remedies.

HISTORY

ACTION	DATE	JOURNAL ENTRY	
Introduced	04-30-02	p.	1741
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Reported, H. Finance & Appropriations	---		---

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