

By: Goldman

H.B. No. 4416

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of auctioneers at the Texas Department of Licensing and Regulation.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 1802.001, Occupations Code, is amended by amending subdivisions (2) and (4) to read as follows:

(2) "Associate auctioneer" means an individual who, for compensation, may sell or offer to sell property at an auction ~~[is employed by and]~~ under the direct supervision of a licensed auctioneer ~~[to sell or offer to sell property at an auction]~~.

SECTION 2. Section 1802.051(a), Occupations Code, is amended to read as follows:

(a) A person may not act as an auctioneer or associate auctioneer in this state unless the person holds a license issued by the department ~~[executive director]~~ under this chapter.

SECTION 3. Subchapter A, Chapter 1802, Occupations Code, is amended by adding Section 1802.005 to read as follows:

Sec. 1802.005. GENERAL POWERS AND DUTIES. The commission shall adopt rules necessary to administer and enforce this chapter.

SECTION 4. Section 1802.051(a) and (c), Occupations Code, is amended to read as follows:

(a) A person may not act as an auctioneer or associate auctioneer in this state unless the person holds a license issued by the department ~~[executive director]~~ under this chapter.

1 (c) Except as provided by Subsection (d), an individual who  
2 is licensed under this chapter may not act as an auctioneer or  
3 associate auctioneer for an entity unless the entity:

4 (1) is an auction company owned or operated by an  
5 individual who is licensed under this chapter; or

6 (2) is a real estate brokerage firm that is operated by  
7 a broker licensed by the Texas Real Estate Commission.

8 SECTION 5. Section 1802.052, Occupations Code, is amended  
9 to read as follows:

10 (a) An individual is eligible for an auctioneer's license if  
11 the individual:

12 (1) is at least 18 years of age;

13 (2) is a citizen of the United States or a legal alien;

14 (3) either:

15 (A) passes a written or oral examination  
16 demonstrating knowledge of the auction business and of the law of  
17 this state relating to the auction business; or

18 (B) shows proof of employment as a licensed  
19 associate auctioneer [~~by a licensed auctioneer~~] for at least two  
20 years and participation in at least 10 auctions during that  
21 employment;

22 (4) holds a high school diploma or a high school  
23 equivalency certificate; and

24 (5) has completed at least 80 hours of classroom  
25 instruction at an auction school with a curriculum approved by the  
26 department in accordance with the standards and procedures  
27 established by rule adopted under this chapter.

1 (b) The department, as provided by rule, may charge an  
2 auction school a reasonable fee for approving the curriculum as  
3 required under Subsection (a)(5) [~~(a)(6)~~].

4 SECTION 6. Section 1802.053, Occupations Code, is amended  
5 to read as follows:

6 Sec. 1802.053. ELIGIBILITY FOR ASSOCIATE AUCTIONEER  
7 LICENSE. An individual is eligible for an associate auctioneer  
8 license if the individual is:

9 (1) a citizen of the United States or a legal alien;  
10 and

11 (2) works [~~employed~~] under the direct supervision of  
12 an auctioneer licensed under this chapter.

13 SECTION 7. Section 1802.054. APPLICATION FOR LICENSE. (a)  
14 An applicant for a license must apply to the department [~~executive~~  
15 ~~director~~] on a form and in a manner prescribed [~~provided~~] by the  
16 department [~~executive director that establishes the applicant's~~  
17 ~~eligibility for the license~~]. The application must be accompanied  
18 by:

19 (1) any fee required for the auctioneer education and  
20 recovery fund authorized under Section 1802.153;

21 (2) the required application fee; and

22 (3) either:

23 (A) the permit number of a sales tax permit  
24 issued to the applicant by the comptroller under Subchapter F,  
25 Chapter 151, Tax Code; or

26 (B) proof of exemption from the tax permit  
27 requirement under Chapter 151, Tax Code.

1        (b) A nonresident applicant must submit with an application  
2 for a license under this chapter a written irrevocable consent to  
3 service of process. The consent must be in the form and supported  
4 by additional information that the commission by rule requires.  
5 The consent must:

6            (1) provide that an action relating to any transaction  
7 subject to this chapter may be commenced against the license holder  
8 in the proper court of any county of this state in which the cause of  
9 action may arise or in which the plaintiff may reside by service of  
10 process on the executive director as the license holder's agent;  
11 and

12            (2) include a statement stipulating and agreeing that  
13 service provided by this section is as valid and binding as if  
14 service had been made on the person according to the laws of this or  
15 any other state.

16        SECTION 8. Section 1802.055, Occupations Code, is amended  
17 to read as follows:

18        Sec. 1802.055. APPLICATION FOR EXAMINATION. An individual  
19 who meets the requirements [~~establishes that the individual is~~  
20 ~~eligible~~] for an auctioneer's license may apply to the department  
21 [~~executive director~~] to take the license examination. The  
22 application must be accompanied by the application fee.

23        SECTION 9. Section 1802.056(a), Occupations Code, is  
24 amended to read as follows:

25            (a) The department shall prepare, recognize, administer, or  
26 arrange for the administration of a license examination [~~must be~~]  
27 designed to establish:

- 1 (1) an applicant's general knowledge of the auction  
2 business;
- 3 (2) the principles of conducting an auction; and
- 4 (3) the laws of this state relating to auctioneers.

5 SECTION 10. Section 1802.102(b), Occupations Code, is  
6 amended to read as follows:

7 (b) In appointing advisory board members [~~under Subsection~~  
8 ~~(a)(1)~~], the presiding officer of the commission shall consider the  
9 geographical diversity of the members.

10 SECTION 11. Section 1802.103(a), Occupations Code, is  
11 amended to read as follows:

12 (a) Advisory board [~~The~~] members [~~appointed under Section~~  
13 ~~1802.102(a)(1)~~] serve six-year [~~two-year~~] terms that expire on  
14 September 1 of each odd-numbered year. Members [~~and~~] may not serve  
15 more than two consecutive terms. If a vacancy occurs during the  
16 term of such a member, the presiding officer of the commission, with  
17 the commission's approval, shall appoint a replacement to serve for  
18 the remainder of the term.

19 SECTION 12. Section 1802.106, Occupations Code, is amended  
20 to read as follows:

21 Sec. 1802.106 COMPENSATION. A member of the advisory board  
22 [~~appointed under Section 1802.102(a)(1)~~] may not receive  
23 compensation from the department for serving on the advisory board.

24 SECTION 13. Chapter 1802, Occupations Code, is amended by  
25 adding Subchapter C-1 and Sections 1802.1201 and 1802.1202 to read  
26 as follows:

27 SUBCHAPTER C-1. PRACTICE STANDARDS

1       Sec. 1802.1201. WRITTEN CONTRACTS. (a) An auctioneer who  
2 agrees to provide services to a person shall provide to the person a  
3 written contract with the terms of the agreement.

4       (b) Each contract for the services of an auctioneer shall  
5 include an itemized inventory of property to be sold or offered for  
6 sale by the license holder at auction and any additional  
7 information required by the commission in rule.

8       Sec. 1802.1202. STANDARDS OF PRACTICE. The commission by  
9 rule shall adopt standards for the practice of auctioneers and  
10 associate auctioneers, including standards for:

11           (1) the maintenance and use of a trust or escrow  
12 account for funds belonging or owed to others; and

13           (2) required consumer notices.

14       SECTION 14. Section 1802.152(a), Occupations Code, is  
15 amended to read as follows:

16       (a) The department is the manager of the fund and shall[+  
17       ~~(1) administer the fund without appropriation,~~  
18       ~~(2)] maintain books and records of the fund [~~as~~  
19 ~~required by the executive director,~~  
20       ~~(3) appear at hearings or judicial proceedings[, and~~  
21       ~~(4) invest and reinvest the fund's assets as~~  
22 ~~instructed by the executive director].~~~~

23       SECTION 15. Sections 1802.153(a) and (b), Occupations Code,  
24 are amended to read as follows:

25       (a) In addition to any other fees required by this chapter,  
26 an applicant entitled to receive a license under this chapter must  
27 pay a fee before the department [~~executive director~~] issues the

1 license.

2 (b) If the balance in the fund on August [~~December~~] 31 of a  
3 year is less than \$350,000, each license holder at the next license  
4 renewal shall pay, in addition to the renewal fee, a fee that is  
5 equal to the greater of \$50 or a pro rata share of the amount  
6 necessary to obtain a balance in the fund of \$350,000.

7 SECTION 16. Section 1802.155(b), Occupations Code, is  
8 amended to read as follows:

9 (b) If the fund contains insufficient assets to pay the  
10 consumer:

11 (1) the department shall record the time and date an  
12 order for payment to a consumer was received; and

13 (2) the department [~~executive director~~] shall pay  
14 consumers for whom an order is recorded under Subdivision (1) as  
15 funds become available in the order of the recorded time and date of  
16 the order.

17 SECTION 17. Section 1802.202(b), Occupations Code, is  
18 amended to read as follows:

19 (b) The department [~~executive director~~] may not pay a claim  
20 against an auctioneer who was not licensed at the time of the  
21 transaction on which the claim is based.

22 SECTION 18. Section 1802.203, Occupations Code, as amended  
23 by Chapters 816 (S.B. 279) and 1215 (S.B. 1147), Acts of the 78th  
24 Legislature, Regular Session, 2003, is reenacted and amended to  
25 read as follows:

26 Sec. 1802.203. HEARING. If the amount determined by the  
27 department under Section 1802.202 is disputed by the auctioneer [~~or~~

1 ~~the aggrieved party~~], the department shall refer the matter to the  
2 State Office of Administrative Hearings for a hearing on the  
3 disputed claim.

4 SECTION 19. Section 1802.205(a) and (b), Occupations Code,  
5 is amended to read as follows:

6 Sec. 1802.205. PAYMENT OF CLAIM. (a) If the department's  
7 determination under Section 1802.202 is not disputed by the  
8 auctioneer [~~or the aggrieved party~~], the department [~~executive~~  
9 ~~director~~] shall pay the claim from the fund, subject to Section  
10 1802.206.

11 (b) If a hearing is held on the department's determination,  
12 the department [~~executive director~~] shall pay to the aggrieved  
13 party the amount of actual damages as determined by the State Office  
14 of Administrative Hearings, subject to Section 1802.206 [~~executive~~  
15 ~~director~~].

16 SECTION 20. Section 1802.206(a) and (c), Occupations Code,  
17 is amended to read as follows:

18 (a) The department [~~executive director~~] may not pay a single  
19 aggrieved party more than \$15,000 for all claims arising from a  
20 single auction.

21 (c) The total payment of claims against a single auctioneer  
22 arising from a single auction may not exceed \$100,000 [~~\$30,000~~].

23 SECTION 21. Section 1802.207, Occupations Code, is amended  
24 to read as follows:

25 Sec. 1802.207. REIMBURSEMENT; INTEREST. (a) If the  
26 department [~~executive director~~] pays a claim against an auctioneer,  
27 the auctioneer shall:

1           (1) reimburse the fund immediately or agree in writing  
2 to reimburse the fund on a schedule to be determined by rule of the  
3 commission; and

4           (2) immediately pay the aggrieved party any amount due  
5 to that party or agree in writing to pay the party on a schedule to  
6 be determined by rule of the commission.

7           (b) Payments made by an auctioneer to the fund or to an  
8 aggrieved party under this section include interest accruing at the  
9 rate of eight percent a year beginning on the date the department  
10 [~~executive director~~] pays the claim.

11           SECTION 22. Section 1802.208, Occupations Code, is amended  
12 to read as follows:

13           Sec. 1802.208. SUBROGATION. If the department [~~executive~~  
14 ~~director~~] pays a claim against an auctioneer, the department is  
15 subrogated to all rights of the aggrieved party against the  
16 auctioneer to the extent of the amount paid to the aggrieved party.

17           SECTION 23. Section 1802.251, Occupations Code, is amended  
18 to read as follows:

19           Sec. 1802.251. DISCIPLINARY ACTION; ADMINISTRATIVE PENALTY  
20 [~~DENIAL OF APPLICATION; SUSPENSION OR REVOCATION OF LICENSE~~]. The  
21 commission or executive director may take any action or administer  
22 a penalty under Subchapter F or G, Chapter 51, against an [~~deny an~~  
23 ~~application for a license or suspend or revoke the license of any~~]  
24 auctioneer or associate auctioneer for:

25           (1) violating this chapter or a rule adopted under  
26 this chapter;

27           (2) obtaining a license through false or fraudulent

1 representation;

2 (3) making a substantial misrepresentation in an  
3 application for an auctioneer's license;

4 (4) engaging in a continued and flagrant course of  
5 misrepresentation or making false promises through an agent,  
6 advertising, or otherwise;

7 (5) failing to account for or remit, within a  
8 reasonable time, money or property belonging to another that is in  
9 the auctioneer's possession or ~~and~~ commingling funds of another  
10 with the auctioneer's funds or failing to keep the funds of another  
11 in an escrow or trust account; ~~or~~

12 (6) violating a provision of the Business & Commerce  
13 Code in conducting an auction; or

14 (7) violating a rule or order of the commission or  
15 executive director.

16 SECTION 24. Section 1802.252(a) and (c), Occupations Code,  
17 is amended to read as follows:

18 (a) The commission may revoke a license issued under this  
19 chapter if the department ~~[executive director]~~ makes a payment from  
20 the fund as the result of an action of the license holder.

21 (c) An auctioneer or associate auctioneer is not eligible  
22 for a new license until the auctioneer or associate auctioneer has  
23 repaid in full the amount paid from the fund on the auctioneer's  
24 account, including interest ~~[, unless:~~

25 ~~(1) a hearing is held, and~~

26 ~~(2) the executive director issues a new probated~~  
27 ~~license].~~

1 SECTION 25. Section 1802.253, Occupations Code, is amended  
2 by amending Subsection (a) and adding Subsection (e) to read as  
3 follows:

4 (a) If the department proposes to deny ~~[Before denying]~~ an  
5 application for a license or take a disciplinary action or issue an  
6 administrative penalty against a license holder, the applicant or  
7 license holder is entitled to ~~[commission or executive director~~  
8 ~~shall:~~

9 ~~(1) set the matter for]~~ a hearing ~~[to be conducted by~~  
10 ~~the State Office of Administrative Hearings; and~~

11 ~~(2) before the hearing date, notify the applicant in~~  
12 ~~writing of:~~

13 ~~(A) the charges alleged or the question to be~~  
14 ~~determined at the hearing; and~~

15 ~~(B) the date and location of the hearing].~~

16 (e) A proceeding relating to a license denial and  
17 disciplinary action by the department under this chapter is a  
18 contested case under Chapter 2001, Government Code.

19 SECTION 26. Section 1802.301(a), Occupations Code, is  
20 amended to read as follows:

21 (a) A person commits an offense if the person acts as an  
22 auctioneer or an associate auctioneer without a license.

23 SECTION 27. The following provisions of the Occupations  
24 Code are repealed:

25 (1) Section 1802.056(b) and (c);

26 (2) Section 1802.059;

27 (3) Section 1802.060;

- 1           (4) Section 1802.103(b);
- 2           (5) Section 1802.109;
- 3           (6) Section 1802.154;
- 4           (7) Section 1802.156;
- 5           (8) Section 1802.201;
- 6           (9) Section 1802.206(b); and
- 7           (10) Section 1802.303.

8           SECTION 28. (a) The changes in law made by this Act to  
9 Chapter 1802, Occupations Code, do not affect the validity of a  
10 proceeding pending before a court or other governmental entity on  
11 the effective date of this Act.

12           (b) An offense or other violation committed before the  
13 effective date of this Act is governed by the law in effect on the  
14 date the offense or violation was committed, and the former law is  
15 continued in effect for that purpose. For purposes of this section,  
16 an offense or violation was committed before the effective date of  
17 this Act if any element of the offense or violation was committed  
18 before that date.

19           SECTION 29. This Act takes effect September 1, 2023.