

1-1 By: Goldman (Senate Sponsor - Kolkhorst) H.B. No. 4416  
 1-2 (In the Senate - Received from the House May 8, 2023;  
 1-3 May 9, 2023, read first time and referred to Committee on Business  
 1-4 & Commerce; May 17, 2023, reported favorably by the following vote:  
 1-5 Yeas 9, Nays 0; May 17, 2023, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9	X			
1-10			X	
1-11	X			
1-12	X			
1-13	X			
1-14			X	
1-15	X			
1-16	X			
1-17	X			
1-18	X			

1-19 A BILL TO BE ENTITLED  
 1-20 AN ACT

1-21 relating to the regulation of auctioneering by the Texas Department  
 1-22 of Licensing and Regulation; authorizing an administrative  
 1-23 penalty.

1-24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-25 SECTION 1. Section 1802.001(2), Occupations Code, is  
 1-26 amended to read as follows:

1-27 (2) "Associate auctioneer" means an individual who,  
 1-28 for compensation, sells or offers to sell property at an auction [~~is~~  
 1-29 ~~employed by and~~] under the direct supervision of a licensed  
 1-30 auctioneer [~~to sell or offer to sell property at an auction~~].

1-31 SECTION 2. Subchapter A, Chapter 1802, Occupations Code, is  
 1-32 amended by adding Section 1802.005 to read as follows:

1-33 Sec. 1802.005. RULES. The commission shall adopt rules  
 1-34 necessary to administer and enforce this chapter.

1-35 SECTION 3. Sections 1802.051(a) and (c), Occupations Code,  
 1-36 are amended to read as follows:

1-37 (a) A person may not act as an auctioneer or associate  
 1-38 auctioneer in this state unless the person holds a license issued by  
 1-39 the department [~~executive director~~] under this chapter.

1-40 (c) Except as provided by Subsection (d), an individual who  
 1-41 is licensed under this chapter may not act as an auctioneer or  
 1-42 associate auctioneer for an entity unless the entity:

1-43 (1) is an auction company owned or operated by an  
 1-44 individual who is licensed under this chapter; or

1-45 (2) is a real estate brokerage firm that is operated by  
 1-46 a broker licensed by the Texas Real Estate Commission.

1-47 SECTION 4. Section 1802.052, Occupations Code, is amended  
 1-48 to read as follows:

1-49 Sec. 1802.052. ELIGIBILITY FOR AUCTIONEER'S LICENSE. (a)  
 1-50 An individual is eligible for an auctioneer's license if the  
 1-51 individual:

1-52 (1) is at least 18 years of age;

1-53 (2) is a citizen of the United States or a legal alien;

1-54 (3) either:

1-55 (A) passes a written or oral examination  
 1-56 demonstrating knowledge of the auction business and of the laws of  
 1-57 this state relating to the auction business; or

1-58 (B) shows proof of employment as a licensed  
 1-59 associate auctioneer [~~by a licensed auctioneer~~] for at least two  
 1-60 years and participation in at least 10 auctions during that  
 1-61 employment;

2-1 (4) holds a high school diploma or a high school  
 2-2 equivalency certificate; and

2-3 (5) has completed at least 80 hours of classroom  
 2-4 instruction at an auction school with a curriculum approved by the  
 2-5 department in accordance with the standards and procedures  
 2-6 established by rule adopted under this chapter.

2-7 (b) The department, as provided by rule, may charge an  
 2-8 auction school a reasonable fee for approving the curriculum as  
 2-9 required under Subsection (a)(5) [~~(a)(6)~~].

2-10 SECTION 5. Section 1802.053, Occupations Code, is amended  
 2-11 to read as follows:

2-12 Sec. 1802.053. ELIGIBILITY FOR ASSOCIATE AUCTIONEER  
 2-13 LICENSE. An individual is eligible for an associate auctioneer  
 2-14 license if the individual [~~is~~]:

2-15 (1) is a citizen of the United States or a legal alien;  
 2-16 and

2-17 (2) works [~~employed~~] under the direct supervision of  
 2-18 an auctioneer licensed under this chapter.

2-19 SECTION 6. Section 1802.054, Occupations Code, is amended  
 2-20 to read as follows:

2-21 Sec. 1802.054. APPLICATION FOR LICENSE. (a) An applicant  
 2-22 for a license must apply to the department [~~executive director~~] on a  
 2-23 form and in a manner prescribed [~~provided~~] by the department  
 2-24 [~~executive director that establishes the applicant's eligibility~~  
 2-25 ~~for the license~~]. The application must be accompanied by:

2-26 (1) any fee required for the auctioneer education and  
 2-27 recovery fund authorized under Section 1802.153;

2-28 (2) the required application fee; and

2-29 (3) either:

2-30 (A) the permit number of a sales tax permit  
 2-31 issued to the applicant by the comptroller under Subchapter F,  
 2-32 Chapter 151, Tax Code; or

2-33 (B) proof of exemption from the tax permit  
 2-34 requirement under Chapter 151, Tax Code.

2-35 (b) A nonresident applicant must submit with an application  
 2-36 for a license under this chapter a written irrevocable consent to  
 2-37 service of process. The consent must:

2-38 (1) be in the form and supported by additional  
 2-39 information that the commission by rule requires;

2-40 (2) provide that an action relating to any transaction  
 2-41 governed by this chapter may be commenced against the license  
 2-42 holder in the proper court of any county of this state in which the  
 2-43 cause of action may arise or in which the plaintiff may reside by  
 2-44 service of process on the executive director as the license  
 2-45 holder's agent; and

2-46 (3) include a statement stipulating and agreeing that  
 2-47 service provided by this section is as valid and binding as if  
 2-48 service had been made on the person according to the laws of this or  
 2-49 any other state.

2-50 SECTION 7. Section 1802.055, Occupations Code, is amended  
 2-51 to read as follows:

2-52 Sec. 1802.055. APPLICATION FOR EXAMINATION. An individual  
 2-53 who meets the requirements [~~establishes that the individual is~~  
 2-54 ~~eligible~~] for an auctioneer's license may apply to the department  
 2-55 [~~executive director~~] to take the license examination. The  
 2-56 application must be accompanied by the application fee.

2-57 SECTION 8. Section 1802.056(a), Occupations Code, is  
 2-58 amended to read as follows:

2-59 (a) The department shall prepare, recognize, administer, or  
 2-60 arrange for the administration of a license examination [~~must be~~]  
 2-61 designed to establish:

2-62 (1) an applicant's general knowledge of the auction  
 2-63 business;

2-64 (2) the principles of conducting an auction; and

2-65 (3) the laws of this state relating to auctioneers.

2-66 SECTION 9. Section 1802.102(b), Occupations Code, is  
 2-67 amended to read as follows:

2-68 (b) In appointing advisory board members [~~under Subsection~~  
 2-69 ~~(a)(1)~~], the presiding officer of the commission shall consider the

3-1 geographical diversity of the members.

3-2 SECTION 10. Section 1802.103(a), Occupations Code, is  
3-3 amended to read as follows:

3-4 (a) Advisory board [~~The~~] members [~~appointed under Section~~  
3-5 ~~1802.102(a)(1)~~] serve six-year [~~two-year~~] terms that expire on  
3-6 September 1 of each odd-numbered year. Members [~~and~~] may not serve  
3-7 more than two consecutive terms. If a vacancy occurs during the  
3-8 term of such a member, the presiding officer of the commission, with  
3-9 the commission's approval, shall appoint a replacement to serve for  
3-10 the remainder of the term.

3-11 SECTION 11. Section 1802.106, Occupations Code, is amended  
3-12 to read as follows:

3-13 Sec. 1802.106. COMPENSATION. A member of the advisory  
3-14 board [~~appointed under Section 1802.102(a)(1)~~] may not receive  
3-15 compensation from the department for serving on the advisory board.

3-16 SECTION 12. Chapter 1802, Occupations Code, is amended by  
3-17 adding Subchapter C-1 to read as follows:

3-18 SUBCHAPTER C-1. PRACTICE STANDARDS

3-19 Sec. 1802.121. WRITTEN CONTRACTS. (a) An auctioneer who  
3-20 agrees to provide services to a person shall provide to the person a  
3-21 written contract with the terms of the agreement.

3-22 (b) Each contract for the services of an auctioneer must  
3-23 include information required by the commission by rule.

3-24 (c) Before any auction, the auctioneer and client must  
3-25 agree in writing to an itemized inventory of property to be sold or  
3-26 offered for sale by the auctioneer at auction. An amendment to the  
3-27 inventory must be in writing and signed by both parties.

3-28 Sec. 1802.122. STANDARDS OF PRACTICE. The commission by  
3-29 rule shall adopt standards for the practice of auctioneers and  
3-30 associate auctioneers, including standards for:

3-31 (1) the maintenance and use of a trust or escrow  
3-32 account for funds belonging or owed to another; and

3-33 (2) required consumer notices.

3-34 SECTION 13. Section 1802.152(a), Occupations Code, is  
3-35 amended to read as follows:

3-36 (a) The department is the manager of the fund and shall [+  
3-37 [~~(1) administer the fund without appropriation,~~  
3-38 [~~(2)~~] maintain books and records of the fund [~~as~~  
3-39 ~~required by the executive director,~~  
3-40 [~~(3) appear at hearings or judicial proceedings, and~~  
3-41 [~~(4) invest and reinvest the fund's assets as~~  
3-42 ~~instructed by the executive director~~].

3-43 SECTION 14. Sections 1802.153(a) and (b), Occupations Code,  
3-44 are amended to read as follows:

3-45 (a) In addition to any other fees required by this chapter,  
3-46 an applicant entitled to receive a license under this chapter must  
3-47 pay a fee before the department [~~executive director~~] issues the  
3-48 license.

3-49 (b) If the balance in the fund on August [~~December~~] 31 of a  
3-50 year is less than \$350,000, each license holder at the next license  
3-51 renewal shall pay, in addition to the renewal fee, a fee that is  
3-52 equal to the greater of \$50 or a pro rata share of the amount  
3-53 necessary to obtain a balance in the fund of \$350,000.

3-54 SECTION 15. Section 1802.155(b), Occupations Code, is  
3-55 amended to read as follows:

3-56 (b) If the fund contains insufficient assets to pay the  
3-57 consumer:

3-58 (1) the department shall record the time and date an  
3-59 order for payment to a consumer was received; and

3-60 (2) the department [~~executive director~~] shall pay  
3-61 consumers for whom an order is recorded under Subdivision (1) as  
3-62 funds become available in the order of the recorded time and date of  
3-63 the order.

3-64 SECTION 16. Section 1802.202(b), Occupations Code, is  
3-65 amended to read as follows:

3-66 (b) The department [~~executive director~~] may not pay a claim  
3-67 against an auctioneer who was not licensed at the time of the  
3-68 transaction on which the claim is based.

3-69 SECTION 17. Section 1802.203, Occupations Code, as amended

4-1 by Chapters 816 (S.B. 279) and 1215 (S.B. 1147), Acts of the 78th  
 4-2 Legislature, Regular Session, 2003, is reenacted and amended to  
 4-3 read as follows:

4-4 Sec. 1802.203. HEARING. If the amount determined by the  
 4-5 department under Section 1802.202 is disputed by the auctioneer [~~or~~  
 4-6 ~~the aggrieved party~~], the department shall refer the matter to the  
 4-7 State Office of Administrative Hearings for a hearing on the  
 4-8 disputed claim.

4-9 SECTION 18. Sections 1802.205(a) and (b), Occupations Code,  
 4-10 are amended to read as follows:

4-11 (a) If the department's determination under Section  
 4-12 1802.202 is not disputed by the auctioneer [~~or the aggrieved~~  
 4-13 ~~party~~], the department [~~executive director~~] shall pay the claim  
 4-14 from the fund, subject to Section 1802.206.

4-15 (b) If a hearing is held on the department's determination,  
 4-16 the department [~~executive director~~] shall pay to the aggrieved  
 4-17 party the amount of actual damages as determined by an  
 4-18 administrative law judge with the State Office of Administrative  
 4-19 Hearings who presided over the hearing, subject to Section 1802.206  
 4-20 [~~executive director~~].

4-21 SECTION 19. Sections 1802.206(a) and (c), Occupations Code,  
 4-22 are amended to read as follows:

4-23 (a) The department [~~executive director~~] may not pay a single  
 4-24 aggrieved party more than \$15,000 for all claims arising from a  
 4-25 single auction.

4-26 (c) The total payment of claims against a single auctioneer  
 4-27 arising from a single auction may not exceed \$100,000 [~~\$30,000~~].

4-28 SECTION 20. Section 1802.207, Occupations Code, is amended  
 4-29 to read as follows:

4-30 Sec. 1802.207. REIMBURSEMENT; INTEREST. (a) If the  
 4-31 department [~~executive director~~] pays a claim against an auctioneer,  
 4-32 the auctioneer shall:

4-33 (1) reimburse the fund immediately or agree in writing  
 4-34 to reimburse the fund on a schedule to be determined by rule of the  
 4-35 commission; and

4-36 (2) immediately pay the aggrieved party any amount due  
 4-37 to that party or agree in writing to pay the party on a schedule to  
 4-38 be determined by rule of the commission.

4-39 (b) Payments made by an auctioneer to the fund or to an  
 4-40 aggrieved party under this section include interest accruing at the  
 4-41 rate of eight percent a year beginning on the date the department  
 4-42 [~~executive director~~] pays the claim.

4-43 SECTION 21. Section 1802.208, Occupations Code, is amended  
 4-44 to read as follows:

4-45 Sec. 1802.208. SUBROGATION. If the department [~~executive~~  
 4-46 ~~director~~] pays a claim against an auctioneer, the department is  
 4-47 subrogated to all rights of the aggrieved party against the  
 4-48 auctioneer to the extent of the amount paid to the aggrieved party.

4-49 SECTION 22. Section 1802.251, Occupations Code, is amended  
 4-50 to read as follows:

4-51 Sec. 1802.251. DISCIPLINARY ACTION; ADMINISTRATIVE PENALTY  
 4-52 [~~DENIAL OF APPLICATION; SUSPENSION OR REVOCATION OF LICENSE~~]. The  
 4-53 commission or executive director may take any action or impose a  
 4-54 penalty under Subchapter F or G, Chapter 51, against an [~~deny an~~  
 4-55 ~~application for a license or suspend or revoke the license of any~~]  
 4-56 auctioneer or associate auctioneer for:

4-57 (1) violating this chapter or a rule adopted under  
 4-58 this chapter;

4-59 (2) obtaining a license through false or fraudulent  
 4-60 representation;

4-61 (3) making a substantial misrepresentation in an  
 4-62 application for an auctioneer's license;

4-63 (4) engaging in a continued and flagrant course of  
 4-64 misrepresentation or making false promises through an agent,  
 4-65 advertising, or otherwise;

4-66 (5) failing to account for or remit, within a  
 4-67 reasonable time, money or property belonging to another that is in  
 4-68 the auctioneer's possession or [~~and~~] commingling funds of another  
 4-69 with the auctioneer's funds or failing to keep the funds of another

5-1 in an escrow or trust account; ~~[or]~~  
 5-2 (6) violating a provision of the Business & Commerce  
 5-3 Code in conducting an auction; or  
 5-4 (7) violating a rule or order of the commission or  
 5-5 executive director.

5-6 SECTION 23. Sections 1802.252(a) and (c), Occupations Code,  
 5-7 are amended to read as follows:

5-8 (a) The commission may revoke a license issued under this  
 5-9 chapter if the department ~~[executive director]~~ makes a payment from  
 5-10 the fund as the result of an action of the license holder.

5-11 (c) An auctioneer or associate auctioneer is not eligible  
 5-12 for a new license until the auctioneer or associate auctioneer has  
 5-13 repaid in full the amount paid from the fund on the auctioneer's  
 5-14 account, including interest ~~[, unless:~~

5-15 ~~[(1) a hearing is held; and~~  
 5-16 ~~[(2) the executive director issues a new probated~~  
 5-17 ~~license].~~

5-18 SECTION 24. Section 1802.253, Occupations Code, is amended  
 5-19 by amending Subsection (a) and adding Subsection (d) to read as  
 5-20 follows:

5-21 (a) If the department proposes to deny ~~[Before denying]~~ an  
 5-22 application for a license or take a disciplinary action or impose an  
 5-23 administrative penalty against a license holder, the applicant or  
 5-24 license holder is entitled to ~~[, the commission or executive~~  
 5-25 ~~director shall:~~

5-26 ~~[(1) set the matter for] a hearing [to be conducted by~~  
 5-27 ~~the State Office of Administrative Hearings; and~~

5-28 ~~[(2) before the hearing date, notify the applicant in~~  
 5-29 ~~writing of:~~

5-30 ~~[(A) the charges alleged or the question to be~~  
 5-31 ~~determined at the hearing; and~~

5-32 ~~[(B) the date and location of the hearing].~~

5-33 (d) A proceeding relating to a license denial or  
 5-34 disciplinary action by the department under this chapter is a  
 5-35 contested case under Chapter 2001, Government Code.

5-36 SECTION 25. Section 1802.301(a), Occupations Code, is  
 5-37 amended to read as follows:

5-38 (a) A person commits an offense if the person acts as an  
 5-39 auctioneer or an associate auctioneer without a license.

5-40 SECTION 26. The following provisions of the Occupations  
 5-41 Code are repealed:

5-42 (1) Sections 1802.056(b) and (c);

5-43 (2) Section 1802.059;

5-44 (3) Section 1802.060;

5-45 (4) Section 1802.103(b);

5-46 (5) Section 1802.109;

5-47 (6) Section 1802.154;

5-48 (7) Section 1802.156;

5-49 (8) Section 1802.201;

5-50 (9) Section 1802.206(b); and

5-51 (10) Section 1802.303.

5-52 SECTION 27. The changes in law made by this Act to Section  
 5-53 1802.103, Occupations Code, apply only to the term of a member of  
 5-54 the Auctioneer Advisory Board appointed to the board on or after the  
 5-55 effective date of this Act.

5-56 SECTION 28. The changes in law made by this Act to Chapter  
 5-57 1802, Occupations Code, do not affect the validity of a proceeding  
 5-58 pending before a court or other governmental entity on the  
 5-59 effective date of this Act.

5-60 SECTION 29. The repeal by this Act of Section 1802.303,  
 5-61 Occupations Code, does not apply to an offense committed under that  
 5-62 section before the effective date of this Act. An offense committed  
 5-63 before the effective date of this Act is governed by the law in  
 5-64 effect on the date the offense was committed, and the former law is  
 5-65 continued in effect for that purpose. For purposes of this section,  
 5-66 an offense was committed before the effective date of this Act if  
 5-67 any element of the offense was committed before that date.

5-68 SECTION 30. The changes in law made by this Act apply only  
 5-69 to conduct constituting a violation of Chapter 1802, Occupations

6-1 Code, that occurs on or after the effective date of this  
6-2 Act. Conduct constituting a violation of Chapter 1802,  
6-3 Occupations Code, that occurs before that date is governed by the  
6-4 law in effect on the date the conduct occurred, and the former law  
6-5 is continued in effect for that purpose.

6-6 SECTION 31. This Act takes effect September 1, 2023.

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