

By: Pitts

H.B. No. 2069

A BILL TO BE ENTITLED

AN ACT

relating to licensing of auctioneers.

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

SECTION 1. Section 1802.001, Occupations Code, is amended by adding Subdivision (8-a) to read as follows:

(8-a) "Executive director" means the executive director of the department.

SECTION 2. Section 1802.002, Occupations Code, is amended to read as follows:

Sec. 1802.002. APPLICABILITY. This chapter does not apply to:

(1) a sale conducted by order of a United States court under Title 11, United States Code;

(2) a sale conducted by an employee of the United States, this state, or a political subdivision of this state in the course and scope of employment;

(3) a sale conducted by a charitable or nonprofit organization, if the auctioneer receives no compensation;

(4) a sale conducted by an individual of the individual's property if the individual is not engaged in the business of selling property as an auctioneer on a recurring basis;

(5) a foreclosure sale of real property personally conducted by a trustee under a deed of trust;

(6) a foreclosure sale of personal property personally

1 conducted by:

2 (A) a person who holds a security interest in the
3 property, including a mortgage; or

4 (B) an employee or agent of a person described by
5 Paragraph (A) acting in the course and scope of employment, if:

6 (i) the employee or agent is not otherwise
7 engaged in the auction business; and

8 (ii) all property for sale in the auction is
9 subject to a security agreement;

10 (7) a sale conducted by sealed bid;

11 (8) an auction conducted only for student training
12 purposes as part of a course of study approved by the executive
13 director [~~commissioner~~] for auctioneers;

14 (9) an auction conducted by a posted stockyard or
15 market agency as defined by the federal Packers and Stockyards Act
16 (7 U.S.C. Section 181 et seq.), as amended;

17 (10) an auction of livestock conducted by a nonprofit
18 livestock trade association chartered in this state, if the auction
19 involves only the sale of livestock owned by members of the trade
20 association; or

21 (11) an auction conducted by a charitable or nonprofit
22 organization chartered in this state, if the auction:

23 (A) is part of a fair that is organized under
24 state, county, or municipal authority; and

25 (B) involves only the sale of property owned by
26 the organization's members.

27 SECTION 3. Section 1802.051, Occupations Code, is amended

1 by amending Subsection (a) and adding Subsection (d) to read as
2 follows:

3 (a) A person may not act as an auctioneer or associate
4 auctioneer in an auction held in this state or advertise or
5 otherwise hold the person out to the public as an auctioneer unless
6 the person is an individual who holds a license issued by the
7 executive director [~~commissioner~~] under this chapter.

8 (d) An auction company shall include the name and license
9 number of each auctioneer who will act as a bid caller in an auction
10 conducted by the company in all advertising and printed materials
11 prepared for distribution to the public.

12 SECTION 4. Section 1802.052, Occupations Code, is amended
13 to read as follows:

14 Sec. 1802.052. ELIGIBILITY FOR AUCTIONEER'S LICENSE. An
15 individual is eligible for an auctioneer's license if the
16 individual:

- 17 (1) is at least 18 years of age;
18 (2) is a citizen of the United States or a legal alien;

19 and

- 20 (3) either:
21 (A) passes a written or oral examination
22 demonstrating knowledge of the auction business and of the laws of
23 this state relating to the auction business; or

24 (B) shows proof of employment as an associate
25 auctioneer with [~~by~~] a licensed auctioneer for at least one year
26 during which the applicant participated in at least five auctions.

27 SECTION 5. Section 1802.054, Occupations Code, is amended

1 to read as follows:

2 Sec. 1802.054. APPLICATION FOR LICENSE. An applicant for a
3 license must apply to the executive director [~~commissioner~~] on a
4 form provided by the executive director [~~commissioner~~] that
5 establishes the applicant's eligibility for the license. The
6 application must be accompanied by:

- 7 (1) [~~the required bond,~~
8 [~~(2)~~] the required license fees [~~fee~~]; and
9 (2) [~~(3)~~] either:

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

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

15 SECTION 6. Section 1802.056, Occupations Code, is amended
16 by amending Subsections (b) and (c) and adding Subsection (d) to
17 read as follows:

18 (b) The license examination shall be offered at least four
19 times each year at locations designated by the executive director
20 [~~commissioner~~].

21 (c) The executive director [~~commissioner~~] shall prepare[+
22 [~~(1)~~] examinations for an auctioneer's license[~~, and~~
23 [~~(2)~~ ~~study and reference materials on which the~~
24 ~~examinations are based~~].

25 (d) The applicant may take the examination at any scheduled
26 offering not later than the 90th day after the date the application
27 is approved.

1 SECTION 7. Sections 1802.057 and 1802.058, Occupations
2 Code, are amended to read as follows:

3 Sec. 1802.057. EXAMINATION RESULTS. (a) The executive
4 director [~~commissioner~~] shall notify each examinee of the results
5 of the examination not later than the 30th day after the date of the
6 examination. However, if an examination is graded or reviewed by a
7 national testing service, the executive director [~~commissioner~~]
8 shall notify each examinee of the results of the examination not
9 later than the 14th day after the date the executive director
10 [~~commissioner~~] receives the results from the testing service.

11 (b) If the notification of results of an examination graded
12 or reviewed by a national testing service will be delayed longer
13 than 90 days after the examination date, the executive director
14 [~~commissioner~~] shall notify each examinee of the reason for the
15 delay before the 90th day.

16 (c) If requested in writing by a person who fails the
17 examination, the executive director [~~commissioner~~] shall provide
18 to the person an analysis of the person's performance on the
19 examination.

20 Sec. 1802.058. REEXAMINATION. An applicant who fails the
21 license examination may retake [~~reapply to take~~] the examination.
22 [~~If the applicant fails the examination twice during a one-year~~
23 ~~period, the applicant may not reapply for one year.~~]

24 SECTION 8. Sections 1802.059(a), (b), and (d), Occupations
25 Code, are amended to read as follows:

26 (a) An applicant for an auctioneer's license who is not a
27 resident of this state but is licensed as an auctioneer in another

1 state must submit to the executive director [~~commissioner~~]:

2 (1) a license application;

3 (2) a certified copy of the auctioneer's license
4 issued to the applicant by the state or political subdivision in
5 which the applicant resides; and

6 (3) proof that the state or political subdivision in
7 which the applicant is licensed has competency standards equivalent
8 to or stricter than those of this state.

9 (b) The executive director [~~commissioner~~] shall accept the
10 applicant's auctioneer's license submitted under Subsection (a)(2)
11 as proof of the applicant's professional competence and waive the
12 eligibility [~~examination and training~~] requirements of Section
13 1802.052(3) [~~1802.052~~] if the state or political subdivision that
14 issued the nonresident a license extends similar recognition and
15 courtesies to this state.

16 (d) A nonresident applicant must submit with the
17 application a written irrevocable consent to service of process.
18 The consent must be in the form and supported by additional
19 information that the executive director [~~commissioner~~] by rule
20 requires. The consent must:

21 (1) provide that an action relating to any transaction
22 subject to this chapter may be commenced against the license holder
23 in the proper court of any county of this state in which the cause of
24 action may arise or in which the plaintiff may reside by service of
25 process on the executive director [~~commissioner~~] as the license
26 holder's agent; and

27 (2) include a statement stipulating and agreeing that

1 service provided by this section is as valid and binding as if
2 service had been made on the person according to the laws of this or
3 any other state.

4 SECTION 9. Sections 1802.061 and 1802.101, Occupations
5 Code, are amended to read as follows:

6 Sec. 1802.061. CONTINUING EDUCATION. The executive
7 director [~~commissioner~~] may recognize, prepare, or administer
8 continuing education programs for license holders. Participation
9 in the programs is voluntary.

10 Sec. 1802.101. AUCTIONEER EDUCATION ADVISORY BOARD. The
11 advisory board shall advise the executive director [~~commissioner~~]
12 on educational matters.

13 SECTION 10. Sections 1802.102(a) and (b), Occupations Code,
14 are amended to read as follows:

15 (a) The advisory board consists of five members appointed as
16 follows:

17 (1) three members who are licensed auctioneers
18 appointed by the executive director [~~commissioner~~];

19 (2) the executive director of the Texas Department of
20 Economic Development or the director's designee; and

21 (3) the commissioner of education or the
22 commissioner's designee.

23 (b) In appointing advisory board members under Subsection
24 (a)(1), the executive director [~~commissioner~~] may not appoint
25 members who reside in contiguous senatorial districts.

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

1 (a) The members appointed under Section 1802.102(a)(1)
2 serve two-year terms that expire on September 1. If a vacancy
3 occurs during the term of such a member, the executive director
4 [~~commissioner~~] shall appoint a replacement to serve for the
5 remainder of the term.

6 SECTION 12. Section 1802.107(a), Occupations Code, is
7 amended to read as follows:

8 (a) The advisory board shall meet at least once [~~quarterly~~]
9 each calendar year.

10 SECTION 13. Section 1802.109, Occupations Code, is amended
11 to read as follows:

12 Sec. 1802.109. AUCTIONEER EDUCATION PROGRAMS. (a) The
13 advisory board shall:

14 (1) evaluate educational programs, seminars, and
15 training projects; and

16 (2) make recommendations to the executive director
17 [~~commissioner~~] on their usefulness and merit as continuing
18 education tools.

19 (b) On the recommendation of the advisory board, the
20 executive director [~~commissioner~~] may fund or underwrite specific
21 classes, seminars, or events for the education and advancement of
22 the auctioneering profession in this state.

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

25 (a) The department is the manager of the fund and shall:

26 (1) administer the fund without appropriation;

27 (2) maintain books and records as required by the

1 executive director [~~commissioner~~];

2 (3) appear at hearings or judicial proceedings; and

3 (4) invest and reinvest the fund's assets as
4 instructed by the executive director [~~commissioner~~].

5 SECTION 15. The heading to Section 1802.153, Occupations
6 Code, is amended to read as follows:

7 Sec. 1802.153. [~~ADDITIONAL~~] FEES FOR AUCTIONEER EDUCATION
8 AND RECOVERY FUND.

9 SECTION 16. Section 1802.153(a), Occupations Code, is
10 amended to read as follows:

11 (a) In addition to any other fees required by this chapter,
12 at the time an initial license is issued, the [~~an applicant entitled~~
13 ~~to receive a~~] license holder shall [~~under this chapter must~~] pay a
14 fee of \$100 for the auctioneer education and recovery fund [~~before~~
15 ~~the commissioner issues the license~~].

16 SECTION 17. Section 1802.155(b), Occupations Code, is
17 amended to read as follows:

18 (b) If the fund contains insufficient assets to pay the
19 consumer:

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

22 (2) the executive director [~~commissioner~~] shall pay
23 consumers for whom an order is recorded under Subdivision (1) as
24 funds become available in the order of the recorded time and date of
25 the order.

26 SECTION 18. Sections 1802.156 and 1802.201, Occupations
27 Code, are amended to read as follows:

1 Sec. 1802.156. EDUCATION EXPENDITURES PERMITTED. The
2 executive director [~~commissioner~~] may use amounts in excess of
3 \$250,000 in the fund to:

4 (1) advance education and research in the
5 auctioneering profession for the benefit of license holders and to
6 improve and increase the efficiency of the industry;

7 (2) underwrite educational seminars, training
8 centers, and other educational projects for the use and benefit of
9 license holders;

10 (3) sponsor, contract, and underwrite other
11 educational and research projects that advance the auctioneering
12 profession in this state; and

13 (4) cooperate with associations of auctioneers and
14 other groups for the education and advancement of the auctioneering
15 profession in this state.

16 Sec. 1802.201. INVESTIGATION OF COMPLAINTS. The executive
17 director [~~commissioner~~] may, on the executive director's
18 [~~commissioner's~~] motion, and shall, on the written and verified
19 complaint of a person aggrieved by the actions of an auctioneer in
20 an auction, investigate an alleged violation of this chapter by a
21 licensed or unlicensed auctioneer or an applicant.

22 SECTION 19. Sections 1802.202(a) and (b), Occupations Code,
23 are amended to read as follows:

24 (a) A person who deals with an auctioneer licensed under
25 this chapter and who is aggrieved by an action of the auctioneer as
26 a result of a violation of a contract made with the auctioneer may
27 initiate a claim against the fund by[+]

1 ~~[(1)]~~ filing with the department a [~~sworn~~] complaint
2 against the auctioneer[~~, and~~
3 ~~[(2)]~~ ~~paying to the department a filing fee of \$50~~].

4 (b) The executive director [~~commissioner~~] may not pay a
5 claim against an auctioneer who was not licensed at the time of the
6 transaction on which the claim is based.

7 SECTION 20. Section 1802.203(c), Occupations Code, is
8 amended to read as follows:

9 (c) After the hearing, the hearings examiner shall prepare a
10 proposal for decision for the executive director [~~commissioner~~].

11 SECTION 21. Section 1802.204, Occupations Code, is amended
12 to read as follows:

13 Sec. 1802.204. APPEAL. A party may appeal a decision of the
14 executive director [~~commissioner~~] in the manner provided for a
15 contested case under Chapter 2001, Government Code.

16 SECTION 22. Sections 1802.205(a) and (b), Occupations Code,
17 are amended to read as follows:

18 (a) If the department's determination under Section
19 1802.202 is not disputed by the auctioneer or the aggrieved party,
20 the executive director [~~commissioner~~] shall pay the claim from the
21 fund, subject to Section 1802.206.

22 (b) If a hearing is held on the department's determination,
23 the executive director [~~commissioner~~] shall pay to the aggrieved
24 party the amount of actual damages determined by the executive
25 director [~~commissioner~~].

26 SECTION 23. Section 1802.206(a), Occupations Code, is
27 amended to read as follows:

1 (a) The executive director [~~commissioner~~] may not pay a
2 single aggrieved party more than \$10,000.

3 SECTION 24. Sections 1802.207 and 1802.208, Occupations
4 Code, are amended to read as follows:

5 Sec. 1802.207. REIMBURSEMENT; INTEREST. (a) If the
6 executive director [~~commissioner~~] pays a claim against an
7 auctioneer, the auctioneer shall:

8 (1) reimburse the fund immediately or agree in writing
9 to reimburse the fund on a schedule to be determined by rule of the
10 executive director [~~commissioner~~]; and

11 (2) immediately pay the aggrieved party any amount due
12 to that party or agree in writing to pay the party on a schedule to
13 be determined by rule of the executive director [~~commissioner~~].

14 (b) Payments made by an auctioneer to the fund or to an
15 aggrieved party under this section include interest accruing at the
16 rate of eight percent a year beginning on the date the executive
17 director [~~commissioner~~] pays the claim.

18 Sec. 1802.208. SUBROGATION. If the executive director
19 [~~commissioner~~] pays a claim against an auctioneer, the department
20 is subrogated to all rights of the aggrieved party against the
21 auctioneer to the extent of the amount paid to the aggrieved party.

22 SECTION 25. Section 1802.209(a), Occupations Code, is
23 amended to read as follows:

24 (a) This subchapter and Section 1802.252 do not limit the
25 executive director's [~~commissioner's~~] authority to take
26 disciplinary action against a license holder for a violation of
27 this chapter or a rule adopted under this chapter.

1 SECTION 26. Sections 1802.251 and 1802.252, Occupations
2 Code, are amended to read as follows:

3 Sec. 1802.251. DENIAL OF APPLICATION; REPRIMAND OR
4 SUSPENSION OR REVOCATION OF LICENSE. The executive director
5 [~~commissioner~~] may deny an application for a license, issue a
6 reprimand, or suspend or revoke the license of any auctioneer for:

7 (1) violating this chapter or a rule adopted under
8 this chapter or Chapter 51;

9 (2) obtaining or attempting to obtain a license
10 through false or fraudulent representation;

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

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

16 (5) failing to account for or remit, within a
17 reasonable time, money belonging to another that is in the
18 auctioneer's possession and commingling funds of another with the
19 auctioneer's funds or failing to keep the funds of another in an
20 escrow or trust account;

21 (6) being convicted in a court of this state or another
22 state of a criminal offense involving moral turpitude or a felony;
23 or

24 (7) violating the Business & Commerce Code in
25 conducting an auction.

26 Sec. 1802.252. SUSPENSION OR REVOCATION FOR CLAIM ON
27 FUND. (a) The executive director [~~commissioner~~] may suspend or

1 revoke a license issued under this chapter if the executive
2 director [~~commissioner~~] makes a payment from the fund as the result
3 of an action of the license holder.

4 (b) The executive director [~~commissioner~~] may probate an
5 order suspending [~~revoking~~] a license.

6 (c) An auctioneer is not eligible for a new license until
7 the auctioneer has repaid in full the amount paid from the fund on
8 the auctioneer's account, including interest, unless:

9 (1) a hearing is held; and

10 (2) the executive director [~~commissioner~~] issues a new
11 probated license.

12 SECTION 27. Section 1802.253, Occupations Code, is amended
13 to read as follows:

14 Sec. 1802.253. NOTICE AND HEARING. (a) Before denying an
15 application for a license, issuing a reprimand, or suspending or
16 revoking a license for a violation of this chapter or a rule adopted
17 under this chapter or Chapter 51, the executive director
18 [~~commissioner~~] shall:

19 (1) notify the applicant or license holder of the
20 alleged violation [~~set the matter for a hearing~~]; and

21 (2) provide the applicant or license holder with an
22 opportunity for a hearing under Chapter 2001, Government Code
23 [~~before the 30th day before the hearing date, notify the applicant~~
24 ~~or license holder in writing of:~~

25 [~~(A) the charges alleged or the question to be~~
26 ~~determined at the hearing, and~~

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

1 (b) ~~[At a hearing under this section, the applicant or~~
2 ~~license holder may:~~

3 ~~[(1) be present and be heard in person or by counsel,~~
4 ~~and~~

5 ~~[(2) have an opportunity to offer evidence by oral~~
6 ~~testimony, affidavit, or deposition.~~

7 ~~[(c) Written notice may be served by personal delivery to~~
8 ~~the applicant or license holder or by certified mail to the last~~
9 ~~known mailing address of the applicant or license holder.~~

10 ~~[(d)]~~ If the applicant or license holder who is the subject
11 of the hearing is an associate auctioneer, the executive director
12 ~~[commissioner]~~ shall provide written notice to the auctioneer who
13 employs the associate auctioneer or who has agreed to employ the
14 associate auctioneer by mailing the notice by certified mail to the
15 auctioneer's last known mailing address.

16 SECTION 28. Subchapter F, Chapter 1802, Occupations Code,
17 is amended by adding Section 1802.2535 to read as follows:

18 Sec. 1802.2535. ADMINISTRATIVE PENALTY. In addition to
19 any other penalty assessed under this chapter, the executive
20 director or commission may assess an administrative penalty as
21 provided by Subchapter F, Chapter 51, for a violation of this
22 chapter or a rule adopted by the department under this chapter or
23 Chapter 51.

24 SECTION 29. Section 1802.254, Occupations Code, is amended
25 to read as follows:

26 Sec. 1802.254. APPEAL. (a) A person aggrieved by a
27 ruling, order, decision, or other action of the commission,

1 executive director, or department may appeal by filing a petition
2 in [~~An appeal by an applicant or license holder of the~~
3 ~~commissioner's determination under Section 1802.252 must be to~~] a
4 district court of Travis County [~~or of the county in which the~~
5 ~~violation is alleged to have occurred~~].

6 (b) An appeal under this chapter is governed by Subchapter
7 G, Chapter 2001, Government Code.

8 SECTION 30. Section 1802.303(a), Occupations Code, is
9 amended to read as follows:

10 (a) A person commits an offense if the person violates a
11 provision of this chapter or a rule adopted by the executive
12 director [~~commissioner~~] under this chapter for which a penalty is
13 not provided.

14 SECTION 31. Chapter 1802, Occupations Code, is amended by
15 adding Subchapter H to read as follows:

16 SUBCHAPTER H. OTHER PENALTIES AND ENFORCEMENT PROVISIONS

17 Sec. 1802.401. CIVIL PENALTY. A person who violates this
18 chapter or a rule adopted under this chapter or Chapter 51 is
19 subject to a civil penalty of up to \$1,000 for each day of
20 noncompliance or each act of noncompliance as determined by the
21 court.

22 Sec. 1802.402. CEASE AND DESIST ORDERS. The executive
23 director may issue a cease and desist order to any person who is
24 acting as an auctioneer without an auctioneer's license.

25 Sec. 1802.403. INJUNCTION AND OTHER ENFORCEMENT
26 PROVISIONS. (a) The executive director may bring an action in a
27 district court of Travis County to enjoin a person from violating

1 this chapter.

2 (b) The executive director may enforce by injunction or
3 other appropriate remedy in court any rule, decision,
4 determination, or order adopted or entered under this chapter or
5 Chapter 51.

6 Sec. 1802.404. ACTION BY ATTORNEY GENERAL. At the request
7 of the executive director, the attorney general shall bring an
8 action in the name of the state for injunctive relief, to recover a
9 civil penalty, or for both injunctive relief and a civil penalty, as
10 authorized by this subchapter or Chapter 51.

11 SECTION 32. Sections 1802.001(7) and 1802.055, Occupations
12 Code, are repealed.

13 SECTION 33. This Act takes effect September 1, 2003, and
14 applies only to a violation committed on or after the effective date
15 of this Act. A violation committed before the effective date of
16 this Act is covered by the law in effect when the violation was
17 committed and the former law is continued in effect for that
18 purpose.