88R20927 SHH-F

By:  Goldman H.B. No. 4416

Substitute the following for H.B. No. 4416:

By:  Harless C.S.H.B. No. 4416

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of auctioneering by the Texas Department of Licensing and Regulation; authorizing an administrative penalty.

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

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

(2)  "Associate auctioneer" means an individual who, for compensation, sells or offers 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.  Subchapter A, Chapter 1802, Occupations Code, is amended by adding Section 1802.005 to read as follows:

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

SECTION 3.  Sections 1802.051(a) and (c), Occupations Code, are 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.

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

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

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

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

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

(1)  is at least 18 years of age;

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

(3)  either:

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

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

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

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

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

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

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

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

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

SECTION 6.  Section 1802.054, Occupations Code, is amended to read as follows:

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

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

(2)  the required application fee; and

(3)  either:

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

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

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

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

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

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

SECTION 7.  Section 1802.055, Occupations Code, is amended to read as follows:

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

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

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

(1)  an applicant's general knowledge of the auction business;

(2)  the principles of conducting an auction; and

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

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

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

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

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

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

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

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

SUBCHAPTER C-1. PRACTICE STANDARDS

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

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

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

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

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

(2)  required consumer notices.

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

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

[~~(1) administer the fund without appropriation;~~

[~~(2)~~]  maintain books and records of the fund [~~as required by the executive director;~~

[~~(3)  appear at hearings or judicial proceedings; and~~

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

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

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

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

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

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

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

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

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

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

SECTION 17.  Section 1802.203, Occupations Code, as amended by Chapters 816 (S.B. 279) and 1215 (S.B. 1147), Acts of the 78th Legislature, Regular Session, 2003, is reenacted and amended to read as follows:

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

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

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

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

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

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

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

SECTION 20.  Section 1802.207, Occupations Code, is amended to read as follows:

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

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

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

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

SECTION 21.  Section 1802.208, Occupations Code, is amended to read as follows:

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

SECTION 22.  Section 1802.251, Occupations Code, is amended to read as follows:

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

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

(2)  obtaining a license through false or fraudulent representation;

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

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

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

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

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

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

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

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

[~~(1)  a hearing is held; and~~

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

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

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

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

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

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

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

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

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

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

SECTION 26.  The following provisions of the Occupations Code are repealed:

(1)  Sections 1802.056(b) and (c);

(2)  Section 1802.059;

(3)  Section 1802.060;

(4)  Section 1802.103(b);

(5)  Section 1802.109;

(6)  Section 1802.154;

(7)  Section 1802.156;

(8)  Section 1802.201;

(9)  Section 1802.206(b); and

(10)  Section 1802.303.

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

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

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

SECTION 30.  The changes in law made by this Act apply only to conduct constituting a violation of Chapter 1802, Occupations Code, that occurs on or after the effective date of this Act.  Conduct constituting a violation of Chapter 1802, Occupations Code, that occurs before that date is governed by the law in effect on the date the conduct occurred, and the former law is continued in effect for that purpose.

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