

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

1
2 relating to the regulation of auctioneering by the Texas Department
3 of Licensing and Regulation; authorizing an administrative
4 penalty.

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

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

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

12 SECTION 2. Subchapter A, Chapter 1802, Occupations Code, is
13 amended by adding Section 1802.005 to read as follows:

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

16 SECTION 3. Sections 1802.051(a) and (c), Occupations Code,
17 are amended to read as follows:

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

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

24 (1) is an auction company owned or operated by an

1 individual who is licensed under this chapter; or

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

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

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

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

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

11 (3) either:

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

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

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

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

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

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

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

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

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

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

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

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

19 (2) the required application fee; and

20 (3) either:

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

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

26 (b) A nonresident applicant must submit with an application
27 for a license under this chapter a written irrevocable consent to

1 service of process. The consent must:

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

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

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

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

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

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

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

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

1 (2) the principles of conducting an auction; and

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

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

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

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

10 (a) Advisory board [~~The~~] members [~~appointed under Section~~
11 ~~1802.102(a)(1)~~] serve six-year [~~two-year~~] terms that expire on
12 September 1 of each odd-numbered year. Members [~~and~~] may not serve
13 more than two consecutive terms. If a vacancy occurs during the
14 term of such a member, the presiding officer of the commission, with
15 the commission's approval, shall appoint a replacement to serve for
16 the remainder of the term.

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

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

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

24 SUBCHAPTER C-1. PRACTICE STANDARDS

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

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

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

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

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

12 (2) required consumer notices.

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

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

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

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

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

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

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

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

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

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

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

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

25 Sec. 1802.203. HEARING. If the amount determined by the
26 department under Section 1802.202 is disputed by the auctioneer [~~or~~
27 ~~the aggrieved party~~], the department shall refer the matter to the

1 State Office of Administrative Hearings for a hearing on the
2 disputed claim.

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

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

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

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

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

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

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

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

27 (1) reimburse the fund immediately or agree in writing

1 to reimburse the fund on a schedule to be determined by rule of the
2 commission; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 ~~[(1) a hearing is held, and~~

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

27 SECTION 24. Section 1802.253, Occupations Code, is amended

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

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

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

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

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

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

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

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

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

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

24 (1) Sections 1802.056(b) and (c);

25 (2) Section 1802.059;

26 (3) Section 1802.060;

27 (4) Section 1802.103(b);

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

7 SECTION 27. The changes in law made by this Act to Section
8 1802.103, Occupations Code, apply only to the term of a member of
9 the Auctioneer Advisory Board appointed to the board on or after the
10 effective date of this Act.

11 SECTION 28. The changes in law made by this Act to Chapter
12 1802, Occupations Code, do not affect the validity of a proceeding
13 pending before a court or other governmental entity on the
14 effective date of this Act.

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

23 SECTION 30. The changes in law made by this Act apply only
24 to conduct constituting a violation of Chapter 1802, Occupations
25 Code, that occurs on or after the effective date of this
26 Act. Conduct constituting a violation of Chapter 1802,
27 Occupations Code, that occurs before that date is governed by the

1 law in effect on the date the conduct occurred, and the former law
2 is continued in effect for that purpose.

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