

SUBJECT: Revising certain auctioneering regulation provisions

COMMITTEE: Licensing & Administrative Procedures — committee substitute recommended

VOTE: 10 ayes — K. King, Walle, Goldman, Harless, Hernandez, Herrero, Patterson, Schaefer, Shaheen, S. Thompson

0 nays

1 absent — T. King

WITNESSES: For — Todd Kercheval, Texas Auctioneer Association

Against — None

On — (*Registered, but did not testify*: Steve Bruno, Texas Department of Licensing and Regulation)

BACKGROUND: Some have suggested that updates should be made to auctioneering regulations to more accurately reflect current operations.

DIGEST: CSHB 4416 would revise the regulation of auctioneering by the Texas Department of Licensing and Regulation (TDLR), and would authorize an administrative penalty for violations of these provisions.

Associate auctioneers. The bill would remove the requirement that an associate auctioneer be employed by a licensed auctioneer. The bill would specify that an associate auctioneer also would have to abide by provisions which limited where a licensed auctioneer could provide services. The offense of acting as an auctioneer without a license would be expanded to also apply to associate auctioneers.

A nonresident applicant for an associate auctioneer license would be required to submit a written irrevocable consent, meeting certain requirements, with their application to service of process.

The bill would apply renewal conditions for auctioneer licenses to associate auctioneer licenses and remove certain ineligibility exemptions for license renewal.

Written contracts. An auctioneer who agreed to provide services to a person would be required to provide the person a written contract with the terms of the agreement. Each contract would have to include information required by the Texas Commission of Licensing and Regulation (TCLR). Before an auction, the auctioneer and client would have to agree in writing to an itemized inventory of property to be sold or offered for sale by the auctioneer. An amendment to the inventory would have to be in writing and signed by both parties.

Standards of practice. TCLR would be required to adopt standards for the practice of auctioneers and associate auctioneers, including standards for the maintenance and use of a trust or escrow account for funds belonging or owed to another and required consumer notices.

Auctioneer education and recovery fund: TDLR would no longer be required to administer the auctioneer education and recovery fund without appropriation, appear at certain hearings or judicial proceedings, or invest and reinvest the fund.

The bill would change the referenced date for provisions regarding annual fund balancing from December 31 to August 31.

Authorities. The bill would transfer certain duties regarding auctioneering regulation from the executive director of TDLR to TDLR itself.

The bill would increase the terms of members of the auctioneer advisory board from two to six years.

Disputes. In cases where a person who deals with a licensed auctioneer was aggrieved by certain actions of the auctioneer and filed a claim, TDLR would no longer be required to refer an aggrieved party's dispute of

the amount determined to be owed to them to the state Office of Administrative Hearings. If a hearing was held, TDLR would be required to pay to the aggrieved party the amount of actual damages as determined by an administrative law judge who presided over the hearing rather than as determined by TDLR's executive director.

The bill would specify that provisions regarding maximum claim payment for a single party would apply only to claims from a single auction. The maximum total payment of claims against a single auctioneer arising from a single auction would be increased from \$30,000 to \$100,000.

Disciplinary action. TDLR or the executive director of TDLR could take any action or impose certain administrative penalties against an auctioneer or associate auctioneer for certain violations. The bill would add failing to account for or remit property belonging to another that was in the auctioneer's possession and violating a rule or order of TDLR or the executive director of TDLR to the list of punishable violations.

The bill would remove certain entitlements, except for a hearing, from license applicants and holders who were denied licensure or received disciplinary action or an administrative fee. A proceeding relating to a license denial or disciplinary action by TDLR would be a contested case.

Implementation. TDLR would be required to adopt rules necessary to administer the bill.

The bill would repeal certain provisions regarding:

- license examination;
- licensing by reciprocity;
- the term of a license;
- auctioneer advisory board terms and vacancies;
- auctioneer education programs;
- auctioneer education and recovery fund investment;
- education expenditures;
- complaint investigations;

- aggrieved party claim payment limits; and
- general criminal penalties.

The bill would take effect September 1, 2023, and apply only to conduct constituting a violation that occurred on or after the effective date. Changes made regarding board vacancies would apply only to the term of a member of the Auctioneer Advisory Board appointed on or after the effective date of the bill. The repeal of provisions regarding general criminal penalties would not apply to an offense committed before the effective date of the bill. The bill would not affect the validity of a proceeding pending before a court or other governmental entity on the effective date of the bill.