

BILL ANALYSIS

Senate Research Center
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H.B. 4416
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 1560, passed by the 87th Legislature, required the Texas Department of Licensing and Regulation (TDLR) to study the regulation of auctioneering, including findings and recommendations to improve public safety and TDLR's processes to eliminate inefficiencies. Some areas of concern regarding auctions include certain regulatory authority regarding auctioneers, the regulation of associate auctioneers, the use of contracts with respect to practice standards, certain disciplinary actions, and the auctioneer education and recovery fund. Additionally, the Texas Auctioneers Association has shared that, especially during estate auctions, a surviving spouse may make last-minute decisions on items to be sold or not sold.

H.B. 4416 seeks to address those concerns and incorporate changes and updates recommended by TDLR to accurately reflect the current operation of auctioneer regulation. H.B. 4416 also clarifies certain consumer protections and provides for an agreement in writing indicating an itemized inventory of property to be sold or offered for sale by the auctioneer at auction.

Key Provisions:

- Transfers regulatory authority from the executive director of TDLR to the Texas Department of Licensing and Regulation (TDLR) and updates applicable provisions:
 - The issuance of, application for, and revocation of an auctioneer's license.
 - Certain activities relating to the auctioneer education and recovery fund, including the payment of claims against an auctioneer from the fund as determined by the applicable administrative law judge who presided over the hearing regarding such claims.
 - Requires an auctioneer who agrees to provide services to a person to provide to the person a written contract with the terms of the agreement including information required by the Texas Commission on Licensing and Regulation (TCLR) and an itemized inventory of property to be sold or offered for sale at auction that may only be amended with a signature from both parties.
 - Requires TCLR to adopt standards for the practice of auctioneers and associate auctioneers, including standards for required consumer notices and the maintenance and use of a trust or escrow account for funds belonging or owed to another.
 - Repeals certain additional requirements for nonresident applicants who are licensed in another state but retains provisions that require such persons to submit with the auctioneer's license application a written irrevocable consent to service of process and that set out requirements for the consent.
 - Repeals authorization for the TDLR executive director to investigate an alleged license violation by a licensed or unlicensed auctioneer or an applicant and repeals a provision establishing a Class C misdemeanor for any license violation or related violation of TCLR rule.

- Specifies that TCLR or the executive director of TDLR may take disciplinary action or impose an administrative or other penalty against an auctioneer or associate auctioneer for specified violations and includes among such violations failing to account for or remit another's property and violating a rule or order of TCLR or the executive director of TDLR.
- Includes TDLR's proposal to take a disciplinary action or impose an administrative penalty against a license holder among other circumstances that trigger a license holder's entitlement to a hearing and removes certain specifications regarding such a hearing.
- Establishes that a proceeding relating to a license denial or disciplinary action is a contested case for purposes of Government Code provisions relating to administrative procedure.
- Removes the exception to a license holder's ineligibility for a new license until the auctioneer or associate auctioneer has repaid the applicable amount.
- Establishes that TDLR is not required to take applicable action based on a dispute or lack of dispute, as applicable, by the aggrieved party relating to the amount of a claim.
- Repeals the authorization for funds from the auctioneer education and recovery fund to be invested and reinvested in the same manner as funds of the Employees Retirement System of Texas.
- Specifies that the \$15,000 cap on the payment to a single aggrieved party is a cap for all claims arising from a single auction.
- Raises from \$30,000 to \$100,000 the cap on the total payment of claims against a single auctioneer and specifies that the cap applies to claims arising from a single auction.
- Changes from December 31 to August 31 the date at which, if the balance in the fund is less than \$350,000, each license holder at the next license renewal must pay an additional license renewal fee.
- Removes the requirements for TDLR to do the following with regard to management of the auctioneer education and recovery fund:
 - administer the fund without appropriation; and
 - appear at hearings or judicial proceedings.
- Repeals a provision authorizing the executive director of TDLR to use funds in the auctioneer education and recovery fund to pay for certain education expenditures.
- Establishes that each auctioneer advisory board member serves a six-year term that expires on September 1 of an odd-numbered year and specifies that each board member is prohibited from receiving compensation from TDLR for serving on the board.
- Revises the definition of "associate auctioneer" to remove the requirement for a person to be employed by a licensed auctioneer and provides for the regulation of an associate auctioneer with respect to the following:
 - the authority for an individual to act as an associate auctioneer for an entity;
 - eligibility for an auctioneer's license based on past employment as a licensed associate auctioneer;

- disciplinary action against an associate auctioneer for specified misconduct;
- license revocation for a claim on the auctioneer education and recovery fund; and
- creating an offense for acting as an auctioneer without a license.

H.B. 4416 amends current law relating to the regulation of auctioneering by the Texas Department of Licensing and Regulation and authorizes an administrative penalty.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Commission of Licensing and Regulation in SECTION 2 (Section 1802.005, Occupations Code), SECTION 6 (Section 1802.054, Occupations Code), and SECTION 12 (Section 1802.121 and 1802.122, Occupations Code) of this bill.

Rulemaking authority previously granted to the Texas Department of Licensing and Regulation is modified in SECTION 4 (Section 1802.052, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1802.001(2), Occupations Code, to redefine "associate auctioneer."

SECTION 2. Amends Subchapter A, Chapter 1802, Occupations Code, by adding Section 1802.005, as follows:

Sec. 1802.005. RULES. Requires the Texas Commission of Licensing and Regulation (TCLR) to adopt rules necessary to administer and enforce Chapter 1802 (Auctioneers).

SECTION 3. Amends Sections 1802.051(a) and (c), Occupations Code, as follows:

(a) Prohibits a person from acting as an auctioneer or associate auctioneer in this state unless the person holds a license issued by the Texas Department of Licensing and Regulation (TDLR), rather than by the executive director of TDLR (executive director), under this chapter.

(c) Prohibits an individual who is licensed under this chapter from acting as an auctioneer or associate auctioneer for an entity, except as provided by Subsection (d) (relating to providing that an individual licensed under Chapter 1802 is authorized to conduct an auction to sell motor vehicles for a person who has obtained the necessary permits and licenses), unless the entity:

(1)-(2) makes no changes to these subdivisions;

SECTION 4. Amends Section 1802.052, Occupations Code, as follows:

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

(1)-(2) makes no changes to these subdivisions;

(3) either:

(A) makes no changes to this paragraph; or

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

(4)-(5) makes no changes to these subdivisions.

(b) Authorizes TDLR, as provided by rule, to charge an auction school a reasonable fee for approving the curriculum as required under Subsection (a)(5), rather than (a)(6).

SECTION 5. Amends Section 1802.053, Occupations Code, as follows:

Sec. 1802.053. **ELIGIBILITY FOR ASSOCIATE AUCTIONEER LICENSE.** Provides that an individual is eligible for an associate auctioneer license if the individual:

- (1) is a citizen of the United States or a legal alien; and
- (2) works, rather than is employed, under the direct supervision of an auctioneer licensed under this chapter.

SECTION 6. Amends Section 1802.054, Occupations Code, as follows:

Sec. 1802.054. **APPLICATION FOR LICENSE.** (a) Requires an applicant for a license to apply to TDLR on a form and in a manner prescribed by TDLR. Deletes existing text requiring an applicant for a license to apply to the executive director on a form provided by the executive director that establishes the applicant's eligibility for the license.

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

- (1) be in the form and supported by additional information that TDLR by rule requires;
- (2) provide that an action relating to any transaction governed by this chapter is authorized to be commenced against the license holder in the proper court of any county of this state in which the cause of action is authorized to 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. Amends Section 1802.055, Occupations Code, as follows:

Sec. 1802.055. **APPLICATION FOR EXAMINATION.** Authorizes an individual who meets the requirements for an auctioneer's license to apply to TDLR to take the license examination. Deletes existing text providing that an individual who establishes that the individual is eligible for an auctioneer's license is authorized to apply to the executive director to take the license examination.

SECTION 8. Amends Section 1802.056(a), Occupations Code, to require TDLR to prepare, recognize, administer, or arrange for the administration of a license examination designed to establish certain knowledge.

SECTION 9. Amends Section 1802.102(b), Occupations Code, to require that the presiding officer of TDLR, in appointing Auctioneer Advisory Board (advisory board) members, consider the geographical diversity of the members.

SECTION 10. Amends Section 1802.103(a), Occupations Code, as follows:

(a) Provides that advisory board members serve six-year terms that expire on September 1 of each odd-numbered year. Prohibits members from serving more than two consecutive terms. Deletes existing text providing that the members appointed under

Section 1802.102(a)(1) (relating to the number of members and the method of appointment for members) serve two-year terms that expire on September 1 and are prohibited from serving more than two consecutive terms.

SECTION 11. Amends Section 1802.106, Occupations Code, as follows:

Sec. 1802.106. COMPENSATION. Prohibits a member of the advisory board from receiving compensation from TDLR for serving on the advisory board. Deletes existing text providing that a member appointed under Section 1802(a)(1) is prohibited from receiving compensation for serving on the advisory board.

SECTION 12. Amends Chapter 1802, Occupations Code, by adding Subchapter C-1, as follows:

SUBCHAPTER C-1. PRACTICE STANDARDS

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

(b) Requires that each contract for the services of an auctioneer include information required by TCLR by rule.

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

Sec. 1802.122. STANDARDS OF PRACTICE. Requires TCLR, by rule, to 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. Amends Section 1802.152(a), Occupations Code, as follows:

(a) Provides that TDLR is the manager of the auctioneer education and recovery fund (fund) and is required to maintain books and records of the fund. Deletes existing text providing that TDLR is the manager of the fund and is required to administer the fund without appropriation, to maintain books and records as required by the executive director, to appear at hearings or judicial proceedings, and to invest and reinvest the fund's assets as instructed by the executive director.

SECTION 14. Amends Sections 1802.153(a) and (b), Occupations Code, as follows:

(a) Requires an applicant entitled to receive a license under this chapter to pay a fee, in addition to any other fees required by this chapter, before TDLR, rather than the executive director, issues the license.

(b) Requires each license holder at the next license renewal to 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, if the balance in the fund on August 31, rather than December 31, of a year is less than \$350,000.

SECTION 15. Amends Section 1802.155(b), Occupations Code, as follows:

(b) Provides that if the fund contains insufficient assets to pay the consumer:

(1) makes no changes to this subdivision; and

(2) TDLR, rather than the executive director, is required to pay consumers for whom an order is recorded under Subdivision (1) (relating to requiring TDLR to record the time and date an order for payment to a consumer was received) as funds become available in the order of the recorded time and date of the order.

SECTION 16. Amends Section 1802.202(b), Occupations Code, to prohibit TDLR, rather than the executive director, from paying a claim against an auctioneer who was not licensed at the time of the transaction on which the claim is based.

SECTION 17. Reenacts 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, and amends it, as follows:

Sec. 1802.203. HEARING. Requires TDLR, if the amount determined by TDLR under Section 1802.202 (Consumer Claims) is disputed by the auctioneer, to refer the matter to the State Office of Administrative Hearings (SOAH) for a hearing on the disputed claim. Deletes existing text requiring TDLR if the amount determined by TDLR under Section 1802.202 is disputed by the auctioneer or the aggrieved party, to refer the matter to SOAH for a hearing on the disputed claim.

SECTION 18. Amends Sections 1802.205(a) and (b), Occupations Code, as follows:

(a) Requires TDLR, if TDLR's determination under Section 1802.202 is not disputed by the auctioneer, to pay the claim from the fund, subject to Section 1802.206 (Payments Limits). Makes conforming changes.

(b) Requires TDLR, rather than the executive director, if a hearing is held on TDLR's determination, to pay to the aggrieved party the amount of actual damages as determined by an administrative law judge with SOAH who presided over the hearing, rather than the executive director, subject to Section 1802.206.

SECTION 19. Amends Sections 1802.206(a) and (c), Occupations Code, as follows:

(a) Prohibits TDLR, rather than the executive director, from paying a single aggrieved party more than \$15,000 for all claims arising from a single auction.

(c) Prohibits the total payment of claims against a single auctioneer arising from a single auction from exceeding \$100,000, rather than \$30,000.

SECTION 20. Amends Section 1802.207, Occupations Code, as follows:

Sec. 1802.207. REIMBURSEMENT; INTEREST. (a) Requires the auctioneer, if TDLR, rather than the executive director, pays a claim against an auctioneer, to make certain payments.

(b) Makes a conforming change to this subsection.

SECTION 21. Amends Section 1802.208, Occupations Code, as follows:

Sec. 1802.208. SUBROGATION. Provides that if TDLR, rather than the executive director, pays a claim against an auctioneer, TDLR 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. Amends Section 1802.251, Occupations Code, as follows:

Sec. 1802.251. New heading: DISCIPLINARY ACTION; ADMINISTRATIVE PENALTY. Authorizes TDLR or the executive director to take any action or impose a

penalty under Subchapter F (Administrative Penalty) or G (Other Penalties and Enforcement Provisions), Chapter 51, against an auctioneer or associate auctioneer for:

(1)-(4) makes no changes to these subdivisions;

(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, rather than and, commingling funds of another with the auctioneer's funds or failing to keep the funds of another in an escrow or trust account;

(6) makes a nonsubstantive change to this subdivision; or

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

SECTION 23. Amends Sections 1802.252(a) and (c), Occupations Code, as follows:

(a) Authorizes TCLR to revoke a license issued under this chapter if TDLR, rather than the executive director, makes a payment from the fund as the result of an action of the license holder.

(c) Provides that 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. Deletes existing text providing that an auctioneer is not eligible for a new license until the auctioneer has repaid in full the amount paid from the fund on the auctioneer's account, including interest, unless a hearing is held and the executive director issues a new probated license.

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

(a) Provides that the applicant or license holder, if TDLR proposes to deny an application for a license or take a disciplinary action or impose an administrative penalty against a license holder, is entitled to a hearing. Deletes existing text requiring TCLR or executive director, before denying an application for a license, to set the matter for a hearing to be conducted by SOAH and before the hearing date, to notify the applicant in writing of certain information.

(d) Provides that a proceeding relating to a license denial or disciplinary action by TDLR under this chapter is a contested case under Chapter 2001 (Administrative Procedure), Government Code.

SECTION 25. Amends Section 1802.301(a), Occupations Code, as follows:

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

SECTION 26. Repealers: Sections 1802.056(b) (relating to the number of times the license examination is required to be held per year and the locations of the examinations) and (c) (relating to requiring the executive director to prepare examinations for an auctioneer's license and study and reference materials on which the examinations are based), Occupations Code.

Repealer: Section 1802.059 (Licensing by Reciprocity), Occupations Code.

Repealer: Section 1802.060 (Term of License), Occupations Code.

Repealer: Section 1802.103(b) (relating to certain members of the Auctioneer Advisory Board serving as ex officio officers and the length of those offices), Occupations Code.

Repealer: Section 1802.109 (Auctioneer Education Programs), Occupations Code.

Repealer: Section 1802.154 (Investment of Fund), Occupations Code.

Repealer: Section 1802.156 (Education Expenditures Permitted), Occupations Code.

Repealer: Section 1802.201 (Investigation of Complaints), Occupations Code.

Repealer: Section 1802.206(b) (relating to the limit for the total payment of all claims), Occupations Code.

Repealer: Section 1802.303 (General Criminal Penalty), Occupations Code.

SECTION 27. Makes application of Section 1802.103, Occupations Code, as amended by this Act, prospective.

SECTION 28. Provides that 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. Provides that 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. Provides that 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. Provides that 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. Makes application of Chapter 1802, Occupations Code, as amended by this Act, prospective.

SECTION 31. Effective date: September 1, 2023.