OCCUPATIONS CODE

TITLE 11. REGULATION OF SALES AND SOLICITATION

CHAPTER 1802. AUCTIONEERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1802.001. DEFINITIONS. In this chapter:

(1) "Advisory board" means the Auctioneer Advisory Board.

(2) "Associate auctioneer" means an individual who, for compensation, is employed by and under the direct supervision of a licensed auctioneer to sell or offer to sell property at an auction.

(3) "Auction" means the sale of property by competitive bid using any method, format, or venue.

(4) "Auction company" means a person who engages in the business of arranging, managing, sponsoring, advertising, or conducting auctions.

(5) "Auctioneer" means any individual who sells or offers to sell property of another person by live bid at auction, with or without receiving consideration.

(6) "Commission" means the Texas Commission of Licensing and Regulation.

(7) Repealed by Acts 2003, 78th Leg., ch. 816, Sec. 4.019(1); Acts 2003, 78th Leg., ch. 1276, Sec. 14A.351(a).

(8) "Department" means the Texas Department of Licensing and Regulation.

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

(9) "Fund" means the auctioneer education and recovery fund.

(10) "Personal property" means any property other than real property.

(11) "Real property" means land, including improvements, fixtures, and other property appurtenant to or used in connection with the land, and any other estate, interest, or legal or equitable right in the land, improvement, fixture, or

appurtenant property.

(12) Repealed by Acts 2015, 84th Leg., R.S., Ch. 777 , Sec. 15, eff. September 1, 2015.

(13) "Sealed bid auction" means a sealed bidding procedure that incorporates or allows for the competitive increasing or decreasing of bids after the opening of sealed bids.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 4.001, 4.019(1), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14.010, 14A.351, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1048 (H.B. 3038), Sec. 1, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1048 (H.B. 3038), Sec. 17, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 777 (H.B. 2481), Sec. 1, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 777 (H.B. 2481), Sec. 15, eff. September 1, 2015.

Sec. 1802.002. APPLICABILITY.

Text of subsection as amended by Acts 2015, 84th Leg., R.S., Ch. 1230 (S.B. 1982), Sec. 1

(a) 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, religious, or civic organization, including an organization having a tax exempt status under Section 501(c), Internal Revenue Code of 1986, or organized as a nonprofit entity, if the person organizing, arranging, or conducting the auction receives no compensation;

(4) a sale conducted by any person of the person's

property if the person is not engaged in the business of selling property at auction 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 conducted by:

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

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

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

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

(7) a sale conducted by sealed bid without the option of increasing or decreasing the amount of a bid;

(8) an auction conducted only for student training purposes as part of a course of study approved by the department;

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

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

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

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

(B) involves only the sale of property owned by the organization's members;

(12) a sale or auction conducted outside of this state;

(13) a sale of motor vehicles at auction by a person licensed under Chapter 2301 or 2302; or

(14) a sale of motor vehicles at auction by a person who holds a wholesale motor vehicle auction general distinguishing

number or an independent motor vehicle general distinguishing number issued by the Texas Department of Motor Vehicles.

Text of subsection as amended by Acts 2015, 84th Leg., R.S., Ch. 777 (H.B. 2481), Sec. 2

(a) 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, religious, or civic organization, including an organization having a tax exempt status under Section 501(c), Internal Revenue Code of 1986, or organized as a nonprofit entity, if the person organizing, arranging, or conducting the auction receives no compensation;

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

(5) a foreclosure sale of personal property personally conducted by:

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

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

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

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

(6) a sale conducted by sealed bid without the option of increasing or decreasing the amount of a bid;

(7) an auction conducted only for student training purposes as part of a course of study approved by the department;

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

(9) an auction of livestock conducted by a nonprofit

livestock trade association chartered in this state, if the auction involves only the sale of livestock owned by members of the trade association;

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

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

(B) involves only the sale of property owned by the organization's members;

(11) a sale or auction conducted by an auctioneer while the auctioneer is physically located outside of this state;

(12) a sale of motor vehicles at auction by a person licensed under Chapter 2301 or 2302;

(13) a sale of motor vehicles at auction by a person who holds a wholesale motor vehicle auction general distinguishing number or an independent motor vehicle general distinguishing number issued by the Texas Department of Motor Vehicles; or

(14) an auction of property through the Internet.

(b) This chapter applies to a sealed bid auction.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.044, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.352, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 201 (H.B. 365), Sec. 1, eff. May 24, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 1048 (H.B. 3038), Sec. 2, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 777 (H.B. 2481), Sec. 2, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1230 (S.B. 1982), Sec. 1, eff. June 19, 2015.

Sec. 1802.003. PREEMPTION. A political subdivision of this state may not levy on or collect from an auctioneer a license tax or fee as a regulatory or revenue measure or require the licensing of an auctioneer, if the auctioneer holds a license under this chapter and is in compliance with this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1048 (H.B. 3038), Sec. 2, eff. June 14, 2013.

Sec. 1802.004. ADVERTISEMENT OF AUCTION. The commission, by rule, may adopt standards for the advertisement of an auction by an auctioneer or associate auctioneer licensed under this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 777 (H.B. 2481), Sec. 3, eff. September 1, 2015.

SUBCHAPTER B. LICENSE REQUIREMENTS

Sec. 1802.051. LICENSE REQUIRED. (a) A person may not act as an auctioneer or associate auctioneer in this state unless the person holds a license issued by the executive director under this chapter.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 777 , Sec. 15, eff. September 1, 2015.

(c) Except as provided by Subsection (d), an individual who is licensed under this chapter may not act as an 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.

Text of subsection as added by Acts 2015, 84th Leg., R.S., Ch. 1230 (S.B. 1982), Sec. 2

(d) An individual who is licensed under this chapter may conduct an auction to sell motor vehicles, as defined by Section 501.002 or 502.001, Transportation Code, if the individual conducts the auction for a person who holds a dealer general distinguishing number or wholesale motor vehicle auction general distinguishing number issued under Subchapter B, Chapter 503, Transportation Code, or a license issued under Subchapter C, Chapter 2302, of this code.

Text of subsection as added by Acts 2015, 84th Leg., R.S., Ch. 777 (H.B. 2481), Sec. 4

(d) An individual who is licensed under this chapter may conduct an auction to sell motor vehicles, as defined by Section 501.002 or 502.001, Transportation Code, for a person who holds:

(1) a dealer general distinguishing number or a wholesale motor vehicle auction general distinguishing number issued under Subchapter B, Chapter 503, Transportation Code; or

(2) a license issued under Subchapter C, Chapter 2302.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.045, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.353, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 325 (H.B. 2519), Sec. 1, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1048 (H.B. 3038), Sec. 3, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 777 (H.B. 2481), Sec. 4, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 777 (H.B. 2481), Sec. 15, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1230 (S.B. 1982), Sec. 2, eff. June 19, 2015.

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 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;

(5) has not been convicted of a felony during the five years preceding the date of application; and

(6) 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)(6).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 395, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1048 (H.B. 3038), Sec. 4, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 777 (H.B. 2481), Sec. 5, eff. September 1, 2015.

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

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

(2) employed under the direct supervision of an auctioneer licensed under this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 777 (H.B. 2481), Sec. 6, eff. September 1, 2015.

Sec. 1802.054. APPLICATION FOR LICENSE. An applicant for a license must apply to the executive director on a form provided by the 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.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.046, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.354, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1048 (H.B. 3038), Sec. 5, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 777 (H.B. 2481), Sec. 7, eff. September 1, 2015.

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.047, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.355, eff. Sept. 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 777 (H.B. 2481), Sec. 8, eff. September 1, 2015.

Sec. 1802.056. LICENSE EXAMINATION. (a) The 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.

(b) The license examination shall be offered at least four times each year at locations designated by the executive director.

(c) The executive director shall prepare:

(1) examinations for an auctioneer's license; and

(2) study and reference materials on which the examinations are based.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.048, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.356, eff. Sept. 1, 2003.

Sec. 1802.058. REEXAMINATION. An applicant who fails the license examination may reapply to take the examination. If the applicant fails the examination twice during a one-year period, the applicant may not reapply for one year.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1802.059. LICENSING BY RECIPROCITY. (a) An applicant for an auctioneer's license who is not a resident of this state but is licensed as an auctioneer in another state must submit to the executive director:

(1) a license application;

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

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

(b) The executive director shall accept the applicant's auctioneer's license submitted under Subsection (a)(2) as proof of the applicant's professional competence and waive the examination or employment and training requirements of Section 1802.052 if the state or political subdivision that issued the nonresident a license extends similar recognition and courtesies to this state.

(c) A nonresident applicant must comply with all other application requirements prescribed by this chapter.

(d) A nonresident applicant must submit with the application a written irrevocable consent to service of process. The consent must be in the form and supported by additional information that the commission by rule requires. The consent must:

(1) provide that an action relating to any transaction subject to 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

(2) 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.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 4.002, eff. Sept. 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 777 (H.B. 2481), Sec. 9, eff. September 1, 2015.

Sec. 1802.060. TERM OF LICENSE. A license issued under this chapter shall be issued for the period prescribed by the commission.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER C. AUCTIONEER ADVISORY BOARD

Sec. 1802.101. AUCTIONEER ADVISORY BOARD. The advisory board shall advise the commission on educational matters, operational matters, and common practices within the auction industry.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 4.003, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.359, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1048 (H.B. 3038), Sec. 6, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 777 (H.B. 2481), Sec. 11, eff. September 1, 2015.

Sec. 1802.102. APPOINTMENT OF ADVISORY BOARD; MEMBERSHIP;

ELIGIBILITY. (a) The advisory board consists of seven members appointed as follows:

(1) four members who are licensed auctioneers appointed by the presiding officer of the commission, with the commission's approval;

(2) the administrative head, or the administrative head's designee, of any state agency or office that is selected by the commission; and

(3) two public members.

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

(c) Appointments to the advisory board shall be made without regard to the race, color, handicap, sex, religion, age, or national origin of the appointees.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 4.004, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 457 (H.B. 2548), Sec. 5, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1176 (H.B. 3278), Sec. 10, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1048 (H.B. 3038), Sec. 7, eff. June 14, 2013.

Sec. 1802.103. TERMS; VACANCIES. (a) The members appointed under Section 1802.102(a)(1) serve two-year terms that expire on September 1 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.

(b) The remaining members are ex officio members. Each ex officio member shall continue to serve during the time the member holds office.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 4.005, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1048 (H.B. 3038), Sec. 8, eff. June 14, 2013.

Sec. 1802.104. PRESIDING OFFICER. The presiding officer of the commission, with the commission's approval, shall appoint a member of the advisory board to serve as presiding officer of the board. The presiding officer serves for two years and may not serve more than two consecutive terms.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 4.006, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1048 (H.B. 3038), Sec. 9, eff. June 14, 2013.

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 777 (H.B. 2481), Sec. 12, eff. September 1, 2015.

Sec. 1802.107. MEETINGS. The advisory board shall meet at the call of the presiding officer of the commission or the executive director.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1048 (H.B. 3038), Sec. 10, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 777 (H.B. 2481), Sec. 13, eff. September 1, 2015.

Sec. 1802.108. CIVIL LIABILITY. A member of the advisory board is not liable in a civil action for an act performed in good faith while performing duties as an advisory board member.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

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

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

(2) make recommendations to the commission on their usefulness and merit as continuing education tools.

(b) On the recommendation of the advisory board, the commission may fund or underwrite specific classes, seminars, or events for the education and advancement of the auctioneering profession in this state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 4.007, eff. Sept. 1, 2003.

SUBCHAPTER D. AUCTIONEER EDUCATION AND RECOVERY FUND

Sec. 1802.151. FUND. The auctioneer education and recovery fund is a trust fund with the comptroller for the payment of claims against auctioneers licensed under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1802.152. MANAGEMENT OF FUND. (a) The department is the manager of the fund and shall:

(1) administer the fund without appropriation;

(2) maintain books and records 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.

(b) The department, as manager, is entitled to compensation for reasonable and necessary costs and expenses for the management of the fund. The department shall be compensated from the earnings from the fund.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.049, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.363, eff. Sept. 1, 2003.

Sec. 1802.153. ADDITIONAL FEES. (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 executive director issues the license.

(b) If the balance in the fund on 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.

(c) The fees paid under this section shall be deposited in the fund.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 4.008, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.364, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1048 (H.B. 3038), Sec. 11, eff. June 14, 2013.

Sec. 1802.154. INVESTMENT OF FUND. (a) Amounts deposited in the fund may be invested and reinvested in the same manner as funds of the Employees Retirement System of Texas, and income from the investments shall be deposited to the credit of the fund.

(b) The department may not make an investment that would impair the liquidity required to satisfy payments made from the fund.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1802.155. LIABILITY. (a) The fund or the department is not liable to a consumer for a recovery from the fund if the assets of the fund are insufficient to pay the amount awarded.

(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 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.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.050, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.365, eff. Sept. 1, 2003.

Sec. 1802.156. EDUCATION EXPENDITURES PERMITTED. The executive director may use amounts in excess of $300,000 in the fund to:

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

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

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

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.051, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.366, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1048 (H.B. 3038), Sec. 12, eff. June 14, 2013.

SUBCHAPTER E. COMPLAINT PROCEDURES

Sec. 1802.201. INVESTIGATION OF COMPLAINTS. The executive director may, on the executive director's motion, and shall, on the written complaint of a person aggrieved by the actions of an auctioneer in an auction, investigate an alleged violation of this chapter by a licensed or unlicensed auctioneer or an applicant.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 4.009, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.366, eff. Sept. 1, 2003.

Sec. 1802.202. CONSUMER CLAIMS. (a) A person who deals with an auctioneer licensed under this chapter and who is aggrieved by an action of the auctioneer as a result of a violation of a contract made with the auctioneer may initiate a claim against the fund by filing with the department a complaint against the auctioneer.

(b) The 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.

(c) The department shall investigate a complaint filed under this section and determine the amount owed to the aggrieved party.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 4.010, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.367, eff. Sept. 1, 2003.

Text of section as amended by Acts 2003, 78th Leg., ch. 816, Sec. 4.011.

Sec. 1802.203. HEARING. (a) If the amount determined by the department under Section 1802.202 is disputed by the auctioneer or the aggrieved party, the department's hearings examiner shall:

(1) conduct a hearing on the claim in accordance with department rules; and

(2) determine the amount owed to the aggrieved party.

(b) A hearing on a claim may be conducted at the department's Austin office or at another location as provided by department rule.

(c) After the hearing, the hearings examiner shall prepare a proposal for decision for the commission.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 4.011, eff. Sept. 1, 2003.

Text of section as amended by Acts 2003, 78th Leg., ch. 1215, Sec. 13

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.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1215, Sec. 13, eff. Sept. 1, 2003.

Sec. 1802.204. APPEAL. A party may appeal a decision of the commission in the manner provided for a contested case under Chapter 2001, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 4.012, eff. Sept. 1, 2003.

Sec. 1802.205. PAYMENT OF CLAIM. (a) If the department's determination under Section 1802.202 is not disputed by the auctioneer or the aggrieved party, the 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 executive director shall pay to the aggrieved party the amount of actual damages determined by the executive director.

(c) The amount of actual damages may not include attorney's fees, speculative damages, or lost profits.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.052, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.370, eff. Sept. 1, 2003.

Sec. 1802.206. PAYMENT LIMITS. (a) The executive director may not pay a single aggrieved party more than $15,000.

(b) The total payment of all claims by more than one aggrieved party arising from one auction at one location, regardless of the length of the auction, may not exceed $30,000.

(c) The total payment of claims against a single auctioneer may not exceed $30,000.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.053, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.371, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1048 (H.B. 3038), Sec. 13, eff. June 14, 2013.

Sec. 1802.207. REIMBURSEMENT; INTEREST. (a) If the 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 executive director pays the claim.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 4.013, eff. Sept. 1, 2003.

Sec. 1802.208. SUBROGATION. If the 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.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.054, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.372, eff. Sept. 1, 2003.

Sec. 1802.209. EFFECT ON DISCIPLINARY PROCEEDINGS. (a) This subchapter and Section 1802.252 do not limit the commission's or executive director's authority to take disciplinary action against a license holder for a violation of this chapter or a rule adopted under this chapter.

(b) A license holder's repayment of all amounts owed to the fund does not nullify or modify the effect of another disciplinary proceeding brought under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 4.014, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1048 (H.B. 3038), Sec. 14,

eff. June 14, 2013.

SUBCHAPTER F. DENIAL OF LICENSE AND DISCIPLINARY PROCEDURES

Sec. 1802.251. DENIAL OF APPLICATION; SUSPENSION OR REVOCATION OF LICENSE. The commission or executive director may deny an application for a license or suspend or revoke the license of any 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 belonging to another that is in the auctioneer's possession 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.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 4.015, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1048 (H.B. 3038), Sec. 15, eff. June 14, 2013.

Sec. 1802.252. REVOCATION FOR CLAIM ON FUND. (a) The commission may revoke a license issued under this chapter if the executive director makes a payment from the fund as the result of an action of the license holder.

(b) The commission may probate an order revoking a license.

(c) 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:

(1) a hearing is held; and

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

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 4.016, eff. Sept. 1, 2003.

Sec. 1802.253. HEARING BY STATE OFFICE OF ADMINISTRATIVE HEARINGS.

(a) Before denying an application for a license, 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.

(b) At a hearing under this section, the applicant may:

(1) be present and be heard in person or by counsel; and

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

(c) Written notice may be served by personal delivery to the applicant or by certified mail to the last known mailing address of the applicant.

(d) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1048, Sec. 17, eff. June 14, 2013.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 4.017, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1215, Secs. 14, 15, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 18.004, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1048 (H.B. 3038), Sec. 16, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1048 (H.B. 3038), Sec. 17,

eff. June 14, 2013.

SUBCHAPTER G. CRIMINAL PENALTIES

Sec. 1802.301. PRACTICING WITHOUT LICENSE; OFFENSE. (a) A person commits an offense if the person acts as an auctioneer without a license.

(b) An offense under this section is a Class B misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1802.302. FRIVOLOUS CLAIM; OFFENSE. (a) A person commits an offense if the person intends to benefit personally or to harm another and the person:

(1) institutes under this chapter a claim in which the person knows the person has no interest; or

(2) institutes under this chapter a frivolous suit or a claim that the person knows is false.

(b) An offense under this section is a Class B misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1802.303. GENERAL CRIMINAL PENALTY. (a) A person commits an offense if the person violates a provision of this chapter or a rule adopted by the commission under this chapter for which a penalty is not provided.

(b) An offense under this section is a Class C misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 4.018, eff. Sept. 1, 2003.