

By: Eltife

S.B. No. 1443

A BILL TO BE ENTITLED

AN ACT

relating to the licensing and regulation of auctioneers and associate auctioneers; amending provisions subject to a criminal penalty; requiring an occupational license.

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

SECTION 1. Section 1802.001, Occupations Code, is amended by amending Subdivisions (1), (5), and (10) and adding Subdivision (2) to read as follows:

(1) "Advisory board" means the Auctioneer ~~[Education]~~ 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.

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

~~[(B) solicits, negotiates, or executes an auction listing contract]~~.

(10) "Personal property" means any property other than real property ~~[, including all tangible and intangible types of property]~~.

SECTION 2. Section 1802.002(a), Occupations Code, is

amended to read as follows:

(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,~~

~~[45)]~~ a foreclosure sale of real property personally conducted by a trustee under a deed of trust;

(5) ~~[46)]~~ 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;

1           (6) [~~(7)~~] a sale conducted by sealed bid without the  
2 option of increasing or decreasing the amount of a bid;

3           (7) [~~(8)~~] an auction conducted only for student  
4 training purposes as part of a course of study approved by the  
5 department;

6           (8) [~~(9)~~] an auction conducted by a posted stockyard  
7 or market agency as defined by the federal Packers and Stockyards  
8 Act (7 U.S.C. Section 181 et seq.), as amended;

9           (9) [~~(10)~~] an auction of livestock conducted by a  
10 nonprofit livestock trade association chartered in this state, if  
11 the auction involves only the sale of livestock owned by members of  
12 the trade association;

13           (10) [~~(11)~~] an auction conducted by a charitable or  
14 nonprofit organization chartered in this state, if the auction:

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

17                   (B) involves only the sale of property owned by  
18 the organization's members; [~~or~~]

19           (11) [~~(12)~~] a sale or auction conducted by an  
20 auctioneer while the auctioneer is physically located outside of  
21 this state;

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

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

1           (14) an auction of property through the Internet.

2           SECTION 3. Section 1802.051, Occupations Code, is amended  
3 to read as follows:

4           Sec. 1802.051. LICENSE REQUIRED. (a) A person may not act  
5 as an auctioneer or associate auctioneer [~~of real or personal~~  
6 ~~property~~] in this state unless the person holds a license issued by  
7 the executive director under this chapter.

8           (b) A person [~~An auctioneer~~] who advertises to conduct an  
9 auction in this state shall provide the [~~auctioneer's~~] name and  
10 license number of the auctioneer who will conduct the auction in the  
11 advertisement.

12           (c) Except as provided by Subsection (d), an [~~An~~] individual  
13 who is licensed under this chapter may not act as an auctioneer for  
14 an entity unless the entity[+]

15           [~~(1)~~] is an auction company owned or operated by an  
16 individual who is licensed under this chapter[+]

17           [~~(2) holds a dealer general distinguishing number~~  
18 ~~issued under Subchapter B, Chapter 503, Transportation Code, and~~  
19 ~~the auction is for the purpose of auctioning vehicles as defined by~~  
20 ~~Section 503.001, Transportation Code, or~~

21           [~~(3) is a real estate brokerage firm that is operated~~  
22 ~~by a broker licensed by the Texas Real Estate Commission~~].

23           (d) An individual who is licensed under this chapter may  
24 only conduct an auction to sell motor vehicles, as defined by  
25 Section 502.001, Transportation Code, if the license holder  
26 conducts the auction for a person who holds a dealer general  
27 distinguishing number issued under Subchapter B, Chapter 503,

Transportation Code.

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

(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.

SECTION 5. Subchapter B, Chapter 1802, Occupations Code, is amended by adding Section 1802.053 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           (1) a citizen of the United States or a legal alien;  
2 and  
3           (2) employed under the direct supervision of an  
4 auctioneer licensed under this chapter.

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

7           Sec. 1802.054. APPLICATION FOR LICENSE. An applicant for a  
8 license must apply to the executive director on a form provided by  
9 the executive director that establishes the applicant's  
10 eligibility for the license. The application must be accompanied  
11 by:

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

14           (2) the required application [~~license~~] fee; and

15           (3) either:

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

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

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

23           Sec. 1802.055. APPLICATION FOR EXAMINATION. [~~(a)~~] An  
24 individual who establishes that the individual is eligible for an  
25 auctioneer's license may apply to the executive director to take  
26 the license examination. The application must be accompanied by  
27 the application [~~examination~~] fee.

1       ~~[(b) On receipt of an examination application and fee, the~~  
2 ~~executive director shall furnish the applicant with:~~

3               ~~[(1) study materials and references on which the~~  
4 ~~examination will be based; and~~

5               ~~[(2) a schedule specifying the dates and places the~~  
6 ~~examination will be offered.~~

7       ~~[(c) The applicant may take the examination at any scheduled~~  
8 ~~offering not later than the 90th day after the date the applicant~~  
9 ~~receives the study materials.]~~

10       SECTION 8. Section 1802.059(b), Occupations Code, is  
11 amended to read as follows:

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

18       SECTION 9. The heading to Subchapter C, Chapter 1802,  
19 Occupations Code, is amended to read as follows:

20               SUBCHAPTER C. AUCTIONEER [~~EDUCATION~~] ADVISORY BOARD

21       SECTION 10. The heading to Section 1802.101, Occupations  
22 Code, is amended to read as follows:

23       Sec. 1802.101. AUCTIONEER [~~EDUCATION~~] ADVISORY BOARD.

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

26       Sec. 1802.106. COMPENSATION. A member appointed under  
27 Section 1802.102(a)(1) may not receive[+

1           ~~[(1)]~~ compensation for serving on the advisory board~~[+]~~  
2 ~~or~~  
3           ~~[(2) reimbursement for expenses]~~.

4           SECTION 12. Section 1802.107, Occupations Code, is amended  
5 to read as follows:

6           Sec. 1802.107. MEETINGS. ~~[(a) The advisory board shall~~  
7 ~~meet at least quarterly each calendar year.]~~

8           ~~[(b)]~~ The advisory board shall ~~[may]~~ meet ~~[at other times]~~  
9 at the call of the presiding officer of the commission or the  
10 executive director.

11          SECTION 13. Section 1802.001(12), Occupations Code, is  
12 repealed.

13          SECTION 14. Not later than March 1, 2016, the Texas  
14 Commission of Licensing and Regulation shall adopt rules necessary  
15 to implement the changes in law made by this Act.

16          SECTION 15. (a) Notwithstanding Chapter 1802, Occupations  
17 Code, as amended by this Act, a person is not required to hold a  
18 license issued under that chapter to act as an associate auctioneer  
19 until March 1, 2016.

20          (b) An individual who was licensed by the Texas Department  
21 of Licensing and Regulation as an associate auctioneer on or before  
22 June 14, 2013, may apply the individual's work experience  
23 participating in auctions as an associate auctioneer on or before  
24 June 14, 2013, toward the individual's eligibility for an  
25 auctioneer's license under Chapter 1802, Occupations Code.

26          SECTION 16. This Act takes effect September 1, 2015.