

By: Smith

H.B. No. 2481

Substitute the following for H.B. No. 2481:

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C.S.H.B. No. 2481

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; requiring a fee.

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,~~

~~[(5)]~~ a foreclosure sale of real property personally conducted by a trustee under a deed of trust;

(5) ~~[(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;

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. Subchapter A, Chapter 1802, Occupations Code, is
3 amended by adding Section 1802.004 to read as follows:

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

7 SECTION 4. Section 1802.051, Occupations Code, is amended
8 by amending Subsections (a) and (c) and adding Subsection (d) to
9 read as follows:

10 (a) A person may not act as an auctioneer or associate
11 auctioneer [~~of real or personal property~~] in this state unless the
12 person holds a license issued by the executive director under this
13 chapter.

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

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

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

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

25 (d) An individual who is licensed under this chapter may
26 conduct an auction to sell motor vehicles, as defined by Section
27 501.002 or 502.001, Transportation Code, if the individual conducts

1 the auction for a person who holds a dealer general distinguishing
2 number or wholesale motor vehicle auction general distinguishing
3 number issued under Subchapter B, Chapter 503, Transportation Code,
4 or a license issued under Subchapter C, Chapter 2302, of this code.

5 SECTION 5. Section 1802.052(a), Occupations Code, is
6 amended to read as follows:

7 (a) An individual is eligible for an auctioneer's license if
8 the 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 by a licensed
16 auctioneer for at least two years and participation in at least 10
17 auctions during that employment;

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

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

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

26 SECTION 6. Subchapter B, Chapter 1802, Occupations Code, is
27 amended by adding Section 1802.053 to read as follows:

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

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

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

8 SECTION 7. Section 1802.054, Occupations Code, is amended
9 to read as follows:

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

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

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

18 (3) either:

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

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

24 SECTION 8. Section 1802.055, Occupations Code, is amended
25 to read as follows:

26 Sec. 1802.055. APPLICATION FOR EXAMINATION. [~~(a)~~] An
27 individual who establishes that the individual is eligible for an

1 auctioneer's license may apply to the executive director to take
2 the license examination. The application must be accompanied by
3 the application ~~[examination]~~ fee.

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

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

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

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

13 SECTION 9. Section 1802.059(b), Occupations Code, is
14 amended to read as follows:

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

21 SECTION 10. The heading to Subchapter C, Chapter 1802,
22 Occupations Code, is amended to read as follows:

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

24 SECTION 11. The heading to Section 1802.101, Occupations
25 Code, is amended to read as follows:

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

27 SECTION 12. Section 1802.106, Occupations Code, is amended

to read as follows:

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

~~[(1)]~~ compensation for serving on the advisory board[+]
~~or~~

~~[(2) reimbursement for expenses].~~

SECTION 13. Section 1802.107, Occupations Code, is amended to read as follows:

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

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

SECTION 14. Sections 1802.001(12) and 1802.051(b), Occupations Code, are repealed.

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

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

(b) An individual who was licensed by the Texas Department of Licensing and Regulation as an associate auctioneer on or before June 14, 2013, may apply the individual's work experience participating in auctions as an associate auctioneer on or before June 14, 2013, toward the individual's eligibility for an

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1 auctioneer's license under Chapter 1802, Occupations Code.

2 SECTION 17. This Act takes effect September 1, 2015.