

BILL ANALYSIS

C.S.H.B. 3038
By: Anderson
Licensing & Administrative Procedures
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties note that there is a need to update and revise certain statutory provisions relating to the regulation of auctioneers to continue protecting consumers from unscrupulous practices in sales made through auction transactions. C.S.H.B. 3038 seeks to update certain such regulations and to provide more current and relevant consumer protections.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3038 amends the Occupations Code to make statutory provisions governing auctioneers applicable to a sealed bid auction, defined in the bill as a sealed bidding procedure that incorporates or allows for the competitive increasing or decreasing of bids after the opening of sealed bids, and to exempt from such provisions a sale conducted by a sealed bid without the option of increasing or decreasing the amount of a bid and a sale or auction conducted outside of Texas. The bill updates a provision exempting from the statutory provisions governing auctioneers an auction conducted only for student training purposes to clarify that the exemption applies to such an auction that is conducted as part of a course of study for auctioneers approved by the Texas Department of Licensing and Regulation (TDLR), rather than by the executive director of TDLR.

C.S.H.B. 3038 adds a real estate brokerage firm operated by a broker licensed by the Texas Real Estate Commission to the entities for which a licensed auctioneer is authorized to act as an auctioneer.

C.S.H.B. 3038 removes a provision establishing as a condition of eligibility for an auctioneer's license that an individual show proof of employment by a licensed auctioneer for at least two years during which the applicant must have performed the duties of an auctioneer in at least 10 auctions. The bill requires a license application to be accompanied by, among other items, any fee required for the auctioneer education and recovery fund, rather than the required bond.

C.S.H.B. 3038 expands the scope of the auctioneer education advisory board's required advice to the Texas Commission of Licensing and Regulation to include, in addition to educational matters, operational matters and common practices within the auction industry. The bill revises provisions relating to the advisory board, including expanding and changing the composition of the board, requiring the presiding officer of the commission to make certain appointments and with certain considerations, and establishing term limits for certain members, and provisions relating to advisory board meetings. The bill requires the presiding officer of the commission to appoint the additional member to the auctioneer education advisory board not later than September 1, 2013, for a term expiring September 1, 2015.

C.S.H.B. 3038 increases from \$300,000 to \$350,000 the threshold amount below which license holders at the next license renewal are required to pay an additional fee necessary to obtain such a balance in the auctioneer education and recovery fund and increases from \$250,000 to \$300,000 the threshold amount above which the executive director is authorized to use the excess amount in the fund for certain education expenditures.

C.S.H.B. 3038 increases from \$10,000 to \$15,000 the limit on a payment to a single party aggrieved by the actions of an auctioneer in an auction; increases from \$20,000 to \$30,000 the limit on 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; and increases from \$20,000 to \$30,000 the limit on the total payment of claims against a single auctioneer.

C.S.H.B. 3038 authorizes the executive director of TDLR, in addition to the Texas Commission of Licensing and Regulation, to deny an application for a license or suspend or revoke the license for any auctioneer under certain conditions. The bill specifies that statutory provisions relating to complaint procedures and the revocation of an auctioneer license for a claim on the auctioneer education and recovery fund do not limit the executive director's authority to take disciplinary action against a license holder for a violation of general licensing provisions or a rule adopted under those provisions.

C.S.H.B. 3038 repeals provisions relating to an associate auctioneer's license, provisions relating to an exemption from licensure for certain auction company employees, and provisions relating to an authorization for the removal of an advisory board member by a board vote.

C.S.H.B. 3038 repeals the following provisions of the Occupations Code:

- Section 1802.001(2)
- Section 1802.053
- Section 1802.062
- Section 1802.105
- Section 1802.253(d)

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3038 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED	HOUSE COMMITTEE SUBSTITUTE
SECTION 1. Section 1802.001, Occupations Code, is amended.	SECTION 1. Same as introduced version.
SECTION 2. Sections 1802.002 and 1802.003, Occupations Code, are amended to read as follows: Sec. 1802.002. APPLICABILITY. <u>(a)</u> This chapter does not apply to:	SECTION 2. Sections 1802.002 and 1802.003, Occupations Code, are amended to read as follows: Sec. 1802.002. APPLICABILITY. <u>(a)</u> 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 [~~an individual~~] of the person's [~~individual's~~] property if the person [~~individual~~] is not engaged in the business of selling property at auction [~~as an auctioneer~~] 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 [~~executive director for auctioneers~~];
- (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; or
- (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

- (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 [~~an individual~~] of the person's [~~individual's~~] property if the person [~~individual~~] is not engaged in the business of selling property at auction [~~as an auctioneer~~] 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 [~~executive director for auctioneers~~];
- (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; [~~or~~]
- (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.

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

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

SECTION 3. Sections 1802.051(a) and (c), Occupations Code, are amended.

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 during which the applicant performed the duties of an auctioneer [participated] in at least 10 auctions;~~

(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. Section 1802.054, Occupations Code, is amended.

state, county, or municipal authority; and
(B) involves only the sale of property owned by the organization's members; or

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

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

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

SECTION 3. Same as introduced version.

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 during which the applicant participated in at least 10 auctions];~~

(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. Same as introduced version.

SECTION 6. Section 1802.101, Occupations Code, is amended to read as follows:

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

SECTION 7. Sections 1802.102(a) and (b), Occupations Code, are amended to read as follows:

(a) The advisory board consists of seven ~~[six]~~ members appointed as follows:

(1) four ~~[three]~~ members who are licensed auctioneers appointed by the executive director ~~[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 executive director ~~[of the Texas Economic Development and Tourism Office or the director's designee]~~; and

(3) two public members.

(b) In appointing advisory board members under Subsection (a)(1), the executive director shall consider the geographical diversity of the members ~~[presiding officer of the commission may not appoint members who reside in contiguous senatorial districts]~~.

SECTION 8. Section 1802.103(a), Occupations Code, is amended to read as follows:

(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 executive director ~~[presiding officer of the commission]~~, with the commission's approval, shall appoint a replacement to serve for the remainder of the term.

SECTION 9. Section 1802.104, Occupations Code, is amended to read as follows:

SECTION 6. Section 1802.101, Occupations Code, is amended to read as follows:

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

SECTION 7. Sections 1802.102(a) and (b), Occupations Code, are amended to read as follows:

(a) The advisory board consists of seven ~~[six]~~ members appointed as follows:

(1) four ~~[three]~~ 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 ~~[executive director of the Texas Economic Development and Tourism Office or the director's designee]~~; 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 ~~[may not appoint members who reside in contiguous senatorial districts]~~.

SECTION 8. Section 1802.103(a), Occupations Code, is amended to read as follows:

(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.

SECTION 9. Section 1802.104, Occupations Code, is amended to read as follows:

Sec. 1802.104. PRESIDING OFFICER. The ~~executive director [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.

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.

SECTION 10. Section 1802.107(b), Occupations Code, is amended to read as follows:

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

SECTION 10. Section 1802.107(b), Occupations Code, is amended to read as follows:

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

SECTION 11. Section 1802.153(b), Occupations Code, is amended.

SECTION 11. Same as introduced version.

SECTION 12. Section 1802.156, Occupations Code, is amended.

SECTION 12. Same as introduced version.

SECTION 13. Section 1802.206, Occupations Code, is amended.

SECTION 13. Same as introduced version.

SECTION 14. Section 1802.209(a), Occupations Code, is amended.

SECTION 14. Same as introduced version.

SECTION 15. Section 1802.251, Occupations Code, is amended.

SECTION 15. Same as introduced version.

SECTION 16. Section 1802.253(a), Occupations Code, is amended.

SECTION 16. Same as introduced version.

SECTION 17. Section 1802.303(a), Occupations Code, is amended to read as follows:

(a) An individual [~~A person~~] commits an offense if the individual [~~person~~] violates a provision of this chapter or a rule adopted by the commission under this chapter for which a penalty is not provided.

~~No equivalent provision.~~

SECTION 18. Sections 1802.001(2), 1802.053, 1802.062, 1802.105, and 1802.253(d), Occupations Code, are

SECTION 17. Same as introduced version.

repealed.

SECTION 19. (a) The executive director of the Texas Department of Licensing and Regulation shall appoint an additional member to the auctioneer education advisory board as required by Section 1802.102, Occupations Code, as amended by this Act, not later than September 1, 2013, for a term expiring September 1, 2015.

(b) Section 1802.103, Occupations Code, as amended by this Act, applies only to the appointment of a member of the auctioneer education advisory board on or after the effective date of this Act and does not affect the entitlement of a member serving on the board immediately before the effective date of this Act to continue to serve for the remainder of the member's term.

SECTION 20. Section 1802.206, Occupations Code, as amended by this Act, applies only to a claim filed under Section 1802.202, Occupations Code, on or after the effective date of this Act. A claim filed before that date is governed by the law in effect on the date the claim was filed, and the former law is continued in effect for that purpose.

SECTION 21. Section 1802.303, Occupations Code, as amended by this Act, applies only to an offense committed on or after the effective date of this Act. 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. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 22. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not

SECTION 18. (a) The presiding officer of the Texas Commission of Licensing and Regulation shall appoint an additional member to the auctioneer education advisory board as required by Section 1802.102, Occupations Code, as amended by this Act, not later than September 1, 2013, for a term expiring September 1, 2015.

(b) Section 1802.103, Occupations Code, as amended by this Act, applies only to the appointment of a member of the auctioneer education advisory board on or after the effective date of this Act and does not affect the entitlement of a member serving on the board immediately before the effective date of this Act to continue to serve for the remainder of the member's term.

SECTION 19. Same as introduced version.

No equivalent provision.

SECTION 20. Same as introduced version.

receive the vote necessary for immediate effect, this Act takes effect September 1, 2013.