

By: Anderson

H.B. No. 3038

A BILL TO BE ENTITLED

AN ACT

relating to licensing and regulation of auctioneers; authorizing 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 (3) and (5) and adding Subdivisions (10), (11), (12), and (13) to read as follows:

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

(5) "Auctioneer" means any person ~~[an individual]~~ who:
(A) sells or offers to sell property at auction, with or without receiving [valuable] consideration; or
(B) solicits, negotiates, or executes an auction listing contract [as a bid caller].

(10) "Personal property" means any property other than real property, including all tangible and intangible types of 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) "Recurring basis" means more than once every 24 months.

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

4 SECTION 2. Sections 1802.002 and 1802.003, Occupations
5 Code, are amended to read as follows:

6 Sec. 1802.002. APPLICABILITY. (a) This chapter does not
7 apply to:

8 (1) a sale conducted by order of a United States court
9 under Title 11, United States Code;

10 (2) a sale conducted by an employee of the United
11 States, this state, or a political subdivision of this state in the
12 course and scope of employment;

13 (3) a sale conducted by a charitable, religious, or
14 civic organization, including an organization having a tax exempt
15 status under Section 501(c), Internal Revenue Code of 1986, or
16 organized as a nonprofit entity, if the person organizing,
17 arranging, or conducting the auction receives no compensation;

18 (4) a sale conducted by any person [~~an individual~~] of
19 the person's [~~individual's~~] property if the person [~~individual~~] is
20 not engaged in the business of selling property at auction [~~as an~~
21 ~~auctioneer~~] on a recurring basis;

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

24 (6) a foreclosure sale of personal property personally
25 conducted by:

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

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

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

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

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

9 (8) an auction conducted only for student training
10 purposes as part of a course of study approved by the department
11 [~~executive director for auctioneers~~];

12 (9) an auction conducted by a posted stockyard or
13 market agency as defined by the federal Packers and Stockyards Act
14 (7 U.S.C. Section 181 et seq.), as amended;

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

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

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

23 (B) involves only the sale of property owned by
24 the organization's members.

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

26 Sec. 1802.003. PREEMPTION. A political subdivision of this
27 state may not levy on or collect from an auctioneer [~~or associate~~

1 ~~auctioneer~~] a license tax or fee as a regulatory or revenue measure
2 or require the licensing of an auctioneer [~~or associate~~
3 ~~auctioneer~~], if the auctioneer [~~or associate auctioneer~~] holds a
4 license under this chapter and is in compliance with this chapter.

5 SECTION 3. Sections 1802.051(a) and (c), Occupations Code,
6 are amended to read as follows:

7 (a) A person may not act as an auctioneer of real or personal
8 property [~~or associate auctioneer in an auction held~~] in this state
9 unless the person [~~is an individual who~~] holds a license issued by
10 the executive director under this chapter.

11 (c) An individual [~~A person~~] who is licensed under this
12 chapter may not act as an auctioneer for an entity unless the
13 entity:

14 (1) is an auction company owned or operated by an
15 individual [~~a person~~] who is licensed under this chapter; [~~or~~]

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

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

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

24 (a) An individual is eligible for an auctioneer's license if
25 the individual:

26 (1) is at least 18 years of age;

27 (2) is a citizen of the United States or a legal alien;

1 (3) either:

2 (A) passes a written or oral examination
3 demonstrating knowledge of the auction business and of the laws of
4 this state relating to the auction business; or

5 (B) shows proof of employment by a licensed
6 auctioneer for at least two years during which the applicant
7 performed the duties of an auctioneer [~~participated~~] in at least 10
8 auctions;

9 (4) holds a high school diploma or a high school
10 equivalency certificate;

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

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

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

19 Sec. 1802.054. APPLICATION FOR LICENSE. An applicant for a
20 license must apply to the executive director on a form provided by
21 the executive director that establishes the applicant's
22 eligibility for the license. The application must be accompanied
23 by:

24 (1) any fee required for the auctioneer education and
25 recovery fund authorized under Section 1802.153 [~~the required~~
26 ~~bond~~];

27 (2) the required license fee; and

1 (3) either:

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

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

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

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

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

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

17 (1) four [~~three~~] members who are licensed auctioneers
18 appointed by the executive director [~~presiding officer of the~~
19 ~~commission~~], with the commission's approval;

20 (2) the administrative head, or the administrative
21 head's designee, of any state agency or office that is selected by
22 the executive director [~~of the Texas Economic Development and~~
23 ~~Tourism Office or the director's designee~~]; and

24 (3) two public members.

25 (b) In appointing advisory board members under Subsection
26 (a)(1), the executive director shall consider the geographical
27 diversity of the members [~~presiding officer of the commission may~~

1 ~~not appoint members who reside in contiguous senatorial districts].~~

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

4 (a) The members appointed under Section 1802.102(a)(1)
5 serve two-year terms that expire on September 1 and may not serve
6 more than two consecutive terms. If a vacancy occurs during the
7 term of such a member, the executive director [~~presiding officer of~~
8 ~~the commission~~], with the commission's approval, shall appoint a
9 replacement to serve for the remainder of the term.

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

12 Sec. 1802.104. PRESIDING OFFICER. The executive director
13 [~~presiding officer of the commission~~], with the commission's
14 approval, shall appoint a member of the advisory board to serve as
15 presiding officer of the board. The presiding officer serves for
16 two years and may not serve more than two consecutive terms.

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

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

22 SECTION 11. Section 1802.153(b), Occupations Code, is
23 amended to read as follows:

24 (b) If the balance in the fund on December 31 of a year is
25 less than \$350,000 [~~\$300,000~~], each license holder at the next
26 license renewal shall pay, in addition to the renewal fee, a fee
27 that is equal to the greater of \$50 or a pro rata share of the amount

1 necessary to obtain a balance in the fund of \$350,000 [~~\$300,000~~].

2 SECTION 12. Section 1802.156, Occupations Code, is amended
3 to read as follows:

4 Sec. 1802.156. EDUCATION EXPENDITURES PERMITTED. The
5 executive director may use amounts in excess of \$300,000 [~~\$250,000~~]
6 in the fund to:

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

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

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

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

19 SECTION 13. Section 1802.206, Occupations Code, is amended
20 to read as follows:

21 Sec. 1802.206. PAYMENT LIMITS. (a) The executive director
22 may not pay a single aggrieved party more than \$15,000 [~~\$10,000~~].

23 (b) The total payment of all claims by more than one
24 aggrieved party arising from one auction at one location,
25 regardless of the length of the auction, may not exceed \$30,000
26 [~~\$20,000~~].

27 (c) The total payment of claims against a single auctioneer

1 may not exceed \$30,000 [~~\$20,000~~].

2 SECTION 14. Section 1802.209(a), Occupations Code, is
3 amended to read as follows:

4 (a) This subchapter and Section 1802.252 do not limit the
5 commission's or executive director's authority to take disciplinary
6 action against a license holder for a violation of this chapter or a
7 rule adopted under this chapter.

8 SECTION 15. Section 1802.251, Occupations Code, is amended
9 to read as follows:

10 Sec. 1802.251. DENIAL OF APPLICATION; SUSPENSION OR
11 REVOCATION OF LICENSE. The commission or executive director may
12 deny an application for a license or suspend or revoke the license
13 of any auctioneer for:

14 (1) violating this chapter or a rule adopted under
15 this chapter;

16 (2) obtaining a license through false or fraudulent
17 representation;

18 (3) making a substantial misrepresentation in an
19 application for an auctioneer's license;

20 (4) engaging in a continued and flagrant course of
21 misrepresentation or making false promises through an agent,
22 advertising, or otherwise;

23 (5) failing to account for or remit, within a
24 reasonable time, money belonging to another that is in the
25 auctioneer's possession and commingling funds of another with the
26 auctioneer's funds or failing to keep the funds of another in an
27 escrow or trust account; or

1 (6) violating a provision of the Business & Commerce
2 Code in conducting an auction.

3 SECTION 16. Section 1802.253(a), Occupations Code, is
4 amended to read as follows:

5 (a) Before denying an application for a license, the
6 commission or executive director shall:

7 (1) set the matter for a hearing to be conducted by the
8 State Office of Administrative Hearings; and

9 (2) before the hearing date, notify the applicant in
10 writing of:

11 (A) the charges alleged or the question to be
12 determined at the hearing; and

13 (B) the date and location of the hearing.

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

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

20 SECTION 18. Sections 1802.001(2), 1802.053, 1802.062,
21 1802.105, and 1802.253(d), Occupations Code, are repealed.

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

27 (b) Section 1802.103, Occupations Code, as amended by this

1 Act, applies only to the appointment of a member of the auctioneer
2 education advisory board on or after the effective date of this Act
3 and does not affect the entitlement of a member serving on the board
4 immediately before the effective date of this Act to continue to
5 serve for the remainder of the member's term.

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

12 SECTION 21. Section 1802.303, Occupations Code, as amended
13 by this Act, applies only to an offense committed on or after the
14 effective date of this Act. An offense committed before the
15 effective date of this Act is governed by the law in effect on the
16 date the offense was committed, and the former law is continued in
17 effect for that purpose. For purposes of this section, an offense
18 was committed before the effective date of this Act if any element
19 of the offense occurred before that date.

20 SECTION 22. This Act takes effect immediately if it
21 receives a vote of two-thirds of all the members elected to each
22 house, as provided by Section 39, Article III, Texas Constitution.
23 If this Act does not receive the vote necessary for immediate
24 effect, this Act takes effect September 1, 2013.