

## **BILL ANALYSIS**

Senate Research Center  
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H.B. 3038  
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Business & Commerce  
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Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Chapter 1802 (Auctioneers), Occupations Code, governs the licensing and regulation of auctioneers in the state and was originally enacted in 1978. The chapter requires auctioneers to obtain a license from the Texas Department of Licensing and Regulation (TDLR), but the definition of "auctioneer" centers around live bid calling and does not take into account modern technology or techniques. Furthermore, current statute allows auctioneering license applicants to skirt the license examination requirements by simply demonstrating employment by a licensed auctioneer. These provisions undermine the state's regulatory structure, create confusion for consumers, and perpetuate an uneven playing field for practitioners operating in Texas.

H.B. 3038 seeks to modernize Chapter 1802 of the Occupations Code so as to ensure that the state's auctioneering licensing requirements are fair, consistent, and reflective of current industry practices. Specifically, H.B. 3038 removes the live bid calling framework within the definition of "auctioneer," repeals the associate auctioneer program that allows applicants to circumvent the examination process, changes the makeup of the auctioneer education advisory board to allow for greater public involvement in the rulemaking process, and increases the amount injured consumers may recover from the auctioneer education and recovery fund.

H.B. 3038 amends current law relating to licensing and regulation of auctioneers, and authorizes a fee.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 1802.001, Occupations Code, by amending Subdivisions (3) and (5) to redefine "auction" and "auctioneer", and adding Subdivisions (10), (11), (12), and (13), to define "personal property," "real property," "recurring basis," and "sealed bid auction" for this section.

SECTION 2. Amends Sections 1802.002 and 1802.003, Occupations Code, as follows:

Sec. 1802.002. **APPLICABILITY.** (a) Creates this subsection from existing text. Provides that this chapter does not apply to:

(1)-(3) Makes no change to these subdivisions;

(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, rather than a sale conducted by an individual of the individual's property if the individual is not engaged in the business of selling property as an auctioneer on a recurring basis;

(5)-(6) Makes no change to these subdivisions;

- (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 Texas Department of Licensing and Regulation (TDLR), rather than approved by the executive director for auctioneers;
  - (9) Makes no change to this subdivision;
  - (10)-(11) Makes nonsubstantive changes to these subdivisions; or
  - (12) a sale or auction conducted outside of this state.
- (b) Provides that this section applies to a sealed bid auction.

Sec. 1802.003. PREEMPTION. Prohibits a political subdivision of this state from levying on or collecting 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, rather than prohibits a political subdivision of this state from levying on or collecting 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. Amends Sections 1802.051(a) and (c), Occupations Code, as follows:

- (a) Prohibits a person from acting as an auctioneer of real or personal property in this state, unless the person holds a license issued by the executive director of TDLR (executive director) under this chapter, rather than prohibits a person from acting as an auctioneer or associate auctioneer in an auction held in this state unless the person is an individual who holds a license issued by the executive director under this chapter.
- (c) Prohibits an individual who is licensed under this chapter from acting as an auctioneer for an entity unless the entity fulfills certain criteria, including the entity is a real estate brokerage firm that is operated by a broker licensed by the Texas Real Estate Commission. Makes nonsubstantive and conforming changes.

SECTION 4. Amends Section 1802.052(a), Occupations Code, to delete existing text providing that an individual is eligible for an auctioneer's license if the individual shows proof of employment by a licensed auctioneer for at least two years during which the applicant participated in at least 10 auctions.

SECTION 5. Amends Section 1802.054, Occupations Code, to require than the application to apply to the executive director that establishes eligibility for the license be accompanied by certain items, including any fee required for the auctioneer education and recovery fund authorized under Section 1802.153 (Additional Fees), rather than accompanied by the required bond.

SECTION 6. Amends Section 1802.101, Occupations Code, to require the Auctioneer Education Advisory Board (advisory board) to advise the Texas Commission of Licensing and Regulation (TCLR) on educational matters, operational matters, and common practices within the auction industry.

SECTION 7. Amends Sections 1802.102(a) and (b), Occupations Code, as follows:

- (a) Provides that the advisory board consists of seven, rather than six, members appointed as follows:

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

(2) the administrative head, or the administrative head's designee, of any state agency or office that is selected by TCLR, rather than the executive director of the Texas Economic Development and Tourism Office or the director's designee; and

(3) Makes no change to this subdivision.

(b) Requires the presiding officer of TCLR, in appointing advisory board members under Subsection (a)(1), to consider the geographical diversity of the members, rather than prohibits the presiding officer of TCLR from appointing members who reside in contiguous senatorial districts.

SECTION 8. Amends Section 1802.103(a), Occupations Code, to provide that the members appointed under Section 1802.102(a)(1) serve two-year terms that expire on September 1 and are prohibited from serving more than two consecutive terms.

SECTION 9. Amends Section 1802.104, Occupations Code, to provide that the presiding officer of the advisory board, appointed by the presiding officer of TCLR with TCLR's approval, serves for two years and is prohibited from serving more than two consecutive terms.

SECTION 10. Amends Section 1802.107(b), Occupations Code, to authorize the advisory board to meet at other times at the call of the presiding officer of TCLR or the executive director.

SECTION 11. Amends Section 1802.153(b), Occupations Code, to require each license holder at the next license renewal, if the balance in the fund on December 31 of a year is less than \$350,000, rather than \$300,000, to 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, rather than \$300,000.

SECTION 12. Amends Section 1802.156, Occupations Code, to authorize the executive director to use amounts in excess of \$300,000, rather than \$250,000, in the fund to fulfill certain obligations.

SECTION 13. Amends Section 1802.206, Occupations Code, as follows:

Sec. 1802.206. PAYMENT LIMITS (a) Prohibits the executive director from paying a single aggrieved party more than \$15,000, rather than \$10,000.

(b) Prohibits 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, from exceeding \$30,000, rather than \$20,000.

(c) Prohibits the total payment of claims against a single auctioneer from exceeding \$30,000, rather than \$20,000.

SECTION 14. Amends Section 1802.209(a), Occupations Code, to provide that this subchapter and Section 1802.252 (Revocation for Claim on Fund) do not limit TCLR'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.

SECTION 15. Amends Section 1802.251, Occupations Code, to authorize TCLR or the executive director to deny an application for a license or suspend or revoke the license of any auctioneer for certain reasons, including violating a provision of the Business & Commerce Code in conducting an auction.

SECTION 16. Amends Section 1802.253(a), Occupations Code, to require TCLR or the executive director, before denying an application for a license, to fulfill certain obligations.

SECTION 17. Repealers: Section 1802.001(2) (defining "associate auctioneer"), 1802.053 (Eligibility for Associate Auctioneer's License), 1802.062 (License Not Required for Certain Employees), Occupations Code; 1802.105 (Removal), and 1802.253(d) (relating to requiring TCLR to provide written notice to the auctioneer who employs the associate auctioneer or who has agreed to employ the associate auctioneer), Occupations Code.

SECTION 18. (a) Requires the presiding officer TCLR to appoint an additional member to the advisory board as required by Section 1802.102 (Appointment of Advisory Board; Membership; Eligibility), Occupations Code, as amended by this Act, not later than September 1, 2013, for a term expiring September 1, 2015.

(b) Provides that Section 1802.103 (Terms; Vacancies), Occupations Code, as amended by this Act, applies only to the appointment of a member of the 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. Provides that Section 1802.206, Occupations Code, as amended by this Act, applies only to a claim filed under Section 1802.202 (Consumer Claims), Occupations Code, on or after the effective date of this Act. Provides that 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 20. Effective date: upon passage or September 1, 2013.