

1-1 By: Anderson (Senate Sponsor - Carona) H.B. No. 3038
 1-2 (In the Senate - Received from the House May 9, 2013;
 1-3 May 10, 2013, read first time and referred to Committee on Business
 1-4 and Commerce; May 16, 2013, reported favorably by the following
 1-5 vote: Yeas 7, Nays 0; May 16, 2013, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9	X			
1-10	X			
1-11			X	
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16			X	

1-17 A BILL TO BE ENTITLED
 1-18 AN ACT

1-19 relating to licensing and regulation of auctioneers; authorizing a
 1-20 fee.

1-21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-22 SECTION 1. Section 1802.001, Occupations Code, is amended
 1-23 by amending Subdivisions (3) and (5) and adding Subdivisions (10),
 1-24 (11), (12), and (13) to read as follows:

1-25 (3) "Auction" means the sale of property by
 1-26 competitive bid using any method, format, or venue.

1-27 (5) "Auctioneer" means any person ~~[an individual]~~ who:

1-28 (A) sells or offers to sell property at auction,
 1-29 with or without receiving ~~[valuable]~~ consideration; or

1-30 (B) solicits, negotiates, or executes an auction
 1-31 listing contract ~~[, as a bid caller]~~.

1-32 (10) "Personal property" means any property other than
 1-33 real property, including all tangible and intangible types of
 1-34 property.

1-35 (11) "Real property" means land, including
 1-36 improvements, fixtures, and other property appurtenant to or used
 1-37 in connection with the land, and any other estate, interest, or
 1-38 legal or equitable right in the land, improvement, fixture, or
 1-39 appurtenant property.

1-40 (12) "Recurring basis" means more than once every 24
 1-41 months.

1-42 (13) "Sealed bid auction" means a sealed bidding
 1-43 procedure that incorporates or allows for the competitive
 1-44 increasing or decreasing of bids after the opening of sealed bids.

1-45 SECTION 2. Sections 1802.002 and 1802.003, Occupations
 1-46 Code, are amended to read as follows:

1-47 Sec. 1802.002. APPLICABILITY. (a) This chapter does not
 1-48 apply to:

1-49 (1) a sale conducted by order of a United States court
 1-50 under Title 11, United States Code;

1-51 (2) a sale conducted by an employee of the United
 1-52 States, this state, or a political subdivision of this state in the
 1-53 course and scope of employment;

1-54 (3) a sale conducted by a charitable, religious, or
 1-55 civic organization, including an organization having a tax exempt
 1-56 status under Section 501(c), Internal Revenue Code of 1986, or
 1-57 organized as a nonprofit entity, if the person organizing,
 1-58 arranging, or conducting the auction receives no compensation;

1-59 (4) a sale conducted by any person ~~[an individual]~~ of
 1-60 the person's ~~[individual's]~~ property if the person ~~[individual]~~ is
 1-61 not engaged in the business of selling property at auction ~~[as an~~

2-1 ~~auctioneer~~] on a recurring basis;

2-2 (5) a foreclosure sale of real property personally
2-3 conducted by a trustee under a deed of trust;

2-4 (6) a foreclosure sale of personal property personally
2-5 conducted by:

2-6 (A) a person who holds a security interest in the
2-7 property, including a mortgage; or

2-8 (B) an employee or agent of a person described by
2-9 Paragraph (A) acting in the course and scope of employment, if:

2-10 (i) the employee or agent is not otherwise
2-11 engaged in the auction business; and

2-12 (ii) all property for sale in the auction is
2-13 subject to a security agreement;

2-14 (7) a sale conducted by sealed bid without the option
2-15 of increasing or decreasing the amount of a bid;

2-16 (8) an auction conducted only for student training
2-17 purposes as part of a course of study approved by the department
2-18 ~~[executive director for auctioneers];~~

2-19 (9) an auction conducted by a posted stockyard or
2-20 market agency as defined by the federal Packers and Stockyards Act
2-21 (7 U.S.C. Section 181 et seq.), as amended;

2-22 (10) an auction of livestock conducted by a nonprofit
2-23 livestock trade association chartered in this state, if the auction
2-24 involves only the sale of livestock owned by members of the trade
2-25 association; ~~[or]~~

2-26 (11) an auction conducted by a charitable or nonprofit
2-27 organization chartered in this state, if the auction:

2-28 (A) is part of a fair that is organized under
2-29 state, county, or municipal authority; and

2-30 (B) involves only the sale of property owned by
2-31 the organization's members; or

2-32 (12) a sale or auction conducted outside of this
2-33 state.

2-34 (b) This chapter applies to a sealed bid auction.

2-35 Sec. 1802.003. PREEMPTION. A political subdivision of this
2-36 state may not levy on or collect from an auctioneer ~~[or associate~~
2-37 ~~auctioneer]~~ a license tax or fee as a regulatory or revenue measure
2-38 or require the licensing of an auctioneer ~~[or associate~~
2-39 ~~auctioneer]~~, if the auctioneer ~~[or associate auctioneer]~~ holds a
2-40 license under this chapter and is in compliance with this chapter.

2-41 SECTION 3. Sections 1802.051(a) and (c), Occupations Code,
2-42 are amended to read as follows:

2-43 (a) A person may not act as an auctioneer of real or personal
2-44 property ~~[or associate auctioneer in an auction held]~~ in this state
2-45 unless the person ~~[is an individual who]~~ holds a license issued by
2-46 the executive director under this chapter.

2-47 (c) An individual ~~[A person]~~ who is licensed under this
2-48 chapter may not act as an auctioneer for an entity unless the
2-49 entity:

2-50 (1) is an auction company owned or operated by an
2-51 individual ~~[a person]~~ who is licensed under this chapter; ~~[or]~~

2-52 (2) holds a dealer general distinguishing number
2-53 issued under Subchapter B, Chapter 503, Transportation Code, and
2-54 the auction is for the purpose of auctioning vehicles as defined by
2-55 Section 503.001, Transportation Code; or

2-56 (3) is a real estate brokerage firm that is operated by
2-57 a broker licensed by the Texas Real Estate Commission.

2-58 SECTION 4. Section 1802.052(a), Occupations Code, is
2-59 amended to read as follows:

2-60 (a) An individual is eligible for an auctioneer's license if
2-61 the individual:

2-62 (1) is at least 18 years of age;

2-63 (2) is a citizen of the United States or a legal alien;

2-64 (3) ~~[either:~~

2-65 ~~[(A)]~~ passes a written or oral examination
2-66 demonstrating knowledge of the auction business and of the laws of
2-67 this state relating to the auction business; ~~[or~~

2-68 ~~[(B) shows proof of employment by a licensed~~
2-69 ~~auctioneer for at least two years during which the applicant~~

3-1 ~~participated in at least 10 auctions];~~

3-2 (4) holds a high school diploma or a high school
3-3 equivalency certificate;

3-4 (5) has not been convicted of a felony during the five
3-5 years preceding the date of application; and

3-6 (6) has completed at least 80 hours of classroom
3-7 instruction at an auction school with a curriculum approved by the
3-8 department in accordance with the standards and procedures
3-9 established by rule adopted under this chapter.

3-10 SECTION 5. Section 1802.054, Occupations Code, is amended
3-11 to read as follows:

3-12 Sec. 1802.054. APPLICATION FOR LICENSE. An applicant for a
3-13 license must apply to the executive director on a form provided by
3-14 the executive director that establishes the applicant's
3-15 eligibility for the license. The application must be accompanied
3-16 by:

3-17 (1) any fee required for the auctioneer education and
3-18 recovery fund authorized under Section 1802.153 [~~the required~~
3-19 ~~bond~~];

3-20 (2) the required license fee; and

3-21 (3) either:

3-22 (A) the permit number of a sales tax permit
3-23 issued to the applicant by the comptroller under Subchapter F,
3-24 Chapter 151, Tax Code; or

3-25 (B) proof of exemption from the tax permit
3-26 requirement under Chapter 151, Tax Code.

3-27 SECTION 6. Section 1802.101, Occupations Code, is amended
3-28 to read as follows:

3-29 Sec. 1802.101. AUCTIONEER EDUCATION ADVISORY BOARD. The
3-30 advisory board shall advise the commission on educational matters,
3-31 operational matters, and common practices within the auction
3-32 industry.

3-33 SECTION 7. Sections 1802.102(a) and (b), Occupations Code,
3-34 are amended to read as follows:

3-35 (a) The advisory board consists of seven [~~six~~] members
3-36 appointed as follows:

3-37 (1) four [~~three~~] members who are licensed auctioneers
3-38 appointed by the presiding officer of the commission, with the
3-39 commission's approval;

3-40 (2) the administrative head, or the administrative
3-41 head's designee, of any state agency or office that is selected by
3-42 the commission [~~executive director of the Texas Economic~~
3-43 ~~Development and Tourism Office or the director's designee~~]; and

3-44 (3) two public members.

3-45 (b) In appointing advisory board members under Subsection
3-46 (a)(1), the presiding officer of the commission shall consider the
3-47 geographical diversity of the members [~~may not appoint members who~~
3-48 ~~reside in contiguous senatorial districts~~].

3-49 SECTION 8. Section 1802.103(a), Occupations Code, is
3-50 amended to read as follows:

3-51 (a) The members appointed under Section 1802.102(a)(1)
3-52 serve two-year terms that expire on September 1 and may not serve
3-53 more than two consecutive terms. If a vacancy occurs during the
3-54 term of such a member, the presiding officer of the commission, with
3-55 the commission's approval, shall appoint a replacement to serve for
3-56 the remainder of the term.

3-57 SECTION 9. Section 1802.104, Occupations Code, is amended
3-58 to read as follows:

3-59 Sec. 1802.104. PRESIDING OFFICER. The presiding officer of
3-60 the commission, with the commission's approval, shall appoint a
3-61 member of the advisory board to serve as presiding officer of the
3-62 board. The presiding officer serves for two years and may not serve
3-63 more than two consecutive terms.

3-64 SECTION 10. Section 1802.107(b), Occupations Code, is
3-65 amended to read as follows:

3-66 (b) The advisory board may meet at other times at the call of
3-67 the presiding officer of the commission or the executive director.

3-68 SECTION 11. Section 1802.153(b), Occupations Code, is
3-69 amended to read as follows:

4-1 (b) If the balance in the fund on December 31 of a year is
 4-2 less than \$350,000 [~~\$300,000~~], each license holder at the next
 4-3 license renewal shall pay, in addition to the renewal fee, a fee
 4-4 that is equal to the greater of \$50 or a pro rata share of the amount
 4-5 necessary to obtain a balance in the fund of \$350,000 [~~\$300,000~~].

4-6 SECTION 12. Section 1802.156, Occupations Code, is amended
 4-7 to read as follows:

4-8 Sec. 1802.156. EDUCATION EXPENDITURES PERMITTED. The
 4-9 executive director may use amounts in excess of \$300,000 [~~\$250,000~~]
 4-10 in the fund to:

4-11 (1) advance education and research in the
 4-12 auctioneering profession for the benefit of license holders and to
 4-13 improve and increase the efficiency of the industry;

4-14 (2) underwrite educational seminars, training
 4-15 centers, and other educational projects for the use and benefit of
 4-16 license holders;

4-17 (3) sponsor, contract, and underwrite other
 4-18 educational and research projects that advance the auctioneering
 4-19 profession in this state; and

4-20 (4) cooperate with associations of auctioneers and
 4-21 other groups for the education and advancement of the auctioneering
 4-22 profession in this state.

4-23 SECTION 13. Section 1802.206, Occupations Code, is amended
 4-24 to read as follows:

4-25 Sec. 1802.206. PAYMENT LIMITS. (a) The executive director
 4-26 may not pay a single aggrieved party more than \$15,000 [~~\$10,000~~].

4-27 (b) The total payment of all claims by more than one
 4-28 aggrieved party arising from one auction at one location,
 4-29 regardless of the length of the auction, may not exceed \$30,000
 4-30 [~~\$20,000~~].

4-31 (c) The total payment of claims against a single auctioneer
 4-32 may not exceed \$30,000 [~~\$20,000~~].

4-33 SECTION 14. Section 1802.209(a), Occupations Code, is
 4-34 amended to read as follows:

4-35 (a) This subchapter and Section 1802.252 do not limit the
 4-36 commission's or executive director's authority to take disciplinary
 4-37 action against a license holder for a violation of this chapter or a
 4-38 rule adopted under this chapter.

4-39 SECTION 15. Section 1802.251, Occupations Code, is amended
 4-40 to read as follows:

4-41 Sec. 1802.251. DENIAL OF APPLICATION; SUSPENSION OR
 4-42 REVOCATION OF LICENSE. The commission or executive director may
 4-43 deny an application for a license or suspend or revoke the license
 4-44 of any auctioneer for:

4-45 (1) violating this chapter or a rule adopted under
 4-46 this chapter;

4-47 (2) obtaining a license through false or fraudulent
 4-48 representation;

4-49 (3) making a substantial misrepresentation in an
 4-50 application for an auctioneer's license;

4-51 (4) engaging in a continued and flagrant course of
 4-52 misrepresentation or making false promises through an agent,
 4-53 advertising, or otherwise;

4-54 (5) failing to account for or remit, within a
 4-55 reasonable time, money belonging to another that is in the
 4-56 auctioneer's possession and commingling funds of another with the
 4-57 auctioneer's funds or failing to keep the funds of another in an
 4-58 escrow or trust account; or

4-59 (6) violating a provision of the Business & Commerce
 4-60 Code in conducting an auction.

4-61 SECTION 16. Section 1802.253(a), Occupations Code, is
 4-62 amended to read as follows:

4-63 (a) Before denying an application for a license, the
 4-64 commission or executive director shall:

4-65 (1) set the matter for a hearing to be conducted by the
 4-66 State Office of Administrative Hearings; and

4-67 (2) before the hearing date, notify the applicant in
 4-68 writing of:

4-69 (A) the charges alleged or the question to be

5-1 determined at the hearing; and

5-2 (B) the date and location of the hearing.

5-3 SECTION 17. Sections 1802.001(2), 1802.053, 1802.062,
5-4 1802.105, and 1802.253(d), Occupations Code, are repealed.

5-5 SECTION 18. (a) The presiding officer of the Texas
5-6 Commission of Licensing and Regulation shall appoint an additional
5-7 member to the auctioneer education advisory board as required by
5-8 Section 1802.102, Occupations Code, as amended by this Act, not
5-9 later than September 1, 2013, for a term expiring September 1, 2015.

5-10 (b) Section 1802.103, Occupations Code, as amended by this
5-11 Act, applies only to the appointment of a member of the auctioneer
5-12 education advisory board on or after the effective date of this Act
5-13 and does not affect the entitlement of a member serving on the board
5-14 immediately before the effective date of this Act to continue to
5-15 serve for the remainder of the member's term.

5-16 SECTION 19. Section 1802.206, Occupations Code, as amended
5-17 by this Act, applies only to a claim filed under Section 1802.202,
5-18 Occupations Code, on or after the effective date of this Act. A
5-19 claim filed before that date is governed by the law in effect on the
5-20 date the claim was filed, and the former law is continued in effect
5-21 for that purpose.

5-22 SECTION 20. This Act takes effect immediately if it
5-23 receives a vote of two-thirds of all the members elected to each
5-24 house, as provided by Section 39, Article III, Texas Constitution.
5-25 If this Act does not receive the vote necessary for immediate
5-26 effect, this Act takes effect September 1, 2013.

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