

BILL ANALYSIS

C.S.H.B. 2481
By: Smith
Licensing & Administrative Procedures
Committee Report (Substituted)

BACKGROUND AND PURPOSE

According to interested parties, recently enacted legislation made several changes to Occupations Code provisions regulating auctioneers, including eliminating the associate auctioneer license, which has removed an important path for people working to become a licensed auctioneer through auction experience in lieu of passing an examination. The parties have expressed additional concerns regarding the changes in law and contend that the requirement to have an auctioneer license to perform certain activities may not be necessary. C.S.H.B. 2481 seeks to amend current law to address these concerns.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Commission of Licensing and Regulation in SECTION 3 of this bill.

ANALYSIS

C.S.H.B. 2481 amends the Occupations Code to exempt the following transactions from statutory provisions regulating auctioneers: a sale of motor vehicles at auction by a person licensed under statutory provisions relating to the sale or lease of motor vehicles or relating to a salvage vehicle dealer, a sale of motor vehicles at auction by a person who holds a wholesale motor vehicle auction general distinguishing number or an independent motor vehicle general distinguishing number issued by the Texas Department of Motor Vehicles, and an auction of property through the Internet. The bill removes from that exemption 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 and revises the exemption for a sale or auction conducted outside of Texas to specify that the exemption applies to a sale or auction conducted by an auctioneer while the auctioneer is physically located outside of Texas.

C.S.H.B. 2481 removes the exception to the prohibition against a licensed auctioneer acting as an auctioneer for an entity if the entity is a real estate brokerage firm operated by a broker licensed by the Texas Real Estate Commission. The bill prohibits a person from acting as an associate auctioneer, defined in the bill as 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, in Texas unless the person holds a license issued by the executive director of the Texas Department of Licensing and Regulation (TDLR). The bill authorizes a licensed auctioneer or associate auctioneer to conduct an auction to sell motor vehicles if the individual conducts the auction for a person who holds a dealer general distinguishing number, a wholesale motor vehicle auction general distinguishing number, a salvage vehicle dealer license, or a salvage

vehicle agent license.

C.S.H.B. 2481 repeals a statutory provision requiring an auctioneer who advertises to conduct an auction in Texas to provide the auctioneer's name and license number in the advertisement and authorizes the Texas Commission of Licensing and Regulation, by rule, to adopt standards for the advertisement of an auction by a licensed auctioneer or associate auctioneer.

C.S.H.B. 2481 adds as an alternative to passing a written or oral examination demonstrating knowledge of the auction business and related state laws, for purposes of establishing eligibility for an auctioneer's license, the option of showing proof of employment by a licensed auctioneer for at least two years and participation in at least 10 auctions during that employment. The bill makes an individual eligible for an associate auctioneer license if the individual is a U.S. citizen or a legal alien and is employed under the direct supervision of a licensed auctioneer.

C.S.H.B. 2481 requires an application for a license and an application for the license examination to be accompanied by the application fee and removes the requirements that the license application be accompanied by a license fee and that the examination application be accompanied by the examination fee. The bill removes the requirement that the executive director furnish an applicant with certain information regarding the license examination on receipt of an examination application and fee and removes the related deadline by which the applicant must take the examination.

C.S.H.B. 2481 renames the auctioneer education advisory board as the auctioneer advisory board, removes the prohibition against an appointed member of the board receiving reimbursement for expenses, and removes the requirement that the board meet at least quarterly each calendar year. The bill requires the board to meet at the call of the presiding officer of the commission or the executive director of TDLR.

C.S.H.B. 2481 removes from the definition of "auctioneer" any person who solicits, negotiates, or executes an auction listing contract. The bill requires the commission, not later than March 1, 2016, to adopt rules necessary to implement the bill's provisions and specifies that a person is not required to hold an associate auctioneer license to act as an associate auctioneer until March 1, 2016. The bill authorizes an individual who was licensed by TDLR as an associate auctioneer on or before June 14, 2013, to apply the individual's work experience participating in auctions as an associate auctioneer on or before that date toward the individual's eligibility for an auctioneer's license.

C.S.H.B. 2481 repeals Sections 1802.001(12) and 1802.051(b), Occupations Code.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2481 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted 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.	Section 1802.002(a),	SECTION 2. Same as introduced version.

Occupations Code, is amended.

No equivalent provision.

SECTION 3. Section 1802.051, Occupations Code, is amended to read as follows:

Sec. 1802.051. LICENSE REQUIRED.

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

(b) A person [An auctioneer] who advertises to conduct an auction in this state shall provide the [auctioneer's] name and license number of the auctioneer who will conduct the auction in the advertisement.

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

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

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

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

(d) An individual who is licensed under this chapter may only conduct an auction to sell motor vehicles, as defined by Section 502.001, Transportation Code, if the license holder conducts the auction for a person who holds a dealer general distinguishing number issued under Subchapter B, Chapter 503, Transportation Code.

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

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

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

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

(See SECTION 14 below.)

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

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

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

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

(d) An individual who is licensed under this chapter may conduct an auction to sell motor vehicles, as defined by Section 501.002 or 502.001, Transportation Code, if the individual conducts the auction for a person who holds a dealer general distinguishing number or wholesale motor vehicle auction general distinguishing number issued under Subchapter B, Chapter 503, Transportation Code, or a license issued under Subchapter C, Chapter 2302, of this code.

SECTION 4. Section 1802.052(a), Occupations Code, is amended.

SECTION 5. Subchapter B, Chapter 1802, Occupations Code, is amended.

SECTION 6. Section 1802.054, Occupations Code, is amended.

SECTION 7. Section 1802.055, Occupations Code, is amended.

SECTION 8. Section 1802.059(b), Occupations Code, is amended.

SECTION 9. The heading to Subchapter C, Chapter 1802, Occupations Code, is amended.

SECTION 10. The heading to Section 1802.101, Occupations Code, is amended.

SECTION 11. Section 1802.106, Occupations Code, is amended.

SECTION 12. Section 1802.107, Occupations Code, is amended.

SECTION 13. Section 1802.001(12), Occupations Code, is repealed.

(See SECTION 3 above.)

SECTION 14. 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 15. (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 auctioneer's license under Chapter 1802, Occupations

SECTION 5. Same as introduced version.

SECTION 6. Same as introduced version.

SECTION 7. Same as introduced version.

SECTION 8. Same as introduced version.

SECTION 9. Same as introduced version.

SECTION 10. Same as introduced version.

SECTION 11. Same as introduced version.

SECTION 12. Same as introduced version.

SECTION 13. Same as introduced version.

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

SECTION 15. Same as introduced version.

SECTION 16. Same as introduced version.

Code.

SECTION 16. This Act takes effect
September 1, 2015.

SECTION 17. Same as introduced version.