

1-1 By: Smith (Senate Sponsor - Eltife) H.B. No. 2481
 1-2 (In the Senate - Received from the House April 22, 2015;
 1-3 April 27, 2015, read first time and referred to Committee on
 1-4 Business and Commerce; May 18, 2015, reported adversely, with
 1-5 favorable Committee Substitute by the following vote: Yeas 8,
 1-6 Nays 0; May 18, 2015, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
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	X			

1-18 COMMITTEE SUBSTITUTE FOR H.B. No. 2481 By: Whitmire

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to the licensing and regulation of auctioneers, associate
 1-22 auctioneers, and auctions; requiring an occupational license;
 1-23 requiring a fee.

1-24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-25 SECTION 1. Section 1802.001, Occupations Code, is amended
 1-26 by amending Subdivisions (1), (5), and (10) and adding Subdivision
 1-27 (2) to read as follows:

1-28 (1) "Advisory board" means the Auctioneer ~~[Education]~~
 1-29 Advisory Board.

1-30 (2) "Associate auctioneer" means an individual who,
 1-31 for compensation, is employed by and under the direct supervision
 1-32 of a licensed auctioneer to sell or offer to sell property at an
 1-33 auction.

1-34 (5) "Auctioneer" means any individual ~~[person]~~ who ~~[+~~
 1-35 ~~[(A)]~~ sells or offers to sell property of another
 1-36 person by live bid at auction, with or without receiving
 1-37 consideration ~~[, or~~

1-38 ~~[(B) solicits, negotiates, or executes an~~
 1-39 ~~auction listing contract].~~

1-40 (10) "Personal property" means any property other than
 1-41 real property ~~[, including all tangible and intangible types of~~
 1-42 ~~property].~~

1-43 SECTION 2. Section 1802.002(a), Occupations Code, is
 1-44 amended to read as follows:

1-45 (a) This chapter does not apply to:

1-46 (1) a sale conducted by order of a United States court
 1-47 under Title 11, United States Code;

1-48 (2) a sale conducted by an employee of the United
 1-49 States, this state, or a political subdivision of this state in the
 1-50 course and scope of employment;

1-51 (3) a sale conducted by a charitable, religious, or
 1-52 civic organization, including an organization having a tax exempt
 1-53 status under Section 501(c), Internal Revenue Code of 1986, or
 1-54 organized as a nonprofit entity, if the person organizing,
 1-55 arranging, or conducting the auction receives no compensation;

1-56 (4) ~~[a sale conducted by any person of the person's~~
 1-57 ~~property if the person is not engaged in the business of selling~~
 1-58 ~~property at auction on a recurring basis,~~

1-59 ~~[(5)]~~ a foreclosure sale of real property personally
 1-60 conducted by a trustee under a deed of trust;

2-1 (5) [~~6~~] a foreclosure sale of personal property
2-2 personally conducted by:
2-3 (A) a person who holds a security interest in the
2-4 property, including a mortgage; or
2-5 (B) an employee or agent of a person described by
2-6 Paragraph (A) acting in the course and scope of employment, if:
2-7 (i) the employee or agent is not otherwise
2-8 engaged in the auction business; and
2-9 (ii) all property for sale in the auction is
2-10 subject to a security agreement;
2-11 (6) [~~7~~] a sale conducted by sealed bid without the
2-12 option of increasing or decreasing the amount of a bid;
2-13 (7) [~~8~~] an auction conducted only for student
2-14 training purposes as part of a course of study approved by the
2-15 department;
2-16 (8) [~~9~~] an auction conducted by a posted stockyard
2-17 or market agency as defined by the federal Packers and Stockyards
2-18 Act (7 U.S.C. Section 181 et seq.), as amended;
2-19 (9) [~~10~~] an auction of livestock conducted by a
2-20 nonprofit livestock trade association chartered in this state, if
2-21 the auction involves only the sale of livestock owned by members of
2-22 the trade association;
2-23 (10) [~~11~~] an auction conducted by a charitable or
2-24 nonprofit organization chartered in this state, if the auction:
2-25 (A) is part of a fair that is organized under
2-26 state, county, or municipal authority; and
2-27 (B) involves only the sale of property owned by
2-28 the organization's members; [~~or~~]
2-29 (11) [~~12~~] a sale or auction conducted by an
2-30 auctioneer while the auctioneer is physically located outside of
2-31 this state;
2-32 (12) a sale of motor vehicles at auction by a person
2-33 licensed under Chapter 2301 or 2302;
2-34 (13) a sale of motor vehicles at auction by a person
2-35 who holds a wholesale motor vehicle auction general distinguishing
2-36 number or an independent motor vehicle general distinguishing
2-37 number issued by the Texas Department of Motor Vehicles; or
2-38 (14) an auction of property through the Internet.
2-39 SECTION 3. Subchapter A, Chapter 1802, Occupations Code, is
2-40 amended by adding Section 1802.004 to read as follows:
2-41 Sec. 1802.004. ADVERTISEMENT OF AUCTION. The commission,
2-42 by rule, may adopt standards for the advertisement of an auction by
2-43 an auctioneer or associate auctioneer licensed under this chapter.
2-44 SECTION 4. Section 1802.051, Occupations Code, is amended
2-45 by amending Subsections (a) and (c) and adding Subsection (d) to
2-46 read as follows:
2-47 (a) A person may not act as an auctioneer or associate
2-48 auctioneer [of real or personal property] in this state unless the
2-49 person holds a license issued by the executive director under this
2-50 chapter.
2-51 (c) Except as provided by Subsection (d), an [An] individual
2-52 who is licensed under this chapter may not act as an auctioneer for
2-53 an entity unless the entity:
2-54 (1) is an auction company owned or operated by an
2-55 individual who is licensed under this chapter; or
2-56 (2) [~~holds a dealer general distinguishing number~~
2-57 ~~issued under Subchapter B, Chapter 503, Transportation Code, and~~
2-58 ~~the auction is for the purpose of auctioning vehicles as defined by~~
2-59 ~~Section 503.001, Transportation Code; or~~
2-60 [~~3~~] is a real estate brokerage firm that is operated
2-61 by a broker licensed by the Texas Real Estate Commission.
2-62 (d) An individual who is licensed under this chapter may
2-63 conduct an auction to sell motor vehicles, as defined by Section
2-64 501.002 or 502.001, Transportation Code, for a person who holds:
2-65 (1) a dealer general distinguishing number or a
2-66 wholesale motor vehicle auction general distinguishing number
2-67 issued under Subchapter B, Chapter 503, Transportation Code; or
2-68 (2) a license issued under Subchapter C, Chapter 2302.
2-69 SECTION 5. Section 1802.052(a), Occupations Code, is

3-1 amended to read as follows:

3-2 (a) An individual is eligible for an auctioneer's license if
 3-3 the individual:

3-4 (1) is at least 18 years of age;

3-5 (2) is a citizen of the United States or a legal alien;

3-6 (3) either:

3-7 (A) passes a written or oral examination
 3-8 demonstrating knowledge of the auction business and of the laws of
 3-9 this state relating to the auction business; or

3-10 (B) shows proof of employment by a licensed
 3-11 auctioneer for at least two years and participation in at least 10
 3-12 auctions during that employment;

3-13 (4) holds a high school diploma or a high school
 3-14 equivalency certificate;

3-15 (5) has not been convicted of a felony during the five
 3-16 years preceding the date of application; and

3-17 (6) has completed at least 80 hours of classroom
 3-18 instruction at an auction school with a curriculum approved by the
 3-19 department in accordance with the standards and procedures
 3-20 established by rule adopted under this chapter.

3-21 SECTION 6. Subchapter B, Chapter 1802, Occupations Code, is
 3-22 amended by adding Section 1802.053 to read as follows:

3-23 Sec. 1802.053. ELIGIBILITY FOR ASSOCIATE AUCTIONEER
 3-24 LICENSE. An individual is eligible for an associate auctioneer
 3-25 license if the individual is:

3-26 (1) a citizen of the United States or a legal alien;
 3-27 and

3-28 (2) employed under the direct supervision of an
 3-29 auctioneer licensed under this chapter.

3-30 SECTION 7. Section 1802.054, Occupations Code, is amended
 3-31 to read as follows:

3-32 Sec. 1802.054. APPLICATION FOR LICENSE. An applicant for a
 3-33 license must apply to the executive director on a form provided by
 3-34 the executive director that establishes the applicant's
 3-35 eligibility for the license. The application must be accompanied
 3-36 by:

3-37 (1) any fee required for the auctioneer education and
 3-38 recovery fund authorized under Section 1802.153;

3-39 (2) the required application [~~license~~] fee; and

3-40 (3) either:

3-41 (A) the permit number of a sales tax permit
 3-42 issued to the applicant by the comptroller under Subchapter F,
 3-43 Chapter 151, Tax Code; or

3-44 (B) proof of exemption from the tax permit
 3-45 requirement under Chapter 151, Tax Code.

3-46 SECTION 8. Section 1802.055, Occupations Code, is amended
 3-47 to read as follows:

3-48 Sec. 1802.055. APPLICATION FOR EXAMINATION. [~~(a)~~] An
 3-49 individual who establishes that the individual is eligible for an
 3-50 auctioneer's license may apply to the executive director to take
 3-51 the license examination. The application must be accompanied by
 3-52 the application [~~examination~~] fee.

3-53 [~~(b) On receipt of an examination application and fee, the~~
 3-54 ~~executive director shall furnish the applicant with:~~

3-55 [~~(1) study materials and references on which the~~
 3-56 ~~examination will be based; and~~

3-57 [~~(2) a schedule specifying the dates and places the~~
 3-58 ~~examination will be offered.~~

3-59 [~~(c) The applicant may take the examination at any scheduled~~
 3-60 ~~offering not later than the 90th day after the date the applicant~~
 3-61 ~~receives the study materials.]~~

3-62 SECTION 9. Section 1802.059(b), Occupations Code, is
 3-63 amended to read as follows:

3-64 (b) The executive director shall accept the applicant's
 3-65 auctioneer's license submitted under Subsection (a)(2) as proof of
 3-66 the applicant's professional competence and waive the examination
 3-67 or employment and training requirements of Section 1802.052 if the
 3-68 state or political subdivision that issued the nonresident a
 3-69 license extends similar recognition and courtesies to this state.

4-1 SECTION 10. The heading to Subchapter C, Chapter 1802,
4-2 Occupations Code, is amended to read as follows:

4-3 SUBCHAPTER C. AUCTIONEER [EDUCATION] ADVISORY BOARD

4-4 SECTION 11. The heading to Section 1802.101, Occupations
4-5 Code, is amended to read as follows:

4-6 Sec. 1802.101. AUCTIONEER [EDUCATION] ADVISORY BOARD.

4-7 SECTION 12. Section 1802.106, Occupations Code, is amended
4-8 to read as follows:

4-9 Sec. 1802.106. COMPENSATION. A member appointed under
4-10 Section 1802.102(a)(1) may not receive[+]

4-11 [~~1~~] compensation for serving on the advisory board[+]
4-12 ~~or~~

4-13 [~~2~~ reimbursement for expenses].

4-14 SECTION 13. Section 1802.107, Occupations Code, is amended
4-15 to read as follows:

4-16 Sec. 1802.107. MEETINGS. [~~a~~] The advisory board shall
4-17 meet at least quarterly each calendar year.

4-18 [~~b~~] The advisory board shall [may] meet [at other times]
4-19 at the call of the presiding officer of the commission or the
4-20 executive director.

4-21 SECTION 14. Section 2301.362, Occupations Code, is amended
4-22 by amending Subsection (a) and adding Subsections (c) and (d) to
4-23 read as follows:

4-24 (a) Except as provided by Subsections [~~Subsection~~] (b) and
4-25 (c) and Sections 2301.358(c) and (d), a dealer may only sell or
4-26 offer to sell a motor vehicle from an established and permanent
4-27 place of business:

4-28 (1) that is approved by the division; and

4-29 (2) for which a general distinguishing number has been
4-30 issued.

4-31 (c) A dealer may sell, offer to sell, including by
4-32 consignment, or exchange at a public auction an antique motor
4-33 vehicle that is at least 25 years of age or a special interest
4-34 vehicle that is at least 12 years of age or that has been the subject
4-35 of a retail sale.

4-36 (d) For purposes of this section, "special interest
4-37 vehicle" has the meaning assigned by Section 683.077,
4-38 Transportation Code.

4-39 SECTION 15. Sections 1802.001(12) and 1802.051(b),
4-40 Occupations Code, are repealed.

4-41 SECTION 16. Not later than March 1, 2016, the Texas
4-42 Commission of Licensing and Regulation shall adopt rules necessary
4-43 to implement the changes in law made by this Act.

4-44 SECTION 17. (a) Notwithstanding Chapter 1802, Occupations
4-45 Code, as amended by this Act, a person is not required to hold a
4-46 license issued under that chapter to act as an associate auctioneer
4-47 until March 1, 2016.

4-48 (b) An individual who was licensed by the Texas Department
4-49 of Licensing and Regulation as an associate auctioneer on or before
4-50 June 14, 2013, may apply the individual's work experience
4-51 participating in auctions as an associate auctioneer on or before
4-52 June 14, 2013, toward the individual's eligibility for an
4-53 auctioneer's license under Chapter 1802, Occupations Code.

4-54 SECTION 18. This Act takes effect September 1, 2015.

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