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By:  Shaheen H.B. No. 910

A BILL TO BE ENTITLED

AN ACT

relating to abolishing the regulation of auctioneers.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  Articles 18.19(c), (d), and (e), Code of Criminal Procedure, are amended to read as follows:

(c)  If there is no prosecution or conviction for an offense involving the weapon seized, the magistrate to whom the seizure was reported shall, before the 61st day after the date the magistrate determines that there will be no prosecution or conviction, notify in writing the person found in possession of the weapon that the person is entitled to the weapon upon written request to the magistrate. The magistrate shall order the weapon returned to the person found in possession before the 61st day after the date the magistrate receives a request from the person. If the weapon is not requested before the 61st day after the date of notification, the magistrate shall, before the 121st day after the date of notification, order the weapon destroyed, sold at public sale by the law enforcement agency holding the weapon or by an auctioneer [~~licensed under Chapter 1802, Occupations Code~~], or forfeited to the state for use by the law enforcement agency holding the weapon or by a county forensic laboratory designated by the magistrate. If the magistrate does not order the return, destruction, sale, or forfeiture of the weapon within the applicable period prescribed by this subsection, the law enforcement agency holding the weapon may request an order of destruction, sale, or forfeiture of the weapon from the magistrate. Only a firearms dealer licensed under 18 U.S.C. Section 923 may purchase a weapon at public sale under this subsection. Proceeds from the sale of a  seized weapon under this subsection shall be transferred, after the deduction of court costs to which a district court clerk is entitled under Article 59.05(f), followed by the deduction of auction costs, to the law enforcement agency holding the weapon.

(d)  A person either convicted or receiving deferred adjudication under Chapter 46, Penal Code, is entitled to the weapon seized upon request to the court in which the person was convicted or placed on deferred adjudication. However, the court entering the judgment shall order the weapon destroyed, sold at public sale by the law enforcement agency holding the weapon or by an auctioneer [~~licensed under Chapter 1802, Occupations Code~~],  or forfeited to the state for use by the law enforcement agency holding the weapon or by a county forensic laboratory designated by the court if:

(1)  the person does not request the weapon before the 61st day after the date of the judgment of conviction or the order placing the person on deferred adjudication;

(2)  the person has been previously convicted under Chapter 46, Penal Code;

(3)  the weapon is one defined as a prohibited weapon under Chapter 46, Penal Code;

(4)  the offense for which the person is convicted or receives deferred adjudication was committed in or on the premises of a playground, school, video arcade facility, or youth center, as those terms are defined by Section 481.134, Health and Safety Code; or

(5)  the court determines based on the prior criminal history of the defendant or based on the circumstances surrounding the commission of the offense that possession of the seized weapon would pose a threat to the community or one or more individuals.

(e)  If the person found in possession of a weapon is convicted of an offense involving the use of the weapon, before the 61st day after the date of conviction the court entering judgment of conviction shall order destruction of the weapon, sale at public sale by the law enforcement agency holding the weapon or by an auctioneer [~~licensed under Chapter 1802, Occupations Code~~],  or forfeiture to the state for use by the law enforcement agency holding the weapon or by a county forensic laboratory designated by the court. If the court entering judgment of conviction does not order the destruction, sale, or forfeiture of the weapon within the period prescribed by this subsection, the law enforcement agency holding the weapon may request an order of destruction, sale, or forfeiture of the weapon from a magistrate. Only a firearms dealer licensed under 18 U.S.C. Section 923 may purchase a weapon at public sale under this subsection. Proceeds from the sale of a seized weapon under this subsection shall be transferred, after the deduction of court costs to which a district court clerk is entitled under Article 59.05(f), followed by the deduction of auction costs, to the law enforcement agency holding the weapon.

SECTION 2.  Section 263.153(c), Local Government Code, is amended to read as follows:

(c)  A county that contracts with an auctioneer [~~licensed under Chapter 1802, Occupations Code,~~] who uses an Internet auction site offering online bidding through the Internet to sell surplus or salvage property under this subchapter having an estimated value of not more than $500 shall satisfy the notice requirement under this section by posting the property on the site for at least 10 days unless the property is sold before the 10th day.

SECTION 3.  Section 1101.005, Occupations Code, is amended to read as follows:

Sec. 1101.005.  APPLICABILITY OF CHAPTER.  This chapter does not apply to:

(1)  an attorney licensed in this state;

(2)  an attorney-in-fact authorized under a power of attorney to conduct not more than three real estate transactions annually;

(3)  a public official while engaged in official duties;

(4)  an auctioneer [~~licensed under Chapter 1802~~] while conducting the sale of real estate by auction if the auctioneer does not perform another act of a broker;

(5)  a person conducting a real estate transaction under a court order or the authority of a will or written trust instrument;

(6)  a person employed by an owner in the sale of structures and land on which structures are located if the structures are erected by the owner in the course of the owner's business;

(7)  an on-site manager of an apartment complex;

(8)  an owner or the owner's employee who leases the owner's improved or unimproved real estate; or

(9)  a transaction involving:

(A)  the sale, lease, or transfer of a mineral or mining interest in real property;

(B)  the sale, lease, or transfer of a cemetery lot;

(C)  the lease or management of a hotel or motel; or

(D)  the sale of real property under a power of sale conferred by a deed of trust or other contract lien.

SECTION 4.  Chapter 1802, Occupations Code, is repealed.

SECTION 5.  (a) The changes in law made by this Act do not affect the validity of a proceeding pending before a court or other governmental entity on the effective date of this Act.

(b)  An offense or other violation of law committed before the effective date of this Act is governed by the law in effect when the offense or violation was committed, and the former law is continued in effect for that purpose. For purposes of this subsection, an offense or violation was committed before the effective date of this Act if any element of the offense or violation occurred before that date.

SECTION 6.  On the effective date of this Act:

(1)  the Auctioneer Advisory Board is abolished;

(2)  money in the auctioneer education and recovery fund is transferred to the general revenue fund; and

(3)  a license issued under former Chapter 1802, Occupations Code, expires.

SECTION 7.  This Act takes effect September 1, 2019.