

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

1 request an order of destruction, sale, or forfeiture of the weapon
2 from the magistrate. Only a firearms dealer licensed under 18
3 U.S.C. Section 923 may purchase a weapon at public sale under this
4 subsection. Proceeds from the sale of a seized weapon under this
5 subsection shall be transferred, after the deduction of court costs
6 to which a district court clerk is entitled under Article 59.05(f),
7 followed by the deduction of auction costs, to the law enforcement
8 agency holding the weapon.

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

19 (1) the person does not request the weapon before the
20 61st day after the date of the judgment of conviction or the order
21 placing the person on deferred adjudication;

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

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

26 (4) the offense for which the person is convicted or
27 receives deferred adjudication was committed in or on the premises

1 of a playground, school, video arcade facility, or youth center, as
2 those terms are defined by Section 481.134, Health and Safety Code;
3 or

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

8 (e) If the person found in possession of a weapon is
9 convicted of an offense involving the use of the weapon, before the
10 61st day after the date of conviction the court entering judgment of
11 conviction shall order destruction of the weapon, sale at public
12 sale by the law enforcement agency holding the weapon or by an
13 auctioneer [~~licensed under Chapter 1802, Occupations Code~~], or
14 forfeiture to the state for use by the law enforcement agency
15 holding the weapon or by a county forensic laboratory designated by
16 the court. If the court entering judgment of conviction does not
17 order the destruction, sale, or forfeiture of the weapon within the
18 period prescribed by this subsection, the law enforcement agency
19 holding the weapon may request an order of destruction, sale, or
20 forfeiture of the weapon from a magistrate. Only a firearms dealer
21 licensed under 18 U.S.C. Section 923 may purchase a weapon at public
22 sale under this subsection. Proceeds from the sale of a seized
23 weapon under this subsection shall be transferred, after the
24 deduction of court costs to which a district court clerk is entitled
25 under Article 59.05(f), followed by the deduction of auction costs,
26 to the law enforcement agency holding the weapon.

27 SECTION 2. Section 263.153(c), Local Government Code, is

1 amended to read as follows:

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

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

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

13 (1) an attorney licensed in this state;

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

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

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

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

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

1 business;

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

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

5 (9) a transaction involving:

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

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

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

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

14 SECTION 4. Chapter [1802](#), Occupations Code, is repealed.

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

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

25 SECTION 6. On the effective date of this Act:

26 (1) the Auctioneer Advisory Board is abolished;

27 (2) money in the auctioneer education and recovery

1 fund is transferred to the general revenue fund; and

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

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