

## **BILL ANALYSIS**

Senate Research Center  
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S.B. 1443  
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### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

H.B. 3038, 83rd Legislature, Regular Session, 2013, made several changes to the Texas auctioneer law in Chapter 1802, Occupations Code. These changes included expanding the requirement for an auctioneer license to include auctions over the Internet; repealing the associate auctioneer license that was used by some persons as a path to becoming a licensed auctioneer using auction experience in lieu of an examination; requiring a person selling their own property at auction and over the Internet more than once every two years to be a licensed auctioneer; and requiring an auctioneer license for any person working at an auction company who solicits, negotiates, or executes an auction listing contract.

S.B. 1443 amends Chapter 1802, Occupations Code, by changes the name of the Auctioneer Education Advisory Board to the Auctioneer Advisory Board, reinstating the associate auctioneer license, allowing an associate auctioneer to use their auction experience as a path to becoming a licensed auctioneer, limiting auction regulation to live bid auctions, allowing a person to sell their own property by auction and via the Internet, clarifying that only a person who conducts a live bid auction needs to hold an auctioneer license or associate auctioneer license to work at or for an auction company, clarifying that a sale or auction is exempt from regulation if it is conducted by an auctioneer who is physically located outside of Texas, exempting auctions of motor vehicles by certain persons who are regulated by the Texas Department of Motor Vehicles, and clarifying the exemption from regulation of Internet-based auctions.

As proposed, S.B. 1443 amends current law relating to the licensing and regulation of auctioneers and associate auctioneers; amends provisions subject to a criminal penalty; and requires an occupational license.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Commission of Licensing and Regulation in SECTION 14 of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 1802.001, Occupations Code, by amending Subdivisions (1), (5), and (10) and adding Subdivision (2), to redefine "advisory board," "auctioneer," and "personal property" and to define "associate auctioneer."

SECTION 2. Amends Section 1802.002(a), Occupations Code, as follows:

(a) Provides that this chapter does not apply to:

- (1)-(3) Makes no change to these subdivisions;
- (4) Redesignates Subdivision (5) text as Subdivision (4);
- (5) Redesignates Subdivision (6) as Subdivision (5);
- (6) Redesignates Subdivision (7) as Subdivision (6);

- (7) Redesignates Subdivision (8) as Subdivision (7);
- (8) Redesignates Subdivision (9) as Subdivision (8);
- (9) Redesignates Subdivision (10) as Subdivision (9);
- (10) Redesignates Subdivision (11) as Subdivision (10);
- (11) a sale or auction conducted by an auctioneer while the auctioneer is physically located outside of this state;
- (12) a sale of motor vehicles at auction by a person licensed under Chapter 2301 (Sale or Lease of Motor Vehicles) or 2302 (Salvage Vehicle Dealers);
- (13) 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; or
- (14) an auction of property through the Internet.

Deletes existing Subdivision (4) providing that this chapter does not apply to 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.

SECTION 3. Amends Section 1802.051, Occupations Code, as follows:

Sec. 1802.051. LICENSE REQUIRED. (a) Prohibits a person from acting as an auctioneer or associate auctioneer, rather than an auctioneer of real or personal property, in this state unless the person holds a license issued by the executive director of the Texas Department of Licensing and Regulation (executive director; TDLR) under this chapter.

(b) Requires a person, rather than auctioneer, who advertises to conduct an auction in this state to provide the name and license number, rather than provide the auctioneer's name and license number, of the auctioneer who will conduct the auction in the advertisement.

(c) Prohibits an individual who is licensed under this chapter, except as provided by Subsection (d), from acting as an auctioneer for an entity unless the entity is an auction company owned or operated by an individual who is licensed under this chapter.

Deletes the designation of Subdivision (1). Deletes existing Subdivision (2) prohibiting an individual who is licensed under this chapter from acting as an auctioneer for an entity unless the entity 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. Deletes existing Subdivision (3) prohibiting an individual who is licensed under this chapter from acting as an auctioneer for an entity unless the entity is a real estate brokerage firm that is operated by a broker licensed by the Texas Real Estate Commission.

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

SECTION 4. Amends Section 1802.052(a), Occupations Code, as follows:

(a) Provides that an individual is eligible for an auctioneer's license if the individual:

(1) and (2) Makes no change to these subdivisions;

(3) either:

(A) Creates this paragraph from existing text; or

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

(4)-(6) Makes no change to these subdivisions.

SECTION 5. Amends Subchapter B, Chapter 1802, Occupations Code, by adding Section 1802.053, as follows:

Sec. 1802.053. ELIGIBILITY FOR ASSOCIATE AUCTIONEER LICENSE. Provides that an individual is eligible for an associate auctioneer license if the individual is:

(1) a citizen of the United States or a legal alien; and

(2) employed under the direct supervision of an auctioneer licensed under this chapter.

SECTION 6. Amends Section 1802.054, Occupations Code, as follows:

Sec. 1802.054. APPLICATION FOR LICENSE. Requires that the application be accompanied by:

(1) Makes no change to this subdivision;

(2) the required application fee, rather than required license fee; and

(3) Makes no change to this subdivision.

SECTION 7. Amends Section 1802.055, Occupations Code, as follows:

Sec. 1802.055. APPLICATION FOR EXAMINATION. Deletes the designation of Subsection (a) and requires that the application be accompanied by the application fee, rather than examination fee.

Deletes existing Subsection (b) requiring the executive director, on receipt of an examination application and fee, to furnish the applicant with study materials and references on which the examination will be based and a schedule specifying the dates and places the examination will be offered. Deletes existing Subsection (c) authorizing the applicant to take the examination at any scheduled offering not later than the 90th day after the date the applicant receives the study materials.

SECTION 8. Amends Section 1802.059(a), Occupations Code, to require the executive director to accept the applicant's auctioneer's license submitted under Subsection (a)(2) (requiring an applicant for an auctioneer's license that is licensed from another state to submit to the executive director a certified copy of the auctioneer's license issued to the applicant by the state or political subdivision in which the applicant resides) as proof of the applicant's professional competence and waive the examination or employment and training requirements of Section 1802.052 (Eligibility for Auctioneer's License) if the state or political subdivision that issued the nonresident a license extends similar recognition and courtesies to this state.

SECTION 9. Amends the heading to Subchapter C, Chapter 1802, Occupations Code, to read as follows:

SUBCHAPTER C. AUCTIONEER ADVISORY BOARD

SECTION 10. Amends the heading to Section 1802.101, Occupations Code, to read as follows:

Sec. 1802.101. AUCTIONEER ADVISORY BOARD.

SECTION 11. Amends Section 1802.106, Occupations Code, as follows:

Sec. 1802.106. COMPENSATION. Prohibits a member appointed under Section 1802.102(a)(1) (requiring the advisory board to consist of certain members) from receiving compensation for serving on the Auctioneer Advisory Board (advisory board). Deletes the designation of Subdivision (1). Deletes existing Subdivision (2) prohibiting a member appointed under Section 1802.102(a)(1) from receiving reimbursement for expenses.

SECTION 12. Amends Section 1802.107, Occupations Code, as follows:

Sec. 1802.107. MEETINGS. Requires the advisory board to meet at the call of the presiding officer of the Texas Commission of Licensing and Regulation (TCLR) or the executive director of TDLR, rather than authorizing the advisory board to meet at other times at the call of the presiding officer of TCLR or executive director. Deletes existing Subsection (a) requiring the advisory board to meet at least quarterly each calendar year. Deletes the designation of Subsection (b).

SECTION 13. Repealer: Section 1802.001(12) (defining "recurring basis"), Occupations Code.

SECTION 14. Requires TCLR, not later than March 1, 2016, to adopt rules necessary to implement the changes in law made by this Act.

SECTION 15. (a) Provides that, 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) 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 June 14, 2013, toward the individual's eligibility for an auctioneer's license under Chapter 1802, Occupations Code.

SECTION 16. Effective date: September 1, 2015.