

SUBJECT: Creating associate auctioneer license and regulating certain transactions

COMMITTEE: Licensing and Administrative Procedures — committee substitute recommended

VOTE: 6 ayes — Smith, Gutierrez, Geren, Goldman, Kuempel, D. Miller

0 nays

3 absent — Guillen, Miles, S. Thompson

WITNESSES: For — Kenneth Holt, Ritchie Bros. Auctioneers; Greg Glod, Texas Public Policy Foundation; John Swofford, Texas Wholesale Automobile Auction Association

(Registered, but did not testify: Colin Parrish and Ray Sullivan, Copart; Victoria Ford, EBay; Mark Vane, Gardere Wynne Sewell; Steven Garza and Daniel Gonzalez, Texas Association of REALTORS)

Against — Brent Graves, Texas Auctioneers Association; James Swigert; Mark Switzer

On — William Kuntz, Texas Department of Licensing and Regulation

BACKGROUND: Occupations Code, ch. 1802 governs auctioneers. In 2013, the 83rd Legislature amended ch. 1802 through the enactment of HB 3038 by Anderson. Among its provisions, HB 3038:

- changed the definition of “auction” to mean the sale of property by competitive bid using any method, format, or venue;
- changed the definition of “auctioneer” to include any person who solicits, negotiates, or executes an auction listing contract, whether or not the person acts as a bid caller;
- eliminated references in code to the position of “associate auctioneer,” including licensing requirements; and

- allowed a licensed auctioneer to conduct an auction for a real estate brokerage firm that is operated by a broker licensed by the Texas Real Estate Commission.

HB 3038 also amended sec. 1802.002 to specify that the chapter does not apply to certain transactions, including a sale or auction conducted outside of Texas and a sale conducted by any person of their property if they are not engaged in the business of selling property at auction on a recurring basis.

DIGEST:

CSHB 2481 would add an associate auctioneer license to Occupations Code, ch. 1802, revise auctioneer license requirements, exempt certain transactions from being conducted by a licensed auctioneer, and make changes to the Auctioneer Education Advisory Board and certain administrative procedures.

The bill would define “associate auctioneer” as an individual who, for compensation, was employed by and under the direct supervision of a licensed auctioneer to sell or offer to sell property at an auction.

An “auctioneer” would be any individual who sold or offered to sell property of another person by live bid at auction, with or without receiving consideration. A person who “solicits, negotiates, or executes an auction listing contract” would no longer fall under the definition.

CSHB 2481 would require associate auctioneers, as well as auctioneers, to hold licenses issued by the executive director of Texas Commission of Licensing and Regulation (TCLR). In lieu of passing a written or oral examination, an applicant for an auctioneer’s license could show proof of working as an associate auctioneer for at least two years and participation in at least 10 auctions during that time. An individual would be eligible for an associate auctioneer license if the individual were a citizen of the United States or a legal alien and employed under the direct supervision of a licensed auctioneer.

Transactions that would be exempt from requiring a licensed auctioneer would include:

- an auction of property through the Internet;
- a sale or auction conducted while the auctioneer was physically located outside of Texas; and
- sale of motor vehicles at auction by persons holding certain licenses for the sale of motor vehicles.

While certain auctions of motor vehicles would no longer require a licensed auctioneer, a licensed auctioneer could conduct an auction to sell motor vehicles, as defined by Transportation Code, sec. 501.002 or 502.001, if the individual conducted the auction for a person holding:

- a dealer general distinguishing number or wholesale motor vehicle auction general distinguishing number; or
- a salvage vehicle dealer license.

The bill would remove language that currently creates an exception for a real estate brokerage firm operated by a broker licensed by the Real Estate Commission from the entities for which a licensed auctioneer could not conduct an auction.

CSHB 2481 would remove the prohibition on a member appointed to the Auctioneer Advisory Board receiving reimbursement for expenses. The advisory board would be required to meet at the call of the presiding officer of TCLR or the executive director, instead of at least quarterly each calendar year.

The bill would allow TCLR to adopt standards for the advertisement of an auction by an auctioneer or associate auctioneer. The executive director of TCLR no longer would be required to send certain materials and information to an applicant who applied to take the license exam.

The bill would require TCLR to adopt rules necessary to implement the changes made by the bill by March 1, 2016, and an associate auctioneer would not need a license until that date. A person who was licensed as an associate auctioneer on or before June 14, 2013, could apply their work

experience participating in auctions that occurred while they were licensed toward their eligibility for an auctioneer's license.

CSHB 2481 would repeal Occupations Code, secs. 1802.001(12) and 1802.051(b) to conform to other changes made.

The bill would take effect September 1, 2015.

**SUPPORTERS
SAY:**

CSHB 2481 would reverse certain revisions made to Occupations Code, ch. 1802 in 2013. It also would remove ineffective regulations on Internet auctions, restore the license and position of associate auctioneer, allow work experience to replace an examination when applying for an auctioneer's license, and clarify that not every employee of an auction company needs to be licensed.

The bill explicitly would allow a person to use the Internet to auction property without having to get an auctioneer's license. Currently, the law purports to regulate online auctions and appears to require that every Texan who posts an item for sale on eBay must have an auctioneer's license. However, the state cannot regulate online auctions because only the federal government can regulate sales across state lines. While the requirement for an auctioneer's license is appropriate to protect consumers from live bid auctioneers who do not properly conduct an auction or transfer the property or funds afterwards, it is not meant to apply to ordinary people engaging in online auctions. A consumer harmed by an online auction could seek remedies through the Federal Trade Commission applying federal law or the Texas Attorney General applying the Texas Deceptive Trade Practices Act.

By restoring the associate auctioneer license, CSHB 2481 would return former associate auctioneers to their livelihoods. When the associate auctioneer license was removed from statute in 2013, about 200 people essentially lost their jobs and could no longer work as associate auctioneers in settings where an auctioneer's license was required. This bill would reestablish the status quo prior to June 14, 2013.

The bill also would allow practical experience gained by associate auctioneers through their employment to count toward their auctioneer's license in the future. Associate auctioneers could skip the written or oral examination if they worked for two years for a licensed auctioneer and participated in at least 10 auctions during that time. This option would be beneficial for an applicant who might not excel at examinations but had put in the time and worked as an associate auctioneer. The bill would lower barriers to becoming an auctioneer for individuals who truly wanted to work in the field and proved their dedication by working as an associate auctioneer.

CSHB 2481 would clarify that only a person who conducted auctions would need an auctioneer's license, not every person who worked at an auction company. Currently, an "auctioneer" includes a person who solicits, negotiates, or executes an auction listing contract, meaning that employees working for an auctioneer might require an auctioneer's license, even though they do not conduct auctions. This bill would narrow the definition of "auctioneer" to mean only an individual who sells property of another by live bid auction.

The bill would not preclude auctioneers from auctioning certain self-propelling vehicles, such as riding lawn mowers. It merely would limit when an auctioneer could auction motor vehicles, defined by the Transportation Code to include travel trailers, motorcycles, all-terrain vehicles, and vehicles that are required to be registered. Auctioneers still would be allowed to conduct motor vehicle auctions for entities that held certain licenses to sell motor vehicles.

Although some have expressed concerns that CSHB 2481 might prevent auctioneers from conducting auctions of real estate for a real estate brokerage firm, this is not the case because this is already allowed under Occupations Code, ch. 1101.

CSHB 2481 would not affect the ability of a Texas auctioneer to seek reciprocity with another state, or vice versa. Reciprocity of licenses is based only on competency standards and application requirements, not on

state laws regulating certain auction transactions such as online auctions.

OPPONENTS
SAY:

CSHB 2481 could preclude auctioneers from conducting certain types of auctions, open the door to potentially fraudulent Internet auctions, and raise questions about the reciprocity of Texas auctioneer licenses.

By removing regulations on online auctions, the bill could allow unlicensed and unregulated auctioneers to take advantage of Texans participating in these auctions. The number of online auctions is growing, and regulation is needed to prevent those who conduct auctions online from wrongfully accepting money without delivering the property that was auctioned. Other businesses, such as gambling and vehicle sales, are regulated online, and the auction business should follow suit. Regulations on Internet auctions need not be so expansive that they cover every situation, such as auctions on eBay, but they should require TCLR to investigate complaints of fraudulent online auctions. People could circumvent the license requirements just because the auction took place online. If an auction is dealing with Texas property located in the state, then Texas law should govern it, whether it is a live bid auction or one conducted online.

The bill would prevent auctioneers from selling motor vehicles in auctions that were not conducted for an entity that held a license to sell motor vehicles, which could have harmful effects. The definition of “motor vehicle” in the Transportation Code is expansive and includes many items that are not generally considered motor vehicles, but that are self-propelling and move on wheels. When a person seeks to auction an estate, usually it includes all the items on the estate, including cars, all-terrain vehicles, or boats on trailers. Motor vehicles are usually big-ticket items that draw attention and attendance to auctions. If this caused fewer people to bid at auctions, it likely would depress the selling prices as well.

Certain changes made by the bill also might preclude an auctioneer from conducting an auction for a real estate brokerage firm. If so, this would harm not only the auctioneer, but also the real estate brokerage firms that could benefit by using the services of the auctioneer to auction properties.

CSHB 2481 could risk the reciprocity relationship Texas has with other states. If Texas did not regulate certain transactions, such as online auctions, other states that do regulate those transactions might be less willing to grant a reciprocal license to a Texas license holder. Other states currently are trying to enact legislation based on changes Texas made in 2013. If the Legislature undid everything that was accomplished by that legislation, other states might not want to recognize license reciprocity with Texas.

NOTES:

CSHB 2481 would differ from the bill as filed in that the committee substitute would:

- allow TCLR to adopt standards for the advertisement of an auction by an auctioneer or associate auctioneer;
- repeal sec. 1802.051(b) to conform to the change mentioned above; and
- allow a licensed auctioneer or associate auctioneer to conduct an auction to sell a motor vehicle if it was being conducted for a person who was a salvage vehicle dealer or held a wholesale motor vehicle auction general distinguishing number.

The Senate companion bill, SB 1443 by Eltife, was considered in a public hearing of the Senate Business and Commerce Committee on April 14.