Ch. 1047, § 2 83rd LEGISLATURE—REGULAR SESSION

this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2013.

Passed by the House on May 2, 2013: Yeas 147, Nays 0, 2 present, not voting; the House concurred in Senate amendments to H.B. No. 3028 on May 24, 2013: Yeas 146, Nays 0, 2 present, not voting; passed by the Senate, with amendments, on May 22, 2013: Yeas 31, Nays 0.

Approved June 14, 2013.

Effective June 14, 2013.

CHAPTER 1048

H.B. No. 3038

AN ACT

relating to licensing and regulation of auctioneers; authorizing a fee.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 1802.001, Occupations Code, is amended by amending Subdivisions (3) and (5) and adding Subdivisions (10), (11), (12), and (13) to read as follows:

(3) “Auction” means the sale of property by competitive bid using any method, format, or venue.

(5) “Auctioneer” means any person who:

(A) sells or offers to sell property at auction, with or without receiving valuable consideration; or

(B) solicits, negotiates, or executes an auction listing contract.

(10) “Personal property” means any property other than real property, including all tangible and intangible types of property.

(11) “Real property” means land, including improvements, fixtures, and other property appurtenant to or used in connection with the land, and any other estate, interest, or legal or equitable right in the land, improvement, fixture, or appurtenant property.

(12) “Recurring basis” means more than once every 24 months.

(13) “Sealed bid auction” means a sealed bidding procedure that incorporates or allows for the competitive increasing or decreasing of bids after the opening of sealed bids.

SECTION 2. Sections 1802.002 and 1802.003, Occupations Code, are amended to read as follows:

Sec. 1802.002. APPLICABILITY. (a) This chapter does not apply to:

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

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

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

(4) 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;

(5) a foreclosure sale of real property personally conducted by a trustee under a deed of trust;

(6) a foreclosure sale of personal property personally conducted by:

(A) a person who holds a security interest in the property, including a mortgage; or

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(B) an employee or agent of a person described by Paragraph (A) acting in the course and scope of employment, if:

(i) the employee or agent is not otherwise engaged in the auction business; and

(ii) all property for sale in the auction is subject to a security agreement;

(7) a sale conducted by sealed bid without the option of increasing or decreasing the amount of a bid;

(8) an auction conducted only for student training purposes as part of a course of study approved by the department; 

(9) a sale conducted by a posted stockyard or market agency as defined by the federal Packers and Stockyards Act (7 U.S.C. Section 181 et seq.), as amended;

(10) an auction of livestock conducted by a nonprofit livestock trade association chartered in this state, if the auction involves only the sale of livestock owned by members of the trade association; or

(11) an auction conducted by a charitable or nonprofit organization chartered in this state, if the auction:

(A) is part of a fair that is organized under state, county, or municipal authority; and

(B) involves only the sale of property owned by the organization's members; or

(12) a sale or auction conducted outside of this state.

(b) This chapter applies to a sealed bid auction.

Sec. 1802.003. PREEMPTION. A political subdivision of this state may not levy on or collect from an auctioneer a license tax or fee as a regulatory or revenue measure or require the licensing of an auctioneer, if the auctioneer holds a license under this chapter and is in compliance with this chapter.

SECTION 3. Sections 1802.051(a) and (c), Occupations Code, are amended to read as follows:

(a) A person may not act as an auctioneer of real or personal property in this state unless the person holds a license issued by the executive director under this chapter.

(c) An individual who is licensed under this chapter may not act as an auctioneer for an entity unless the entity:

(1) is an auction company owned or operated by an individual who holds a license issued by the executive director under this chapter; or

(2) 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; or

(3) is a real estate brokerage firm that is operated by a broker licensed by the Texas Real Estate Commission.

SECTION 4. Section 1802.052(a), Occupations Code, is amended to read as follows:

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

(1) is at least 18 years of age;

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

(3) [either:

[(A)] passes a written or oral examination demonstrating knowledge of the auction business and of the laws of this state relating to the auction business; or

[(B) shows proof of employment by a licensed auctioneer for at least two years during which the applicant participated in at least 10 auctions];

(4) holds a high school diploma or a high school equivalency certificate;

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

(6) has not been convicted of any crime involving moral turpitude.

(b) If the individual is not otherwise engaged in the auction business and he otherwise meets the requirements of this section, he shall be issued a license.
(6) has completed at least 80 hours of classroom instruction at an auction school with a curriculum approved by the department in accordance with the standards and procedures established by rule adopted under this chapter.

SECTION 5. Section 1802.054, Occupations Code, is amended to read as follows:

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

(1) any fee required for the auctioneer education and recovery fund authorized under Section 1802.153 [the required bond];

(2) the required license fee; and

(3) either:

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

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

SECTION 6. Section 1802.101, Occupations Code, is amended to read as follows:

Sec. 1802.101. AUCTIONEER EDUCATION ADVISORY BOARD. The advisory board shall advise the commission on educational matters, operational matters, and common practices within the auction industry.

SECTION 7. Sections 1802.102(a) and (b), Occupations Code, are amended to read as follows:

(a) The advisory board consists of seven [six] members appointed as follows:

(1) four [three] members who are licensed auctioneers appointed by the presiding officer of the commission, with the commission's approval;

(2) the administrative head, or the administrative head's designee, of any state agency or office that is selected by the executive director of the Texas Economic Development and Tourism Office or the director's designee; and

(3) two public members.

(b) In appointing advisory board members under Subsection (a)(1), the presiding officer of the commission shall consider the geographical diversity of the members [may not appoint members who reside in contiguous senatorial districts].

SECTION 8. Section 1802.103(a), Occupations Code, is amended to read as follows:

(a) The members appointed under Section 1802.102(a)(1) serve two-year terms that expire on September 1 and may not serve more than two consecutive terms. If a vacancy occurs during the term of such a member, the presiding officer of the commission, with the commission's approval, shall appoint a replacement to serve for the remainder of the term.

SECTION 9. Section 1802.104, Occupations Code, is amended to read as follows:

Sec. 1802.104. PRESIDING OFFICER. The presiding officer of the commission, with the commission's approval, shall appoint a member of the advisory board to serve as presiding officer of the board. The presiding officer serves for two years and may not serve more than two consecutive terms.

SECTION 10. Section 1802.107(b), Occupations Code, is amended to read as follows:

(b) The advisory board may meet at other times at the call of the presiding officer of the commission or the executive director.

SECTION 11. Section 1802.153(b), Occupations Code, is amended to read as follows:

(b) If the balance in the fund on December 31 of a year is less than $350,000 [$250,000], each license holder at the next license renewal shall pay, in addition to the renewal fee, a fee that is equal to the greater of $50 or a pro rata share of the amount necessary to obtain a balance in the fund of $350,000 [$250,000].

SECTION 12. Section 1802.156, Occupations Code, is amended to read as follows:

Sec. 1802.156. EDUCATION EXPENDITURES PERMITTED. The executive director may use amounts in excess of $300,000 [$250,000] in the fund to:
(1) advance education and research in the auctioneering profession for the benefit of license holders and to improve and increase the efficiency of the industry;
(2) underwrite educational seminars, training centers, and other educational projects for the use and benefit of license holders;
(3) sponsor, contract, and underwrite other educational and research projects that advance the auctioneering profession in this state; and
(4) cooperate with associations of auctioneers and other groups for the education and advancement of the auctioneering profession in this state.

SECTION 13. Section 1802.206, Occupations Code, is amended to read as follows:

Sec. 1802.206. PAYMENT LIMITS. (a) The executive director may not pay a single aggrieved party more than $15,000 [$40,000].
 (b) The total payment of all claims by more than one aggrieved party arising from one auction at one location, regardless of the length of the auction, may not exceed $30,000 [$20,000].
 (c) The total payment of claims against a single auctioneer may not exceed $30,000 [$20,000].

SECTION 14. Section 1802.209(a), Occupations Code, is amended to read as follows:

(a) This subchapter and Section 1802.252 do not limit the commission's or executive director’s authority to take disciplinary action against a license holder for a violation of this chapter or a rule adopted under this chapter.

SECTION 15. Section 1802.251, Occupations Code, is amended to read as follows:

Sec. 1802.251. DENIAL OF APPLICATION; SUSPENSION OR REVOCATION OF LICENSE. The commission or executive director may deny an application for a license or suspend or revoke the license of any auctioneer for:
(1) violating this chapter or a rule adopted under this chapter;
(2) obtaining a license through false or fraudulent representation;
(3) making a substantial misrepresentation in an application for an auctioneer's license;
(4) engaging in a continued and flagrant course of misrepresentation or making false promises through an agent, advertising, or otherwise;
(5) failing to account for or remit, within a reasonable time, money belonging to another that is in the auctioneer's possession and commingling funds of another with the auctioneer's funds or failing to keep the funds of another in an escrow or trust account; or
(6) violating a provision of the Business & Commerce Code in conducting an auction.

SECTION 16. Section 1802.253(a), Occupations Code, is amended to read as follows:

(a) Before denying an application for a license, the commission or executive director shall:
 (1) set the matter for a hearing to be conducted by the State Office of Administrative Hearings; and
 (2) before the hearing date, notify the applicant in writing of:
 (A) the charges alleged or the question to be determined at the hearing; and
 (B) the date and location of the hearing.

SECTION 17. Sections 1802.001(2), 1802.053, 1802.062, 1802.105, and 1802.253(d), Occupations Code, are repealed.

SECTION 18. (a) The presiding officer of the Texas Commission of Licensing and Regulation shall appoint an additional member to the auctioneer education advisory board as required by Section 1802.102, Occupations Code, as amended by this Act, not later than September 1, 2013, for a term expiring September 1, 2015.
 (b) Section 1802.103, Occupations Code, as amended by this Act, applies only to the appointment of a member of the auctioneer education advisory board on or after the effective date of this Act and does not affect the entitlement of a member serving on the board immediately before the effective date of this Act to continue to serve for the remainder of the member's term.
SECTION 19. Section 1802.206, Occupations Code, as amended by this Act, applies only to a claim filed under Section 1802.202, Occupations Code, on or after the effective date of this Act. A claim filed before that date is governed by the law in effect on the date the claim was filed, and the former law is continued in effect for that purpose.

SECTION 20. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2013.

Passed by the House on May 8, 2013: Yeas 141, Nays 6, 2 present, not voting; passed by the Senate on May 22, 2013: Yeas 26, Nays 3.

Approved June 14, 2013.

Effective June 14, 2013.

CHAPTER 1049

H.B. No. 3067

AN ACT
relating to the composition of an administrative authority for a defense economic readjustment zone.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 2310.202, Government Code, is amended to read as follows:

Sec. 2310.202. ADMINISTRATION BY ADMINISTRATIVE AUTHORITY. (a) The governing body of a readjustment zone may delegate its administrative duties to an administrative authority appointed by the governing body.

(b) An administrative authority must:

(1) be composed of 3, 5, 7, 9, 11, or 15 members; and

(2) be a viable and responsive body generally representative of all public or private entities that have a stake in the development of the zone;

[(3)] if the readjustment zone includes private residences, include:

[(A)] an elected official representing readjustment zone residents and businesses; or

[(B)] at least two readjustment zone residents.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2013.

Passed by the House on May 2, 2013: Yeas 146, Nays 1, 2 present, not voting; passed by the Senate on May 22, 2013: Yeas 31, Nays 0.

Approved June 14, 2013.

Effective June 14, 2013.

CHAPTER 1050

H.B. No. 3086

AN ACT
relating to an optional exemption from the diesel fuel tax for materials blended with taxable diesel fuel.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 162.204, Tax Code, is amended by adding Subsection (g) to read as follows:

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