

AMENDED IN SENATE APRIL 6, 2015

**SENATE BILL**

**No. 474**

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**Introduced by Senator Wieckowski**

February 26, 2015

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*An act to amend Section 1812.610 of the Civil Code, relating to auctions, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 474, as amended, Wieckowski. Auctions.

Existing law regulates the activities of auctioneers and auction companies and, on and after July 1, 2015, with respect to an auction that includes the sale of real property, prohibits a person from causing or allowing any person to bid at a sale for the sole purpose of increasing the bid on any real property being sold by the auctioneer, *including stating an increased bid greater than that offered by the last highest bidder was made when no person actually made an increased bid*. Existing law excepts from the application of these provisions a credit bid made by a creditor with a security interest in the property that is the subject of auction when the credit bid can result in the transfer of title to property to the creditor. *Existing law provides that anyone who violates this provision is guilty of a misdemeanor.*

~~This bill would express the intent of the Legislature to enact legislation that would define the term "credit bid" as that term applies to auctions.~~

*This bill would eliminate that prohibition, but would, instead, prohibit an auctioneer from stating an increased bid greater than that offered by the last highest bidder was made when no person actually made an increased bid, as provided, and would eliminate the exception for credit bids. By expanding the crime of violating this provision to creditors*

*making credit bids, this bill would impose a state-mandated local program.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

*This bill would declare that it is to take effect immediately as an urgency statute.*

Vote: ~~majority~~<sup>2/3</sup>. Appropriation: no. Fiscal committee: ~~no~~-yes. State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 1812.610 of the Civil Code is amended  
2 to read:

3     1812.610. (a) Notwithstanding Section 1812.601, for purposes  
4 of this section, an auction includes the sale of real property and an  
5 “auctioneer” means any individual who is engaged in, or who by  
6 advertising or otherwise holds himself or herself out as being  
7 available to engage in, the calling for, the recognition of, and the  
8 acceptance of, offers for the purchase of real property at an auction.

9     (b) ~~Except as provided in subdivision (d), a person shall not~~  
10 ~~cause or allow a person to bid at a sale for the sole purpose of~~  
11 ~~increasing the bid on any real property being sold by the auctioneer,~~  
12 ~~including, but not limited to, stating any~~ *An auctioneer shall not*  
13 *state at an auction that an increased bid greater than that offered*  
14 *by the last highest bidder has been made when, in fact, no person*  
15 *has made an increased bid.* ~~However,~~ *Notwithstanding the*  
16 *foregoing, an auctioneer or another authorized person may place*  
17 *a bid on the seller’s behalf during an auction of real property that*  
18 *would not result in a sale of the real property, if both of the*  
19 *following are true:*

20     (1) Notice is given to all auction participants, including all other  
21 bidders, that liberty for that type of bidding is reserved and that  
22 type of bid will not result in the sale of the real property.

23     (2) The person placing that type of bid contemporaneously  
24 discloses to all auction participants, including all other bidders,  
25 that the particular bid has been placed on behalf of the seller.

1 (c) For the purpose of the conduct of online auctions of real  
2 property, “notice” means a statement of the information required  
3 to be given under paragraph (1) of subdivision (b) within the end  
4 user license agreement, terms of service, or equivalent policy  
5 posted on, or provided by, the operator of an Internet Web site,  
6 online service, online application, or mobile application, and by  
7 conspicuously posting the information required to be given under  
8 paragraph (1) of subdivision (b) in any of the following ways:

9 (1) Upon the Internet Web page or its equivalent through which  
10 a user directly interacts with the site, service, or application during  
11 the online auction.

12 (2) With an icon that hyperlinks to an Internet Web page or its  
13 equivalent upon which the required information is posted, if the  
14 icon is located on the Internet Web page or its equivalent through  
15 which a user directly interacts with the site, service, or application  
16 during the online auction. The icon shall use a color that contrasts  
17 with the background color of the Internet Web page or is otherwise  
18 readily distinguishable.

19 (3) With a text link that hyperlinks to an Internet Web page or  
20 its equivalent upon which the required information is posted, if  
21 the text link is located on the Internet Web page or its equivalent  
22 through which a user directly interacts with the site, service, or  
23 application during the online auction. The text link shall be written  
24 in capital letters that are in larger type than the surrounding text,  
25 or shall be written in contrasting type, font, or color to the  
26 surrounding text of the same size, or shall be set off from the  
27 surrounding text of the same size by symbols or other marks that  
28 call attention to the language.

29 (4) With any other functional hyperlink or its equivalent that is  
30 displayed on the site, service, or application through which a user  
31 directly interacts with the site, service, or application during the  
32 online auction so that a reasonable person would notice it and  
33 understand it to hyperlink to the required information.

34 ~~(d) This section shall not apply to a credit bid made by a creditor~~  
35 ~~holding a deed of trust, mortgage, or other lien on the property~~  
36 ~~that is the subject of auction when the credit bid can result in the~~  
37 ~~transfer of title to property to the creditor.~~

38 (e)

39 (d) This section shall be operative on July 1, 2015.

1     *SEC. 2. No reimbursement is required by this act pursuant to*  
 2     *Section 6 of Article XIII B of the California Constitution because*  
 3     *the only costs that may be incurred by a local agency or school*  
 4     *district will be incurred because this act creates a new crime or*  
 5     *infraction, eliminates a crime or infraction, or changes the penalty*  
 6     *for a crime or infraction, within the meaning of Section 17556 of*  
 7     *the Government Code, or changes the definition of a crime within*  
 8     *the meaning of Section 6 of Article XIII B of the California*  
 9     *Constitution.*

10    *SEC. 3. This act is an urgency statute necessary for the*  
 11    *immediate preservation of the public peace, health, or safety within*  
 12    *the meaning of Article IV of the Constitution and shall go into*  
 13    *immediate effect. The facts constituting the necessity are:*

14    *In order to amend Section 1812.610 of the Civil Code before its*  
 15    *operative date, it is necessary for this act to take effect immediately.*

16    ~~SECTION 1. It is the intent of the Legislature to enact~~  
 17    ~~legislation that would define the term “credit bid” as that term~~  
 18    ~~applies to auctions.~~

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