

AMENDED IN SENATE APRIL 13, 2009

SENATE BILL

No. 109

Introduced by Senator Calderon

January 28, 2009

An act to amend Sections 1812.601 and 1812.607 of the Civil Code, relating to auctioneers.

LEGISLATIVE COUNSEL'S DIGEST

SB 109, as amended, Calderon. Auctioneers: real estate.

(1) Existing law regulates the activities of auctioneers and auction companies and requires that they maintain a bond issued by a surety company admitted in this state or an equivalent deposit. Existing law defines auction in this regard and excepts from this definition a sale of real estate or a sale of real estate with personal property or fixtures or both in a unified sale, as specified. Existing law requires auctioneers and auction companies to post or distribute to the audience the terms, conditions, restrictions, and procedures under which goods will be sold at the auction. A violation of certain of these provisions is punishable by specified fines, and a violation of these provisions generally is a misdemeanor.

This bill would remove the exception provided for real estate from the definition of auction for the purposes described above, thereby bringing real property auctions within those provisions. The bill would require an auction company and auctioneer to post or distribute to the audience a description of all fees, both refundable and nonrefundable, that will be levied on bidders, as well as any changes to those fees. With respect to auctions of real property *auctioned with reserve*, the bill would require an auction company and auctioneer to post or distribute to the audience a description of the reserve bid, or to inform the audience

~~that there is not a reserve bid, prior to the beginning of the auction sale a clear explanation of the terms “auctioned with reserve” and “sale subject to seller confirmation, approval, or acceptance,” and the procedures and timelines to be used in connection with sales that are subject to these requirements. A violation of these provisions would be subject to specified fines. The bill would require, for auctions of real property auctioned subject to seller confirmation, that an auction company and auctioneer to return a refundable deposit paid by a bidder at an auction of real property, if the bidder fails to win the auction for the property, within 2 working days return deposits and fees within 2 days after the high bidder’s offer is rejected, or within 15 working days after the high bidder’s offer is made and the seller fails to respond to the offer. By changing the definition of a crime, the bill would impose a state-mandated local program.~~

(2) 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.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

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

1 SECTION 1. Section 1812.601 of the Civil Code is amended
2 to read:

3 1812.601. (a) “Advertisement” means any of the following:

4 (1) Any written or printed communication for the purpose of
5 soliciting, describing, or offering to act as an auctioneer or provide
6 auction company services, including any brochure, pamphlet,
7 newspaper, periodical, or publication.

8 (2) A telephone or other directory listing caused or permitted
9 by an auctioneer or auction company to be published that indicates
10 the offer to practice auctioneering or auction company services.

11 (3) A radio, television, or similar airwave transmission that
12 solicits or offers the practice of auctioneering or auction company
13 services.

14 (b) “Auction” means a sale transaction conducted by means of
15 oral or written exchanges, which include exchanges made in person
16 or through electronic media, between an auctioneer and the

1 members of his or her audience, which exchanges consist of a
2 series of invitations for offers for the purchase of goods made by
3 the auctioneer and offers to purchase made by members of the
4 audience and culminate in the acceptance by the auctioneer of the
5 highest or most favorable offer made by a member of the
6 participating audience. However, auction does not include *any of*
7 *the following*:—a

8 (1) A wholesale motor vehicle auction subject to regulation by
9 the Department of Motor Vehicles.

10 (2) A sale of real property pursuant to a nonjudicial foreclosure
11 governed by Article 1 (commencing with Section 2920) of Chapter
12 2 of Title 14 of Part 4.

13 (3) A unified sale pursuant to subparagraph (B) of paragraph
14 (1) of subdivision (a) of Section 9604 of the Commercial Code.

15 (c) “Auction company” means any person who arranges,
16 manages, sponsors, advertises, accounts for the proceeds of, or
17 carries out auction sales at locations, including, but not limited to,
18 any fixed location, including an auction barn, gallery place of
19 business, sale barn, sale yard, sale pavilion, and the contiguous
20 surroundings of each.

21 (d) “Auctioneer” means any individual who is engaged in, or
22 who by advertising or otherwise holds himself or herself out as
23 being available to engage in, the calling for, the recognition of,
24 and the acceptance of, offers for the purchase of goods at an
25 auction.

26 (e) “Employee” means an individual who works for an employer,
27 is listed on the employer’s payroll records, and is under the
28 employer’s control.

29 (f) “Employer” means a person who employs an individual for
30 wages or salary, lists the individual on the person’s payroll records,
31 and withholds legally required deductions and contributions.

32 (g) “Goods” means any goods, wares, chattels, merchandise, or
33 other personal property, including domestic animals and farm
34 products, *or real property*.

35 (h) “Person” means an individual, corporation, partnership,
36 trust, including a business trust, firm, association, organization, or
37 any other form of business enterprise.

38 SEC. 2. Section 1812.607 of the Civil Code is amended to
39 read:

1 1812.607. Every auction company and auctioneer shall do all
2 of the following:

3 (a) Disclose his or her name, trade or business name, telephone
4 number, and bond number in all advertising of auctions. A first
5 violation of this subdivision is an infraction subject to a fine of
6 fifty dollars (\$50); a second violation is subject to a fine of
7 seventy-five dollars (\$75); and a third or subsequent violation is
8 subject to a fine of one hundred dollars (\$100). This section shall
9 not apply to business cards, business stationery, or to any
10 advertisement that does not specify an auction date.

11 (b) Post a sign, the dimensions of which shall be at least 18
12 inches by 24 inches, at the main entrance to each auction, stating
13 that the auction is being conducted in compliance with Section
14 2328 of the Commercial Code, Section 535 of the Penal Code, and
15 the provisions of the California Civil Code. A first violation of
16 this subdivision is an infraction subject to a fine of fifty dollars
17 (\$50); a second violation is subject to a fine of seventy-five dollars
18 (\$75); and a third or subsequent violation is subject to a fine of
19 one hundred dollars (\$100).

20 (c) (1) Post or distribute to the audience the terms, conditions,
21 restrictions, and procedures whereby goods will be sold at the
22 auction, and a description of all fees, both refundable and
23 nonrefundable, that will be levied ~~on bidders as a condition of~~
24 *bidding*, and announce any changes to those terms, conditions,
25 restrictions, procedures, and fees prior to the beginning of the
26 auction ~~sale. A sale.~~

27 (2) *With respect to auctions of real property, during which one*
28 *or more properties will be auctioned with reserve, post or distribute*
29 *to the audience a clear explanation of the terms “auctioned with*
30 *reserve” and “sale subject to seller confirmation, approval, or*
31 *acceptance,” and the procedures and timelines to be used in*
32 *connection with sales that are subject to these requirements.*

33 (3) A first violation of this subdivision is an infraction subject
34 to a fine of fifty dollars (\$50); a second violation is subject to a
35 fine of one hundred dollars (\$100); and a third or subsequent
36 violation is subject to a fine of two hundred fifty dollars (\$250).

37 ~~(d) With respect to auctions of real property, post or distribute~~
38 ~~to the audience a description of the reserve bid, or inform the~~
39 ~~audience that no reserve is to be applied, prior to the beginning of~~
40 ~~the auction sale.~~

1 ~~(e)~~

2 ~~(d)~~ Notify the Secretary of State of any change in address of
3 record within 30 days of the change. A violation of this subdivision
4 is an infraction subject to a fine of fifty dollars (\$50).

5 ~~(f)~~

6 ~~(e)~~ Notify the Secretary of State of any change in the officers
7 of a corporate license within 30 days of the change. A violation
8 of this subdivision is an infraction subject to a fine of fifty dollars
9 (\$50).

10 ~~(g)~~

11 ~~(f)~~ Notify the Secretary of State of any change in the business
12 or trade name of the auctioneer or auction company within 30 days
13 of the change. A violation of this subdivision is an infraction
14 subject to a fine of fifty dollars (\$50).

15 ~~(h)~~

16 ~~(g)~~ Keep and maintain, at the auctioneer's or auction company's
17 address of record, complete and correct records and accounts
18 pertaining to the auctioneer's or auction company's activity for a
19 period of not less than two years. The records shall include the
20 name and address of the owner or consignor and of any buyer of
21 goods at any auction sale engaged in or conducted by the auctioneer
22 or auction company, a description of the goods, the terms and
23 conditions of the acceptance and sale of the goods, all written
24 contracts with owners and consignors, and accounts of all moneys
25 received and paid out, whether on the auctioneer's or auction
26 company's own behalf or as agent, as a result of those activities.
27 A first violation of this subdivision is a misdemeanor subject to a
28 fine of five hundred dollars (\$500); and a second or subsequent
29 violation is subject to a fine of one thousand dollars (\$1,000).

30 ~~(i)~~

31 ~~(h)~~ Within 30 working days after the sale transaction, provide,
32 or cause to be provided, an account to the owner or consignor of
33 all goods that are the subject of an auction engaged in or conducted
34 by the auctioneer or auction company. A first violation of this
35 subdivision is a misdemeanor subject to a fine of five hundred
36 dollars (\$500); and a second or subsequent violation is subject to
37 a fine of one thousand dollars (\$1,000).

38 ~~(j)~~

39 ~~(i)~~ Within 30 working days after a sale transaction of goods,
40 pay or cause to be paid all moneys and proceeds due to the owner

1 or the consignor of all goods that were the subject of an auction
2 engaged in or conducted by the auctioneer or auction company,
3 unless delay is compelled by legal proceedings or the inability of
4 the auctioneer or auction company, through no fault of his or her
5 own, to transfer title to the goods or to comply with any provision
6 of this chapter, the Commercial Code, or the Code of Civil
7 Procedure, or with any other applicable provision of law. A first
8 violation of this subdivision is a misdemeanor subject to a fine of
9 one thousand dollars (\$1,000); a second violation is subject to a
10 fine of one thousand five hundred dollars (\$1,500); and a third or
11 subsequent violation is subject to a fine of two thousand dollars
12 (\$2,000).

13 ~~(k)~~

14 (j) Maintain the funds of all owners, consignors, buyers, and
15 other clients and customers separate from his or her personal funds
16 and accounts. A violation of this subdivision is an infraction subject
17 to a fine of two hundred fifty dollars (\$250).

18 ~~(l)~~

19 (k) Immediately prior to offering any item for sale, disclose to
20 the audience the existence and amount of any liens or other
21 encumbrances on the item, unless the item is sold as free and clear.
22 For the purposes of this subdivision, an item is “free and clear” if
23 all liens and encumbrances on the item are to be paid prior to the
24 transfer of title. A violation of this subdivision is an infraction
25 subject to a fine of two hundred fifty dollars (\$250) in addition to
26 the requirement that the buyer be refunded, upon demand, the
27 amount paid for any item that is the subject of the violation.

28 ~~(m)~~

29 (l) (1) Within two working days after an auction sale, return
30 the blank check or deposit of each buyer who ~~purchased no goods~~
31 ~~at the sale, or return a refundable deposit paid by a bidder at an~~
32 ~~auction of real property, if the bidder fails to win the auction for~~
33 ~~the property. A did not purchase goods at the sale.~~

34 (2) *After an auction sale of real property sold subject to seller*
35 *confirmation, within two days after the high bidder’s offer is*
36 *rejected, or within 15 working days after the high bidder’s offer*
37 *is made and the seller fails to respond to the offer, return all*
38 *deposits and fees collected from the bidder in connection with the*
39 *auction.*

1 (3) A first violation of this subdivision is an infraction subject
2 to a fine of one hundred dollars (\$100); and a second or subsequent
3 violation is subject to a fine of two hundred fifty dollars (\$250).

4 ~~(n)~~

5 (m) Within 30 working days of any auction sale, refund that
6 portion of the deposit of each buyer that exceeds the cost of the
7 goods purchased, unless delay is compelled by legal proceedings
8 or the inability of the auctioneer or auction company, through no
9 fault of his or her own, to transfer title to the goods or to comply
10 with any provision of this chapter, the Commercial Code, or the
11 Code of Civil Procedure, or with other applicable provisions of
12 law, or unless the buyer violated the terms of a written agreement
13 that he or she take possession of purchased goods within a specified
14 period of time. A first violation of this subdivision is an infraction
15 subject to a fine of one hundred dollars (\$100); and a second or
16 subsequent violation is subject to a fine of two hundred fifty dollars
17 (\$250).

18 SEC. 3. No reimbursement is required by this act pursuant to
19 Section 6 of Article XIII B of the California Constitution because
20 the only costs that may be incurred by a local agency or school
21 district will be incurred because this act creates a new crime or
22 infraction, eliminates a crime or infraction, or changes the penalty
23 for a crime or infraction, within the meaning of Section 17556 of
24 the Government Code, or changes the definition of a crime within
25 the meaning of Section 6 of Article XIII B of the California
26 Constitution.