

AMENDED IN SENATE APRIL 22, 2009

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 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, *approval, or acceptance*, that an auction company and auctioneer return deposits and fees within 2 *working* 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
17 members of his or her audience, which exchanges consist of a
18 series of invitations for offers for the purchase of goods made by
19 the auctioneer and offers to purchase made by members of the

audience and culminate in the acceptance by the auctioneer of the highest or most favorable offer made by a member of the participating audience. However, auction does not include any of the following:

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

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

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

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

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

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

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

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

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

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

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

(a) Disclose his or her name, trade or business name, telephone number, and bond number in all advertising of auctions. A first

1 violation of this subdivision is an infraction subject to a fine of
2 fifty dollars (\$50); a second violation is subject to a fine of
3 seventy-five dollars (\$75); and a third or subsequent violation is
4 subject to a fine of one hundred dollars (\$100). This section shall
5 not apply to business cards, business stationery, or to any
6 advertisement that does not specify an auction date.

7 (b) Post a sign, the dimensions of which shall be at least 18
8 inches by 24 inches, at the main entrance to each auction, stating
9 that the auction is being conducted in compliance with Section
10 2328 of the Commercial Code, Section 535 of the Penal Code, and
11 the provisions of the California Civil Code. A first violation of
12 this subdivision is an infraction subject to a fine of fifty dollars
13 (\$50); a second violation is subject to a fine of seventy-five dollars
14 (\$75); and a third or subsequent violation is subject to a fine of
15 one hundred dollars (\$100).

16 (c) (1) Post or distribute to the audience the terms, conditions,
17 restrictions, and procedures whereby goods will be sold at the
18 auction, and a description of all fees, both refundable and
19 nonrefundable, that will be levied as a condition of bidding, and
20 announce any changes to those terms, conditions, restrictions,
21 procedures, and fees prior to the beginning of the auction sale.

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

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

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

35 (e) Notify the Secretary of State of any change in the officers
36 of a corporate license within 30 days of the change. A violation
37 of this subdivision is an infraction subject to a fine of fifty dollars
38 (\$50).

39 (f) Notify the Secretary of State of any change in the business
40 or trade name of the auctioneer or auction company within 30 days

1 of the change. A violation of this subdivision is an infraction
2 subject to a fine of fifty dollars (\$50).

3 (g) Keep and maintain, at the auctioneer's or auction company's
4 address of record, complete and correct records and accounts
5 pertaining to the auctioneer's or auction company's activity for a
6 period of not less than two years. The records shall include the
7 name and address of the owner or consignor and of any buyer of
8 goods at any auction sale engaged in or conducted by the auctioneer
9 or auction company, a description of the goods, the terms and
10 conditions of the acceptance and sale of the goods, all written
11 contracts with owners and consignors, and accounts of all moneys
12 received and paid out, whether on the auctioneer's or auction
13 company's own behalf or as agent, as a result of those activities.
14 A first violation of this subdivision is a misdemeanor subject to a
15 fine of five hundred dollars (\$500); and a second or subsequent
16 violation is subject to a fine of one thousand dollars (\$1,000).

17 (h) Within 30 working days after the sale transaction, provide,
18 or cause to be provided, an account to the owner or consignor of
19 all goods that are the subject of an auction engaged in or conducted
20 by the auctioneer or auction company. A first violation of this
21 subdivision is a misdemeanor subject to a fine of five hundred
22 dollars (\$500); and a second or subsequent violation is subject to
23 a fine of one thousand dollars (\$1,000).

24 (i) Within 30 working days after a sale transaction of goods,
25 pay or cause to be paid all moneys and proceeds due to the owner
26 or the consignor of all goods that were the subject of an auction
27 engaged in or conducted by the auctioneer or auction company,
28 unless delay is compelled by legal proceedings or the inability of
29 the auctioneer or auction company, through no fault of his or her
30 own, to transfer title to the goods or to comply with any provision
31 of this chapter, the Commercial Code, or the Code of Civil
32 Procedure, or with any other applicable provision of law. A first
33 violation of this subdivision is a misdemeanor subject to a fine of
34 one thousand dollars (\$1,000); a second violation is subject to a
35 fine of one thousand five hundred dollars (\$1,500); and a third or
36 subsequent violation is subject to a fine of two thousand dollars
37 (\$2,000).

38 (j) Maintain the funds of all owners, consignors, buyers, and
39 other clients and customers separate from his or her personal funds

1 and accounts. A violation of this subdivision is an infraction subject
2 to a fine of two hundred fifty dollars (\$250).

3 (k) Immediately prior to offering any item for sale, disclose to
4 the audience the existence and amount of any liens or other
5 encumbrances on the item, unless the item is sold as free and clear.
6 For the purposes of this subdivision, an item is “free and clear” if
7 all liens and encumbrances on the item are to be paid prior to the
8 transfer of title. A violation of this subdivision is an infraction
9 subject to a fine of two hundred fifty dollars (\$250) in addition to
10 the requirement that the buyer be refunded, upon demand, the
11 amount paid for any item that is the subject of the violation.

12 (l) (1) Within two working days after an auction sale, return
13 the blank check or deposit of each buyer who did not purchase
14 goods at the sale.

15 (2) After an auction sale of real property sold subject to seller
16 confirmation, *approval*, or *acceptance*, within two *working* days
17 after the high bidder’s offer is rejected, or within 15 working days
18 after the high bidder’s offer is made and the seller fails to respond
19 to the offer, return all deposits and fees collected from the bidder
20 in connection with the auction.

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

24 (m) Within 30 working days of any auction sale, refund that
25 portion of the deposit of each buyer that exceeds the cost of the
26 goods purchased, unless delay is compelled by legal proceedings
27 or the inability of the auctioneer or auction company, through no
28 fault of his or her own, to transfer title to the goods or to comply
29 with any provision of this chapter, the Commercial Code, or the
30 Code of Civil Procedure, or with other applicable provisions of
31 law, or unless the buyer violated the terms of a written agreement
32 that he or she take possession of purchased goods within a specified
33 period of time. A first violation of this subdivision is an infraction
34 subject to a fine of one hundred dollars (\$100); and a second or
35 subsequent violation is subject to a fine of two hundred fifty dollars
36 (\$250).

37 SEC. 3. No reimbursement is required by this act pursuant to
38 Section 6 of Article XIII B of the California Constitution because
39 the only costs that may be incurred by a local agency or school
40 district will be incurred because this act creates a new crime or

1 infraction, eliminates a crime or infraction, or changes the penalty
2 for a crime or infraction, within the meaning of Section 17556 of
3 the Government Code, or changes the definition of a crime within
4 the meaning of Section 6 of Article XIII B of the California
5 Constitution.

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