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SB-474 Auctions. (2015-2016)

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Senate Bill No. 474

CHAPTER 354

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

[Approved by Governor September 28, 2015. Filed with Secretary of State September 28, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

SB 474, 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 eliminate that prohibition, and 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. The bill 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: 2/3 Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

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

1812.610. (a) Notwithstanding Section 1812.601, for purposes of this section, an auction includes the sale of real property and an "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 real property at an auction.

(b) An auctioneer shall not state at an auction that an increased bid greater than that offered by the last highest bidder has been made when, in fact, no person has made an increased bid. Notwithstanding the foregoing, an auctioneer or another authorized person may place a bid on the seller's behalf during an auction of real property that would not result in a sale of the real property, if both of the following are true:

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

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

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

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

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

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

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

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

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

In order to revise and eliminate, as soon as possible, certain provisions in Section 1812.610 of the Civil Code that became operative on July 1, 2015, before they potentially harm participants in real estate auctions, it is necessary for this act to take effect immediately.