



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB3885

Introduced 2/26/2009, by Rep. Emily McAsey

SYNOPSIS AS INTRODUCED:

720 ILCS 5/32-14 new

Amends the Criminal Code of 1961. Creates the offense of unlawful manipulation of a judicial sale. Provides that a person commits the offense when he or she knowingly and by any means makes any contract with or engages in any combination or conspiracy with any other person who is, or but for a prior agreement is, a competitor of such person for the purpose of or with the effect of fixing, controlling, limiting, or otherwise manipulating (1) the participation of any person in, or (2) the making of bids, at any judicial sale. Provides that unlawful manipulation of a judicial sale is a Class 3 felony. Provides that a mandatory fine shall be imposed for a violation, not to exceed \$1,000,000 if the violator is a corporation, or, if the violator is any other person, \$100,000. Provides that a second or subsequent violation is a Class 2 felony. Establishes injunctive relief and a private right of action for damages or injunctive relief. Effective immediately.

LRB096 11679 RLC 22329 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Criminal Code of 1961 is amended by adding
5 Section 32-14 as follows:

6 (720 ILCS 5/32-14 new)

7 Sec. 32-14. Unlawful manipulation of a judicial sale.

8 (a) A person commits the offense of unlawful manipulation
9 of a judicial sale when he or she knowingly and by any means
10 makes any contract with or engages in any combination or
11 conspiracy with any other person who is, or but for a prior
12 agreement is, a competitor of such person for the purpose of or
13 with the effect of fixing, controlling, limiting, or otherwise
14 manipulating (1) the participation of any person in, or (2) the
15 making of bids, at any judicial sale.

16 (b) Penalties. Unlawful manipulation of a judicial sale is
17 a Class 3 felony. A mandatory fine shall be imposed for a
18 violation, not to exceed \$1,000,000 if the violator is a
19 corporation, or, if the violator is any other person, \$100,000.
20 A second or subsequent violation is a Class 2 felony.

21 (c) Injunctive and other relief. The State's Attorney shall
22 bring suit in the circuit court to prevent and restrain
23 violations of subsection (a). In such a proceeding, the court

1 shall determine whether a violation has been committed, and
2 shall enter such judgment as it considers necessary to remove
3 the effects of any violation which it finds, and to prevent
4 such violation from continuing or from being renewed in the
5 future. The court, in its discretion, may exercise all powers
6 necessary for this purpose, including, but not limited to,
7 injunction and divestiture of property.

8 (d) Private right of action. Any person who has been
9 injured by a violation of subsection (a) may maintain an action
10 in the Circuit Court for damages, or for an injunction, or
11 both, against any person who has committed such violation. If,
12 in an action for an injunction, the court issues an injunction,
13 the plaintiff shall be awarded costs and reasonable attorney's
14 fees. In an action for damages, the person injured shall be
15 awarded 3 times the amount of actual damages. This State,
16 counties, municipalities, townships, and any political
17 subdivision organized under the authority of this State, and
18 the United States, are considered a person having standing to
19 bring an action under this subsection. Any action for damages
20 under this subsection is forever barred unless commenced within
21 4 years after the cause of action accrued. In any action for
22 damages under this subsection, the court may, in its
23 discretion, award reasonable fees to the prevailing defendant
24 upon a finding that the plaintiff acted in bad faith,
25 vexatiously, wantonly, or for oppressive reasons.

26 (e) Exclusion from subsequent judicial sales. Any person

1 convicted of a violation of subsection (a) or any similar
2 offense of any state or the United States shall be barred for 5
3 years from the date of conviction from participating as a
4 bidding entity in any judicial sale. No corporation shall be
5 barred from participating in a judicial sale as a result of a
6 conviction under subsection (a) of any employee or agent of
7 such corporation if the employee so convicted is no longer
8 employed by the corporation and: (1) it has been finally
9 adjudicated not guilty or (2) it demonstrates to the circuit
10 court conducting such judicial sale and the court so finds that
11 the commission of the offense was neither authorized,
12 requested, commanded, nor performed by a director, officer or a
13 high managerial agent in behalf of the corporation as provided
14 in paragraph (2) of subsection (a) of Section 5-4 of this Code.

15 (f) Definitions. As used in this Section, unless the
16 context otherwise requires:

17 "Judicial sale" means any sale of real or personal
18 property in accordance with a court order, including, but
19 not limited to, judicial sales conducted pursuant to
20 Section 15-1507 of the Code of Civil Procedure, sales
21 ordered to satisfy judgments under Article XII of the Code
22 of Civil Procedure, and enforcements of delinquent
23 property taxes under Article XXI of the Property Tax Code.

24 "Person" means any natural person, or any corporation,
25 partnership, or association of persons.

26 Section 99. Effective date. This Act takes effect upon

1 becoming law.