



2017 SENATE BILL 622

December 7, 2017 - Introduced by Senators OLSEN, JOHNSON, CARPENTER and COWLES, cosponsored by Representatives KATZMA, GOYKE, ALLEN, ANDERSON, BALLWEG, BERCEAU, BOWEN, E. BROOKS, R. BROOKS, BROSTOFF, CONSIDINE, CROWLEY, FELZKOWSKI, FIELDS, HEBL, HUTTON, JACQUE, KNODL, KOOYENGA, KUGLITSCH, KULP, MURSAU, OHNSTAD, PETERSEN, POPE, RIEMER, RIPP, ROHRKASTE, SARGENT, SINICKI, SKOWRONSKI, SPIROS, SPREITZER, SUBECK, C. TAYLOR, TUSLER, WACHS, YOUNG and ZEPNICK. Referred to Committee on Insurance, Housing and Trade.

- 1 **AN ACT** *to amend* 846.16 (1); and *to create* 846.155 of the statutes; **relating to:**
2 eligible bidders at foreclosure sales, eligible purchasers of foreclosed property,
3 and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill limits who may bid at a sale of foreclosed property, requires a purchaser of foreclosed property to submit an affidavit to the clerk of court affirming that the purchaser is an eligible bidder, and provides penalties for a purchaser that makes a false representation on that affidavit.

Under the bill, no person other than a party to the foreclosure action (third-party bidder) may bid at a foreclosure sale if any of the following applies:

1. The third-party bidder owns property against which property taxes have been levied that are more than 120 days delinquent.

2. The third-party bidder is directly or indirectly owned, managed, or controlled by a person that owns property against which property taxes have been levied that are more than 120 days delinquent.

3. The third-party bidder directly or indirectly owns, manages, or controls an entity that owns property against which property taxes have been levied that are more than 120 days delinquent.

4. An unsatisfied judgment related to a violation of a state or local building code with respect to property in this state has been rendered against a) the third-party bidder; b) a person that directly or indirectly owns, manages, or controls the third-party bidder; or c) an entity that is directly or indirectly owned, managed, or controlled by the third-party bidder.

SENATE BILL 622

5. The third-party bidder is bidding on behalf of or as part of an agreement with a person to which any of the conditions described above applies.

The bill also prohibits any assignment of a bid submitted at a foreclosure sale to a person that does not meet those minimum bidder qualifications.

Under the bill, a third-party bidder must file an affidavit with the clerk of court affirming that the third-party bidder meets the minimum bidder qualifications, and the court may not confirm the sale until that affidavit is filed. If the court determines that the affidavit contains a false representation, the court may choose not to confirm the sale and may order that the property be resold and the third-party bidder's deposit forfeited. If the court determines that the false representation was made knowingly, the court also may order the third-party bidder, the individual who signed the affidavit on behalf of the third-party bidder, or both to forfeit up to \$1,000 and may bar the third-party bidder, the individual who signed the affidavit on behalf of the third-party bidder, or both from participating in any foreclosure sales in the county for a period of time not to exceed one year from the date on which the order is entered.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 846.155 of the statutes is created to read:

2 **846.155 Eligible bidders at foreclosure sales; affidavit required for**
3 **confirmation; penalties for false representation. (1) DEFINITIONS.** In this
4 section:

5 (a) "Entity" means a person other than an individual.

6 (b) "Taxes" means general property taxes, as defined in s. 74.01 (1), special
7 assessments, as defined in s. 74.01 (3), special charges, as defined in s. 74.01 (4), or
8 special taxes, as defined in s. 74.01 (5).

9 (c) "Third-party bidder" means a person that is not a party in the foreclosure
10 action, or an agent of a party in the foreclosure action, and that submits a bid at a
11 sale of mortgaged premises.

SENATE BILL 622

1 **(2) MINIMUM BIDDER QUALIFICATIONS.** No 3rd-party bidder may submit a bid at
2 a sale of mortgaged premises unless the 3rd-party bidder meets all of the following
3 qualifications:

4 (a) The 3rd-party bidder does not own an interest in property in this state
5 against which taxes have been levied that are more than 120 days delinquent.

6 (b) The 3rd-party bidder is not directly or indirectly owned, managed, or
7 controlled, in whole or in part, by a person that owns an interest in property in this
8 state against which taxes have been levied that are more than 120 days delinquent.

9 (c) The 3rd-party bidder does not directly or indirectly own, manage, or control,
10 in whole or in part, an entity that owns an interest in property in this state against
11 which taxes have been levied that are more than 120 days delinquent.

12 (d) No judgment against the 3rd-party bidder related to a violation of a state
13 or local building code with respect to property in this state has been rendered that
14 is unsatisfied.

15 (e) No judgment against a person that directly or indirectly owns, manages, or
16 controls, in whole or in part, the 3rd-party bidder related to a violation of a state or
17 local building code with respect to property in this state has been rendered that is
18 unsatisfied.

19 (f) No judgment against an entity directly or indirectly owned, managed, or
20 controlled, in whole or in part, by the 3rd-party bidder related to a violation of a state
21 or local building code with respect to property in this state has been rendered that
22 is unsatisfied.

23 (g) In submitting a bid at the sale, the 3rd-party bidder is not acting on behalf
24 of or as part of an agreement with a person that does not meet the qualifications
25 described in pars. (a) to (f).

SENATE BILL 622**SECTION 1**

1 **(3) PREBIDDING ACKNOWLEDGMENTS.** Before allowing a 3rd-party bidder to
2 submit a bid at a sale of mortgaged premises, the sheriff or referee shall require the
3 3rd-party bidder to confirm all of the following:

4 (a) The 3rd-party bidder meets all of the qualifications described in sub. (2).

5 (b) If the 3rd-party bidder submits a bid at the sale, the 3rd-party bidder will
6 not assign the bid to a person that, if the person had submitted a bid directly at the
7 sale, would not have met the qualifications described in sub. (2).

8 (c) If the 3rd-party bidder is the purchaser of the mortgaged premises, the
9 3rd-party bidder will file the affidavit described in sub. (5).

10 (d) The 3rd-party bidder is aware that, if a false representation is made in the
11 affidavit described in sub. (5), the 3rd-party bidder, and the individual acting on
12 behalf of the 3rd-party bidder, may be subject to the penalties described in sub. (6)
13 (c) and (d).

14 **(4) ASSIGNMENT OF BID TO UNQUALIFIED BIDDER PROHIBITED.** No person that
15 submits a bid at a sale of mortgaged premises, nor any assignee of that person, may
16 assign that bid to a person that, if the person had submitted a bid directly at the sale,
17 would not have met the qualifications described in sub. (2).

18 **(5) FILING AFFIDAVIT OF MINIMUM BIDDER QUALIFICATIONS.** (a) If the grantee of a
19 deed executed under s. 846.17 is not a party in the foreclosure action, the grantee
20 shall file with the clerk of court an affidavit affirming that, as of the date on which
21 the affidavit is filed, the grantee meets all of the qualifications described in sub. (2).
22 The affidavit also shall identify the name and street address of a person in this state
23 that is authorized to accept service of process for the grantee. If the grantee is not
24 an individual, an individual who is authorized to act on behalf of the grantee shall
25 sign the affidavit.

SENATE BILL 622

1 (b) The director of state courts shall provide to the clerk of court in each county
2 a form for use in filing affidavits required under this subsection. The form shall
3 require a person that files the affidavit to acknowledge that the person is aware that,
4 if a false representation is made in the affidavit, the person, and the individual who
5 signs the affidavit on behalf of the person, may be subject to the penalties described
6 in sub. (6).

7 **(6) AFFIDAVIT REQUIRED FOR CONFIRMATION OF SALE; PENALTIES FOR FALSE**
8 **REPRESENTATIONS.** (a) If a grantee of a deed executed under s. 846.17 is not a party
9 in the foreclosure action, the court may not confirm the sale until the grantee files
10 the affidavit required under sub. (5).

11 (b) At any time before the court confirms a sale of mortgaged premises, a party
12 in the foreclosure action or the city, village, town, or county where the mortgaged
13 premises are located may provide to the court testimony or evidence that the affidavit
14 filed by a grantee under sub. (5) contains a false representation.

15 (c) If the court determines that the affidavit filed by a grantee under sub. (5)
16 contains a false representation, the court may refuse to confirm the sale and may
17 order any of the following:

18 1. That the grantee shall forfeit the amount of the deposit or down payment
19 described under s. 846.16 (1) that the sheriff or referee deposits with the clerk of
20 court.

21 2. That the clerk of court shall pay the amount forfeited under subd. 1. to the
22 parties that would be entitled to the proceeds of the sale as ordered by the court.

23 3. That the mortgaged premises shall be resold.

24 4. That the clerk of court shall destroy the deed executed to the purchaser, and
25 that deed is of no effect.

SENATE BILL 622**SECTION 1**

1 (d) If the court determines that the affidavit filed by a grantee under sub. (5)
2 contains a false representation that was made knowingly, in addition to any of the
3 penalties imposed under par. (c), the court may order the grantee, the individual who
4 signed the affidavit on behalf of the grantee, or both to forfeit up to \$1,000 and may
5 bar the grantee, the individual who signed the affidavit on behalf of the grantee, or
6 both from submitting a bid at any sale of mortgaged premises conducted in the
7 county for a period of time not to exceed one year from the date on which the order
8 is entered.

9 **SECTION 2.** 846.16 (1) of the statutes is amended to read:

10 846.16 (1) The sheriff or referee who makes sale of mortgaged premises, under
11 a judgment therefor, shall give notice of the time and place of sale in the manner
12 provided by law for the sale of real estate upon execution or in such other manner
13 as the court shall in the judgment direct; ~~where.~~ The sheriff or referee shall include
14 in the notice of sale an explanation regarding the minimum bidder qualifications
15 under s. 846.155 (2) that a participant must meet and a statement that, before the
16 sale may be confirmed, a purchaser that is not a party in the foreclosure action must
17 submit an affidavit to the court affirming that the purchaser meets those minimum
18 bidder qualifications. If the department of veterans affairs is also a party in the
19 foreclosure action, the judgment shall direct that notice of sale be given by registered
20 mail, return receipt requested, to the department at Madison, Wisconsin, at least 3
21 weeks prior to the date of sale, but such requirement does not affect any other
22 provision as to giving notice of sale. Except as provided in sub. (3) and s. 846.167,
23 the sheriff or referee shall, within 10 days thereafter, file with the clerk of the court
24 a report of the sale, and shall also immediately after the sale first deduct any fee due
25 under s. 77.22 (1); then deposit that fee, a return under s. 77.22 and the deed with

SENATE BILL 622

1 the clerk of the court for transmittal to the register of deeds; then deduct the costs
2 and expenses of the sale, unless the court orders otherwise, and then deposit with
3 the clerk of the court the proceeds of the sale ordered by the court. The sheriff may
4 accept from the purchaser at such sale as a deposit or down payment upon the same
5 not less than \$100, in which case such amount shall be so deposited with the clerk
6 of the court as above provided, and the balance of the sale price shall be paid to the
7 clerk by the purchaser at such sale upon the confirmation thereof. If the highest bid
8 is less than \$100, the whole amount thereof shall be so deposited.

9 **SECTION 3. Initial applicability.**

10 (1) This act first applies to a foreclosure action for which notice is given as
11 provided under section 846.16 (1) of the statutes on the effective date of this
12 subsection.

13 **SECTION 4. Effective date.**

14 (1) This act takes effect on the first day of the 6th month beginning after
15 publication.

16 (END)