

2023 Regular Session

SENATE BILL NO. 140

BY SENATOR FOIL (On Recommendation of the Louisiana State Law Institute)

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

SEIZURES/SALES. Provides relative to online judicial sales. (8/1/23)

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AN ACT

To amend and reenact Code of Civil Procedure Articles 2293(B)(1), 2334, 2375, 2721, and 2724(A) and R.S. 13:3852, 4341, 4360, and 5530(A)(7)(a), and to enact Code of Civil Procedure Article 2344 and R.S. 13:4358 and 4369, relative to judicial sales; to provide for procedures and requirements for online auctions; to provide for notice of seizure and sale; to provide with respect to online auction companies; to provide for submission of payment and readvertisement; to provide with respect to actions to set aside or annul online judicial sales; to provide with respect to the price of adjudication; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Code of Civil Procedure Articles 2293(B)(1), 2334, 2375, 2721, and 2724(A) are hereby amended and reenacted, and Code of Civil Procedure Article 2344 is hereby enacted, to read as follows:

Art. 2293. Notice to judgment debtor; appointment of attorney

* * *

B.(1) After the seizure of property, the sheriff shall serve promptly upon the judgment debtor, **in the manner provided for service of citation**, a written notice

1 of the seizure and a list of the property seized, ~~in the manner provided for service of~~
 2 ~~citation.~~ ~~Such~~ **The** notice of seizure shall be accomplished by personal service or
 3 domiciliary service. If service cannot be made on the judgment debtor or his attorney
 4 of record, the court shall appoint an attorney upon whom service may be made. The
 5 notice of seizure shall include information concerning the ~~availability of housing~~
 6 ~~counseling services, as well as the~~ time, date, and place of the sheriff's sale, in
 7 accordance with the form provided in R.S. 13:3852(B). **If the sheriff's sale is to be**
 8 **conducted through an online auction in accordance with Article 2344, the notice**
 9 **of seizure, or a subsequent notice served upon the judgment debtor at least**
 10 **three days before the sale, shall state that the sheriff's sale will be conducted**
 11 **through an online auction, shall specify the date of the online auction and the**
 12 **time when bidding is scheduled to open, and shall identify the electronic address**
 13 **of the platform through which bids can be entered. In the case of seizure of**
 14 **residential property, the notice of seizure shall include information concerning**
 15 **the availability of housing counseling services, in accordance with the form**
 16 **provided in R.S. 13:3852(B).**

17 * * *

18 Art. 2334. Reading of advertisement and certificates

19 A. At the time and place designated for the sale, the sheriff shall read aloud
 20 all or part of the advertisement describing the property in such sufficiency as to
 21 reasonably provide notice to the public of the property then being offered for sale,
 22 which, at a minimum, shall include the lot and subdivision or municipal number or
 23 by the section, township, and range, including some identifying mark, if appropriate,
 24 and a reference to the conveyance or mortgage recordation. The sheriff shall also
 25 read aloud a mortgage certificate and any other certificate required by law or
 26 otherwise provide, at least twenty-four hours prior to the sale, a copy of ~~such~~ **these**
 27 certificates to the public by means of public posting, written copies, electronic
 28 means, or by any other method.

29 B. **In the case of sale through an online auction in accordance with**

1 Article 2344, the requirements of Article 2344(D) apply.

2 C. The failure of the sheriff to procure, read aloud, or provide a copy of any
3 certificate as required by this Article, **or to comply with the requirements of**
4 **Article 2344(D) in the case of an online auction,** shall not impact the validity of the
5 sale and shall not give rise to any cause of action against the sheriff, the seizing
6 creditor, or the purchaser arising out of ~~such~~ the failure.

7 * * *

8 Art. 2344. Online auctions

9 A. In lieu of selling the seized property at an auction conducted at a
10 designated place, the sheriff may offer the property for sale by an online auction
11 conducted through a computer network or other electronic telecommunications
12 system generally available to the public.

13 B. Notice of a sale by online auction shall be published in accordance
14 with Article 2331 and in the manner provided by law. In addition to the other
15 requirements of law, the notice shall state that the sale will be conducted
16 through an online auction, shall identify the electronic address of the platform
17 through which bids can be entered, and shall specify the date of the sale and the
18 time when bidding is scheduled to open.

19 C. Online auctions shall be conducted only on a day on which the sheriff
20 is permitted by law to conduct judicial sales, beginning at a time set by the
21 sheriff. Online bidding at each sale shall be open until at least two minutes have
22 elapsed since the most recent bid was entered, or if no bid is entered, until at
23 least two minutes have elapsed since bidding was opened. The amount of each
24 bid shall be posted on the platform and made visible to the public
25 contemporaneously with the entering of the bid. The sheriff may set a minimum
26 incremental bid amount for each sale.

27 D. Before the opening of bidding, the platform on which bidders enter
28 bids for the property shall display or otherwise make accessible the
29 advertisement of the sale, the mortgage certificate, and all other certificates that

1 the sheriff would be required by Article 2334 to read aloud at the time and place
2 designated for a sheriff's sale. The platform shall also display the announcement
3 required by Article 2335.

4 E. The sheriff may impose reasonable qualifications on bidders other
5 than the seizing creditor and the debtor, including the requirement to pay a
6 deposit or provide proof of available funds before the opening of bidding. These
7 qualifications shall be displayed or otherwise made accessible on the platform.

8 F. Upon request made by the debtor before the day of the online auction,
9 the sheriff shall inform the debtor of a location where the debtor may, without
10 charge, have use of a computer terminal or other accommodation to bid at the
11 online auction.

12 G. Entry by a seizing creditor of a bid at an online auction or the seizing
13 creditor's indication on the platform that it is present for the online auction or
14 that it will not enter a bid constitutes presence at the sale for the purposes of
15 Article 2338.

16 H. Except as otherwise provided in this Article, the online auction shall
17 be conducted as far as practicable in compliance with the requirements of this
18 Chapter and Chapter 3 of this Title.

19 Comments – 2023

20 (a) This Article is new. It permits the sheriff to sell seized property through
21 an online auction rather than through an in-person sale, but only with the consent of
22 the seizing creditor. Although the sheriff is granted the flexibility to conduct online
23 auctions, the sheriff is not required to do so.

24 (b) The sheriff may contract with an online auction company in accordance
25 with R.S. 13:4358 to conduct an online auction.

26 (c) This Article applies not only to a sale conducted under a writ of fieri
27 facias but also to a sale under a writ of seizure and sale issued in an executory
28 proceeding. See Article 2724.

29 * * *

30 Art. 2375. Purchaser's liability; property subject to inferior mortgages

31 The Except as otherwise provided in R.S. 13:4358(C), the purchaser is
32 liable for nothing beyond the purchase price. ~~He~~ The purchaser shall pay the full

1 purchase price to the sheriff, despite the existence of a mortgage, lien, or privilege
2 on the property inferior to that of the seizing creditor.

3 * * *

4 Art. 2721. Seizure of property; notice

5 A. The sheriff shall seize the property affected by the mortgage, security
6 agreement, or privilege immediately upon receiving the writ of seizure and sale.

7 B. The sheriff shall serve upon the defendant a written notice of the seizure
8 of the property. ~~Such~~ **The** notice of seizure shall be accomplished by personal
9 service or domiciliary service. The notice of seizure shall reproduce in full the
10 provisions of Article 2642 and include information concerning the ~~availability of~~
11 ~~housing counseling services, as well as the~~ time, date, and place of the sheriff's sale,
12 in accordance with the form provided in R.S. 13:3852(B). **If the sheriff's sale is to**
13 **be conducted through an online auction in accordance with Article 2344, the**
14 **notice of seizure, or a subsequent notice served upon the defendant at least three**
15 **days before the sale, shall state that the sheriff's sale will be conducted through**
16 **an online auction, shall specify the date of the online auction and the time when**
17 **bidding is scheduled to open, and shall identify the electronic address of the**
18 **platform through which bids can be entered.**

19 C. **If the seized property is residential property, the notice of seizure**
20 **shall include information concerning the availability of housing counseling**
21 **services, in accordance with the form provided in R.S. 13:3852(B).**

22 **D.** The sheriff shall have no liability to the debtor or to any third party for
23 wrongful or improper seizure of the debtor's or third party's property of the same
24 general type as described in the debtor's security agreement. If necessary, the sheriff
25 shall request the secured creditor to identify the property subject to the security
26 agreement and shall act pursuant to the secured creditor's instructions. The debtor's
27 and other owner's sole remedy for the wrongful or improper seizure of the property
28 shall be for actual losses sustained under R.S. 10:9-625 against the secured creditor
29 on whose behalf and pursuant to whose instructions the sheriff may act.

* * *

Art. 2724. Articles relating to sales under fieri facias applicable

A. The provisions of ~~Paragraphs A through C of Article 2293~~ **Articles 2293(A) through (C)**, Articles 2333 through 2335, and 2337 through **2344, and 2371 through** 2381, relating to a sale of property under the writ of fieri facias, shall apply to a sale of property under the writ of seizure and sale.

* * *

Section 2. R.S. 13:3852, 4341, 4360, and 5530(A)(7)(a) are hereby amended and reenacted, and R.S. 13:4358 and 4369 are hereby enacted, to read as follows:

§3852. Notices of seizure

A. The sheriff to whom the writ is directed shall make three notices setting forth the title of the action or proceeding, its docket number, the court ~~which~~ that issued the writ, the amount of the judgment or claim specified in the writ, an exact copy of the description of the immovable property furnished ~~him~~ to the sheriff in accordance with R.S. 13:3851, the fact that the sheriff is seizing the described property in accordance with Code of Civil Procedure Article 2293, information as provided in Subsection B of this Section concerning the property owner's rights and the availability of housing counseling services, and the date of the first scheduled sale of the property. The initial sheriff's sale date shall not be scheduled any earlier than sixty days after the date of the signed court order commanding the issuance of the writ. If the immovable property to be seized is owned by more than one party, the sheriff shall make an additional notice for each additional party. No other notice of seizure shall be required.

B. The following form shall be used for these notices by the sheriff:

~~"Notice is hereby given that I am this day seizing, in accordance with the provisions of R.S. 13:3851 through 13:3861, the following described immovable property, to wit: _____ as the property of _____, under a writ of _____, issued on the _____ day of _____, _____, by the _____ District Court for the Parish of~~

1 _____, in the matter entitled _____
 2 versus _____, No. _____ of its docket, to satisfy a claim of
 3 \$ _____, interest and costs, this _____ day of _____, _____. **This is**
 4 **formal notice that today, this _____ day of _____, _____, I am seizing**
 5 **the property of _____ described as:**
 6 _____ . **This seizure is pursuant to**
 7 **Louisiana law, including R.S. 13:3851 through 3861. This seizure is a result of**
 8 **a writ of _____, issued on the _____ day of _____, _____, by**
 9 **the _____ Court. The writ was issued in**
 10 **versus _____, Docket No. _____ . This seizure is to satisfy a**
 11 **claim of \$ _____, plus interest and costs.**

12 This matter is scheduled for sheriff's sale **as follows [COMPLETE ONLY**
 13 **ONE OF THE FOLLOWING ALTERNATIVES AS APPROPRIATE]:**

14 **[] A sheriff's sale is scheduled to be conducted on the _____ day**
 15 **of _____, _____, at _____ A.M./P.M.a.m./p.m. at _____.**

16 **[] A sheriff's sale is scheduled to be conducted through an online**
 17 **auction on the _____ day of _____, _____, beginning at _____ a.m./p.m.,**
 18 **and bids may be entered on the platform having the following electronic**
 19 **address: _____.**

20 Please be aware that the sheriff's sale date **or the manner in which the sale**
 21 **will be conducted** may change. You may contact the sheriff's office to find out the
 22 new date when the property is scheduled to be sold. The new sale date will also be
 23 published in the local newspaper in accordance with R.S. 43:203. **If the sale is**
 24 **conducted through an online auction, the sheriff will, upon your request made**
 25 **before the day of the online auction, inform you of a location where you may,**
 26 **without charge, have use of a computer terminal or other accommodation to bid**
 27 **at the online auction.**

28 If the seized property is residential property, you may be afforded the
 29 opportunity to bring your account in good standing by entering into a loss mitigation

1 agreement with your lender, or by paying all of your past due payments plus
 2 permitted costs and expenses within the time permitted by law for reinstatement of
 3 your account. You are strongly encouraged to seek legal counsel. If you cannot
 4 afford to pay an attorney, you may be able to qualify for free legal services.
 5 Foreclosure prevention counseling services through a housing counselor, including
 6 loss mitigation, are provided free of charge. To find a local housing counseling
 7 agency approved by the U.S. Department of Housing and Urban Development, you
 8 may contact the U.S. Department of Housing and Urban Development or the
 9 Louisiana Housing Corporation.

10 THE FOLLOWING PARAGRAPH APPLIES ONLY TO PROPERTY
 11 THAT HAS BEEN SEIZED PURSUANT TO A WRIT OF SEIZURE AND SALE
 12 ISSUED IN AN EXECUTORY PROCEEDING: As provided in Louisiana Code of
 13 Civil Procedure Article 2642, defenses and procedural objections to an executory
 14 proceeding may be asserted either through an injunction proceeding to arrest the
 15 seizure and sale as provided in Articles 2751 through 2754, or a suspensive appeal
 16 from the order directing the issuance of the writ of seizure and sale, or both. A
 17 suspensive appeal from an order directing the issuance of a writ of seizure and sale
 18 shall be taken within fifteen days of service of the notice of seizure as provided in
 19 Article 2721. The appeal is governed by the provisions of Articles 2081 through
 20 2086, 2088 through 2122, and 2124 through 2167, except that the security therefor
 21 shall be for an amount exceeding by one-half the balance due on the debt secured by
 22 the mortgage or privilege sought to be enforced, including principal, interest to date
 23 of the order of appeal, and attorney fees, but exclusive of court costs.

24 _____
 25 Sheriff
 26 Parish of _____
 27 By: _____"

28 C. The sheriff shall not be required to serve any further notice of rescheduled
 29 sale dates **or rescheduled online auction dates** provided ~~he~~ **the sheriff** has not

1 returned the writ to the clerk of court.

2 * * *

3 §4341. Time and place of sale; adjournments; Orleans Parish excepted

4 A. All public sales by auction, the parish of Orleans excepted, when made
5 by sheriffs, coroners, constables, auctioneers, or succession representatives shall be
6 advertised to take place at the courthouse, any courthouse annex if located in the
7 same parish as the courthouse but on the opposite side of any navigable river, or at
8 some other public place in the vicinity of the courthouse, on any Monday,
9 Wednesday, Friday, or Saturday of the month, beginning at 10:00 a.m., after the
10 expiration of the time required by law for the advertisement of ~~such~~ **these** sales; and
11 the sheriff, coroner, constable, auctioneer, or succession representative may adjourn
12 the sale to the following legal day, and then, from day to day, only in case there shall
13 not be time to conclude the sale in one day. However, nothing contained **herein in**
14 **this Subsection** shall deprive the defendant of the privilege now enjoyed by him of
15 having his movable property, when it is under seizure, offered for sale at his
16 domicile, upon his giving notice to the proper officer within three days after notice
17 of seizure. In the sales of succession property; consisting of only movable property
18 or of both movable and immovable property, the succession representative may pray
19 that the sale of the succession movable property be made on the premises.

20 B. When the sale takes place at the courthouse, courthouse annex, sheriff's
21 office, or other public place in the vicinity of the courthouse, the sheriff or other
22 person conducting the sale may use an empty courtroom, auditorium, or office with
23 sufficient seating for persons attending the sale. The location shall be accessible to
24 the public and reasonably specified in the advertisement of the time and place of
25 sale. The sheriff or other person conducting the sale shall maintain the decorum of
26 proceedings during the sale and may use a microphone or amplified sound system
27 for recitals required by the sale. The provisions of this Subsection are applicable to
28 all parishes in the state. If the sale is held under the provisions of this Subsection at
29 a location other than the steps of the courthouse, on the date of sale, a notice of the

1 time and location of the sale shall be posted at the main entrance to the courthouse.

2 C. A sale conducted by online auction in accordance with Code of Civil
3 Procedure Article 2344 shall take place on one of the days specified in
4 Subsection A of this Section but shall not otherwise be subject to the provisions
5 of this Section.

6 * * *

7 §4358. Online auction companies

8 A. The sheriff may, in accordance with law, engage a licensed auction
9 company to perform an online auction pursuant to Code of Civil Procedure
10 Article 2344, but the sheriff remains responsible for the performance or
11 nonperformance of the duties delegated to that company. The sheriff shall not
12 delegate the duties to serve notices required by law, to receive and obtain
13 appraisals of the property, to determine the amount of the minimum bid
14 required by law, to ascertain the existence of superior encumbrances, to release
15 inferior encumbrances, to file the proces verbal of the sale or the act of sale in
16 favor of the purchaser, or to distribute the proceeds of the sale.

17 B. Except as otherwise provided in Subsection C of this Section, the
18 agreement between the sheriff and the auction company shall provide for the
19 payment to the auction company of a fixed fee, which shall be taxed as costs of
20 the sale, in an agreed amount not exceeding three hundred fifty dollars per
21 adjudication.

22 C. In lieu of a fixed fee in accordance with Subsection B of this Section,
23 the sheriff may, in a specific case and with the consent of the seizing creditor,
24 agree with the auction company that the successful bidder will be charged a
25 buyer's premium in an agreed amount, except that a buyer's premium shall not
26 be charged if the successful bidder is the seizing creditor, the judgment debtor,
27 a lessee of the property sold under a recorded lease, or a person holding a
28 mortgage, privilege, security interest, or other real right burdening the property
29 sold. The amount of any buyer's premium shall be stated conspicuously on the

1 electronic platform on which bidders enter bids for the property. Any buyer's
2 premium shall be remitted directly to the auction company and shall be paid in
3 addition to the amount of the purchase price payable to the sheriff in
4 accordance with Code of Civil Procedure Articles 2374 and 2375. No portion of
5 any buyer's premium shall be taxed as costs or applied to the credit of the writ
6 under which the sale is conducted.

7 D. Upon motion of the sheriff or either of the parties, the court may, in
8 a specific case having exceptional circumstances and after a hearing, authorize
9 a fee in excess of those provided in Subsections B and C of this Section.

10 E. The auction company conducting the sale shall not be entitled to any
11 fee or compensation other than the fees authorized by this Section, and the
12 auction company shall not be entitled to reimbursement of any expenses
13 incurred in connection with the sale. Any contrary stipulation shall be
14 absolutely null.

15 F. Any stipulation by which the auction company agrees to share any
16 portion of its fee or buyer's premium with the sheriff or otherwise provide a
17 financial benefit of any nature to the sheriff shall be absolutely null.

18 G. The contract by which the sheriff engages an auction company to
19 conduct an online auction under this Section shall contain such requirements
20 as the sheriff may impose concerning data security and liability insurance. If the
21 auction company will receive funds from bidders, other than fees earned by the
22 auction company under this Section, the contract shall require the auction
23 company to furnish a fidelity bond in an amount deemed appropriate by the
24 sheriff.

25 H. The auction company shall segregate any funds received from
26 bidders, other than fees earned by the auction company under this Section,
27 from funds of the auction company and shall hold the funds received in a
28 separate escrow or trust account that is identified as such on the books of the
29 depository institution with which the account is maintained.

Comments – 2023

(a) This Section grants the sheriff flexibility to engage an online auction company to conduct online auctions of seized property in accordance with Code of Civil Procedure Article 2344.

(b) The fee arrangements in Subsections B and C are alternatives and cannot be cumulated. In each instance, the amount of the fee stated is a maximum fee; the sheriff is free to contract with an online auction company for a lesser fee. As Subsection D provides, the court may, after a contradictory hearing, authorize a greater fee in a specific case with exceptional circumstances upon motion of the sheriff or either of the parties. The seizing creditor, the defendant, and other interested parties may contest the motion.

(c) The fixed fee provided in Subsection B applies separately to each adjudication. Thus, if in the execution of a single writ directed to the sheriff, two properties are exposed to online auction and adjudicated separately, the fixed fee is earned for each of the properties. If, on the other hand, two properties are offered and adjudicated as a single lot, only one fixed fee is earned. If property exposed to online auction is not sold at the first offering for lack of a sufficient bid and is later reoffered and adjudicated at a second offering in accordance with Code of Civil Procedure Article 2336, only one fixed fee is earned, as there was only one adjudication.

(d) Where the auction company agrees to be compensated by a buyer's premium in accordance with Subsection C but the property is adjudicated to a purchaser who cannot be charged a buyer's premium under the terms of Subsection C, the auction company earns no compensation; it cannot under those circumstances receive a fixed fee under Subsection B.

(e) A lease that has become effective against third persons through the recordation of a notice of lease in accordance with R.S. 9:2742 is a "recorded lease" for purposes of Subsection C.

(f) As the sheriff remains responsible for the performance or nonperformance of the duties delegated to the auction company, Subsection G affords the sheriff great latitude in determining the qualifications of licensed auction companies, the requirements they will have to satisfy, and the amount of any fidelity bond that may be required. Where an auction company will receive funds other than fees it has earned, a fidelity bond in an amount deemed appropriate by the sheriff is mandatory.

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§4360. Resale if required payment not made; resale if adjudicatee fails to pay
balance

A. If the terms of the sale provide for the full payment of the adjudication price at the moment of the adjudication, or if the terms provide for a deposit, and the purchaser fails to make ~~such~~ **the** full payment or deposit, the seizing creditor may direct the officer conducting the sale either to ~~re-offer~~ **reoffer** the property immediately; or ~~re-advertise~~ **to readvertise** the property for sale as provided in ~~Subsection C~~ **Subsection D** of this Section. If the property is ~~re-offered~~ **reoffered** for

1 sale immediately, the first purchaser is relieved of any liability. This Subsection
 2 does not apply to a sale conducted by online auction in accordance with Code
 3 of Civil Procedure Article 2344.

4 B. In the case of a sale conducted by online auction in accordance with
 5 Code of Civil Procedure Article 2344, the purchaser shall pay the adjudication
 6 price and any buyer's premium, or the deposit if the terms of the sale provide
 7 for a deposit, by 4:30 p.m. on the first day following the sale exclusive of legal
 8 holidays as provided in R.S. 1:55(E)(3). If the purchaser fails to do so, the
 9 seizing creditor may direct the officer conducting the sale either to adjudicate
 10 the property to the bidder who submitted the second highest bid at the online
 11 auction, if that bidder is still willing to purchase the property for the amount of
 12 his bid, or to readvertise the property for sale as provided in Subsection D of
 13 this Section. If the property is adjudicated to the second highest bidder, the first
 14 purchaser is relieved of any liability.

15 C. If the purchaser makes the deposit required by the terms of the sale; and
 16 fails to pay the entire purchase price within thirty days after the adjudication, on
 17 demand of any interested party, the officer conducting the sale shall ~~re-advertise~~
 18 readvertise the property for sale as provided in ~~Sub-section C~~ Subsection D of this
 19 Section.

20 ~~C. D.(1)~~ When the property is ~~re-advertised~~ readvertised, it shall be in the
 21 manner required by law for the advertisement of the original sale, and the second
 22 sale is at the risk and for the account of the first purchaser. Should there be a loss
 23 because of the second sale, the first purchaser is liable for ~~such~~ the loss; but should
 24 the property bring a higher price at the second sale, the first purchaser has no right
 25 to the increase.

26 (2) The first purchaser ~~may~~ shall not bid at a second sale.

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28 §4369. Actions to set aside or annul online judicial sales

29 No action shall be instituted to set aside or annul the judicial sale of

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immovable property through an online auction by reason of noncompliance with the requirements of Code of Civil Procedure Article 2344 or R.S. 13:4358 if the sheriff executing the judicial sale has either filed the proces verbal of the sale or filed the sale for recordation in the conveyance records of the parish. No action shall be instituted to set aside or annul the judicial sale of movable property through an online auction by reason of noncompliance with the requirements of Code of Civil Procedure Article 2344 or R.S. 13:4358 if the sheriff executing the judicial sale has either filed the proces verbal of the sale or has delivered an act of sale to the purchaser.

* * *

§5530. Fees in civil matters

A. Sheriffs shall be entitled to no more than the following fees and compensation of office in all civil matters:

* * *

(7)(a) For commission on sales of property made by the sheriffs, three percent shall be allowed on the price of adjudication of immovable property, and six percent shall be allowed on the price of adjudication of movable property. As used herein **in this Subparagraph, "the price of adjudication" the "price of adjudication"** shall mean the amount of the successful bid price at the sale conducted by the sheriff. **The "price of adjudication" shall not include the amount of any buyer's premium payable in the case of a sale through an online auction, and no portion of any buyer's premium shall be deducted from, or credited against, the amount of the commission due to the sheriff.**

* * *

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Angela L. De Jean.

DIGEST

SB 140 Original 2023 Regular Session Foil

Present law (C.C.P. Art. 2293(B)(1)) requires service of notice of seizure to be made by the sheriff upon the judgment debtor and requires the notice of seizure to include the time, date, and place of the sheriff's sale.

Proposed law retains present law and, for sales conducted through an online auction, requires the notice of seizure to state that fact and to provide the date and time and the electronic address of the platform through which bids can be entered. Proposed law also makes technical corrections.

Present law (C.C.P. Art. 2334) sets forth certain procedural requirements applicable to sheriff's sales concerning reading the advertisement and reading or providing a copy of a mortgage certificate or any other certificate.

Proposed law retains present law and, for sales conducted through an online auction, requires the advertisement and mortgage or other certificate to be displayed or made accessible on the electronic platform.

Proposed law (C.C.P. Art. 2344) sets forth the procedures relative to online auctions with respect to providing notice, conducting online auctions, entering bids, displaying the advertisement and mortgage or other certificates, imposing qualifications on bidders, and indicating the presence of the seizing creditor.

Present law (C.C.P. Art. 2375) provides that the purchaser is liable only for the purchase price and shall pay that price to the sheriff.

Proposed law adds an exception to present law for online auctions where the sheriff and seizing creditor agree to impose a buyer's premium, which will be remitted directly to the online auction company.

Present law (C.C.P. Art. 2721) requires service of notice of seizure to be made by the sheriff and requires the notice of seizure to include the time, date, and place of the sheriff's sale.

Proposed law retains present law and, for sales conducted through an online auction, requires the notice of seizure to state that fact and to provide the date and time and the electronic address of the platform through which bids can be entered. Proposed law also makes technical corrections.

Present law (C.C.P. Art. 2724(A)) extends the application of certain provisions relative to writs of fieri facias to writs of seizure and sale.

Present law (R.S. 13:3852) sets forth the requirements applicable to notices of seizure, provides a form, and provides that the sheriff is not required to serve further notice of rescheduled sale dates if the sheriff has not returned the writ.

Proposed law extends the application of present law to online auctions by requiring the form to provide the date and time of the online auction and the electronic address of the platform through which bids can be entered. Proposed law also provides that the sheriff is not required to serve further notice of rescheduled online auction dates if the sheriff has not returned the writ.

Present law (R.S. 13:4341) provides with respect to the time and place of judicial sales and provides for the adjournment of sales to the following legal day.

Proposed law requires online auctions to be conducted on one of the days specified by present law but otherwise exempts online auctions from the requirements set forth by present law.

Proposed law (R.S. 13:4358) provides with respect to the use and compensation of online auction companies, including the assessment and maximum amount of fixed fees and buyer's premiums. Proposed law prohibits the sheriff from delegating certain duties and prohibits online auction companies from collecting additional fees or reimbursements or agreeing to share any monies received with the sheriff. Proposed law further provides for requirements

concerning data security and liability insurance in contracts with online auction companies and, if the auction company will receive funds from bidders, requires the auction company to furnish a fidelity bond and hold the funds in a separate escrow or trust account.

Present law (R.S. 13:4360) provides with respect to the reoffering or readvertising of property for which full payment of the adjudication price has not been made.

Proposed law makes technical corrections to present law and further provides that for sales conducted through an online auction, payment is due by 4:30 p.m. on the first day following the sale that is not a legal holiday; otherwise, the property may be adjudicated to the second highest bidder or readvertised.

Proposed law (R.S. 13:4369) prohibits the institution of actions to set aside judicial sales conducted through online auctions for noncompliance with procedural requirements if the sheriff either has filed the proces verbal or has filed the sale for recordation in the conveyance records, for immovables, or has delivered an act of sale, for movables.

Present law (R.S. 13:5530(A)(7)(a)) sets forth the sheriffs' commissions on sales of property and defines "price of adjudication".

Proposed law retains present law and provides that for sales conducted through an online auction, "price of adjudication" does not include the amount of any buyer's premium.

Effective August 1, 2023.

(Amends C.C.P. Arts. 2293(B)(1), 2334, 2375, 2721, and 2724(A) and R.S. 13:3852, 4341, 4360, and 5530(A)(7)(a); adds C.C.P. Art. 2344 and R.S. 13:4358 and 4369)