

SENATE BILL NO. 140

BY SENATOR FOIL

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

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AN ACT

To amend and reenact Code of Civil Procedure Articles 2293(B)(1), 2334, 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, 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 of the seizure and a list of the property seized, ~~in the manner provided for service of citation. Such~~ **The** notice of seizure shall be accomplished by personal service or domiciliary service. If service cannot be made on the judgment debtor or his attorney of record, the court shall appoint an attorney upon whom service may be made. The notice of seizure shall include information concerning the ~~availability of housing counseling services, as well as the~~ time, date, and place of the sheriff's sale, in accordance with the form provided in R.S. 13:3852(B). **If the sheriff's sale is to be conducted through an online auction in accordance with Article 2344, the notice**

1 of seizure, or a subsequent notice served upon the judgment debtor at least
 2 three days before the sale, shall state that the sheriff's sale will be conducted
 3 through an online auction, shall specify the date of the online auction and the
 4 time when bidding is scheduled to open, and shall identify the electronic address
 5 of the platform through which bids can be entered. In the case of seizure of
 6 residential property, the notice of seizure shall include information concerning
 7 the availability of housing counseling services, in accordance with the form
 8 provided in R.S. 13:3852(B).

9 * * *

10 Art. 2334. Reading of advertisement and certificates

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

21 B. **In the case of sale through an online auction in accordance with**
 22 **Article 2344, the requirements of Article 2344(D) apply.**

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

28 * * *

29 **Art. 2344. Online auctions**

30 **A. In lieu of selling the seized property at an auction conducted at a**

1 designated place, the sheriff may offer the property for sale by an online auction
2 conducted through a computer network or other electronic telecommunications
3 system generally available to the public.

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

10 C. Online auctions shall be conducted only on a day on which the sheriff
11 is permitted by law to conduct judicial sales, beginning at a time set by the
12 sheriff. Online bidding at each sale shall be open until at least two minutes have
13 elapsed since the most recent bid was entered, or if no bid is entered, until at
14 least two minutes have elapsed since bidding was opened. The amount of each
15 bid shall be posted on the platform and made visible to the public
16 contemporaneously with the entering of the bid. The sheriff may set a minimum
17 incremental bid amount for each sale.

18 D. Before the opening of bidding, the platform on which bidders enter
19 bids for the property shall display or otherwise make accessible the
20 advertisement of the sale, the mortgage certificate, and all other certificates that
21 the sheriff would be required by Article 2334 to read aloud at the time and place
22 designated for a sheriff's sale. The platform shall also display the announcement
23 required by Article 2335.

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

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

1 online auction.

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

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

9 * * *

10 Art. 2721. Seizure of property; notice

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

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

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

28 **D.** The sheriff shall have no liability to the debtor or to any third party for
29 wrongful or improper seizure of the debtor's or third party's property of the same
30 general type as described in the debtor's security agreement. If necessary, the sheriff

1 shall request the secured creditor to identify the property subject to the security
2 agreement and shall act pursuant to the secured creditor's instructions. The debtor's
3 and other owner's sole remedy for the wrongful or improper seizure of the property
4 shall be for actual losses sustained under R.S. 10:9-625 against the secured creditor
5 on whose behalf and pursuant to whose instructions the sheriff may act.

6 * * *

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

8 A. The provisions of ~~Paragraphs A through C of Article 2293~~ **Articles**
9 **2293(A) through (C)**, ~~Articles 2333 through 2335, and 2337 through~~ **2344, and**
10 **2371 through** 2381, relating to a sale of property under the writ of fieri facias, shall
11 apply to a sale of property under the writ of seizure and sale.

12 * * *

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

15 §3852. Notices of seizure

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

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

30 "~~Notice is hereby given that I am this day seizing, in accordance with the~~

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

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

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

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

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

1 **at the online auction.**

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

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

27 _____
28 Sheriff
29 Parish of _____
30 By: _____"

1 C. The sheriff shall not be required to serve any further notice of rescheduled
 2 sale dates or rescheduled online auction dates provided ~~he~~ the sheriff has not
 3 returned the writ to the clerk of court.

4 * * *

5 §4341. Time and place of sale; adjournments; Orleans Parish excepted

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

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

1 a location other than the steps of the courthouse, on the date of sale, a notice of the
2 time and location of the sale shall be posted at the main entrance to the courthouse.

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

7 * * *

8 §4358. Online auction companies

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

18 B. The agreement between the sheriff and the auction company shall
19 provide for the payment to the auction company of a fixed fee, which shall be
20 taxed as costs of the sale, in an agreed amount not exceeding three hundred
21 seventy-five dollars per adjudication.

22 C. Upon motion of the sheriff or either of the parties, the court may, in
23 a specific case having exceptional circumstances and after a hearing, authorize
24 a fee in excess of those provided in Subsection B of this Section.

25 D. The auction company conducting the sale shall not be entitled to any
26 fee or compensation other than the fee authorized by this Section, and the
27 auction company shall not be entitled to reimbursement of any expenses
28 incurred in connection with the sale. Any contrary stipulation shall be
29 absolutely null.

30 E. Any stipulation by which the auction company agrees to share any

1 portion of its fee with the sheriff or otherwise provide a financial benefit of any
 2 nature to the sheriff shall be absolutely null.

3 F. The contract by which the sheriff engages an auction company to
 4 conduct an online auction under this Section shall contain such requirements
 5 as the sheriff may impose concerning data security and liability insurance. If the
 6 auction company will receive funds from bidders, other than fees earned by the
 7 auction company under this Section, the contract shall require the auction
 8 company to furnish a fidelity bond in an amount deemed appropriate by the
 9 sheriff.

10 G. The auction company shall segregate any funds received from
 11 bidders, other than fees earned by the auction company under this Section,
 12 from funds of the auction company and shall hold the funds received in a
 13 separate escrow, trust, or similar transaction settlement bank account holding
 14 funds as restricted cash separate from the general funds of the auction
 15 company. The auction company may use this account to conduct settlements, in
 16 which case the internet-based platform may collect bidder funds from sales into
 17 this account and then settle the transaction.

18 * * *

19 §4360. Resale if required payment not made; resale if adjudicatee fails to pay
 20 balance

21 A. If the terms of the sale provide for the full payment of the adjudication
 22 price at the moment of the adjudication, or if the terms provide for a deposit, and the
 23 purchaser fails to make ~~such~~ **the** full payment or deposit, the seizing creditor may
 24 direct the officer conducting the sale either to ~~re-offer~~ **reoffer** the property
 25 immediately; or ~~re-advertise~~ **to readvertise** the property for sale as provided in Sub-
 26 ~~section C~~ **Subsection D** of this Section. If the property is ~~re-offered~~ **reoffered** for
 27 sale immediately, the first purchaser is relieved of any liability. **This Subsection**
 28 **does not apply to a sale conducted by online auction in accordance with Code**
 29 **of Civil Procedure Article 2344.**

30 B. **In the case of a sale conducted by online auction in accordance with**

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

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

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

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

23 * * *

24 §4369. Actions to set aside or annul online judicial sales

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

1 property through an online auction by reason of noncompliance with the
 2 requirements of Code of Civil Procedure Article 2344 or R.S. 13:4358 if the
 3 sheriff executing the judicial sale has either filed the proces verbal of the sale or
 4 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.

* * *

Section 2. The Louisiana State Law Institute is hereby directed to review the provisions of this Act and add comments they deem necessary under Code of Civil Procedure Art. 2344 and R.S. 13:4358 as enacted in this Act.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____