

2023 Regular Session

SENATE BILL NO. 140

BY SENATOR FOIL

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 * * *

20 Art. 2721. Seizure of property; notice

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

23 B. The sheriff shall serve upon the defendant a written notice of the seizure
24 of the property. ~~Such~~ **The** notice of seizure shall be accomplished by personal
25 service or domiciliary service. The notice of seizure shall reproduce in full the
26 provisions of Article 2642 and include information concerning the ~~availability of~~
27 ~~housing counseling services, as well as the time, date, and place of the sheriff's sale,~~
28 in accordance with the form provided in R.S. 13:3852(B). **If the sheriff's sale is to**
29 **be conducted through an online auction in accordance with Article 2344, the**

1 notice of seizure, or a subsequent notice served upon the defendant at least three
 2 days before the sale, shall state that the sheriff's sale will be conducted through
 3 an online auction, shall specify the date of the online auction and the time when
 4 bidding is scheduled to open, and shall identify the electronic address of the
 5 platform through which bids can be entered.

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

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

17 * * *

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

19 A. The provisions of ~~Paragraphs A through C of Article 2293~~ Articles
 20 2293(A) through (C), Articles 2333 through 2335, and 2337 through 2344, and
 21 2371 through 2381, relating to a sale of property under the writ of fieri facias, shall
 22 apply to a sale of property under the writ of seizure and sale.

23 * * *

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

26 §3852. Notices of seizure

27 A. The sheriff to whom the writ is directed shall make three notices setting
 28 forth the title of the action or proceeding, its docket number, the court ~~which~~ that
 29 issued the writ, the amount of the judgment or claim specified in the writ, an exact

1 copy of the description of the immovable property furnished him to the sheriff in
 2 accordance with R.S. 13:3851, the fact that the sheriff is seizing the described
 3 property in accordance with Code of Civil Procedure Article 2293, information as
 4 provided in Subsection B of this Section concerning the property owner's rights and
 5 the availability of housing counseling services, and the date of the first scheduled
 6 sale of the property. The initial sheriff's sale date shall not be scheduled any earlier
 7 than sixty days after the date of the signed court order commanding the issuance of
 8 the writ. If the immovable property to be seized is owned by more than one party, the
 9 sheriff shall make an additional notice for each additional party. No other notice of
 10 seizure shall be required.

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

12 ~~"Notice is hereby given that I am this day seizing, in accordance with the~~
 13 ~~provisions of R.S. 13:3851 through 13:3861, the following described immovable~~
 14 ~~property, to wit: _____ as the property of~~
 15 ~~_____, under a writ of _____, issued on the _____ day of~~
 16 ~~_____, _____, by the _____ District Court for the Parish of~~
 17 ~~_____, in the matter entitled _____~~
 18 ~~versus _____, No. _____ of its docket, to satisfy a claim of~~
 19 ~~\$ _____, interest and costs, this _____ day of _____, _____.~~ **This is**
 20 **formal notice that today, this _____ day of _____, _____, I am seizing**
 21 **the property of _____ described as:**
 22 **_____ . This seizure is pursuant to**
 23 **Louisiana law, including R.S. 13:3851 through 3861. This seizure is a result of**
 24 **a writ of _____, issued on the _____ day of _____, _____, by**
 25 **the _____ Court. The writ was issued in**
 26 **versus _____, Docket No. _____ . This seizure is to satisfy a**
 27 **claim of \$ _____, plus interest and costs.**

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

1 [] A sheriff's sale is scheduled to be conducted on the _____ day

2 of _____, _____, at _____ A.M./P.M.a.m./p.m. at _____.

3 [] A sheriff's sale is scheduled to be conducted through an online

4 auction on the _____ day of _____, beginning at _____ a.m./p.m.,

5 and bids may be entered on the platform having the following electronic

6 address: _____.

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

15 If the seized property is residential property, you may be afforded the
 16 opportunity to bring your account in good standing by entering into a loss mitigation
 17 agreement with your lender, or by paying all of your past due payments plus
 18 permitted costs and expenses within the time permitted by law for reinstatement of
 19 your account. You are strongly encouraged to seek legal counsel. If you cannot
 20 afford to pay an attorney, you may be able to qualify for free legal services.
 21 Foreclosure prevention counseling services through a housing counselor, including
 22 loss mitigation, are provided free of charge. To find a local housing counseling
 23 agency approved by the U.S. Department of Housing and Urban Development, you
 24 may contact the U.S. Department of Housing and Urban Development or the
 25 Louisiana Housing Corporation.

26 THE FOLLOWING PARAGRAPH APPLIES ONLY TO PROPERTY
 27 THAT HAS BEEN SEIZED PURSUANT TO A WRIT OF SEIZURE AND SALE
 28 ISSUED IN AN EXECUTORY PROCEEDING: As provided in Louisiana Code of
 29 Civil Procedure Article 2642, defenses and procedural objections to an executory

1 proceeding may be asserted either through an injunction proceeding to arrest the
 2 seizure and sale as provided in Articles 2751 through 2754, or a suspensive appeal
 3 from the order directing the issuance of the writ of seizure and sale, or both. A
 4 suspensive appeal from an order directing the issuance of a writ of seizure and sale
 5 shall be taken within fifteen days of service of the notice of seizure as provided in
 6 Article 2721. The appeal is governed by the provisions of Articles 2081 through
 7 2086, 2088 through 2122, and 2124 through 2167, except that the security therefor
 8 shall be for an amount exceeding by one-half the balance due on the debt secured by
 9 the mortgage or privilege sought to be enforced, including principal, interest to date
 10 of the order of appeal, and attorney fees, but exclusive of court costs.

11 _____
 12 Sheriff
 13 Parish of _____
 14 By: _____"

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

18 * * *
 19 §4341. Time and place of sale; adjournments; Orleans Parish excepted

20 A. All public sales by auction, the parish of Orleans excepted, when made
 21 by sheriffs, coroners, constables, auctioneers, or succession representatives shall be
 22 advertised to take place at the courthouse, any courthouse annex if located in the
 23 same parish as the courthouse but on the opposite side of any navigable river, or at
 24 some other public place in the vicinity of the courthouse, on any Monday,
 25 Wednesday, Friday, or Saturday of the month, beginning at 10:00 a.m., after the
 26 expiration of the time required by law for the advertisement of ~~such~~ **these** sales; and
 27 the sheriff, coroner, constable, auctioneer, or succession representative may adjourn
 28 the sale to the following legal day, and then, from day to day, only in case there shall
 29 not be time to conclude the sale in one day. However, nothing contained ~~herein~~ **in**

1 **this Subsection** shall deprive the defendant of the privilege now enjoyed by him of
 2 having his movable property, when it is under seizure, offered for sale at his
 3 domicile, upon his giving notice to the proper officer within three days after notice
 4 of seizure. In the sales of succession property; consisting of only movable property
 5 or of both movable and immovable property, the succession representative may pray
 6 that the sale of the succession movable property be made on the premises.

7 B. When the sale takes place at the courthouse, courthouse annex, sheriff's
 8 office, or other public place in the vicinity of the courthouse, the sheriff or other
 9 person conducting the sale may use an empty courtroom, auditorium, or office with
 10 sufficient seating for persons attending the sale. The location shall be accessible to
 11 the public and reasonably specified in the advertisement of the time and place of
 12 sale. The sheriff or other person conducting the sale shall maintain the decorum of
 13 proceedings during the sale and may use a microphone or amplified sound system
 14 for recitals required by the sale. The provisions of this Subsection are applicable to
 15 all parishes in the state. If the sale is held under the provisions of this Subsection at
 16 a location other than the steps of the courthouse, on the date of sale, a notice of the
 17 time and location of the sale shall be posted at the main entrance to the courthouse.

18 **C. A sale conducted by online auction in accordance with Code of Civil**
 19 **Procedure Article 2344 shall take place on one of the days specified in**
 20 **Subsection A of this Section but shall not otherwise be subject to the provisions**
 21 **of this Section.**

22 * * *

23 **§4358. Online auction companies**

24 **A. The sheriff may, in accordance with law, engage a auction company**
 25 **to perform an online auction pursuant to Code of Civil Procedure Article 2344,**
 26 **but the sheriff remains responsible for the performance or nonperformance of**
 27 **the duties delegated to that company. The sheriff shall not delegate the duties**
 28 **to serve notices required by law, to receive and obtain appraisals of the**
 29 **property, to determine the amount of the minimum bid required by law, to**

1 ascertain the existence of superior encumbrances, to release inferior
2 encumbrances, to file the proces verbal of the sale or the act of sale in favor of
3 the purchaser, or to distribute the proceeds of the sale.

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

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

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

16 E. Any stipulation by which the auction company agrees to share any
17 portion of its fee with the sheriff or otherwise provide a financial benefit of any
18 nature to the sheriff shall be absolutely null.

19 F. The contract by which the sheriff engages an auction company to
20 conduct an online auction under this Section shall contain such requirements
21 as the sheriff may impose concerning data security and liability insurance. If the
22 auction company will receive funds from bidders, other than fees earned by the
23 auction company under this Section, the contract shall require the auction
24 company to furnish a fidelity bond or other commercial crime insurance policy
25 insuring against employee dishonesty and fraud, a performance or payment
26 bond, or a letter of credit in an amount deemed appropriate by the sheriff.

27 G. The auction company shall segregate any funds received from
28 bidders, other than fees earned by the auction company under this Section,
29 from funds of the auction company and shall hold the funds received in a

1 fails to pay the entire purchase price within thirty days after the adjudication, on
2 demand of any interested party, the officer conducting the sale shall ~~re-advertise~~
3 **readvertise** the property for sale as provided in ~~Sub-section C~~ **Subsection D** of this
4 Section.

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

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

12 * * *

13 **§4369. Actions to set aside or annul online judicial sales**

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

24 * * *

25 §5530. Fees in civil matters

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

28 * * *

29 (7)(a) For commission on sales of property made by the sheriffs, three

1 percent shall be allowed on the price of adjudication of immovable property, and six
 2 percent shall be allowed on the price of adjudication of movable property. As used
 3 **herein in this Subparagraph**, ~~"the price of adjudication"~~ **the "price of**
 4 **adjudication"** shall mean the amount of the successful bid price at the sale
 5 conducted by the sheriff.

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

The original instrument was prepared by Angela Lockett-De Jean. The following digest, which does not constitute a part of the legislative instrument, was prepared by Nicholas Davison.

DIGEST

SB 140 Engrossed

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. 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 or other commercial crime insurance policy 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 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".

Effective August 1, 2023.

(Amends C.C.P. Arts. 2293(B)(1), 2334, 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)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary A to the original bill

1. Removes licensure requirements for auction companies.
2. Provides a revised dollar amount cap for the fixed-fee auction companies may require for their services.
3. Removes comments from the Louisiana Law Institute.

4. Adds insurance policies and fidelity bonds to protect funds from bidders other than the fees earned by the auction companies to ensure professional transparency.
5. Adds the scope of "the price of adjudication".
6. Directs the Louisiana State Law Institute to add comments they deem necessary under C.C.P. Arts. 2344 and R.S. 13:4358 an enacted in this Act.