
DIGEST

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SB 140 Reengrossed

2023 Regular Session

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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 may 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 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.

Senate Floor Amendments to engrossed bill

1. Limits the method by which an auction company may protect its bidders funds to a fidelity bond. Removes the auction company's ability to use other commercial criminal insurance policies, payment bonds, or letters of credit to protect its bidders funds.

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Civil Law and Procedure to the reengrossed bill:

1. Provide that the fixed fee paid to the auction company is payable only upon the completion of the sale.