



LOUISIANA STATE LAW INSTITUTE

PAUL M. HEBERT LAW CENTER, ROOM W127

UNIVERSITY STATION

BATON ROUGE, LA 70803-1016

(225) 578-0200

FAX: (225) 578-0211

EMAIL: LAWINSTITUTE@LSLI.ORG

WWW.LSLI.ORG

April 5, 2023

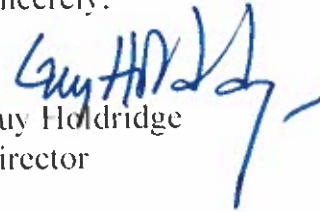
Senator Patrick Page Cortez
President of the Senate
P.O. Box 94183
Baton Rouge, Louisiana 70804

RE: SENATE RESOLUTION NO. 152 OF THE 2022 REGULAR SESSION

Dear Mr. President:

The Louisiana State Law Institute respectfully submits its report to the legislature relative to online judicial sales.

Sincerely,


Guy Holdridge
Director

GH/pc

Enclosure

cc: Senator Franklin Foil

email cc: David R. Poynter Legislative Research Library
drplibrary@legis.la.gov

Secretary of State. Mr. R. Kyle Ardoin
admin@sos.louisiana.gov

**LOUISIANA STATE LAW INSTITUTE
SECURITY DEVICES COMMITTEE**

**REPORT TO THE LEGISLATURE IN RESPONSE TO
SR NO. 152 OF THE 2022 REGULAR SESSION**

Relative to online judicial sales

Prepared for the
Louisiana Legislature on

April 5, 2023

Baton Rouge, Louisiana

**LOUISIANA STATE LAW INSTITUTE
SECURITY DEVICES COMMITTEE**

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Keith Vetter	New Orleans

Special Advisors

Billie M. Giroir	St. Francisville
Mark C. Landry	Metairie
Carl W. Richard	Shreveport

L. David Cromwell, Reporter
Mallory C. Waller, Staff Attorney

SENATE RESOLUTION NO. 152

BY SENATOR FOIL

A RESOLUTION

To urge and request the Louisiana State Law Institute to study and recommend legislation to implement procedures for conducting online judicial sales.

WHEREAS, the advancement of communication technology has made it possible to conduct online auctions and public sales through the use of the internet; and

WHEREAS, conducting online judicial sales can attract more bidders and potentially higher purchase prices, which would benefit both debtors and creditors in our state; and

WHEREAS, the laws regulating judicial sales have been amended numerous times over the years, and it is important that changes to provide for online judicial sales be carefully crafted to address the detailed procedure involved with conducting judicial sales; and

WHEREAS, it is important that the laws providing for online judicial sales are functional and do not jeopardize the validity of titles to properties conveyed through the judicial sale process; and

WHEREAS, the Louisiana State Law Institute's general duties include examining and studying the civil law and statutes of the state.

THEREFORE, BE IT RESOLVED that the Senate of the Legislature of Louisiana does hereby declare that it is the policy of this state that available technology should be used to allow for online judicial sales in the state of Louisiana, with each selling authority having the choice of using such a procedure with the agreement of the seizing creditor.

BE IT FURTHER RESOLVED that the Legislature of Louisiana does hereby urge and request that the Security Devices Committee of the Louisiana State Law Institute prepare draft legislation to enact, amend, and repeal laws in order to implement requirements and procedures for conducting online judicial sales by sheriffs, marshals, and constables, and that representatives of the Louisiana Bankers Association, Louisiana Sheriffs' Association, and Louisiana City Marshals and City Constables Association be appointed as special advisors to participate in drafting the legislation.

SR NO. 152

ENROLLED

BE IT FURTHER RESOLVED that recommendations for revising state law in the form of proposed legislation shall be submitted to the Legislature of Louisiana no later than February 15, 2023.

BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the Louisiana State Law Institute.

PRESIDENT OF THE SENATE

April 5, 2023

To: Senator Patrick Page Cortez
President of the Senate
P.O. Box 94183
Baton Rouge, Louisiana 70804

**REPORT TO THE LEGISLATURE
IN RESPONSE TO SR NO. 152 OF THE 2022 REGULAR SESSION**

Senate Resolution No. 152 of the 2022 Regular Session urged and requested the Louisiana State Law Institute “to study and recommend legislation to implement procedures for conducting online judicial sales.” The resolution did not direct the Law Institute to study the advisability of allowing online judicial sales in Louisiana but instead included a declaration by the Senate that “it is the policy of this state that available technology should be used to allow for online judicial sales in the state of Louisiana, with each selling authority having the choice of using such a procedure with the agreement of the seizing creditor.” The resolution requested the Law Institute to draft the enabling legislation. The resolution also requested that “representatives of the Louisiana Bankers Association, Louisiana Sheriffs’ Association, and Louisiana City Marshals and City Constables Association be appointed as special advisors to participate in drafting the legislation.”

In accordance with the directives of the resolution, the Law Institute assigned the project to its Security Devices Committee, which operates under the direction of Mr. L. David Cromwell as Reporter. The Committee appointed Mr. Mark C. Landry of the Louisiana Bankers Association, Ms. Billie M. Giroir of the Louisiana Sheriffs’ Association, and Mr. Carl W. Richard of the Louisiana City Marshals and City Constables Association as special advisors for the project.

The Committee met several times to draft revisions to the Code of Civil Procedure and related provisions of the Revised Statutes to permit Louisiana sheriffs, marshals, and constables to conduct online auctions. Not only did the Committee receive very thoughtful guidance and recommendations from the special advisors, but it also benefited from the experience and suggestions of representatives of several online auction companies. Throughout the course of its work, the Committee remained mindful of the admonition in the resolution that “changes to provide for online judicial sales [must] be carefully crafted to address the detailed procedure involved with conducting judicial sales.” Accordingly, the Committee drafted safeguards concerning the consent and presence of the seizing creditor, the publication of notice and other information concerning the auction and bids made during the auction, the ability of the debtor to bid at the online auction, and the use of online auction companies and the fees and requirements associated with doing so.

A copy of the draft legislation appears below and has been submitted to the Legislature for introduction during the 2023 Regular Session.

2023 Regular Session

SENATE BILL NO.

BY SENATOR FOIL

(On Recommendation of the Louisiana State Law Institute)

SEIZURES/SALES. Provides relative to online judicial sales

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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

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

16 * * *

17 Art. 2334. Reading of advertisement and certificates

18 A. At the time and place designated for the sale, the sheriff shall read aloud all or
19 part of the advertisement describing the property in such sufficiency as to reasonably
20 provide notice to the public of the property ~~then~~ being offered for sale, which, at a
21 minimum, shall include the lot and subdivision or municipal number or ~~by~~ the section,
22 township, and range, including some identifying mark, if appropriate, and a reference to

1 the conveyance or mortgage recordation. The sheriff shall also read aloud a mortgage
2 certificate and any other certificate required by law or otherwise provide, at least twenty-
3 four hours prior to the sale, a copy of ~~such~~ these certificates to the public by means of
4 public posting, written copies, electronic means, or by any other method.

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

7 C. The failure of the sheriff to procure, read aloud, or provide a copy of any
8 certificate as required by this Article, or to comply with the requirements of Article
9 2344(D) in the case of an online auction, shall not impact the validity of the sale and shall
10 not give rise to any cause of action against the sheriff, the seizing creditor, or the purchaser
11 arising out of ~~such~~ the failure.

12 * * *

13 Art. 2344. Online auctions

14 A. In lieu of selling the seized property at an auction conducted at a designated
15 place, the sheriff may, with the consent of the seizing creditor, offer the property for sale
16 by an online auction conducted through a computer network or other electronic
17 telecommunications system generally available to the public.

18 B. Notice of a sale by online auction shall be published in accordance with Article
19 2331 and in the manner provided by law. In addition to the other requirements of law, the
20 notice shall state that the sale will be conducted through an online auction, shall identify
21 the electronic address of the platform through which bids can be entered, and shall specify
22 the date of the sale and the time when bidding is scheduled to open.

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

8 D. Before the opening of bidding, the platform on which bidders enter bids for the
9 property shall display or otherwise make accessible the advertisement of the sale, the
10 mortgage certificate, and all other certificates that the sheriff would be required by Article
11 2334 to read aloud at the time and place designated for a sheriff's sale. The platform shall
12 also display the announcement required by Article 2335.

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

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

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

1 domiciliary service. The notice of seizure shall reproduce in full the provisions of Article
2 2642 and include information concerning the ~~availability of housing counseling services,~~
3 ~~as well as the~~ time, date, and place of the sheriff's sale, in accordance with the form
4 provided in R.S. 13:3852(B). If the sheriff's sale is to be conducted through an online
5 auction in accordance with Article 2344, the notice of seizure, or a subsequent notice served
6 upon the defendant at least three days before the sale, shall state that the sheriff's sale will
7 be conducted through an online auction, shall specify the date of the online auction and the
8 time when bidding is scheduled to open, and shall identify the electronic address of the
9 platform through which bids can be entered.

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

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

21 * * *

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

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

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

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

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

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

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

18 THE FOLLOWING PARAGRAPH APPLIES ONLY TO PROPERTY THAT
19 HAS BEEN SEIZED PURSUANT TO A WRIT OF SEIZURE AND SALE ISSUED IN
20 AN EXECUTORY PROCEEDING: As provided in Louisiana Code of Civil Procedure
21 Article 2642, defenses and procedural objections to an executory proceeding may be
22 asserted either through an injunction proceeding to arrest the seizure and sale as provided

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

9 _____

10 Sheriff

11 Parish of _____

12 By: _____"

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

16 * * *

17 §4341. Time and place of sale; adjournments; Orleans Parish excepted

18 A. All public sales by auction, the parish of Orleans excepted, when made by
19 sheriffs, coroners, constables, auctioneers, or succession representatives shall be advertised
20 to take place at the courthouse, any courthouse annex if located in the same parish as the
21 courthouse but on the opposite side of any navigable river, or at some other public place in
22 the vicinity of the courthouse, on any Monday, Wednesday, Friday, or Saturday of the

1 month, beginning at 10:00 a.m., after the expiration of the time required by law for the
2 advertisement of ~~such~~ these sales; and the sheriff, coroner, constable, auctioneer, or
3 succession representative may adjourn the sale to the following legal day, and then, from
4 day to day, only in case there shall not be time to conclude the sale in one day. However,
5 nothing contained ~~herein~~ in this Subsection shall deprive the defendant of the privilege now
6 enjoyed by him of having his movable property, when it is under seizure, offered for sale
7 at his domicile, upon his giving notice to the proper officer within three days after notice
8 of seizure. In the sales of succession property, consisting of only movable property or of
9 both movable and immovable property, the succession representative may pray that the
10 sale of the succession movable property be made on the premises.

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

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

4 * * *

5 §4358. Online auction companies

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

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

18 C. In lieu of a fixed fee in accordance with Subsection B of this Section, the sheriff
19 may, in a specific case and with the consent of the seizing creditor, agree with the auction
20 company that the successful bidder will be charged a buyer's premium in an agreed amount
21 not to exceed one percent of the amount of the successful bid, except that a buyer's premium
22 shall not be charged if the successful bidder is the seizing creditor, the judgment debtor, a

1 lessee of the property sold under a recorded lease, or a person holding a mortgage,
2 privilege, security interest, or other real right burdening the property sold. The amount of
3 any buyer's premium shall be stated conspicuously on the electronic platform on which
4 bidders enter bids for the property. Any buyer's premium shall be remitted directly to the
5 auction company and shall be paid in addition to the amount of the purchase price payable
6 to the sheriff in accordance with Code of Civil Procedure Articles 2374 and 2375. No
7 portion of any buyer's premium shall be taxed as costs or applied to the credit of the writ
8 under which the sale is conducted.

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

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

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

19 G. The contract by which the sheriff engages an auction company to conduct an
20 online auction under this Section shall contain such requirements as the sheriff may impose
21 concerning data security and liability insurance. If the auction company will receive funds
22 from bidders, other than fees earned by the auction company under this Section, the

1 contract shall require the auction company to furnish a fidelity bond in an amount deemed
2 appropriate by the sheriff.

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

8 Comments – 2023

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

12
13 (b) The fee arrangements in Subsections B and C are alternatives and cannot be
14 cumulated. In each instance, the amount of the fee stated is a maximum fee; the sheriff is
15 free to contract with an online auction company for a lesser fee. As Subsection D provides,
16 the court may, after a contradictory hearing, authorize a greater fee in a specific case with
17 exceptional circumstances upon motion of the sheriff or either of the parties. The seizing
18 creditor, the defendant, and other interested parties may contest the motion.

19
20 (c) The fixed fee provided in Subsection B applies separately to each adjudication.
21 Thus, if in the execution of a single writ directed to the sheriff, two properties are exposed
22 to online auction and adjudicated separately, the fixed fee is earned for each of the
23 properties. If, on the other hand, two properties are offered and adjudicated as a single lot,
24 only one fixed fee is earned. If property exposed to online auction is not sold at the first
25 offering for lack of a sufficient bid and is later reoffered and adjudicated at a second
26 offering in accordance with Code of Civil Procedure Article 2336, only one fixed fee is
27 earned, as there was only one adjudication.

28
29 (d) Where the auction company agrees to be compensated by a buyer's premium in
30 accordance with Subsection C but the property is adjudicated to a purchaser who cannot
31 be charged a buyer's premium under the terms of Subsection C, the auction company earns
32 no compensation; it cannot under those circumstances receive a fixed fee under Subsection
33 B.

1 (e) A lease that has become effective against third persons through the recordation
2 of a notice of lease in accordance with R.S. 9:2742 is a “recorded lease” for purposes of
3 Subsection C.
4

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

11 * * *

12 §4360. Resale if required payment not made; resale if adjudicatee fails to pay balance

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

21 B. In the case of a sale conducted by online auction in accordance with Code of
22 Civil Procedure Article 2344, the purchaser shall pay the adjudication price and any
23 buyer’s premium, or the deposit if the terms of the sale provide for a deposit, by 4:30 p.m.
24 on the first day following the sale exclusive of legal holidays as provided in R.S.
25 1:55(E)(3). If the purchaser fails to do so, the seizing creditor may direct the officer
26 conducting the sale either to adjudicate the property to the bidder who submitted the second

1 highest bid at the online auction, if that bidder is still willing to purchase the property for
2 the amount of his bid, or to readvertise the property for sale as provided in Subsection D
3 of this Section. If the property is adjudicated to the second highest bidder, the first
4 purchaser is relieved of any liability.

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

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

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

15 * * *

16 §4369. Actions to set aside or annul online judicial sales

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

1 with the requirements of Code of Civil Procedure Article 2344 or R.S. 13:4358 if the sheriff
2 executing the judicial sale has either filed the proces verbal of the sale or has delivered an
3 act of sale to the purchaser.

4 * * *

5 §5530. Fees in civil matters

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

8 * * *

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

17 * * *

DIGEST

The digest printed below was prepared by the Louisiana State Law Institute. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

SB _____

2023 Regular Session

Foil

Abstract: Provides with respect to online judicial sales

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.

Proposed law clarifies present law.

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.

(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)