**South Carolina General Assembly**

125th Session, 2023-2024

**S. 179**

**STATUS INFORMATION**

General Bill

Sponsors: Senators Climer, Gambrell and Garrett

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Introduced in the Senate on January 10, 2023

Currently residing in the Senate Committee on **Judiciary**

Summary: Judicial Sales

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

11/30/2022 Senate Prefiled

11/30/2022 Senate Referred to Committee on **Judiciary**

1/10/2023 Senate Introduced and read first time ([Senate Journal‑page 97](h:\sj\20230110.docx))

1/10/2023 Senate Referred to Committee on **Judiciary** ([Senate Journal‑page 97](h:\sj\20230110.docx))

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**VERSIONS OF THIS BILL**

[11/30/2022](https://www.scstatehouse.gov/sess125_2023-2024/prever/179_20221130.docx)

A bill

to amend the South Carolina Code of Laws by adding Section 15-39-625 so as to provide for the sale of property by a private selling officer; AND BY AMENDING SECTIONS 15-39-630, 15-39-640, 15-39-650, 15-39-660, 15-39-680, 15-39-700, 15-39-710, 15-39-770, AND 15-39-850 SO AS TO MAKE CONFORMING CHANGES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Article 5, Chapter 39, Title 15 of the S.C. Code is amended by adding:

Section 15-39-625. **(**A) For purposes of this chapter, a ‘private selling officer’ is a person or entity licensed as both an auctioneer in accordance with SC §40‑6‑40 and as a real estate broker, brokerage, or salesperson in accordance with SC §40‑57‑1 and who is not an affiliate or employee of a judgement creditor or mortgage servicer or a subsidiary of a judgement creditor or mortgage servicer.

(B) A judgment creditor may file a motion with the court for an order authorizing a specified private selling officer to conduct the sale of property in this article. The motion requesting appointment of the private selling officer shall include the name, address, and email address of the private selling officer seeking to be appointed. Any denial of such motion by the court shall include good and reasonable cause. The fee charged as a cost to the case by the private selling officer and all costs incurred by the private selling officer shall be in accordance with § 15‑39‑770 but any fees charged under § 15‑39‑770(a) that exceed five hundred dollars ($500) shall be paid to the county treasurer.

(C) Any sheriff, master in equity, private selling officer, or person who is authorized under of this article, making a sale of property governed by this article, may conduct the judicial sale by means of electronic auction conducted online simultaneously with the in‑person sale in conformance with the provisions of this section and advertised in conformance with the provisions of §15‑39‑660.

(D) Any sheriff, probate judge, clerk of court, private selling officer, or master may conduct an online judicial sale of property, provided that:

(1) An online sale must occur at the same time and date as the in‑person sale as designated in the notice requirements of § 15‑39‑630.

(2) Any contract for such services shall require that South Carolina law shall govern the contract and the relationship between vendor and the officer.

(3) Notwithstanding any other provision of law to the contrary, an electronic sale service may be procured through competitive contracting, without the need for a resolution by the governing body.

(4) Any officer or vendor providing online sale services shall maintain industry standard internal security controls. Upon the request of the court or officer evidence of satisfactory internal controls set forth in this section must be provided.

(5) All bid information and participant financial data is deemed property of the officer.

(6) Any officer conducting the sale or vendor, including employees and independent contractors of the vendor, shall be prohibited from participating in any sale.

(7) All bids entered during the sale shall be visible to the public online and displayed at the time the bids are placed. Any maximum bid amounts provided by bidders ahead of the sale shall not be visible to the public or to the officer conducting the sale while the sale is in process until the bid is placed.

(8) If a bid is placed within two minutes of the sale ending the end time of the sale shall be extended an adequate amount of time after such bid is placed to allow for competing bids to be placed. (9) The website shall not charge a fee for members of the public to view properties for sale, and no fee may be charged to a buyer at the sale of property over and above the winning bid amount, including but not limited to, a buyer’s premium.

SECTION 2. Section 15-39-630 of the S.C. Code is amended to read:

Section 15-39-630. Property adjudged to be sold must be sold in the county in which it lies, except as otherwise provided in this article, and in the manner herein provided. All sales of real estate under the orders of the probate court shall be made by the judge of probate. All sales under the order of the court when the title is to be made by the clerk of the circuit court shall be made by the clerk. All sales for which a private selling officer is authorized by the court to conduct the sale pursuant to Section 15-39-625, the designated private selling officer shall make all sales ordered by the court in granting equitable relief, conformable to the practice of the circuit court or to the practice of the courts of equity in this State before such courts were abolished. In those counties in which the office of master exists the master shall make all sales ordered by the court in granting equitable relief, conformable to the practice of the circuit court or to the practice of the courts of equity in this State before such courts were abolished. In all sales for which a private selling officer is authorized by the court to conduct the sale pursuant to Section 15-39-625, the sheriff, master in equity, clerk of the circuit court, or any other person who is authorized under this article to conduct the sale of property shall cooperate with the appointed private selling officer to conduct the sale of the property. And whenever real estate is adjudged to be sold by a master, such sale may take place by consent of the parties to the cause or their attorneys, or, when infants are parties, by consent of their guardians ad litem or their attorneys in any county which the court may direct. Whenever the court of common pleas in any county shall have acquired jurisdiction over real estate lying in another county the master for the county in which the action is brought may sell such real estate in the county in which the land is situated. But when such land is contained in one tract or adjoining tracts lying in more than one county the land may be sold in whatever county the court may fix, and the advertisement shall appear in the county or counties in which the land is situate and in which the land is to be sold. All other judicial sales shall be made by the sheriffs.

SECTION 3. Sections 15-39-640, 15-39-650, 15-39-660, 15-39-680 of the S.C. Code are amended to read:

Section 15-39-640. All judicial sales shall be made by the sheriff, unless otherwise provided by law or ordered by the court. In all such sales made by him his fees shall be such as are allowed by law on sales under executions issuing from the court of common pleas.

Section 15-39-650. The sheriff of every county in this State officer making judicial sales of real estate shall, before he exposes any lands or tenements which he may be directed to sell by virtue of any execution or mortgage, publicly advertise the lands or tenements three weeks immediately previous to the sale day or days on which he means to expose them for sale.

Personal property shall be advertised for fifteen days.

Section 15-39-660. The sheriff officer making judicial sales of real estate shall specify in the advertisement the property to be sold, the time and place of sale, the name of the owner of the property and the party at whose suit the sale is to be made, and the website where online bidding may take place as provided by Section 15-39-625, if applicable, and shall publish the advertisement at three public places in the county, one of which shall be at the courthouse door, and publication shall also be made in some gazette, as provided in Section 15‑39‑650, before the day of sale, if the sale is to be made in a county in which a newspaper may be printed.

Section 15-39-680. The regular day of judicial sales is the first Monday in each month except when the first Monday in any month is a legal holiday in which case the sale day is on the Tuesday next succeeding the holiday. However, the sheriff may sell personal property on any day after fifteen days' advertisement at any convenient place in his county to be designated in the advertisement. If there is not time to dispose of all the property on sale day the next day following is also a regular sale day, if by public outcry on sale day notice of sale on the next day has been given. Judicial sales of property may be conducted at any other time when so ordered by a court of competent authority or when so directed by an order of reference. A judgment creditor may request a date of sale following an approval of a motion to appoint a private selling officer. A request from a judgment creditor must not be reasonably denied.

SECTION 4. Sections 15-39-700 and 15-39-710 of the S.C. Code are amended to read:

Section 15-39-700. The place of sheriff's judicial sales, as to real estate, shall be at the courthouse of the county and may be simultaneously held online as provided in Section 15-39-625. Personalty may be sold at the place whereon it may be found by the sheriff upon levy or such other more convenient place as may be selected.

Section 15-39-710. Every sheriff's sale made by virtue of the directions of an execution shall be for cash. If the purchaser shall fail to comply with the terms aforesaid the sheriff's officer making the sale shall proceed to resell at the risk of the defaulting purchaser either on the same or some subsequent sale day, as the plaintiff may direct, and, in the absence of any direction by the plaintiff, the sheriff sale officer shall resell on the same day, if practicable, and if not on the next succeeding sale day, making in every such case proclamation that he is reselling at the risk of such defaulting former purchaser.

SECTION 5. Section 15-39-770 of the S.C. Code is amended to read:

Section 15-39-770. (A) The officer making judicial sales of real estate may charge as a cost in the case for services rendered in making such sales and in paying over the proceeds of such sales to the parties entitled thereto and for rendering all services in connection with such sales for which a commission fee is authorized by law a fee of seven dollars in case of such sale for a price of five hundred dollars or less, and in the case of a sale for more than five hundred dollars he shall be entitled to an additional fee of one per cent of the excess.

(B)(1) No fees, charges or commissions, other than those herein authorized, may be charged by the officer making such sales, except that:

(a) if such officer acted as referee or master in any case and took testimony, made a report or performed any other service prior to the order or decree of sale he shall be entitled to the regular legal fees therefor; or

(b) if any fees, charges, or commissions may be paid by the judgment creditor directly to the officer making the sale; however, in no event shall such fees, charges, or commissions be included in the calculation of any deficiency judgment or be charged as a cost in the case.

(2) When such officer is upon a salary basis of compensation all such fees, charges and commissions shall be paid to the county treasurer as may be provided by law.

SECTION 6. Section 15-39-850 of the S.C. Code is amended to read:

Section 15-39-850. In all cases in which any sheriff, probate judge, clerk of court, private selling officer, or master shall have legally sold any real or personal estate and such sheriff, probate judge, clerk of court, private selling officer, or master shall die, resign or otherwise go out of office before he shall have executed title therefor to the purchaser, any subsequent sheriff, probate judge, clerk of court, private selling officer, or master of the same county, upon the terms of sale being complied with or satisfactory evidence produced that they have been complied with, may make and execute good and sufficient title to the purchaser for the property so sold.

SECTION 7. This act takes effect upon approval by the Governor.

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