



SPONSOR: Sen. Poore & Rep. K. Williams
Sens. Ennis, Hansen, Walsh

DELAWARE STATE SENATE
150th GENERAL ASSEMBLY

SENATE BILL NO. 134

AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATED TO COURTS AND JUDICIAL
PROCEDURE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend § 4911, Title 10 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 § 4911 Prohibition against levying upon goods in storage warehouse; violation and penalty.

4 (a) No constable in the State shall levy upon or sell or offer to sell or to remove, by virtue of any writ or upon
5 any claim or demand whatsoever, any goods and chattels when such goods and chattels have been placed in, and
6 continue to be in, any storage warehouse. No such goods and chattels, so placed, shall hereafter be seized upon or
7 sold, except by the sheriff of the county in which such goods and chattels are located, after such ~~appraisement and~~
8 advertisement and under like conditions as are required by law in the case of goods and chattels seized and sold by
9 the sheriff under execution process.

10 (b) For purposes of this section, a "storage warehouse" is defined as any facility designed for the commercial
11 storage of goods or a self-service storage facility consisting of real property designed and used for the purposes of
12 renting and leasing individual storage space to occupants who are to have access to such for the purpose of storing
13 and removing personal property.

14 Section 2. Amend § 4952, Title 10 of the Delaware Code by making deletions as shown by strike through and
15 insertions as shown by underline as follows:

16 § 4952 Failure or neglect in execution; penalty.

17 The person to whom such writ of venditioni exponas may be directed, shall, for neglect, or failure, in the execution
18 thereof, or in making return thereon, be subject to all such rules of court, suits, fines, and other process and proceedings, as
19 ~~any sheriff is, or can be liable to in like cases.~~ except that the sheriff shall not be subject to suit or liable for damages.

20 Section 3. Amend Section 5042, Title 10 of the Delaware Code by making deletions as shown by strike through
21 and insertions as shown by underline as follows:

22 § 5042 Inventory ~~and appraisement~~ of unsold goods and chattels.

Where the levy, or ~~seizure, return,~~ by virtue of a fieri facias has been of goods and chattels unsold at the return day, the sheriff shall annex to the writ an inventory of each article of such goods and chattels, ~~with an appraisement of the same, duly made and certified, so that their value may be judged.~~

Section 4. Amend § 5045, Title 10 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

~~§ 5045 Sheriff's neglect in making return.~~

~~If any sheriff neglects to make a return of any writ of fieri facias to him or her directed, in due form and within the time limited in this subchapter, such sheriff shall answer for the debt, damages and costs in the fieri facias mentioned, in the same manner as if he or she had returned thereon, levied to the value of the sum or sums of money therein mentioned, and may be proceeded against accordingly.~~ [Repealed]

Section 5. Amend § 9553, Title 10 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 9553 Levy; inventory.

(a) The goods and chattels seized by virtue of an execution issued by a Justice of the Peace Court shall be inventoried ~~and appraised~~ by the officer levying the same. ~~The officer shall appraise the value of the goods and chattels based upon a readily obtainable reliable industry source for goods of that sort, if available. If no industry source is available, the constable shall appraise the value of the goods based upon training and experience.~~

(b) The property which any debtor is entitled to have set apart under any exemption law of the State shall be set apart and delivered to the debtor at the time when the levy ~~and appraisement~~ is made, in the manner provided by law if requested by the debtor pursuant to Chapter 49 of this title.

Section 6. Amend § 9554(a), Title 10 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows

§ 9554 Sale of goods levied upon; advertisement.(a) The goods and chattels taken on execution issued by a Justice of the Peace Court shall not be sold until ~~10 days after the appraisement, nor until~~ they are advertised for at least 10 days, in at least 5 of the most public places in the neighborhood, by advertisements setting forth the goods to be sold, and the day, hour and place of sale.

Section 7. Amend § 9556(d), Title 10 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 9556 Duty of constable or sheriff upon receipt of execution; return of execution.

(d) If the levy has been made, an inventory ~~and appraisement~~ shall be returned, and shall state as whose property the goods and chattels were seized in execution.

Section 8. Amend § 9557, Title 10 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 9557 Venditioni exponas; issuance; requirements; effect.

(a) If there has been a levy made, but no sale, then an execution of venditioni exponas shall be issued at the request of any party entitled to the judgment.

(b) A copy of the inventory ~~and appraisement~~ shall accompany the ~~writ of venditioni exponas~~; return.

Section 9. Amend § 9559, Title 10 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

~~§ 9559 Failure to return and defective return of execution.~~

~~If any sheriff, or constable, to whom an execution is duly delivered, neglects to return the same according to the command thereof, or to return his or her doing thereon plainly set forth, as required by §§ 9556-9558 of this title, or to annex an inventory and appraisement as required by § 9557 of this title, he or she shall be liable for the amount of the execution as if he or she had levied and received the same. Liability may be enforced by action on the official obligation of the sheriff, or constable, or proceedings may be had against such constable before a justice of the peace, according to § 9561 of this title.~~

Section 10. Amend § 9564, Title 10 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 9564 Execution docket.

Every justice of the peace shall make a fair entry of every execution issued by such justice of the peace, setting down the names of the parties, the day of issuing, and the day when it is returnable, the debt and the costs, how directed, and to whom delivered, and when returned, a copy of the return, ~~and the amount of any appraisement~~, and a note of any further proceedings.

Section 11. Amend § 9585, Title 10 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 9585 Goods and chattels subject to attachment; notice; judgment; creditors.

(a) If any goods, or chattels, are taken on any attachment issued under this subchapter, the constable shall make an inventory, ~~and cause them to be appraised by 2 judicious persons, under oath, or affirmation~~, and annex the inventory to the attachment.

82 (b) The constable shall be responsible for the safe keeping of the goods to be levied on in execution of the
83 plaintiff's judgment when obtained. If the goods are of a perishable nature, they may be sold on the justice's order, and
84 on due notice. The proceeds shall be held by the constable to be so applied, or restored, as is right. The constable's
85 official bond shall embrace both these duties.

SYNOPSIS

Under current Delaware law, the county sheriff's offices are required to appraise goods that are being levied upon to pay debts. In addition, the sheriff's offices can be held liable to pay the debts of a judgment debtor if, for example, they inadvertently neglect to make a return on a writ of execution. The appraisal provisions in Title 10 of the Delaware Code addressed in this act are out-of-date and impractical to implement. On the subject of the liability of the sheriff's offices, it is a questionable policy to require the sheriff's office to pay the debt of a judgment debtor for an inadvertent mistake in handling the procedure to levy upon and sell the debtor's property. This act repeals the appraisal provisions in Title 10 related to the sheriff's offices. It also repeals provisions imposing liability on the sheriff's office to pay debt obligations of debtors who fail to pay their bills, when the sheriff's office commits an error through neglect.

Author: Senator Poore