

2017 Regular Session  
HOUSE BILL NO. 524

# ACT No. 91

BY REPRESENTATIVE SCHRODER

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AN ACT

To repeal Code of Civil Procedure Article 1426.1(E), relative to discovery in civil matters;  
to provide relative to the authority of a district attorney to move to stay discovery in  
certain circumstances; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Code of Civil Procedure Article 1426.1(E) is hereby repealed in its  
entirety.

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_

2017 Regular Session  
HOUSE BILL NO. 129  
BY REPRESENTATIVE DAVIS

# ACT No. 96

1 AN ACT

2 To amend and reenact Code of Civil Procedure Articles 3421 and 3422, relative to  
3 successions; to provide for the definition of a small succession; to provide relative  
4 to court costs; and to provide for related matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. Code of Civil Procedure Articles 3421 and 3422 are hereby amended and  
7 reenacted to read as follows:

8 Art. 3421. Small successions defined

9 A small succession, within the meaning of this Title, is the succession or the  
10 ancillary succession of a person who at any time has died ~~leaving~~ and the decedent's  
11 property in Louisiana ~~having~~ has a gross value of ~~seventy-five~~ one hundred twenty-  
12 five thousand dollars or less valued as of the date of death or, if the date of death  
13 occurred at least ~~twenty-five~~ twenty years prior to the date of filing of a small  
14 succession affidavit as authorized in this Title, leaving property in Louisiana of any  
15 value.

16 Art. 3422. Court costs; compensation

17 In judicial proceedings under this Title, the following schedule of costs,  
18 ~~commissions~~ compensation, and fees shall prevail:

19 (1) Court costs for successions valued less than seventy-five thousand dollars  
20 shall be one-half the court costs in similar proceedings in larger successions, but the  
21 minimum costs in any case shall be five dollars; and

1                   (2) The ~~commission~~ compensation of the succession representative shall be  
2                   not more than five percent of the gross assets of the succession.

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_

SENATE BILL NO. 236

BY SENATOR LAFLEUR

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

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AN ACT

To amend and reenact R.S. 9:5217, R.S. 13:844, R.S. 44:40(A), (B), (C), and (E), 116(A) and (B), and 161, Civil Code Art. 3352(C), and Code of Civil Procedure Art. 258(A), and to enact Code of Civil Procedure Arts. 258(D) and 259, relative to clerks of court; to provide for fees for services rendered; to provide standards for documents to be recorded; to provide alternate means to maintain copies of recorded documents; to provide indexing standards; to require plans for recording electronic documents; to provide relative to redaction and contents of certain personal information in filings and recordings; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 9:5217 is hereby amended and reenacted to read as follows:

§5217. Recorder's fees for multiple indebtedness mortgages; form

~~A.~~ The uniform filing fee that a recorder in any parish of this state is authorized to charge for the filing and recordation of a multiple indebtedness mortgage executed in accordance with Civil Code Article 3298 is ~~twenty-five dollars, plus ten dollars for each subsequent page, and five dollars for each name after the first name that is required to be indexed~~ **as set forth in R.S. 13:844.**

1 Notwithstanding the provisions of R.S. 13:844, R.S. 44:234, or any similar provision  
 2 or any other law to the contrary, the provisions of this Section establish the sole and  
 3 exclusive method of determining the filing and recordation fee for a multiple  
 4 indebtedness mortgage executed in accordance with Civil Code Article 3298,  
 5 regardless of the length of such mortgage.

6 B. For purposes of establishing the recordation fee, every multiple  
 7 indebtedness mortgage filed for recordation shall be captioned as a "multiple  
 8 indebtedness mortgage" or "multiple obligations mortgage" on the first page, and  
 9 shall have on the first page a margin of two inches at the top and one inch at the  
 10 bottom and on each side, and all subsequent pages shall have a margin requirement  
 11 of one inch on all sides. In addition, the type size shall be not less than eight point.

12 C. For any document not in compliance with the requirements of Subsection  
 13 B there shall be an additional noncompliance fee of ten dollars per document.

14 Section 2. R.S. 13:844 is hereby amended and reenacted to read as follows:

15 §844. Fees of ex officio recorders

16 A. (1) Clerks of the district courts as ex officio recorders ~~may~~ **shall** charge the  
 17 following fees **for filing and recording documents**:

18 ~~(1) For filing and recording any document, twenty-five dollars per book for~~  
 19 ~~the first page and ten dollars for each subsequent page per book up to ten pages. All~~  
 20 ~~documents that exceed ten pages, twenty-five dollars for the first page and eight~~  
 21 ~~dollars for each subsequent page.~~

22 **(a) For one to five page documents, one hundred dollars.**

23 **(b) For six to twenty-five page documents, two hundred dollars.**

24 **(c) For twenty-six to fifty page documents, three hundred dollars.**

25 **(d) For documents in excess of fifty pages, three hundred dollars for first**  
 26 **fifty pages and five dollars for each subsequent page.**

27 **(e) For indexing of all documents filed for record for each name after the**  
 28 **tenth name that is required to be indexed, five dollars per name.**

29 **(f) The above set forth fees shall be inclusive of the following:**

30 **(i) Indexing of all documents filed for record for up to ten names.**

1                    (ii) One certified copy of the recorded document or e-certification of  
2                    document.

3                    (g) Notwithstanding any other provision of law to the contrary, there  
4                    shall be a fee of fifty dollars for the recordation of an act or affidavit to cancel  
5                    a single mortgage, lien, or privilege.

6                    (h) If a document is to be recorded and filed in both the mortgage and  
7                    conveyance records, the fees provided in this Section shall be assessed  
8                    separately for recording in the mortgage records and in the conveyance records.

9                    (i) Documents to be recorded may be either on eight-and-one-half-inch-  
10                    by-eleven-inch paper or on eight-and-one-half-inch-by-fourteen-inch paper and  
11                    the recording fees set forth in this Section shall be the same regardless of which  
12                    size paper is used. For any other size paper, there shall be an additional fee of  
13                    twenty dollars per page.

14                    ~~(2) For indexing of all documents filed for record for each name after the first~~  
15                    ~~name that is required to be indexed, five dollars per name.~~

16                    ~~(3) For notarizing acknowledgments of acts executed under private signature,~~  
17                    ~~with seal and certificate, five~~ **ten** ~~dollars.~~

18                    ~~(4)(3) For certificate of real estate mortgage and lien certificate with seal, for~~  
19                    ~~each name in which search is made, and for one definable property only, twenty~~  
20                    ~~dollars for the first name and ten dollars for each additional name. There shall be an~~  
21                    ~~additional charge of one dollar per exception in the event that more than ten~~  
22                    ~~exceptions are contained on a certificate.~~

23                    ~~(5)(4) For canceling real estate mortgage, with original note, ten dollars.~~

24                    ~~(6)(5) For making copies of all official documents, no more than two dollars~~  
25                    ~~per page.~~

26                    ~~(7)(6) For~~ **Except as provided in R.S. 13:844(A)(1)(f)(ii), for** ~~attesting any~~  
27                    ~~record or copy thereof, five~~ **ten** ~~dollars.~~ **For a file-stamped conformed copy, five**  
28                    **dollars.**

29                    ~~(8) For canceling of lien for paving or installation of sewerage system, ten~~  
30                    ~~dollars.~~

1           B. ~~(1)~~ The funds derived by the clerk of court in the parish of Calcasieu from  
 2           that portion of the fees collectable pursuant to this Subsection above the amount of  
 3           such fees collectable at the rates provided by R.S. 13:844 prior to the amendment  
 4           thereof at the 1981 Regular Session of the Legislature shall be expended exclusively  
 5           for the payment of salaries of deputy clerks of court in that parish. As used in this  
 6           Section, a "document" is defined as those pages presented together for filing or  
 7           recording, inclusive of the act, together with exhibits, riders, or additional  
 8           documents attached thereto, including but not limited to powers of attorney,  
 9           property description exhibits, tax certificates and researches, mortgage  
 10           certificates, resolutions, certificates, and surveys.

11           (2) Every document filed for recordation shall be captioned as to type of  
 12           act on the first page, and shall have on the first page a margin of two inches at  
 13           the top and one inch at the bottom and sides. The type size shall not be less than  
 14           eight point.

15           C. In addition to the above charges, the clerks of court as ex officio notaries  
 16           public may make a reasonable charge for drawing deeds, mortgages, chattel  
 17           mortgages, liens, or other similar instruments.

18           ~~D. (1) For purposes of establishing the filing and recording fee, every~~  
 19           ~~document filed for recordation shall be captioned as to type of act on the first page,~~  
 20           ~~and shall have on the first page a margin of two inches at the top, and one inch at the~~  
 21           ~~bottom and sides. The type size shall not be less than eight point.~~

22           ~~(2) For any document not in compliance with Paragraph (1) above, there shall~~  
 23           ~~be an additional ten-dollar noncompliance fee per document.~~

24           ~~E. In addition to the fees provided in Subsection A of this Section, the clerk~~  
 25           ~~of the Twenty-Fourth Judicial District for the parish of Jefferson may demand and~~  
 26           ~~receive additional fees in an amount not to exceed twenty-five percent of the fees~~  
 27           ~~specified in Subsection A of this Section. The funds so derived by the clerk shall be~~  
 28           ~~expended exclusively for the payment of salaries of deputy clerks of court in that~~  
 29           ~~parish.~~

30           Section 3. R.S. 44:40(A), (B), (C), and (E), 116 (A) and (B), and 161 are hereby

1 amended and reenacted to read as follows:

2 §40. Additional copies of records ~~by microphotographic process~~; purchase of  
3 equipment; funds available for payment; copies of suit records

4 A. The several clerks of court and ex officio recorders and registers of  
5 conveyances and recorders of mortgages, throughout the state, are hereby authorized  
6 at their option to make additional copies, by any means ~~of the microphotographic~~  
7 ~~process, of all original acts and/or records thereof, including criminal records~~  
8 **authorized by R.S. 44:116**, of every nature and kind in their custody by virtue of  
9 their various official capacities as such clerks of court and ex officio recorders and  
10 registers of conveyances and recorders of mortgages, filed or recorded in their  
11 offices prior to July 29, 1964, and subsequent thereto.

12 B. Such clerks of court and ex officio recorders and registers are hereby  
13 authorized to purchase the necessary ~~microphotographic~~ equipment ~~and equipment~~  
14 ~~used to retrieve from storage microfilm copies~~ **for photorecording, photocopying,**  
15 **microfilming, or electronic imaging**, to lease such equipment or to contract with  
16 competent independent contractors, or both, according to the discretion of ~~said~~ **the**  
17 clerks of court and ex officio recorders and registers, to cause the records described  
18 in this section **Section** to be copied and reproduced ~~by means of the~~  
19 ~~microphotographic process~~.

20 C. Each such clerk of court and ex officio recorder and register is hereby  
21 authorized to defray the cost of copying, reproducing, and retrieving the records  
22 described in this section, ~~including the cost of microphotographic and retrieval~~  
23 ~~equipment and services~~, **Section** out of any funds available in the clerk's salary fund.

24 \* \* \*

25 E. **The Notwithstanding the provisions of Subsection A of this Section or**  
26 **any other provision of law to the contrary, prior to destroying the original**  
27 **criminal records and any other records of every nature and kind that are**  
28 **deemed permanent under a record retention and disposal schedule adopted by**  
29 **the secretary of state and the clerks of court in accordance with R.S. 44:410 and**  
30 **411, the destruction of which is authorized by R.S. 13:917, the** several clerks of



1 court, including the clerks of the Criminal or Civil District Courts for the parish of  
 2 Orleans, shall make and retain in their custody, ~~by means of the microphotographic~~  
 3 ~~process, a copy of all original criminal and civil records of every nature and kind,~~  
 4 ~~which are deemed permanent under a record retention and disposal schedule adopted~~  
 5 ~~by the secretary of state and the clerks of court in accordance with R.S. 44:410 and~~  
 6 ~~411. The clerks of court may then destroy the original criminal records and any other~~  
 7 ~~records, the destruction of which is authorized by R.S. 13:917, which have been so~~  
 8 ~~copied and retained~~ **a copy of such records electronically on nonrewritable**  
 9 **magnetic, optical, or laser-type storage media, including but not limited to**  
 10 **CD-ROM. No cause of action for any claim shall exist against a clerk of court**  
 11 **for any damage or loss resulting from the destruction of an original record after**  
 12 **proper preservation of the record in accordance herewith.** However, all records  
 13 in suits affecting records relating to immovable property, or adoption, interdiction,  
 14 successions, trusts, or emancipation created prior to 1922 shall be retained in their  
 15 original form.

16 \* \* \*

17 §116. Photostatic, photographic, microfilm, or other photographic or electronic  
 18 copies of records; indexes of conveyance and mortgage records;  
 19 disposition; evidentiary status; preservation

20 A. In all cases where the clerks of court and recorders of the various parishes  
 21 throughout the state, Orleans Parish excepted, are required by law to make records  
 22 of filings, documents, pleadings, and all other written instruments, **except including**  
 23 indexes, and registers of the same, such records may be made by any method of  
 24 photorecording, photocopying, microfilming, or other photographic method of  
 25 reproduction or electronically on non-rewritable magnetic, optical, or ~~laser-type~~  
 26 **laser-type** storage media, including but not limited to CD-ROM. However, the film  
 27 stock used in making photographic or microphotographic copies and the processing  
 28 of the copies shall comply with the standards of the American National ~~Standard~~  
 29 **Standards** Institute for permanent record photographic microcopying film and the  
 30 electronic media used shall comply with the standards of the International Standards

1 Organization for electronic storage of records.

2 B. Whenever recordation by means of photorecording, photocopying,  
 3 microfilming, or other photographic method of reproduction is used or when  
 4 electronic recordation on non-rewritable magnetic, optical, or ~~laser-type~~ **laser-type**  
 5 storage media is used, any requirement expressed or implied in law for the above-  
 6 mentioned records, ~~other than~~ **including** indexes and registers of the same, to be  
 7 maintained in a book or bound volume shall be satisfied by the appropriate storage  
 8 unit of microfilm or other photographic method employed, or tape or disk; however,  
 9 ~~the originals of conveyances, probate, mortgage, and other permanent records~~  
 10 ~~required by existing law to be kept for all time shall continue to be maintained in a~~  
 11 ~~book or bound volume and shall remain subject to~~ **if a clerk of court elects to**  
 12 **record by means of microfilming or other photographic method of**  
 13 **reproduction, or electronically, he shall have copies of the films, tapes, or disks**  
 14 **available for inspection,** examination, and copying under the provisions of R.S.  
 15 44:31 et seq., and other applicable laws.

16 \* \* \*

17 §161. Double index; form and contents

18 Recorders shall keep indexes, both direct and inverse, to all acts filed for  
 19 record in their respective offices which indexes shall contain, in alphabetical order,  
 20 references to the names of the parties to the acts, to the file number assigned on  
 21 recordation to the day, month, and year in which they are recorded, and to the book  
 22 and page in which they are recorded. **In addition to these requirements, all**  
 23 **recorders shall adopt and adhere to any indexing standards that have been**  
 24 **promulgated by the Louisiana Clerks' Remote Access Authority, as provided**  
 25 **for in R.S. 13:754.**

26 Section 4. Civil Code Article 3352(C) is hereby amended and reenacted to read as  
 27 follows:

28 Art. 3352. Recorded acts; required information

29 \* \* \*

30 C. The recorder shall ~~only display~~ **display only** the last four digits of the

1 social security numbers or taxpayer identification numbers listed on instruments  
 2 that his office makes available for viewing on the Internet.

3 Section 5. Code of Civil Procedure Article 258(A) is hereby amended and reenacted  
 4 and Code of Civil Procedure Articles 258(D) and 259 are hereby enacted to read as follows:

5 Art. 258. Electronic filing and recording of written instruments

6 A. Notwithstanding any provision of law to the contrary, a clerk of court, as  
 7 ex officio recorder, the Orleans Parish register of conveyances, or its successor, or  
 8 the Orleans Parish recorder of mortgages or its successor, hereinafter referred to as  
 9 "recorder," is authorized ~~but not required~~ to adopt and implement a published plan  
 10 which shall include a written contract between the clerk of court, the Orleans Parish  
 11 register of conveyances, or its successor, or the Orleans Parish recorder of  
 12 mortgages, or its successor, and the filer, which complies with the Louisiana  
 13 Uniform Electronic Transactions Act, R.S. 9:2601 et seq., and which provides for the  
 14 acceptance of an electronic record of any recordable written instrument except  
 15 original maps, plats, property descriptions, or photographs as related to the work of  
 16 a professional surveyor engaged in the "Practice of Land Surveying" as defined in  
 17 R.S. 37:682 for filing and recording submitted by any person, department, political  
 18 subdivision, agency, branch, entity, or instrumentality of Louisiana or of the federal  
 19 government or of a state-chartered or federally chartered financial institution insured  
 20 by the Federal Deposit Insurance Corporation or the National Credit Union  
 21 Administration. The filer of such an electronic record shall certify to the recorder  
 22 that the written instrument from which the electronic record is taken conforms to all  
 23 applicable laws relating to the form and content of instruments which are submitted  
 24 in writing.

25 \* \* \*

26 **D. On or before January 1, 2022, each clerk of court, including the**  
 27 **Orleans Parish register of conveyances or its successor and the Orleans Parish**  
 28 **recorder of mortgages or its successor, shall adopt and implement a plan for**  
 29 **recording electronic documents in accordance with Paragraph A of this Article.**

30 **Art. 259. Liability of clerk of court**

1                    The clerk of court shall not be liable for any damages caused by any  
2                    third party to any information included in pleadings or documents filed of  
3                    record by the clerk of court.

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PRESIDENT OF THE SENATE

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_

2017 Regular Session  
HOUSE BILL NO. 121  
BY REPRESENTATIVE GREGORY MILLER

# ACT No. 198

(On Recommendation of the Louisiana State Law Institute)

1 AN ACT

2 To amend and reenact Code of Civil Procedure Article 3396.18, relative to the independent  
3 administration of estates; to provide for the sealing of the detailed descriptive list;  
4 to provide court authorization for the release of relevant information to certain  
5 parties; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. Code of Civil Procedure Article 3396.18 is hereby amended and reenacted  
8 to read as follows:

9 Art. 3396.18. Inventory or sworn descriptive list

10 A. Before the succession can be closed and the independent administrator  
11 discharged, there must be filed an inventory or sworn detailed descriptive list of  
12 assets and liabilities of the estate verified by the independent administrator.

13 B. ~~A successor shall not be placed in possession of property without the~~  
14 ~~filing of an inventory or sworn descriptive list of assets and liabilities. The successor~~  
15 ~~may be placed in possession by a final or partial judgment of possession. The~~  
16 detailed descriptive list shall be sealed upon the request of an independent  
17 administrator, heir, or legatee.

18 C. If the detailed descriptive list is sealed, a copy shall be provided to the  
19 decendent's universal successors and surviving spouse. Upon motion of any  
20 successor, surviving spouse, or creditor of the estate, the court may furnish relevant

1 information contained in the detailed descriptive list regarding assets and liabilities  
2 of the estate.

3 Revision Comments - 2017

4 (a) The 2017 revision changes the law insofar as it attempts to strike an  
5 appropriate balance between publicity regarding the assets and liabilities of a  
6 decedent and privacy of the decedent and his successors.

7 (b) Paragraph A maintains the prior law requiring the production and filing  
8 of the detailed descriptive list. Under Paragraph B of the revision, however, the  
9 independent administrator or an heir or legatee of the decedent may request that the  
10 detailed descriptive list be sealed and therefore shielded from general availability to  
11 the public.

12 (c) Paragraph C recognizes that the privacy of the parties requesting the  
13 sealing of the detailed descriptive list cannot prejudice the rights of those parties with  
14 a legitimate interest in the assets and liabilities of the succession. Therefore, if  
15 sealed, copies of the detailed descriptive list must be provided to all of the decedent's  
16 universal successors as well as the surviving spouse. Even after the sealing of the  
17 detailed descriptive list, these same parties may have a need for the information at  
18 a later time. Other parties, such as particular legatees or creditors of the estate, may  
19 also have a legitimate interest in relevant information regarding the assets and  
20 liabilities of the decedent. Consequently, upon appropriate motion of any successor,  
21 surviving spouse, or creditor of the estate, a court may provide information that, in  
22 the court's discretion, is relevant to the party's request. The appropriate information  
23 to be furnished to the requesting party is likely to differ depending upon the  
24 requesting party and the reason for the request. In some instances, it may be  
25 appropriate for the court to furnish the entire detailed descriptive list to the  
26 requesting party, but in other instances a redacted version or excerpted portion may  
27 be more appropriate.

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_

2017 Regular Session  
HOUSE BILL NO. 227  
BY REPRESENTATIVE SHADOIN

# ACT No. 268

1 AN ACT

2 To amend and reenact Code of Civil Procedure Article 1446(A)(1), relative to depositions;  
3 to provide procedures for the sealing of certain depositions; to provide for delivery  
4 of electronically sealed depositions; and to provide for related matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. Code of Civil Procedure Article 1446(A)(1) is hereby amended and  
7 reenacted to read as follows:

8 Art. 1446. Certification by officer; custody of deposition; exhibits; copies; notice  
9 of availability for inspection or copying; cost of originals and copies of  
10 transcripts

11 A.(1)(a) The officer as defined in Article 1434(B) shall certify on the  
12 deposition that the witness was duly sworn and that the deposition is a true record  
13 of the testimony given by the witness.

14 (b) The officer shall do either of the following:

15 (i) Securely ~~He shall then securely~~ seal the deposition in an envelope  
16 endorsed with the title of the action and marked "Deposition of (here insert name of  
17 witness)" and shall promptly and simultaneously send it by United States mail or by  
18 courier to the party at whose request the deposition was taken, who shall become the  
19 custodian of the deposition, and to all other parties to the action who have ordered  
20 a copy of the deposition transcript.

21 (ii) At the request of the parties, seal the deposition electronically by secure  
22 electronic means approved by rules promulgated by the Louisiana Board of  
23 Examiners of Certified Shorthand Reporters and shall promptly and simultaneously  
24 deliver the deposition electronically to the party at whose request the deposition was

1           taken and to all other parties to the action who have ordered a copy of the deposition  
 2           transcript. The party at whose request the deposition was taken shall then become the  
 3           custodian of the deposition.

4                     (c) The original of the deposition shall not be filed in the record, but shall be  
 5           made available to all other parties in the matter for inspection or copying. The  
 6           failure or lack of filing such original in the record shall not affect the use or  
 7           admissibility of the original at trial or by the court if otherwise authorized or  
 8           provided by law.

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 SPEAKER OF THE HOUSE OF REPRESENTATIVES

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 PRESIDENT OF THE SENATE

\_\_\_\_\_  
 GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_



SENATE BILL NO. 121

BY SENATOR WARD

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

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AN ACT

To amend and reenact Code of Civil Procedure Articles 1421 and 1464, R.S. 23:1123, 1124, 1203(E), 1221(4)(s)(ii), 1307 and 1317.1, R.S. 39:1952(14)(e), and R.S. 46:2136(A)(4), relative to court-ordered and other mandatory physical and mental examinations; to provide relative to such examinations in certain civil and administrative matters, procedures, and claims; to provide for consistency in terminology and nomenclature, and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Code of Civil Procedure Articles 1421 and 1464 are hereby amended and reenacted to read as follows:

Art. 1421. Discovery methods

Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations, **including additional medical opinions under Article 1464**; request for release of medical records; and requests for admission. Unless the court orders otherwise under Article 1426, the frequency of use of these methods is not limited.

\* \* \*

Art. 1464. Order for **an additional medical opinion for** physical or mental examination of persons

**A.** When the mental or physical condition of a party, or of a person in the

1 custody or under the legal control of a party, is in controversy, the court in which the  
 2 action is pending may order the party to submit to a **an additional medical opinion**  
 3 **regarding** physical or mental examination by a physician or to produce for  
 4 examination the person in his custody or legal control, except as provided by law. In  
 5 addition, the court may order the party to submit to an **additional medical opinion**  
 6 **regarding an** examination by a vocational rehabilitation expert or a licensed clinical  
 7 psychologist who is not a physician, provided the party has given notice of intention  
 8 to use such an expert. The order may be made only on motion for good cause shown  
 9 and upon notice to the person to be examined and to all parties and shall specify the  
 10 time, place, manner, conditions, and scope of the examination and the person or  
 11 persons by whom it is to be made.

12 **B. Regardless of the number of defendants, a plaintiff shall not be**  
 13 **ordered to submit to multiple examinations by multiple physicians within the**  
 14 **same field of specialty for the same injury except for good cause shown.**

15 **C. A minor subject to examination under the provisions of this Article**  
 16 **shall have the right to have a parent, tutor, or legal guardian present during the**  
 17 **examination. If such person cannot be present, the court shall order the**  
 18 **examination to be videotaped at the expense of the party being examined. The**  
 19 **court shall consider the best interests of the minor and may impose conditions**  
 20 **upon videotaping, including that it be done in a manner least harmful to the**  
 21 **minor and without disclosure to the minor.**

22 Section 2. R.S. 23:1123, 1124, 1203(E), 1221(4)(s)(ii), 1307 and 1317.1 are hereby  
 23 amended and reenacted to read as follows:

24 §1123. Disputes as to condition or capacity to work; **additional medical opinion**  
 25 **regarding an** examination under supervision of the director

26 If any dispute arises as to the condition of the employee, or the employee's  
 27 capacity to work, the director, upon application of any party, shall order an  
 28 **additional medical opinion regarding an** examination of the employee to be made  
 29 by a medical practitioner selected and appointed by the director. The medical  
 30 examiner shall report his conclusions from the examination to the director and to the

1 parties and such report shall be prima facie evidence of the facts therein stated in any  
2 subsequent proceedings under this Chapter.

3 §1124. Refusal to submit to **an additional medical opinion regarding an**  
4 examination; effect on right to compensation

5 If the employee refuses to submit himself to **an additional medical opinion**  
6 **regarding** a medical examination at the behest of the employer or an examination  
7 conducted pursuant to R.S. 23:1123, or in anywise obstructs the same, his right to  
8 compensation and to take or prosecute any further proceedings under this Chapter  
9 may be suspended by the employer or payor until the examination takes place. Such  
10 suspension of benefits by the employer or payor shall be made in accordance with  
11 the provisions of R.S. 23:1201.1(A)(4) and (5). When the employee has filed a  
12 disputed claim, the employer or payor may move for an order to compel the  
13 employee to appear for an **additional medical opinion regarding an** examination.  
14 The employee shall receive at least fourteen days written notice prior to the  
15 **additional medical opinion regarding an** examination. When a right to  
16 compensation is suspended no compensation shall be payable in respect to the period  
17 of suspension.

18 \* \* \*

19 §1203. Duty to furnish medical and vocational rehabilitation expenses; prosthetic  
20 devices; other expenses

21 \* \* \*

22 E. Upon the first request for authorization pursuant to R.S. 23:1142(B)(1),  
23 for a claimant's medical care, service, or treatment, the payor, as defined in R.S.  
24 23:1142(A)(1), shall communicate to the claimant information, in plain language,  
25 regarding the procedure for requesting an ~~independent~~ **additional medical opinion**  
26 **regarding a** medical examination in the event a dispute arises as to the condition of  
27 the employee or the employee's capacity to work, and the procedure for appealing  
28 the denial of medical treatment to the medical director as provided in R.S. 23:1203.1.  
29 A payor shall not deny medical care, service, or treatment to a claimant unless the  
30 payor can document a reasonable and diligent effort in communicating such

1 information. A payor who denies medical care, service, or treatment without making  
2 such an effort may be fined an amount not to exceed five hundred dollars or the cost  
3 of the medical care, service, or treatment, whichever is more.

4 \* \* \*

5 §1221. Temporary total disability; permanent total disability; supplemental earnings  
6 benefits; permanent partial disability; schedule of payments

7 Compensation shall be paid under this Chapter in accordance with the  
8 following schedule of payments:

9 \* \* \*

10 (4) Permanent partial disability. In the following cases, compensation shall  
11 be solely for anatomical loss of use or amputation and shall be as follows:

12 \* \* \*

13 (s)(i) \* \* \*

14 (ii) In any claim for an injury, it must be established by clear and convincing  
15 evidence that the employee suffers an injury and that such resulted from an accident  
16 arising out of and in the course and scope of his employment. Nothing herein shall  
17 limit the right of any party to obtain a second medical opinion or, in appropriate  
18 cases, the opinion of an ~~independent~~ **additional medical opinion** medical examiner  
19 pursuant to R.S. 23:1123.

20 \* \* \*

21 §1307. Information to injured employee

22 Upon receipt of notice of injury from the employer or other indication of an  
23 injury reportable under R.S. 23:1306, the office shall mail immediately to the injured  
24 employee and employer a brochure which sets forth in clear understandable language  
25 a summary statement of the rights, benefits, and obligations of employers and  
26 employees under this Chapter, together with an explanation of the operations of the  
27 office, and shall invite the employer and employee to seek the advice of the office  
28 with reference to any question or dispute which the employee has concerning the  
29 injury. Such brochure shall specifically state the procedure for requesting an  
30 ~~independent~~ **additional medical opinion regarding a** medical examination in the

1 event a dispute arises as to the condition of the employee or the employee's capacity  
 2 to work and the procedure for appealing the denial of medical treatment to the  
 3 medical director as provided in R.S. 23:1203.1. If such brochure has previously been  
 4 mailed to an employer within the calendar year, the office shall not mail ~~such~~ the  
 5 employer an additional brochure unless the employer specifically requests ~~such~~ it.

6 \* \* \*

7 §1317.1. ~~Independent~~ Additional medical opinion regarding medical  
 8 examinations

9 A. Any party wishing to request an ~~independent~~ additional medical opinion  
 10 regarding a medical examination of the claimant pursuant to R.S. 23:1123 and  
 11 1124.1 shall be required to make its request at or prior to the pretrial conference.  
 12 Requests for ~~independent~~ additional medical opinions regarding medical  
 13 examinations made after that time shall be denied except for good cause or if it is  
 14 found to be in the best interest of justice to order such examination.

15 B. An examiner performing ~~independent~~ additional medical opinion exams  
 16 pursuant to R.S. 23:1123 shall be required to prepare and send to the office a  
 17 certified report of the examination within thirty days after its occurrence.

18 C. The report of the examination shall contain the following, when  
 19 applicable:

20 (1) A statement of the medical and legal issues the examiner was asked to  
 21 address.

22 (2) A detailed summary of the basis of the examiner's opinion, including but  
 23 not limited to a listing of reports or documents reviewed in formulating that opinion.

24 (3) The medical treatment and physical rehabilitative procedures which have  
 25 already been rendered and the treatment, if any, which the examiner recommends for  
 26 the future, together with reasons for the recommendation.

27 (4) Any other conclusions required by the scope of the ~~independent~~  
 28 additional medical opinion regarding a medical examination, together with  
 29 reasons for the conclusion reached.

30 (5) A curriculum vitae of the examiner.

1 (6) A written certification personally signed by the examiner that the report  
2 is true. The substance of the certification shall be: "I certify that I have caused this  
3 report to be prepared, I have examined it, and to the best of my knowledge and  
4 belief, all statements contained herein are true, accurate, and complete."

5 D. If a physical examination of the claimant was conducted, the certified  
6 report shall contain all of the following additional information:

7 (1) A complete history of the claimant, including all previous relevant or  
8 contributory injuries with a detailed description of the present injury.

9 (2) The complaints of the claimant.

10 (3) A complete listing of tests and diagnostic procedures conducted during  
11 the course of the examination.

12 (4) The examiner's findings on examination, including but not limited to a  
13 description of the examination and any diagnostic tests and X-rays.

14 E. When the ~~independent~~ **additional medical opinion** medical examiner's  
15 report is presented within thirty days as provided in this Section:

16 (1) The examiner shall be protected from subpoena except for a single trial  
17 deposition. However, upon a proper motion for cause, the workers' compensation  
18 judge may order further discovery of the ~~independent~~ **additional medical opinion**  
19 **by a** medical examiner as deemed appropriate.

20 (2) Except to schedule the deposition or further discovery as described above,  
21 the office of the ~~independent~~ **additional medical opinion** medical examiner shall not  
22 be contacted regarding the claimant by any party, attorney, or agent.

23 F. Objections to the ~~independent~~ **additional medical opinion regarding a**  
24 medical examination shall be made on form LDOL-WC-1008, and shall be set for  
25 hearing before a workers' compensation judge within thirty days of receipt. No  
26 mediation shall be scheduled on disputes arising under this Section.

27 Section 3. R.S. 39:1952(14)(e) is hereby amended and reenacted to read as follows:  
28 §1952. Definitions

29 Unless the context requires otherwise, the following words shall have the  
30 following meanings:

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\* \* \*

(14) "Minority" means a person who is a citizen or permanent resident of the United States residing in Louisiana and who is any of the following:

\* \* \*

(e) Person with a disability: a person who has a permanent physical impairment which includes any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, speech organs, skin, and endocrine, which substantially limits at least one major life activity of an individual, as defined in R.S. 28:477(3)(a), as verified by two physicians or as certified by the United States Department of Veterans Affairs as meeting the qualifications and approved by the division. The division may require an additional ~~independent~~ **medical opinion regarding a** medical examination by a physician chosen by the division, at the applicant's expense, prior to approval of an application. For the purpose of this Subparagraph, "disability" shall not mean mental impairment, temporary impairment, alcohol or drug addiction, sexual or behavioral disorders, or substantially limiting illnesses including human immunodeficiency virus.

\* \* \*

Section 4. R.S. 46:2136(A)(4) is hereby amended and reenacted to read as follows:  
§2136. Protective orders; content; modification; service

A. The court may grant any protective order or approve any consent agreement to bring about a cessation of domestic abuse as defined in R.S. 46:2132(3), or the threat or danger thereof, to a party, any minor children, or any person alleged to be incompetent, which relief may include but is not limited to:

\* \* \*

(4)(a) Ordering **an additional medical opinion regarding** a medical evaluation of the defendant or the abused person, or both, to be conducted by an independent court-appointed evaluator who qualifies as an expert in the field of domestic abuse. The evaluation shall be conducted by a person who has no family, financial, or prior medical relationship with the defendant or abused person, or their

1 attorneys of record.

2 (b) If the **additional medical opinion** medical evaluation is ordered for both  
3 the defendant and abused person, two separate evaluators shall be appointed.

4 (c) After ~~an independent~~ **an additional medical opinion** medical evaluation  
5 has been completed and a report issued, the court may order counseling or other  
6 medical treatment as deemed appropriate.

7 \* \* \*

8 Section 5. This Act shall become effective upon signature by the governor or, if not  
9 signed by the governor, upon expiration of the time for bills to become law without signature  
10 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
11 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
12 effective on the day following such approval.

\_\_\_\_\_  
PRESIDENT OF THE SENATE

\_\_\_\_\_  
SPEAKER OF THE HOUSE OF REPRESENTATIVES

\_\_\_\_\_  
GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_



2017 Regular Session

# ACT No. 406

HOUSE BILL NO. 83

BY REPRESENTATIVE MARINO

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AN ACT

To amend and reenact Code of Criminal Procedure Articles 551(B), 553(A) and (C), 831, 832, 833(A) and (C), and 900(A)(introductory paragraph), (B), and (C) and to enact Code of Criminal Procedure Articles 556(E), 556.1(F), and 562, relative to presence of the defendant; to provide relative to an incarcerated defendant's appearance at arraignment, the entry of his plea, and probation violation hearing; to authorize the incarcerated defendant to appear by way of simultaneous audio-visual transmission; to provide the procedure and requirements for using simultaneous audio-visual transmission; to provide relative to a defendant's waiver of certain rights; to provide relative to the use of electronic signatures; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Code of Criminal Procedure Articles 551(B), 553(A) and (C), 831, 832, 833(A) and (C), and 900(A)(introductory paragraph), (B), and (C) are hereby amended and reenacted and Code of Criminal Procedure Articles 556(E), 556.1(F), and 562 are hereby enacted to read as follows:

Art. 551. Arraignment of defendant

\* \* \*

~~B. Nothing in this Article shall prohibit the court, by local rule, or the defense counsel from providing for a defendant's appearance at his arraignment by simultaneous audio-visual transmission.~~ The court may, by local rule, provide for the defendant's appearance at the arraignment, and at the entry of his plea of guilty, or both, by way of simultaneous transmission through audio-visual electronic equipment in accordance with the provisions of Article 562.

\* \* \*

1 Art. 553. Method of pleading

2 A. Except when otherwise provided under Paragraph B of this Article or by  
3 local rule in accordance with ~~Article~~ Articles 551 and 562, the defendant in a felony  
4 case shall plead in person. In misdemeanor cases, the defendant may plead not guilty  
5 through counsel, may plead guilty through counsel with consent of the court, may  
6 appear at arraignment, at the entry of his plea of guilty, or both, by way of  
7 simultaneous audio-visual transmission in accordance with local rules of court and  
8 Articles 551 and 562, and may plead and be arraigned in accordance with procedures  
9 established according to R.S. 32:57(C). A corporation may plead through counsel  
10 in all cases. The plea shall be made in open court and shall be immediately entered  
11 in the minutes of the court. A failure to enter a plea in the minutes shall not affect  
12 the validity of any proceeding in the case.

13 \* \* \*

14 C. Nothing in this Article ~~shall prohibit~~ prohibits the court, by local rule,  
15 from providing for a defendant's appearance at his arraignment, at the entry of his  
16 plea of guilty, or both, by simultaneous audio-visual transmission in accordance with  
17 the provisions of Articles 551 and 562. ~~For good cause shown, defense counsel may~~  
18 ~~request, and the court may require the defendant's appearance in open court.~~

19 \* \* \*

20 Art. 556. Plea of guilty or nolo contendere in misdemeanor cases; duty of court

21 \* \* \*

22 E. Nothing in this Article prohibits the court, by local rule, from providing  
23 for a defendant's appearance at the entry of his plea of guilty or nolo contendere by  
24 simultaneous audio-visual transmission in accordance with the provisions of Articles  
25 551 and 562.

26 Art. 556.1. Plea of guilty or nolo contendere in felony cases; duty of court

27 \* \* \*

28 F. Nothing in this Article prohibits the court, by local rule, from providing  
29 for a defendant's appearance at the entry of his plea of guilty or nolo contendere by

1 simultaneous audio-visual transmission in accordance with the provisions of Articles  
2 551 and 562.

3 \* \* \*

4 Art. 562. Use of simultaneous audio-visual transmission for certain proceedings

5 A.(1) In a case where the offense is a felony or an enhanceable  
6 misdemeanor, the defendant, who is confined in a jail, prison, or other detention  
7 facility in Louisiana, may, with the court's consent and the consent of the district  
8 attorney, appear at the arraignment, at any preliminary matter or pretrial conference  
9 that does not involve the taking of testimony, at the entry of his plea of guilty, and  
10 at any revocation hearing for a probation violation, including any hearing for a  
11 contempt of court, by simultaneous audio-visual transmission if the court, by local  
12 rule, provides for the defendant's appearance in this manner and the defendant  
13 waives, in accordance with the provisions of Paragraph D of this Article, his right to  
14 be physically present at the proceeding.

15 (2) In a case where the offense is not a felony and is not an enhanceable  
16 misdemeanor, the court, with the consent of the district attorney, may require the  
17 defendant, who is confined in a jail, prison, or other detention facility in Louisiana,  
18 to appear at the arraignment, at any preliminary matter or pretrial conference that  
19 does not involve the taking of testimony, at the entry of his plea of guilty, and at any  
20 revocation hearing for a probation violation, including any hearing for a contempt  
21 of court, by simultaneous audio-visual transmission if the court, by local rule,  
22 provides for the defendant's appearance in this manner.

23 (3) For purposes of this Paragraph, "enhanceable misdemeanor" means a  
24 misdemeanor offense that provides increased or enhanced penalties for a subsequent  
25 conviction of the offense or that provides increased or enhanced penalties when  
26 certain elements are present during the commission of the offense.

27 B. Notwithstanding the provisions of Paragraph A of this Article, in a capital  
28 case, the defendant may not enter his plea by simultaneous audio-visual  
29 transmission.

1           C. If the defendant is represented by an attorney during the proceeding in  
 2           which a simultaneous audio-visual transmission system is used, the attorney may  
 3           elect to be present either in the courtroom with the presiding judicial officer or in the  
 4           place where the defendant is confined. Upon request by the defendant or the  
 5           attorney representing the defendant, the court shall provide the opportunity for  
 6           confidential communication between the defendant and the attorney representing him  
 7           at any time prior to or during the proceeding.

8           D.(1) A defendant who elects to appear at the proceeding by simultaneous  
 9           audio-visual transmission in accordance with the provisions of this Article and enter  
 10          a plea of guilty or nolo contendere shall submit to the court a form signed by the  
 11          defendant and, if represented by an attorney at the proceeding, by the defendant's  
 12          attorney, stating that the defendant waives his right to be physically present at the  
 13          proceeding and that he has been addressed by the court and informed of his rights  
 14          pursuant to Article 556 or 556.1. The form shall allow for the defendant to sign, or  
 15          initial where appropriate, each element of the waiver of rights set forth in Article 556  
 16          or 556.1.

17          (2) The defendant and, if represented by an attorney at the proceeding, the  
 18          defendant's attorney may sign, or initial where appropriate, the waiver of presence  
 19          as set forth in Paragraph A of this Article and the waiver of rights form as set forth  
 20          in Subparagraph (1) of this Paragraph by use of an electronic signature as defined by  
 21          R.S. 9:2602. The court, by local rule, shall provide for the method of electronic  
 22          signature to be used to ensure authenticity of the electronic signature.

23          (3) The law enforcement agency who has custody of the defendant at the  
 24          time of the proceeding shall obtain the fingerprints of the defendant for purposes of  
 25          Article 871. The fingerprints may be taken electronically or in ink and converted to  
 26          electronic format.

\* \* \*

1 Art. 831. Presence of defendant; ~~when felony prosecution is for felony~~

2 A. Except as may be provided by local rules of court in accordance with  
 3 Articles 522, ~~and~~ 551, and 562, a defendant charged with a felony shall be present  
 4 at all of the following:

5 (1) At arraignment;

6 (2) When a plea of guilty, not guilty, or not guilty and not guilty by reason  
 7 of insanity is made;

8 (3) At the calling, examination, challenging, impaneling, and swearing of the  
 9 jury, and at any subsequent proceedings for the discharge of the jury or of a juror;

10 (4) At all times during the trial when the court is determining and ruling on  
 11 the admissibility of evidence;

12 (5) In trials by jury, at all proceedings when the jury is present, and in trials  
 13 without a jury, at all times when evidence is being adduced; ~~and~~

14 (6) At the rendition of the verdict or judgment, unless he voluntarily absents  
 15 himself.

16 B. Nothing in this Article ~~shall prohibit~~ prohibits the court, by local rule,  
 17 from providing for a defendant's appearance at his arraignment, at the entry of his  
 18 plea of guilty, or both, by simultaneous audio-visual transmission in accordance with  
 19 the provisions of Articles 551 and 562, ~~except when the defense counsel requests the~~  
 20 ~~defendant's appearance in open court.~~

21 Art. 832. Continued presence not required

22 A. A defendant initially present for the commencement of trial shall not  
 23 prevent the further progress of the trial, including the return of the verdict, and shall  
 24 be considered to have waived his right to be present if his counsel is present or if the  
 25 right to counsel has been waived and either of the following occur:

26 (1) He voluntarily absents himself after the trial has commenced, whether  
 27 or not he has been informed by the court of his obligation to be present during the  
 28 trial; ~~or~~

1 (2) After being warned by the court that disruptive conduct will cause him  
2 to be removed from the courtroom, he persists in conduct which justifies his  
3 exclusion from the courtroom.

4 B. Nothing in this Article ~~shall prohibit~~ prohibits the court, by local rule,  
5 from providing for a defendant's appearance at his arraignment, at the entry of his  
6 plea of guilty, or both, by simultaneous audio-visual transmission in accordance with  
7 the provisions of Articles 551 and 562, except when the defense counsel requests the  
8 defendant's appearance in open court. Any appearance made by way of simultaneous  
9 audio-visual transmission under applicable local rules of court in accordance with  
10 the provisions of ~~Article~~ Articles 551 and 562 shall not constitute absence for the  
11 purposes of this Article.

12 Art. 833. Presence of defendant; ~~when~~ misdemeanor prosecution is ~~for~~  
13 misdemeanor

14 A. The court may permit a defendant charged with a misdemeanor to be  
15 arraigned, ~~plead guilty~~ enter his plea of guilty, or be tried, in his absence. ~~Otherwise~~  
16 ~~he must be present, provided that he may appear at arraignment by way of~~  
17 ~~simultaneous audio-visual transmission under applicable local rules in accordance~~  
18 ~~with the provisions of Articles 522 and 551.~~

19 \* \* \*

20 C. Nothing in this Article ~~shall prohibit~~ prohibits the court, by local rule,  
21 from providing for a defendant's appearance at his arraignment, at the entry of his  
22 plea of guilty, or both, by simultaneous audio-visual transmission in accordance with  
23 the provisions of Articles 551 and 562, ~~except when the defense counsel requests the~~  
24 ~~defendant's appearance in open court.~~

25 \* \* \*

26 Art. 900. Violation hearing; sanctions

27 A. After an arrest pursuant to Article 899, the court shall cause a defendant  
28 who continues to be held in custody to be brought before it within thirty days for a  
29 hearing. If a summons is issued pursuant to Article 899, or if the defendant has been  
30 admitted to bail, the court shall set the matter for a violation hearing within a

1 reasonable time. The hearing may be informal or summary. The defendant may  
2 choose, with the court's consent, to appear at the violation hearing and stipulate the  
3 revocation by simultaneous audio-visual transmission in accordance with the  
4 provisions of Article 562. If the court decides that the defendant has violated, or was  
5 about to violate, a condition of his probation it may:

6 \* \* \*

7 B. When a defendant has been committed to a community rehabilitation  
8 center pursuant to Subparagraph ~~(4) of Paragraph A~~ (A)(4) of this Article, upon  
9 written request of the department that an offender be removed for violating the rules  
10 or regulations of the community rehabilitation center, the court shall cause the  
11 defendant to be brought before it and order that probation be revoked with credit for  
12 the time served in the community rehabilitation center.

13 C. The department may pay a per diem for offenders placed in a community  
14 rehabilitation center pursuant to the provisions of Subparagraph ~~(4) of Paragraph A~~  
15 (A)(4) of this Article.

16 \* \* \*

\_\_\_\_\_  
SPEAKER OF THE HOUSE OF REPRESENTATIVES

\_\_\_\_\_  
PRESIDENT OF THE SENATE

\_\_\_\_\_  
GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_

2017 Regular Session  
HOUSE BILL NO. 439

# ACT No. 419

BY REPRESENTATIVES ZERINGUE AND MAGEE

(On Recommendation of the Louisiana State Law Institute)

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## AN ACT

To amend and reenact Code of Civil Procedure Articles 253.3(A)(4), 284, 532(heading), 925(A)(3), 928(A), 1002, 1701 through 1704, 1843, 1913(B) and (C), 2002(A)(2), 3861, 3864, 3901, 3902, 3955(B), 4904, 4921, 4921.1(C), and 5095, R.S. 13:3205, and R.S. 23:1316 and 1316.1(A) and to enact Code of Civil Procedure Articles 74.3.1 and 253(E), relative to civil procedure; to provide for the clarification of terminology; to provide with respect to lis pendens and motions to stay in pending suits; to provide for the timing of the filing of an answer or other pleading; to provide for the submission of a certified copy of a protective order or injunction in support of a preliminary default; to provide for the applicability of mandamus and quo warranto proceedings to limited liability companies; to provide for certain judicial authorization concerning persons seeking to marry; to provide for the acceptance of documents signed by electronic signature; to provide for the redesignation of Code of Civil Procedure Article 1067; to provide for an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Code of Civil Procedure Articles 253.3(A)(4), 284, 532(heading), 925(A)(3), 928(A), 1002, 1701 through 1704, 1843, 1913(B) and (C), 2002(A)(2), 3861, 3864, 3901, 3902, 3955(B), 4904, 4921, 4921.1(C), and 5095 are hereby amended and reenacted and Code of Civil Procedure Article 74.3.1 is hereby enacted to read as follows:

Art. 74.3.1. Marriage of persons; waiver of certain information

A. A person applying for a marriage license who is unable to provide a birth certificate, letter required by R.S. 9:227, a valid and unexpired passport, or visa



1 accompanied by Form I-94 as issued by the United States may provide a Certificate  
 2 of Naturalization by the U.S. Citizenship and Immigration Authority. A person  
 3 applying for a marriage license who is unable to provide a social security number  
 4 may provide a driver's license, a government issued identification card, a passport,  
 5 a visa issued by the United States Department of State, or a Certificate of  
 6 Naturalization issued by the United States Citizenship and Immigration Services. A  
 7 person applying for a marriage license who is unable to comply with the  
 8 requirements of this Article may seek judicial authorization for waiver of the  
 9 requirements of this Article. The court may grant the waiver and order the issuance  
 10 of the marriage license if, after hearing and good cause shown, the court finds that  
 11 such relief is appropriate and that the person has complied with other legal  
 12 requirements for the marriage license. The hearing may be conducted in camera, and  
 13 before a duty judge. The written order granting the waiver shall be attached to the  
 14 marriage license application. If the court denies the waiver, the court shall provide  
 15 reasons for the denial of the waiver.

16 B. The judicial authorization may be granted by the district court, parish  
 17 court, family court, or juvenile court, in the parish in which the marriage license  
 18 application is made, or by the First or Second City Court of the City of New Orleans  
 19 if such application is made within their territorial jurisdiction, or by a justice of the  
 20 peace court or city court if the issuing official is located within the justice of the  
 21 peace or city court's territorial jurisdiction.

22 C. The provisions of this Article are in addition to any other right or remedy  
 23 provided by law, are notwithstanding any other provision of law to the contrary, and  
 24 shall supersede and control to the extent of conflict with any other provision of law.

25 \* \* \*

26 Art. 253.3. Duty judge exceptions; authority to hear certain matters

27 A. In any case assigned pursuant to Article 253.1, a duty judge shall only  
 28 hear and sign orders or judgments for the following:

29 \* \* \*

1 (4) Uncontested cases in which all parties other than the plaintiff are  
2 represented by a ~~curator ad hoc~~ an attorney appointed by the court.

3 \* \* \*

4 Comments - 2017

5 The purpose of the amendment to Subparagraph (A)(4) of this Article was to  
6 align the provision with Article 5091 by replacing "a curator ad hoc" with "an  
7 attorney appointed by the court."

8 \* \* \*

9 Art. 284. Judicial powers of district court clerk

10 The clerk of a district court may render, confirm, and sign final default  
11 judgments by default or judgments by confession in cases where the jurisdiction of  
12 the court is concurrent with that of justices of the peace, as provided in Article 5011.

13 Comments - 2017

14 This Article has been amended to substitute "final default judgments" for  
15 "judgments by default" to make the article more easily understood and to make the  
16 terminology consistent with other related articles. This amendment is intended to be  
17 stylistic only.

18 \* \* \*

19 Art. 532. ~~Suits~~ Motions to stay in suits pending in Louisiana and federal or foreign  
20 court

21 When a suit is brought in a Louisiana court while another is pending in a  
22 court of another state or of the United States on the same transaction or occurrence,  
23 between the same parties in the same capacities, on motion of the defendant or on its  
24 own motion, the court may stay all proceedings in the second suit until the first has  
25 been discontinued or final judgment has been rendered.

26 \* \* \*

27 Art. 925. Objections raised by declinatory exception; waiver

28 A. The objections which may be raised through the declinatory exception  
29 include but are not limited to the following:

30 \* \* \*

31 (3) Lis pendens under Article 531.

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Comments - 2017

Subparagraph (A)(3) of this Article was amended to clarify that, although Article 532 appears in Chapter 3 of Book I of Title II, entitled "Lis Pendens," the declinatory exception of lis pendens may be raised only under Article 531. Article 532 permits the court to stay the proceedings of a second suit pending resolution of the first suit but does not permit the court to dismiss the second suit by granting an exception of lis pendens.

\* \* \*

Art. 928. Time of pleading exceptions

A. The declinatory exception and the dilatory exception shall be pleaded prior to or in the answer and, prior to or along with the filing of any pleading seeking relief other than entry or removal of the name of an attorney as counsel of record, extension of time within which to plead, security for costs, or dissolution of an attachment issued on the ground of the nonresidence of the defendant, and in any event, prior to the ~~confirmation~~ signing of a final default judgment. When both exceptions are pleaded, they shall be filed at the same time, and may be incorporated in the same pleading. When filed at the same time or in the same pleading, these exceptions need not be pleaded in the alternative or in a particular order.

\* \* \*

Comments - 2017

Paragraph A of this Article has been amended to substitute "signing of a final default judgment" for "confirmation of a default judgment" to make the article more easily understood and to make the terminology consistent with other related articles. Pursuant to Article 1002, the defendant may file an answer or other pleading at any time prior to the actual signing of the final default judgment. See *Martin v. Martin*, 680 So. 2d 759 (La. App. 1st Cir. 1996).

\* \* \*

Art. 1002. Answer or other pleading filed prior to ~~confirmation~~ signing of final default judgment

Notwithstanding the provisions of Article 1001, the defendant may file his answer or other pleading at any time prior to ~~confirmation~~ the signing of a final default judgment against him.

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Comments - 2017

This Article has been amended to clarify that the defendant may file an answer or other pleading at any time prior to the actual signing of the final default judgment. See *Martin v. Martin*, 680 So. 2d 759 (La. App. 1st Cir. 1996).

\* \* \*

Art. 1701. ~~Judgment by~~ Preliminary default

A. If a defendant in the principal or incidental demand fails to answer or file other pleadings within the time prescribed by law or by the court, ~~judgment by default~~ a preliminary default may be entered against him. The ~~judgment~~ preliminary default may be obtained by oral motion in open court or by written motion mailed to the court, either of which shall be entered in the minutes of the court, but the ~~judgment~~ preliminary default shall consist merely of an entry in the minutes.

B. When a defendant in an action for divorce under Civil Code Article 103(1), by sworn affidavit, acknowledges receipt of a certified copy of the petition and waives formal citation, service of process, all legal delays, notice of trial, and appearance at trial, a ~~judgment of~~ preliminary default may be entered against the defendant the day on which the affidavit is filed. The affidavit of the defendant may be prepared or notarized by any notary public. The ~~judgment~~ preliminary default may be obtained by oral motion in open court or by written motion mailed to the court, either of which shall be entered in the minutes of the court, but the ~~judgment~~ preliminary default shall consist merely of an entry in the minutes. Notice of the ~~signing entry of the final judgment as provided in Article 1913~~ preliminary default is not required.

Comments - 2017

(a) This Article has been amended to substitute "preliminary default" for "judgment of default" and "judgment by default" to make the article more easily understood and to make the terminology consistent within the article and with other related articles. A preliminary default is not a judgment. A final judgment confirming a preliminary default is now referred to as a "final default judgment." These amendments are intended to be stylistic only.

(b) The first sentence of Paragraph A of this Article has also been amended to provide that a preliminary default can be entered if the defendant "fails to answer or file other pleadings within the time prescribed by law or by the court."

1 Art. 1702. Confirmation of preliminary default ~~judgment~~

2 A. A ~~judgment of~~ preliminary default must be confirmed by proof of the  
3 demand that is sufficient to establish a prima facie case and that is admitted on the  
4 record prior to ~~confirmation~~ the entry of a final default judgment. The court may  
5 permit documentary evidence to be filed in the record in any electronically stored  
6 format authorized by the local rules of the district court or approved by the clerk of  
7 the district court for receipt of evidence. If no answer or other pleading is filed  
8 timely, this confirmation may be made after two days, exclusive of holidays, from  
9 the entry of the ~~judgment of~~ preliminary default. When a ~~judgment of~~ preliminary  
10 default has been entered against a party that is in default after having made an  
11 appearance of record in the case, notice of the date of the entry of the ~~judgment of~~  
12 preliminary default must be sent by certified mail by the party obtaining the  
13 ~~judgment of~~ preliminary default to counsel of record for the party in default, or if  
14 there is no counsel of record, to the party in default, at least seven days, exclusive of  
15 holidays, before confirmation of the ~~judgment of~~ preliminary default.

16 B.(1) When a demand is based upon a conventional obligation, affidavits and  
17 exhibits annexed thereto which contain facts sufficient to establish a prima facie case  
18 shall be admissible, self-authenticating, and sufficient proof of such demand. The  
19 court may, under the circumstances of the case, require additional evidence in the  
20 form of oral testimony before entering a final default judgment.

21 (2) When a demand is based upon a delictual obligation, the testimony of the  
22 plaintiff with corroborating evidence, which may be by affidavits and exhibits  
23 annexed thereto which contain facts sufficient to establish a prima facie case, shall  
24 be admissible, self-authenticating, and sufficient proof of such demand. The court  
25 may, under the circumstances of the case, require additional evidence in the form of  
26 oral testimony before entering a final default judgment.

27 (3) When the sum due is on an open account or a promissory note or other  
28 negotiable instrument, an affidavit of the correctness thereof shall be prima facie  
29 proof. When the demand is based upon a promissory note or other negotiable  
30 instrument, no proof of any signature thereon shall be required.

1 C. In those proceedings in which the sum due is on an open account or a  
2 promissory note, other negotiable instrument, or other conventional obligation, or a  
3 deficiency judgment derived therefrom, including those proceedings in which one  
4 or more mortgages, pledges, or other security for the open account, promissory note,  
5 negotiable instrument, conventional obligation, or deficiency judgment derived  
6 therefrom is sought to be enforced, maintained, or recognized, or in which the  
7 amount sought is that authorized by R.S. 9:2782 for a check dishonored for  
8 nonsufficient funds, a hearing in open court shall not be required unless the judge,  
9 in his discretion, directs that such a hearing be held. The plaintiff shall submit to the  
10 court the proof required by law and the original and not less than one copy of the  
11 proposed final default judgment. The judge shall, within seventy-two hours of  
12 receipt of such submission from the clerk of court, sign the proposed final default  
13 judgment or direct that a hearing be held. The clerk of court shall certify that no  
14 answer or other pleading has been filed by the defendant. The minute clerk shall  
15 make an entry showing the dates of receipt of proof, review of the record, and  
16 rendition of the final default judgment. A certified copy of the signed final default  
17 judgment shall be sent to the plaintiff by the clerk of court, and notice of the signing  
18 of the final default judgment shall be given as provided in Article 1913.

19 D. When the demand is based upon a claim for a personal injury, a sworn  
20 narrative report of the treating physician or dentist may be offered in lieu of his  
21 testimony.

22 E. Notwithstanding any other provisions of law to the contrary, when the  
23 demand is for divorce under Civil Code Article 103(1) or (5), whether or not the  
24 demand contains a claim for relief incidental or ancillary thereto, a hearing in open  
25 court shall not be required unless the judge, in his discretion, directs that a hearing  
26 be held. The plaintiff shall submit to the court an affidavit specifically attesting to  
27 and testifying as to the truth of all of the factual allegations contained in the petition,  
28 the original and not less than one copy of the proposed final judgment, and a  
29 certification which shall indicate the type of service made on the defendant, the date  
30 of service, the date a preliminary default was entered, and a certification by the clerk

1 that the record was examined by the clerk, including the date of the examination, and  
 2 a statement that no answer or other ~~opposition~~ pleading has been filed. If the  
 3 demand is for divorce under Civil Code Article 103(5), a certified copy of the  
 4 protective order or injunction rendered after a contradictory hearing or consent  
 5 decree shall also be submitted to the court. If no answer or other pleading has been  
 6 filed by the defendant, the judge shall, after two days, exclusive of holidays, of entry  
 7 of a preliminary default, review the affidavit, proposed final default judgment, and  
 8 certification, render and sign the proposed final default judgment, or direct that a  
 9 hearing be held. The minutes shall reflect rendition and signing of the final default  
 10 judgment.

11 Comments - 2017

12 (a) This Article has been amended to substitute "preliminary default" for  
 13 "judgment of default" and "judgment by default" to make the article more easily  
 14 understood and to make the terminology consistent within the Article and with other  
 15 related Articles. A final judgment confirming a preliminary default is now referred  
 16 to as a "final default judgment." These amendments are intended to be stylistic only.

17 (b) Paragraph E of this Article has been amended to provide that, when a  
 18 demand for divorce is made under Civil Code Article 103(5), a certified copy of the  
 19 protective order or injunction rendered after a contradictory hearing or consent  
 20 decree as required by that Article shall be submitted to the court in addition to the  
 21 affidavit of the plaintiff.

22 Art. 1702.1. Confirmation of preliminary default ~~judgment~~ without hearing in open  
 23 court; required information; certifications

24 A. When the plaintiff seeks to confirm a preliminary default ~~judgment~~  
 25 without appearing for a hearing in open court as provided in Article 1702(B)(1) and  
 26 (C), along with any proof required by law, he or his attorney shall include in an  
 27 itemized form with ~~the~~ a written motion for confirmation of preliminary default and  
 28 proposed final default judgment a certification that the suit is on an open account,  
 29 promissory note, or other negotiable instrument, on a conventional obligation, or on  
 30 a check dishonored for nonsufficient funds, and that the necessary invoices and  
 31 affidavit, note and affidavit, or check or certified reproduction thereof are attached.  
 32 If attorney fees are sought under R.S. 9:2781 or 2782, the attorney shall certify that  
 33 fact and ~~that a copy of the demand letter and if required, the return receipt showing~~  
 34 ~~the date received by the debtor are attached and~~ the fact that the number of days

1 required by R.S. 9:2781(A) or 2782(A), respectively, have elapsed ~~before suit was~~  
 2 ~~filed~~ since demand was made upon the defendant.

3 B. The certification shall indicate the type of service made on the defendant,  
 4 the date of service, and the date a preliminary default was entered, and shall also  
 5 include a certification by the clerk that the record was examined by the clerk,  
 6 including therein the date of the examination and a statement that no answer or other  
 7 ~~opposition~~ pleading has been filed within the time prescribed by law or by the court.

8 Comments - 2017

9 (a) This Article has been amended to substitute "preliminary default" for  
 10 "default judgment" to make the Article more easily understood and to make the  
 11 terminology consistent within the Article and with other related Articles. A final  
 12 judgment confirming a preliminary default is now referred to as a "final default  
 13 judgment." These amendments are intended to be stylistic only.

14 (b) Paragraph A of this Article has been amended to clarify that a written  
 15 motion for confirmation of preliminary default is required only if the plaintiff is  
 16 seeking the confirmation without hearing in open court as provided in Article  
 17 1702(B)(1) and (C).

18 (c) The filing of the suit constitutes a demand made upon the defendant for  
 19 the purposes of Paragraph A of this Article.

20 Art. 1703. Scope of judgment

21 A ~~judgment by default~~ final default judgment shall not be different in kind  
 22 from that demanded in the petition. The amount of damages awarded shall be the  
 23 amount proven to be properly due as a remedy.

24 Comments - 2017

25 This Article has been amended to substitute "final default judgment" for  
 26 "judgment by default" to make the Article more easily understood and to make the  
 27 terminology consistent with other related Articles. A "judgment of default" or  
 28 "judgment by default" is now referred to as a "preliminary default." This amendment  
 29 is intended to be stylistic only.

30 Art. 1704. Confirmation of ~~judgment by~~ preliminary default in suits against the state  
 31 or a political subdivision

32 A. Notwithstanding any other provision of law to the contrary, prior to  
 33 confirmation of a ~~judgment of~~ preliminary default against the state or any of its  
 34 departments, offices, boards, commissions, agencies, or instrumentalities, a certified  
 35 copy of the minute entry constituting the ~~judgment~~ preliminary default entered  
 36 pursuant to Article 1701, together with a certified copy of the petition or other



1 demand, shall be sent by the plaintiff or his counsel to the attorney general by  
2 registered or certified mail, or shall be served by the sheriff personally upon the  
3 attorney general or the first assistant attorney general at the office of the attorney  
4 general. If the minute entry and the petition are served on the attorney general by  
5 mail, the person mailing such items shall execute and file in the record an affidavit  
6 stating that these items have been enclosed in an envelope properly addressed to the  
7 attorney general with sufficient postage affixed, and stating the date on which such  
8 envelope was deposited in the United States ~~mails~~ mail. In addition the return  
9 receipt shall be attached to the affidavit which was filed in the record.

10 B. If no answer or other pleading is filed during the fifteen days immediately  
11 following the date on which the attorney general or the first assistant attorney general  
12 received notice of the preliminary default as provided in ~~Subsection A of this Section~~  
13 Paragraph A of this Article, a ~~judgment by~~ preliminary default entered against the  
14 state or any of its departments, offices, boards, commissions, agencies, or  
15 instrumentalities may be confirmed by proof as required by Article 1702.

16 C. Notwithstanding any other provision of law to the contrary, prior to  
17 confirmation of a ~~judgment of~~ preliminary default against a political subdivision of  
18 the state or any of its departments, offices, boards, commissions, agencies, or  
19 instrumentalities, a certified copy of the minute entry constituting the ~~judgment~~  
20 preliminary default entered pursuant to Article 1701, together with a certified copy  
21 of the petition or other demand, shall be sent by the plaintiff or his counsel by  
22 registered or certified mail to the proper agent or person for service of process at the  
23 office of that agent or person. The person mailing such items shall execute and file  
24 in the record an affidavit stating that these items have been enclosed in an envelope  
25 properly addressed to the proper agent or person for service of process, with  
26 sufficient postage affixed, and stating the date on which such envelope was deposited  
27 in the United States ~~mails~~ mail. In addition the return receipt shall be attached to the  
28 affidavit which was filed in the record.

29 D. If no answer or other pleading is filed during the fifteen days immediately  
30 following the date on which the agent or person for service of process received

1 notice of the preliminary default as provided in Paragraph C of this Article, a  
 2 ~~judgment by~~ preliminary default entered against the political subdivision of the state  
 3 or any of its departments, offices, boards, commissions, agencies, or  
 4 instrumentalities may be confirmed by proof as required by Article 1702.

5 Comments - 2017

6 This Article has been amended to substitute "preliminary default" for  
 7 "judgment of default" and "judgment by default" to make the Article more easily  
 8 understood and to make the terminology consistent within the Article and with other  
 9 related Articles. A final judgment confirming a preliminary default is now referred  
 10 to as a "final default judgment." These amendments are intended to be stylistic only.

11 \* \* \*

12 Art. 1843. ~~Judgment by~~ Final default judgment

13 A final default judgment ~~by default~~ is that which is rendered against a  
 14 defendant who fails to plead within the time prescribed by law.

15 Comments - 2017

16 This Article has been amended to substitute "final default judgment" for  
 17 "judgment by default" to make the Article more easily understood and to make the  
 18 terminology consistent with other related Articles. A final default judgment is  
 19 different from a preliminary default, which is nothing more than an entry in the  
 20 minutes prior to the rendition of a final default judgment and is not itself a judgment.

21 \* \* \*

22 Art. 1913. Notice of judgment

23 \* \* \*

24 B. Notice of the signing of a final default judgment against a defendant on  
 25 whom citation was not served personally, or on whom citation was served through  
 26 the secretary of state, and who filed no exceptions or answer, shall be served on the  
 27 defendant by the sheriff, by either personal or domiciliary service, or in the case of  
 28 a defendant originally served through the secretary of state, by service on the  
 29 secretary of state.

30 C. Notice of the signing of a final default judgment against a defendant on  
 31 whom citation was served personally, and who filed no exceptions or answer, shall  
 32 be mailed by the clerk of court to the defendant at the address where personal service  
 33 was obtained or to the last known address of the defendant.

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Comments - 2017

This Article has been amended to substitute "final default judgment" for "default judgment" to make the Article more easily understood and to make the terminology consistent with other related Articles. A "judgment of default" or "judgment by default" is now referred to as a "preliminary default." These amendments are intended to be stylistic only.

\* \* \*

Art. 2002. Annulment for vices of form; time for action

A. A final judgment shall be annulled if it is rendered:

\* \* \*

(2) Against a defendant who has not been served with process as required by law and who has not waived objection to jurisdiction, or against whom a valid final default judgment ~~by default~~ has not been taken.

\* \* \*

Comments - 2017

Subparagraph (A)(2) of this Article has been amended to substitute "final default judgment" for "judgment by default" to make the Article more easily understood and to make the terminology consistent with other related Articles. This amendment is intended to be stylistic only.

\* \* \*

Art. 3861. Definition

Mandamus is a writ directing a public officer, ~~or~~ a corporation or an officer thereof, or a limited liability company or a member or manager thereof, to perform any of the duties set forth in Articles 3863 and 3864.

\* \* \*

Art. 3864. Mandamus against corporation or corporate officer; limited liability company or member or manager

A. A writ of mandamus may be directed to a corporation or an officer thereof to compel either of the following:

(1) The holding of an election or the performance of other duties required by the ~~corporate charter~~ corporation's articles of incorporation or bylaws, or as prescribed by law; ~~or~~.

1 (2) The recognition of the rights of its the corporation's members or  
2 shareholders.

3 B. A writ of mandamus may be directed to a limited liability company or a  
4 member or manager thereof to compel either of the following:

5 (1) The holding of an election or the performance of other duties required by  
6 the limited liability company's articles of organization or operating agreement, or as  
7 prescribed by law.

8 (2) The recognition of the rights of the limited liability company's members.

9 \* \* \*

10 Art. 3901. Definition

11 Quo warranto is a writ directing an individual to show by what authority he  
12 claims or holds public office, or office in a corporation or limited liability company,  
13 or directing a corporation or limited liability company to show by what authority it  
14 exercises certain powers. Its purpose is to prevent usurpation of office or of powers.

15 Art. 3902. Judgment

16 When the court finds that a person is holding or claiming office without  
17 authority, the judgment shall forbid him to do so. It may declare who is entitled to  
18 the office and may direct an election when necessary.

19 When the court finds that a corporation or limited liability company is  
20 exceeding its powers, the judgment shall prohibit it from doing so.

21 \* \* \*

22 Art. 3955. Service of petition

23 \* \* \*

24 B. If the defendant is an absentee, the request for appointment of a ~~curator~~  
25 ~~ad hoc~~ an attorney to represent the absentee defendant within ninety days of  
26 commencement of the action constitutes compliance with the requirements of  
27 Paragraph A of this Article.

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Comments - 2017

The purpose of the amendment to Paragraph B of this Article is to align the provision with Article 5091 by replacing "curator ad hoc" with "attorney to represent the absentee defendant."

\* \* \*

Art. 4904. ~~Judgment by~~ Final default judgment in parish and city courts

A. In suits in a parish court or a city court, if the defendant fails to answer timely, or if he fails to appear at the trial, and the plaintiff proves his case, a final default judgment in favor of plaintiff may be rendered. No ~~prior~~ preliminary default is necessary.

B. The plaintiff may obtain a final default judgment only by producing relevant and competent evidence which establishes a prima facie case. When the suit is for a sum due on an open account, promissory note, negotiable instrument, or other conventional obligation, prima facie proof may be submitted by affidavit. When the demand is based upon a promissory note or other negotiable instrument, no proof of any signature thereon shall be required.

C. When the sum due is on an open account, promissory note, negotiable instrument, or other conventional obligation, a hearing in open court shall not be required unless the judge in his discretion directs that such a hearing be held. The plaintiff shall submit to the court the proof required by law and the original and not less than one copy of the proposed final default judgment. The judge shall, within seventy-two hours of receipt of such submission from the clerk of court, sign the proposed final default judgment or direct that a hearing be held. The clerk of court shall certify that no answer or other pleading has been filed by the defendant. The minute clerk shall make an entry showing the dates of receipt of proof, review of the record, and rendition of the final default judgment. A certified copy of the signed final default judgment shall be sent to the plaintiff by the clerk of court.

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Comments - 2017

This Article has been amended to substitute "preliminary default" for "prior default" and "final default judgment" for "final judgment" and "judgment by default" to make the Article more easily understood and to make the terminology consistent with other related Articles. These amendments are intended to be stylistic only.

\* \* \*

Art. 4921. ~~Judgment by~~ Final default judgment; justice of the peace courts; district courts with concurrent jurisdiction

A. If the defendant fails to answer timely, or if he fails to appear at the trial, and the plaintiff proves his case, a final default judgment in favor of plaintiff may be rendered. No ~~prior~~ preliminary default is necessary.

B. The plaintiff may obtain a final default judgment only by producing relevant and competent evidence which establishes a prima facie case. When the suit is for a sum due on an open account, promissory note, negotiable instrument, or other conventional obligation, prima facie proof may be submitted by affidavit. When the demand is based upon a promissory note or other negotiable instrument, no proof of any signature thereon shall be required.

Comments - 2017

This Article has been amended to substitute "preliminary default" for "prior default" and "final default judgment" for "final judgment" and "judgment by default" to make the Article more easily understood and to make the terminology consistent with other related Articles. These amendments are intended to be stylistic only.

Art. 4921.1. Demand for trial; abandonment; applicability

\* \* \*

C.(1) Notwithstanding the provisions of Paragraph A of this Article, the justice of the peace or clerk may set the matter for trial upon filing of a petition. The date, time, and location of the trial shall be contained in the citation. The first scheduled trial date shall be not more than forty-five days, nor less than ten days, from the service of the citation. If the defendant appears, he need not file an answer unless ordered to do so by the court. If a defendant who has been served with citation fails to appear at the time and place specified in the citation, the judge may enter a final default judgment for the plaintiff in the amount proved to be due. If the

1 plaintiff does not appear, the judge may enter an order dismissing the action without  
2 prejudice.

3 (2) If a matter has been set for trial pursuant to ~~Paragraph~~ Subparagraph (1)  
4 of this ~~Article~~ Paragraph, no final default ~~judgement~~ judgment shall be rendered  
5 prior to the trial date.

6 Comments - 2017

7 Paragraph C of this Article has been amended to substitute "final default  
8 judgment" for "default judgment" to make the Article more easily understood and  
9 to make the terminology consistent with other related Articles. These amendments  
10 are intended to be stylistic only.

11 \* \* \*

12 Art. 5095. Same; defense of action

13 The attorney at law appointed by the court to represent a defendant shall use  
14 reasonable diligence to inquire of the defendant, and to determine from other  
15 available sources, what defense, if any, the defendant may have, and what evidence  
16 is available in support thereof.

17 Except in an executory proceeding, the attorney may except to the petition,  
18 shall file an answer or other pleading in time to prevent a final default judgment from  
19 being rendered, may plead therein any affirmative defense available, may prosecute  
20 an appeal from an adverse judgment, and generally has the same duty, responsibility,  
21 and authority in defending the action or proceeding as if he had been retained as  
22 counsel for the defendant.

23 Comments - 2017

24 This Article has been amended to substitute "final default judgment" for  
25 "default judgment" to make the Article more easily understood and to make the  
26 terminology consistent with other related Articles. This amendment is intended to  
27 be stylistic only.

28 Section 2. R.S. 13:3205 is hereby amended and reenacted to read as follows:

29 §3205. Default judgment; hearings; proof of service of process

30 No preliminary default or final default judgment ~~can~~ may be rendered against  
31 the defendant and no hearing may be held on a contradictory motion, rule to show  
32 cause, or other summary proceeding, except for actions pursuant to R.S. 46:2131 et

1 seq., until thirty days after the filing in the record of the affidavit of the individual  
 2 who ~~either~~ has done any of the following:

3 (1) Mailed the process to the defendant, showing that it was enclosed in an  
 4 envelope properly addressed to the defendant, with sufficient postage affixed, and  
 5 the date it was deposited in the United States mail, to which shall be attached the  
 6 return receipt of the defendant; ~~or~~.

7 (2) Utilized the services of a commercial courier to make delivery of the  
 8 process to the defendant, showing the name of the commercial courier, the date, and  
 9 address at which the process was delivered to the defendant, to which shall be  
 10 attached the commercial courier's confirmation of delivery; ~~or~~.

11 (3) Actually delivered the process to the defendant, showing the date, place,  
 12 and manner of delivery.

13 Comments - 2017

14 This Section has been amended to substitute "preliminary default or final  
 15 default judgment" for "default judgment" to make the provision more easily  
 16 understood and to make the terminology consistent with related Articles in the Code  
 17 of Civil Procedure. These amendments are intended to be stylistic only.

18 Section 3. R.S. 23:1316 and 1316.1(A) are hereby amended and reenacted to read  
 19 as follows:

20 §1316. Answer or other pleading, failure to file; ~~judgment by~~ preliminary default  
 21 If a defendant in the principal or incidental demand fails to answer or file  
 22 other pleadings within the time prescribed by law or the time extended by the  
 23 workers' compensation judge, and upon proof of proper service having been made,  
 24 ~~judgment by~~ preliminary default may be entered against him. The ~~judgment~~  
 25 preliminary default shall be obtained by written motion.

26 Comments - 2017

27 This Section has been amended to substitute "preliminary default" for  
 28 "judgment by default" to make the provision more easily understood and to make the  
 29 terminology consistent with related Articles in the Code of Civil Procedure. A final  
 30 judgment confirming a preliminary default is now referred to as a "final default  
 31 judgment." These amendments are intended to be stylistic only.



1           §1316.1. Confirmation of ~~judgment by~~ preliminary default

2                   A. A ~~judgment by~~ preliminary default on behalf of any party at interest must  
3 be confirmed by proof of the demand sufficient to establish a prima facie case. If no  
4 answer or other pleading is filed timely, this confirmation may be made after two  
5 days, exclusive of holidays, from the entry of the ~~judgment of~~ preliminary default.

6   \*           \*           \*

7   Comments - 2017

8                   Paragraph A of this Section has been amended to substitute "preliminary  
9 default" for "judgment by default" and "judgment of default" to make the provision  
10 more easily understood and to make the terminology consistent with related Articles  
11 in the Code of Civil Procedure. A final judgment confirming a preliminary default  
12 is now referred to as a "final default judgment." These amendments are intended to  
13 be stylistic only.

14           Section 4. Code of Civil Procedure Article 253(E) is hereby enacted to read as  
15 follows:

16           Art. 253. Pleadings, documents, and exhibits to be filed with clerk

17   \*           \*           \*

18                   E. The clerk shall not refuse to accept for filing any pleading or other  
19 document signed by electronic signature, as defined by R.S. 9:2602, and executed  
20 in connection with court proceedings, solely on the ground that it was signed by  
21 electronic signature.

22   Comments - 2018

23                   Paragraph E is new; however, nothing in this provision is intended to  
24 abrogate any specific legislation requiring that certain documents be signed by other  
25 than electronic means.

26           Section 5. The Louisiana State Law Institute is hereby directed to redesignate Code  
27 of Civil Procedure Article 1067 as Article 1041.

1           Section 6. The provisions of Section 4 of this Act shall become effective on January 1, 2018.

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_