

Regular Session, 2008

SENATE BILL NO. 308

BY SENATOR DONAHUE

CIVIL PROCEDURE. Provides for a pre-trial hearing regarding the qualifications and admissibility of testimony of expert witnesses. (gov sig)

AN ACT

To amend and reenact Code of Civil Procedure Article 1425(C) and to enact Code of Civil Procedure Article 1425(F), relative to discovery and experts; to extend the deadline for filing expert witness disclosures; to provide for a pre-trial hearing regarding the qualifications and admissibility of testimony of an expert witness; to provide procedures for conducting the hearing and appealing the decision of the judge; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Code of Civil Procedure Art. 1425(C) is hereby amended and reenacted and Code of Civil Procedure Art. 1425(F) is hereby enacted to read as follows:

Art. 1425. Experts; pre-trial disclosures; scope of discovery

* * *

C. The disclosures of Paragraph B of this Article shall be made at the times and in the sequence directed by the court. In the absence of other directions from the court or stipulation by the parties, the disclosures required pursuant to Paragraph B of this Article shall be made at least ~~ninety~~ **one hundred twenty** days before the trial date ~~or the date the case is to be ready for trial~~ or, if the evidence is intended solely

1 to contradict or rebut evidence on the same subject matter identified by another party
2 under Paragraph B, within thirty days after the disclosure made by the other party.
3 The parties shall supplement these disclosures when required by Article 1428.

4 * * *

5 **F. (1) Any party may file a motion for a pretrial hearing to determine**
6 **whether a witness qualifies as an expert or whether the methodologies employed**
7 **by such witness are reliable under Articles 702 through 705 of the Louisiana**
8 **Code of Evidence. The motion shall be filed not later than sixty days prior to**
9 **trial and shall set forth sufficient allegations showing the necessity for these**
10 **determinations by the court.**

11 **(2) The court shall hold a contradictory hearing and shall rule on the**
12 **motion not later than thirty days prior to the trial. At the hearing, the court**
13 **shall allow sufficient time for evidence to be adduced as to the qualifications and**
14 **methodologies of the proposed witness based upon the provisions of Articles 702**
15 **though 705 of the Louisiana Code of Evidence.**

16 **(3) If the ruling of the court is made at the conclusion of the hearing, the**
17 **court shall recite orally its findings of fact and reasons for judgment. If the**
18 **matter is taken under advisement, the court shall render its ruling and provide**
19 **written findings of fact and reasons for judgment not later than five days after**
20 **the hearing.**

21 **(4) The findings of facts and reasons for judgment shall be made part of**
22 **the record of the proceedings. The findings of facts and reasons for judgment**
23 **shall specifically include and address:**

24 **(a) The elements required to be satisfied in order for a person to testify**
25 **under Articles 702 through 705 of the Louisiana Code of Evidence.**

26 **(b) The evidence that has been presented at the hearing by a party in**
27 **order to satisfy the requirements of Articles 702 through 705 of the Louisiana**
28 **Code of Evidence at trial.**

29 **(c) A decision by the judge as to whether or not a person shall be allowed**

1 to testify under Articles 702 through 705 of the Louisiana Code of Evidence at
2 trial.

3 (d) The reasons of the judge detailing in law and fact why a person shall
4 be allowed or disallowed to testify under Articles 702 through 705 of the
5 Louisiana Code of Evidence based upon the evidence presented at this hearing.

6 (5) A ruling of the court pursuant to the provisions of this Subsection
7 shall be subject to appellate review as provided by law.

8 (6) Notwithstanding the time limitations set forth in Paragraphs (1), (2),
9 and (3), by unanimous consent of the parties, and with approval by the court,
10 a motion under this Subsection may be filed, heard, and ruled upon by the court
11 at any time prior to trial. The ruling by the court on such motion shall include
12 findings of fact and reasons for judgment complying with the provisions of
13 Paragraph (4).

14 (7) The provisions of this Subsection shall not apply to testimony in an
15 action for divorce or annulment of marriage, or to a separation in a covenant
16 marriage or to a property partition, or to testimony in any incidental or
17 ancillary proceedings or matters arising from such actions.

18 (8) If the mover filing the motion authorized in this Subsection loses, he
19 shall pay all costs of the proceedings, including but not limited to court cost and
20 witness expenses.

21 Section 2. The provisions of this Act shall not affect any action set for trial prior to
22 the effective date of this Act.

23 Section 3. This Act shall become effective upon signature by the governor or, if not
24 signed by the governor, upon expiration of the time for bills to become law without signature
25 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
26 vetoed by the governor and subsequently approved by the legislature, this Act shall become
27 effective on the day following such approval.

The original instrument was prepared by Camille Sebastien Perry. The following digest, which does not constitute a part of the legislative instrument, was prepared by Lauren Bailey.

DIGEST

Donahue (SB 308)

Present law (C.C.P. Art. 1425) allows the parties through interrogatories or by deposition to require any other party to identify each party that may be used at trial to present evidence as an expert under Articles 702-705 of the Code of Evidence; gives the court authority to order the parties to provide written reports for testifying expert witnesses that shall contain a complete statement of all opinions to be expressed and the basis and reasons therefor and the data or other information considered by the witness in forming the opinions, and authorizes parties to obtain discovery of the opinions of experts as well as the facts known by them.

Present law requires the written report for testifying expert witnesses to be filed at least 90 days before the trial date or the date the case is to be ready for trial.

Proposed law extends the deadline for filing the written report from 90 days to 120 days.

Proposed law provides for a hearing upon motion of any party filed at least 60 days prior to trial to be held and ruled on at least 30 days before trial to present evidence on why an expert qualifies as an expert and why their methodologies are reliable under Articles 702-705 of the Code of Evidence, concerning opinions and expert testimony.

Proposed law requires a judge, if the matter is taken under advisement, to provide written reasons no later than five days after the hearing for determining whether a person qualifies as a expert by providing the following:

- (a) The elements required to be satisfied in order for a person to testify under Articles 702-705 of the Code of Evidence.
- (b) The evidence that has been presented at the hearing by a party in order to satisfy the requirements of Articles 702 -705 of the Code of Evidence at trial.
- (c) A decision by the judge as to whether or not a person shall be allowed to testify under Articles 702-705 of the Code of Evidence at trial.
- (d) The reasons of the judge detailing in law and fact why a person shall be allowed or disallowed to testify under Articles 702-705 of the Code of Evidence based upon the evidence presented at this hearing.

Proposed law provides an exemption to testimony in an action for divorce or annulment or marriage, or to a separation in a covenant marriage or to a property partition.

Proposed law provides that if the mover filing the motion loses he shall pay all costs.

Proposed law provides that its provisions shall not affect any action set for trial prior to the effective date of the proposed law.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends C.C.P. Art. 1425(C); adds C.C.P. Art. 1425(F))

Summary of Amendments Adopted by SenateCommittee Amendments Proposed by Senate Committee on Judiciary A to the original bill.

1. Deleted language providing that provisions of proposed law shall be applicable to all actions commenced on and after its effective date and to all pending actions in which trial has not been scheduled or in which trial has been scheduled in excess of 90 days after the effective date of the proposed law.
2. Substituted language providing that provisions of proposed law shall be given prospective application only and shall apply only to an action commenced on and after the effective date of the proposed law.

Summary of Amendments Adopted by SenateSenate Floor Amendments to engrossed bill.

1. Revises motion procedure to require filing of motion not later than 60 days prior to trial and to require the court to hold a contradictory hearing and to rule on the motion not later than 30 days prior to the trial. Also requires the court to render its filing and provide written findings of fact and reasons for judgment not later than five days after the hearing, if taken under advisement.
2. Deletes detailed provisions relative to an interlocutory appeal of a ruling on the admissibility of expert evidence and replaces it with a general reference to appellate review as provided by law.
3. Adds requirement that a mover who loses shall pay all costs, including court costs and witness expenses.
4. Adds exception for expert testimony in an action for separation in a covenant marriage and in an action to partition property.