HLS 13RS-583 ENGROSSED

Regular Session, 2013

HOUSE BILL NO. 321

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BY REPRESENTATIVES HUVAL AND ABRAMSON

(On Recommendation of the Louisiana State Law Institute)

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

CIVIL/JURY TRIALS: Provides relative to expedited jury trials

1 AN ACT

To enact Code of Civil Procedure Articles 1553, 1571(A)(3), and 4872(C) and Chapter 8 of Title V of Book II of the Code of Civil Procedure, to be comprised of Articles 1815 through 1838, relative to expedited jury trials; to provide for the procedures for expedited jury trials; to provide for pretrial conferences; to provide for special assignment by court rule; to provide that motions of summary judgment be filed prior to trial; to provide for the number of jurors; to provide that a cash deposit for all costs associated with jury costs be timely made; to provide for the service, swearing, and examination of jurors; to provide for the selection of a foreperson; to provide for challenges for cause; to provide for peremptory challenges; to provide for a time limit for an expedited trial jury; to provide for expert witnesses, their fees, and the presentation of their evidence; to provide for the admittance of exhibits; to provide for charges to the jury; to provide for the use of juror notes; to authorize jurors to take evidence into the jury room; to provide for the number of jurors needed for the court to render a verdict; to provide for general verdicts; to provide for verdict forms and interrogatories; to provide for post-verdict relief; to provide for appeals; to prohibit transfer of certain actions to district court; and to provide for related matters.

1 Be it enacted by the Legislature of Louisiana: 2 Section 1. Code of Civil Procedure Articles 1553, 1571(A)(3), and 4872(C) and 3 Chapter 8 of Title V of Book II of the Code of Civil Procedure, comprised of Articles 1815 4 through 1838, are hereby enacted to read as follows: 5 Art. 1553. Expedited jury trial pretrial conference; order 6 A. If an expedited jury trial has been requested, the parties shall prepare and 7 present to the court at the pretrial conference a proposed joint pretrial order 8 containing the following: 9 (1) A list of all witnesses for each party. 10 (2) A list of all exhibits for each party. 11 (3) A list of all experts and a designation as to whether each of them will 12 testify in person, by report, or by deposition. 13 (4) A certification that each party can present its case within the time limits 14 of Article 1828. 15 B. The pretrial order may, by agreement of the parties, contain additional 16 stipulations, which shall be binding on the court and all parties, including but not 17 <u>limited to the following:</u> 18 (1) A limitation of damages to an amount not in excess of the stated limits 19 of a policy of insurance. (2) Any maximum or minimum amounts that shall apply to the jury's verdict. 20 21 (3) A waiver of any right to an appeal or limitations as to appealable issues. 22 (4) A waiver of any right to move for a new trial. 23 (5) A waiver of any provision of the Code of Evidence. 24 (6) An agreement as to the payment of the cash deposit for the jury costs. 25 C. Subject to the provisions of Article 1816, the court shall conduct the 26 expedited jury trial within one hundred twenty days after the pretrial conference. 27 D. Subject to the provisions of Article 1571, the date of the expedited jury 28 trial shall be set at the pretrial conference even if discovery has not yet been 29 completed.

1	E. In the pretrial order, the court shall fix the deadline for filing the cash
2	deposit, which shall be no later than thirty days prior to trial.
3	F. The parties or their attorneys, as well as the court, shall sign the pretrial
4	order and file it into the record. The signature of a party or his attorney shall
5	constitute a certification that the party agreed to the terms of the pretrial order and
6	an expedited jury trial.
7	G. The court may amend a pretrial order at any time, but only with the
8	agreement of all parties.
9	* * *
10	Art. 1571. Assignment by court rule
11	A.
12	* * *
13	(3) These rules shall require the assignment of an expedited jury trial
14	pursuant to Article 1815 et seq. to be assigned by special setting only and shall
15	prohibit the assignment of a case for an expedited jury trial to upset a previously
16	assigned civil or criminal trial.
17	* * *
18	CHAPTER 8. EXPEDITED JURY TRIALS
19	Art. 1815. Expedited jury trials
20	An expedited jury trial is a method of trial by jury in which the parties
21	present their evidence in an efficient, expedited fashion.
22	Art. 1816. Joint motion for an expedited jury trial
23	Upon joint motion of all parties for an expedited jury trial, the court shall set
24	the matter for a pretrial conference in accordance with Article 1553 to be held within
25	forty-five days after the filing of the motion. The court shall grant the parties' joint
26	motion for an expedited jury trial unless the court, in its discretion, finds that an
27	expedited jury trial is not in the best interest of justice. An expedited jury trial shall
28	be allowed whether or not any party previously requested a trial by jury and, upon

1	consent of all parties, whether or not the petitioner's cause of action exceeds fifty
2	thousand dollars exclusive of interests and costs.
3	Comment - 2014
4 5 6 7	If all parties agree, an expedited jury trial shall be available to the parties even if no party had requested a jury trial in any previous pleadings. Specifically, the time periods for requesting a jury trial in Article 1733 do not apply to an expedited jury trial.
8	Art. 1817. Agreement for an expedited jury trial
9	An agreement to try an action by expedited jury trial shall not be made prior
10	to the institution of the action.
11	Art. 1818. Cash deposit; procedure
12	A. The court shall fix the cash deposit for the jury costs at an amount
13	sufficient for payment of all costs associated with the expedited jury trial, including
14	juror fees, and expenses and charges of the clerk of court.
15	B. If the deposit is not timely made, the other parties shall have an additional
16	ten days to make the required deposit.
17	C. When an expedited jury trial has been granted in a suit against the state,
18	a state agency, or a political subdivision, payment of the cash deposit shall be in
19	accordance with R.S. 13:5105.
20	Art. 1819. Motion for summary judgment
21	All motions for summary judgment in which an expedited jury trial has been
22	granted shall be filed at least sixty days prior to the trial date.
23	<u>Art. 1820. Jurors</u>
24	In cases to be tried by an expedited jury trial, six jurors shall be chosen by lot
25	to try all issues.
26	Art. 1821. Service to jurors
27	All jurors shall be served by regular mail.
28	Art. 1822. Swearing of juror before examination
29	Before being examined, every prospective juror shall be sworn and shall
30	affirm to answer truthfully such questions as may be propounded to him.

1	Art. 1823. Examination of juror
2	A. The court shall examine prospective jurors as to their qualifications and
3	may conduct such further examination as it deems appropriate.
4	B. The parties or their attorneys may individually conduct an examination
5	of all prospective jurors, not to exceed a total of twenty minutes for each side.
6	Comment - 2014
7 8 9 10	Efficiency is a hallmark of an expedited civil jury trial. Thus, an expedited civil jury trial is limited to three hours per side. Nevertheless, in the interest of providing parties the opportunity to be fully heard, the twenty minutes allotted for voir dire is not included within the three hours that each party has to present his case.
11	Art. 1824. Challenges for cause
12	A juror may be challenged for cause in accordance with Articles 1765
13	<u>through 1767.</u>
14	Art. 1825. Peremptory challenges
15	Each side is allowed two peremptory challenges. If there is more than one
16	party on any side, the court may allow each side one additional challenge.
17	Art.1826. Swearing of jurors; selection of foreperson
18	The jurors shall be sworn and the foreperson shall be selected in accordance
19	with Article 1768.
20	Art. 1827. Alternate jurors
21	No alternate juror shall be called or selected in an expedited jury trial.
22	Art. 1828. Procedure in expedited jury trials
23	Each side shall be allowed three hours to present its case, including opening
24	statements, direct examination, cross-examination, rebuttal, and closing arguments.
25	Opening statements shall not exceed ten minutes for each side, and closing
26	arguments shall not exceed fifteen minutes for each side. Time spent on objections
27	and bench conferences are not included in the time limits.
28	Art. 1829. Exhibits
29	A. At least thirty days prior to the jury trial, the parties shall exchange copies
30	of all proposed exhibits they plan to offer at trial.

1	B. Objections to exhibits shall be made at least twenty days prior to the trial.
2	At least five days prior to trial, the court shall rule on the admissibility of any exhibit
3	to which an objection has been made. If no objection is made at least twenty days
4	prior to the trial, the exhibit shall be admitted.
5	C. All exhibits shall be marked and admitted into evidence at the beginning
6	of trial.
7	Art. 1830. Expert witnesses
8	A. Expert witnesses may testify in person, or their testimony may be
9	presented by reports, depositions, or video depositions. If an expert witness is called
10	to testify in person at trial, the party calling the expert shall be responsible for all of
11	his expert fees, which shall not be taxed as court costs.
12	B. All motions challenging the qualifications or methodologies of an expert
13	witness shall be filed and heard by the court in accordance with Article 1425(F).
14	C. An expert who is listed in the pretrial order shall be allowed to testify at
15	trial unless the court precludes his testimony by an order issued in response to a
16	pretrial motion.
17	D. All expert reports to be introduced at trial shall be exchanged prior to the
18	pretrial conference.
19	Art. 1831. Charge to jury
20	A. At any time during the trial, the court may instruct the jury on the law
21	applicable to any issue in the case.
22	B. After the trial of the case and the presentation of all the evidence and
23	arguments, the court shall give a charge to the jury on the applicable law. The court
24	shall provide to the parties a written copy of the charge prior to the trial.
25	C. The jury may take with them or have sent to them a written copy of all
26	instructions and charges.
27	Art. 1832. Juror notes
28	Jurors shall be permitted to take notes in accordance with Article 1794.

1	Art. 1833. Taking evidence into the jury room
2	The court shall allow the jury to take with them into the jury room any object,
3	writing, or exhibit, except depositions, that has been admitted into evidence.
4	Art. 1834. Number required for verdict
5	Five of the six jurors must concur to render a verdict unless the parties
6	stipulate otherwise. In the event that one juror becomes unable to serve, four out of
7	the five remaining jurors must concur to render a verdict. If there are fewer than five
8	jurors, a mistrial shall be granted, unless the parties agree otherwise on the record.
9	Art. 1835. General verdict
10	A. The court shall submit to the jury the general verdict form and written
11	interrogatories agreed upon by all parties.
12	B. If the parties cannot agree on a verdict form and interrogatories, the court
13	shall inform the parties, prior to closing arguments, of the verdict form and
14	interrogatories it intends to submit to the jury. The parties shall be given a
15	reasonable opportunity to make any objections to the court's verdict form and
16	interrogatories.
17	Art. 1836. Post verdict relief
18	After an expedited jury trial, any party may file motions in accordance with
19	Articles 1811, 1814, and 1971 through 1979 unless the parties have waived the right
20	by stipulation in open court or in the pretrial order.
21	Art. 1837. Appeals
22	Following an expedited jury trial, the parties shall be allowed to appeal in
23	accordance with the procedure for appeals in Book III of this Code. The parties may
24	waive the right to appeal in the pretrial order or by stipulation in open court.
25	Comment - 2014
26 27 28	In accordance with Article 1553, the parties may also place limits on appealable issues in their pretrial order, and those limits will be binding on the appellate court.

1 Art. 1838. Applicability of general rules of trial by jury 2 Except as expressly provided in this Chapter, the general rules applicable to 3 trial by jury shall apply. 4 5 Art. 4872. Transfer to district court 6 7 C. Where a principal demand commenced in a court of limited jurisdiction 8 is one in which the parties are not entitled to a trial by jury under Article 1732(1), the 9 parties shall not be entitled to transfer an action to district court for an expedited trial 10 by jury under Article 1816. 11 Section 2. The provisions of this Act become effective on January 1, 2014, and shall 12 apply to all actions pending on that date or filed thereafter.

DIGEST

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

Huval HB No. 321

Abstract: Establishes expedited jury trials, provides for the availability of expedited jury trials in certain civil matters, and provides for the procedures for an expedited jury trial.

<u>Proposed law</u> provides procedures for expedited jury trials.

<u>Proposed law</u> (C.C.P. Art. 1553) provides that the court shall schedule a pretrial conference with the parties, that the parties shall have a pretrial order at the pretrial conference, and that the parties shall certify that they agree to an expedited jury trial.

Present law (C.C.P. Art. 1571) provides for assignment of cases for trial by court rule.

<u>Proposed law</u> retains <u>present law</u> and requires that an expedited jury trial be set by special assignment and prohibits the setting from upsetting a previously assigned civil or criminal trial.

<u>Proposed law</u> (C.C.P. Art. 1816) provides that upon a joint motion of all parties, the court shall set the matter for a pretrial conference in accordance with Art. 1553 to be held within 45 days of the filing of the motion. Further provides court with discretion in granting the motion for an expedited jury trial if it is not in the best interest of justice and allows the parties to consent to an expedited jury trial even when the cause of action does not exceed \$50,000.

<u>Proposed law</u> (C.C.P. Art. 1817) prohibits parties from agreeing to an expedited jury trial in advance of the institution of the action.

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CODING: Words in struck through type are deletions from existing law; words <u>underscored</u> are additions.

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<u>Proposed law</u> (C.C.P. Art. 1818) provides the amount that the court shall fix for the cash deposit for an expedited jury trial and the time period during which the deposit must be made. Requires cash deposits in expedited jury trials against the state, a state agency, or a political subdivision to be made in accordance with <u>present law</u>.

<u>Present law</u> (R.S. 13:5105) provides limitations on jury trials against the state, requires party demanding jury trial to pay all costs including posting of a bond or cash deposit, exempts the state, state agency, or state employee from the payment of any costs required for a jury trial in certain cases.

<u>Proposed law</u> (C.C.P. Art. 1819) provides that parties to an expedited jury trial shall file all motions for summary judgment 60 days prior to the trial date.

<u>Proposed law</u> (C.C.P. Art. 1820) provides that six jurors shall be chosen by lot to try all issues present in an expedited jury trial.

<u>Proposed law</u> (C.C.P. Art. 1821) provides that all jurors of an expedited jury trial shall be served by regular mail.

<u>Proposed law</u> (C.C.P. Art. 1822) provides that before examination, every prospective juror shall be sworn and affirm to answer truthfully questions propounded to him.

<u>Proposed law</u> (C.C.P. Art. 1823) provides that the court shall examine prospective jurors, and the parties may conduct an examination of all such jurors but no more than 20 minutes in total.

<u>Proposed law</u> (C.C.P. Art. 1824) provides that a juror can be challenged for cause in accordance with C.C.P. Arts. 1765-1767.

<u>Proposed law</u> (C.C.P. Art. 1825) provides that each side is allowed two peremptory challenges, but if there is more than one party on either side, the court can allow additional challenges.

<u>Proposed law</u> (C.C.P. Art. 1826) provides that jurors shall be sworn and a foreperson selected in accordance with C.C.P. Art. 1768.

<u>Proposed law</u> (C.C.P. Art. 1827) provides that no alternate jurors shall be called or selected in an expedited jury trial.

<u>Proposed law</u> (C.C.P. Art. 1828) provides that the entire expedited jury trial shall not exceed six hours, the opening statements shall not exceed 10 minutes per side, closing arguments shall not exceed 15 minutes per side, and that time spent on objections and bench conference does not count against the six-hour time limit.

<u>Proposed law</u> (C.C.P. Art. 1829) provides that no later than 30 days prior to trial, the parties shall exchange all exhibits they plan to offer at trial, the time limits during which a party can object to exhibits, when the court must rule on the admissibility of the exhibits, and when exhibits shall be marked and admitted into evidence.

<u>Proposed law</u> (C.C.P. Art. 1830) provides for expert witnesses to testify in person, by reports, depositions, or video depositions and that each side shall pay for his expert fees, that all motions challenging an expert shall be filed and heard in accordance with C.C.P. Art. 1425(F), and that all expert reports to be used at trial shall be exchanged prior to the pre-trial conference.

<u>Proposed law</u> (C.C.P. Art. 1831) provides that the court may instruct the jury as to any applicable law, that the court shall provide the parties a written copy of the charge prior to the trial, and that the jury can take with it or have sent to it a written copy of all instructions and charges.

<u>Proposed law</u> (C.C.P. Art. 1832) provides that, in accordance with C.C.P. Art. 1794, jurors can take notes.

<u>Proposed law</u> (C.C.P. Art. 1833) provides that jurors can take any object, writing, or exhibit that has been admitted into evidence, with the exception of depositions, into the jury room.

<u>Proposed law</u> (C.C.P. Art. 1834) provides for the number of jurors that must concur for a verdict to be rendered, and that if fewer than five agree, a mistrial must be granted unless the parties agree otherwise on the record.

<u>Proposed law</u> (C.C.P. Art. 1835) provides that the court shall submit the general verdict form and interrogatories agreed upon by the parties; otherwise, the court shall give the parties a reasonable time to object to the court's supplied verdict form and interrogatories.

<u>Proposed law</u> (C.C.P. Art. 1836) provides that unless the parties have waived a motion by stipulation in open court or in the pretrial order, any party may file a motion in accordance with the C.C.P. Arts. 1811, 1814, and 1971-1979.

<u>Proposed law</u> (C.C.P. Art. 1837) provides that unless the parties have waived the right to appeal by stipulation in open court or in the pretrial order, a party may appeal in accordance with the procedure for appeals in Book III of the C.C.P.

<u>Proposed law</u> (C.C.P. Art. 1838) provides that except as provided for in <u>proposed law</u>, the general rules applicable to jury trials apply.

Present law (C.C.P. Art. 4872) provides for transfer of cases in certain cases to district court.

<u>Proposed law</u> retains <u>present law</u> and prohibits parties from moving for an expedited jury trial and requesting a transfer to district court when the principal demand originates in a court of limited jurisdiction and the parties are not entitled to a trial by jury because the cause of action does not exceed \$50,000.

Effective Jan. 1, 2014.

(Adds C.C.P. Arts. 1553, 1571(A)(3), 4872(C), and 1815-1838)

Summary of Amendments Adopted by House

Committee Amendments Proposed by <u>House Committee on Civil Law and Procedure</u> to the <u>original</u> bill.

- 1. Added requirement that an expedited jury trial be set by special setting and that an expedited jury trial setting not upset a previously set civil or criminal trial.
- 2. Required a pretrial conference to be held within 45 days of the filing of the joint motion for an expedited jury trial and provided the court with discretion in granting a motion for an expedited jury trial if the court finds that it is not in the best interest of justice.
- 3. Allowed parties to consent to an expedited jury trial even when the cause of action does not exceed \$50,000.

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- 4. Prohibited parties from agreeing to an expedited jury trial prior to the filing of an action.
- 5. Required cash deposits in expedited jury trials against the state, a state agency, or a political subdivision to be made in accordance with <u>present law</u>.
- 6. Prohibited parties from being able to request an expedited jury trial and transfer the matter to district court when the matter was originally filed in a court of limited jurisdiction and the cause of action did not exceed \$50,000.