

Regular Session, 2014

HOUSE BILL NO. 619

BY REPRESENTATIVES ABRAMSON AND LORUSSO

(On Recommendation of the Louisiana State Law Institute)

CIVIL/PROCEDURE: Provides relative to the Uniform Interstate Deposition and Discovery Act

1 AN ACT

2 To amend and reenact R.S. 13:3822, 3823(A)(4) and (B), and 3824(A) and to enact
3 R.S.13:3823(A)(5) and 3825, relative to depositions and discovery procedure; to
4 provide for uniform foreign depositions law; to provide for assistance to tribunals
5 and litigants in other states and jurisdictions; to provide for the Uniform Interstate
6 Depositions and Discovery Act; to provide for definitions and procedures; and to
7 provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 13:3822, 3823(A)(4) and (B), and 3824(A) are hereby amended and
10 reenacted and R.S.13:3823(A)(5) and 3825 are hereby enacted to read as follows:

11 §3822. Same; interpretation and citation

12 R.S. 13:3821 and 13:~~3822~~ 3823 shall be so interpreted and construed as to
13 effectuate its general purposes to make uniform the law of those states which enact
14 it, and may be cited as the Uniform Foreign Depositions Law.

15 §3823. Taking of depositions in another state, or in a territory, district, or foreign
16 jurisdiction

17 A. When an action is pending in this state, a deposition to obtain testimony
18 or documents or other things may be taken in another state, or in a territory, district,
19 or foreign jurisdiction:

20 * * *

(4) Pursuant to Article 1435 of the Code of Civil Procedure.

(5) In any manner stipulated by the parties before any person, at any time or place, upon any notice, and a person designated by the stipulation shall have the power by virtue of his designation to administer any necessary oath.

B. If a commission or a letter rogatory from a court in this state is required in another state, territory, district, or foreign jurisdiction, the party seeking the commission or letter rogatory shall be issued apply for it by written motion. The commission or letter rogatory shall be issued ex parte if it is unopposed, after or after notice and application to the court, a contradictory hearing if it is opposed, and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter rogatory that the taking of the deposition in any other manner is impracticable or inconvenient, and both a commission and a letter rogatory may be issued in proper cases. Evidence obtained in a foreign country in response to a letter rogatory need not be excluded merely for the reason that it is not a verbatim transcript or that the testimony was not taken under oath or for any similar departure from the requirements for depositions taken within this state.

* * *

Comment - 2014

The 2014 amendment added a reference to Article 1435 of the Code of Civil Procedure. Discovery from a non-resident who is not a party to a Louisiana action may be taken in another state, territory, or foreign jurisdiction either by obtaining a letter rogatory from the Louisiana court or by utilizing the compulsory process of the foreign state pursuant to Article 1435.

§3824. Assistance to tribunals and litigants in another state, or in a territory, district, or foreign jurisdiction

A. ~~A court of this state may order a~~ person who is domiciled or is found within this state may be compelled to give his testimony or statement or to produce documents or other things for use in a proceeding in a ~~tribunal court~~ tribunal court in another state, or in a territory, district, or foreign jurisdiction: pursuant to:

(1) R.S. 13:3825; or

(2) ~~The An~~ order may be made upon the application of any interested person or in response to a letter rogatory ~~and may prescribe the practice and procedure, which may be wholly or in part the practice and procedure of the tribunal of the other state, or territory, district, or foreign jurisdiction, for taking the testimony or statement or producing the documents or other things.~~ To the extent that the order does not prescribe otherwise, the practice and procedure shall be in accordance with that of the court of this state issuing the order. The order may direct that the testimony or statement be given, or document or other thing produced, before a person appointed by the court. The person appointed shall have power to administer any necessary oath.

* * *

Comment - 2014

The 2014 amendment added a reference to the Louisiana Uniform Interstate Depositions and Discovery Act, R.S. 13:3825, adopted in 2014.

§3825. Louisiana Uniform Interstate Depositions and Discovery Act

A. Short Title. This Section may be cited as the "Louisiana Uniform Interstate Depositions and Discovery Act".

B. Definitions. In this Section:

(1) "Foreign jurisdiction" means a state other than this state.

(2) "Foreign subpoena" means a subpoena issued under authority of a court of record of a foreign jurisdiction.

(3) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency, or instrumentality, or other legal or commercial entity.

(4) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(5) "Subpoena" means a document, however denominated, issued under authority of a court of record requiring a person to:

1 (a) Attend and give testimony at a deposition;

2 (b) Produce and permit inspection and copying of designated books,
3 documents, records, electronically stored information, or tangible things in the
4 possession, custody, or control of the person; or

5 (c) Permit inspection of premises under the control of the person.

6 C. Issuance of Subpoena.

7 (1) To request issuance of a subpoena under this Section, a party must
8 present the original or a certified copy of a foreign subpoena to the clerk of court of
9 the parish in which discovery is sought to be conducted in this state. A request for
10 the issuance of a subpoena under this Section does not constitute an appearance in
11 the courts of this state.

12 (2) When a party presents a foreign subpoena to a clerk of court in this state,
13 the clerk, in accordance with that court's procedure, shall promptly issue a subpoena
14 for service upon the person to which the foreign subpoena is directed.

15 (3) A subpoena issued under Paragraph (C)(2) must:

16 (a) Identify the caption and case number of the out-of-state case to which it
17 relates and incorporate the terms used in the foreign subpoena;

18 (b) State the name of the court in this state which has issued it with an
19 identifying number; and

20 (c) Contain or be accompanied by the names, addresses, and telephone
21 numbers of all counsel of record in the proceeding to which the subpoena relates and
22 of any party not represented by counsel.

23 D. Service of Subpoena. A subpoena issued by a clerk of court under
24 Subsection C must be served in compliance with the laws of this state, including
25 Article 1355 of the Code of Civil Procedure.

26 E. Deposition, Production, and Inspection. The Code of Civil Procedure and
27 any other laws or district court rules of this state governing a deposition, production
28 of documents or other tangible items, or an inspection of premises apply to discovery
29 under Subsection C.

1 F. Application to Court. An application to a court of this state for a
2 protective order or for an order enforcing, quashing, or modifying a subpoena issued
3 by a clerk of court under Subsection C must comply with the district court rules, the
4 Code of Civil Procedure, and the Rules of Professional Conduct of this state and be
5 submitted to the district court that issued the subpoena.

6 G. Uniformity of Application and Construction. In applying and construing
7 this Section, consideration must be given to the need to promote uniformity of the
8 law with respect to its subject matter among states that enact it.

9 Comments to Subsections A and B - 2014

10 This Act is limited to discovery in state courts, the District of Columbia,
11 Puerto Rico, the United States Virgin Islands, and the territories of the United States.
12 This Act does not apply to foreign countries including the Canadian provinces.

13 The term "Subpoena" includes a subpoena duces tecum. The description of
14 a subpoena in the Act is based on the language of Rule 45 of the Federal Rules of
15 Civil Procedure.

16 The term "Subpoena" does not include a subpoena for the inspection of a
17 person. Medical examinations in a personal injury case, for example, are separately
18 controlled by state discovery rules (the corresponding federal rule is Rule 35 of the
19 FRCP). It does not include a subpoena for the inspection of a person. Since the
20 plaintiff in personal injury cases is already subject to the jurisdiction of the foreign
21 state, a subpoena is not necessary.

22 The term "Court of Record" in Paragraphs B(2) and (5) excludes subpoenas
23 issued in administrative proceedings and arbitrations. The term "Court of Record"
24 in Paragraph B(2) was chosen to exclude non-court of record proceedings from the
25 ambit of the Act. Extending the Act to such proceedings as administrative
26 proceedings and arbitrations would be a significant and unnecessary expansion.

27 Comments to Subsection C - 2014

28 The term "present" used in Subsection C means delivering to and filing with
29 the clerk of court. Presenting a subpoena to the clerk of court in this state for
30 issuance in the name of the district court in this state, is the necessary act that
31 invokes the jurisdiction of this state, which in turn makes the newly issued subpoena
32 issued in this state both enforceable and challengeable in this state.

33 The standard procedure under this Section will be as follows. When a case
34 is filed in a foreign state and the witness to be deposed lives or is found in Louisiana,
35 a lawyer of record for a party in the action pending in the foreign state will issue a
36 subpoena in that state. The lawyer in the out of state proceeding will then obtain a
37 copy of the subpoena form from the clerk's office in this state. The lawyer will then
38 prepare a Louisiana form of subpoena so that it has the same terms as the out-of-state
39 subpoena. The completed and executed out-of-state subpoena and the completed but
40 not yet executed Louisiana subpoena will be delivered to the clerk's office in
41 Louisiana. It is suggested that a short transmittal letter to accompany the subpoena,
42 advising the clerk in this state that the subpoena is being sought pursuant to this
43 statute. The clerk of court, upon being presented with the out-of-state subpoena, will

1 then issue the identical subpoena from the court in this state ("issue" includes
2 signing, stamping, and assigning a case or docket number). The party seeking
3 issuance of the subpoena will pay any necessary filing and service fees, and then
4 have the subpoena served on the deponent in accordance with Louisiana law (which
5 includes any applicable local rules).

6 The advantages of this process are apparent. The act of the clerk of court in
7 issuing the subpoena is ministerial, yet is sufficient to invoke the jurisdiction of this
8 state over the deponent. The only documents that need to be presented to the clerk
9 of court in this state are the subpoena issued from the foreign state and the draft
10 subpoena to be served in this state. There is no need to hire local counsel to have the
11 subpoena issued in this state or present the matter to a judge in this state before the
12 subpoena can be issued. In effect, the clerk of court in this state simply reissues the
13 subpoena of the foreign state, and the new subpoena is then served on the deponent
14 in accordance with the laws of this state. The process is simple and efficient, costs
15 are kept to a minimum, and local counsel and judicial participation are unnecessary
16 to have the subpoena issued and served in this state.

17 This Act does not change or repeal the law in this state that requires a
18 commission or letters rogatory to take a deposition in a foreign jurisdiction. The Act
19 does, however, eliminate any requirement in this state of a commission or letter
20 rogatory from the foreign court before a deposition can be taken in this state.

21 The Act requires that, when the subpoena is served, it contain or be
22 accompanied by the names, addresses, and telephone numbers of all counsel of
23 record and of any party not represented by counsel. This requirement imposes no
24 significant burden on the lawyer requesting the issuance of the subpoena, given that
25 the lawyer already has the obligation to send a notice of deposition to every counsel
26 of record and any unrepresented parties. The benefits in this state, by contrast, are
27 significant. This requirement makes it easy for the deponent (or, as will frequently
28 be the case, the deponent's lawyer) to learn the names of and contact the other
29 lawyers in the case. This requirement can easily be met, since the subpoena will
30 contain or be accompanied by the names, addresses, and telephone numbers of all
31 counsel of record and of any party not represented by counsel (which is the same
32 information that will ordinarily be contained on a notice of deposition and proof of
33 service).

34 Comment to Subsection E - 2014

35 The Act requires that the discovery permitted by this Section must comply
36 with the laws of this state. This state has a significant interest in protecting its
37 residents who become non-party witnesses in an action pending in a foreign
38 jurisdiction from any unreasonable or unduly burdensome discovery request.
39 Therefore, the discovery procedure must be the same as it would be if the case had
40 originally been filed in this state.

41 Comments to Subsection F - 2014

42 The Act requires that any application to a court in this state for a protective
43 order, or for an order enforcing, quashing, or modifying a subpoena, or for any other
44 order relating to discovery under this Act, must comply with the rules or statutes of
45 this state, including this state's procedural, evidentiary, and conflict of laws rules.
46 This state has a significant interest in protecting its residents who become non-party
47 witnesses in an action pending in a foreign jurisdiction from any unreasonable or
48 unduly burdensome discovery requests, and this is accomplished by requiring that
49 any discovery motions must be decided under the laws of this state.

Evidentiary issues that may arise, such as objections based on grounds of relevance or privilege, are best decided in this state under the laws of this state (including its conflict of laws principles).

Nothing in this Act limits any party from applying for appropriate relief in the foreign state. Any party can move for an order in the foreign state to bar the deposition of a Louisiana deponent, and that motion may be made and ruled on before the subpoena is ever presented to the clerk of court in this state.

If the attorney for a party in an out-of-state action makes or responds to an application in Louisiana to enforce, quash, or modify a subpoena in this state, the lawyer making or responding to the application must comply with this state's rules governing lawyers appearing in its courts. This Section of the Act does not change Louisiana's rules governing out-of-state lawyers appearing in its courts. (See Rule of Professional Conduct 5.5.)

Section 2. This Act shall apply to all requests for discovery in cases pending on the effective date of this Act 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)]

Abramson

HB No. 619

Abstract: Adds the La. Uniform Interstate Depositions and Discovery Act, which adopts, in addition to the current mechanisms of discovery provided in the Uniform Foreign Depositions Law, including letters rogatory, additional mechanisms for discovery and depositions, limited to discovery in state courts.

Present law in R.S.13:3822, provides for the interpretation and citation of the Uniform Foreign Depositions Law.

Proposed law adds a reference to 13:3823 as part of the Uniform Foreign Depositions Law.

Present law (R.S.13:3823) provides for procedures in taking depositions in another state, or in a territory, district, or foreign jurisdiction, including letters rogatory.

Proposed law adds a reference to C.C.P. Art. 1435, allowing discovery from a non-resident non-party by utilizing the compulsory process of the foreign state or territory pursuant to that Article.

Present law (R.S.13:3824) provides for court orders to persons domiciled or found in this state to give testimony or produce documents in another state or foreign jurisdiction.

Proposed law includes and references the new La. Uniform Interstate Depositions and Discovery Act (R.S.13:3825) as a mechanism for compelling such discovery.

Present law provides for Uniform Foreign Depositions Law.

Proposed law (R.S.13:3825) adds the La. Uniform Interstate Depositions and Discovery Act, which adopts, in addition to the current mechanisms of discovery provided in the Uniform Foreign Depositions Law, including letters rogatory, additional mechanisms for discovery and depositions, limited to discovery in state courts.

SYNOPSIS

This La. State Law Institute recommended bill provides a La. version of the Uniform Interstate Depositions and Discovery Act (UIDDA), designated as R.S. 13:3825, with comments adjusted for the Louisiana version. This uniform law, adopted in a majority of states, is designed to make it easier for out-of-state lawyers to conduct discovery in foreign states to be used in the pending action. Adoption of the UIDDA in La. does not eliminate any pre-existing requirement in La. that a commission or letters rogatory from its trial courts are required to take out-of-state depositions.

The UIDDA as adopted in La. will not affect the two alternative existing procedures which La. law now provides for La. lawyers to conduct discovery out-of-state:

- (1) R.S. 13:3823 authorizes the La. trial court to issue letters rogatory addressed to the out-of-state court to enable the out-of-state court to issue a subpoena. This procedure is provided by the Uniform Foreign Depositions Act which has been adopted in this state. It is used primarily for conducting discovery in those foreign states that still require letters rogatory from the out-of-state trial court.
- (2) Alternatively, the La. lawyer seeking out-of-state discovery can (after notice to all parties in the La. proceeding) compel the discovery in the foreign state by utilizing the foreign state's "compulsory process" to conduct discovery. Article 1435 provides this procedure.

Under Article 1435, if the foreign state has adopted the UIDDA, compliance with its procedure for the issuance of the two subpoenas (with no judicial intervention) is all that would be needed. To make sure that La. practitioners are aware of the availability of these two alternate procedures, amendment is made in R.S. 13:3823(A)(4) making a reference to the alternative procedure in Article 1435.

Additionally, R.S. 13:3824, which deals with making La. discovery available to out-of-state litigants, has been amended to reflect that the newly adopted UIDDA in R.S. 13:3825 is now available as an alternative procedure for such discovery in La.

(Amends R.S.13:3822, 3823(A)(4) and (B), and 3824(A); Adds R.S.13:3823(A)(5) and 3825)