

2020 Regular Session

HOUSE BILL NO. 648

BY REPRESENTATIVE ROBBY CARTER

JUDGMENTS: Provides relative to final default judgments

1 AN ACT

2 To amend and reenact Code of Civil Procedure Articles 253.3(A)(3), 1702 (A) and (E),
3 1702.1, 1704, 4904(A) and 4921(A), R.S. 13:3205(introductory paragraph) and
4 4990, and R.S. 23:1316.1(A) and to repeal Code of Civil Procedure Articles 1701
5 and 1704(D) and R.S. 23:1316, relative to default judgments; to eliminate the
6 preliminary default and confirmation of preliminary default; to provide for rendering
7 a final default judgment; to provide for proof; to provide for the court record; and to
8 provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Code of Civil Procedure Articles 253.3(A)(3), 1702 (A) and (E), 1702.1,
11 1704, 4904(A) and 4921(A) are hereby amended and reenacted to read as follows:

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

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

15 * * *

16 (3) ~~Entry of preliminary defaults, confirmation of defaults~~ Final default
17 judgments, stipulated matters, examination of judgment debtors, orders to proceed
18 in forma pauperis, orders allowing the filing of supplemental and amending petitions
19 when no trial date has been assigned, orders allowing incidental demands when no

1 trial date has been assigned, orders allowing additional time to answer, and judicial
2 commitments.

3 * * *

4 Art. 1702. ~~Confirmation of preliminary default~~ Final default judgment

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

21 * * *

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 default judgment, ~~and~~
29 a certification ~~which shall indicate~~ indicating the type of service made on the

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

12 Art. 1702.1. ~~Confirmation of preliminary default~~ Final default judgment without
 13 hearing in open court; required information; certifications

14 A. When the plaintiff seeks ~~to confirm a preliminary default~~ a final default
 15 judgment without appearing for a hearing in open court as provided in Article
 16 1702(B)(1) and (C), along with any proof required by law, he or his attorney shall
 17 include in an itemized form with a written motion for ~~confirmation of preliminary~~
 18 ~~default~~ final default judgment and proposed final default judgment a certification that
 19 the suit is on an open account, promissory note, or other negotiable instrument, on
 20 a conventional obligation, or on a check dishonored for nonsufficient funds, and that
 21 the necessary invoices and affidavit, note and affidavit, or check or certified
 22 reproduction thereof are attached. If attorney fees are sought under R.S. 9:2781 or
 23 2782, the attorney shall certify that fact and the fact that the number of days required
 24 by R.S. 9:2781(A) or 2782(A), respectively, have elapsed since demand was made
 25 upon the defendant.

26 B. The certification shall indicate the type of service made on the defendant;
 27 and the date of service; ~~and the date a preliminary default was entered~~; and shall also
 28 include a certification by the clerk that the record was examined by the clerk,

1 including therein the date of the examination and a statement that no answer or other
2 pleading has been filed within the time prescribed by law or by the court.

3 * * *

4 Art. 1704. ~~Confirmation of preliminary default~~ Final default judgment in suits
5 against the state or a political subdivision

6 A. Notwithstanding any other provision of law to the contrary, prior to
7 ~~confirmation of a preliminary default~~ the court rendering a final default judgment
8 against the state or any of its departments, offices, boards, commissions, agencies,
9 or instrumentalities, ~~a certified copy of the minute entry constituting the preliminary~~
10 ~~default entered pursuant to Article 1701,~~ together with a certified copy of the petition
11 or other demand; shall be sent by the plaintiff or his counsel to the attorney general
12 by registered or certified mail; or shall be served by the sheriff personally upon the
13 attorney general or the first assistant attorney general at the office of the attorney
14 general. If ~~the minute entry and the petition are~~ is served on the attorney general by
15 mail, the person mailing ~~such items~~ the petition shall execute and file in the record
16 an affidavit stating that ~~these items have~~ the petition has been enclosed in an
17 envelope properly addressed to the attorney general with sufficient postage affixed,
18 and stating the date on which such envelope was deposited in the United States mail.
19 ~~In addition the~~ The return receipt shall be attached to the affidavit which was filed
20 in the record.

21 B. ~~If no answer or other pleading is filed during the fifteen days immediately~~
22 ~~following the date on which the attorney general or the first assistant attorney general~~
23 ~~received notice of the preliminary default as provided in Paragraph A of this Article,~~
24 ~~a preliminary default entered against the state or any of its departments, offices,~~
25 ~~boards, commissions, agencies, or instrumentalities may be confirmed by proof as~~
26 ~~required by Article 1702.~~

27 C. Notwithstanding any other provision of law to the contrary, prior to
28 ~~confirmation of a preliminary default~~ the court rendering a final default judgment
29 against a political subdivision of the state or any of its departments, offices, boards,

1 commissions, agencies, or instrumentalities, ~~a certified copy of the minute entry~~
 2 ~~constituting the preliminary default entered pursuant to Article 1701, together with~~
 3 a certified copy of the petition or other demand; shall be sent by the plaintiff or his
 4 counsel by registered or certified mail to the proper agent or person for service of
 5 process at the office of that agent or person. The person mailing ~~such items~~ the
 6 petition shall execute and file in the record an affidavit stating that ~~these items have~~
 7 the petition has been enclosed in an envelope properly addressed to the proper agent
 8 or person for service of process, with sufficient postage affixed, and stating the date
 9 on which such envelope was deposited in the United States mail. ~~In addition the~~ The
 10 return receipt shall be attached to the affidavit which was filed in the record.

11 * * *

12 Art. 4904. Final default judgment in parish and city courts

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

17 * * *

18 Art. 4921. Final default judgment; justice of the peace courts; district courts with
 19 concurrent jurisdiction

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

23 * * *

24 Section 2. R.S. 13:3205(introductory paragraph) and 4990 are hereby amended and
 25 reenacted to read as follows:

26 §3205. ~~Default~~ Final default judgment; hearings; proof of service of process

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

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)]

HB 648 Original

2020 Regular Session

Robby Carter

Abstract: Eliminates the preliminary default in civil cases.

Present law provides that in district courts and in workers' compensation cases, if a defendant fails to file an answer or other pleadings within the time prescribed by law or by the court, a preliminary default may be entered against him. Present law further provides that after a delay of either two or 15 days a preliminary default may be confirmed by proof that is sufficient to establish a prima facie case admitted on the record prior to entry of a final default judgment.

Proposed law repeals present law.

Proposed law provides that a final default judgment may be rendered if a defendant fails to file an answer or other pleadings within the time prescribed by law or by the court and the plaintiff establishes a prima facie case that is admitted on the record.

Present law provides that before a final default judgment may be rendered against the state or political subdivision thereof, a certified copy of the petition and the minute entry constituting the preliminary default shall be sent to or served on the attorney general or proper agent.

Proposed law provides that only the petition shall be sent to or served pursuant to present law.

Proposed law eliminates references in present law to "preliminary default."

(Amends C.C.P. Arts. 253.3(A)(3), 1702 (A) and (E), 1702.1, 1704, 4904(A) and 4921(A), R.S. 13:3205(intro. para.) and 4990, and R.S. 23:1316.1(A); repeals C.C.P. Arts. 1701 and 1704(D) and R.S. 23:1316)