REENGROSSED

2021 Regular Session

HOUSE BILL NO. 152

BY REPRESENTATIVE GREGORY MILLER

(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/PROCEDURE: Provides for the continuous revision of the Code of Civil Procedure

1	AN ACT
2	To amend and reenact Civil Code Article 3452, Code of Civil Procedure Articles 80(A)(1)
3	and (2), 253.2, 592(A)(2) and (3), 893(A)(2), (B), and (C), 927(B), 1352, 1561(A),
4	1702(D) and (E), 1793(D), 1795, 1918, 1951, 1974, 2088(A), 2254(B), 2721(C),
5	3943, 3947(B), 4907(B), 4913(B)(4), and 5001, and R.S. 13:3661, and to enact Code
6	of Civil Procedure Articles 1702(F), 4904(D), and 4921(C), relative to civil
7	procedure; to provide with respect to venue; to provide with respect to certification
8	procedure; to provide for the pleading of damages; to provide for the necessity of
9	pleading prescription; to provide for restrictions on subpoenas; to provide for
10	consolidation; to provide with respect to courts raising the issue of prescription on
11	their own motion; to provide for jury instructions; to provide for the form and
12	amendment of final judgments; to provide with respect to the delay for applying for
13	a new trial; to provide for the jurisdiction of trial and justice of the peace courts; to
14	provide for the appeal of judgments; to provide with respect to improper or wrongful
15	seizure; to provide for name confirmation; to provide for witness fees; and to provide
16	for related matters.
17	Be it enacted by the Legislature of Louisiana:
18	Section 1. Civil Code Article 3452 is hereby amended and reenacted to read as
19	follows:

1	Art. 3452. Necessity for pleading prescription
2	Prescription must be pleaded. Courts Except as otherwise provided by
3	legislation, courts may not supply a plea of prescription.
4	Section 2. Code of Civil Procedure Articles 80(A)(1) and (2), 253.2, 592(A)(2) and
5	(3), 893(A)(2), (B), and (C), 927(B), 1352, 1561(A), 1702(D) and (E), 1793(D), 1795, 1918,
6	1951, 1974, 2088(A), 2254(B), 2721(C), 3943, 3947(B), 4907(B), 4913(B)(4), and 5001 are
7	hereby amended and reenacted, and Code of Civil Procedure Articles 1702(F), 4904(D), and
8	4921(C) are hereby enacted to read as follows:
9	Art. 80. Action involving immovable property
10	A. The following actions may be brought in the parish where the immovable
11	property is situated or in the parish where the defendant in the action is domiciled:
12	(1) An action to assert an interest in immovable property, or a right in, to, or
13	against immovable property, except as otherwise provided in Article 72;.
14	(2) An action to partition immovable property, except as otherwise provided
15	in Articles 81, 82, and 83 ; and .
16	* * *
16 17	* * * * Comments - 2021
17 18 19 20	Comments - 2021 The deletion of the phrase "except as otherwise provided in Article 72" is intended to recognize the removal by Acts 1997, No. 1005 of the exception that previously allowed a defendant to convert a personal action into an in rem action by
17 18 19 20 21	Comments - 2021 The deletion of the phrase "except as otherwise provided in Article 72" is intended to recognize the removal by Acts 1997, No. 1005 of the exception that previously allowed a defendant to convert a personal action into an in rem action by objecting to venue.
17 18 19 20 21 22	Comments - 2021 The deletion of the phrase "except as otherwise provided in Article 72" is intended to recognize the removal by Acts 1997, No. 1005 of the exception that previously allowed a defendant to convert a personal action into an in rem action by objecting to venue.
 17 18 19 20 21 22 23 	Comments - 2021The deletion of the phrase "except as otherwise provided in Article 72" isintended to recognize the removal by Acts 1997, No. 1005 of the exception thatpreviously allowed a defendant to convert a personal action into an in rem action byobjecting to venue.* * *Art. 253.2. Transfer and reassignment of pending cases
 17 18 19 20 21 22 23 24 	Comments - 2021 The deletion of the phrase "except as otherwise provided in Article 72" is intended to recognize the removal by Acts 1997, No. 1005 of the exception that previously allowed a defendant to convert a personal action into an in rem action by objecting to venue. * * Art. 253.2. Transfer and reassignment of pending cases After a case has been assigned to a particular section or division of the court,
 17 18 19 20 21 22 23 24 25 	Comments - 2021The deletion of the phrase "except as otherwise provided in Article 72" is intended to recognize the removal by Acts 1997, No. 1005 of the exception that previously allowed a defendant to convert a personal action into an in rem action by objecting to venue.****Art. 253.2. Transfer and reassignment of pending casesAfter a case has been assigned to a particular section or division of the court, it may not be transferred from one section or division to another section or division
 17 18 19 20 21 22 23 24 25 26 	Comments - 2021The deletion of the phrase "except as otherwise provided in Article 72" is intended to recognize the removal by Acts 1997, No. 1005 of the exception that previously allowed a defendant to convert a personal action into an in rem action by objecting to venue.* *Art. 253.2. Transfer and reassignment of pending casesAfter a case has been assigned to a particular section or division of the court, it may not be transferred from one section or division to another section or division within the same court, unless agreed to by all parties, or unless it is being transferred
 17 18 19 20 21 22 23 24 25 26 27 	Comments - 2021The deletion of the phrase "except as otherwise provided in Article 72" is intended to recognize the removal by Acts 1997, No. 1005 of the exception that previously allowed a defendant to convert a personal action into an in rem action by objecting to venue.* *Art. 253.2. Transfer and reassignment of pending casesAfter a case has been assigned to a particular section or division of the court, it may not be transferred from one section or division to another section or division within the same court, unless agreed to by all parties, or unless it is being transferred to effect a consolidation for purpose of trial pursuant to Article 1561. However, the

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1	Art. 592. Certification procedure; notice; judgment; orders
2	А.
3	* * *
4	(2) If the proponent fails to file a motion for certification within the delay
5	allowed by Subparagraph $A(1)$ of this Paragraph, any adverse party may file a notice
6	of the failure to move for certification. On the filing of such a notice and after
7	hearing thereon, the demand for class relief may be stricken. If the demand for class
8	relief is stricken, the action may continue between the named parties alone. A
9	demand for class relief stricken under this Subparagraph may be reinstated upon a
10	showing of good cause by the proponent.
11	(3)(a) No motion to certify an action as a class action shall be granted prior
12	to a hearing on the motion. Such hearing shall be held as soon as practicable, but in
13	no event before until after both of the following have occurred:
14	(i) All named adverse parties have been served with the pleading containing
15	the demand for class relief or have made an appearance or, with respect to unserved
16	defendants who have not appeared, the proponent of the class has made due and
17	diligent effort to perfect service of such pleading; and.
18	(ii) The parties have had a reasonable opportunity to obtain discovery on
19	class certification issues, on such terms and conditions as the court deems necessary,
20	which may include expert witness testimony or evidence. The admissibility of
21	expert witness testimony or evidence for class certification purposes shall also be
22	governed by Article 1425(F), although the court in its discretion may change the
23	deadlines for filing or hearing a motion as set forth in Article 1425(F) provided such
24	deadlines are prior to or contemporaneous with the class certification hearing.
25	(b) At the hearing on the motion to certify an action as a class action, the
26	proponent of the class shall have the burden of proof to establish that all
27	requirements of Article 591 of this Code have been satisfied.
28	(c) If the court finds that the action should be maintained as a class action,
29	it shall certify the action accordingly. If the court finds that the action should not be

maintained as a class action, the action may continue between the named parties. In
either event, the court shall give in writing its findings of fact and reasons for
judgment provided a request is made not later than ten days after notice of the order
or judgment. A suspensive or devolutive appeal, as provided in Article 2081 et seq.
of the Code of Civil Procedure, may be taken as a matter of right from an order or
judgment provided for herein.
(d) In the process of class certification, or at any time thereafter before a
decision on the merits of the common issues, the court may alter, amend, or recall
its initial ruling on certification and may enlarge, restrict, or otherwise redefine the
constituency of the class or the issues to be maintained in the class action.
(e) No order contemplated in this Subparagraph shall be rendered after a
judgment or partial judgment on the merits of common issues has been rendered
against the party opposing the class and over such party's objection.
* * *
Comments - 2021
Former Subsubparagraph (A)(3)(e) of this Article has been deleted. This deletion is intended to recognize a series of judicial decisions permitting motions and exceptions that are dispositive of common and determinative issues to be resolved prior to certification of the class action. See, e.g., <i>Cooper v. CVS Caremark Corporation</i> , 176 So. 3d 422 (La. App. 1 Cir. 2015); <i>Smith v. City of New Orleans</i> , 131 So. 3d 511 (La. App. 4 Cir. 2013); <i>Clark v. Shackelford Farms Partnership</i> , 880 So. 2d 225 (La. App. 2 Cir. 2004); see also <i>Wade v. Kirkland</i> , 118 F. 3d 667 (9 Cir. 1997).
* * *
* * * * Art. 893. Pleading of damages
Art. 893. Pleading of damages
Art. 893. Pleading of damages A.
Art. 893. Pleading of damages A. * * *
 Art. 893. Pleading of damages A. * * * (2) If a petition is filed in violation of this Article, the claim for a specific
Art. 893. Pleading of damages A. * * * (2) If a petition is filed in violation of this Article, the claim for a specific monetary amount of damages shall be stricken upon the motion of an opposing party ₂

1	B. The provisions of Paragraph A of this Article shall not be applicable to
2	a suit on a conventional obligation, promissory note, open account, or other
3	negotiable instrument, for alimony or child support, on a tax claim, or in a
4	garnishment proceeding.
5	C. The prohibitions in Paragraph A of this Article apply only to an original,
6	amended, or incidental demand. Evidence at trial or hearing of a specific monetary
7	amount of damages shall be adduced in accordance with the Louisiana Code of
8	Evidence or other applicable law.
9	Comments - 2021
10 11 12 13	The amendment to Paragraph $(A)(2)$ of this Article is intended to make this paragraph consistent with Article 863, which permits the court to impose sanctions for the improper certification of a pleading against the person who made the certification, the represented party, or both.
14	* * *
15	Art. 927. Objections raised by peremptory exception
16	* * *
17	B. The Except as otherwise provided by Articles 1702(D), 4904(D), and
18	4921(C), the court may not supply the objection of prescription, which shall be
19	specially pleaded. The nonjoinder of a party, peremption, res judicata, the failure to
20	disclose a cause of action or a right or interest in the plaintiff to institute the suit, or
21	discharge in bankruptcy, may be noticed by either the trial or appellate court on its
22	own motion.
23	* * *
24	Art. 1352. Restrictions on subpoena
25	A witness, whether a party or not, who resides or is employed in this state
26	may be subpoenaed to attend a trial or hearing wherever held in this state. No
27	subpoena shall issue to compel the attendance of such a witness who resides and is
28	employed outside the parish and more than twenty-five miles from the courthouse
29	where the trial or hearing is to be held, unless the provisions of R.S. 13:3661 are
30	complied with.
31	* * *

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1	Art. 1561. Consolidation for trial or other limited purposes
2	A. When two or more separate actions are pending in the same court, the
3	section or division of the court in which the first filed action is pending may order
4	consolidation of the actions for trial or other limited purposes after a contradictory
5	hearing, and upon a finding that common issues of fact and law predominate, and,
6	in the event a trial date has been set in a subsequently filed action, upon a finding
7	that consolidation is in the interest of justice. The contradictory hearing may be
8	waived upon the certification by the mover that all parties in all cases to be
9	consolidated consent to the consolidation.
10	* * *
11	Comments - 2021
12 13 14 15 16	The amendment to this Article to allow the court in its discretion to consolidate two or more separate actions for trial or other limited purposes, such as discovery, is intended to legislatively overrule the decision of the Fourth Circuit Court of Appeal in <i>Boh v. James Indus. Contractors, LLC</i> , 868 So. 2d 180 (La. App. 4 Cir. 2004).
17	* * *
18	Art. 1702. Confirmation of preliminary default
19	* * *
20	D. When the demand is based upon a right acquired by assignment in an
21	open account, promissory note, or other negotiable instrument, the court may raise
22	an objection of prescription before entering a final default judgment if the grounds
23	for the objection appear from the pleadings or from the evidence submitted by the
24	plaintiff. If the court raises an objection of prescription, it shall not enter the final
25	default judgment unless the plaintiff presents prima facie proof that the action is not
26	barred by prescription. Upon the plaintiff's request, the court shall hold a hearing for
27	the submission of such proof.
28	D. <u>E.</u> When the demand is based upon a claim for a personal injury, a sworn
29	narrative report of the treating physician or dentist may be offered in lieu of his
30	testimony.

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1	E.F. Notwithstanding any other provisions of law to the contrary, when the
2	demand is for divorce under Civil Code Article 103(1) or (5), whether or not the
3	demand contains a claim for relief incidental or ancillary thereto, a hearing in open
4	court shall not be required unless the judge, in his discretion, directs that a hearing
5	be held. The plaintiff shall submit to the court an affidavit specifically attesting to
6	and testifying as to the truth of all of the factual allegations contained in the petition,
7	the original and not less than one copy of the proposed final judgment, and a
8	certification which shall indicate the type of service made on the defendant, the date
9	of service, the date a preliminary default was entered, and a certification by the clerk
10	that the record was examined by the clerk, including the date of the examination, and
11	a statement that no answer or other pleading has been filed. If the demand is for
12	divorce under Civil Code Article 103(5), a certified copy of the protective order or
13	injunction rendered after a contradictory hearing or consent decree shall also be
14	submitted to the court. If no answer or other pleading has been filed by the
15	defendant, the judge shall, after two days, exclusive of holidays, of entry of a
16	preliminary default, review the affidavit, proposed final default judgment, and
17	certification, render and sign the proposed final default judgment, or direct that a
18	hearing be held. The minutes shall reflect rendition and signing of the final default
19	judgment.
20	* * *
21	Art. 1793. Instructions to jury; objections
22	* * *
23	D. The jury may take with it or have sent to it a written copy of all

25 physical examination thereof is required to enable the jury to arrive at a verdict.

instructions and charges and any object or document received in evidence when a

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Comments	- 2021

2 Paragraph D of this Article has been amended to delete the restriction that the 3 jury may take evidence into the jury room only when a physical examination of the 4 evidence is required to enable the jury to arrive at a verdict. This language 5 incorrectly imposed the criminal procedural rule of Code of Criminal Procedure 6 Article 793(A). In civil proceedings, Article 1794(B) permits the jury to take into 7 the deliberation room any object or writing received in evidence, except depositions 8 and except as otherwise provided in the Louisiana Code of Evidence. 9 10 Art. 1795. Jury request to review evidence testimony 11 A. If the jury, after retiring for deliberation, requests a review of certain 12 testimony or other evidence, they shall be conducted to the courtroom. After giving 13 notice to the parties, the court may have the requested testimony read to the jury. 14 B. After giving notice to the parties, the court may have the requested 15 testimony read to the jury and may permit the jury to examine the requested 16 materials admitted into evidence. 17 Comments - 2021 18 This Article has been amended to clarify a misunderstanding concerning the 19 review of testimony by the jury. Under this Article, when the jury retires for 20 deliberation and later requests review of certain testimony, the jury must be 21 conducted to the courtroom where, after notifying the parties, the requested 22 testimony may be read to the jury; however, the jury may not take depositions, trial 23 transcripts, or other testimony into the jury room for examination. Because Article 1794 already permits the jury, with certain exceptions, to take with it any object or 24 25 writing received into evidence, the references to "other evidence" and "materials" 26 have been deleted to eliminate confusion. 27 28 Art. 1918. Form of final judgment 29 A. A final judgment in accordance with Article 1841 shall be identified as 30 such by appropriate language; shall be signed and dated; and shall, in its decree, 31 identify the name of the party in whose favor the relief is awarded, the name of the 32 party against whom the relief is awarded, and the relief that is awarded. If appealed, 33 a final judgment that does not contain the appropriate decretal language shall be 34 remanded to the trial court, which shall amend the judgment in accordance with 35 Article 1951 within the time set by the appellate court.

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B. When written reasons for the judgment are assigned, they shall be set out

2 in an opinion separate from the judgment.

Comments - 2021

(a) The amendments to this Article are intended to codify Louisiana jurisprudence providing that a final judgment must contain decretal language identifying the relief that is awarded and the parties in whose favor and against whom the relief is awarded. See, e.g., *Matter of Succession of Porche*, 213 So. 3d 401 (La. App. 1 Cir. 2017); *Abshire v. Town of Gueydan*, 208 So. 3d 405 (La. App. 3 Cir. 2016); *Schiff v. Pollard*, 222 So. 3d 867 (La. App. 4 Cir. 2017); *Contreras v. Vesper*, 202 So. 3d 1186 (La. App. 5 Cir. 2016). The issue of whether a judgment constitutes a final judgment should be determined in accordance with Article 1841. A lack of proper decretal language in a judgment that is otherwise a final judgment shall be corrected to include proper decretal language by an amendment in accordance with Article 1951.

(b) The amendments to this Article are consistent with existing requirements pertaining to final judgments affecting immovable property under Article 1919 and those granting an injunction or temporary restraining order under Article 3605.

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- 20 Art. 1951. Amendment of judgment

21 On motion of the court or any party, a final judgment may be amended at any 22 time to alter the phraseology of the judgment, but not its substance, or to correct 23 deficiencies in the decretal language or errors of calculation. The judgment may be 24 amended only after a hearing with notice to all parties, except that a hearing is not 25 required if all parties consent or if the court or the party submitting the amended 26 judgment certifies that it was provided to all parties at least five days before the 27 amendment and that no opposition has been received. A final judgment may not be 28 amended under this Article to change its substance.

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Comments - 2021

The amendments to this Article and Article 2088 allow the trial court to retain jurisdiction to correct, on its own motion or after remand from the appellate court, the lack of proper decretal language in a final judgment. This Article does not allow the court to make a substantive change to a final judgment. See, e.g., *Denton v. State Farm Mut. Auto. Ins. Co.*, 998 So. 2d 48 (La. 2008); *Bourgeois v. Kost*, 846 So. 2d 692 (La. 2003).

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1	Art. 1974. Delay for applying for new trial
2	The delay for applying for a new trial shall be A party may file a motion for
3	a new trial not later than seven days, exclusive of legal holidays,. The delay for
4	applying for a new trial commences to run on the day after the clerk has mailed, or
5	the sheriff has served, the notice of judgment as required by Article 1913.
6	Comments - 2021
7 8 9	This Article has been amended to clarify that the delay for filing a motion for new trial is the same as the delay for filing a motion for judgment notwithstanding the verdict under Article 1811.
10	* * *
11	Art. 2088. Divesting of jurisdiction of trial court
12	A. The jurisdiction of the trial court over all matters in the case reviewable
13	under the appeal is divested, and that of the appellate court attaches, on the granting
14	of the order of appeal and the timely filing of the appeal bond, in the case of a
15	suspensive appeal or on the granting of the order of appeal, in the case of a
16	devolutive appeal. Thereafter, the trial court has jurisdiction in the case only over
17	those matters not reviewable under the appeal, including the right to do any of the
18	following:
19	(1) Allow the taking of a deposition, as provided in Article 1433;.
20	(2) Extend the return day of the appeal, as provided in Article 2125;.
21	(3) Make, or permit the making of, a written narrative of the facts of the
22	case, as provided in Article 2131 ; .
23	(4) Correct any misstatement, irregularity, informality, or omission of the
24	trial record, as provided in Article 2132 ; .
25	(5) Test the solvency of the surety on the appeal bond as of the date of its
26	filing or subsequently, consider objections to the form, substance, and sufficiency
27	of the appeal bond, and permit the curing thereof, as provided in Articles 5123, 5124,
28	and 5126 ; .
29	(6) Grant an appeal to another party;.

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1	(7) Execute or give effect to the judgment when its execution or effect is not
2	suspended by the appeal ; .
3	(8) Enter orders permitting the deposit of sums of money within the meaning
4	of Article 4658 of this Code;.
5	(9) Impose the penalties provided by Article 2126, or dismiss the appeal,
6	when the appellant fails to timely pay the estimated costs or the difference between
7	the estimated costs and the actual costs of the appeal; or.
8	(10) Set and tax costs, and expert witness fees, and attorney fees.
9	(11) Certify a partial judgment or partial summary judgment in accordance
10	with Article 1915(B).
11	(12) Amend a judgment to provide proper decretal language under Article
12	<u>1918 or 1951.</u>
13	* * *
14	Comments - 2021
15 16 17 18 19 20 21 22	(a) The amendment to Subparagraph (A)(10) of this Article clarifies that the trial court retains jurisdiction for purposes of setting attorney fees after an appeal has been taken from the initial judgment. Trial courts award reasonable attorney fees in many judgments, but often these judgments are appealed before the attorney fees are set . With this amendment, it is no longer necessary for an appellate court to dismiss an appeal in order to allow the trial court to set the amount of the attorney fees, because the trial court has jurisdiction to set attorney fees while the appeal is pending.
23 24 25 26	(b) Subparagraph (A)(11) codifies the Louisiana Supreme Court's holding in <i>In re Interdiction of Gambino</i> , 296 So. 3d 1046 (La. 2020) (per curiam), that the trial court had jurisdiction to certify a partial judgment under Article 1915(B) as a final judgment after an appeal had been obtained.
27 28 29	(c) Subparagraph (A)(12) allows a trial court to retain jurisdiction after an order of appeal is granted to amend a final judgment to correct any deficiencies in the decretal language.
30	* * *
31	Art. 2254. Execution by sheriff; return; wrongful seizure
32	* * *
33	B. Since secured collateral subject to a security interest under Chapter 9 of
34	the Louisiana Commercial Laws (R.S. 10:9-101, et seq.) need only be reasonably
35	described in the debtor's security agreement (R.S. 10:9-110), the The sheriff shall

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1	have no liability to the debtor or to any third party for wrongful or improper seizure
2	of the debtor's or third party's property of the same general type as described in the
3	debtor's security agreement. If necessary, the sheriff shall request the secured
4	creditor to identify the property subject to the security agreement and shall act
5	pursuant to the secured creditor's instructions. The debtor's and other owner's sole
6	remedy for the wrongful or improper seizure of the property shall be for actual losses
7	sustained under R.S. $\frac{10:9-507(1)}{10:9-625}$ against the secured creditor on whose
8	behalf and pursuant to whose instructions the sheriff may act.
9	* * *
10	Art. 2721. Seizure of property; notice
11	* * *
12	C. Since secured collateral subject to a security interest under Chapter 9 of
13	the Louisiana Commercial Laws need only be reasonably described in the debtor's
14	security agreement, the The sheriff shall have no liability to the debtor or to any third
15	party for wrongful or improper seizure of the debtor's or third party's property of the
16	same general type as described in the debtor's security agreement. If necessary, the
17	sheriff shall request the secured creditor to identify the property subject to the
18	security agreement and shall act pursuant to the secured creditor's instructions. The
19	debtor's and other owner's sole remedy for the wrongful or improper seizure of the
20	property shall be for actual losses sustained under R.S. 10:9-625 against the secured
21	creditor on whose behalf and pursuant to whose instructions the sheriff may act.
22	* * *
23	Art. 3943. Appeal from judgment awarding, modifying, or denying custody,
24	visitation, or support
25	An appeal from a judgment awarding, modifying, or denying custody,
26	visitation, or support of a person can be taken only within the delay provided in
27	Article 3942. Such an appeal shall not suspend execution of the judgment insofar
28	as the judgment relates to custody, visitation, or support.
29	* * *

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1	Art. 3947. Name confirmation
2	* * *
3	B. The court may enter an order confirming the name of a married woman
4	spouse in a divorce proceeding, whether she the person is the plaintiff or defendant,
5	which confirmation shall be limited to the name which she that the person was using
6	at the time of the marriage, or the name of her the person's minor children, or her
7	maiden name the person's surname on the birth certificate, without complying with
8	the provisions of R.S. 13:4751 through 4755. This Article shall not be construed to
9	allow her to amend her an amendment to a birth certificate with the Bureau of Vital
10	Statistics.
11	* * *
12	Art. 4904. Final default judgment in parish and city courts
13	* * *
14	D. When the demand is based upon a right acquired by assignment in an
15	open account, promissory note, or other negotiable instrument, the court may raise
16	an objection of prescription before entering a final default judgment if the grounds
17	for the objection appear from the pleadings or from the evidence submitted by the
18	plaintiff. If the court raises an objection of prescription, it shall not enter the final
19	default judgment unless the plaintiff presents prima facie proof that the action is not
20	barred by prescription. Upon the plaintiff's request, the court shall hold a hearing for
21	the submission of proof.
22	* * *
23	Art. 4907. New trials; delay in parish or city courts
24	* * *
25	B. The delay for applying for a new trial shall be seven days, exclusive of
26	legal holidays. Where notice of judgment is required, this delay commences to run
27	on the day a party may file a motion for a new trial not later than seven days,
28	exclusive of legal holidays, after the clerk has mailed, or the sheriff has served, the
29	notice of judgment.

Comments	- 2021
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1	Comments - 2021
2 3 4 5	This Article has been amended to make certain that the delay for filing a motion for new trial in parish and city courts is seven days, exclusive of legal holidays. If a notice of judgment is required, the delay begins to run once the clerk has mailed the notice of judgment or the sheriff has served the notice of judgment.
6	* * *
7	Art. 4913. Limitations upon jurisdiction; nature of proceedings; justice of the peace
8	courts
9	* * *
10	B. A justice of the peace court has no jurisdiction in any of the following
11	cases or proceedings:
12	* * *
13	(4) A claim for annulment of marriage, separation from bed and board,
14	divorce, separation of property, or alimony custody, visitation, spousal support, or
15	child support.
16	* * *
17	Art. 4921. Final default judgment; justice of the peace courts; district courts with
18	concurrent jurisdiction
19	* * *
20	C. When the demand is based upon a right acquired by assignment in an
21	open account, promissory note, or other negotiable instrument, the court may raise
22	an objection of prescription before entering a final default judgment if the grounds
23	for the objection appear from the pleadings or from evidence submitted by the
24	plaintiff. If the court raises an objection of prescription, it shall not enter the final
25	default judgment unless the plaintiff presents prima facie proof that the action is not
26	barred by prescription. Upon the plaintiff's request, the court shall hold a hearing
27	for the submission of such proof.
28	* * *

1	Art. 5001. Appeals from city and parish courts
2	A. Except as provided in Paragraph B of this Article, an An appeal from a
3	judgment rendered by a parish court or by a city court shall be taken to the court of
4	appeal.
5	B. Appeal from a judgment rendered by a city court located in the
6	Nineteenth Judicial District shall be taken to the district court of the parish in which
7	the court of original jurisdiction is located.
8	$\underline{B.}$ C. Appeal shall be on the record and shall be taken in the same manner
9	as an appeal from the district court.
10	Section 3. R.S. 13:3661 is hereby amended to read as follows:
11	§3661. Attendance compulsory in civil cases; witnesses outside parish but within
12	state; deposit
13	A. Witnesses in civil cases who reside or who are employed in this state may
14	be subpoenaed and compelled to attend trials or hearings wherever held in this state.
15	B. Witnesses who are subpoenaed to attend a trial or hearing shall be paid
16	their travel expenses to and from the courthouse at a rate equal to the rate in effect
17	for state officials and an attendance fee of fifty dollars for each day that the witness
18	is required to appear in court.
19	B.(1)C. No witness residing and employed outside of the parish and more
20	than twenty-five miles from the courthouse where the trial or hearing is to be held
21	shall be subpoenaed to attend court personally a trial or hearing unless the party who
22	desired desires the testimony of the witness has deposited with the clerk of court $\frac{1}{2}$
23	sum of money sufficient to cover: the estimated attendance fee and travel expenses.
24	(a) Reimbursement of the traveling expenses of the witness in traveling to
25	the court and returning, at the rate of twenty cents a mile.
26	(b) The witness' fee at the rate of twenty-five dollars a day.
27	(c) Hotel and meal expenses at the rate of five dollars a day.

1	(2) Such a D. The witness shall be paid his expenses and the attendance fee
2	and travel expenses immediately by the clerk of court when the witness has answered
3	the subpoena and has appeared for the purpose of testifying.
4	E. In cases of exceptional hardship, the court may increase the travel
5	expenses paid to the witness.
6	Comments - 2021
7 8 9 10 11 12 13 14	This Section has been amended to increase the witness attendance fee from twenty-five dollars per day to fifty dollars per day, and the travel expense reimbursement from twenty cents per mile to the rate in effect for state officials, both of which are consistent with the amounts paid to jurors in civil cases. See R.S. 13:3049(B)(2)(a). The prior provision for reimbursement of hotel and meal expenses at the rate of five dollars per day has been eliminated, and a new provision has been added to provide the court with the discretion to increase the amount of travel expenses paid to witnesses in cases of exceptional hardship.

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 152 Reengrossed2021 Regular SessionGregory Miller

Abstract: Provides for the continuous revision of the Code of Civil Procedure.

<u>Present law</u> (C.C. Art. 3452) provides that prescription must be pleaded and cannot be supplied by the courts.

<u>Proposed law</u> retains <u>present law</u> and creates an exception where legislation provides otherwise.

<u>Present law</u> (C.C.P. Art. 80(A)(1) and (2)) set forth the venue for actions involving immovable property.

<u>Proposed law</u> retains <u>present law</u> but removes an outdated exception that previously allowed a defendant to convert a personal action into an in rem action by objecting to venue.

<u>Present law</u> (C.C.P. Art. 253.2) provides for the transfer of pending cases and includes an exception for cases being transferred to effect a consolidation.

<u>Proposed law</u> retains <u>present law</u> and recognizes that consolidations can be effected for purposes other than trial under <u>proposed law</u> (Article 1561(A)).

Present law (C.C.P. Art. 592) provides the procedure for certification of class actions.

Proposed law retains present law and makes minor semantic changes.

<u>Present law</u> (C.C.P. Art. 592(A)(3)(e)) prohibits the certification of a class after a judgment on the merits of common issues has been rendered against the party opposing the class.

Proposed law deletes present law.

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<u>Present law</u> (C.C.P. Art. 893) provides for the pleading of damages and permits the court to award attorney fees and costs against the party who filed the petition.

<u>Proposed law</u> retains <u>present law</u> and permits the court to award attorney fees and costs against the person who signed the petition, the party on whose behalf the petition was filed, or both. <u>Proposed law</u> also makes minor semantic changes.

<u>Present law</u> (C.C.P. Art. 927(B)) provides that prescription must be pleaded and cannot be supplied by the courts.

<u>Proposed law</u> retains <u>present law</u> and creates an exception where the Code of Civil Procedure provides otherwise.

<u>Present law</u> (C.C.P. Art. 1352) sets forth a restriction on the issuance of a subpoena when the witness resides and is employed outside of the parish and more than 25 miles from the courthouse.

<u>Proposed law</u> removes the restriction set forth by <u>present law</u> for purposes of consistency with <u>proposed law</u> (R.S. 13:3661).

Present law (C.C.P. Art. 1561(A)) provides for the consolidation of actions for trial.

<u>Proposed law</u> retains <u>present law</u> and also provides that actions may be consolidated for other limited purposes, such as discovery.

<u>Present law</u> (C.C.P. Art. 1702) provides the procedure for the confirmation of a preliminary default and the rendition of a final default judgment.

<u>Proposed law retains present law</u> and provides that the court may raise an objection of prescription before entering a final default judgment when the demand is based on an open account, promissory note, or other negotiable instrument that the plaintiff acquired by assignment.

<u>Present law</u> (C.C.P. Art. 1793(D)) sets forth the circumstances under which the jury may take written instructions and evidence into the jury room.

<u>Proposed law</u> deletes the requirement under <u>present law</u> that the jury may only take evidence into the jury room when a physical examination thereof is required to enable the jury to arrive at a verdict.

Present law (C.C.P. Art. 1795) permits the jury to review certain testimony or other evidence.

<u>Proposed law</u> changes <u>present law</u> by clarifying that the review of the requested testimony shall be conducted in the courtroom.

<u>Present law</u> (C.C.P. Art. 1918) requires final judgments to be identified as such by appropriate language.

<u>Proposed law</u> retains <u>present law</u> and also requires final judgments to be signed and dated and to contain the name of the party in favor of whom relief is awarded, the name of the party against whom relief is awarded, and the relief that is awarded. <u>Proposed law</u> further provides that a final judgment that does not satisfy these requirements shall be remanded to the trial court for amendment within the time period set by the appellate court.

<u>Present law</u> (C.C.P. Art. 1951) permits a final judgment to be amended to alter its phraseology or to correct errors of calculation.

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<u>Proposed law</u> retains <u>present law</u> and also permits a final judgment to be amended to correct deficiencies in decretal language.

<u>Present law</u> (C.C.P. Art. 1974) provides that the delay for applying for a new trial commences to run on the day after notice of judgment has been mailed or served.

<u>Proposed law</u> clarifies <u>present law</u> by providing that a party may file a motion requesting a new trial not later than seven days, exclusive of legal holidays, after notice of judgment has been mailed or served.

<u>Present law</u> (C.C.P. Art. 2088(A)) sets forth the matters over which the trial court retains jurisdiction while an appeal is pending.

<u>Proposed law</u> adds to <u>present law</u> the right to set attorney fees, to make a certification under Article 1915(B), and to amend a judgment to add proper decretal language.

<u>Present law</u> (C.C.P. Art. 2254(B) and 2721(C)) provides with respect to the wrongful or improper seizure of a debtor or third party's property.

<u>Proposed law</u> retains <u>present law</u> but removes unnecessary language and updates outdated cross-references.

<u>Present law</u> (C.C.P. Art. 3943) provides for the delays within which appeals from judgments awarding custody, visitation, or support must be taken.

<u>Proposed law</u> retains <u>present law</u> and extends its application to judgments awarding, modifying, or denying custody, visitation, or support.

<u>Present law</u> (C.C.P. Art. 3947(B)) provides for the confirmation of the name of a married woman in a divorce proceeding.

Proposed law changes present law by using gender neutral terminology.

<u>Present law</u> (C.C.P. Art. 4904) provides the procedure for the rendition of a final default judgment in parish and city courts.

<u>Proposed law</u> retains <u>present law</u> and provides that the court may raise an objection of prescription before entering a final default judgment when the demand is based on an open account, promissory note, or other negotiable instrument that the plaintiff acquired by assignment.

<u>Present law</u> (C.C.P. Art. 4907(B)) provides that when notice of judgment is required, the delay for applying for a new trial shall commence to run on the day after notice of judgment has been mailed or served.

<u>Proposed law</u> retains <u>present law</u> and clarifies that when notice of judgment is required, a party may file a motion requesting a new trial not later than seven days, exclusive of legal holidays, after notice of judgment has been mailed or served.

<u>Present law</u> (C.C.P. Art. 4913(B)(4)) provides that justice of the peace courts have no jurisdiction over a claim for annulment of marriage, separation from bed and board, divorce, separation of property, or alimony.

<u>Proposed law</u> changes <u>present law</u> by replacing "alimony" with "spousal support" and adding custody, visitation, and child support.

<u>Present law</u> (C.C.P. Art. 4921) provides the procedure for the rendition of a final default judgment in justice of the peace courts.

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<u>Proposed law retains present law</u> and provides that the court may raise an objection of prescription before entering a final default judgment when the demand is based on an open account, promissory note, or other negotiable instrument that the plaintiff acquired by assignment.

<u>Present law</u> (C.C.P. Art. 5001) provides that appeals from judgments rendered by city and parish courts shall be taken to the court of appeal, except that in city courts located in the 19th JDC, the appeal shall be taken to the applicable district court.

<u>Proposed law</u> removes the exception under <u>present law</u> for city courts located in the 19th JDC, such that appeals from judgments rendered by these courts shall also be taken to the court of appeal.

<u>Present law</u> (R.S. 13:3661) sets forth the fees owed to witnesses who are subpoenaed to attend court more than 25 miles from where they reside and are employed, including travel expenses to and from the courthouse at the rate of 20° per mile, a witness fee of \$25 per day, and hotel and meal expenses at the rate of \$5 per day.

<u>Proposed law</u> removes the 25-mile requirement under <u>present law</u> and increases the fees owed to witnesses for travel expenses from 20ϕ per mile to the rate in effect for state officials and for attendance from \$25 per day to \$50 per day. <u>Proposed law</u> also deletes the reimbursement of \$5 per day for hotel and meal expenses, and provides the court with the discretion to increase the amount paid to witnesses in cases of exceptional hardship.

(Amends C.C. Art. 3452, C.C.P. Arts. 80(A)(1) and (2), 253.2, 592(A)(2) and (3), 893(A)(2), (B), and (C), 927(B), 1352, 1561(A), 1702(D) and (E), 1793(D), 1795, 1918, 1951, 1974, 2088(A), 2254(B), 2721(C), 3943, 3947(B), 4907(B), 4913(B)(4), and 5001, and R.S. 13:3661; Adds C.C.P. Arts. 1702(F), 4904(D), and 4921(C))

Summary of Amendments Adopted by House

- The Committee Amendments Proposed by <u>House Committee on Civil Law and</u> <u>Procedure to the original bill:</u>
- 1. Make technical changes.