

Regular Session, 2013

HOUSE BILL NO. 192

BY REPRESENTATIVES EDWARDS 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/PROCEDURE: Provides for the continuous revision of the Code of Civil Procedure

1 AN ACT

2 To amend and reenact Code of Civil Procedure Articles 45, 1702(A), 1951, and 1979,  
3 relative to the continuous revision of the Code of Civil Procedure; to provide for  
4 application of rules to determine proper venue when two or more articles conflict;  
5 to require the proof supporting confirmation of a default judgment to be placed into  
6 the court record; to require that certain conditions be met before a final judgment  
7 may be amended; to provide for exceptions; to require the court to specify its reasons  
8 for granting a motion for new trial; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Code of Civil Procedure Articles 45, 1702(A), 1951, and 1979 are hereby  
11 amended and reenacted to read as follows:

12 Art. 45. Conflict between two or more articles in Chapter

13 The following rules determine the proper venue in cases where two or more  
14 articles in this Chapter may conflict:

15 (1) Article 78, 79, 80, 81, 82, ~~or 83, 84, 86, or 87~~ governs the venue  
16 exclusively, if this article conflicts with any of Articles 42 and 71 through 77;

17 (2) If there is a conflict between two or more of Articles 78 ~~through~~ , 79, 80,  
18 81, 82, 83, 84, 86, or 87, the plaintiff may bring the action in any venue provided by  
19 any applicable article; and

1 (3) If ~~Article~~ Articles 78, 79, 80, 81, 82, ~~or 83 is not~~, 84, 86, and 87 are not  
2 applicable, and there is a conflict between two or more of Articles 42 and 71 through  
3 77, the plaintiff may bring the action in any venue provided by any applicable article.

4 Comment - 2013

5 Articles added to the Code of Civil Procedure after its 1960 enactment were  
6 not included in Article 45. The 2013 amendment adds Articles 84, 86, and 87 to the  
7 list of those articles governing venue exclusively if they conflict with the general  
8 venue articles. Article 85, providing for actions against domestic corporations with  
9 a revoked charter and franchise, has not been included because it provides for  
10 multiple venues including Article 42(2) and its exceptions provided in Article 43.

11 \* \* \*

12 Art. 1702. Confirmation of default judgment

13 A. A judgment of default must be confirmed by proof of the demand that is  
14 sufficient to establish a prima facie case and that is admitted on the record prior to  
15 confirmation. The court may require that documentary evidence be placed in the  
16 record in an electronically stored form. If no answer is filed timely, this  
17 confirmation may be made after two days, exclusive of holidays, from the entry of  
18 the judgment of default. When a judgment of default has been entered against a  
19 party that is in default after having made an appearance of record in the case, notice  
20 of the date of the entry of the judgment of default must be sent by certified mail by  
21 the party obtaining the judgment of default to counsel of record for the party in  
22 default, or if there is no counsel of record, to the party in default, at least seven days,  
23 exclusive of holidays, before confirmation of the judgment of default.

24 \* \* \*

25 Comments - 2013

26 (a) The 2013 amendment to the first sentence in Article 1702(A) adds a new  
27 requirement that all of the proof required to establish a *prima facie case* supporting  
28 confirmation of a default judgment must be placed into the court record prior to  
29 judgment. The change follows La. Const. Art. 1 §19, which grants litigants "the  
30 right of judicial review based upon a complete record of all evidence upon which the  
31 judgment is based." The amendment is also consistent with jurisprudence holding  
32 that "to prevent reversal on appeal, both the plaintiff and the trial judge should be  
33 vigilant to assure that the judgment rests on admissible evidence that establishes a  
34 *prima facie case*." *Arias v. Stolthaven New Orleans, LLC*, 9 So.3d 815, 820 (La.  
35 2009).

36 (b) Although there is a presumption that a default judgment is supported by  
37 sufficient admissible evidence, this presumption may be rebutted through the

1 defendant's utilization of appellate review of the record upon which the judgment  
2 was rendered. Without a complete record of the evidence presented to the trial court,  
3 meaningful appellate review of default judgments may be impaired. Prior to  
4 jurisprudence holding that a simple recitation in the default judgement that "the court  
5 reviewed the proof of the demands" is a substitute for the introduction in the record  
6 of the evidence considered by the trial court in rendering the judgment is no longer  
7 valid.

8 (c) To avoid encumbering the court records with documentary evidence, the  
9 2013 amendment provides an option to the trial court to admit documentary evidence  
10 in the record in an electronically stored form. *See* Code of Evidence, Article 1003.1.

11 \* \* \*

12 Art. 1951. Amendment of judgment

13 ~~A final judgment may be amended by the trial court at any time, with or~~  
14 ~~without notice, on its own motion or on motion of any party.~~

15 (1) ~~To alter the phraseology of the judgment, but not the substance, or~~

16 (2) ~~To correct errors of calculation.~~

17 On motion of the court or any party, a final judgment may be amended at any  
18 time to alter the phraseology of the judgment, but not its substance, or to correct  
19 errors of calculation. The judgment may be amended only after a hearing with notice  
20 to all parties, except that a hearing is not required if all parties consent or if the court  
21 or the party submitting the amended judgment certifies that it was provided to all  
22 parties at least five days before the amendment and that no opposition has been  
23 received.

24 Comment - 2013

25 Article 1951 has been changed to require a hearing before a final judgment  
26 may be amended, unless the parties consent to the amendment or no opposition is  
27 filed after notice. The notice referenced in the Article is to counsel for named parties  
28 and self-represented parties entitled to notice under Article 1913. The court may  
29 direct notice to other interested persons, such as those entitled to notice in succession  
30 proceedings under Article 3305 and 3335.

31 \* \* \*

32 Art. 1979. Summary decision on motion; maximum delays

33 The court shall decide on a motion for a new trial within ten days from the  
34 time it is submitted for decision. The time may be extended for a specified period  
35 upon the written consent or stipulation of record by the attorneys representing all

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 parties. When the court grants a motion for new trial, it shall specify each of its  
2 reasons in the order.

3 Comment - 2013

4 The last sentence was added to require the court to state all of its reasons in  
5 an order granting a new trial. The change was taken from a similar provision in  
6 FRCP 59(D). The specification of reasons for granting a new trial may facilitate  
7 appellate review by supervisory writ or subsequent trial court proceedings.

---

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)]

---

Edwards

HB No. 192

**Abstract:** Provides for the continuous revision of the Code of Civil Procedure, including providing for exclusive venue and the rules for application when two or more articles conflict, requiring proof supporting confirmation of a default judgment be placed in the court record, requiring a hearing, consent of the parties, or no opposition to a proposed amendment before a final judgment may be amended, and requiring the court to specify its reasons for granting a motion for new trial.

Present law provides for application of rules to determine proper venue when two or more C.C.P. articles conflict.

Proposed law retains present law and adds articles addressing proper venue in actions involving certain retirement systems and employee benefit programs, actions involving voting trusts, and actions involving application for compensation for wrongful conviction and imprisonment to the list of articles providing exclusive venue and the rules for application when two or more articles conflict.

Present law provides for confirmation of default judgments.

Proposed law requires the proof supporting confirmation of a default judgment to be placed into the court record prior to judgment. Provides that the court may require the proof to be in electronic form.

Present law provides for amendment to judgments to correct phraseology or errors of calculation.

Proposed law retains present law and requires a hearing before amending a final judgment, unless the parties consent or no opposition is filed after notice of the proposed amendment.

Present law requires the court to render a decision on a motion for new trial within 10 days of the submission of the motion. Allows the time to be extended if the parties agree.

Proposed law retains present law and requires the court to specify its reasons for granting a motion for a new trial.

(Amends C.C.P. Arts. 45, 1702(A), 1951, and 1979)