

Regular Session, 2013

HOUSE BILL NO. 589

BY REPRESENTATIVE ABRAMSON

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

CIVIL/PROCEDURE: Provides a comprehensive revision of the Code of Civil Procedure

1 AN ACT

2 To amend and reenact Code of Civil Procedure Articles 966(E) and (F), 1732(1), and  
3 1915(B) and to enact Code of Civil Procedure Article 966(G) and 4553(D), relative  
4 to civil procedure; to provide for submission of and objections to evidence for  
5 motions for summary judgment; to provide for limitations on jury trial threshold  
6 amounts; to provide for the effect of a partial summary judgment; to provide for  
7 notice of certain post-judgment proceedings; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. Code of Civil Procedure Articles 966(E) and (F), 1732(1), and 1915(B)  
10 are hereby amended and reenacted and Code of Civil Procedure Articles 966(G) and  
11 4553(D) are hereby enacted to read as follows:

12 Art. 966. Motion for summary judgment; procedure

13 \* \* \*

14 E.~~(1)~~ A summary judgment may be rendered dispositive of a particular issue,  
15 theory of recovery, cause of action, or defense, in favor of one or more parties, even  
16 though the granting of the summary judgment does not dispose of the entire case as  
17 to that party or parties ; ~~however, a.~~

18 F.(1) A summary judgment ~~shall~~ may only be rendered or affirmed ~~only~~  
19 to those issues set forth in the motion under consideration by the court at that time.

20 (2) Only evidence ~~admitted~~ cited and attached to the motion for summary  
21 judgment ~~shall~~ or opposition may be considered by the court in its ruling on the

1 motion. Objections to evidence in support of or in opposition to a motion for  
2 summary judgment may be raised in a memorandum in support or opposition thereof  
3 or in a motion to strike stating the specific grounds therefor.

4 F.G.(1) When the court grants a motion for summary judgment in  
5 accordance with the provisions of this Article, that a party or nonparty is not  
6 negligent, not at fault, or did not cause, whether in whole or in part, the injury or  
7 harm alleged, that party or nonparty shall not be considered in any subsequent  
8 allocation of fault. Evidence shall not be admitted at trial to establish the fault of that  
9 party or nonparty nor shall the issue be submitted to the jury nor included on the jury  
10 verdict form. This Paragraph shall not apply when a summary judgment is granted  
11 solely on the basis of the successful assertion of an affirmative defense in accordance  
12 with Article 1005, except for negligence or fault.

13 (2) If the provisions of this Paragraph are applicable to the summary  
14 judgment, the court shall so specify in the judgment. If the court fails to specify that  
15 the provisions of this Paragraph are applicable, then the provisions of this Paragraph  
16 shall not apply to the judgment.

17 \* \* \*

18 Art. 1732. Limitation upon jury trials

19 A trial by jury shall not be available in:

20 (1) A suit where the amount of no individual petitioner's cause of action  
21 exceeds fifty thousand dollars exclusive of interest and costs, except as follows:

22 (a) If an individual petitioner stipulates or otherwise judicially admits ninety  
23 days or more prior to a trial that the amount of the individual petitioner's cause of  
24 action does not exceed fifty thousand dollars exclusive of interest and costs, a  
25 defendant shall not be entitled to a trial by jury.

26 (b) If an individual petitioner stipulates or otherwise judicially admits for the  
27 first time less than ninety days prior to trial that the amount of the individual  
28 petitioner's cause of action does not exceed fifty thousand dollars exclusive of  
29 interest and costs any other party may retain the right to a trial by jury if that party

1 is entitled to a trial by jury pursuant to this Article and has otherwise complied with  
2 the procedural requirements for obtaining a trial by jury.

3 \* \* \*

4 Art. 1915. Partial final judgment; partial judgment; partial exception; partial  
5 summary judgment

6 \* \* \*

7 B.(1) When a court renders a partial judgment or partial summary judgment  
8 or sustains an exception in part, as to one or more but less than all of the claims,  
9 demands, issues, or theories against a party, whether in an original demand,  
10 reconventional demand, cross-claim, ~~third party~~ third-party claim, or intervention,  
11 the judgment shall not constitute a final judgment unless it is designated as a final  
12 judgment by the court after an express determination that there is no just reason for  
13 delay.

14 (2) In the absence of such a determination and designation, any such order  
15 or decision ~~which adjudicates fewer than all claims or the rights and liabilities of~~  
16 ~~fewer than all the parties, shall not terminate the action as to any of the claims or~~  
17 ~~parties and~~ shall not constitute a final judgment for the purpose of an immediate  
18 appeal. ~~Any such order or decision issued~~ and may be revised at any time prior to  
19 rendition of the judgment adjudicating all the claims and the rights and liabilities of  
20 all the parties.

21 \* \* \*

22 Art. 4553. Post-judgment proceedings

23 \* \* \*

24 D. Notice of any post-judgment proceeding as provided by this Article or  
25 pursuant to R.S. 28:69 shall be served upon the attorney from the Mental Health  
26 Advocacy Service appointed for the interdict or on a previously appointed attorney  
27 of record for the interdict.

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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)]

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Abramson

HB No. 589

**Abstract:** Provides for a comprehensive revision of the Code of Civil Procedure relative to submission of evidence for the purposes of a motion for summary judgment, procedures governing objections to submitted evidence, defendant's right to demand a jury trial when a plaintiff has stipulated to a cause of action less than \$50,000, the effect of a partial summary judgment, and the notice requirement for proceedings pertaining to interdicts.

Present law (C.C.P. Art. 966) provides the procedure by which a party may move for a summary judgment. Requires the court to render a decision only as to those issues raised in the motion under consideration.

Proposed law clarifies present law by stating that summary judgment on a particular issue may be rendered in favor of one or more parties even if the granting of the summary judgment does not dispose of the case as to that party or parties.

Proposed law changes present law by providing that the court may only render a decision as to those issues raised in the motion under consideration.

Present law requires the court to consider only evidence admitted for the purposes of the motion for summary judgment in its ruling.

Proposed law changes present law to allow the court to consider evidence submitted for the purposes of summary judgment and provides that a party can object to evidence submitted for the purposes of the motion for summary judgment through a memorandum in support or opposition or in a motion to strike that provides the specific grounds for the objection.

Present law (C.C.P. Art. 1732) provides that a trial by jury shall not be available in a suit where the amount of no individual petitioner's cause of action exceeds \$50,000 exclusive of interests and costs.

Proposed law provides that a party may retain the right to a trial by jury even if the petitioner has stipulated that the cause of action does not exceed \$50,000 when that party is entitled to trial by jury pursuant to present law has complied with the procedural requirements for asserting that right if the stipulation has occurred less than 90 days prior to trial. Proposed law further provides that a defendant shall not be entitled to a trial by jury when a petitioner stipulates that his cause of action is less than \$50,000 if the stipulation occurs more than 90 days before trial.

Present law (C.C.P. Art. 1915) authorizes the court to render a final judgment when it does one of the following:

- (1) Dismisses the suit.
- (2) Grants a motion for judgment on the pleadings.
- (3) Grants a motion for summary judgment except when summary judgment does not dispose of the entire case.
- (4) Signs a judgment on the principal or incidental demand.

- (5) Signs a judgment on the issue of liability when the issues of liability and damages have been tried separately.
- (6) Imposes sanctions pursuant to various provisions of present law.

Present law further provides that a partial judgment or partial summary judgment that does not address all of the claims, demand, issues, or theories is not a final judgment unless the court specifically designates it as such after an express determination that there is no reason for delay. Provides that absent the required designation and determination, an order that does not adjudicate all claims or the rights of all parties does not terminate the action and is not a final judgment for purposes of an immediate appeal.

Proposed law retains present law except that it deletes the prohibition of terminating an action if a partial judgment or partial summary judgment does not adjudicate all claims or the rights of all parties.

Present law (C.C.P. Art. 4553) requires post-judgment proceedings relative to an interdiction to be conducted by the court and division or section that rendered the interdiction judgment unless there is good cause shown.

Proposed law retains present law and requires notice of the post-judgment proceeding to be served upon the attorney from the Mental Health Advocacy Service who was appointed for the interdict or on an attorney who was previously appointed for the interdict.

(Amends C.C.P. 966(E) and (F), 1732(1), and 1915(B); Adds C.C.P. Art. 966(G) and 4553(D))

#### Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill.

1. Clarified that a motion for summary judgment may be rendered on a particular issue in favor of one or more parties even if the granting of the summary judgment does not dispose of the case as to that party or parties.
2. Added provisions allowing a party to retain his right to a trial by jury under Article 1732(1) if a petitioner stipulates less than 90 days prior to trial that his cause of action is less than \$50,000, but prohibits a defendant from obtaining a jury trial if the stipulation occurred more than 90 days prior to trial.

#### House Floor Amendments to the engrossed bill.

1. Added a memorandum in opposition as a method to object to evidence submitted in support of or opposition to a motion for summary judgment.
2. Added provision requiring notice to be sent to the attorney from the Mental Health Advocacy Service who was appointed for the interdict or on an attorney who was previously appointed for the interdict.