

# ACT No. 793

Regular Session, 2014

HOUSE BILL NO. 619

BY REPRESENTATIVES ABRAMSON AND LORUSSO

(On Recommendation of the Louisiana State Law Institute)

1 AN ACT

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

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 13:3822, 3823(A) and (B), and 3824(A) are hereby amended and  
10 reenacted and R.S.13:3825 is 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.(1) When an action is pending in this state, a deposition to obtain  
18 testimony or documents or other things may be taken in another state, or in a  
19 territory, district, or foreign jurisdiction:

20 ~~(1)~~ On on reasonable notice in writing to all parties, setting forth the time  
21 and place for taking the deposition, the name and address of each person to be  
22 examined, if known, and, if the name is not known, a general description sufficient  
23 to identify him or the particular class or group to which he belongs and the name or  
24 descriptive title of the person before whom the deposition will be taken.

1                   (2) The deposition may be taken by any of the following:

2                   (a) before Before a person authorized to administer oaths in the place where  
3 the deposition is taken by the law thereof or by the law of this state or of the United  
4 States.

5                   ~~(2)~~ (b) Before a person commissioned by the court, and a person so  
6 commissioned shall have the power by virtue of his commission to administer any  
7 necessary oath.

8                   ~~(3)~~ (c) Pursuant to a letter rogatory issued by the court. A letter rogatory may  
9 be addressed "To the Appropriate Authority in", or "To the Appropriate Judicial  
10 Authority in" (here name the state or country).

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

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

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

27   \*       \*       \*

28   Comment - 2014

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

1 letter rogatory from the Louisiana court or by utilizing the compulsory process of the  
2 foreign state pursuant to Article 1435.

3 §3824. Assistance to tribunals and litigants in another state, or in a territory, district,  
4 or foreign jurisdiction

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

9 (1) R.S. 13:3825.

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

20 \* \* \*

21 Comment - 2014

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

24 §3825. Louisiana Uniform Interstate Depositions and Discovery Act

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

27 B. Definitions. In this Section:

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

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

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

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

8                   (5) "Subpoena" means a document, however denominated, issued under  
9                   authority of a court of record requiring a person to do any of the following:

10                   (a) Attend and give testimony at a deposition.

11                   (b) Produce and permit inspection and copying of designated books,  
12                   documents, records, electronically stored information, or tangible things in the  
13                   possession, custody, or control of the person.

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

15                   C. Issuance of Subpoena.

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

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

24                   (3) A subpoena issued under Paragraph (2) of this Subsection must:

25                   (a) Identify the caption and case number of the out-of-state case to which it  
26                   relates and incorporate the terms used in the foreign subpoena.

27                   (b) State the name of the court in this state which has issued it with an  
28                   identifying number.

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

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

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

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

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

## Comments to Subsections A and B - 2014

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

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

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

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

## Comments to Subsection C - 2014

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

The standard procedure under this Section will be as follows. When a case is filed in a foreign state and the witness to be deposed lives or is found in Louisiana, a lawyer of record for a party in the action pending in the foreign state will issue a subpoena in that state. The lawyer in the out of state proceeding will then obtain a copy of the subpoena form from the clerk's office in this state. The lawyer will then prepare a Louisiana form of subpoena so that it has the same terms as the out-of-state subpoena. The completed and executed out-of-state subpoena and the completed but not yet executed Louisiana subpoena will be delivered to the clerk's office in Louisiana. It is suggested that a short transmittal letter accompany the subpoena, advising the clerk in this state that the subpoena is being sought pursuant to this statute. The clerk of court, upon being presented with the out-of-state subpoena, will then issue the identical subpoena from the court in this state ("issue" includes signing, stamping, and assigning a case or docket number). The party seeking issuance of the subpoena will pay any necessary filing and service fees, and then have the subpoena served on the deponent in accordance with Louisiana law (which includes any applicable local rules).

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

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

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

## Comment to Subsection E - 2014

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

## Comments to Subsection F - 2014

The Act requires that any application to a court in this state for a protective order, or for an order enforcing, quashing, or modifying a subpoena, or for any other order relating to discovery under this Act, must comply with the rules or statutes of this state, including this state's procedural, evidentiary, and conflict of laws rules. This state has a significant interest in protecting its residents who become non-party witnesses in an action pending in a foreign jurisdiction from any unreasonable or unduly burdensome discovery requests, and this is accomplished by requiring that 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. The provisions of this Act shall apply only to requests for discovery made on and after its effective date.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_