HLS 16RS-834 ORIGINAL

2016 Regular Session

HOUSE BILL NO. 285

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## BY REPRESENTATIVE GAROFALO

(On Recommendation of the Louisiana State Law Institute)

CIVIL/PROCEDURE: Provides for continuous revisions to the Code of Civil Procedure and related provisions of the Revised Statutes

AN ACT

2 To amend and reenact Code of Civil Procedure Articles 1458, 1462(B)(1), 1465.1(B), 3 1467(A), 2541, 2642, and 2721(B), and R.S. 13:3852(B), and to enact R.S. 4 13:4611(1)(g), relative to civil procedure; to extend the time delays for responding 5 to discovery requests; to provide for the enforcement of foreign and domestic 6 judgments; to provide for commencement of the suspensive appeal delay from an 7 order of seizure and sale; to provide with respect to the notice of seizure of property; 8 to provide for an award of attorney fees in civil contempt of court proceedings; and 9 to provide for related matters. 10 Be it enacted by the Legislature of Louisiana: Section 1. Code of Civil Procedure Articles 1458, 1462(B)(1), 1465.1(B), 1467(A), 11 12 2541, 2642, and 2721(B) are hereby amended and reenacted to read as follows: 13 Art. 1458. Interrogatories to parties; procedures for use 14 Each interrogatory shall be answered separately and fully in writing under 15 oath, unless it is objected to, in which event the reasons for objection shall be stated 16 in lieu of an answer. The written answer or reasons for objection to each 17 interrogatory shall immediately follow a restatement of the interrogatory to which 18 the answer or objection is responding. The answers are to be signed by the person 19 making them. When interrogatories are served on a specific party, that party shall

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CODING: Words in struck through type are deletions from existing law; words <u>underscored</u> are additions.

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verify he has read and confirmed the answers and objections. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within fifteen thirty days after the service of the interrogatories, except that a defendant may serve answers or objections within thirty days after service of the petition upon that defendant and the state and its political subdivisions may serve a copy of the answers or objections within thirty days after service of the interrogatories. The court may allow a shorter or longer time. The party submitting the interrogatories may move for an order under Article 1469 with respect to any objection to or other failure to answer an interrogatory.

\* \* \*

Art. 1462. Production of documents and things; entry upon land; procedure

12 \* \* \*

B.(1) The party upon whom the request is served shall serve a written response within fifteen thirty days after service of the request, except that a defendant may serve a response within thirty days after service of the petition upon that defendant, and except that the state and its political subdivisions may serve a response within thirty days after service of the request. The court may allow a shorter or longer time. With respect to each item or category, the response shall state that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. The written answer or reasons for objection to each request for production of documents shall immediately follow a restatement of the request for production of documents to which the answer or objection is responding. The party submitting the request may move for an order under Article 1469 with respect to any objection to or other failure to respond to the request, or any part thereof, or any failure to permit inspection as requested. If objection is made to the requested form or forms for producing information, including electronically stored information, or if no form was

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specified in the request, the responding party shall state in its response the form or forms it intends to use.

3 \* \* \*

Art. 1465.1. Requests for release of medical records

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B. The party upon whom the request is served, within fifteen thirty days after service of the request, shall provide to the requesting party releases signed by the plaintiff or other authorized person unless the request is objected to, in which event the reasons for the objection shall be stated. The party requesting the release of medical records may move for an order under Article 1469 with respect to any objection or other failure to respond to the request.

\* \* \*

Art. 1467. Requests for admission; answers and objections

A. Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within fifteen thirty days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney, but, unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of thirty days after service of the petition upon him. The written answer or reasons for objection to each request for admission shall immediately follow a restatement of the request for admission to which the answer or objection is responding. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of

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information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; he may, subject to the provisions of Article 1472, deny the matter or set forth reasons why he cannot admit or deny it. Art. 2541. Execution of foreign judgments A. A party seeking recognition or execution by a Louisiana court of a judgment or decree of a court of the United States or a territory thereof, or of any other state, or of any foreign country may either seek enforcement pursuant to R.S. 13:4241, et seq., or bring an ordinary proceeding against the judgment debtor in the proper Louisiana court, to have the judgment or decree recognized and made the judgment of the Louisiana court. B. In the latter case, a A duly authenticated copy of the judgment or decree must be annexed to the petition. C. A judgment, decree, or order of a court of the United States or any other court that is entitled to full faith and credit in this state may also be enforced pursuant to R.S. 13:4241. Comment - 2016 Article 2541 was amended to clarify that La. R.S. 13:4241 does not authorize ex parte enforcement of the judgments of foreign countries in a Louisiana state court. See Baker & Mckenzie Advokatbyra v. Thinkstream, 20 So. 3d 1109 (La. App. 1 Cir. 2009). Art. 2642. Assertion of defenses; appeal Defenses and procedural objections to an executory proceeding may be

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directing the issuance of the writ of seizure and sale, or both.

asserted either through an injunction proceeding to arrest the seizure and sale as

provided in Articles 2751 through 2754, or a suspensive appeal from the order

1	A suspensive appeal from an order directing the issuance of a writ of seizure			
2	and sale shall be taken within fifteen days of the signing of the order service of the			
3	notice of seizure as provided in Article 2721. The appeal is governed by the			
4	provisions of Articles 2081 through 2086, 2088 through 2122, and 2124 through			
5	2167, except that the security therefor shall be for an amount exceeding by one-half			
6	the balance due on the debt secured by the mortgage or privilege sought to be			
7	enforced, including principal, interest to date of the order of appeal, and attorney's			
8	fee attorney fees, but exclusive of court costs.			
9	* * *			
10	Art. 2721. Seizure of property; notice			
11	* * *			
12	B. The sheriff shall serve upon the defendant a written notice of the seizure			
13	of the property. Such notice of seizure shall be accomplished by personal service or			
14	domiciliary service. The notice of seizure shall <u>reproduce in full the provisions of</u>			
15	Article 2642 and include information concerning the availability of housing			
16	counseling services, as well as the time, date, and place of the sheriff's sale, in			
17	accordance with the form provided in R.S. 13:3852(B).			
18	* * *			
19	Section 2. R.S. 13:3852(B) is hereby amended and reenacted and R.S. 13:4611(1)(g)			
20	is hereby enacted to read as follows:			
21	§3852. Notices of seizure			
22	* * *			
23	B. The following form shall be used for these notices by the sheriff:			
24	"Notice is hereby given that I am this day seizing, in accordance with the			
25	provisions of R.S. 13:3851 through 13:3861, the following described immovable			
26	property, to wit: as the property of			
27	, under a writ of, issued on the day of			
28	,, by the District Court for the Parish of			
29	, in the matter entitled			

versus	, No	of its docket,	to satisfy a claim of
\$, i	interest and costs, this	_day of	This matter
is scheduled f	or sheriff's sale on _	day of_	
atA.M./	P.M. Please be aware that	the sheriff's sale	date may change. You
nay contact the	sheriff's office to find o	out the new date	when the property is
scheduled to be s	old. The new sale date will	also be published	in the local newspaper
in accordance wi	ith R.S. 43:203. If the seiz	zed property is re	sidential property, you
nay be afforded	the opportunity to bring yo	our account in goo	od standing by entering
into a loss mitiga	ation agreement with your	lender, or by payi	ing all of your past due
payments plus p	ermitted costs and expense	es within the tim	e permitted by law for
reinstatement of	your account. You are stre	ongly encouraged	l to seek legal counsel.
If you cannot af	ford to pay an attorney, yo	ou may be able to	o qualify for free legal
services. Foreclo	osure prevention counselin	g services throug	th a housing counselor,
including loss m	nitigation, are provided fro	ee of charge. To	o find a local housing
counseling agen	acy approved by the U.S	. Department of	f Housing and Urban
Development, y	ou may contact the U.S.	. Department of	Housing and Urban
Development or	the Louisiana Housing Co	rporation.	
THE FO	LLOWING PARAGRAP	H APPLIES ON	NLY TO PROPERTY
THAT HAS BEI	EN SEIZED PURSUANT	TO A WRIT OF	SEIZURE AND SALE
ISSUED IN AN	EXECUTORY PROCEED	OING: As provide	ed in Louisiana Code of
Civil Procedure	Article 2642, defenses and	d procedural obje	ections to an executory
proceeding may	be asserted either through	an injunction p	roceeding to arrest the
seizure and sale	as provided in Articles 275	51 through 2754,	or a suspensive appeal
from the order d	lirecting the issuance of the	ne writ of seizure	e and sale, or both. A
suspensive appea	al from an order directing t	he issuance of a	writ of seizure and sale
shall be taken wi	ithin fifteen days of service	e of the notice of	seizure as provided in
Article 2721. Tl	he appeal is governed by t	the provisions of	Articles 2081 through
2086, 2088 throu	igh 2122, and 2124 through	h 2167, except th	at the security therefor
shall be for an an	nount exceeding by one-hal	If the balance due	on the debt secured by

1 the mortgage or privilege sought to be enforced, including principal, interest to date 2 of the order of appeal, and attorney fees, but exclusive of court costs. 3 Sheriff 4 5 Parish of 6 7 8 §4611. Punishment for contempt of court 9 Except as otherwise provided for by law: 10 (1) The supreme court, the courts of appeal, the district courts, family courts, 11 juvenile courts and the city courts may punish a person adjudged guilty of a 12 contempt of court therein, as follows: 13 14 (g) The court may award attorney fees to the prevailing party in a contempt 15 of court proceeding provided for in this Section. 16 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 285 Original

2016 Regular Session

Garofalo

**Abstract:** Provides for continuous revisions to the Code of Civil Procedure and related provisions of the Revised Statutes

<u>Present law</u> (C.C.P. Arts. 1458, 1462(B)(1), 1465.1(B), and 1467(A)) provides for a 15-day time period within which to respond to discovery requests.

<u>Proposed law</u> extends the time period within which to respond to discovery requests to 30 days.

<u>Present law</u> (C.C.P. Art. 2541) provides for the enforcement of foreign and domestic judgments by a Louisiana court.

<u>Proposed law</u> clarifies that unlike state and federal judgments, judgments of a foreign country may not be enforced pursuant to R.S. 13:4241.

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<u>Present law</u> (C.C.P. Art. 2642) provides for the signing of the order of seizure and sale as the commencement of the delay for taking a suspensive appeal from the order.

<u>Proposed law</u> changes the commencement of the suspensive appeal delay under <u>present law</u> to run upon service of the notice of seizure as provided in Article 2721.

<u>Present law</u> (C.C.P. Art. 2721) provides for the required contents of the notice of seizure of property.

<u>Proposed law</u> adds to <u>present law</u> that the notice of seizure shall reproduce in full the provisions of Article 2642.

<u>Present law</u> (R.S. 13:3852(B)) provides the form that shall be used by the sheriff for the notice of seizure of property.

<u>Proposed law</u> reproduces in full the provisions of C.C.P. Art. 2642 within the notice of seizure of property required under <u>present law</u>.

<u>Present law</u> (R.S. 13:4611) provides the penalties that may be imposed in a civil contempt of court proceeding.

<u>Proposed law</u> adds an award of attorney fees to the prevailing party in a civil contempt of court proceeding to the penalties permitted under <u>present law</u>.

(Amends C.C.P. Arts. 1458, 1462(B)(1), 1465.1(B), 1467(A), 2541, 2642, and 2721(B), and R.S. 13:3852(B); Adds R.S. 13:4611(1)(g))