

GREEN SHEET REDIGEST

HB 267

2021 Regular Session

DuBuisson

COURTS: Provides relative to the online dispute resolution pilot project for certain cases filed in the City Court of East St. Tammany

DIGEST

Present law provides for the purpose of small claims procedures.

Proposed law retains present law and provides for the Online Dispute Resolution Pilot Project Program (program) as an effort to improve access to justice and further the primary objectives of the small claims divisions.

Present law establishes small claims divisions and provides for the jurisdiction of these divisions.

Proposed law provides for the program in the City Court of East St. Tammany to include all small claims cases filed in those courts beginning January 1, 2022, and continuing until the program sunsets in August 1, 2025.

Proposed law provides for parties to small claims proceedings to participate in the program unless they have been exempted by the court due to an undue hardship.

Proposed law provides that if an exemption is provided to a party participating in the program, the clerk of court shall schedule the matter for trial de novo.

Proposed law provides for the appointment of a program facilitator by the judges of courts participating in the program to assist parties in reaching a settlement.

Proposed law provides for the responsibilities of the facilitator as all of the following:

- (1) The facilitator shall be assigned to the case within not more than 10 days of all parties registering for an account within the program.
- (2) The facilitator shall inform the parties of the procedures to be followed, including the types of communications the parties may use.
- (3) Unless the facilitator determines additional time will likely result in a settlement, these efforts at resolution shall not exceed 14 days. The facilitator may extend or shorten the timelines at any time during the process.

Proposed law provides for the initiation of small claims cases by an affidavit from the plaintiff stating the demand. Provides that the affidavit shall include the plaintiff's email address and, if known, the defendant's email address.

Proposed law provides that a plaintiff seeking an exemption from the program due to undue hardship shall file the request for exemption with the affidavit of claim.

Proposed law provides that the plaintiff shall register in the program within 10 days of filing the affidavit of claim, or within 10 days of denial if the plaintiff filed a request for exemption and the exemption is denied.

Proposed law provides for dismissal of the plaintiff's affidavit of claim without prejudice if the plaintiff fails to register in the program within the prescribed time delay.

Proposed law provides for dismissal of the plaintiff's affidavit of claim with prejudice if the defendant establishes by clear and convincing evidence that the plaintiff failed to register or participate in a prior case regarding the same dispute.

Proposed law provides that the court may, on its own motion, dismiss the plaintiff's claim with prejudice and may take judicial notice of a plaintiff's previously filed claim regarding the same dispute and the plaintiff's failure to register with the program.

Proposed law provides that neither written discovery or oral deposition shall be allowed in the program. Provides for private communication between the facilitator and any party for the purposes of facilitating a resolution.

Proposed law provides that the facilitator may request a party provide the facilitator and every other party any of the following:

- (1) Information and evidence about the merits of the case.
- (2) Information about either party's ability to pay.
- (3) Responses to another party's information.
- (4) The party's position on any proposed resolution of the affidavit of claim.

Proposed law provides for the service of an affidavit of claim in the program or other process by certified mail, return receipt requested. Provides that an affidavit of claim in the program or other process shall contain a notice.

Proposed law provides that a properly addressed certified mail return receipt reply form signed by the addressee or defendant or service via electronic mail shall be considered personal service. Provides that either a properly addressed certified mail return receipt reply form signed by a person other than the addressee or defendant or returned and marked "refused" or "unclaimed" by the addressee or defendant shall be considered domiciliary service.

Proposed law provides that the facilitator shall request the parties to provide an electronic mail address at which the party is willing to receive service and notice of future proceedings and that once an electronic mail address is provided, all service and notice of future proceedings shall be sent electronically.

Proposed law provides for the following fees:

- (1) \$35 for each party made a defendant, assessed to the plaintiff.
- (2) \$20 for each additional service, assessed to the plaintiff, unless service of process is required to be made upon the secretary of state and the action remains in the program.
- (3) \$20 for each subpoena issued.
- (4) \$35 filing fee.

Proposed law provides for waiver of costs for an indigent party.

Proposed law provides that a defendant shall register for an account within the program, link the claim to an existing account within the program, or seek an exemption from participating in the program within 10 days of service of the affidavit of claim. Provides that a defendant who seeks an exemption and is denied the exemption shall register for an account within the program or link the claim to an existing account within the program within 10 days of receiving the denial.

Proposed law provides that a plaintiff may file a motion to enter a default judgment in an amount not to exceed the amount requested in the affidavit of claim when a defendant who

fails to register or request an exemption. Provides that a defendant may raise and present evidence on any reconventional demand or counterclaim during the program without the need to formally file.

Proposed law provides that a defendant may file a reconventional demand against the plaintiff and have the proceedings transferred from the program to a court of competent jurisdiction at any time prior to settlement of a claim in the program.

Proposed law provides for settlement agreements between the plaintiff and defendant. Provides that the program facilitator shall guide the parties through the program and assist them in reaching a settlement by providing information to a party regarding procedure and commenting on the merits of the claim or defenses provided.

Proposed law provides that the facilitator shall terminate the program and notify the clerk of court to set the matter for trial de novo if the parties do not settle the claim.

Proposed law provides that a plaintiff who files a complaint in the program shall be deemed to have waived his right to appeal unless the complaint is removed or transferred. Provides that a defendant shall be deemed to have waived his right to appeal unless, within the time allowed for filing an answer to the complaint, he files a written motion seeking removal of the action to the ordinary civil docket of the court in which the complaint is filed.

Proposed law provides that these provisions shall not apply to state agencies.

Proposed law provides that the clerk shall do the following:

- (1) Prepare the citation summoning the defendant to answer.
- (2) Send notice to the defendant by certified mail, return receipt requested, or by service through the marshal, constable, or sheriff.
- (3) Cooperate fully with the parties, which includes answering any questions that the parties may have concerning the small claims procedure, in identification of the proper parties to the suit, and in furnishing general information concerning appropriate evidence for trial.

Proposed law provides that the clerk is not authorized or expected to provide legal advice.

Proposed law provides for applicability of these provisions in the program.

Proposed law provides that the pilot program sunsets on August 1, 2025.

(Amends R.S. 13:5200; Adds R.S. 13:5201(E) and 5213-5225)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Judiciary to the original bill:

1. Make technical changes.
2. Make a technical change by rearranging the placement of the procedure to transfer and consolidate cases.

The House Floor Amendments to the engrossed bill:

1. Make a technical change in terminology from "tangible" property to "corporeal movable" property.

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary A to the reengrossed bill

1. Deletes the ability of the La. Supreme Court to expand the pilot program to other courts throughout the state.
2. Changes arbitration to trial de novo by a judge.
3. Provides a sunset date for the pilot program.