### 2021 Regular Session

### HOUSE BILL NO. 164

### BY REPRESENTATIVE ROBBY CARTER

AN ACT
To amend and reenact Code of Civil Procedure Articles 253.3(A)(3), 284, 928(A), 1001,
1002, 1471(A)(3), 1702, 1702.1, 1703, 1704, 1843, 1913(B) and (C), 2002(A)(2),
4904, 4921, 4921.1(C), and 5095, R.S. 13:3205(introductory paragraph) and 4990,
and R.S. 23:1316.1(A) and to repeal Code of Civil Procedure Article 1701 and R.S.
23:1316, relative to default judgments; to eliminate preliminary defaults and
confirmation of preliminary defaults; to provide for the rendition of default
judgments; to provide for notice of the intent to obtain a default judgment and related
delays; to provide for default judgments in parish, city, justice of the peace, and
workers' compensation courts; to provide with respect to the delay for answering; to
update terminology; to provide for an effective date; and to provide for related
matters.
Be it enacted by the Legislature of Louisiana:
Section 1. Code of Civil Procedure Articles 253.3(A)(3), 284, 928(A), 1001, 1002,
1471(A)(3), 1702.1, 1703, 1704, 1843, 1913(B) and (C), 2002(A)(2), 4921.1(C), and 5095
are hereby amended and reenacted to read as follows:
Art. 253.3. Duty judge exceptions; authority to hear certain matters
A. In any case assigned pursuant to Article 253.1, a duty judge shall only
hear and sign orders or judgments for the following:
* * *
(3) Entry of preliminary defaults, confirmation of defaults Default
judgments, stipulated matters, examination of judgment debtors, orders to proceed
in forma pauperis, orders allowing the filing of supplemental and amending petitions

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1	when no trial date has been assigned, orders allowing incidental demands when no
2	trial date has been assigned, orders allowing additional time to answer, and judicial
3	commitments.
4	* * *
5	Art. 284. Judicial powers of district court clerk
6	The clerk of a district court may render, confirm, and sign final default
7	judgments or judgments by confession in cases where the jurisdiction of the court is
8	concurrent with that of justices of the peace, as provided in Article 5011.
9	* * *
10	Art. 928. Time of pleading exceptions
11	A. The declinatory exception and the dilatory exception shall be pleaded
12	prior to or in the answer and, prior to or along with the filing of any pleading seeking
13	relief other than entry or removal of the name of an attorney as counsel of record,
14	extension of time within which to plead, security for costs, or dissolution of an
15	attachment issued on the ground of the nonresidence of the defendant, and in any
16	event, prior to the signing of a final default judgment. When both exceptions are
17	pleaded, they shall be filed at the same time, and may be incorporated in the same
18	pleading. When filed at the same time or in the same pleading, these exceptions
19	need not be pleaded in the alternative or in a particular order.
20	* * *
21	Art. 1001. Delay for answering
22	A. A defendant shall file his answer within fifteen twenty-one days after
23	service of citation upon him, except as otherwise provided by law. If the plaintiff
24	files and serves a discovery request with his petition, the defendant shall file his
25	answer to the petition within thirty days after service of citation and service of
26	discovery request.
27	$\underline{B}$ . When an exception is filed prior to answer and is overruled or referred to
28	the merits, or is sustained and an amendment of the petition ordered, the answer shall
29	be filed within ten fifteen days after the exception is overruled or referred to the
30	merits, or ten fifteen days after service of the amended petition.

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1	<u>C.</u> The court may grant additional time for answering.
2	Comments - 2021
3 4 5 6 7 8 9 10	(a) The revision to Paragraph A of this Article extends the time within which the defendant must file an answer from fifteen to twenty-one days after service of citation. If the plaintiff files a discovery request with his petition, the delays for answering the petition and for responding to the discovery request will be thirty days. See Articles 1458(A), 1462(B)(1), and 1467(A). This change is intended to eliminate confusion, particularly for self-represented litigants who are served with a discovery request along with the petition, since the delays for responding to both are now the same.
11 12 13 14	(b) The revision to Paragraph B of this Article extends the time within which the defendant must file an answer to fifteen days after an exception is overruled or referred to the merits, or fifteen days after service of an amended petition when an exception is sustained and an amendment is ordered.
15	Art. 1002. Answer or other pleading filed prior to signing of final default judgment
16	Notwithstanding the provisions of Article 1001, the defendant may file his
17	answer or other pleading at any time prior to the signing of a final default judgment
18	against him.
19	* * *
20	Art. 1471. Failure to comply with order compelling discovery; sanctions
21	A. If a party or an officer, director, or managing agent of a party or a person
22	designated under Article 1442 or 1448 to testify on behalf of a party fails to obey an
23	order to provide or permit discovery, including an order made under Article 1464 or
24	1469, the court in which the action is pending may make such orders in regard to the
25	failure as are just, including any of the following:
26	* * *
27	(3) An order striking out pleadings or parts thereof, or staying further
28	proceedings until the order is obeyed, or dismissing the action or proceeding or any
29	part thereof, or rendering a final default judgment against the disobedient party upon
30	presentation of proof as required by Article 1702.
31	* * *
32	Art. 1702.1. Confirmation of preliminary default Default judgment without hearing
33	in open court; required information; certifications
34	A. When the plaintiff seeks to confirm a preliminary default judgment
35	without appearing for a hearing in open court as provided in Article 1702(B)(1) and

1	(C), along with any proof required by law, he or his attorney shall include in an
2	itemized form with a written motion for confirmation of preliminary default and
3	proposed final the plaintiff shall file a written request for default judgment
4	containing a certification that the suit is on an open account, promissory note, or
5	other negotiable instrument, on a conventional obligation, or on a check dishonored
6	for nonsufficient funds, and that the necessary invoices and affidavit, note and
7	affidavit, or check or certified reproduction thereof are attached, along with any
8	proof required by law and a proposed default judgment. If attorney fees are sought
9	under R.S. 9:2781 or 2782, the attorney shall certify that fact and the fact that the
10	number of days required by R.S. 9:2781(A) or 2782(A), respectively, have elapsed
11	since demand was made upon the defendant.
12	B. The certification shall indicate the type of service made on the defendant,
13	and the date of service, and the date a preliminary default was entered, and shall also
14	include a certification by the clerk that the record was examined by the clerk,
15	including therein the date of the examination and a statement that no answer or other
16	pleading has been filed within the time prescribed by law or by the court.
16 17	pleading has been filed within the time prescribed by law or by the court. Art. 1703. Scope of judgment
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17 18 19 20	Art. 1703. Scope of judgment A final default judgment shall not be different in kind from that demanded in the petition. The amount of damages awarded shall be the amount proven to be properly due as a remedy.
17 18 19 20 21	<ul> <li>Art. 1703. Scope of judgment</li> <li>A final default judgment shall not be different in kind from that demanded</li> <li>in the petition. The amount of damages awarded shall be the amount proven to be</li> <li>properly due as a remedy.</li> <li>Art. 1704. Confirmation of preliminary default <u>Default judgment</u> in suits against the</li> </ul>
<ol> <li>17</li> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> </ol>	<ul> <li>Art. 1703. Scope of judgment</li> <li>A final default judgment shall not be different in kind from that demanded</li> <li>in the petition. The amount of damages awarded shall be the amount proven to be</li> <li>properly due as a remedy.</li> <li>Art. 1704. Confirmation of preliminary default Default judgment in suits against the state or a political subdivision</li> </ul>
<ol> <li>17</li> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> </ol>	<ul> <li>Art. 1703. Scope of judgment</li> <li>A final default judgment shall not be different in kind from that demanded in the petition. The amount of damages awarded shall be the amount proven to be properly due as a remedy.</li> <li>Art. 1704. Confirmation of preliminary default Default judgment in suits against the state or a political subdivision</li> <li>A. Notwithstanding any other provision of law to the contrary, prior to</li> </ul>
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<ol> <li>17</li> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> <li>25</li> <li>26</li> </ol>	<ul> <li>Art. 1703. Scope of judgment</li> <li>A final default judgment shall not be different in kind from that demanded in the petition. The amount of damages awarded shall be the amount proven to be properly due as a remedy.</li> <li>Art. 1704. Confirmation of preliminary default Default judgment in suits against the state or a political subdivision</li> <li>A. Notwithstanding any other provision of law to the contrary, prior to confirmation of a preliminary the rendition of a default judgment against the state or any of its departments, offices, boards, commissions, agencies, or instrumentalities, a certified copy of the minute entry constituting the preliminary default entered</li> </ul>
<ol> <li>17</li> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> <li>25</li> <li>26</li> <li>27</li> </ol>	<ul> <li>Art. 1703. Scope of judgment</li> <li>A final default judgment shall not be different in kind from that demanded in the petition. The amount of damages awarded shall be the amount proven to be properly due as a remedy.</li> <li>Art. 1704. Confirmation of preliminary default Default judgment in suits against the state or a political subdivision</li> <li>A. Notwithstanding any other provision of law to the contrary, prior to confirmation of a preliminary the rendition of a default judgment against the state or any of its departments, offices, boards, commissions, agencies, or instrumentalities, a certified copy of the minute entry constituting the preliminary default entered pursuant to Article 1701 the plaintiff or the plaintiff's attorney shall send notice of</li> </ul>
<ol> <li>17</li> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> <li>25</li> <li>26</li> <li>27</li> <li>28</li> </ol>	<ul> <li>Art. 1703. Scope of judgment</li> <li>A final default judgment shall not be different in kind from that demanded in the petition. The amount of damages awarded shall be the amount proven to be properly due as a remedy.</li> <li>Art. 1704. Confirmation of preliminary default Default judgment in suits against the state or a political subdivision</li> <li>A. Notwithstanding any other provision of law to the contrary, prior to confirmation of a preliminary the rendition of a default judgment against the state or any of its departments, offices, boards, commissions, agencies, or instrumentalities, a certified copy of the minute entry constituting the preliminary default entered pursuant to Article 1701 the plaintiff or the plaintiff's attorney shall send notice of the plaintiff's intent to obtain a default judgment, together with a certified copy of the</li> </ul>

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1 upon the attorney general or the first assistant attorney general at the office of the 2 attorney general. If the minute entry and the notice and petition are served on the 3 attorney general by mail, the person mailing such items shall execute and file in the 4 record an affidavit stating that these items have been enclosed in an envelope 5 properly addressed to the attorney general with sufficient postage affixed, and stating 6 the date on which such envelope was deposited in the United States mail. In addition 7 the The return receipt shall be attached to the affidavit which was that is filed in the 8 record.

B. If no answer or other pleading is filed during the fifteen twenty-one days
immediately following the date on which the attorney general or the first assistant
attorney general received notice of the preliminary intent to obtain a default
<u>judgment</u> as provided in Paragraph A of this Article, a preliminary default entered
<u>judgment</u> against the state or any of its departments, offices, boards, commissions,
agencies, or instrumentalities may be confirmed by rendered upon proof as required
by Article 1702.

16 C. Notwithstanding any other provision of law to the contrary, prior to 17 confirmation of a preliminary the rendition of a default judgment against a political 18 subdivision of the state or any of its departments, offices, boards, commissions, 19 agencies, or instrumentalities, a certified copy of the minute entry constituting the 20 preliminary default entered pursuant to Article 1701 the plaintiff or the plaintiff's 21 attorney shall send notice of the plaintiff's intent to obtain a default judgment, 22 together with a certified copy of the petition or other demand, shall be sent by the 23 plaintiff or his counsel by registered or certified mail to the proper agent or person 24 for service of process at the office of that agent or person. The person mailing such 25 items shall execute and file in the record an affidavit stating that these items have 26 been enclosed in an envelope properly addressed to the proper agent or person for 27 service of process, with sufficient postage affixed, and stating the date on which such 28 envelope was deposited in the United States mail. In addition the The return receipt 29 shall be attached to the affidavit which was that is filed in the record.

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1	D. If no answer or other pleading is filed during the fifteen twenty-one days
2	immediately following the date on which the agent or person for service of process
3	received notice of the preliminary intent to obtain a default judgment as provided in
4	Paragraph C of this Article, a preliminary default entered judgment against the
5	political subdivision of the state or any of its departments, offices, boards,
6	commissions, agencies, or instrumentalities may be confirmed by rendered upon
7	proof as required by Article 1702.
8	Comments - 2021
9 10 11 12 13 14	Article 1704 continues the requirement that, prior to a default judgment being rendered against the state of Louisiana or any of its departments, offices, boards, commissions, agencies, or instrumentalities, the office of the attorney general must receive notice of the plaintiff's intent to obtain the default judgment along with a certified copy of the petition or other demand. A similar notice requirement applies to any political subdivision of the state.
15	* * *
16	Art. 1843. Final default Default judgment
17	A final default judgment is that which is rendered against a defendant who
18	fails to plead within the time prescribed by law.
19	* * *
20	Art. 1913. Notice of judgment
21	* * *
22	B. Notice of the signing of a final default judgment against a defendant on
23	whom citation was not served personally, or on whom citation was served through
24	the secretary of state, and who filed no exception, answer, or other pleading, shall be
25	served on the defendant by the sheriff, by either personal or domiciliary service, or
26	in the case of a defendant originally served through the secretary of state, by service
27	on the secretary of state.
28	C. Except when service is required under Paragraph B of this Article, notice
29	of the signing of a final default judgment shall be mailed by the clerk of court to the
30	defendant at the address where personal service was obtained or to the last known
31	address of the defendant.
32	* * *

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1	Art. 2002. Annulment for vices of form; time for action
2	A. A final judgment shall be annulled if it is rendered:
3	* * *
4	(2) Against a defendant who has not been served with process as required by
5	law and who has not waived objection to jurisdiction, or against whom a valid final
6	default judgment has not been taken.
7	* * *
8	Art. 4921.1. Demand for trial; abandonment; applicability
9	* * *
10	C.(1) Notwithstanding the provisions of Paragraph A of this Article, the
11	justice of the peace or clerk may set the matter for trial upon filing of a petition. The
12	date, time, and location of the trial shall be contained in the citation. The first
13	scheduled trial date shall be not more than forty-five days, nor less than ten days,
14	from the service of the citation. If the defendant appears, he need not file an answer
15	unless ordered to do so by the court. If a defendant who has been served with
16	citation fails to appear at the time and place specified in the citation, the judge may
17	enter a final default judgment for the plaintiff in the amount proved to be due. If the
18	plaintiff does not appear, the judge may enter an order dismissing the action without
19	prejudice.
20	(2) If a matter has been set for trial pursuant to Subparagraph (1) of this
21	Paragraph, no final default judgment shall be rendered prior to the trial date.
22	* * *
23	Art. 5095. Same; defense of action
24	$\underline{A}$ . The attorney at law appointed by the court to represent a defendant shall
25	use reasonable diligence to inquire of the defendant, and to determine from other
26	available sources, what defense, if any, the defendant may have, and what evidence
27	is available in support thereof.
28	B. Except in an executory proceeding, the attorney may except to the
29	petition, shall file an answer or other pleading in time to prevent a final default
30	judgment from being rendered, may plead therein any affirmative defense available,

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1	may prosecute an appeal from an adverse judgment, and generally has the same duty,
2	responsibility, and authority in defending the action or proceeding as if he had been
3	retained as counsel for the defendant.
4	Section 2. R.S. 13:3205(introductory paragraph) and 4990 are hereby amended and
5	reenacted to read as follows:
6	§3205. Default judgment; hearings; proof of service of process
7	No preliminary default or final default judgment may be rendered against the
8	defendant and no hearing may be held on a contradictory motion, rule to show cause,
9	or other summary proceeding, except for actions pursuant to R.S. 46:2131 et seq.,
10	until thirty days after the filing in the record of the affidavit of the individual who
11	has done any of the following:
12	* * *
13	§4990. Diligence in locating co-owners; known co-owners made parties
14	In any judicial proceeding in which real property is sought to be partitioned
15	upon the trial of the cause upon on the merits or upon confirmation of any
16	preliminary rendition of a default judgment therein, due proof shall be made of a
17	diligent effort on the part of the plaintiff to locate all co-owners of the property to be
18	partitioned and of the fact that all known co-owners have been made parties thereto.
19	Section 3. R.S. 23:1316.1(A) is hereby amended and reenacted to read as follows:
20	§1316.1. Confirmation of preliminary default Default judgment
21	A.(1) A preliminary default on behalf of any party at interest must be
22	confirmed by proof of the demand sufficient to establish a prima facie case. If no
23	answer or other pleading is filed timely, this confirmation may be made after two
24	days, exclusive of holidays, from the entry of the preliminary default. If a defendant
25	in the principal or incidental demand fails to answer or file other pleadings within
26	the time prescribed by law or the time extended by the workers' compensation judge,
27	and the plaintiff establishes a prima facie case by competent and admissible evidence
28	and proof of proper service is made, a default judgment may be rendered against the
29	defendant, provided that notice that the plaintiff intends to obtain a default judgment
30	is sent if required by this Paragraph, unless such notice is waived.

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1	(2) If a party who fails to answer has made an appearance of record in the
2	case, notice that the plaintiff intends to obtain a default judgment shall be sent by
3	certified mail to counsel of record for the party, or if there is no counsel of record,
4	to the party, at least seven days before a default judgment may be rendered.
5	(3) If an attorney for a party who fails to answer has contacted the plaintiff
6	or the plaintiff's attorney in writing concerning the action after it has been filed,
7	notice that the plaintiff intends to obtain a default judgment shall be sent by certified
8	mail to the party's attorney at least seven days before a default judgment may be
9	rendered.
10	* * *
11	Section 4. Code of Civil Procedure Articles 1702, 4904, and 4921 are hereby
12	amended and reenacted to read as follows:
13	Art. 1702. Confirmation of preliminary default Default judgment
14	A. A preliminary default must be confirmed by proof of the demand that is
15	sufficient to establish a prima facie case and that is admitted on the record prior to
16	the entry of a final default judgment. The court may permit documentary evidence
17	to be filed in the record in any electronically stored format authorized by the local
18	rules of the district court or approved by the clerk of the district court for receipt of
19	evidence. If no answer or other pleading is filed timely, this confirmation may be
20	made after two days, exclusive of holidays, from the entry of the preliminary default.
21	When a preliminary default has been entered against a party that is in default after
22	having made an appearance of record in the case, notice of the date of the entry of
23	the preliminary default must be sent by certified mail by the party obtaining the
24	preliminary default to counsel of record for the party in default, or if there is no
25	counsel of record, to the party in default, at least seven days, exclusive of holidays,
26	before confirmation of the preliminary default. If a defendant in the principal or
27	incidental demand fails to answer or file other pleadings within the time prescribed
28	by law or by the court, and the plaintiff establishes a prima facie case by competent
29	and admissible evidence that is admitted on the record, a default judgment in favor
30	of the plaintiff may be rendered, provided that notice that the plaintiff intends to

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1	obtain a default judgment is sent if required by this Paragraph, unless such notice is
2	waived. The court may permit documentary evidence to be filed in the record in any
3	electronically stored format authorized by the local rules of the district court or
4	approved by the clerk of the district court for receipt of evidence.
5	(1) If a party who fails to answer has made an appearance of record in the
6	case, notice that the plaintiff intends to obtain a default judgment shall be sent by
7	certified mail to counsel of record for the party, or if there is no counsel of record,
8	to the party, at least seven days before a default judgment may be rendered.
9	(2) If an attorney for a party who fails to answer has contacted the plaintiff
10	or the plaintiff's attorney in writing concerning the action after it has been filed,
11	notice that the plaintiff intends to obtain a default judgment shall be sent by certified
12	mail to the party's attorney at least seven days before a default judgment may be
13	rendered.
14	(3) In cases involving delictual actions where neither Subparagraph (1) or
15	(2) of this Paragraph applies, notice that the plaintiff intends to obtain a default
16	judgment shall be sent by regular mail to the party who fails to answer at the address
17	where service was obtained at least seven days before a default judgment may be
18	rendered.
19	B.(1) When a demand is based upon a conventional obligation, affidavits and
20	exhibits annexed thereto which that contain facts sufficient to establish a prima facie
21	case shall be admissible, self-authenticating, and sufficient proof of such demand.
22	The court may, under the circumstances of the case, require additional evidence in
23	the form of oral testimony before entering a final default judgment.
24	(2) When a demand is based upon a delictual obligation, the testimony of the
25	plaintiff with corroborating evidence, which may be by affidavits and exhibits
26	annexed thereto which contain containing facts sufficient to establish a prima facie
27	case, shall be admissible, self-authenticating, and sufficient proof of such demand.
28	The court may, under the circumstances of the case, require additional evidence in
29	the form of oral testimony before entering a final default judgment.

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(3) When the sum due is on an open account or a promissory note or other negotiable instrument, an affidavit of the correctness thereof shall be prima facie proof. When the demand is based upon a promissory note or other negotiable instrument, no proof of any signature thereon shall be required.

5 C. In those proceedings in which the sum due is on an open account or a 6 promissory note, other negotiable instrument, or other conventional obligation, or a 7 deficiency judgment derived therefrom, including those proceedings in which one 8 or more mortgages, pledges, or other security for the open account, promissory note, 9 negotiable instrument, conventional obligation, or deficiency judgment derived 10 therefrom is sought to be enforced, maintained, or recognized, or in which the 11 amount sought is that authorized by R.S. 9:2782 for a check dishonored for 12 nonsufficient funds, a hearing in open court shall not be required unless the judge, 13 in his discretion, directs that such a hearing be held. The plaintiff shall submit to the 14 court the proof required by law and the original and not less than one copy of the 15 proposed final default judgment. The judge shall, within seventy-two hours of 16 receipt of such submission from the clerk of court, sign the proposed final default 17 judgment or direct that a hearing be held. The clerk of court shall certify that no 18 answer or other pleading has been filed by the defendant. The minute clerk shall 19 make an entry showing the dates of receipt of proof, review of the record, and 20 rendition of the final default judgment. A certified copy of the signed final default 21 judgment shall be sent to the plaintiff by the clerk of court, and notice of the signing 22 of the final default judgment shall be given as provided in Article 1913.

D. When the demand is based upon a claim for a personal injury, a sworn narrative report of the treating physician or dentist may be offered in lieu of his testimony.

E.(1) Notwithstanding any other provisions of law to the contrary, when the demand is for divorce under Civil Code Article 103(1) or (5), whether or not the demand contains a claim for relief incidental or ancillary thereto, a hearing in open court shall not be required unless the judge, in his discretion, directs that a hearing be held. The plaintiff shall submit to the court an affidavit specifically attesting to

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1	and testifying as to the truth of all of the factual allegations contained in the petition,
2	the original and not less than one copy of the proposed final default judgment, and
3	a certification which shall indicate indicating the type of service made on the
4	defendant; and the date of service, the date a preliminary default was entered, and a
5	certification by the clerk that the record was examined by the clerk, including the
6	date of the examination, and a statement that no answer or other pleading has been
7	filed. If the demand is for divorce under Civil Code Article 103(5), a certified copy
8	of the protective order or injunction rendered after a contradictory hearing or consent
9	decree shall also be submitted to the court. If no answer or other pleading has been
10	filed by the defendant, the judge shall, after two days, exclusive of holidays, of entry
11	of a preliminary default, review the submitted affidavit, proposed final default
12	judgment, and certification, and render and sign the proposed final default judgment,
13	or direct that a hearing be held. The minutes shall reflect rendition and signing of
14	the final default judgment.
15	(2) If the demand is for divorce under Civil Code Article 103(1) and the
16	defendant, by sworn affidavit, acknowledges receipt of a certified copy of the
17	petition and waives formal citation, service of process, all legal delays, notice of
18	trial, and appearance at trial, a default judgment of divorce may be entered against
19	the defendant two days, exclusive of legal holidays, after the affidavit is filed. The
20	affidavit of the defendant may be prepared or notarized by any notary public.
21	Comments - 2021
22 23 24 25 26 27 28	(a) Paragraph C of this Article adopts a new rule that, prior to the rendition of a default judgment, notice must be sent to a party's attorney who has contacted the plaintiff or the plaintiff's attorney in writing about the case. The term "in writing" includes electronic means as well as any other type of writing. If such notice is not given, any default judgment rendered shall be a nullity similar to that arising from a lack of the notice required by Paragraph B. See, e.g., <i>First Bank &amp; Trust v. Bayou Land and Marine Contractors, Inc.</i> , 103 So. 3d 1148 (La. App. 5 Cir. 2012).
29 30 31 32 33 34 35	(b) Paragraph G of this Article continues the authorization under former Articles 1701 and 1702(E) for a judgment of divorce under Civil Code Article 103(1) to be granted without a hearing in open court two days, exclusive of holidays, after the filing of the defendant's affidavit waiving all legal delays, and for a judgment of divorce under Civil Code Article 103(5) to be rendered without a hearing in open court after the delays for answering have expired.

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1	Art. 4904. Final default Default judgment in parish and city courts
2	A. In suits in a parish court or a city court, if the defendant fails to answer
3	timely, or if he fails to appear at the trial, and the plaintiff proves his establishes a
4	prima facie case by competent and admissible evidence, a final default judgment in
5	favor of the plaintiff may be rendered. No preliminary default is necessary.
6	B. The plaintiff may obtain a final default judgment only by producing
7	relevant and competent evidence which establishes a prima facie case. When the suit
8	is for a sum due on an open account, promissory note, negotiable instrument, or other
9	conventional obligation, prima facie proof may be submitted by affidavit. When the
10	demand is based upon a promissory note or other negotiable instrument, no proof of
11	any signature thereon shall be required.
12	C. When the sum due is on an open account, promissory note, negotiable
13	instrument, or other conventional obligation, a hearing in open court shall not be
14	required unless the judge in his discretion directs that such a hearing be held. The
15	plaintiff shall submit to the court the proof required by law and the original and not
16	less than one copy of the proposed final default judgment. The judge shall, within
17	seventy-two hours of receipt of such submission from the clerk of court, sign the
18	proposed final default judgment or direct that a hearing be held. The clerk of court
19	shall certify that no answer or other pleading has been filed by the defendant. The
20	minute clerk shall make an entry showing the dates of receipt of proof, review of the
21	record, and rendition of the final default judgment. A certified copy of the signed
22	final default judgment shall be sent to the plaintiff by the clerk of court, and notice
23	of the signing of the default judgment shall be given as provided in Article 1913.
24	Comments - 2021
25 26 27	(a) The change to Paragraph A of this Article makes the burden of proof to obtain a default judgment in parish and city courts consistent with the burden of proof that is imposed in district court pursuant to Article 1702.
28 29	(b) Paragraph C of this Article was amended to make this provision consistent with Article 1702(E) concerning the requirements of Article 1913.
30	* * *

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1	Art. 4921. Final default Default judgment; justice of the peace courts; district courts
2	with concurrent jurisdiction
3	A. If the defendant fails to answer timely, or if he fails to appear at the trial,
4	and the plaintiff proves his establishes a prima facie case by competent and
5	admissible evidence, a final default judgment in favor of the plaintiff may be
6	rendered. No preliminary default is necessary.
7	B. The plaintiff may obtain a final default judgment only by producing
8	relevant and competent evidence which establishes a prima facie case. When the suit
9	is for a sum due on an open account, promissory note, negotiable instrument, or other
10	conventional obligation, prima facie proof may be submitted by affidavit. When the
11	demand is based upon a promissory note or other negotiable instrument, no proof of
12	any signature thereon shall be required.
13	Comments - 2021
14 15 16	The change to Paragraph A of this Article makes the burden of proof to obtain a default judgment in justice of the peace courts consistent with the burden of proof that is imposed in district court pursuant to Article 1702.
17	Section 5. Code of Civil Procedure Articles 1702, 4904, and 4921 are hereby
17 18	Section 5. Code of Civil Procedure Articles 1702, 4904, and 4921 are hereby amended and reenacted to read as follows:
	· · · · · ·
18	amended and reenacted to read as follows:
18 19	amended and reenacted to read as follows: Art. 1702. Confirmation of preliminary default <u>Default judgment</u>
18 19 20	amended and reenacted to read as follows: Art. 1702. <del>Confirmation of preliminary default</del> <u>Default judgment</u> A. <del>A preliminary default must be confirmed by proof of the demand that is</del>
18 19 20 21	amended and reenacted to read as follows: Art. 1702. Confirmation of preliminary default <u>Default judgment</u> A. A preliminary default must be confirmed by proof of the demand that is sufficient to establish a prima facie case and that is admitted on the record prior to
<ol> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> </ol>	amended and reenacted to read as follows: Art. 1702. Confirmation of preliminary default <u>Default judgment</u> A. A preliminary default must be confirmed by proof of the demand that is sufficient to establish a prima facie case and that is admitted on the record prior to the entry of a final default judgment. The court may permit documentary evidence
<ol> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> </ol>	amended and reenacted to read as follows: Art. 1702. Confirmation of preliminary default <u>Default judgment</u> A. A preliminary default must be confirmed by proof of the demand that is sufficient to establish a prima facie case and that is admitted on the record prior to the entry of a final default judgment. The court may permit documentary evidence to be filed in the record in any electronically stored format authorized by the local
<ol> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> </ol>	amended and reenacted to read as follows: Art. 1702. Confirmation of preliminary default <u>Default judgment</u> A. A preliminary default must be confirmed by proof of the demand that is sufficient to establish a prima facie case and that is admitted on the record prior to the entry of a final default judgment. The court may permit documentary evidence to be filed in the record in any electronically stored format authorized by the local rules of the district court or approved by the clerk of the district court for receipt of
<ol> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> <li>25</li> </ol>	amended and reenacted to read as follows: Art. 1702. Confirmation of preliminary default <u>Default judgment</u> A. A preliminary default must be confirmed by proof of the demand that is sufficient to establish a prima facie case and that is admitted on the record prior to the entry of a final default judgment. The court may permit documentary evidence to be filed in the record in any electronically stored format authorized by the local rules of the district court or approved by the clerk of the district court for receipt of evidence. If no answer or other pleading is filed timely, this confirmation may be
<ol> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> <li>25</li> <li>26</li> </ol>	amended and reenacted to read as follows: Art. 1702. Confirmation of preliminary default <u>Default judgment</u> A. A preliminary default must be confirmed by proof of the demand that is sufficient to establish a prima facie case and that is admitted on the record prior to the entry of a final default judgment. The court may permit documentary evidence to be filed in the record in any electronically stored format authorized by the local rules of the district court or approved by the clerk of the district court for receipt of evidence. If no answer or other pleading is filed timely, this confirmation may be made after two days, exclusive of holidays, from the entry of the preliminary default.
<ol> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> <li>25</li> <li>26</li> <li>27</li> </ol>	amended and reenacted to read as follows: Art. 1702. Confirmation of preliminary default <u>Default judgment</u> A. A preliminary default must be confirmed by proof of the demand that is sufficient to establish a prima facie case and that is admitted on the record prior to the entry of a final default judgment. The court may permit documentary evidence to be filed in the record in any electronically stored format authorized by the local rules of the district court or approved by the clerk of the district court for receipt of evidence. If no answer or other pleading is filed timely, this confirmation may be made after two days, exclusive of holidays, from the entry of the preliminary default. When a preliminary default has been entered against a party that is in default after
<ol> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> <li>25</li> <li>26</li> <li>27</li> <li>28</li> </ol>	amended and reenacted to read as follows: Art. 1702. Confirmation of preliminary default <u>Default judgment</u> A. A preliminary default must be confirmed by proof of the demand that is sufficient to establish a prima facie case and that is admitted on the record prior to the entry of a final default judgment. The court may permit documentary evidence to be filed in the record in any electronically stored format authorized by the local rules of the district court or approved by the clerk of the district court for receipt of evidence. If no answer or other pleading is filed timely, this confirmation may be made after two days, exclusive of holidays, from the entry of the preliminary default. When a preliminary default has been entered against a party that is in default after having made an appearance of record in the case, notice of the date of the entry of

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### HB NO. 164

### **ENROLLED**

1	before confirmation of the preliminary default. If a defendant in the principal or
2	incidental demand fails to answer or file other pleadings within the time prescribed
3	by law or by the court, and the plaintiff establishes a prima facie case by competent
4	and admissible evidence that is admitted on the record, a default judgment in favor
5	of the plaintiff may be rendered, provided that notice that the plaintiff intends to
6	obtain a default judgment is sent if required by this Paragraph, unless such notice is
7	waived. The court may permit documentary evidence to be filed in the record in any
8	electronically stored format authorized by the local rules of the district court or
9	approved by the clerk of the district court for receipt of evidence.
10	(1) If a party who fails to answer has made an appearance of record in the
11	case, notice that the plaintiff intends to obtain a default judgment shall be sent by
12	certified mail to counsel of record for the party, or if there is no counsel of record,
13	to the party, at least seven days before a default judgment may be rendered.
14	(2) If an attorney for a party who fails to answer has contacted the plaintiff
15	or the plaintiff's attorney in writing concerning the action after it has been filed,
16	notice that the plaintiff intends to obtain a default judgment shall be sent by certified
17	mail to the party's attorney at least seven days before a default judgment may be
18	rendered.
19	(3) In cases involving delictual actions where neither Subparagraph (1) or
20	(2) of this Paragraph applies, notice that the plaintiff intends to obtain a default
21	judgment shall be sent by regular mail to the party who fails to answer at the address
22	where service was obtained at least seven days before a default judgment may be
23	rendered.
24	B.(1) When a demand is based upon a conventional obligation, affidavits and
25	exhibits annexed thereto which that contain facts sufficient to establish a prima facie
26	case shall be admissible, self-authenticating, and sufficient proof of such demand.
27	The court may, under the circumstances of the case, require additional evidence in
28	the form of oral testimony before entering a final default judgment.
29	(2) When a demand is based upon a delictual obligation, the testimony of the
30	plaintiff with corroborating evidence, which may be by affidavits and exhibits

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annexed thereto which contain <u>containing</u> facts sufficient to establish a prima facie
case, shall be admissible, self-authenticating, and sufficient proof of such demand.
The court may, under the circumstances of the case, require additional evidence in
the form of oral testimony before entering a final default judgment.

(3) When the sum due is on an open account or a promissory note or other negotiable instrument, an affidavit of the correctness thereof shall be prima facie proof. When the demand is based upon a promissory note or other negotiable instrument, no proof of any signature thereon shall be required.

9 C. In those proceedings in which the sum due is on an open account or a 10 promissory note, other negotiable instrument, or other conventional obligation, or a 11 deficiency judgment derived therefrom, including those proceedings in which one 12 or more mortgages, pledges, or other security for the open account, promissory note, 13 negotiable instrument, conventional obligation, or deficiency judgment derived 14 therefrom is sought to be enforced, maintained, or recognized, or in which the 15 amount sought is that authorized by R.S. 9:2782 for a check dishonored for 16 nonsufficient funds, a hearing in open court shall not be required unless the judge, 17 in his discretion, directs that such a hearing be held. The plaintiff shall submit to the 18 court the proof required by law and the original and not less than one copy of the 19 proposed final default judgment. The judge shall, within seventy-two hours of 20 receipt of such submission from the clerk of court, sign the proposed final default 21 judgment or direct that a hearing be held. The clerk of court shall certify that no 22 answer or other pleading has been filed by the defendant. The minute clerk shall 23 make an entry showing the dates of receipt of proof, review of the record, and 24 rendition of the final default judgment. A certified copy of the signed final default judgment shall be sent to the plaintiff by the clerk of court, and notice of the signing 25 26 of the final default judgment shall be given as provided in Article 1913.

D. When the demand is based upon a right acquired by assignment in an
 open account, promissory note, or other negotiable instrument, the court may raise
 an objection of prescription before entering a default judgment if the grounds for the
 objection appear from the pleadings or from the evidence submitted by the plaintiff.
 If the court raises an objection of prescription, it shall not enter the default judgment

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1unless the plaintiff presents prima facie proof that the action is not barred by2prescription. Upon the plaintiff's request, the court shall hold a hearing for the3submission of such proof.

D.E. When the demand is based upon a claim for a personal injury, a sworn narrative report of the treating physician or dentist may be offered in lieu of his testimony.

7 E.F.(1) Notwithstanding any other provisions of law to the contrary, when 8 the demand is for divorce under Civil Code Article 103(1) or (5), whether or not the 9 demand contains a claim for relief incidental or ancillary thereto, a hearing in open 10 court shall not be required unless the judge, in his discretion, directs that a hearing 11 be held. The plaintiff shall submit to the court an affidavit specifically attesting to 12 and testifying as to the truth of all of the factual allegations contained in the petition, 13 the original and not less than one copy of the proposed final judgment, and a 14 certification which shall indicate indicating the type of service made on the 15 defendant, and the date of service, the date a preliminary default was entered, and a 16 certification by the clerk that the record was examined by the clerk, including the 17 date of the examination, and a statement that no answer or other pleading has been 18 filed. If the demand is for divorce under Civil Code Article 103(5), a certified copy 19 of the protective order or injunction rendered after a contradictory hearing or consent 20 decree shall also be submitted to the court. If no answer or other pleading has been 21 filed by the defendant, the judge shall, after two days, exclusive of holidays, of entry 22 of a preliminary default, review the submitted affidavit, proposed final default 23 judgment, and certification; and render and sign the proposed final default judgment; 24 or direct that a hearing be held. The minutes shall reflect rendition and signing of 25 the final default judgment.

26 (2) If the demand is for divorce under Civil Code Article 103(1) and the
 27 defendant, by sworn affidavit, acknowledges receipt of a certified copy of the
 28 petition and waives formal citation, service of process, all legal delays, notice of
 29 trial, and appearance at trial, a default judgment of divorce may be entered against

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1	the defendant two days, exclusive of legal holidays, after the affidavit is filed. The
2	affidavit of the defendant may be prepared or notarized by any notary public.
3	Comments - 2021
4 5 6 7 8 9 10	(a) Paragraph C of this Article adopts a new rule that, prior to the rendition of a default judgment, notice must be sent to a party's attorney who has contacted the plaintiff or the plaintiff's attorney in writing about the case. The term "in writing" includes electronic means as well as any other type of writing. If such notice is not given, any default judgment rendered shall be a nullity similar to that arising from a lack of the notice required by Paragraph B. See, e.g., <i>First Bank &amp; Trust v. Bayou Land and Marine Contractors, Inc.</i> , 103 So. 3d 1148 (La. App. 5 Cir. 2012).
11 12 13 14 15 16	(b) Paragraph H of this Article continues the authorization under former Articles 1701 and 1702(E) for a judgment of divorce under Civil Code Article 103(1) to be granted without a hearing in open court two days, exclusive of holidays, after the filing of the defendant's affidavit waiving all legal delays, and for a judgment of divorce under Civil Code Article 103(5) to be rendered without a hearing in open court after the delays for answering have expired.
17	* * *
18	Art. 4904. Final default Default judgment in parish and city courts
19	A. In suits in a parish court or a city court, if the defendant fails to answer
20	timely, or if he fails to appear at the trial, and the plaintiff <del>proves his case</del> establishes
21	a prima facie case by competent and admissible evidence, a final default judgment
22	in favor of the plaintiff may be rendered. No preliminary default is necessary.
23	B. The plaintiff may obtain a final default judgment only by producing
24	relevant and competent evidence which establishes a prima facie case. When the suit
25	is for a sum due on an open account, promissory note, negotiable instrument, or other
26	conventional obligation, prima facie proof may be submitted by affidavit. When the
27	demand is based upon a promissory note or other negotiable instrument, no proof of
28	any signature thereon shall be required.
29	C. When the sum due is on an open account, promissory note, negotiable
30	instrument, or other conventional obligation, a hearing in open court shall not be
31	required unless the judge in his discretion directs that such a hearing be held. The
32	plaintiff shall submit to the court the proof required by law and the original and not
33	less than one copy of the proposed final default judgment. The judge shall, within
34	seventy-two hours of receipt of such submission from the clerk of court, sign the
35	proposed final default judgment or direct that a hearing be held. The clerk of court

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1	shall certify that no answer or other pleading has been filed by the defendant. The
2	minute clerk shall make an entry showing the dates of receipt of proof, review of the
3	record, and rendition of the final default judgment. A certified copy of the signed
4	final default judgment shall be sent to the plaintiff by the clerk of court, and notice
5	of the signing of the default judgment shall be given as provided in Article 1913.
6	D. When the demand is based upon a right acquired by assignment in an
7	open account, promissory note, or other negotiable instrument, the court may raise
8	an objection of prescription before entering a default judgment if the grounds for the
9	objection appear from pleadings or from the evidence submitted by the plaintiff. If
10	the court raises an objection of prescription, it shall not enter the default judgment
11	unless the plaintiff presents prima facie proof that the action is not barred by
12	prescription. Upon the plaintiff's request, the court shall hold a hearing for the
13	submission of such proof.
14	Comments - 2021
15 16 17	(a) The change to Paragraph A of this Article makes the burden of proof to obtain a default judgment in parish and city courts consistent with the burden of proof that is imposed in district court pursuant to Article 1702.
18 19	(b) Paragraph C of this Article was amended to make this provision consistent with Article 1702(E) concerning the requirements of Article 1913.
20	* * *
21	Art. 4921. Final default Default judgment; justice of the peace courts; district courts
22	with concurrent jurisdiction
23	A. If the defendant fails to answer timely, or if he fails to appear at the trial,
24	and the plaintiff proves his establishes a prima facie case by competent and
25	admissible evidence, a final default judgment in favor of the plaintiff may be
26	rendered. No preliminary default is necessary.
27	B. The plaintiff may obtain a final default judgment only by producing
28	relevant and competent evidence which establishes a prima facie case. When the suit
29	is for a sum due on an open account, promissory note, negotiable instrument, or other
30	conventional obligation, prima facie proof may be submitted by affidavit. When the
31	demand is based upon a promissory note or other negotiable instrument, no proof of
32	any signature thereon shall be required.

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1	C. When the demand is based upon a right acquired by assignment in an
2	open account, promissory note, or other negotiable instrument, the court may raise
3	an objection of prescription before entering a default judgment if the grounds for the
4	objection appear from the pleadings or from the evidence submitted by the plaintiff.
5	If the court raises an objection of prescription, it shall not enter the default judgment
6	unless the plaintiff presents prima facie proof that the action is not barred by
7	prescription. Upon the plaintiff's request, the court shall hold a hearing for the
8	submission of such proof.
9	Comments - 2021
10 11 12	The change to Paragraph A of this Article makes the burden of proof to obtain a default judgment in justice of the peace courts consistent with the burden of proof that is imposed in district court pursuant to Article 1702.
13	Section 6. Code of Civil Procedure Article 1701 and R.S. 23:1316 are hereby
14	repealed in their entirety.
15	Section 7.(A) This Act shall become effective on January 1, 2022, except as
16	otherwise provided by this Section, and shall apply to default judgments rendered on or after
17	that date.
18	(B) Section 4 of this Act shall become effective only if House Bill No. 152 of the
19	2021 Regular Session does not become law.
20	(C) Section 5 of this Act shall become effective only if House Bill No. 152 of the
21	2021 Regular Session becomes law. If House Bill No. 152 of the 2021 Regular Session
22	becomes law, then Code of Civil Procedure Articles 1702, 4904, and 4921 as provided by
23	Section 5 of this Act shall, on January 1, 2022, supersede Code of Civil Procedure Articles
24	1702, 4904, and 4921 as provided by House Bill No. 152 of the 2021 Regular Session.

### SPEAKER OF THE HOUSE OF REPRESENTATIVES

### PRESIDENT OF THE SENATE

### GOVERNOR OF THE STATE OF LOUISIANA

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

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