

ACT No. 174

2021 Regular Session

HOUSE BILL NO. 164

BY REPRESENTATIVE ROBBY CARTER

(On Recommendation of the Louisiana State Law Institute)

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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

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 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.

1 C. The court may grant additional time for answering.

2 Comments - 2021

3 (a) The revision to Paragraph A of this Article extends the time within which
4 the defendant must file an answer from fifteen to twenty-one days after service of
5 citation. If the plaintiff files a discovery request with his petition, the delays for
6 answering the petition and for responding to the discovery request will be thirty days.
7 See Articles 1458(A), 1462(B)(1), and 1467(A). This change is intended to eliminate
8 confusion, particularly for self-represented litigants who are served with a discovery
9 request along with the petition, since the delays for responding to both are now the
10 same.

11 (b) The revision to Paragraph B of this Article extends the time within which
12 the defendant must file an answer to fifteen days after an exception is overruled or
13 referred to the merits, or fifteen days after service of an amended petition when an
14 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.

17 Art. 1703. Scope of judgment

18 A ~~final~~ default judgment shall not be different in kind from that demanded
 19 in the petition. The amount of damages awarded shall be the amount proven to be
 20 properly due as a remedy.

21 Art. 1704. ~~Confirmation of preliminary default~~ Default judgment in suits against the
 22 state or a political subdivision

23 A. Notwithstanding any other provision of law to the contrary, prior to
 24 ~~confirmation of a preliminary~~ the rendition of a default judgment against the state or
 25 any of its departments, offices, boards, commissions, agencies, or instrumentalities,
 26 ~~a certified copy of the minute entry constituting the preliminary default entered~~
 27 ~~pursuant to Article 1704~~ the plaintiff or the plaintiff's attorney shall send notice of
 28 the plaintiff's intent to obtain a default judgment, together with a certified copy of the
 29 petition or other demand, ~~shall be sent by the plaintiff or his counsel~~ to the attorney
 30 general by registered or certified mail, or shall be served by the sheriff personally

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.

9 B. If no answer or other pleading is filed during the ~~fifteen~~ twenty-one days
 10 immediately following the date on which the attorney general or the first assistant
 11 attorney general received notice of the preliminary intent to obtain a default
 12 judgment as provided in Paragraph A of this Article, a preliminary default entered
 13 judgment against the state or any of its departments, offices, boards, commissions,
 14 agencies, or instrumentalities may be ~~confirmed by~~ rendered upon proof as required
 15 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.

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 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,

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.

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~~

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.

1 (3) When the sum due is on an open account or a promissory note or other
2 negotiable instrument, an affidavit of the correctness thereof shall be prima facie
3 proof. When the demand is based upon a promissory note or other negotiable
4 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.

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

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

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 (a) Paragraph C of this Article adopts a new rule that, prior to the rendition
 23 of a default judgment, notice must be sent to a party's attorney who has contacted the
 24 plaintiff or the plaintiff's attorney in writing about the case. The term "in writing"
 25 includes electronic means as well as any other type of writing. If such notice is not
 26 given, any default judgment rendered shall be a nullity similar to that arising from
 27 a lack of the notice required by Paragraph B. See, e.g., *First Bank & Trust v. Bayou*
 28 *Land and Marine Contractors, Inc.*, 103 So. 3d 1148 (La. App. 5 Cir. 2012).

29 (b) Paragraph G of this Article continues the authorization under former
 30 Articles 1701 and 1702(E) for a judgment of divorce under Civil Code Article 103(1)
 31 to be granted without a hearing in open court two days, exclusive of holidays, after
 32 the filing of the defendant's affidavit waiving all legal delays, and for a judgment of
 33 divorce under Civil Code Article 103(5) to be rendered without a hearing in open
 34 court after the delays for answering have expired.

35 * * *

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 (a) The change to Paragraph A of this Article makes the burden of proof to
26 obtain a default judgment in parish and city courts consistent with the burden of
27 proof that is imposed in district court pursuant to Article 1702.

28 (b) Paragraph C of this Article was amended to make this provision
29 consistent with Article 1702(E) concerning the requirements of Article 1913.

30 * * *

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

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 The change to Paragraph A of this Article makes the burden of proof to
 15 obtain a default judgment in justice of the peace courts consistent with the burden
 16 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
 18 amended and reenacted to read as follows:

19 Art. 1702. ~~Confirmation of preliminary default~~ Default judgment

20 A. ~~A preliminary default must be confirmed by proof of the demand that is~~
 21 ~~sufficient to establish a prima facie case and that is admitted on the record prior to~~
 22 ~~the entry of a final default judgment. The court may permit documentary evidence~~
 23 ~~to be filed in the record in any electronically stored format authorized by the local~~
 24 ~~rules of the district court or approved by the clerk of the district court for receipt of~~
 25 ~~evidence. If no answer or other pleading is filed timely, this confirmation may be~~
 26 ~~made after two days, exclusive of holidays, from the entry of the preliminary default.~~
 27 ~~When a preliminary default has been entered against a party that is in default after~~
 28 ~~having made an appearance of record in the case, notice of the date of the entry of~~
 29 ~~the preliminary default must be sent by certified mail by the party obtaining the~~
 30 ~~preliminary default to counsel of record for the party in default, or if there is no~~
 31 ~~counsel of record, to the party in default, at least seven days, exclusive of holidays,~~

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

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

5 (3) When the sum due is on an open account or a promissory note or other
6 negotiable instrument, an affidavit of the correctness thereof shall be prima facie
7 proof. When the demand is based upon a promissory note or other negotiable
8 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
25 judgment shall be sent to the plaintiff by the clerk of court, and notice of the signing
26 of the ~~final~~ default judgment shall be given as provided in Article 1913.

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

1 unless the plaintiff presents prima facie proof that the action is not barred by
 2 prescription. Upon the plaintiff's request, the court shall hold a hearing for the
 3 submission of such proof.

4 D.E. When the demand is based upon a claim for a personal injury, a sworn
 5 narrative report of the treating physician or dentist may be offered in lieu of his
 6 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

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 (a) Paragraph C of this Article adopts a new rule that, prior to the rendition
5 of a default judgment, notice must be sent to a party's attorney who has contacted the
6 plaintiff or the plaintiff's attorney in writing about the case. The term "in writing"
7 includes electronic means as well as any other type of writing. If such notice is not
8 given, any default judgment rendered shall be a nullity similar to that arising from
9 a lack of the notice required by Paragraph B. See, e.g., *First Bank & Trust v. Bayou*
10 *Land and Marine Contractors, Inc.*, 103 So. 3d 1148 (La. App. 5 Cir. 2012).

11 (b) Paragraph H of this Article continues the authorization under former
12 Articles 1701 and 1702(E) for a judgment of divorce under Civil Code Article 103(1)
13 to be granted without a hearing in open court two days, exclusive of holidays, after
14 the filing of the defendant's affidavit waiving all legal delays, and for a judgment of
15 divorce under Civil Code Article 103(5) to be rendered without a hearing in open
16 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 ~~proves his case~~ 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

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

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 (a) The change to Paragraph A of this Article makes the burden of proof to
 16 obtain a default judgment in parish and city courts consistent with the burden of
 17 proof that is imposed in district court pursuant to Article 1702.

18 (b) Paragraph C of this Article was amended to make this provision
 19 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.

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.

Comments - 2021

10 The change to Paragraph A of this Article makes the burden of proof to
 11 obtain a default judgment in justice of the peace courts consistent with the burden
 12 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: _____