

2023 Regular Session

HOUSE BILL NO. 196

BY REPRESENTATIVE BROWN

(On Recommendation of the Louisiana State Law Institute)

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CIVIL/PROCEDURE: Provides relative to summary judgment

1 AN ACT

2 To amend and reenact Code of Civil Procedure Article 966(A)(4), (B)(1), (2), and (3),
3 (D)(2), and (G), and to enact Code of Civil Procedure Article 966(B)(5) and (D)(3),
4 relative to motions for summary judgment; to provide for certain procedures at the
5 hearing on a motion for summary judgment; to provide for the filing and
6 consideration of certain documents; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. Code of Civil Procedure Article 966(A)(4), (B)(1), (2), and (3), (D)(2),
9 and (G) are hereby amended and reenacted and Code of Civil Procedure Article 966(B)(5)
10 and (D)(3) are hereby enacted to read as follows:

11 Art. 966. Motion for summary judgment; procedure

12 A.

13 * * *

14 (4)(a) The only documents that may be filed or referenced in support of or
15 in opposition to the motion are pleadings, memoranda, affidavits, depositions,
16 answers to interrogatories, certified medical records, certified copies of public
17 documents or public records, certified copies of insurance policies, written
18 stipulations, and admissions. The court may permit documents to be filed in any
19 electronically stored format authorized by court rules or approved by the clerk of the
20 court.

1 D.

2 * * *

3 (2) The court ~~may~~ shall consider only those documents filed or referenced
4 in support of or in opposition to the motion for summary judgment ~~and shall consider~~
5 ~~any documents to which no objection is made~~ but shall not consider any document
6 that is excluded pursuant to a timely filed objection. Any objection to a document
7 shall be raised in a timely filed opposition or reply memorandum. The court shall
8 consider all objections prior to rendering judgment. The court shall specifically state
9 on the record or in writing ~~which documents, if any, it held to be inadmissible or~~
10 ~~declined to consider~~ whether the court sustains or overrules the objections raised.

11 (3) If a timely objection is made to an expert's qualifications or
12 methodologies in support of or in opposition to a motion for summary judgment, any
13 motion in accordance with Article 1425(F) to determine whether the expert is
14 qualified or the expert's methodologies are reliable shall be filed, heard, and decided
15 prior to the hearing on the motion for summary judgment.

16 * * *

17 G. When the court ~~grants a motion for summary~~ renders judgment in
18 accordance with the provisions of this Article; that a party or ~~non-party~~ nonparty is
19 not negligent, is not at fault, or did not cause in whole or in part the injury or harm
20 alleged, that party or ~~non-party~~ nonparty shall not be considered in any subsequent
21 allocation of fault. Evidence shall not be admitted at trial to establish the fault of that
22 party or ~~non-party~~ nonparty. During the course of the trial, no party or person shall
23 refer directly or indirectly to any such fault, nor shall that party or ~~non-party's~~
24 nonparty's fault be submitted to the jury or included on the jury verdict form. This
25 Paragraph does not apply if the trial or appellate court's judgment rendered in
26 accordance with this Article is reversed. If the judgment is reversed by an appellate
27 court, the reversal applies to all parties.

28 * * *

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Comments - 2023

2 (a) Subsubparagraph (A)(4)(a) expands the exclusive list of documents that
3 may be filed and offered in support of or in opposition to a motion for summary
4 judgment to include certified copies of public records and public documents as well
5 as certified copies of insurance policies. Objections to any of the documents listed
6 in Subparagraph (A)(4)(a) or their contents may be raised in a timely filed opposition
7 or reply memorandum. See Subparagraph (D)(2) and Comment (k) (2015) to this
8 Article. Even though affidavits may be filed in accordance with Subsubparagraph
9 (A)(4)(a), objections may be filed if the affidavit does not comply with the
10 requirements of Article 967. Objections may be raised in a timely filed opposition
11 or reply memorandum if the content of any document filed in accordance with
12 Subparagraph (A)(4)(a), including any certified copies of public records or public
13 documents, would not be admissible at the trial on the merits. See *Thompson v.*
14 *Center for Pediatric and Adolescent Medicine, L.L.C.*, 244 So. 3d 441, 446 (La. App.
15 1 Cir. 2018). In most cases, a certified copy of an insurance policy should include
16 the declaration page and relevant endorsements.

17 (b) Subsubparagraph (A)(4)(b) is new and provides that a document listed
18 in Subsubparagraph (A)(4)(a) that was previously filed in the record may be
19 specifically referenced with the motion and opposition by title and date of filing. At
20 the time of the filing of the motion or opposition, the party shall also furnish to the
21 court and opposing party a copy of the entire document, designate the pertinent part
22 of the document, and include the date the document was filed. See Louisiana District
23 Court Rule 9.10. Failure to comply with Subsubparagraph (A)(4)(b) may be
24 grounds for an objection requesting that the court not consider the referenced
25 document. This Subsubparagraph still allows a party to attach to the motion or
26 opposition all documents that are submitted and does not require a party to reference
27 a previously filed document. Subparagraphs (B)(1) and (2) were also revised in
28 accordance with this change.

29 (c) Subparagraphs (B)(1), (2), and (3) now require that the motion for
30 summary judgment, opposition to the motion, reply memorandum, and all documents
31 filed or referenced in support of or in opposition to the motion for summary
32 judgment be served electronically in accordance with Article 1313(A)(4).

33 (d) Subparagraph (B)(3) clarifies that legal holidays are included in the
34 calculation of time within which the mover shall file the reply memorandum.
35 Subparagraph (B)(4) continues to apply in this situation. For example, if the hearing
36 on the motion for summary judgment is set on Friday, the fifth day to file the reply
37 memorandum falls on the preceding Sunday. Accordingly, under Subparagraph
38 (B)(4), the mover would have the entirety of the preceding Monday to file the reply
39 memorandum. The court should be aware of this requirement when setting hearings
40 on motions for summary judgment.

41 (e) Subparagraph (B)(5) is new and would change the result reached by the
42 Louisiana Supreme Court in *Zapata v. Seal*, 330 So. 3d 175 (La. 2021). This
43 Subparagraph is intended only to prohibit a trial court from reconsidering the
44 granting of a partial summary judgment because a document was not timely filed and
45 served with an opposition in accordance with the deadlines imposed by this Article.

46 (f) Subparagraph (D)(2) was amended to include only slight changes in
47 phraseology. The amendment is not intended to make substantive changes to the
48 law.

49 (g) Subparagraph (D)(3) sets forth a rule recognizing that if a party timely
50 objects to the expert's opinion attached to either the motion for summary judgment
51 or the opposition and elects to file a motion in accordance with Article 1425(F)

1 questioning the expert's qualifications or methodologies, the court shall set a hearing
2 and decide the Article 1425(F) motion prior to the hearing on the motion for
3 summary judgment. To avoid any possible conflict between the time delays in this
4 Article and Article 1425(F), the court should set appropriate deadlines for the Article
5 1425(F) hearing in a scheduling or pretrial order.

6 (h) Paragraph G was amended to codify the holding of the Louisiana
7 Supreme Court in *Amedee v. Aimbridge Hospitality LLC*, 351 So. 3d 321 (La.
8 2022). A defendant who has filed an opposition to the granting of a motion for
9 summary judgment dismissing a codefendant may appeal the judgment despite the
10 plaintiff's failure to appeal. Paragraph G was also amended to answer the question
11 raised in footnote 1 of the opinion - if summary judgment is granted finding a party
12 not at fault, not negligent, or not to have caused in whole or in part the injury of any
13 harm alleged, and that judgment is subsequently reversed, the fault or contribution
14 of that party is deemed not to have been adjudicated as to any other party,
15 notwithstanding whether any other party has appealed. As a result of the reversal,
16 the previously dismissed defendant is returned as a party to the case for all purposes
17 and as to all parties. The final judgment of the appellate court reversing the granting
18 of a motion for summary judgment as to one party applies to all parties, including
19 a plaintiff who has failed to appeal.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 196 Engrossed

2023 Regular Session

Brown

Abstract: Provides with respect to the substance and procedure relative to motions for summary judgment.

Present law (C.C.P. Art. 966(A)(4)) sets forth the documents that may be filed in support of or in opposition to a motion for summary judgment.

Proposed law (C.C.P. Art. 966(A)(4)(a)) adds to the documents listed under present law certified copies of public documents and public records and certified copies of insurance policies.

Proposed law (C.C.P. Art. 966(A)(4)(b)) provides that any document previously filed into the record in support of or in opposition to the motion for summary judgment may be referenced in the motion or opposition if the party referencing the document furnishes to the court and the opposing party a copy of the document with the pertinent part designated and with the filing information.

Present law (C.C.P. Art. 966(B)(1)-(3)) provides relative to filing, opposing, and replying to motions for summary judgment and requires any motion, opposition, or reply memorandum to be filed and served in accordance with Article 1313.

Proposed law changes present law by requiring that motions for summary judgment, oppositions, and reply memoranda be filed and served electronically in accordance with Article 1313(A)(4).

Proposed law (C.C.P. Art. 966(B)(3)) also clarifies present law relative to the timely filing of reply memoranda.

Proposed law (C.C.P. Art. 966(B)(5)) provides that the granting of a motion for partial summary judgment shall not be reconsidered or revised if the party seeking the reconsideration or revision fails to meet the applicable deadlines set forth in this Article.

Present law (C.C.P. Art. 966(D)(2)) provides that the court shall consider only those documents filed in support of or in opposition to the motion for summary judgment.

Proposed law retains present law but makes semantic changes and adds that the court shall also consider documents that are referenced in support of or in opposition to the motion for summary judgment, with the exception of any document that is excluded pursuant to a timely filed objection.

Proposed law (C.C.P. Art. 966(D)(3)) provides that objections made in accordance with Art. 1425(F) to determine whether an expert is qualified or whether the expert's methodologies are reliable shall be filed, heard, and decided prior to the hearing on the motion for summary judgment.

Present law (C.C.P. Art. 966(G)) provides that when the court grants a motion for summary judgment, a party or nonparty that is not negligent, is not at fault, or did not cause in whole or in part the injury or harm alleged shall not be considered in any subsequent allocation of fault.

Proposed law retains present law and adds that this provision does not apply if the court's judgment is reversed. Proposed law further specifies that if the judgment is reversed by an appellate court, the reversal is applicable to all parties.

(Amends C.C.P. Art. 966(A)(4), (B)(1), (2), and (3), (D)(2), and (G); Adds C.C.P. Art. 966(B)(5) and (D)(3))