

Regular Session, 2008

SENATE BILL NO. 308

BY SENATOR DONAHUE

CIVIL PROCEDURE. Provides for a pre-trial hearing regarding the qualifications and admissibility of testimony of expert witnesses. (gov sig)

1 AN ACT

2 To amend and reenact Code of Civil Procedure Article 1425(C) and to enact Code of Civil

3 Procedure Article 1425(F), relative to discovery and experts; to extend the deadline

4 for filing expert witness disclosures; to provide for a pre-trial hearing regarding the

5 qualifications and admissibility of testimony of an expert witness; to provide

6 procedures for conducting the hearing and appealing the decision of the judge; and

7 to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. Code of Civil Procedure Art. 1425(C) is hereby amended and reenacted
10 and Code of Civil Procedure Art. 1425(F) is hereby enacted to read as follows:

11 Art. 1425. Experts; pre-trial disclosures; scope of discovery

12 * * *

13 C. The disclosures of Paragraph B of this Article shall be made at the times

14 and in the sequence directed by the court. In the absence of other directions from the

15 court or stipulation by the parties, the disclosures required pursuant to Paragraph B

16 of this Article shall be made at least ~~ninety~~ **one hundred twenty** days before the trial

17 date or the date the case is to be ready for trial or, if the evidence is intended solely

1 to contradict or rebut evidence on the same subject matter identified by another party
2 under Paragraph B, within thirty days after the disclosure made by the other party.

3 The parties shall supplement these disclosures when required by Article 1428.

4 * * *

5 **(F)(1) Upon motion of any party, the court shall hold a hearing at least**
6 **ninety days before the trial date or the date the case is to be ready for trial**
7 **requiring any and all parties that have retained or specially employed a person**
8 **to provide expert testimony in the case or whose duties as an employee of the**
9 **party regularly involve giving expert testimony under Articles 702 through 705**
10 **of the Louisiana Code of Evidence, to present evidence that proves why such**
11 **person qualifies as an expert and why their methodologies are reliable under**
12 **Articles 702 through 705 of the Louisiana Code of Evidence.**

13 **(2) The court shall allow sufficient time for a hearing and shall rule on**
14 **the qualifications and methodologies of the witness. Following the hearing, the**
15 **judge shall provide written reasons for every person testifying under Articles**
16 **702 through 705 of the Louisiana Code of Evidence. Such written reasons shall**
17 **provide the following:**

18 **(a) The elements required to be satisfied in order for a person to testify**
19 **under Articles 702 through 705 of the Louisiana Code of Evidence.**

20 **(b) The evidence that has been presented at the hearing by a party in**
21 **order to satisfy the requirements of Articles 702 through 705 of the Louisiana**
22 **Code of Evidence at trial.**

23 **(c) A decision by the judge as to whether or not a person shall be allowed**
24 **to testify under Articles 702 through 705 of the Louisiana Code of Evidence at**
25 **trial.**

26 **(d) The reasons of the judge detailing in law and fact why a person shall**
27 **be allowed or disallowed to testify under Articles 702 through 705 of the**
28 **Louisiana Code of Evidence based upon the evidence presented at this hearing.**

29 **(3) The hearing and the subsequent ruling shall be completed no later**

1 **than sixty days before trial or the date the case is to be ready for trial.**

2 **(4)(a) An interlocutory appeal of a ruling on the admissibility of expert**
 3 **evidence shall be available at the discretion of the appellate court. In deciding**
 4 **whether to grant the interlocutory appeal, the court shall consider the**
 5 **following:**

6 **(i) Whether the ruling involved any challenge to the constitutionality of**
 7 **this Paragraph.**

8 **(ii) Whether the ruling will help prove or disprove criminal liability.**

9 **(iii) Whether the ruling will help establish civil liability at or above**
 10 **seventy-five thousand dollars, where the testimony could be outcome-**
 11 **determinative for establishing liability or determining damages.**

12 **(b) Neither a party's failure to seek an interlocutory appeal nor an**
 13 **appellate court's decision to deny a motion for interlocutory appeal shall waive**
 14 **a party's right to appeal a ruling on the admissibility of expert evidence after**
 15 **an entry of judgment in the case.**

16 Section 2. The provisions of this Act shall be given prospective application only and
 17 shall apply only to an action commenced on and after the effective date of this Act.

18 Section 3. This Act shall become effective upon signature by the governor or, if not
 19 signed by the governor, upon expiration of the time for bills to become law without signature
 20 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
 21 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 22 effective on the day following such approval.

The original instrument was prepared by Camille Sebastien Perry. The following digest, which does not constitute a part of the legislative instrument, was prepared by Jerry G. Jones.

DIGEST

Donahue (SB 308)

Present law (C.C.P. Art. 1425) allows the parties through interrogatories or by deposition to require any other party to identify each party that may be used at trial to present evidence as an expert under Articles 702-705 of the Code of Evidence; gives the court authority to order the parties to provide written reports for testifying expert witnesses that shall contain a complete statement of all opinions to be expressed and the basis and reasons therefor and the data or other information considered by the witness in forming the opinions, and

authorizes parties to obtain discovery of the opinions of experts as well as the facts known by them.

Present law requires the written report for testifying expert witnesses to be filed at least 90 days before the trial date or the date the case is to be ready for trial.

Proposed law extends the deadline for filing the written report from 90 days to 120 days.

Proposed law provides for a hearing to be held upon motion of any party at least 90 days before trial to present evidence on why an expert qualifies as an expert and why their methodologies are reliable under Articles 702-705 of the Code of Evidence, concerning opinions and expert testimony.

Proposed law requires a judge to provide written reasons for determining whether a person qualifies as an expert by providing the following:

- (a) The elements required to be satisfied in order for a person to testify under Articles 702-705 of the Code of Evidence.
- (b) The evidence that has been presented at the hearing by a party in order to satisfy the requirements of Articles 702 -705 of the Code of Evidence at trial.
- (c) A decision by the judge as to whether or not a person shall be allowed to testify under Articles 702-705 of the Code of Evidence at trial.
- (d) The reasons of the judge detailing in law and fact why a person shall be allowed or disallowed to testify under Articles 702-705 of the Code of Evidence based upon the evidence presented at this hearing.

Proposed law provides for the availability of an interlocutory appeal at the discretion of the appellate court, and provides that a party's right to appeal a ruling on the admissibility of expert evidence after an entry of judgment in the case shall not be waived by either a party's failure to seek an interlocutory appeal nor an appellate court's decision to deny a motion for interlocutory appeal.

Proposed law provides that its provisions shall be given prospective application only and shall apply only to an action commenced on and after the effective date of the proposed law.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends C.C.P. Art. 1425(C); adds C.C.P. Art. 1425(F))

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary A to the original bill.

1. Deleted language providing that provisions of proposed law shall be applicable to all actions commenced on and after its effective date and to all pending actions in which trial has not been scheduled or in which trial has been scheduled in excess of 90 days after the effective date of the proposed law.
2. Substituted language providing that provisions of proposed law shall be given prospective application only and shall apply only to an action commenced on and after the effective date of the proposed law.