
DIGEST

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Donahue

SB No. 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.

Proposed law provides for a hearing upon motion of any party filed at least 60 days prior to trial to be held and ruled on at least 30 days before trial to present evidence on why an expert qualifies as an expert and why their methodologies are reliable under Articles 104(A) and 702-705 of the Code of Evidence.

Proposed law provides that for good cause shown, the court may allow live testimony at the contradictory hearing.

Proposed law requires a judge, if the matter is taken under advisement, to provide findings of fact, conclusions of law, and written reasons no later than five days after the hearing for determining whether a person qualifies as a expert by providing the following:

- (a) The elements required to be satisfied for a person to testify under Articles 702-705 of the Code of Evidence.
- (b) The evidence presented at the hearing 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.

Proposed law provides an exemption to testimony in an action for divorce or annulment or marriage, or to a separation in a covenant marriage, to a property partition or to a succession.

Proposed law provides that all or a portion of the costs, including expert witness fees and costs, incurred may, in the discretion of the court, be assessed to the non-prevailing party at the conclusion of the hearing on the motion.

Proposed law provides that its provisions shall not affect any action set for trial or any action in which the expert disclosures have been made in accordance with C.C.P. Art. 1425 prior to the effective date of proposed law.

Effective January 1, 2009.

(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.

Senate Floor Amendments to engrossed bill.

1. Revises motion procedure to require filing of motion not later than 60 days prior to trial and to require the court to hold a contradictory hearing and to rule on the motion not later than 30 days prior to the trial. Also requires the court to render its filing and provide written findings of fact and reasons for judgment not later than five days after the hearing, if taken under advisement.
2. Deletes detailed provisions relative to an interlocutory appeal of a ruling on the admissibility of expert evidence and replaces it with a general reference to appellate review as provided by law.
3. Adds requirement that a mover who loses shall pay all costs, including court costs and witness expenses.
4. Adds exception for expert testimony in an action for separation in a covenant marriage and in an action to partition property.

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Civil Law and Procedure to the reengrossed bill.

1. Deletes the extension of the deadline for the submission of a written report for experts testifying from 90 days to 120 days.
2. Adds C.E. Art. 104(A) as a standard for the presentation of evidence on why an expert qualifies as an expert and why their methodologies are reliable.
3. Provides that for good cause shown, the court may permit live testimony at the contradictory hearing.
4. Requires the court to provide conclusions of law when ruling on the contradictory motion.
5. Adds an exemption to testimony in succession actions.
6. Deletes the requirement that if the mover of the motion loses, he shall pay all costs.
7. Provides that all or a portion of the costs, including expert witness fees and costs, incurred may be assessed to the non-prevailing party at the conclusion of the hearing on the motion.
8. Provides that the provisions of this Act shall not affect any action in which the expert disclosures have been made in accordance with C.C.P. Art. 1425 prior to the effective date of proposed law.
9. Deletes emergency effective date.

10. Provides that the provisions of proposed law shall be effective January 1, 2009.