

SENATE SUMMARY OF HOUSE AMENDMENTS

SB 308 By Senator Donahue

KEYWORD AND SUMMARY AS RETURNED TO THE SENATE

CIVIL PROCEDURE. Provides for a pre-trial hearing regarding the qualification and admissibility of testimony of expert witnesses. (1/1/09)

SUMMARY OF HOUSE AMENDMENTS TO THE SENATE BILL

1. Deletes the extension of the deadline for the submission of a written report for experts testifying from 90 days to 120 days and retains the current 90 day period.
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 also 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. Adds provision that proposed law not apply to actions filed to recover covered losses in accordance with a homeowners insurance policy or business owners insurance policy which resulted from Hurricanes Katrina or Rita.
9. Deletes emergency effective date.
10. Provides that the provisions of proposed law shall be effective January 1, 2009 except if an action has been set for trial between 1/1/09 and 4/1/09, then proposed law is effective as to those actions on 4/1/09.

DIGEST OF THE SENATE BILL AS RETURNED TO THE SENATE

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 does not apply to actions filed to recover covered losses in accordance with a homeowners insurance policy or business owners insurance policy which resulted from Hurricanes Katrina or Rita.

Effective January 1, 2009; except that if an action except if an action has been set for trial between 1/1/09 and 4/1/09, then proposed law is effective as to those actions on 4/1/09.

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

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