

SENATE BILL NO. 308

BY SENATOR DONAHUE

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AN ACT

To amend and reenact Code of Civil Procedure Article 1425(C) and to enact Code of Civil Procedure Article 1425(F), relative to discovery and experts; to provide for a pre-trial hearing regarding the qualifications and admissibility of testimony of an expert witness; to provide procedures for conducting the hearing and appealing the decision of the judge; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

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

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

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C. The disclosures of Paragraph B of this Article shall be made at the times and in the sequence directed by the court. In the absence of other directions from the court or stipulation by the parties, the disclosures required pursuant to Paragraph B of this Article shall be made at least ninety days before the trial date ~~or the date the case is to be ready for trial~~ or, if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under Paragraph B **of this Article**, within thirty days after the disclosure made by the other party. The parties shall supplement these disclosures when required by Article 1428.

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F. (1) Any party may file a motion for a pretrial hearing to determine whether a witness qualifies as an expert or whether the methodologies employed by such witness are reliable under Articles 702 through 705 of the Louisiana Code of Evidence. The motion shall be filed not later than sixty days prior to

1 trial and shall set forth sufficient allegations showing the necessity for these
2 determinations by the court.

3 (2) The court shall hold a contradictory hearing and shall rule on the
4 motion not later than thirty days prior to the trial. At the hearing, the court
5 shall consider the qualifications and methodologies of the proposed witness
6 based upon the provisions of Articles 104(A) and 702 through 705 of the
7 Louisiana Code of Evidence. For good cause shown, the court may allow live
8 testimony at the contradictory hearing.

9 (3) If the ruling of the court is made at the conclusion of the hearing, the
10 court shall recite orally its findings of fact, conclusions of law, and reasons for
11 judgment. If the matter is taken under advisement, the court shall render its
12 ruling and provide written findings of fact, conclusions of law, and reasons for
13 judgment not later than five days after the hearing.

14 (4) The findings of facts, conclusions of law, and reasons for judgment
15 shall be made part of the record of the proceedings. The findings of facts,
16 conclusions of law, and reasons for judgment shall specifically include and
17 address:

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

20 (b) The evidence presented at the hearing to satisfy the requirements of
21 Articles 702 through 705 of the Louisiana Code of Evidence at trial.

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

25 (d) The reasons of the judge detailing in law and fact why a person shall
26 be allowed or disallowed to testify under Articles 702 through 705 of the
27 Louisiana Code of Evidence.

28 (5) A ruling of the court pursuant to a hearing held in accordance with
29 the provisions of this Subsection shall be subject to appellate review as provided
30 by law.

1 (6) Notwithstanding the time limitations in Subparagraphs (1), (2), and
 2 (3) of this Paragraph, by unanimous consent of the parties, and with approval
 3 by the court, a motion under this Subsection may be filed, heard, and ruled
 4 upon by the court at any time prior to trial. The ruling by the court on such
 5 motion shall include findings of fact, conclusions of law, and reasons for
 6 judgment complying with the provisions of Subparagraph (4) of this Paragraph.

7 (7) The provisions of this Paragraph shall not apply to testimony in an
 8 action for divorce or annulment of marriage, or to a separation in a covenant
 9 marriage, to a property partition, or to an administration of a succession, or to
 10 testimony in any incidental or ancillary proceedings or matters arising from
 11 such actions.

12 (8) All or a portion of the court costs, including reasonable expert
 13 witness fees and costs, incurred when a motion is filed in accordance with this
 14 Paragraph may, in the discretion of the court, be assessed to the non-prevailing
 15 party as taxable costs at the conclusion of the hearing on the motion.

16 Section 2. The provisions of this Act shall not apply to any action filed for the
 17 recovery of any covered losses, in accordance with a homeowners insurance policy or
 18 business owners insurance policy, which occurred as a result of hurricanes Katrina or Rita.

19 Section 3. This Act shall become effective January 1, 2009; however if an action has
 20 been set for trial between January 1, 2009, and April 1, 2009, the provisions of this Act shall
 21 become effective as to those actions on April 1, 2009.

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PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____