



CIVIL LAW AND PROCEDURE UPDATE

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of the Louisiana Legislature

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SELECTED CIVIL LAW LEGISLATION

COVID-19/State of Emergency

Act No. 44 (SB 450) by Sen. Carter

Provides that all payments, grants, and loans by the United States, any state, or any federal or state agency as a result of a national or statewide extraordinary emergency event shall be exempt from seizure, except for the payment of alimony or child support or to the extent of the balance due on debt secured by a security interested granted in such governmental grants, payments, or loans that the person granted after the extraordinary emergency event.

Effective June 4, 2020.

Act No. 131 (HB 122) by Rep. Gregory Miller

Provides that transactions authenticated through electronic notarization during the period of March 11, 2020, until April 30, 2020, shall have the same force and effect as if the parties to the transaction, witnesses, and notary public had been in the physical presence of each other.

Does not apply to the execution of any testament, trust instrument, donation inter vivos, matrimonial agreement, act modifying, waiving, or extinguishing an obligation of final spousal support, or any amendments to such acts, or authentic acts.

Effective on June 1, 2019, and applies retroactively as well as prospectively.

Act No. 162 (HB 805) by Rep. Pressly

Provides for a limited suspension of all prescriptive, peremptive, and legal deadlines that would have otherwise expired during the period from March 17, 2020, through July 5, 2020. The right to enforce any right, claim, or action which was suspended shall expire on July 6, 2020.

Parties may seek an extension by contradictory motion or declaratory judgment for legal deadlines that lapsed during the suspension period; however, in no case shall the deadline be extended beyond September 1, 2020.

Does not apply to legal deadlines related to leases or eviction proceedings.

Effective on June 9, 2020, and applies retroactively as well as prospectively.

Act No. 336 (HB 826) by Rep. Pressly

No person or local or state government or political subdivision thereof shall be liable for civil damages for injury or death resulting from exposure to COVID-19 in the course of or through the performance of a person's business operations unless it is proven that the person, government, or political subdivision was not in substantial compliance with applicable COVID-19 procedures, and unless such damage was caused by gross negligence or wanton or reckless misconduct.

No person or local or state government or political subdivision thereof, business event strategist, association meeting planner, corporate meeting planner, independent trade show organizer or owner, or other entity shall be liable for civil damages for injury or death resulting from exposure to COVID-19 in the course of or through the performance of hosting, promoting, producing or otherwise organizing, planning, or owning a trade show, convention, meeting, association produced event, corporate event, sporting event, or exhibition of any kind, unless such damage was caused by gross negligence or willful or wanton misconduct.

During the public health emergency declared during the outbreak of COVID-19, no designers, manufacturers, labelers, or distributors of personal protective equipment shall be liable for civil damages for injury caused by personal protective equipment unless such damages were caused by gross negligence or willful or wanton misconduct.

During the COVID-19 public health emergency, no person who uses, dispenses, or administers personal protective equipment shall be liable for civil damages for injury or death related to the personal protective equipment unless the person was not in substantial compliance with applicable COVID-19 procedures and unless such damage was caused by gross negligence or wanton and reckless misconduct.

When two or more sets of COVID-19 procedures apply to a business operation or to the use, dispensing, or administering of personal protective equipment, the responsible party need only substantially comply with one applicable set of procedures.

Employees, whether or not covered by Worker's Compensation, shall have no remedy in tort against their employer for exposure to COVID-19 unless caused by an intentional act.

Effective upon signature of the governor (June 13, 2020) and retroactive to March 11, 2020.

Act No. 362 (SB 435) by Sen. Abraham

Provides for civil liability immunity for natural or juridical persons, state or local governments, or political subdivisions for damages or personal injury resulting from or related to actual or alleged exposure to COVID-19 in the course of the performance of business operations unless the entity failed to substantially comply with applicable COVID-19 procedures as established by the governing federal, state, or local agency or in cases of gross negligence or wanton or reckless misconduct.

Does not effect any person's right to receive benefits otherwise entitled under the workers' compensation law.

Effective on June 12, 2020.

Act No. 3 (HB 5) by Rep. Marino (2020 First Extraordinary Session)

Provides that the Supreme Court may suspend the running of prescriptive, peremptive, and abandonment periods for a period up to 90 days if a state of emergency or disaster is declared by the governor. Provides for additional continuing suspensions for further executive orders extending the state of emergency or disaster.

Effective on June 25, 2020.

Act No. 9 (HB 59) by Rep. Mincey (2020 First Extraordinary Session)

Provides for immunity for public, nonpublic, and charter schools and postsecondary institutions from civil liability from damages resulting from exposure to COVID-19 or acts undertaken in an effort to respond to the COVID-19 public health emergency.

Provides that institutions are not immune from civil liability for damages and actions or inactions that are (1) in violation of a policy adopted by the school and (2) determined to be grossly negligent or wanton or reckless misconduct.

Effective on March 11, 2020.

Tort Reform

Act No. 37 (HB 57) by Speaker Schexnayder (2020 First Extraordinary Session)
"Civil Justice Reform Act of 2020"

Jury Trials

Reduces the amount in controversy required to authorize a jury trial from \$50,000 to \$10,000.

Provides that if a party fails to file a motion to transfer a case from parish or city court to district court, thereby obtaining a jury trial, within the delays provided by existing law, the matter shall not be transferred.

Provides that a jury trial shall not be available for non-tort suits originally filed in parish or city court

when the amount in controversy does not exceed the parish or city court's jurisdictional limit.

Provides that in a tort action where a petitioner stipulates or otherwise judicially admits that his cause of action exceeds \$10,000, but is less than \$50,000, a party requesting a jury trial shall provide a cash deposit in the amount of \$5,000.

Further provides that when the case is set for trial, the court may provide for a supplemental bond or cash deposit.

Evidence of Liability Insurance

Provides that the existence of insurance coverage shall not be communicated to the jury, unless any of the following apply:

- (1) A factual dispute related to an issue of coverage is an issue which the jury will decide.
- (2) The existence of insurance coverage would be admissible to attack the credibility of a witness.
- (3) The cause of action is brought against the insurer alone under the direct action statute or under the statute requiring good faith and fair dealing in the settlement of claims.

Provides that the identity of the insurer shall not be communicated to the jury unless the identity of the insurer would be admissible to attack the credibility of a witness.

Provides that in all cases brought against an insurer, at the opening and closing of the trial, the court shall read instructions to the jury that there is insurance coverage for the damages claimed by the plaintiff.

Recoverable Past Medical Expenses (Collateral Source)

Provides that in cases where a claimant's medical expenses have been paid, in whole or in part, by a health insurance issuer or Medicare to a medical provider, the claimant's recovery of medical expenses is limited to the amount actually paid to the medical provider by the health insurance issuer or Medicare, and any applicable cost sharing amounts paid or owed by the claimant, and not the amount billed.

Provides that the court shall award 40% of the difference between the amount billed and the amount actually paid to the contracted medical provider by a health insurance issuer or Medicare in consideration of the plaintiff's cost of procurement provided that this amount shall not make the award unreasonable.

Provides that in cases where a claimant's medical expenses have been paid, in whole or in part, by

Medicaid to a medical provider, the claimant's recovery of medical expenses paid by Medicaid is limited to the amount actually paid to the medical provider by Medicaid, and any applicable cost sharing amounts paid or owed by the claimant, and not the amount billed.

Provides that the recovery of any other past medical expenses shall be limited to amounts paid to a medical provider by or on behalf of the claimant, and amounts remaining owed to a medical provider, including medical expenses secured by a contractual or statutory privilege, lien, or guarantee.

Provides that in cases where a claimant's medical expenses are paid pursuant to the La. Workers' Compensation Law (LWC), a claimant's recovery of medical expenses is limited to the amount paid under the LWC medical payments fee schedule.

Provides that in a jury trial, only after a jury verdict is rendered may the court receive evidence related to the limitations of recoverable past medical expenses paid by a health insurance issuer or Medicare. The jury shall be informed only of the amount billed by a medical provider for medical treatment. Whether any person, health insurance issuer, or Medicare has paid or has agreed to pay, in whole or in part, any of a claimant's medical expenses shall not be disclosed to the jury. In trial to the court alone, the court may consider such evidence.

Does not apply in medical malpractice claims or in claims brought pursuant to the Governmental Claims Act.

Evidence of Failure to Wear a Safety Belt

Repeals the law providing that the failure to wear a safety belt was prohibited from being admitted to mitigate damages in any action to recover damages arising out of the ownership, common maintenance, or operation of motor vehicle, and the failure to wear a safety belt was prohibited from being considered evidence of comparative negligence.

Effective Date

Effective on January 1, 2021. Has prospective application only and shall not apply to a cause of action arising or action pending prior to January 1, 2021.

Civil Procedure

Act No. 13 (HB 98) by Rep. Magee

Provides that a party signing the pleading provide a physical address for service of process.

Effective on August 1, 2020.

Notaries

Act No. 254 (HB 274) by Rep. Garofalo (On recommendation of the Law Institute)

Provides for remote online notarization including limitations, qualifications, procedures, duties, and rulemaking relative to the performance of remote online notarization.

Effective upon the later of the enactment of the SECURE Notarization Act (H.R. 6364 or S. 3533 of the 116th Congress) or February 1, 2022.

Property

Act No. 281 (HB 594) by Rep. Seabaugh

Provides that a court may order a partition by private sale for absentee and nonconsenting co-owners. Provides that judgments ordering the private sale of a property shall order reimbursement to the co-owner for taxes, expenses, and reasonable costs related to the sale.

Effective on June 11, 2020.

Mineral Rights

Act No. 76 (HB 227) by Rep. Coussan (On recommendation of the Law Institute)

Clarifies that the owner of a production payment created out of the mineral lessee's interest must give written notice of the nonpayment of a production payment prior to a judicial demand for damages.

Effective on August 1, 2020.

Attorney Advertising

Act No. 231 (SB 115) by Sen. Connick

Provides that all advertisements for legal services that contain a reference to a settlement or jury verdict disclose a full accounting of all attorney fees associated with that settlement or verdict.

Effective on January 1, 2021.

Paternity

Act No. 266 (HB 410) by Rep. LaCombe

Provides that the execution of a three-party acknowledgment of paternity terminates the obligation to pay child support by the husband or former husband and revokes any court order enforcing that obligation. However, it does not affect any child support payment or arrearages paid, due, or owing prior to the date the three-party acknowledgment was executed.

Requires that in a filiation or paternity proceeding, the child's mother, the biological father, and any man presumed to be the father shall be joined as a party.

Effective August 1, 2020.

Child Support

Act No. 177 (HB 210) by Rep. Johnson

Establishes a presumption that the custodial or domiciliary party has the right to claim the child as a dependent.

Provides that the non-domiciliary party shall be entitled to claim the child as a dependent if the court finds the domiciliary party is unemployed and did not or does not intend to file a tax return for the tax year in question, the obligor owes arrears, and the obligor's anticipated tax refund may be used to reduce the arrears.

Requires that, for child support orders rendered or modified on or after January 1, 2021, the order prohibit the non-domiciliary parent from claiming a dependent for any given tax year if he owes arrears for that dependent.

Updates the child support guideline schedule by incorporating the most recent economic estimates of child-rearing expenditures as a portion of household consumption.

Provides monthly basic child support obligations for combined adjusted monthly gross incomes which begin with \$0 - \$950 as the minimum adjusted monthly gross income.

Effective January 1, 2021.

Act No. 149 (HB 438) by Rep. Turner

Requires that any rule to show cause or summons ordering the defendant to appear and show cause why he should not be held in contempt of court for violating the terms of a court order requiring him to pay child support to the Department of Children and Family Services (DCFS) contain certain information and establish grounds for which the court may find a defendant in contempt.

Upon a finding that the accused is guilty of contempt, the court shall first consider the defendant's present ability to comply with the order before imposing upon the defendant a prison sentence not to exceed 90 days or a \$500 fine.

Provides that termination of a court order requiring a defendant to pay child support to DCFS does not abate the power of the court or DCFS to collect any overdue and unpaid support or arrearage owed under the terminated support order or the power of the court to punish a person for a failure to comply with a terminated court order.

Effective August 1, 2020.

Act No. 199 (HB 593) by Rep. Seabaugh

Provides that the effect of recordation of a judgment or affidavit of past due child support as a legal mortgage shall prescribe 10 years from the date of the judgment or affidavit unless appropriately reinscribed or filed.

Further provides that the effect of recordation of an affidavit that was of record on or before the effective date of this Act shall not cease until August 31, 2022.

Effective upon signature of governor (June 11, 2020) and applies retroactively and prospectively.

Children's Code

Act No. 122 (SB 433) by Sen. Mizell

Provides that a mandatory reporter shall report to the proper authorities as suspected abuse the pregnancy of a child under the age of 13 years.

Effective upon signature of the governor (June 9, 2020).

Supported Decisionmaking Agreements

Act No. 258 (HB 361) by Rep. Davis

Provides for an additional requirement of certification of consideration of less restrictive means prior to seeking an interdiction.

Provides for a supportive decisionmaking agreement as a less restrictive means, whereby the supporter advises the adult with a disability on issues outlined within the agreement without impeding the self-determination of the adult.

Effective on August 1, 2020.

Continuing Tutorship

Act No. 218 (SB 153) by Sen. Foil

Authorizes parents who have never been married to each other to petition for continuing tutorship.

Allows the court to name parents as co-tutors when they petition jointly or when it is in the best interest of the child and provides for the naming of a tutor when one parent is dead, when the parents are divorced or judicially separated, and when the parents were never married to each other.

Effective August 1, 2020.

Successions

Act No. 107 (HB 499) by Rep. Seabaugh

Provides that upon qualification of a succession representative to serve as an independent administrator or executor, the clerk of court, rather than the court, shall issue letters of independent administration or executorship upon qualification of a succession representative.

Effective upon signature of governor (June 9, 2020).

Act No. 173 (HB 142) by Rep. Carter

Authorizes testate successions to be administered without judicial approval when the person has dies leaving no immovable property and probate of the testament of the deceased would have the same

effect as if the deceased had died intestate.

Effective August 1, 2020.

Act No. 19 (HB 125) by Rep. Miller (On recommendation of the Law Institute)

Moves the Greenlaw rule (providing for the reduction of the legitime share of a force heir to an intestate share in certain circumstances) to C.C. Art. 1495.1 and provides for its applicability to both the share of a forced heir in the first degree and a share of a forced heir by representation.

Provides for the calculation of an individual forced heir's legitime when all forced heirs are of the first degree and when one or more forced heirs are heirs by representation.

Provides for the proper mathematical order of the calculation of the disposable portion of the mass of the succession so that the value of the debts of a succession are subtracted prior to fictitiously adding donations within three years of the date of the donor's death.

Provides that the detailed descriptive list may be sealed upon the request of an heir or legatee and authorizes the court to release relevant information.

Effective August 1, 2020.

Trusts

Act No. 17 (HB 123) by Rep. Miller (On recommendation of the Law Institute.)

Generally, provides for the allocation of receipts and expenses to income and principal in trust.

Provides that in the absence of allocation provisions in the trust instrument or in the Trust Code, trust receipts and expenses shall be allocated in accordance with what is reasonable and equitable.

Removes use of the "prudent man" standard when providing for the allocation of receipts and expenditures to the beneficiaries of usufruct and naked ownership, for the allocation of proceeds and losses of a sole proprietorship, and allocation of receipts from timber.

Provides for the apportionment of receipts from interests in juridical persons other than corporations, such as limited liability companies and other modern business forms when the right to income arises or ceases.

Provides that succession receipts and expenses are allocated in accordance with what is reasonable and equitable, rather than in accordance with the laws regulating donations mortis causa.

Generally classifies all non-monetary property as principal.

Provides that the entire increase in value of discount obligations is attributable to principal when the trustee receives the proceeds from the disposition, unless the obligation, when acquired, has a maturity of less than one year.

Provides for the allocation of payments made from annuities, individual retirement accounts, and deferred compensation, pension, employee-benefit, or other similar plans.

Provides that royalty payments associated with oil and gas leases and receipts from timber and other properties subject to depletion shall be allocated in accordance with what is reasonable and equitable. Further provides that allocation of 90% to principal and 10% to income is presumed to be reasonable and equitable but clarifies that other allocations are not necessarily unreasonable or inequitable.

Provides the trustee with discretion to make transfers from income to principal for property that is subject to depreciation, rather than allowing such charges against income to occur in accordance with generally accepted accounting principles.

Provides for the payment of taxes from income and principal.

Requires the trustee to adjust income or principal receipts in the event that the trust receives a deduction for payments made to a beneficiary.

Provides the income beneficiary with the right to compel the trustee to take action to make property productive of income, convert the property within a reasonable time, and transfer funds from principal to income.

Effective January 1, 2021.

Act No. 18 (HB 124) by Rep. Miller (On recommendation of the Law Institute)

Prohibits out-of-state trust companies that establish a trust representative office in Louisiana from serving as a trustee.

Permits a competent beneficiary to relieve a trustee from liability in certain circumstances and removes an exception for releases concerning the improper advancement of money or conveyance of property to a beneficiary of a spendthrift trust or a trust with restrictions on the beneficiary's right to alienate.

Effective August 1, 2020.