

GREEN SHEET REDIGEST

HB 439

2017 Regular Session

Zeringue

(KEYWORD, SUMMARY, AND DIGEST as amended by Senate committee amendments)

CIVIL/PROCEDURE: Provides for continuous revisions to the Code of Civil Procedure and related provisions of the Revised Statutes

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DIGEST

Present law (C.C.P. Arts. 284, 928(A), 1002, 1701-1704, 1843, 1913(B) and (C), 2002(A)(2), 4904, 4921, 4921.1(C), and 5095, R.S. 13:3205, and R.S. 23:1316 and 1316.1) uses terms including "default", "default judgment", "judgment by default", and "judgment of default" for both the preliminary default and final default judgment procedures.

Proposed law clarifies present law by consistently using the terms "preliminary default" and "final default judgment" throughout.

Present law (C.C.P. Arts. 253.3(A)(4) and 3955(B)) uses the term "curator ad hoc".

Proposed law clarifies present law by replacing the term "curator ad hoc" with "an attorney appointed by the court" and "an attorney appointed to represent the absentee defendant" in accordance with C.C.P. Art. 5091.

Present law (C.C.P. Art. 532) permits the court to stay all proceedings in suits brought in a Louisiana court while suit is also pending in another jurisdiction.

Proposed law clarifies that the procedure provided under present law is accomplished by a motion to stay rather than an exception of lis pendens.

Present law (C.C.P. Art. 925(A)(3)) sets forth the objections that may be raised as declinatory exceptions.

Proposed law clarifies that the exception of lis pendens under present law is provided only by C.C.P. Art. 531.

Present law (C.C.P. Art. 1464) provides that in a pending action the court may order the physical or mental examination of a person if such is in controversy, except as otherwise provided by law. Further provides that the court's order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

Proposed law retains present law and adds that such examination shall not be referred to as an "independent" examination in the presence of a jury. Further provides that, regardless of the number of defendants, a plaintiff shall not be ordered to submit to multiple examinations by multiple physicians within the same field of specialty.

Proposed law also adds that a minor subject to examination shall have the right to have a parent, or tutor or legal guardian, present during the examination. If such person cannot be present, the court shall order the examination to be videotaped. The court shall consider the best interests of the minor and may impose conditions upon videotaping, including that it be done in a manner least harmful to the minor and without disclosure to the minor. The costs associated with the videotaping shall be paid by the party requesting the examination.

Proposed law further adds that, subject to proposed law concerning minors, if a videotape is made of an examination, the party requesting videotaping shall pay the costs associated with such videotaping.

Present law (C.C.P. Art. 1702(E)) requires that when the plaintiff's demand is for divorce under C.C. Art. 103(1) or (5), the plaintiff must submit an affidavit, proposed final judgment, and certification that service was properly made and the procedural requirements of the preliminary default process were properly followed.

Proposed law adds to present law the requirement that when the plaintiff's demand is for divorce under C.C. Art. 103(5), the plaintiff shall also submit to the court a certified copy of the protective order or injunction rendered after a contradictory hearing or consent decree.

Present law (C.C.P. Arts. 3861, 3864, 3901, and 3902) provides for the applicability of mandamus and quo warranto proceedings to corporations.

Proposed law adds to present law that these proceedings shall also be applicable to limited liability companies.

Present law (C.C.P. Art. 253) provides for the pleadings, documents, and exhibits to be filed with the clerk of court.

Proposed law adds to present law that the clerk of court shall not refuse to accept any pleading or other document solely on the ground that it was signed by electronic signature.

Proposed law also provides for a delayed effective date of Jan. 1, 2018.

Present law (C.C.P. Art. 1067) provides with respect to the barring of all incidental demands by prescription or peremption but appears in the section of the C.C.P. on Reconvention specifically.

Proposed law redesignates present law as C.C.P. Art. 1041 so it appears in the section of the C.C.P. on General Dispositions of Incidental Actions.

(Amends C.C.P. Arts. 253.3(A)(4), 284, 532(heading), 925(A)(3), 928(A), 1002, 1464, 1701-1704, 1843, 1913(B) and (C), 2002(A)(2), 3861, 3864, 3901, 3902, 3955(B), 4904, 4921, 4921.1(C), and 5095, R.S. 13:3205, and R.S. 23:1316 and 1316.1(A); Adds C.C.P. Art. 253(E); Redesignates C.C.P. Art. 1067)

#### Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill:

1. Change additional references from "default judgment" to "preliminary default".
2. Specify that a final judgment is a final default judgment.

The House Floor Amendments to the engrossed bill:

1. Add technical amendments.

#### Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary A to the reengrossed bill

1. Add proposed law relative to mental or physical examinations.