
DIGEST

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HB 152 Original

2021 Regular Session

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Abstract: Provides for the continuous revision of the Code of Civil Procedure.

Present law (C.C. Art. 3452) provides that prescription must be pleaded and cannot be supplied by the courts.

Proposed law retains present law and creates an exception where legislation provides otherwise.

Present law (C.C.P. Art. 80(A)(1) and (2)) set forth the venue for actions involving immovable property.

Proposed law retains present law but removes an outdated exception that previously allowed a defendant to convert a personal action into an in rem action by objecting to venue.

Present law (C.C.P. Art. 253.2) provides for the transfer of pending cases and includes an exception for cases being transferred to effect a consolidation.

Proposed law retains present law and recognizes that consolidations can be effected for purposes other than trial under proposed law (Article 1561(A)).

Present law (C.C.P. Art. 592) provides the procedure for certification of class actions.

Proposed law retains present law and makes minor semantic changes.

Present law (C.C.P. Art. 592(A)(3)(e)) prohibits the certification of a class after a judgment on the merits of common issues has been rendered against the party opposing the class.

Proposed law deletes present law.

Present law (C.C.P. Art. 893) provides for the pleading of damages and permits the court to award attorney fees and costs against the party who filed the petition.

Proposed law retains present law and permits the court to award attorney fees and costs against the person who signed the petition, the party on whose behalf the petition was filed, or both. Proposed law also makes minor semantic changes.

Present law (C.C.P. Art. 927(B)) provides that prescription must be pleaded and cannot be supplied

by the courts.

Proposed law retains present law and creates an exception where the Code of Civil Procedure provides otherwise.

Present law (C.C.P. Art. 1352) sets forth a restriction on the issuance of a subpoena when the witness resides and is employed outside of the parish and more than 25 miles from the courthouse.

Proposed law removes the restriction set forth by present law for purposes of consistency with proposed law (R.S. 13:3661).

Present law (C.C.P. Art. 1561(A)) provides for the consolidation of actions for trial.

Proposed law retains present law and also provides that actions may be consolidated for other limited purposes, such as discovery.

Present law (C.C.P. Art. 1702) provides the procedure for the confirmation of a preliminary default and the rendition of a final default judgment.

Proposed law retains present law and provides that the court may raise an objection of prescription before entering a final default judgment when the demand is based on an open account, promissory note, or other negotiable instrument that the plaintiff acquired by assignment.

Present law (C.C.P. Art. 1793(D)) sets forth the circumstances under which the jury may take written instructions and evidence into the jury room.

Proposed law deletes the requirement under present law that the jury may only take evidence into the jury room when a physical examination thereof is required to enable the jury to arrive at a verdict.

Present law (C.C.P. Art. 1795) permits the jury to review certain testimony or other evidence.

Proposed law changes present law by clarifying that the review of the requested testimony shall be conducted in the courtroom.

Present law (C.C.P. Art. 1918) requires final judgments to be identified as such by appropriate language.

Proposed law retains present law and also requires final judgments to be signed and dated and to contain the name of the party in favor of whom relief is awarded, the name of the party against whom relief is awarded, and the relief that is awarded. Proposed law further provides that a final judgment that does not satisfy these requirements shall be remanded to the trial court for amendment within the time period set by the appellate court.

Present law (C.C.P. Art. 1951) permits a final judgment to be amended to alter its phraseology or

to correct errors of calculation.

Proposed law retains present law and also permits a final judgment to be amended to correct deficiencies in decretal language.

Present law (C.C.P. Art. 1974) provides that the delay for applying for a new trial commences to run on the day after notice of judgment has been mailed or served.

Proposed law clarifies present law by providing that a party may file a motion requesting a new trial not later than seven days, exclusive of legal holidays, after notice of judgment has been mailed or served.

Present law (C.C.P. Art. 2088(A)) sets forth the matters over which the trial court retains jurisdiction while an appeal is pending.

Proposed law adds to present law the right to set attorney fees, to make a certification under Article 1915(B), and to amend a judgment to add proper decretal language.

Present law (C.C.P. Art. 2254(B) and 2721(C)) provides with respect to the wrongful or improper seizure of a debtor or third party's property.

Proposed law retains present law but removes unnecessary language and updates outdated cross-references.

Present law (C.C.P. Art. 3943) provides for the delays within which appeals from judgments awarding custody, visitation, or support must be taken.

Proposed law retains present law and extends its application to judgments awarding, modifying, or denying custody, visitation, or support.

Present law (C.C.P. Art. 3947(B)) provides for the confirmation of the name of a married woman in a divorce proceeding.

Proposed law changes present law by using gender neutral terminology.

Present law (C.C.P. Art. 4904) provides the procedure for the rendition of a final default judgment in parish and city courts.

Proposed law retains present law and provides that the court may raise an objection of prescription before entering a final default judgment when the demand is based on an open account, promissory note, or other negotiable instrument that the plaintiff acquired by assignment.

Present law (C.C.P. Art. 4907(B)) provides that when notice of judgment is required, the delay for applying for a new trial shall commence to run on the day after notice of judgment has been mailed or served.

Proposed law retains present law and clarifies that when notice of judgment is required, a party may file a motion requesting a new trial not later than seven days, exclusive of legal holidays, after notice of judgment has been mailed or served.

Present law (C.C.P. Art. 4913(B)(4)) provides that justice of the peace courts have no jurisdiction over a claim for annulment of marriage, separation from bed and board, divorce, separation of property, or alimony.

Proposed law changes present law by replacing "alimony" with "spousal support" and adding custody, visitation, and child support.

Present law (C.C.P. Art. 4921) provides the procedure for the rendition of a final default judgment in justice of the peace courts.

Proposed law retains present law and provides that the court may raise an objection of prescription before entering a final default judgment when the demand is based on an open account, promissory note, or other negotiable instrument that the plaintiff acquired by assignment.

Present law (C.C.P. Art. 5001) provides that appeals from judgments rendered by city and parish courts shall be taken to the court of appeal, except that in city courts located in the 19th JDC, the appeal shall be taken to the applicable district court.

Proposed law removes the exception under present law for city courts located in the 19th JDC, such that appeals from judgments rendered by these courts shall also be taken to the court of appeal.

Present law (R.S. 13:3661) sets forth the fees owed to witnesses who are subpoenaed to attend court more than 25 miles from where they reside and are employed, including travel expenses to and from the courthouse at the rate of 20¢ per mile, a witness fee of \$25 per day, and hotel and meal expenses at the rate of \$5 per day.

Proposed law removes the 25-mile requirement under present law and increases the fees owed to witnesses for travel expenses from 20¢ per mile to the rate in effect for state officials and for attendance from \$25 per day to \$50 per day. Proposed law also deletes the reimbursement of \$5 per day for hotel and meal expenses, and provides the court with the discretion to increase the amount paid to witnesses in cases of exceptional hardship.

(Amends C.C. Art. 3452, C.C.P. Arts. 80(A)(1) and (2), 253.2, 592(A)(2) and (3), 893(A)(2), (B), and (C), 927(B), 1352, 1561(A), 1702(D) and (E), 1793(D), 1795, 1918, 1951, 1974, 2088(A), 2254(B), 2721(C), 3943, 3947(B), 4907(B), 4913(B)(4), and 5001, and R.S. 13:3661; Adds C.C.P. Arts. 1702(F), 4904(D), and 4921(C))