

2021 Regular Session

HOUSE BILL NO. 164

BY REPRESENTATIVE ROBBY CARTER

(On Recommendation of the Louisiana State Law Institute)

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

JUDGMENTS: Provides relative to default judgments

1 AN ACT

2 To amend and reenact Code of Civil Procedure Articles 253.3(A)(3), 284, 928(A), 1001,
3 1002, 1471(A)(3), 1702, 1702.1, 1703, 1704, 1843, 1913(B) and (C), 2002(A)(2),
4 4904, 4921, 4921.1(C), and 5095, R.S. 13:3205(introductory paragraph) and 4990,
5 and R.S. 23:1316.1(A) and to repeal Code of Civil Procedure Article 1701 and R.S.
6 23:1316, relative to default judgments; to eliminate preliminary defaults and
7 confirmation of preliminary defaults; to provide for the rendition of default
8 judgments; to provide for notice of the intent to obtain a default judgment and related
9 delays; to provide for default judgments in parish, city, justice of the peace, and
10 workers' compensation courts; to provide with respect to the delay for answering; to
11 update terminology; to provide for an effective date; and to provide for related
12 matters.

13 Be it enacted by the Legislature of Louisiana:

14 Section 1. Code of Civil Procedure Articles 253.3(A)(3), 284, 928(A), 1001, 1002,
15 1471(A)(3), 1702.1, 1703, 1704, 1843, 1913(B) and (C), 2002(A)(2), 4921.1(C), and 5095
16 are hereby amended and reenacted to read as follows:

17 Art. 253.3. Duty judge exceptions; authority to hear certain matters

18 A. In any case assigned pursuant to Article 253.1, a duty judge shall only
19 hear and sign orders or judgments for the following:

20 * * *

1 Art. 1702.1. ~~Confirmation of preliminary default~~ Default judgment without hearing
2 in open court; required information; certifications

3 A. When the plaintiff seeks ~~to confirm a preliminary default judgment~~
4 without appearing for a hearing in open court as provided in Article 1702~~(B)(1) and~~
5 ~~(C) (D)(1) and (E), along with any proof required by law, he or his attorney shall~~
6 ~~include in an itemized form with a written motion for confirmation of preliminary~~
7 ~~default and proposed final~~ the plaintiff shall file a written request for default
8 judgment containing a certification that the suit is on an open account, promissory
9 note, or other negotiable instrument, on a conventional obligation, or on a check
10 dishonored for nonsufficient funds, and that the necessary invoices and affidavit,
11 note and affidavit, or check or certified reproduction thereof are attached, along with
12 any proof required by law and a proposed default judgment. If attorney fees are
13 sought under R.S. 9:2781 or 2782, the attorney shall certify that fact and the fact that
14 the number of days required by R.S. 9:2781(A) or 2782(A), respectively, have
15 elapsed since demand was made upon the defendant.

16 B. The certification shall indicate the type of service made on the defendant;
17 and the date of service, ~~and the date a preliminary default was entered;~~ and shall also
18 include a certification by the clerk that the record was examined by the clerk,
19 including therein the date of the examination and a statement that no answer or other
20 pleading has been filed within the time prescribed by law or by the court.

21 Art. 1703. Scope of judgment

22 A ~~final~~ default judgment shall not be different in kind from that demanded
23 in the petition. The amount of damages awarded shall be the amount proven to be
24 properly due as a remedy.

25 Art. 1704. ~~Confirmation of preliminary default~~ Default judgment in suits against the
26 state or a political subdivision

27 A. Notwithstanding any other provision of law to the contrary, prior to
28 ~~confirmation of a preliminary~~ the rendition of a default judgment against the state or
29 any of its departments, offices, boards, commissions, agencies, or instrumentalities,

1 ~~a certified copy of the minute entry constituting the preliminary default entered~~
2 ~~pursuant to Article 1701~~ the plaintiff or the plaintiff's attorney shall send notice of
3 the plaintiff's intent to obtain a default judgment, together with a certified copy of the
4 petition or other demand, ~~shall be sent by the plaintiff or his counsel~~ to the attorney
5 general by registered or certified mail, or shall be served by the sheriff personally
6 upon the attorney general or the first assistant attorney general at the office of the
7 attorney general. ~~If the minute entry and the~~ notice and petition are served on the
8 attorney general by mail, the person mailing such items shall execute and file in the
9 record an affidavit stating that these items have been enclosed in an envelope
10 properly addressed to the attorney general with sufficient postage affixed, and stating
11 the date on which such envelope was deposited in the United States mail. ~~In addition~~
12 ~~the~~ The return receipt shall be attached to the affidavit ~~which was~~ that is filed in the
13 record.

14 B. If no answer or other pleading is filed during the ~~fifteen~~ twenty-one days
15 immediately following the date on which the attorney general or the first assistant
16 attorney general received notice of the ~~preliminary~~ intent to obtain a default
17 judgment as provided in Paragraph A of this Article, a ~~preliminary default entered~~
18 judgment against the state or any of its departments, offices, boards, commissions,
19 agencies, or instrumentalities may be ~~confirmed by~~ rendered upon proof as required
20 by Article 1702.

21 C. Notwithstanding any other provision of law to the contrary, prior to
22 ~~confirmation of a preliminary~~ the rendition of a default judgment against a political
23 subdivision of the state or any of its departments, offices, boards, commissions,
24 agencies, or instrumentalities, ~~a certified copy of the minute entry constituting the~~
25 ~~preliminary default entered pursuant to Article 1701~~ the plaintiff or the plaintiff's
26 attorney shall send notice of the plaintiff's intent to obtain a default judgment,
27 together with a certified copy of the petition or other demand, ~~shall be sent by the~~
28 ~~plaintiff or his counsel~~ by registered or certified mail to the proper agent or person
29 for service of process at the office of that agent or person. The person mailing such

1 items shall execute and file in the record an affidavit stating that these items have
2 been enclosed in an envelope properly addressed to the proper agent or person for
3 service of process, with sufficient postage affixed, and stating the date on which such
4 envelope was deposited in the United States mail. ~~In addition the~~ The return receipt
5 shall be attached to the affidavit ~~which was~~ that is filed in the record.

6 D. If no answer or other pleading is filed during the ~~fifteen~~ twenty-one days
7 immediately following the date on which the agent or person for service of process
8 received notice of the ~~preliminary~~ intent to obtain a default judgment as provided in
9 Paragraph C of this Article, a ~~preliminary~~ default ~~entered~~ judgment against the
10 political subdivision of the state or any of its departments, offices, boards,
11 commissions, agencies, or instrumentalities may be ~~confirmed by~~ rendered upon
12 proof as required by Article 1702.

13 Comments - 2021

14 Article 1704 continues the requirement that, prior to a default judgment being
15 rendered against the state of Louisiana or any of its departments, offices, boards,
16 commissions, agencies, or instrumentalities, the office of the attorney general must
17 receive notice of the plaintiff's intent to obtain the default judgment along with a
18 certified copy of the petition or other demand. **A similar notice requirement** applies
19 to any political subdivision of the state.

20 * * *

21 Art. 1843. ~~Final default~~ Default judgment

22 A ~~final~~ default judgment is that which is rendered against a defendant who
23 fails to plead within the time prescribed by law.

24 * * *

25 Art. 1913. Notice of judgment

26 * * *

27 B. Notice of the signing of a ~~final~~ default judgment against a defendant on
28 whom citation was not served personally, or on whom citation was served through
29 the secretary of state, and who filed no exception, answer, or other pleading, shall be
30 served on the defendant by the sheriff, by either personal or domiciliary service, or
31 in the case of a defendant originally served through the secretary of state, by service
32 on the secretary of state.

1 C. Except when service is required under Paragraph B of this Article, notice
2 of the signing of a ~~final~~ default judgment shall be mailed by the clerk of court to the
3 defendant at the address where personal service was obtained or to the last known
4 address of the defendant.

5 * * *

6 Art. 2002. Annulment for vices of form; time for action

7 A. A final judgment shall be annulled if it is rendered:

8 * * *

9 (2) Against a defendant who has not been served with process as required by
10 law and who has not waived objection to jurisdiction, or against whom a valid ~~final~~
11 default judgment has not been taken.

12 * * *

13 Art. 4921.1. Demand for trial; abandonment; applicability

14 * * *

15 C.(1) Notwithstanding the provisions of Paragraph A of this Article, the
16 justice of the peace or clerk may set the matter for trial upon filing of a petition. The
17 date, time, and location of the trial shall be contained in the citation. The first
18 scheduled trial date shall be not more than forty-five days, nor less than ten days,
19 from the service of the citation. If the defendant appears, he need not file an answer
20 unless ordered to do so by the court. If a defendant who has been served with
21 citation fails to appear at the time and place specified in the citation, the judge may
22 enter a ~~final~~ default judgment for the plaintiff in the amount proved to be due. If the
23 plaintiff does not appear, the judge may enter an order dismissing the action without
24 prejudice.

25 (2) If a matter has been set for trial pursuant to Subparagraph (1) of this
26 Paragraph, no ~~final~~ default judgment shall be rendered prior to the trial date.

27 * * *

1 Art. 5095. Same; defense of action

2 A. The attorney at law appointed by the court to represent a defendant shall
3 use reasonable diligence to inquire of the defendant, and to determine from other
4 available sources, what defense, if any, the defendant may have, and what evidence
5 is available in support thereof.

6 B. Except in an executory proceeding, the attorney may except to the
7 petition, shall file an answer or other pleading in time to prevent a ~~final~~ default
8 judgment from being rendered, may plead therein any affirmative defense available,
9 may prosecute an appeal from an adverse judgment, and generally has the same duty,
10 responsibility, and authority in defending the action or proceeding as if he had been
11 retained as counsel for the defendant.

12 Section 2. R.S. 13:3205(introductory paragraph) and 4990 are hereby amended and
13 reenacted to read as follows:

14 §3205. Default judgment; hearings; proof of service of process

15 No ~~preliminary default or final~~ default judgment may be rendered against the
16 defendant and no hearing may be held on a contradictory motion, rule to show cause,
17 or other summary proceeding, except for actions pursuant to R.S. 46:2131 et seq.,
18 until thirty days after the filing in the record of the affidavit of the individual who
19 has done any of the following:

20 * * *

21 §4990. Diligence in locating co-owners; known co-owners made parties

22 In any judicial proceeding in which real property is sought to be partitioned
23 upon the trial of the cause ~~upon~~ on the merits or upon ~~confirmation of any~~
24 ~~preliminary~~ rendition of a default judgment therein, due proof shall be made of a
25 diligent effort on the part of the plaintiff to locate all co-owners of the property to be
26 partitioned and of the fact that all known co-owners have been made parties thereto.

27 Section 3. R.S. 23:1316.1 is hereby amended and reenacted to read as follows:

1 ~~evidence. If no answer or other pleading is filed timely, this confirmation may be~~
2 ~~made after two days, exclusive of holidays, from the entry of the preliminary default.~~
3 ~~When a preliminary default has been entered against a party that is in default after~~
4 ~~having made an appearance of record in the case, notice of the date of the entry of~~
5 ~~the preliminary default must be sent by certified mail by the party obtaining the~~
6 ~~preliminary default to counsel of record for the party in default, or if there is no~~
7 ~~counsel of record, to the party in default, at least seven days, exclusive of holidays,~~
8 ~~before confirmation of the preliminary default. If a defendant in the principal or~~
9 ~~incidental demand fails to answer or file other pleadings within the time prescribed~~
10 ~~by law or by the court, and the plaintiff establishes a prima facie case by competent~~
11 ~~and admissible evidence that is admitted on the record, a default judgment in favor~~
12 ~~of the plaintiff may be rendered. The court may permit documentary evidence to be~~
13 ~~filed in the record in any electronically stored format authorized by the local rules~~
14 ~~of the district court or approved by the clerk of the district court for receipt of~~
15 ~~evidence.~~

16 B. If a party has made an appearance of record in the case, notice that the
17 plaintiff intends to obtain a default judgment shall be sent by certified mail to
18 counsel of record for the party who failed to answer, or if there is no counsel of
19 record, to the party who failed to answer, at least seven days, exclusive of holidays,
20 before a default judgment may be rendered.

21 C. If an attorney for a party who fails to answer has contacted the plaintiff
22 or the plaintiff's attorney in writing concerning an action after it has been filed,
23 notice that the plaintiff intends to obtain a default judgment shall be sent by certified
24 mail to the attorney for that party at least seven days, exclusive of holidays, before
25 a default judgment may be rendered.

26 B.D.(1) When a demand is based upon a conventional obligation, affidavits
27 and exhibits annexed thereto ~~which~~ that contain facts sufficient to establish a prima
28 facie case shall be admissible, self-authenticating, and sufficient proof of such

1 demand. The court may, under the circumstances of the case, require additional
2 evidence in the form of oral testimony before entering a ~~final~~ default judgment.

3 (2) When a demand is based upon a delictual obligation, the testimony of the
4 plaintiff with corroborating evidence, which may be by affidavits and exhibits
5 annexed thereto ~~which contain~~ containing facts sufficient to establish a prima facie
6 case, shall be admissible, self-authenticating, and sufficient proof of such demand.
7 The court may, under the circumstances of the case, require additional evidence in
8 the form of oral testimony before entering a ~~final~~ default judgment.

9 (3) When the sum due is on an open account or a promissory note or other
10 negotiable instrument, an affidavit of the correctness thereof shall be prima facie
11 proof. When the demand is based upon a promissory note or other negotiable
12 instrument, no proof of any signature thereon shall be required.

13 C.E. In those proceedings in which the sum due is on an open account or a
14 promissory note, other negotiable instrument, or other conventional obligation, or a
15 deficiency judgment derived therefrom, including those proceedings in which one
16 or more mortgages, pledges, or other security for the open account, promissory note,
17 negotiable instrument, conventional obligation, or deficiency judgment derived
18 therefrom is sought to be enforced, maintained, or recognized, or in which the
19 amount sought is that authorized by R.S. 9:2782 for a check dishonored for
20 nonsufficient funds, a hearing in open court shall not be required unless the judge,
21 in his discretion, directs that such a hearing be held. The plaintiff shall submit to the
22 court the proof required by law and the original and not less than one copy of the
23 proposed ~~final~~ default judgment. The judge shall, within seventy-two hours of
24 receipt of such submission from the clerk of court, sign the proposed ~~final~~ default
25 judgment or direct that a hearing be held. The clerk of court shall certify that no
26 answer or other pleading has been filed by the defendant. The minute clerk shall
27 make an entry showing the dates of receipt of proof, review of the record, and
28 rendition of the ~~final~~ default judgment. A certified copy of the signed ~~final~~ default

1 judgment shall be sent to the plaintiff by the clerk of court, and notice of the signing
2 of the ~~final~~ default judgment shall be given as provided in Article 1913.

3 D.F. When the demand is based upon a claim for a personal injury, a sworn
4 narrative report of the treating physician or dentist may be offered in lieu of his
5 testimony.

6 E.G.(1) Notwithstanding any other provisions of law to the contrary, when
7 the demand is for divorce under Civil Code Article 103(1) or (5), whether or not the
8 demand contains a claim for relief incidental or ancillary thereto, a hearing in open
9 court shall not be required unless the judge, in his discretion, directs that a hearing
10 be held. The plaintiff shall submit to the court an affidavit specifically attesting to
11 and testifying as to the truth of all of the factual allegations contained in the petition,
12 the original and not less than one copy of the proposed ~~final~~ default judgment, ~~and~~
13 a certification ~~which shall indicate~~ indicating the type of service made on the
14 defendant; and the date of service, ~~the date a preliminary default was entered~~; and a
15 certification by the clerk that the record was examined by the clerk, including the
16 date of the examination, and a statement that no answer or other pleading has been
17 filed. If the demand is for divorce under Civil Code Article 103(5), a certified copy
18 of the protective order or injunction rendered after a contradictory hearing or consent
19 decree shall also be submitted to the court. If no answer or other pleading has been
20 filed by the defendant, the judge shall, ~~after two days, exclusive of holidays, of entry~~
21 ~~of a preliminary default~~, review the submitted affidavit, proposed ~~final~~ default
22 judgment, and certification; and render and sign the proposed ~~final~~ default judgment;
23 or direct that a hearing be held. The minutes shall reflect rendition and signing of
24 the ~~final~~ default judgment.

25 (2) If the demand is for divorce under Civil Code Article 103(1) and the
26 defendant, by sworn affidavit, acknowledges receipt of a certified copy of the
27 petition and waives formal citation, service of process, all legal delays, notice of
28 trial, and appearance at trial, a default judgment of divorce may be entered against

1 the defendant two days, exclusive of legal holidays, after the affidavit is filed. The
2 affidavit of the defendant may be prepared or notarized by any notary public.

3 Comments - 2021

4 (a) Paragraph C of this Article adopts a new rule that, prior to the rendition
5 of a default judgment, notice must be sent to a party's attorney who has contacted the
6 plaintiff or the plaintiff's attorney in writing about the case. The term "in writing"
7 includes electronic means as well as any other type of writing. If such notice is not
8 given, any default judgment rendered shall be a nullity similar to that arising from
9 a lack of the notice required by Paragraph B. See, e.g., *First Bank & Trust v. Bayou*
10 *Land and Marine Contractors, Inc.*, 103 So. 3d 1148 (La. App. 5 Cir. 2012).

11 (b) Paragraph G of this Article continues the authorization under former
12 Articles 1701 and 1702(E) for a judgment of divorce under Civil Code Article 103(1)
13 to be granted without a hearing in open court two days, exclusive of holidays, after
14 the filing of the defendant's affidavit waiving all legal delays, and for a judgment of
15 divorce under Civil Code Article 103(5) to be rendered without a hearing in open
16 court after the delays for answering have expired.

17 * * *

18 Art. 4904. ~~Final default~~ Default judgment in parish and city courts

19 A. In suits in a parish court or a city court, if the defendant fails to answer
20 timely, or if he fails to appear at the trial, and the plaintiff ~~proves his~~ establishes a
21 prima facie case by competent and admissible evidence, a ~~final~~ default judgment in
22 favor of the plaintiff may be rendered. ~~No preliminary default is necessary.~~

23 B. ~~The plaintiff may obtain a final default judgment only by producing~~
24 ~~relevant and competent evidence which establishes a prima facie case.~~ When the suit
25 is for a sum due on an open account, promissory note, negotiable instrument, or other
26 conventional obligation, prima facie proof may be submitted by affidavit. When the
27 demand is based upon a promissory note or other negotiable instrument, no proof of
28 any signature thereon shall be required.

29 C. When the sum due is on an open account, promissory note, negotiable
30 instrument, or other conventional obligation, a hearing in open court shall not be
31 required unless the judge in his discretion directs that such a hearing be held. The
32 plaintiff shall submit to the court the proof required by law and the original and not
33 less than one copy of the proposed final default judgment. The judge shall, within
34 seventy-two hours of receipt of such submission from the clerk of court, sign the
35 proposed ~~final~~ default judgment or direct that a hearing be held. The clerk of court

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 shall certify that no answer or other pleading has been filed by the defendant. The
2 minute clerk shall make an entry showing the dates of receipt of proof, review of the
3 record, and rendition of the ~~final~~ default judgment. A certified copy of the signed
4 ~~final~~ default judgment shall be sent to the plaintiff by the clerk of court, and notice
5 of the signing of the default judgment shall be given as provided in Article 1913.

6 Comments - 2021

7 (a) The change to Paragraph A of this Article makes the burden of proof to
8 obtain a default judgment in parish and city courts consistent with the burden of
9 proof that is imposed in district court pursuant to Article 1702.

10 (b) Paragraph C of this Article was amended to make this provision
11 consistent with Article 1702(E) concerning the requirements of Article 1913.

12 * * *

13 Art. 4921. ~~Final default~~ Default judgment; justice of the peace courts; district courts
14 with concurrent jurisdiction

15 A. If the defendant fails to answer timely, or if he fails to appear at the trial,
16 and the plaintiff ~~proves his~~ establishes a prima facie case by competent and
17 admissible evidence, a ~~final~~ default judgment in favor of the plaintiff may be
18 rendered. ~~No preliminary default is necessary.~~

19 B. ~~The plaintiff may obtain a final default judgment only by producing~~
20 ~~relevant and competent evidence which establishes a prima facie case.~~ When the suit
21 is for a sum due on an open account, promissory note, negotiable instrument, or other
22 conventional obligation, prima facie proof may be submitted by affidavit. When the
23 demand is based upon a promissory note or other negotiable instrument, no proof of
24 any signature thereon shall be required.

25 Comments - 2021

26 The change to Paragraph A of this Article makes the burden of proof to
27 obtain a default judgment in justice of the peace courts consistent with the burden
28 of proof that is imposed in district court pursuant to Article 1702.

29 Section 5. Code of Civil Procedure Articles 1702, 4904, and 4921 are hereby
30 amended and reenacted to read as follows:

1 Art. 1702. ~~Confirmation of preliminary default~~ Default judgment

2 A. ~~A preliminary default must be confirmed by proof of the demand that is~~
3 ~~sufficient to establish a prima facie case and that is admitted on the record prior to~~
4 ~~the entry of a final default judgment. The court may permit documentary evidence~~
5 ~~to be filed in the record in any electronically stored format authorized by the local~~
6 ~~rules of the district court or approved by the clerk of the district court for receipt of~~
7 ~~evidence. If no answer or other pleading is filed timely, this confirmation may be~~
8 ~~made after two days, exclusive of holidays, from the entry of the preliminary default.~~
9 ~~When a preliminary default has been entered against a party that is in default after~~
10 ~~having made an appearance of record in the case, notice of the date of the entry of~~
11 ~~the preliminary default must be sent by certified mail by the party obtaining the~~
12 ~~preliminary default to counsel of record for the party in default, or if there is no~~
13 ~~counsel of record, to the party in default, at least seven days, exclusive of holidays,~~
14 ~~before confirmation of the preliminary default. If a defendant in the principal or~~
15 ~~incidental demand fails to answer or file other pleadings within the time prescribed~~
16 ~~by law or by the court, and the plaintiff establishes a prima facie case by competent~~
17 ~~and admissible evidence that is admitted on the record, a default judgment in favor~~
18 ~~of the plaintiff may be rendered. The court may permit documentary evidence to be~~
19 ~~filed in the record in any electronically stored format authorized by the local rules~~
20 ~~of the district court or approved by the clerk of the district court for receipt of~~
21 ~~evidence.~~

22 B. If a party has made an appearance of record in the case, notice that the
23 plaintiff intends to obtain a default judgment shall be sent by certified mail to
24 counsel of record for the party who failed to answer, or if there is no counsel of
25 record, to the party who failed to answer, at least seven days, exclusive of holidays,
26 before a default judgment may be rendered.

27 C. If an attorney for a party who fails to answer has contacted the plaintiff
28 or the plaintiff's attorney in writing concerning an action after it has been filed,
29 notice that the plaintiff intends to obtain a default judgment shall be sent by certified

1 mail to the attorney for that party at least seven days, exclusive of holidays, before
2 a default judgment may be rendered.

3 B:D.(1) When a demand is based upon a conventional obligation, affidavits
4 and exhibits annexed thereto ~~which~~ that contain facts sufficient to establish a prima
5 facie case shall be admissible, self-authenticating, and sufficient proof of such
6 demand. The court may, under the circumstances of the case, require additional
7 evidence in the form of oral testimony before entering a ~~final~~ default judgment.

8 (2) When a demand is based upon a delictual obligation, the testimony of the
9 plaintiff with corroborating evidence, which may be by affidavits and exhibits
10 annexed thereto ~~which contain~~ containing facts sufficient to establish a prima facie
11 case, shall be admissible, self-authenticating, and sufficient proof of such demand.
12 The court may, under the circumstances of the case, require additional evidence in
13 the form of oral testimony before entering a ~~final~~ default judgment.

14 (3) When the sum due is on an open account or a promissory note or other
15 negotiable instrument, an affidavit of the correctness thereof shall be prima facie
16 proof. When the demand is based upon a promissory note or other negotiable
17 instrument, no proof of any signature thereon shall be required.

18 C:E. In those proceedings in which the sum due is on an open account or a
19 promissory note, other negotiable instrument, or other conventional obligation, or a
20 deficiency judgment derived therefrom, including those proceedings in which one
21 or more mortgages, pledges, or other security for the open account, promissory note,
22 negotiable instrument, conventional obligation, or deficiency judgment derived
23 therefrom is sought to be enforced, maintained, or recognized, or in which the
24 amount sought is that authorized by R.S. 9:2782 for a check dishonored for
25 nonsufficient funds, a hearing in open court shall not be required unless the judge,
26 in his discretion, directs that such a hearing be held. The plaintiff shall submit to the
27 court the proof required by law and the original and not less than one copy of the
28 proposed ~~final~~ default judgment. The judge shall, within seventy-two hours of
29 receipt of such submission from the clerk of court, sign the proposed ~~final~~ default

1 judgment or direct that a hearing be held. The clerk of court shall certify that no
2 answer or other pleading has been filed by the defendant. The minute clerk shall
3 make an entry showing the dates of receipt of proof, review of the record, and
4 rendition of the ~~final~~ default judgment. A certified copy of the signed ~~final~~ default
5 judgment shall be sent to the plaintiff by the clerk of court, and notice of the signing
6 of the ~~final~~ default judgment shall be given as provided in Article 1913.

7 F. When the demand is based upon a right acquired by assignment in an open
8 account, promissory note, or other negotiable instrument, the court may raise an
9 objection of prescription before entering a default judgment if the grounds for the
10 objection appear from the pleadings or from the evidence submitted by the plaintiff.
11 If the court raises an objection of prescription, it shall not enter the default judgment
12 unless the plaintiff presents prima facie proof that the action is not barred by
13 prescription. Upon the plaintiff's request, the court shall hold a hearing for the
14 submission of such proof.

15 D.G. When the demand is based upon a claim for a personal injury, a sworn
16 narrative report of the treating physician or dentist may be offered in lieu of his
17 testimony.

18 E.H.(1) Notwithstanding any other provisions of law to the contrary, when
19 the demand is for divorce under Civil Code Article 103(1) or (5), whether or not the
20 demand contains a claim for relief incidental or ancillary thereto, a hearing in open
21 court shall not be required unless the judge, in his discretion, directs that a hearing
22 be held. The plaintiff shall submit to the court an affidavit specifically attesting to
23 and testifying as to the truth of all of the factual allegations contained in the petition,
24 the original and not less than one copy of the proposed ~~final~~ judgment, ~~and~~ a
25 certification ~~which shall indicate~~ indicating the type of service made on the
26 defendant; and the date of service, ~~the date a preliminary default was entered,~~ and a
27 certification by the clerk that the record was examined by the clerk, including the
28 date of the examination, and a statement that no answer or other pleading has been
29 filed. If the demand is for divorce under Civil Code Article 103(5), a certified copy

1 of the protective order or injunction rendered after a contradictory hearing or consent
2 decree shall also be submitted to the court. If no answer or other pleading has been
3 filed by the defendant, the judge shall, ~~after two days, exclusive of holidays, of entry~~
4 ~~of a preliminary default~~, review the submitted affidavit, proposed ~~final~~ default
5 judgment, and certification; and render and sign the proposed ~~final~~ default judgment;
6 or direct that a hearing be held. The minutes shall reflect rendition and signing of
7 the ~~final~~ default judgment.

8 (2) If the demand is for divorce under Civil Code Article 103(1) and the
9 defendant, by sworn affidavit, acknowledges receipt of a certified copy of the
10 petition and waives formal citation, service of process, all legal delays, notice of
11 trial, and appearance at trial, a default judgment of divorce may be entered against
12 the defendant two days, exclusive of legal holidays, after the affidavit is filed. The
13 affidavit of the defendant may be prepared or notarized by any notary public.

14 Comments - 2021

15 (a) Paragraph C of this Article adopts a new rule that, prior to the rendition
16 of a default judgment, notice must be sent to a party's attorney who has contacted the
17 plaintiff or the plaintiff's attorney in writing about the case. The term "in writing"
18 includes electronic means as well as any other type of writing. If such notice is not
19 given, any default judgment rendered shall be a nullity similar to that arising from
20 a lack of the notice required by Paragraph B. See, e.g., *First Bank & Trust v. Bayou*
21 *Land and Marine Contractors, Inc.*, 103 So. 3d 1148 (La. App. 5 Cir. 2012).

22 (b) Paragraph H of this Article continues the authorization under former
23 Articles 1701 and 1702(E) for a judgment of divorce under Civil Code Article 103(1)
24 to be granted without a hearing in open court two days, exclusive of holidays, after
25 the filing of the defendant's affidavit waiving all legal delays, and for a judgment of
26 divorce under Civil Code Article 103(5) to be rendered without a hearing in open
27 court after the delays for answering have expired.

28 * * *

29 Art. 4904. ~~Final default~~ Default judgment in parish and city courts

30 A. In suits in a parish court or a city court, if the defendant fails to answer
31 timely, or if he fails to appear at the trial, and the plaintiff ~~proves his case~~ establishes
32 a prima facie case by competent and admissible evidence, a ~~final~~ default judgment
33 in favor of the plaintiff may be rendered. ~~No preliminary default is necessary.~~

34 B. ~~The plaintiff may obtain a final default judgment only by producing~~
35 ~~relevant and competent evidence which establishes a prima facie case.~~ When the suit

1 is for a sum due on an open account, promissory note, negotiable instrument, or other
2 conventional obligation, prima facie proof may be submitted by affidavit. When the
3 demand is based upon a promissory note or other negotiable instrument, no proof of
4 any signature thereon shall be required.

5 C. When the sum due is on an open account, promissory note, negotiable
6 instrument, or other conventional obligation, a hearing in open court shall not be
7 required unless the judge in his discretion directs that such a hearing be held. The
8 plaintiff shall submit to the court the proof required by law and the original and not
9 less than one copy of the proposed ~~final~~ default judgment. The judge shall, within
10 seventy-two hours of receipt of such submission from the clerk of court, sign the
11 proposed ~~final~~ default judgment or direct that a hearing be held. The clerk of court
12 shall certify that no answer or other pleading has been filed by the defendant. The
13 minute clerk shall make an entry showing the dates of receipt of proof, review of the
14 record, and rendition of the ~~final~~ default judgment. A certified copy of the signed
15 ~~final~~ default judgment shall be sent to the plaintiff by the clerk of court, and notice
16 of the signing of the default judgment shall be given as provided in Article 1913.

17 D. When the demand is based upon a right acquired by assignment in an
18 open account, promissory note, or other negotiable instrument, the court may raise
19 an objection of prescription before entering a default judgment if the grounds for the
20 objection appear from pleadings or from the evidence submitted by the plaintiff. If
21 the court raises an objection of prescription, it shall not enter the default judgment
22 unless the plaintiff presents prima facie proof that the action is not barred by
23 prescription. Upon the plaintiff's request, the court shall hold a hearing for the
24 submission of such proof.

25 Comments - 2021

26 (a) The change to Paragraph A of this Article makes the burden of proof to
27 obtain a default judgment in parish and city courts consistent with the burden of
28 proof that is imposed in district court pursuant to Article 1702.

29 (b) Paragraph C of this Article was amended to make this provision
30 consistent with Article 1702(E) concerning the requirements of Article 1913.

31 * * *

1 Art. 4921. ~~Final default~~ Default judgment; justice of the peace courts; district courts
2 with concurrent jurisdiction

3 A. If the defendant fails to answer timely, or if he fails to appear at the trial,
4 and the plaintiff ~~proves his~~ establishes a prima facie case by competent and
5 admissible evidence, a ~~final~~ default judgment in favor of the plaintiff may be
6 rendered. ~~No preliminary default is necessary.~~

7 B. ~~The plaintiff may obtain a final default judgment only by producing~~
8 ~~relevant and competent evidence which establishes a prima facie case.~~ When the suit
9 is for a sum due on an open account, promissory note, negotiable instrument, or other
10 conventional obligation, prima facie proof may be submitted by affidavit. When the
11 demand is based upon a promissory note or other negotiable instrument, no proof of
12 any signature thereon shall be required.

13 C. When the demand is based upon a right acquired by assignment in an
14 open account, promissory note, or other negotiable instrument, the court may raise
15 an objection of prescription before entering a default judgment if the grounds for the
16 objection appear from the pleadings or from the evidence submitted by the plaintiff.
17 If the court raises an objection of prescription, it shall not enter the default judgment
18 unless the plaintiff presents prima facie proof that the action is not barred by
19 prescription. Upon the plaintiff's request, the court shall hold a hearing for the
20 submission of such proof.

21 Comments - 2021

22 The change to Paragraph A of this Article makes the burden of proof to
23 obtain a default judgment in justice of the peace courts consistent with the burden
24 of proof that is imposed in district court pursuant to Article 1702.

25 Section 6. Code of Civil Procedure Article 1701 and R.S. 23:1316 are hereby
26 repealed in their entirety.

27 Section 7.(A) This Act shall become effective on January 1, 2022, except as
28 otherwise provided by this Section, and shall apply to default judgments rendered on or after
29 that date.

1 (B) Section 4 of this Act shall only become effective if House Bill No. 152 of the
2 2021 Regular Session does not become law.

3 (C) Section 5 of this Act shall only become effective if House Bill No. 152 of the
4 2021 Regular Session becomes law. If House Bill No. 152 of the 2021 Regular Session
5 becomes law, then Code of Civil Procedure Articles 1702, 4904, and 4921 as provided by
6 Section 5 of this Act shall, on January 1, 2022, supersede Code of Civil Procedure Articles
7 1702, 4904, and 4921 as provided by House Bill No. 152 of the 2021 Regular Session.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 164 Engrossed

2021 Regular Session

Robby Carter

Abstract: Provides for the elimination of preliminary defaults.

Present law (C.C.P. Art. 253.3(A)(3)) authorizes the duty judge to hear and sign certain orders and judgments.

Proposed law retains present law but removes entry of preliminary defaults and confirmation of defaults and adds default judgments.

Present law (C.C.P. Arts. 284, 928(A), 1002, 1471(A)(3), 1703, 1843, 1913(B) and (C), 2002(A)(2), 4921.1(C), and 5095) includes references to final default judgments.

Proposed law retains present law but updates terminology and makes other technical corrections.

Present law (C.C.P. Art. 1001) requires the defendant to file his answer within 15 days after service of citation and within 10 days after an exception is overruled or referred to the merits or the amended petition is served.

Proposed law extends the time periods provided under present law from 15 to 21 days and from 10 to 15 days. Proposed law also provides that if a discovery request is served by the plaintiff with the petition, the defendant shall have 30 days within which to file his answer.

Present law (C.C.P. Art. 1702.1) provides for the confirmation of preliminary defaults without a hearing in open court.

Proposed law updates terminology and cross-references included in present law and requires the plaintiff to file a written request for default judgment.

Present law (C.C.P. Art. 1704) provides for the confirmation of preliminary defaults in suits against the state or a political subdivision.

Proposed law requires the plaintiff to send notice of his intent to obtain a default judgment before the court can render a default judgment against the state or its political subdivisions or any of its instrumentalities. Proposed law also extends the time period within which the answer or other pleading shall be filed under present law from 15 to 21 days.

Present law (R.S. 13:3205(intro. para.)) prohibits the rendition of a preliminary default or final default judgment under certain circumstances.

Proposed law updates terminology used in present law.

Present law (R.S. 13:4990) requires the plaintiff to make a diligent effort to locate all co-owners of property that is sought to be partitioned upon confirmation of a preliminary default.

Proposed law updates terminology used in present law.

Present law (R.S. 23:1316.1(A)) provides with respect to the confirmation of preliminary defaults in workers' compensation cases.

Proposed law provides for the rendition of a default judgment in favor of a plaintiff who establishes a prima facie case when the defendant fails to answer or file other pleadings within the prescribed time.

Proposed law further requires the plaintiff to provide notice of his intent to obtain a default judgment against the defendant in certain circumstances at least seven days, exclusive of legal holidays, prior to the rendition of the default judgment.

Present law (C.C.P. Art. 1702) provides with respect to the confirmation of preliminary defaults.

Proposed law provides for the rendition of a default judgment in favor of a plaintiff who establishes a prima facie case when the defendant fails to answer or file other pleadings within the prescribed time.

Proposed law further requires the plaintiff to provide notice of his intent to obtain a default judgment against the defendant in certain circumstances at least seven days, exclusive of legal holidays, prior to the rendition of the default judgment.

Proposed law further provides that in cases involving divorce under C.C. Art. 103(1), when the defendant files an affidavit waiving citation, service, all delays, and notice, a default judgment of divorce may be rendered against the defendant two days, exclusive of legal holidays, after the affidavit is filed.

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

Proposed law updates terminology used in present law and provides that notice of the signing of a default judgment shall be given as provided in Art. 1913.

Present law (C.C.P. Art. 4921) provides for the rendition of final default judgments in justice of the peace courts and district courts with concurrent jurisdiction.

Proposed law updates terminology used in present law.

Present law (C.C.P. Art. 1701) provides with respect to the entry of preliminary defaults.

Proposed law repeals present law.

Present law (R.S. 23:1316) provides for the rendition of preliminary defaults in workers' compensation cases.

Proposed law repeals present law.

(Amends C.C.P. Arts. 253.3(A)(3), 284, 928(A), 1001, 1002, 1471(A)(3), 1702, 1702.1, 1703, 1704, 1843, 1913(B) and (C), 2002(A)(2), 4904, 4921, 4921.1(C), and 5095, R.S. 13:3205(intro. para.) and 4990, and R.S. 23:1316.1(A); Repeals C.C.P. Art. 1701 and R.S. 23:1316)

Summary of Amendments Adopted by House

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

1. With respect to default judgments in parish and city courts, specify that the plaintiff must establish a prima facie case by competent and admissible evidence.
2. Make technical changes.