

2021 Regular Session

HOUSE BILL NO. 152

BY REPRESENTATIVE GREGORY MILLER

(On Recommendation of the Louisiana State Law Institute)

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

CIVIL/PROCEDURE: Provides for the continuous revision of the Code of Civil Procedure

1 AN ACT

2 To amend and reenact Civil Code Article 3452, Code of Civil Procedure Articles 80(A)(1)

3 and (2), 253.2, 592(A)(2) and (3), 893(A)(2), (B), and (C), 927(B), 1352, 1561(A),

4 1702(D) and (E), 1793(D), 1795, 1918, 1951, 1974, 2088(A), 2254(B), 2721(C),

5 3943, 3947(B), 4907(B), 4913(B)(4), and 5001, and R.S. 13:3661, and to enact Code

6 of Civil Procedure Articles 1702(F), 4904(D), and 4921(C), relative to civil

7 procedure; to provide with respect to venue; to provide with respect to certification

8 procedure; to provide for the pleading of damages; to provide for the necessity of

9 pleading prescription; to provide for restrictions on subpoenas; to provide for

10 consolidation; to provide with respect to courts raising the issue of prescription on

11 their own motion; to provide for jury instructions; to provide for the form and

12 amendment of final judgments; to provide with respect to the delay for applying for

13 a new trial; to provide for the jurisdiction of trial and justice of the peace courts; to

14 provide for the appeal of judgments; to provide with respect to improper or wrongful

15 seizure; to provide for name confirmation; to provide for witness fees; and to provide

16 for related matters.

17 Be it enacted by the Legislature of Louisiana:

18 Section 1. Civil Code Article 3452 is hereby amended and reenacted to read as

19 follows:

1 Art. 3452. Necessity for pleading prescription

2 Prescription must be pleaded. ~~Courts~~ Except as otherwise provided by  
3 legislation, courts may not supply a plea of prescription.

4 Section 2. Code of Civil Procedure Articles 80(A)(1) and (2), 253.2, 592(A)(2) and  
5 (3), 893(A)(2), (B), and (C), 927(B), 1352, 1561(A), 1702(D) and (E), 1793(D), 1795, 1918,  
6 1951, 1974, 2088(A), 2254(B), 2721(C), 3943, 3947(B), 4907(B), 4913(B)(4), and 5001 are  
7 hereby amended and reenacted, and Code of Civil Procedure Articles 1702(F), 4904(D), and  
8 4921(C) are hereby enacted to read as follows:

9 Art. 80. Action involving immovable property

10 A. The following actions may be brought in the parish where the immovable  
11 property is situated or in the parish where the defendant in the action is domiciled:

12 (1) An action to assert an interest in immovable property, or a right in, to, or  
13 against immovable property, ~~except as otherwise provided in Article 72,~~

14 (2) An action to partition immovable property, except as otherwise provided  
15 in Articles 81, 82, and 83; ~~and,~~

16 \* \* \*

17 Comments - 2021

18 The deletion of the phrase "except as otherwise provided in Article 72" is  
19 intended to recognize the removal by Acts 1997, No. 1005 of the exception that  
20 previously allowed a defendant to convert a personal action into an in rem action by  
21 objecting to venue.

22 \* \* \*

23 Art. 253.2. Transfer and reassignment of pending cases

24 After a case has been assigned to a particular section or division of the court,  
25 it may not be transferred from one section or division to another section or division  
26 within the same court, unless agreed to by all parties, or unless it is being transferred  
27 to effect a consolidation ~~for purpose of trial~~ pursuant to Article 1561. However, the  
28 supreme court, by rule, may establish uniform procedures for reassigning cases under  
29 circumstances where an expeditious disposition of cases may be effectuated.

30 \* \* \*

1 Art. 592. Certification procedure; notice; judgment; orders

2 A.

3 \* \* \*

4 (2) If the proponent fails to file a motion for certification within the delay  
5 allowed by Subparagraph ~~A(1)~~ of this Paragraph, any adverse party may file a notice  
6 of the failure to move for certification. On the filing of such a notice and after  
7 hearing thereon, the demand for class relief may be stricken. If the demand for class  
8 relief is stricken, the action may continue between the named parties alone. A  
9 demand for class relief stricken under this Subparagraph may be reinstated upon a  
10 showing of good cause by the proponent.

11 (3)(a) No motion to certify an action as a class action shall be granted prior  
12 to a hearing on the motion. Such hearing shall be held as soon as practicable, but in  
13 no event ~~before~~ until after both of the following have occurred:

14 (i) All named adverse parties have been served with the pleading containing  
15 the demand for class relief or have made an appearance or, with respect to unserved  
16 defendants who have not appeared, the proponent of the class has made due and  
17 diligent effort to perfect service of such pleading, ~~and~~.

18 (ii) The parties have had a reasonable opportunity to obtain discovery on  
19 class certification issues, on such terms and conditions as the court deems necessary,  
20 which may include expert witness testimony or evidence. The admissibility of  
21 expert witness testimony or evidence for class certification purposes shall also be  
22 governed by Article 1425(F), although the court in its discretion may change the  
23 deadlines for filing or hearing a motion as set forth in Article 1425(F) provided such  
24 deadlines are prior to or contemporaneous with the class certification hearing.

25 (b) At the hearing on the motion to certify an action as a class action, the  
26 proponent of the class shall have the burden of proof to establish that all  
27 requirements of Article 591 ~~of this Code~~ have been satisfied.

28 (c) If the court finds that the action should be maintained as a class action,  
29 it shall certify the action accordingly. If the court finds that the action should not be

1 maintained as a class action, the action may continue between the named parties. In  
2 either event, the court shall give in writing its findings of fact and reasons for  
3 judgment provided a request is made not later than ten days after notice of the order  
4 or judgment. A suspensive or devolutive appeal, as provided in Article 2081 et seq.  
5 ~~of the Code of Civil Procedure~~, may be taken as a matter of right from an order or  
6 judgment provided for herein.

7 (d) In the process of class certification, or at any time thereafter before a  
8 decision on the merits of the common issues, the court may alter, amend, or recall  
9 its initial ruling on certification and may enlarge, restrict, or otherwise redefine the  
10 constituency of the class or the issues to be maintained in the class action.

11 ~~(e) No order contemplated in this Subparagraph shall be rendered after a~~  
12 ~~judgment or partial judgment on the merits of common issues has been rendered~~  
13 ~~against the party opposing the class and over such party's objection.~~

14 \* \* \*

15 Comments - 2021

16 Former Subsubparagraph (A)(3)(e) of this Article has been deleted. This  
17 deletion is intended to recognize a series of judicial decisions permitting motions and  
18 exceptions that are dispositive of common and determinative issues to be resolved  
19 prior to certification of the class action. See, e.g., *Cooper v. CVS Caremark*  
20 *Corporation*, 176 So. 3d 422 (La. App. 1 Cir. 2015); *Smith v. City of New Orleans*,  
21 131 So. 3d 511 (La. App. 4 Cir. 2013); *Clark v. Shackelford Farms Partnership*, 880  
22 So. 2d 225 (La. App. 2 Cir. 2004); see also *Wade v. Kirkland*, 118 F. 3d 667 (9 Cir.  
23 1997).

24 \* \* \*

25 Art. 893. Pleading of damages

26 A.

27 \* \* \*

28 (2) If a petition is filed in violation of this Article, the claim for a specific  
29 monetary amount of damages shall be stricken upon the motion of an opposing party,  
30 and the court may award ~~attorney's~~ attorney fees and costs against the person who  
31 signed the petition, the party who filed on whose behalf the petition was filed, or  
32 both.

1           B. The provisions of Paragraph A of this Article shall not be applicable to  
 2 a suit on a conventional obligation, promissory note, open account, or other  
 3 negotiable instrument, for alimony or child support, on a tax claim, or in a  
 4 garnishment proceeding.

5           C. The prohibitions in Paragraph A of this Article apply only to an original,  
 6 amended, or incidental demand. Evidence at trial or hearing of a specific monetary  
 7 amount of damages shall be adduced in accordance with the Louisiana Code of  
 8 Evidence or other applicable law.

9    Comments - 2021

10                 The amendment to Paragraph (A)(2) of this Article is intended to make this  
 11 paragraph consistent with Article 863, which permits the court to impose sanctions  
 12 for the improper certification of a pleading against the person who made the  
 13 certification, the represented party, or both.

14    \*           \*           \*

15 Art. 927. Objections raised by peremptory exception

16    \*           \*           \*

17           B. ~~The~~ Except as otherwise provided by Articles 1702(D), 4904(D), and  
 18 4921(C), the court may not supply the objection of prescription, which shall be  
 19 specially pleaded. The nonjoinder of a party, peremption, res judicata, the failure to  
 20 disclose a cause of action or a right or interest in the plaintiff to institute the suit, or  
 21 discharge in bankruptcy, may be noticed by either the trial or appellate court on its  
 22 own motion.

23    \*           \*           \*

24 Art. 1352. Restrictions on subpoena

25           A witness, whether a party or not, who resides or is employed in this state  
 26 may be subpoenaed to attend a trial or hearing wherever held in this state. No  
 27 subpoena shall issue to compel the attendance of such a witness ~~who resides and is~~  
 28 ~~employed outside the parish and more than twenty-five miles from the courthouse~~  
 29 ~~where the trial or hearing is to be held~~, unless the provisions of R.S. 13:3661 are  
 30 complied with.

31    \*           \*           \*

1 Art. 1561. Consolidation for trial or other limited purposes

2 A. When two or more separate actions are pending in the same court, the  
3 section or division of the court in which the first filed action is pending may order  
4 consolidation of the actions for trial or other limited purposes after a contradictory  
5 hearing, ~~and~~ upon a finding that common issues of fact and law predominate, and,  
6 in the event a trial date has been set in a subsequently filed action, upon a finding  
7 that consolidation is in the interest of justice. The contradictory hearing may be  
8 waived upon the certification by the mover that all parties in all cases to be  
9 consolidated consent to the consolidation.

10 \* \* \*

11 Comments - 2021

12 The amendment to this Article to allow the court in its discretion to  
13 consolidate two or more separate actions for trial or other limited purposes, such as  
14 discovery, is intended to legislatively overrule the decision of the Fourth Circuit  
15 Court of Appeal in *Boh v. James Indus. Contractors, LLC*, 868 So. 2d 180 (La. App.  
16 4 Cir. 2004).

17 \* \* \*

18 Art. 1702. Confirmation of preliminary default

19 \* \* \*

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

28 ~~D.E.~~ When the demand is based upon a claim for a personal injury, a sworn  
29 narrative report of the treating physician or dentist may be offered in lieu of his  
30 testimony.

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

\* \* \*

21           Art. 1793. Instructions to jury; objections

\* \* \*

23           D. The jury may take with it or have sent to it a written copy of all  
24           instructions and charges ~~and any object or document received in evidence when a~~  
25           ~~physical examination thereof is required to enable the jury to arrive at a verdict.~~

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Comments - 2021

Paragraph D of this Article has been amended to delete the restriction that the jury may take evidence into the jury room only when a physical examination of the evidence is required to enable the jury to arrive at a verdict. This language incorrectly imposed the criminal procedural rule of Code of Criminal Procedure Article 793(A). In civil proceedings, Article 1794(B) permits the jury to take into the deliberation room any object or writing received in evidence, except depositions and except as otherwise provided in the Louisiana Code of Evidence.

\* \* \*

Art. 1795. Jury request to review ~~evidence~~ testimony

A. If the jury, after retiring for deliberation, requests a review of certain testimony ~~or other evidence~~, they shall be conducted to the courtroom. After giving notice to the parties, the court may have the requested testimony read to the jury.

~~B. After giving notice to the parties, the court may have the requested testimony read to the jury and may permit the jury to examine the requested materials admitted into evidence.~~

Comments - 2021

This Article has been amended to clarify a misunderstanding concerning the review of testimony by the jury. Under this Article, when the jury retires for deliberation and later requests review of certain testimony, the jury must be conducted to the courtroom where, after notifying the parties, the requested testimony may be read to the jury; however, the jury may not take depositions, trial transcripts, or other testimony into the jury room for examination. Because Article 1794 already permits the jury, with certain exceptions, to take with it any object or writing received into evidence, the references to "other evidence" and "materials" have been deleted to eliminate confusion.

\* \* \*

Art. 1918. Form of final judgment

A. A final judgment in accordance with Article 1841 shall be identified as such by appropriate language; shall be signed and dated; and shall, in its decree, identify the name of the party in whose favor the relief is awarded, the name of the party against whom the relief is awarded, and the relief that is awarded. If appealed, a final judgment that does not contain the appropriate decretal language shall be remanded to the trial court, which shall amend the judgment in accordance with Article 1951 within the time set by the appellate court.





1 Art. 1974. Delay for applying for new trial

2 ~~The delay for applying for a new trial shall be~~ A party may file a motion for  
3 a new trial not later than seven days, exclusive of legal holidays. ~~The delay for~~  
4 ~~applying for a new trial commences to run on the day~~ after the clerk has mailed; or  
5 the sheriff has served; the notice of judgment as required by Article 1913.

6 Comments - 2021

7 This Article has been amended to clarify that the delay for filing a motion for  
8 new trial is the same as the delay for filing a motion for judgment notwithstanding  
9 the verdict under Article 1811.

10 \* \* \*

11 Art. 2088. Divesting of jurisdiction of trial court

12 A. The jurisdiction of the trial court over all matters in the case reviewable  
13 under the appeal is divested, and that of the appellate court attaches, on the granting  
14 of the order of appeal and the timely filing of the appeal bond, in the case of a  
15 suspensive appeal or on the granting of the order of appeal, in the case of a  
16 devolutive appeal. Thereafter, the trial court has jurisdiction in the case only over  
17 those matters not reviewable under the appeal, including the right to do any of the  
18 following:

- 19 (1) Allow the taking of a deposition, as provided in Article 1433;
- 20 (2) Extend the return day of the appeal, as provided in Article 2125;
- 21 (3) Make, or permit the making of, a written narrative of the facts of the  
22 case, as provided in Article 2131;
- 23 (4) Correct any misstatement, irregularity, informality, or omission of the  
24 trial record, as provided in Article 2132;
- 25 (5) Test the solvency of the surety on the appeal bond as of the date of its  
26 filing or subsequently, consider objections to the form, substance, and sufficiency  
27 of the appeal bond, and permit the curing thereof, as provided in Articles 5123, 5124,  
28 and 5126;
- 29 (6) Grant an appeal to another party;

1 (7) Execute or give effect to the judgment when its execution or effect is not  
2 suspended by the appeal;

3 (8) Enter orders permitting the deposit of sums of money within the meaning  
4 of Article 4658 of this Code;

5 (9) Impose the penalties provided by Article 2126, or dismiss the appeal,  
6 when the appellant fails to timely pay the estimated costs or the difference between  
7 the estimated costs and the actual costs of the appeal; ~~or.~~

8 (10) Set and tax costs, ~~and~~ expert witness fees, and attorney fees.

9 (11) Certify a partial judgment or partial summary judgment in accordance  
10 with Article 1915(B).

11 (12) Amend a judgment to provide proper decretal language under Article  
12 1918 or 1951.

13 \* \* \*

14 Comments - 2021

15 (a) The amendment to Subparagraph (A)(10) of this Article clarifies that the  
16 trial court retains jurisdiction for purposes of setting attorney fees after an appeal has  
17 been taken from the initial judgment. Trial courts award reasonable attorney fees in  
18 many judgments, but often these judgments are appealed before the attorney fees are  
19 set . With this amendment, it is no longer necessary for an appellate court to dismiss  
20 an appeal in order to allow the trial court to set the amount of the attorney fees,  
21 because the trial court has jurisdiction to set attorney fees while the appeal is  
22 pending.

23 (b) Subparagraph (A)(11) codifies the Louisiana Supreme Court's holding  
24 in *In re Interdiction of Gambino*, 296 So. 3d 1046 (La. 2020) (per curiam), that the  
25 trial court had jurisdiction to certify a partial judgment under Article 1915(B) as a  
26 final judgment after an appeal had been obtained.

27 (c) Subparagraph (A)(12) allows a trial court to retain jurisdiction after an  
28 order of appeal is granted to amend a final judgment to correct any deficiencies in  
29 the decretal language.

30 \* \* \*

31 Art. 2254. Execution by sheriff; return; wrongful seizure

32 \* \* \*

33 ~~B. Since secured collateral subject to a security interest under Chapter 9 of~~  
34 ~~the Louisiana Commercial Laws (R.S. 10:9-101, et seq.) need only be reasonably~~  
35 ~~described in the debtor's security agreement (R.S. 10:9-110), the The sheriff shall~~

1           have no liability to the debtor or to any third party for wrongful or improper seizure  
 2           of the debtor's or third party's property of the same general type as described in the  
 3           debtor's security agreement. If necessary, the sheriff shall request the secured  
 4           creditor to identify the property subject to the security agreement and shall act  
 5           pursuant to the secured creditor's instructions. The debtor's and other owner's sole  
 6           remedy for the wrongful or improper seizure of the property shall be for actual losses  
 7           sustained under R.S. ~~10:9-507(1)~~ 10:9-625 against the secured creditor on whose  
 8           behalf and pursuant to whose instructions the sheriff may act.

9   \*           \*           \*

10          Art. 2721. Seizure of property; notice

11   \*           \*           \*

12                           C. ~~Since secured collateral subject to a security interest under Chapter 9 of~~  
 13                           ~~the Louisiana Commercial Laws need only be reasonably described in the debtor's~~  
 14                           ~~security agreement, the~~ The sheriff shall have no liability to the debtor or to any third  
 15                           party for wrongful or improper seizure of the debtor's or third party's property of the  
 16                           same general type as described in the debtor's security agreement. If necessary, the  
 17                           sheriff shall request the secured creditor to identify the property subject to the  
 18                           security agreement and shall act pursuant to the secured creditor's instructions. The  
 19                           debtor's and other owner's sole remedy for the wrongful or improper seizure of the  
 20                           property shall be for actual losses sustained under R.S. 10:9-625 against the secured  
 21                           creditor on whose behalf and pursuant to whose instructions the sheriff may act.

22   \*           \*           \*

23          Art. 3943. Appeal from judgment awarding, modifying, or denying custody,  
 24                           visitation, or support

25                           An appeal from a judgment awarding, modifying, or denying custody,  
 26                           visitation, or support of a person can be taken only within the delay provided in  
 27                           Article 3942. Such an appeal shall not suspend execution of the judgment insofar  
 28                           as the judgment relates to custody, visitation, or support.

29   \*           \*           \*

1 Art. 3947. Name confirmation

2 \* \* \*

3 B. The court may enter an order confirming the name of a ~~married woman~~  
4 spouse in a divorce proceeding, whether ~~she~~ the person is the plaintiff or defendant,  
5 which confirmation shall be limited to the name ~~which she~~ that the person was using  
6 at the time of the marriage, or the name of ~~her~~ the person's minor children, or ~~her~~  
7 ~~maiden name~~ the person's surname on the birth certificate, without complying with  
8 the provisions of R.S. 13:4751 through 4755. This Article shall not be construed to  
9 allow ~~her to amend her~~ an amendment to a birth certificate with the Bureau of Vital  
10 Statistics.

11 \* \* \*

12 Art. 4904. Final default judgment in parish and city courts

13 \* \* \*

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

22 \* \* \*

23 Art. 4907. New trials; delay in parish or city courts

24 \* \* \*

25 B. The delay for applying for a new trial shall be seven days, exclusive of  
26 legal holidays. Where notice of judgment is required, ~~this delay commences to run~~  
27 ~~on the day~~ a party may file a motion for a new trial not later than seven days,  
28 exclusive of legal holidays, after the clerk has mailed, or the sheriff has served, the  
29 notice of judgment.

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Comments - 2021

This Article has been amended to make certain that the delay for filing a motion for new trial in parish and city courts is seven days, exclusive of legal holidays. If a notice of judgment is required, the delay begins to run once the clerk has mailed the notice of judgment or the sheriff has served the notice of judgment.

\* \* \*

Art. 4913. Limitations upon jurisdiction; nature of proceedings; justice of the peace courts

\* \* \*

B. A justice of the peace court has no jurisdiction in any of the following cases or proceedings:

\* \* \*

(4) A claim for annulment of marriage, separation from bed and board, divorce, separation of property, ~~or alimony~~ custody, visitation, spousal support, or child support.

\* \* \*

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

\* \* \*

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

\* \* \*

1 Art. 5001. Appeals from city and parish courts

2 A. ~~Except as provided in Paragraph B of this Article, an~~ An appeal from a  
3 judgment rendered by a parish court or by a city court shall be taken to the court of  
4 appeal.

5 ~~B. Appeal from a judgment rendered by a city court located in the~~  
6 ~~Nineteenth Judicial District shall be taken to the district court of the parish in which~~  
7 ~~the court of original jurisdiction is located.~~

8 ~~C.~~ Appeal shall be on the record and shall be taken in the same manner as  
9 an appeal from the district court.

10 Section 3. R.S. 13:3661 is hereby amended to read as follows:

11 §3661. Attendance compulsory in civil cases; witnesses ~~outside parish but~~ within  
12 state; deposit

13 A. Witnesses in civil cases who reside or who are employed in this state may  
14 be subpoenaed and compelled to attend trials or hearings wherever held in this state.

15 B. Witnesses who are subpoenaed to attend a trial or hearing shall be paid  
16 their travel expenses to and from the courthouse at a rate equal to the rate in effect  
17 for state officials and an attendance fee of fifty dollars for each day that the witness  
18 is required to appear in court.

19 ~~B.(1)C.~~ No witness ~~residing and employed outside of the parish and more~~  
20 ~~than twenty-five miles from the courthouse where the trial or hearing is to be held~~  
21 shall be subpoenaed to attend ~~court personally~~ a trial or hearing unless the party who  
22 ~~desired~~ desires the testimony of the witness has deposited with the clerk of court a  
23 ~~sum of money sufficient to cover:~~ the estimated attendance fee and travel expenses.

24 ~~(a) Reimbursement of the traveling expenses of the witness in traveling to~~  
25 ~~the court and returning, at the rate of twenty cents a mile.~~

26 ~~(b) The witness' fee at the rate of twenty-five dollars a day.~~

27 ~~(c) Hotel and meal expenses at the rate of five dollars a day.~~

1                    ~~(2)~~ Such a D. The witness shall be paid ~~his expenses and the attendance fee~~  
 2                    and travel expenses immediately by the clerk of court when the witness has answered  
 3                    the subpoena and has appeared for the purpose of testifying.

4                    E. In cases of exceptional hardship, the court may increase the travel  
 5                    expenses paid to the witness.

6                    Comments - 2021

7                    This Section has been amended to increase the witness attendance fee from  
 8                    twenty-five dollars per day to fifty dollars per day, and the travel expense  
 9                    reimbursement from twenty cents per mile to the rate in effect for state officials, both  
 10                    of which are consistent with the amounts paid to jurors in civil cases. See R.S.  
 11                    13:3049(B)(2)(a). The prior provision for reimbursement of hotel and meal expenses  
 12                    at the rate of five dollars per day has been eliminated, and a new provision has been  
 13                    added to provide the court with the discretion to increase the amount of travel  
 14                    expenses paid to witnesses in cases of exceptional hardship.

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#### 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)]

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HB 152 Engrossed

2021 Regular Session

Gregory Miller

**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))

#### Summary of Amendments Adopted by House

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

1. Make technical changes.