

2021 Regular Session

HOUSE BILL NO. 267

BY REPRESENTATIVE DUBUISSON

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

COURTS: Provides relative to the online dispute resolution pilot project for certain cases filed in the City Court of East St. Tammany

1 AN ACT

2 To amend and reenact R.S. 13:5200 and to enact R.S. 13:5201(E) and Part XVIII-A of

3 Chapter 32 of Title 13 of the Louisiana Revised Statutes of 1950, to be comprised

4 of R.S. 13:5213 through 5225, relative to small claims courts; to designate a purpose;

5 to provide for the Online Dispute Resolution Pilot Project Program; to provide for

6 appointment of a facilitator; to provide for procedures; to provide for procedural

7 deadlines; to provide for filing deadlines; to provide for admissible evidence; to

8 provide for service of process; to provide for fees; to provide for exemptions; to

9 provide for jurisdiction; to provide for settlements; to provide for waiver of right to

10 appeal; to provide for the role of the clerk; to provide for applicability; and to

11 provide for related matters.

12 Be it enacted by the Legislature of Louisiana:

13 Section 1. R.S. 13:5200 is hereby amended and reenacted and R.S. 13:5201(E) and

14 Part XVIII-A of Chapter 32 of Title 13 of the Louisiana Revised Statutes of 1950, comprised

15 of R.S. 13:5213 through 5225 are hereby enacted to read as follows:

16 §5200. Declaration of purpose

17 A. The purpose of this Part is to improve the administration of justice in

18 small noncriminal cases, and make the judicial system more available to and

19 comprehensible by the public; to simplify practice and procedure in the

1 commencement, handling, and trial of such cases in order that plaintiffs may bring
2 actions in their own behalf, and defendants may participate actively in the
3 proceedings rather than default; to provide an efficient and inexpensive forum with
4 the objective of dispensing justice in a speedy manner; and generally to promote the
5 confidence of the public in the overall judicial system by providing a forum for small
6 claims.

7 B. In an effort to improve access to justice, the Louisiana Supreme Court has
8 initiated an Online Dispute Resolution Pilot Project Program as provided in Part
9 XVIII-A of this Chapter to include all small claims cases filed in the City Court of
10 East St. Tammany beginning January 1, 2022, and continuing until the Louisiana
11 Supreme Court or Louisiana Legislature terminates the program. The Louisiana
12 Supreme Court may approve any other additional courts or types of claims to
13 participate in the Online Dispute Resolution Pilot Project Program as provided in
14 Part XVIII-A of this Chapter.

15 §5201. Small claims divisions

16 * * *

17 E. In the City Court of East St. Tammany, and in any other court so
18 authorized, parties shall participate in the Online Dispute Resolution Pilot Project
19 Program process pursuant to R.S. 13:5213, et seq.

20 * * *

21 PART XVIII-A. ONLINE DISPUTE RESOLUTION PILOT PROJECT PROGRAM

22 §5213. Declaration of Purpose

23 The purpose of the Online Dispute Resolution Pilot Project Program,
24 hereinafter referred to as "the program" is to further the primary objectives of the
25 small claims division pursuant to R.S. 13:5200. In an effort to improve access to
26 justice, the Louisiana Supreme Court has initiated the program in the City Court of
27 East St. Tammany and any other authorized court to include all small claims cases
28 filed in those courts beginning January 1, 2022.

1 §5214. Online Dispute Resolution Pilot Project Program

2 A. In a court participating in the program, parties to small claims
3 proceedings shall participate in the program unless they have been exempted by the
4 court due to an undue hardship. An undue hardship exists when a party cannot
5 access the online system or participate in the online process without substantial
6 difficulty or expense.

7 B. If the court exempts any party from participating in the program, the clerk
8 of court shall transfer the matter to arbitration.

9 §5215. Appointment of a facilitator

10 A. A program facilitator shall be appointed by the judge of a court
11 participating in the program to assist parties in reaching a settlement.

12 B. The facilitator shall be assigned to the case not more than ten days after
13 all parties register for an account within the program.

14 C. The facilitator shall inform the parties of the procedure to be followed,
15 including the type of communication the parties may use.

16 D. Unless the facilitator determines additional time will likely result in a
17 settlement, these efforts at resolution shall not exceed fourteen days. The facilitator
18 may extend or shorten the timelines at any time during the process.

19 §5216. Initiation of claim

20 A. In a court participating in the program, small claims cases shall be
21 initiated by affidavit filed by the plaintiff stating the demand. The affidavit shall
22 include the plaintiff's email address and, if known, the defendant's email address.

23 B. If the plaintiff seeks an exemption from the program due to undue
24 hardship pursuant to R.S. 13:5214, the request for exemption shall be filed with the
25 affidavit of claim.

26 C. The plaintiff shall register in the program within ten days of filing the
27 affidavit of claim, or if the plaintiff filed a request for exemption and the exemption
28 is denied, within ten days of the denial.

1 D. If the plaintiff fails to register in the program within the prescribed time
2 delay, the court shall dismiss the affidavit of claim without prejudice. If the
3 defendant establishes by clear and convincing evidence that the plaintiff failed to
4 register or participate in a prior case regarding the same dispute, the court shall
5 dismiss the affidavit of claim with prejudice. The court may take judicial notice of
6 a plaintiff's previously filed claim regarding the same dispute and the plaintiff's
7 failure to register with the program, and the court may dismiss the claim with
8 prejudice on its own motion.

9 E. Neither written discovery nor deposition upon oral examination shall be
10 allowed in the program. However, the facilitator may communicate privately with
11 any party for the purposes of facilitating a resolution. In addition, the facilitator may
12 request a party provide the facilitator and every other party any of the following:

- 13 (1) Information and evidence about the merits of the case.
14 (2) Information about either party's ability to pay.
15 (3) Responses to another party's information.
16 (4) The party's position on any proposed resolution of the affidavit of claim.

17 §5217. Service of citation; extension of delay to answer

18 A. Service of affidavit of claim in the program or other process shall be by
19 certified mail, return receipt requested. However, if the receipt is not returned, if
20 requested by a party filing the pleading who pays the service charge, or if required
21 by local court rule, service of pleadings may be made in accordance with the Code
22 of Civil Procedure.

23 B. Notwithstanding any other provision of law to the contrary, the affidavit
24 of claim or other process shall contain a notice which provides substantially as
25 follows:

26 "ATTENTION!

27 THIS LAWSUIT IS FILED IN THE SMALL CLAIMS COURT, WHICH
28 HAS BEEN REFERRED TO THE ONLINE DISPUTE RESOLUTION PILOT
29 PROJECT PROGRAM.

1 THE ORDINARY RULES OF EVIDENCE DO NOT APPLY IN THE
2 ONLINE DISPUTE RESOLUTION PILOT PROJECT PROGRAM.

3 IF YOUR CLAIM IS NOT SETTLED IN THE ONLINE DISPUTE
4 RESOLUTION PILOT PROJECT PROGRAM, THE CASE WILL BE SET FOR
5 ARBITRATION.

6 IF YOU WISH TO FILE AN EXEMPTION FROM PARTICIPATING IN
7 THE ONLINE DISPUTE RESOLUTION PILOT PROJECT PROGRAM DUE TO
8 AN UNDUE HARDSHIP, YOU MUST FILE THE EXEMPTION WITHIN TEN
9 (10) DAYS OF RECEIVING THIS LETTER.

10 IF THE EXEMPTION IS GRANTED, THE CASE WILL BE SET FOR
11 ARBITRATION.

12 IF YOU LOSE IN THE ONLINE DISPUTE RESOLUTION PILOT
13 PROJECT PROGRAM OR IN ARBITRATION, YOU HAVE NO RIGHT TO
14 APPEAL THE COURT'S DECISION.

15 YOU MAY HAVE THIS CASE TRANSFERRED TO THE REGULAR
16 CIVIL COURT FOR TRIAL IF YOU WISH. TO DO SO, YOU MUST FILE A
17 WRITTEN NOTICE WITH THE CLERK OF THE SMALL CLAIMS COURT
18 AND PAY THE APPROPRIATE TRANSFER FEE WITHIN TEN (10) DAYS OF
19 RECEIVING THIS LETTER.

20 IF YOU ARE UNSURE OF WHAT TO DO, CONTACT THE CLERK OF
21 COURT'S OFFICE OR AN ATTORNEY IMMEDIATELY."

22 C.(1) If the properly addressed certified mail return receipt reply form is
23 signed by the addressee or defendant, then service shall be considered as personal
24 service.

25 (2) If the properly addressed certified mail return receipt reply form is signed
26 by a person other than the addressee or defendant, then service shall be considered
27 as domiciliary service.

1 (3) If the properly addressed certified mail return receipt reply form is
2 returned and marked "refused" or "unclaimed" by the addressee or defendant, then
3 service is regarded as tendered and shall be considered as domiciliary service.

4 D. The facilitator shall request the parties to provide an electronic mail
5 address at which the party is willing to receive service and notice of future
6 proceedings. The facilitator shall advise the parties that once an electronic mail
7 address is provided, all service and notice of future proceedings shall be sent
8 electronically. Service via electronic mail shall constitute personal service.

9 E. If service of the affidavit of claim or other process is made pursuant to
10 Paragraph (C)(2) of this Section, service of the notice of judgment shall be made as
11 provided by law. If service of the affidavit of claim or other process is made
12 pursuant to Paragraph (C)(3) of this Section service of the notice of judgment shall
13 be made by the sheriff, marshal, or constable having jurisdiction.

14 §5218. Fees

15 A. The plaintiff, upon filing an affidavit of claim, shall pay as court costs a
16 fee of thirty-five dollars for each party made defendant. No other prejudgment costs,
17 except those required by R.S. 13:10.3, shall be required of the plaintiff so long as the
18 action remains in the program; provided that if the suit is amended or additional
19 service of process is required, the court may require a fee of not more than twenty
20 dollars for each additional service. Additionally, the court may require a fee of not
21 more than twenty dollars for each subpoena issued. In accordance with the
22 provisions of R.S. 49:225, no additional cost or fee shall be required when service
23 of process is required to be made upon the secretary of state so long as the action
24 remains in the program.

25 B. Costs may be waived for an indigent party who complies with the
26 provisions of Articles 5181 through 5188 of the Code of Civil Procedure.

27 C. The filing fee of thirty-five dollars shall be paid to the judge of the court
28 as a fee in lieu of all other fees in each such case; however, all costs and expenses
29 incurred shall be paid from the filing fee, except as otherwise provided.

1 §5219. Answer and reconventional demand

2 A. A defendant shall register for an account within the program, link the
3 claim to an existing account within the program, or seek an exemption from
4 participating in the program within ten days of service of the affidavit of claim.

5 B. A defendant who seeks an exemption and is denied the exemption shall
6 register for an account within the program or link the claim to an existing account
7 within the program within ten days of receiving the denial.

8 C. If a defendant fails to register or request an exemption within the delays
9 provided in this Section, the plaintiff may file a motion to enter a default judgment
10 in an amount not to exceed the amount requested in the affidavit of claim.

11 D. While participating in the program, the defendant may raise and present
12 evidence on any reconventional demand or counterclaim without the need to
13 formally file a demand or claim. The program may result in an agreement with the
14 defendant as the judgment creditor. However, if an agreement or settlement of the
15 claim is not reached, the defendant may file a reconventional demand or
16 counterclaim and pay the appropriate filing fee no later than ten days after referral
17 to arbitration.

18 §5220. Reconventional demand beyond jurisdiction; filing in court of competent
19 jurisdiction; transfer of proceedings

20 A. If a defendant has a claim against the plaintiff in such action for an
21 amount over the jurisdiction of the small claims division as provided in R.S.
22 13:5202, but of a nature which may be asserted by a reconventional demand as
23 authorized by Article 1061 of the Code of Civil Procedure, the defendant may assert
24 his claim in the manner provided by this Section, in order to secure consolidation for
25 trial of the dispute with his own claim.

26 B. At any time prior to settlement of a claim, the defendant may commence
27 an action against the plaintiff in a court of competent jurisdiction to assert a claim
28 of the nature set forth by R.S. 13:5206(A), and file an affidavit that the

1 reconventional demand is in excess of five thousand dollars with the judge of the
2 small claims division in which the plaintiff has commenced the small claims action.

3 C. The defendant shall attach to the affidavit a true copy of his petition or
4 reconventional demand so filed and shall pay the clerk of the small claims division
5 a transmittal fee of ten dollars, in addition to the prescribed court costs for filing the
6 reconventional demand, furnishing a copy of the affidavit and pleading to the
7 plaintiff.

8 D. The judge shall order that the small claims division action be transferred
9 to the ordinary docket of the court set forth in the affidavit, and the judge shall
10 transmit to such court copies of the citation and any pleadings in the small claims
11 action. The actions shall then be consolidated for trial in such other docket or court.

12 E. The plaintiff in the small claims action shall not be required to pay to the
13 clerk of the court to which the action is so transferred any transmittal, appearance,
14 or filing fee; although, upon adverse judgment, he may be taxed with costs as in the
15 case of any other defendant.

16 §5221. Settlement agreement

17 A. A program facilitator shall guide the parties through the program and
18 assist them in reaching a settlement. To reach a settlement, the facilitator may
19 provide information to a party regarding procedure and may comment on the merits
20 of the claim or defenses provided.

21 B. Once the facilitation has begun, if the plaintiff fails to respond to the
22 facilitator within ten days, the facilitator may notify the defendant of the ability to
23 file a request to dismiss the case.

24 C. If the parties settle the claim, the parties may request the facilitator
25 prepare the online settlement agreement form to be executed by the parties, which
26 shall set forth the terms agreed to by the parties and will state that if the judgment
27 debtor breaches the agreement, the judgment creditor may ask the court to enter
28 judgment in the amount that remains owing under the settlement agreement.

1 D. Either party may elect to have the court render a judgment at the time the
2 settlement agreement is entered or after the judgment debtor fails to comply with the
3 settlement agreement.

4 E. Settlement agreements that contain performance-related terms, such as the
5 return of tangible property or performance of a service, will not be enforceable by
6 the court in event of a breach. The agreement shall provide for a monetary recovery
7 in the event of non-performance.

8 F. If the parties do not settle the claim, the facilitator shall terminate the
9 program and notify the clerk of court to set the matter for arbitration. The facilitator
10 shall provide the court with a concise description of the issues and as much relevant
11 information as possible. The facilitator shall also assist the parties in preparing a
12 form to submit to the court that includes information and documents provided during
13 the program that are relevant to the dispute and agreed upon by both parties. The
14 subsequent proceeding will be governed by R.S. 13:5200, et seq.

15 §5222. Waiver of right to appeal

16 A. A plaintiff who files a complaint in the program shall be deemed to have
17 waived his right to appeal unless the complaint is removed as provided in Subsection
18 (B) of this Section or is transferred as provided in R.S. 13:5220.

19 B. A defendant shall be deemed to have waived his right to appeal unless,
20 within the time allowed for filing an answer to the complaint, he files a written
21 motion seeking removal of the action to the ordinary civil docket of the court in
22 which the complaint is filed, which motion shall be granted immediately.

23 C. Upon removal as provided in Subsection (B) of this Section, a plaintiff
24 shall not be required to pay for additional costs beyond those due under this Section.
25 Any additional assessed costs shall be paid by the defendant mover.

26 §5223. State agencies

27 The provisions of this Part shall not apply to agencies of the state.

1 §5224. Clerk's role

2 If the parties do not settle the claim, the facilitator shall terminate the
3 program and notify the clerk of court to set the matter for arbitration. The clerk of
4 the small claims division shall prepare the citation summoning the defendant to
5 answer as provided in Article 4902 of the Code of Civil Procedure. The clerk shall
6 send notice to the defendant by certified mail, return receipt requested, or by service
7 through the marshal, constable, or sheriff. In addition, the clerk is authorized to
8 cooperate fully with the parties, which includes answering any questions that the
9 parties may have concerning the small claims procedure, in identification of the
10 proper parties to the suit, and in furnishing general information concerning
11 appropriate evidence for trial. The clerk is neither authorized nor expected to
12 provide legal advice.

13 §5225. Applicability

14 The provisions of this Part, except as otherwise specifically provided by
15 Book VIII of the Code of Civil Procedure, shall govern and regulate the procedure
16 in proceedings in the program.

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 267 Engrossed

2021 Regular Session

DuBuisson

Abstract: Creates the Online Dispute Resolution Pilot Project Program in the City Court of East St. Tammany.

Present law provides for the purpose of small claims procedures.

Proposed law retains present law and provides for the Online Dispute Resolution Pilot Project Program (program) as an effort to improve access to justice and further the primary objectives of the small claims divisions.

Present law establishes small claims divisions and provides for the jurisdiction of these divisions.

Proposed law provides for the program in the City Court of East St. Tammany and any other courts participating in the program to include all small claims cases filed in those courts beginning January 1, 2022, and continuing until the Louisiana Supreme Court or Louisiana Legislature terminates the program.

Proposed law provides for parties to small claims proceedings to participate in the program unless they have been exempted by the court due to an undue hardship.

Proposed law provides that if an exemption is provided to a party participating in the program, the clerk of court shall schedule the matter for trial or arbitration.

Proposed law provides for the appointment of a program facilitator by the judges of courts participating in the program to assist parties in reaching a settlement.

Proposed law provides for the responsibilities of the facilitator as all of the following:

- (1) The facilitator shall be assigned to the case within not more than 10 days of all parties registering for an account within the program.
- (2) The facilitator shall inform the parties of the procedures to be followed, including the types of communications the parties may use.
- (3) Unless the facilitator determines additional time will likely result in a settlement, these efforts at resolution shall not exceed 14 days. The facilitator may extend or shorten the timelines at any time during the process.

Proposed law provides for the initiation of small claims cases by an affidavit from the plaintiff stating the demand. Provides that the affidavit shall include the plaintiff's email address and, if known, the defendant's email address.

Proposed law provides that a plaintiff seeking an exemption from the program due to undue hardship shall file the request for exemption with the affidavit of claim.

Proposed law provides that the plaintiff shall register in the program within 10 days of filing the affidavit of claim, or within 10 days of denial if the plaintiff filed a request for exemption and the exemption is denied.

Proposed law provides for dismissal of the plaintiff's affidavit of claim without prejudice if the plaintiff fails to register in the program within the prescribed time delay.

Proposed law provides for dismissal of the plaintiff's affidavit of claim with prejudice if the defendant establishes by clear and convincing evidence that the plaintiff failed to register or participate in a prior case regarding the same dispute.

Proposed law provides that the court may, on its own motion, dismiss the plaintiff's claim with prejudice and may take judicial notice of a plaintiff's previously filed claim regarding the same dispute and the plaintiff's failure to register with the program.

Proposed law provides that neither written discovery or oral deposition shall be allowed in the program. Provides for private communication between the facilitator and any party for the purposes of facilitating a resolution.

Proposed law provides that the facilitator may request a party provide the facilitator and every other party any of the following:

- (1) Information and evidence about the merits of the case.
- (2) Information about either party's ability to pay.
- (3) Responses to another party's information.
- (4) The party's position on any proposed resolution of the affidavit of claim.

Proposed law provides for the service of an affidavit of claim in the program or other process by certified mail, return receipt requested. Provides that an affidavit of claim in the program or other process shall contain a notice.

Proposed law provides that a properly addressed certified mail return receipt reply form signed by the addressee or defendant or service via electronic mail shall be considered personal service. Provides that either a properly addressed certified mail return receipt reply form signed by a person other than the addressee or defendant or returned and marked "refused" or "unclaimed" by the addressee or defendant shall be considered domiciliary service.

Proposed law provides that the facilitator shall request the parties to provide an electronic mail address at which the party is willing to receive service and notice of future proceedings and that once an electronic mail address is provided, all service and notice of future proceedings shall be sent electronically.

Proposed law provides for the following fees:

- (1) \$35 for each party made defendant, assessed to the plaintiff.
- (2) \$20 for each additional service, assessed to the plaintiff, unless service of process is required to be made upon the secretary of state and the action remains in the program.
- (3) \$20 for each subpoena issued.
- (4) \$35 filing fee.

Proposed law provides for waiver of costs for an indigent party.

Proposed law provides that a defendant shall register for an account within the program, link the claim to an existing account within the program, or seek an exemption from participating in the program within 10 days of service of the affidavit of claim. Provides that a defendant who seeks an exemption and is denied the exemption shall register for an account within the program or link the claim to an existing account within the program within 10 days of receiving the denial.

Proposed law provides that a plaintiff may file a motion to enter a default judgment in an amount not to exceed the amount requested in the affidavit of claim when a defendant who fails to register or request an exemption. Provides that a defendant may raise and present evidence on any reconventional demand or counterclaim during the program without the need to formally file.

Proposed law provides that a defendant may file a reconventional demand against the plaintiff and have the proceedings transferred from the program to a court of competent jurisdiction at any time prior to settlement of a claim in the program.

Proposed law provides for settlement agreements between the plaintiff and defendant. Provides that the program facilitator shall guide the parties through the program and assist them in reaching a settlement by providing information to a party regarding procedure and commenting on the merits of the claim or defenses provided.

Proposed law provides that the facilitator shall terminate the program and notify the clerk of court to set the matter for arbitration if the parties do not settle the claim.

Proposed law provides that a plaintiff who files a complaint in the program shall be deemed to have waived his right to appeal unless the complaint is removed or transferred. Provides that a defendant shall be deemed to have waived his right to appeal unless, within the time

allowed for filing an answer to the complaint, he files a written motion seeking removal of the action to the ordinary civil docket of the court in which the complaint is filed.

Proposed law provides that these provisions shall not apply to state agencies.

Proposed law provides that the clerk shall do the following:

- (1) Prepare the citation summoning the defendant to answer.
- (2) Send notice to the defendant by certified mail, return receipt requested, or by service through the marshal, constable, or sheriff.
- (3) Cooperate fully with the parties, which includes answering any questions that the parties may have concerning the small claims procedure, in identification of the proper parties to the suit, and in furnishing general information concerning appropriate evidence for trial.

Purposed law provides that the clerk is not authorized or expected to provide legal advice.

Proposed law provides for applicability of these provisions in the program.

(Amends R.S. 13:5200; Adds R.S. 13:5201(E) and 5213-5225)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Judiciary to the original bill:

1. Make technical changes.
2. Make a technical change by rearranging the placement of the procedure to transfer and consolidate cases.