

2021 Regular Session

HOUSE BILL NO. 55

BY REPRESENTATIVES FREEMAN, BUTLER, CARPENTER, ECHOLS, FREIBERG, GREEN, HILFERTY, JENKINS, MIKE JOHNSON, LARVADAIN, MARCELLE, MARINO, MOORE, NELSON, NEWELL, PIERRE, STAGNI, AND WHITE AND SENATORS BARROW, JACKSON, MIZELL, AND PETERSON

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

DOMESTIC ABUSE: Provides relative to protective orders

1 AN ACT

2 To amend and reenact Code of Civil Procedure Article 3603(A), Children's Code Article  
3 1568(D), and R.S. 46:2134(D) and to enact Code of Civil Procedure Article  
4 3603.1(C)(3), relative to the issuance of protective orders; to provide for  
5 complainants seeking protection from domestic abuse, dating violence, stalking, or  
6 sexual assault; to provide for the signature of the petitioner; to provide for the  
7 affirmation of the petitioner; to provide for a witness; to provide for the crime of  
8 perjury; to provide for the penalty of perjury; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Code of Civil Procedure Article 3603(A) is hereby amended and  
11 reenacted and Code of Civil Procedure Article 3603.1(C)(3) is hereby enacted to read as  
12 follows:

13 Art. 3603. Temporary restraining order; affidavit or affirmation of irreparable injury  
14 and notification efforts

15 A. A temporary restraining order shall be granted without notice when all of  
16 the following occur:

17 (1) It clearly appears from specific facts shown by a verified petition ~~or~~, by  
18 supporting affidavit, or by affirmation as provided in Article 3603.1(C)(3) that

1 immediate and irreparable injury, loss, or damage will result to the applicant before  
2 the adverse party or his attorney can be heard in opposition, ~~and,~~

3 (2) The applicant's attorney certifies to the court in writing the efforts which  
4 have been made to give the notice or the reasons supporting his claim that notice  
5 should not be required.

6 \* \* \*

7 Art. 3603.1. Governing provisions for issuance of protective orders; grounds;  
8 notice; court-appointed counsel

9 \* \* \*

10 C.

11 \* \* \*

12 (3) When a complainant is seeking a temporary restraining order for  
13 protection from domestic abuse, dating violence, stalking, or sexual assault, it is  
14 sufficient for the petition to contain a written affirmation signed and dated by the  
15 complainant that the facts and circumstances contained in the complaint are true and  
16 correct to the best knowledge, information, and belief of the complainant, under  
17 penalty of perjury pursuant to R.S. 14:123. The affirmation shall be made before a  
18 witness who shall sign and print his name.

19 Section 2. Children's Code Article 1568(D) is hereby amended and reenacted to read  
20 as follows:

21 Art. 1568. Petition

22 \* \* \*

23 D. If the petition requests the issuance of an ex parte temporary restraining  
24 order, the petition shall contain ~~an affidavit~~ a written affirmation signed and dated  
25 by each petitioner that the facts and circumstances contained in the petition are true  
26 and correct to the best knowledge, information, and belief of the petitioner, under  
27 penalty of perjury pursuant to R.S. 14:123. The affirmation shall be made before a  
28 witness who shall sign and print his name. ~~Any false statement under oath contained~~  
29 ~~in the affidavit shall constitute perjury and shall be punishable by a fine of not more~~

1 ~~than one thousand dollars or by imprisonment with or without hard labor for not~~  
2 ~~more than five years, or both.~~

3 \* \* \*

4 Section 3. R.S. 46:2134(D) is hereby amended and reenacted to read as follows:

5 §2134. Petition

6 \* \* \*

7 D. If the petition requests the issuance of an ex parte temporary restraining  
8 order, the petition shall contain ~~an affidavit~~ a written affirmation signed and dated  
9 by each petitioner that the facts and circumstances contained in the petition are true  
10 and correct to the best knowledge, information, and belief of the petitioner, under  
11 penalty of perjury pursuant to R.S. 14:123. The affirmation shall be made before a  
12 witness who shall sign and print his name. ~~Any false statement under oath contained~~  
13 ~~in the affidavit shall constitute perjury and shall be punishable by a fine of not more~~  
14 ~~than one thousand dollars, or by imprisonment, with or without hard labor, for not~~  
15 ~~more than five years, or both.~~

16 \* \* \*

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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 55 Reengrossed                      2021 Regular Session                      Freeman

**Abstract:** Authorizes use of a written affirmation to support a petition for an ex parte temporary restraining order in domestic abuse cases.

Present law provides that a petition requesting the issuance of an ex parte temporary restraining order pursuant to the Domestic Abuse Assistance Act shall contain an affidavit signed by each petitioner that the facts and circumstances contained in the petition are true and correct to the best knowledge, information, and belief of the petitioner.

Proposed law provides that the petition shall contain a written affirmation, rather than an affidavit, signed and dated by the petitioner before a witness who shall sign and print his name. Proposed law further explicitly provides the same for a complainant seeking protection from domestic abuse, dating violence, stalking, or sexual assault.

Present law (R.S. 14:123) provides that perjury committed in a civil action shall be punished by a fine of not more than \$10,000 or imprisonment at hard labor for not more than five years, or both. Proposed law retains present law.

Present law further provides that any false statement under oath contained in the affidavit accompanying a petition requesting an ex parte temporary restraining order pursuant to the Domestic Abuse Assistance Act shall constitute perjury and shall be punishable by a fine of not more than \$1,000 or by imprisonment with or without hard labor for not more than five years, or both.

Proposed law repeals present law and provides that the affirmation provided by proposed law is subject to perjury pursuant to present law (R.S. 14:123).

Present law provides that a temporary restraining order shall be granted without notice when:

- (1) It clearly appears from specific facts shown by a verified petition or by supporting affidavit that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or his attorney can be heard in opposition.
- (2) The applicant's attorney certifies to the court in writing the efforts which have been made to give the notice or the reasons supporting his claim that notice should not be required.

Proposed law retains present law and provides that a temporary restraining order shall also be granted when an affirmation as provided in proposed law shows the specific facts required by present law.

(Amends C.C.P. Art. 3603(A), Ch.C. Art. 1568(D), and R.S. 46:2134(D); Adds C.C.P. Art 3603.1(C)(3))

#### Summary of Amendments Adopted by House

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

1. Change the punishment for perjury.
2. Require the petitioner to date the petition.
3. Require the petitioner to sign the petition before a witness who shall sign and print his name.

#### The House Floor Amendments to the engrossed bill:

1. Make technical changes.
2. Specify that the complainant is seeking a temporary restraining order.
3. Rearrange the placement of the statutory requirement that the complainant sign and print his name.