

2021 Regular Session

HOUSE BILL NO. 267

BY REPRESENTATIVE DUBUISSON

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 5226, relative to small claims courts; to designate a purpose;
5 to provide for the Online Dispute Resolution Pilot Project Program for the City Court
6 of East St. Tammany; to provide for appointment of a facilitator; to provide for
7 procedures; to provide for procedural deadlines; to provide for filing deadlines; to
8 provide for admissible evidence; to provide for service of process; to provide for
9 fees; to provide for exemptions; to provide for jurisdiction; to provide for
10 settlements; to provide for waiver of right to appeal; to provide for the role of the
11 clerk; to provide for applicability; and to 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 5226 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
20 commencement, handling, and trial of such cases in order that plaintiffs may bring
21 actions in their own behalf, and defendants may participate actively in the

1 proceedings rather than default; to provide an efficient and inexpensive forum with
2 the objective of dispensing justice in a speedy manner; and generally to promote the
3 confidence of the public in the overall judicial system by providing a forum for small
4 claims.

5 B. In an effort to improve access to justice, the Louisiana Supreme Court has
6 initiated an Online Dispute Resolution Pilot Project Program as provided in Part
7 XVIII-A of this Chapter to include all small claims cases filed in the City Court of
8 East St. Tammany beginning January 1, 2022, and continuing until the Louisiana
9 Supreme Court or Louisiana Legislature terminates the program.

10 §5201. Small claims divisions

11 * * *

12 E. In the City Court of East St. Tammany, parties shall participate in the
13 Online Dispute Resolution Pilot Project Program process pursuant to R.S. 13:5213,
14 et seq.

15 * * *

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

17 §5213. Declaration of Purpose

18 The purpose of the Online Dispute Resolution Pilot Project Program,
19 hereinafter referred to as "the program" is to further the primary objectives of the
20 small claims division pursuant to R.S. 13:5200. In an effort to improve access to
21 justice, the Louisiana Supreme Court has initiated the program in the City Court of
22 East St. Tammany to include all small claims cases filed in the court beginning
23 January 1, 2022.

24 §5214. Online Dispute Resolution Pilot Project Program

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

1 B. If the court exempts any party from participating in the program, the clerk
2 of court shall transfer the matter to be set for a trial de novo.

3 §5215. Appointment of a facilitator

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

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

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

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

13 §5216. Initiation of claim

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

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

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

23 D. If the plaintiff fails to register in the program within the prescribed time
24 delay, the court shall dismiss the affidavit of claim without prejudice. If the
25 defendant establishes by clear and convincing evidence that the plaintiff failed to
26 register or participate in a prior case regarding the same dispute, the court shall
27 dismiss the affidavit of claim with prejudice. The court may take judicial notice of
28 a plaintiff's previously filed claim regarding the same dispute and the plaintiff's
29 failure to register with the program, and the court may dismiss the claim with
30 prejudice on its own motion.

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

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

9 §5217. Service of citation; extension of delay to answer

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

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

18 "ATTENTION!
 19 THIS LAWSUIT IS FILED IN THE SMALL CLAIMS COURT, WHICH
 20 HAS BEEN REFERRED TO THE ONLINE DISPUTE RESOLUTION PILOT
 21 PROJECT PROGRAM.

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

24 IF YOUR CLAIM IS NOT SETTLED IN THE ONLINE DISPUTE
 25 RESOLUTION PILOT PROJECT PROGRAM, THE CASE WILL BE SET FOR A
 26 TRIAL DE NOVO.

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

1 IF THE EXEMPTION IS GRANTED, THE CASE WILL BE SET FOR A
2 TRIAL DE NOVO.

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

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

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

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

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

19 D. The facilitator shall request the parties to provide an electronic mail
20 address at which the party is willing to receive service and notice of future
21 proceedings. The facilitator shall advise the parties that once an electronic mail
22 address is provided, all service and notice of future proceedings shall be sent
23 electronically. Service via electronic mail shall constitute personal service.

24 E. If service of the affidavit of claim or other process is made pursuant to
25 Paragraph (C)(2) of this Section, service of the notice of judgment shall be made as
26 provided by law. If service of the affidavit of claim or other process is made
27 pursuant to Paragraph (C)(3) of this Section service of the notice of judgment shall
28 be made by the sheriff, marshal, or constable having jurisdiction.

§5218. Fees

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

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

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

§5219. Answer and reconventional demand

A. 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 ten days of service of the affidavit of claim.

B. 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 ten days of receiving the denial.

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

D. While participating in the program, the defendant may raise and present evidence on any reconventional demand or counterclaim without the need to formally file a demand or claim. The program may result in an agreement with the defendant as the judgment creditor. However, if an agreement or settlement of the

1 claim is not reached, the defendant may file a reconventional demand or
2 counterclaim and pay the appropriate filing fee no later than ten days after referral
3 to the clerk to set the matter for a trial de novo.

4 §5220. Reconventional demand beyond jurisdiction; filing in court of competent
5 jurisdiction; transfer of proceedings

6 A. If a defendant has a claim against the plaintiff in such action for an
7 amount over the jurisdiction of the small claims division as provided in R.S.
8 13:5202, but of a nature which may be asserted by a reconventional demand as
9 authorized by Article 1061 of the Code of Civil Procedure, the defendant may assert
10 his claim in the manner provided by this Section, in order to secure consolidation for
11 trial of the dispute with his own claim.

12 B. At any time prior to settlement of a claim, the defendant may commence
13 an action against the plaintiff in a court of competent jurisdiction to assert a claim
14 of the nature set forth by R.S. 13:5206(A), and file an affidavit that the
15 reconventional demand is in excess of five thousand dollars with the judge of the
16 small claims division in which the plaintiff has commenced the small claims action.

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

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

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

1 §5221. Settlement agreement

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

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

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

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

17 E. Settlement agreements that contain performance-related terms, such as the
18 return of corporeal movable property or performance of a service, will not be
19 enforceable by the court in event of a breach. The agreement shall provide for a
20 monetary recovery in the event of non-performance.

21 F. If the parties do not settle the claim, the facilitator shall terminate the
22 program and notify the clerk of court to set the matter for a trial de novo. The
23 facilitator shall provide the court with a concise description of the issues and as
24 much relevant information as possible. The facilitator shall also assist the parties in
25 preparing a form to submit to the court that includes information and documents
26 provided during the program that are relevant to the dispute and agreed upon by both
27 parties. The subsequent proceeding will be governed by R.S. 13:5200, et seq.

1 §5222. Waiver of right to appeal

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

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

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

12 §5223. State agencies

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

14 §5224. Clerk's role

15 If the parties do not settle the claim, the facilitator shall terminate the
16 program and notify the clerk of court to set the matter for a trial de novo. The clerk
17 of the small claims division shall prepare the citation summoning the defendant to
18 answer as provided in Article 4902 of the Code of Civil Procedure. The clerk shall
19 send notice to the defendant by certified mail, return receipt requested, or by service
20 through the marshal, constable, or sheriff. In addition, the clerk is authorized to
21 cooperate fully with the parties, which includes answering any questions that the
22 parties may have concerning the small claims procedure, in identification of the
23 proper parties to the suit, and in furnishing general information concerning
24 appropriate evidence for trial. The clerk is neither authorized nor expected to
25 provide legal advice.

26 §5225. Applicability

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

1 §5226. Termination

2 This Part shall be null and of no effect on and after August 1, 2025.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____