

## RÉSUMÉ DIGEST

**ACT 259 (HB 152)**

**2021 Regular Session**

**Gregory Miller**

Existing law (C.C. Art. 3452) provides that prescription must be pleaded and cannot be supplied by the courts.

New law retains existing law and creates an exception where legislation provides otherwise.

Existing law (C.C.P. Art. 80(A)(1) and (2)) sets forth the venue for actions involving immovable property.

New law retains existing law but removes an outdated exception that previously allowed a defendant to convert a personal action into an in rem action by objecting to venue.

Existing 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.

New law retains existing law and recognizes that consolidations can be effected for purposes other than trial under new law (Article 1561(A)).

Existing law (C.C.P. Art. 592) provides the procedure for certification of class actions.

New law retains existing law and makes minor semantic changes.

Prior law (C.C.P. Art. 592(A)(3)(e)) prohibited the certification of a class after a judgment on the merits of common issues had been rendered against the party opposing the class.

New law deletes prior law.

Existing 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.

New law retains existing 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.

Existing law (C.C.P. Art. 927(B)) provides that prescription must be pleaded and cannot be supplied by the courts.

New law retains existing law and creates an exception where the C.C.P. provides otherwise.

Prior law (C.C.P. Art. 1352) set forth a restriction on the issuance of a subpoena when the witness resided and was employed outside of the parish and more than 25 miles from the courthouse.

New law removes the restriction set forth by prior law for purposes of consistency with new law (R.S. 13:3661).

Existing law (C.C.P. Art. 1561(A)) provides for the consolidation of actions for trial.

New law retains existing law and also provides that actions may be consolidated for other limited purposes, such as discovery.

Existing law (C.C.P. Art. 1702) provides the procedure for the confirmation of a preliminary default and the rendition of a final default judgment.

New law retains existing 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.

Existing 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.

New law deletes the requirement under existing 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.

Existing law (C.C.P. Art. 1795) permits the jury to review certain testimony or other evidence.

New law changes existing law by clarifying that the review of the requested testimony shall be conducted in the courtroom.

Existing law (C.C.P. Art. 1918) requires final judgments to be identified as such by appropriate language.

New law retains existing 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. New 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.

Existing law (C.C.P. Art. 1951) permits a final judgment to be amended to alter its phraseology or to correct errors of calculation.

New law retains existing law and also permits a final judgment to be amended to correct deficiencies in decretal language.

Existing 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.

New law clarifies existing 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.

Existing law (C.C.P. Art. 2088(A)) sets forth the matters over which the trial court retains jurisdiction while an appeal is pending.

New law adds to existing law the right to set attorney fees, to make a certification under C.C.P. Art. 1915(B), and to amend a judgment to add proper decretal language.

Existing law (C.C.P. Arts. 2254(B) and 2721(C)) provides with respect to the wrongful or improper seizure of a debtor or third party's property.

New law retains existing law but removes unnecessary language and updates outdated cross-references.

Existing law (C.C.P. Art. 3943) provides for the delays within which appeals from judgments awarding custody, visitation, or support must be taken.

New law retains existing law and extends its application to judgments awarding, modifying, or denying custody, visitation, or support.

Existing law (C.C.P. Art. 3947(B)) provides for the confirmation of the name of a married woman in a divorce proceeding.

New law changes existing law by using gender neutral terminology.

Existing law (C.C.P. Art. 4904) provides the procedure for the rendition of a final default judgment in parish and city courts.

New law retains existing 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.

Existing 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.

New law retains existing 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.

Existing 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.

New law changes existing law by replacing "alimony" with "spousal support" and adding custody, visitation, and child support.

Existing law (C.C.P. Art. 4921) provides the procedure for the rendition of a final default judgment in justice of the peace courts.

New law retains existing 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.

Prior law (C.C.P. Art. 5001) required that appeals from judgments rendered by city and parish courts be taken to the court of appeal, except that in city courts located in the 19th JDC, the appeal was required to be taken to the applicable district court.

New law removes the exception under prior 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.

Existing 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.

New law removes the 25-mile requirement under existing 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. New 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.

Effective August 1, 2021.

(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))