

2023 Regular Session

HOUSE BILL NO. 544

BY REPRESENTATIVE JORDAN

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

CIVIL/PROCEDURE: Provides relative to legislative continuances

1

AN ACT

2 To amend and reenact R.S. 13:4163(B), (C)(1)(c), (D)(2), (E)(1)(a) and (b), (G), and (H)(2)
3 and to enact R.S. 13:4163(C)(3) and (4), relative to civil procedure; to provide for
4 continuances or extensions of certain deadlines; to provide relative to legislators or
5 employees; to provide for judicial notice; to provide for sanctions; to provide relative
6 to grounds for continuance or extension; to provide for deadlines; to provide relative
7 to appeals and supervisory writs; to provide relative to costs; and to provide for
8 related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 13:4163(B), (C)(1)(c), (D)(2), (E)(1)(a) and (b), (G), and (H)(2) are
11 hereby amended and reenacted and R.S. 13:4163(C)(3) and (4) are hereby enacted to read
12 as follows:

13 §4163. Ex parte motion for legislative continuance or extension of time; legislators
14 or employees engaged in legislative or constitutional convention activities

15 * * *

16 B. The peremptory grounds for continuance or extension is available to and
17 for the benefit of a member or legislative employee and may only be asserted or
18 waived by a member or employee. Any waiver of privilege by a member or
19 legislative employee shall be express and in writing and shall not be irrevocable.

1 C.(1) Such peremptory grounds are available for the continuance of any type
2 of proceeding and the extension of any type of deadline or legal delay pertaining to
3 a criminal case, civil case, or administrative proceeding, if the presence,
4 participation, or involvement of a member or employee is required in any capacity,
5 including any pretrial or post-trial legal proceeding, during:

6 * * *

7 (c) Any time other than those provided in Subparagraph (a) or (b) of this
8 Paragraph when such person is engaged in activities, including travel, in connection
9 with or ordered by: (i) the legislature; (ii) any legislative committee or subcommittee
10 appointed by the president of the Senate or the speaker of the House of
11 Representatives; (iii) any committee or commission appointed by the governor or
12 other person authorized to make such appointments; ~~or~~ (iv) any constitutional
13 convention or commission; or (v) the role of the legislator or duty to the constituents
14 for which the legislator is eligible to receive a per diem.

15 * * *

16 (3) Notwithstanding any law to the contrary, the court shall take judicial
17 notice any time the legislature or any legislative committee, task force, special or
18 select committee, commission, or subcommittee convenes, and the member or
19 employee is required to attend.

20 (4) Notwithstanding the provisions of this Subsection, the continuance and
21 extension provided by this Section shall not be applicable to incidental demands and
22 third party demands that are barred by prescription or peremption as provided in
23 Code of Civil Procedure Article 1041.

24 D.

25 * * *

26 (2)(a) A motion for legislative continuance or extension shall be filed at no
27 cost to a member, employee, or a client of a member or employee.

28 (b) If a party or attorney opposes a motion for continuance or extension,
29 upon motion of any party or upon its own motion, the court may award attorney fees

1 and court costs payable to the member or employee by the party or attorney who
2 opposed a motion for legislative continuance or extension and the opposition is not
3 grounded in fact or in compliance with the provisions of Code of Civil Procedure
4 Article 863. The attorney who opposes a motion for continuance or extension
5 pursuant to this Section and the opposition is not grounded in fact or in compliance
6 with the provisions of Code of Civil Procedure Article 863 may also be subject to
7 sanctions pursuant to Code of Civil Procedure Article 863 by the judge presiding at
8 the time of the motions.

9 E.(1)(a) If the grounds for a legislative continuance or extension are founded
10 upon the convening of a regular legislative session, organizational session, or a
11 constitutional convention, the motion for legislative continuance or extension shall
12 be timely if filed no later than five calendar days prior to the hearing or proceeding
13 to be continued.

14 (b)(i) If the grounds for a legislative continuance or extension are founded
15 upon any provision of Subparagraph (C)(1)(c) of this Section or upon the issuance
16 of a call for an extraordinary session of the legislature, the motion for legislative
17 continuance or extension shall be timely if filed no later than five calendar days prior
18 to the hearing or proceeding to be continued or no later than two days following the
19 issuance of the notice of the meeting or of the call for the extraordinary legislative
20 session, which ever occurs last.

21 (ii) If the grounds for a legislative continuance or extension are founded
22 upon the knowledge of the convening of a veto session, the motion for legislative
23 continuance or extension shall be timely if filed no later than four calendar days prior
24 to the hearing or proceeding to be continued or no later than two days following the
25 knowledge of the convening of the veto session, whichever occurs last.

26 (iii) If the grounds for legislative continuance or extension are founded upon
27 any provision of Subparagraph (C)(1)(c) of this Section and the member or employee
28 is unable to comply with the notice requirements of this Paragraph, the member or

employee shall give notice at the earliest time practicable prior to the hearing or
proceeding to be continued.

* * *

4 G.(1) Any action taken against a person, including any sanction imposed on
5 an attorney, who has filed a motion for legislative continuance or extension and
6 which results from the failure of such person or attorney to appear or comply with
7 an order of the court or agency or any deadline shall be considered an absolute
8 nullity and shall be set aside by the court or agency upon the filing of a motion by
9 the aggrieved person or attorney.

10 (2) Any action taken against a person who has filed a motion for continuance
11 or extension which resulted from or relates back to a misapplication of this Section
12 shall be considered an absolute nullity and shall be set aside by a court or agency
13 upon the filing of a motion by the aggrieved person or attorney, at no cost to a
14 member, employee, or client of a member or employee.

15 H.

* * *

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 544 Engrossed

2023 Regular Session

Jordan

Abstract: Provides relative to legislative continuances and extensions of time in court proceedings.

Present law provides for ex parte motions for legislative continuances or extension of time for legislators and legislative employees.

Present law (R.S. 13:4163(B)) provides that peremptory grounds for continuance or extension may only be asserted or waived by a member or employee.

Proposed law retains present law and provides that any waiver of privilege shall be express and in writing and shall not be irrevocable.

Present law (R.S. 13:4163(C)) provides that such peremptory grounds as provided in present law shall be available in the following times:

- (1) Any time between 30 days prior to the original call of order and 30 days following adjournment sine die of any session of the legislature.
- (2) Any time between 30 days prior to the convening and 30 days following adjournment sine die of any constitutional convention.
- (3) Any time when the person is engaged in activities connected to or ordered by the legislature, any legislative committee or subcommittee, any committee or convention appointed by the governor or other authorized person, or any constitutional convention or commission.

Proposed law expands present law and provides that the peremptory grounds are available when such person is engaged in activities in connection with the legislator's role as legislator or duty to the constituents for which the legislator is eligible to receive a per diem.

Proposed law provides that the court shall take judicial notice any time the legislature or any legislative committee, task force, special select committee, commission, or subcommittee convenes, and the member or employee is required to attend.

Present law (C.C.P. Art. 1041) provides incidental demands and third party demands are not barred if filed within 90 days of service of the main demand or within 90 days of service of process of the third party demand, respectively.

Proposed law provides that legislative continuances and extensions are not applicable to incidental demands and third party demands that are barred by prescription or peremption under present law.

Present law (R.S. 13:4163(D)(2)) provides that a motion for legislative continuance or extension shall be filed at no cost to the member, employee, or a member or employee's client.

Proposed law retains present law and provides that if a party or attorney opposes a motion for continuance or extension, the court may award attorney fees, court costs, and sanctions against an attorney who opposes a motion for continuance or extension and the opposition is not grounded in fact or in compliance with present law (C.C.P. Art. 863).

Present law (C.C.P. Art. 863) provides that the signature of an attorney or party on a pleading constitutes a certification by the attorney or party that they have read the pleading and to the best of their knowledge, information, and belief formed after reasonable inquiry, the attorney or party certifies all of the following:

- (1) The pleading is not being presented for any improper purpose.
- (2) Each claim, defense, or other legal assertion in the pleading is warranted.
- (3) Each allegation or other factual assertion has evidentiary support or is likely to have evidentiary support.

- (4) Each denial in the pleading is warranted by evidence or reasonably based on a lack of information or belief.

Present law provides that if the court determines that a certification has been made in violation of present law the court shall impose an appropriate sanction.

Present law (R.S. 13:4163(E)(1)) provides if the grounds for a legislative continuance or extension are founded upon the convening of a regular legislative session or constitutional convention, the motion shall be timely if filed no later than five calendar days prior to the hearing to be continued.

Proposed law retains present law and adds organizational sessions. Proposed law also provides that in the case of veto sessions, a motion for legislative continuance or extension is timely if filed during the later of four calendar days prior to the hearing or proceeding to be continued or two days following the knowledge of the convening of a veto session.

Proposed law provides that members or employees give notice at the earliest time practicable prior to for activities in connection with present law (R.S. 13:4163(C)(1)(c)) including activities in connection with or ordered by the legislature, legislative committees or subcommittees, gubernatorial appointments to committees or commissions, or any constitutional convention or commission.

Present law (R.S. 13:4163(G)) provides that actions taken against a person who has filed a motion for legislative continuance or extension and resulting from such person or attorney to appear or comply with the court shall be an absolute nullity and set aside by the court upon a filing of a motion by the aggrieved person or attorney.

Proposed law retains present law and provides that actions taken against a person who has filed for continuance or extension which resulted from or relates back to a misapplication of proposed law shall be considered an absolute nullity and shall be set aside by the court at no cost to the member, employee, or member or employee's client.

Present law (R.S. 13:4163(H)) provides that any person who has filed a motion for legislative continuance or extension which has been denied or not been granted within 72 hours of filing may apply directly to the supreme court for supervisory writs.

Proposed law retains present law and provides that actions taken against a person who has filed for continuance or extension which resulted from or relates back to a misapplication of proposed law may be appealed to or a supervisory writ may be filed with the supreme court or courts of appeal at no cost to a member, employee, or member or employee's client.

(Amends R.S. 13:4163(B), (C)(1)(c), (D)(2), (E)(1)(a) and (b), (G), and (H)(2); Adds R.S. 13:4163(C)(3) and (4))

Summary of Amendments Adopted by House

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

1. Provide for the permissive ordering of attorney fees, court costs, and sanctions and remove the \$1,000 minimum for attorney fees.
2. Provide that any waiver of privilege shall be revocable.
3. Provide that continuances and extensions are not applicable to incidental demands and third party demands barred by prescription or peremption.

4. Provide for the applicability of continuances and extensions to organizational and veto sessions.
5. Remove provision authorizing the timely filing of a continuance or extension prior to a proceeding on a motion for sanctions or penalties brought by opposing counsel for the failure to comply with a legal deadline.
6. Remove permissive applicability of the continuance or extension to cases before the Supreme Court of La.
7. Remove authority to request a judicial recusal for denials of continuance or extensions.
8. Make technical changes.