

2023 Regular Session

HOUSE BILL NO. 230

BY REPRESENTATIVE GREGORY MILLER

1 AN ACT

2 To amend and reenact Code of Civil Procedure Articles 531, 561(A), 925(A)(introductory  
3 paragraph) and (C), 927(A)(introductory paragraph) and (B), 963, 1155, 1424(C),  
4 and 1702(A)(2) and (3), the heading of Code of Civil Procedure Article 1810, and  
5 Code of Civil Procedure Articles 1912 and 3603(A)(introductory paragraph) and (2)  
6 and R.S. 40:1231.8(B)(2)(a) and 1237.2(B)(2)(a), to enact Code of Civil Procedure  
7 Articles 927(A)(8) and 1702(A)(5), and to repeal Code of Civil Procedure Articles  
8 925(A)(6) and 5183(A)(3), relative to civil procedure; to provide for continuous  
9 revisions to the Code of Civil Procedure and related provisions of the Revised  
10 Statutes; to provide for actions pending in Louisiana courts; to provide with respect  
11 to abandonment in trial and appellate courts; to provide for objections raised by  
12 declinatory and peremptory exceptions; to provide for unopposed motions; to  
13 provide for supplemental pleadings; to provide for privilege logs within the scope  
14 of discovery; to provide with respect to notice in default judgment; to provide with  
15 respect to the signing of final judgments; to provide with respect to temporary  
16 restraining orders; to provide with respect to affidavits of poverty; and to provide for  
17 related matters.

18 Be it enacted by the Legislature of Louisiana:

19 Section 1. Code of Civil Procedure Articles 531, 561(A), 925(A)(introductory  
20 paragraph) and (C), 927(A)(introductory paragraph) and (B), 963, 1155, 1424(C), and  
21 1702(A)(2) and (3), the heading of Code of Civil Procedure Article 1810, and Code of Civil  
22 Procedure Articles 1912 and 3603(A)(introductory paragraph) and (2) are hereby amended  
23 and reenacted, and Code of Civil Procedure Articles 927(A)(8) and 1702(A)(5) are hereby  
24 enacted to read as follows:

1 Art. 531. Suits Actions pending in Louisiana court or courts

2 When two or more ~~suits~~ actions are pending in a Louisiana court or courts on  
3 the same transaction or occurrence, between the same parties in the same capacities,  
4 the defendant may have all but the first ~~suit~~ action dismissed by excepting thereto as  
5 provided in Article 925. When the defendant does not so except, the plaintiff may  
6 continue the prosecution of any of the ~~suits~~ actions, but the first final judgment  
7 rendered shall be conclusive of all.

8 Comments - 2023

9 The replacement of "suits" with "actions" does not change the law but is in  
10 accordance with the court's ruling in Chumley v. LaCour, 339 So. 3d 766, 768 (La.  
11 App. 2 Cir. 2022).

12 \* \* \*

13 Art. 561. Abandonment in trial and appellate court

14 A.(1) An action, ~~except as provided in Subparagraph (2) of this Paragraph,~~  
15 is abandoned when the parties fail to take any step in its prosecution or defense in the  
16 trial court for a period of three years, unless it is a succession proceeding:

- 17 (a) Which has been opened;
- 18 (b) In which an administrator or executor has been appointed; or
- 19 (c) In which a testament has been probated.

20 ~~(2) If a party whose action is declared or claimed to be abandoned proves~~  
21 ~~that the failure to take a step in the prosecution or defense in the trial court or the~~  
22 ~~failure to take any step in the prosecution or disposition of an appeal was caused by~~  
23 ~~or was a direct result of Hurricane Katrina or Rita, an action originally initiated by~~  
24 ~~the filing of a pleading prior to August 26, 2005, which has not previously been~~  
25 ~~abandoned in accordance with the provisions of Subparagraph (1) of this Paragraph,~~  
26 ~~is abandoned when the parties fail to take any step in its prosecution or defense in the~~  
27 ~~trial court for a period of five years, unless it is a succession proceeding:~~

- 28 ~~(a) Which has been opened;~~
- 29 ~~(b) In which an administrator or executor has been appointed; or~~
- 30 ~~(c) In which a testament has been probated.~~

1           ~~(3)~~ (2) This provision shall be operative without formal order, but, on ex  
 2           parte motion of any party or other interested person by affidavit ~~which provides that~~  
 3           states that no step has been timely taken in the prosecution or defense of the action,  
 4           the trial court shall enter a formal order of dismissal as of the date of its  
 5           abandonment. The sheriff shall serve the order in the manner provided in Article  
 6           1314, and shall execute a return pursuant to Article 1292.

7           ~~(4)~~ (3) A motion to set aside a dismissal may be made only within thirty days  
 8           of the date of the sheriff's service of the order of dismissal. If the trial court denies  
 9           a timely motion to set aside the dismissal, the clerk of court shall give notice of the  
 10          order of denial pursuant to Article 1913(A) and shall file a certificate pursuant to  
 11          Article 1913(D).

12          ~~(5)~~ (4) An appeal of an order of dismissal may be taken only within sixty  
 13          days of the date of the sheriff's service of the order of dismissal. An appeal of an  
 14          order of denial may be taken only within sixty days of the date of the clerk's mailing  
 15          of the order of denial.

16          ~~(6) The provisions of Subparagraph (2) of this Paragraph shall become null~~  
 17          ~~and void on August 26, 2010.~~

\* \* \*

Art. 925. Objections raised by declinatory exception; waiver

20          A. The objections ~~which~~ that may be raised through the declinatory  
 21          exception include but are not limited to the following:

\* \* \*

23          C. All objections ~~which~~ that may be raised through the declinatory  
 24          exception, ~~except the court's lack of jurisdiction over the subject matter of the action,~~  
 25          are waived unless pleaded therein.

Comments - 2023

27          The objection of lack of jurisdiction over the subject matter is deleted from  
 28          the objections raised by declinatory exceptions and has been added as an objection  
 29          that is raised by peremptory exception under Article 927.

\* \* \*

1 Art. 927. Objections raised by peremptory exception

2 A. The objections ~~which~~ that may be raised through the peremptory  
3 exception include but are not limited to the following:

4 \* \* \*

5 (8) The court's lack of jurisdiction over the subject matter of the action.

6 B. Except as otherwise provided by Articles 1702(D), 4904(D), and 4921(C),  
7 the court ~~may~~ shall not supply the objection of prescription, which shall be specially  
8 pleaded. The nonjoinder of a party, peremption, res judicata, discharge in  
9 bankruptcy, the failure to disclose a cause of action or a right or interest in the  
10 plaintiff to institute the suit, or ~~discharge in bankruptcy~~, the court's lack of  
11 jurisdiction over the subject matter of the action may be noticed by either the trial or  
12 appellate court on its own motion. Once the objection of the lack of subject matter  
13 jurisdiction is raised by the parties or noticed by the court on its own motion, the  
14 court shall address the objection before ruling on any other matter. If an exception  
15 is noticed by the appellate court on its own motion, the exception shall not be  
16 adjudicated without assigning the matter for briefing and permitting the parties an  
17 opportunity to request oral argument.

18 Comments - 2023

19 The objection of the court's lack of jurisdiction over the subject matter of the  
20 action may be raised through a peremptory exception. Paragraph B now mandates  
21 that in all cases where multiple objections are raised, the court should rule on the  
22 objection of lack of subject matter jurisdiction prior to ruling on any other matters.  
23 Under Article 3, a judgment rendered by a court having no jurisdiction over the  
24 subject matter of the action or proceeding is void. Paragraph B has been further  
25 revised to clarify that if an appellate court raises a peremptory exception on its own  
26 motion, the court shall give the parties an opportunity to brief the exception and  
27 request oral argument. This provision allows the parties the opportunity to address  
28 the merits of a peremptory exception that is raised by the court for the first time at  
29 the appellate level. See, e.g., *Thompson v. Winn-Dixie Montgomery, Inc.*, 181 So.  
30 3d 656 (La. 2015) ("The court of appeal's failure to give the parties notice of its *sua*  
31 *sponte* determination or to provide them with an opportunity to be heard on the issue  
32 of operational control was legal error."); *Merrill v. Greyhound Lines, Inc.*, 60 So. 3d  
33 600 (La. 2011) ("[W]e find no error in the decision of the court of appeal to review  
34 issues not raised by the parties. However, having made the determination to review  
35 these issues, the court of appeal should have invited additional briefing from the  
36 parties prior to rendering judgment.").

37 \* \* \*

1 Art. 963. Ex parte, ~~and~~ contradictory, and unopposed motions; rule to show cause

2 A. If the order applied for by written motion is one to which the mover is  
3 clearly entitled without supporting proof, the court may grant the order ex parte and  
4 without hearing the adverse party.

5 B. If the order applied for by written motion is one to which the mover is not  
6 clearly entitled, or which requires supporting proof, the motion shall be served on  
7 and tried contradictorily with the adverse party.

8 C. The rule to show cause is a contradictory motion.

9 D. An unopposed motion is one to which all affected parties have consented  
10 prior to the filing of the motion. The mover shall certify in the motion that the  
11 mover has obtained the consent of all affected parties both to the motion and to the  
12 accompanying order that is presented to the court. Failure to certify that all affected  
13 parties have consented requires the motion to be set for contradictory hearing.

14 Comments - 2023

15 Paragraph D was adapted from Louisiana District Court Rule 9.8(f) to codify  
16 the procedure used for unopposed motions. An unopposed motion should be served  
17 on all parties under Article 1313(C) by emailing the motion to the email address  
18 designated by counsel or the party to ensure that all parties have notice of the  
19 proposed unopposed motion and order. Similar to an ex parte motion, an unopposed  
20 motion may be granted by the court without hearing from the consenting party.

21 \* \* \*

22 Art. 1155. Supplemental pleadings

23 The court, ~~on motion of a party, upon reasonable notice and upon such terms~~  
24 ~~as are just~~ upon written consent of the parties, may permit the mover to file a  
25 supplemental petition or answer setting forth items of damage, causes of action or  
26 defenses ~~which that~~ that have become exigible since the date of filing the original petition  
27 or answer, and ~~which that~~ that are related to or connected with the causes of action or  
28 defenses asserted therein. If the parties do not consent, the court may grant leave to  
29 file a supplemental petition or answer only upon contradictory motion.

30 Comments - 2023

31 (a) This Article changes procedural law by providing that a party who wishes  
32 to file a supplemental pleading must either have the consent of all parties or file a  
33 contradictory motion. Previously, a party was permitted to file a supplemental  
34 pleading after obtaining leave of court and providing "reasonable notice," the

1 meaning of which was uncertain. The filing of a contradictory motion will guarantee  
2 that other parties are afforded an opportunity to object to the filing of a supplemental  
3 pleading and will therefore alleviate concerns with respect to what constitutes  
4 "reasonable notice."

5 (b) With this change to Article 1155, the practice of filing an "Amending and  
6 Supplemental Petition" should be avoided unless the petition contains causes of  
7 action that have become exigible since the filing of the original petition. Whereas  
8 the filing of an amending petition under Article 1152 requires only leave of court,  
9 the filing of a supplemental petition under this Article will require a contradictory  
10 hearing if all parties do not consent.

11 \* \* \*

12 Art. 1424. Scope of discovery; trial preparation; materials

13 \* \* \*

14 C. When a party withholds information otherwise discoverable under these  
15 rules by claiming that it is privileged or subject to protection as trial preparation  
16 material, the party shall make the claim expressly and shall ~~describe~~ prepare and  
17 send to the other parties a privilege log that describes the nature of the documents,  
18 communications, or things not produced or disclosed in a manner that, without  
19 revealing information itself privileged or protected, will enable other parties to assess  
20 the applicability of the privilege or protection.

21 Comments - 2023

22 This Article was amended in accordance with the court's opinion in Cloud v.  
23 Gibson, 344 So. 3d 253, 258 (La. App. 4 Cir. 2022) wherein the Fourth Circuit held  
24 that a privilege log under Paragraph C of this Article is mandatory and not  
25 discretionary. "Privilege log" is a generally accepted term that refers to a document  
26 that enables other parties to assess the applicability of a privilege or protection upon  
27 withheld information otherwise discoverable under the rules.

28 \* \* \*

29 Art. 1702. Default judgment

30 A.

31 \* \* \*

32 (2) If a party who fails to answer has made an appearance of record in the  
33 case, notice that the plaintiff intends to obtain a default judgment shall be sent by  
34 certified mail or actually delivered to counsel of record for the party, or if there is no  
35 counsel of record, to the party, at least seven days before a default judgment may be  
36 rendered.



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

4 \* \* \*

5 Comments - 2023

6 This Article was amended to clarify that a temporary restraining order may  
7 be granted without notice only if the applicant or his attorney has certified in writing  
8 that notice has been given to the adverse party or his attorney, that efforts were made  
9 to give notice, or that reason exists as to why notice should not be required. See  
10 Comments-1985.

11 \* \* \*

12 Section 2. R.S. 40:1231.8(B)(2)(a) and 1237.2(B)(2)(a) are hereby amended and  
13 reenacted to read as follows:

14 §1231.8. Medical review panel

15 \* \* \*

16 B.

17 \* \* \*

18 (2)(a) A health care provider, against whom a claim has been filed under the  
19 provisions of this Part, may raise peremptory exceptions of no right of action  
20 pursuant to Code of Civil Procedure Article 927~~(6)~~ or any exception or defenses  
21 available pursuant to R.S. 9:5628 in a court of competent jurisdiction and proper  
22 venue at any time without need for completion of the review process by the medical  
23 review panel.

24 \* \* \*

25 §1237.2. State medical review panel

26 \* \* \*

27 B.

28 \* \* \*

29 (2)(a) The state or a person, against whom a claim has been filed under the  
30 provisions of this Part, may raise peremptory exceptions of no right of action  
31 pursuant to Code of Civil Procedure Article 927~~(6)~~ or any exceptions or defenses  
32 available pursuant to R.S. 9:5628 in a court of competent jurisdiction and proper

1 venue at any time without need for completion of the review process by the state  
2 medical review panel.

3 \* \* \*

4 Section 3. Code of Civil Procedure Articles 925(A)(6) and 5183(A)(3) are hereby  
5 repealed in their entirety.

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_