HLS 242ES-69 REENGROSSED

2024 Second Extraordinary Session

HOUSE BILL NO. 23

1

BY REPRESENTATIVE MELERINE

CIVIL/PROCEDURE: Provides with respect to procedures for challenging the constitutionality of a statute or law (Item #21)

AN ACT

2 To amend and reenact R.S. 49:257(C) and Code of Civil Procedure Article 1880 and to enact 3 Code of Civil Procedure Articles 855.1 and 1845 and Code of Criminal Procedure 4 Article 62(D), relative to procedures challenging the constitutionality of state law; 5 to provide for procedures for actions alleging unconstitutionality of laws; and to 6 provide for related matters. 7 Be it enacted by the Legislature of Louisiana: 8 Section 1. Code of Civil Procedure Article 1880 is hereby amended and reenacted, 9 and Code of Civil Procedure Articles 855.1 and 1845 are hereby enacted to read as follows: 10 Art. 855.1. Pleadings for unconstitutionality of state law 11 All civil actions alleging that a statute or law is unconstitutional shall be in 12 writing and be brought in an ordinary proceeding. The pleading shall be served upon 13 the attorney general of the state in accordance with Article 1314. Upon proper 14 service, the attorney general shall have thirty days to respond to the allegations or 15 represent or supervise the interests of the state. 16 Art. 1845. Effects of judgments on state law 17 18 A judgment rendering a statute or law unconstitutional is absolutely null and 19 shall be void and unenforceable if the provisions of Article 855.1 have not been met. 20

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CODING: Words in struck through type are deletions from existing law; words <u>underscored</u> are additions.

Art. 1880. Parties

When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding. In a proceeding which involves the validity of a municipal ordinance or franchise, such municipality shall be made a party, and shall be entitled to be heard. If the statute, ordinance, or franchise is alleged to be unconstitutional, the attorney general of the state shall also be served with a copy of the proceeding and be entitled to be heard. If the statute or law is alleged to be unconstitutional, pleadings shall be made pursuant to the requirements in Articles 855.1 and 1845.

Section 2. Code of Criminal Procedure Article 62(D) is hereby enacted to read as follows:

Art. 62. Authority of attorney general; supervision of district attorney

14 * * *

D. Any pleading containing an allegation of unconstitutionality of a criminal statute shall be in writing and served upon the attorney general of the state. Upon proper service, the attorney general shall have thirty days to respond to the allegations or represent or supervise the interests of the state. The attorney general shall have a right to directly appeal adverse rulings to the supreme court of Louisiana for supervisory review whether or not the attorney general participated in the underlying proceeding.

Section 3. R.S. 49:257(C) is hereby amended and reenacted to read as follows:

§257. Legal representation of certain state agencies

24 * * *

C. Notwithstanding any other law to the contrary, the attorney general, at his discretion, shall represent or supervise the representation of the interests of the state in any action or proceeding in which the constitutionality of a state statute or of a resolution of the legislature is challenged or assailed. <u>In all other proceedings in which the constitutionality of a statute or law is assailed, the attorney general shall</u>

be served notice or a copy of the pleading. The attorney general, at his discretion,

shall be permitted to present, represent, or supervise the representation of the state's

interest in the proceeding if the proceeding is in accordance with Code of Civil

Procedure Articles 855.1 and 1845 and Code of Criminal Procedure Article 62(D).

In any civil proceeding challenging the constitutionality of a statute or law, the

allegations of unconstitutionality shall be contained in a pleading as defined in Code

of Civil Procedure Article 852.

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 23 Reengrossed

2024 Second Extraordinary Session

Melerine

Abstract: Establishes the procedures to challenge the constitutionality of statutes or law.

<u>Proposed law</u> (C.C.P. Art. 855.1) requires civil pleadings alleging a statute or law unconstitutional to be in writing and brought as an ordinary proceeding. <u>Proposed law</u> also allows the attorney general 30 days to respond to the pleading or represent or supervise the interests of the state.

<u>Proposed law</u> (C.C.P. Art. 1845) provides that judgments rendering a statute or law unconstitutional are absolutely null and shall be void and unenforceable if the provisions of <u>proposed law</u> are not met.

<u>Present law</u> (R.S. 49:257(C)) provides that the attorney general under his discretion shall represent or supervise the representation of the interests of the state in any action or proceeding in which the constitutionality of a state statute or of a resolution of the legislature is challenged or assailed.

<u>Proposed law</u> retains <u>present law</u> but requires all other proceedings to be in accordance with C.C.P. Art. 852 and <u>proposed law</u>.

<u>Present law</u> (C.C.P. Art. 1880) provides that when declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding.

<u>Proposed law</u> retains <u>present law</u> but requires proceedings alleging unconstitutionality of statutes or laws be in accordance with <u>proposed law</u>.

<u>Present law</u> (C.Cr.P. Art. 62) provides supervisory authority for the attorney general in certain circumstances involving the district attorneys and other state interests.

<u>Proposed law</u> retains <u>present law</u> but requires actions alleging that statutes or laws are unconstitutional to be brought in accordance with <u>proposed law</u>.

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<u>Proposed law</u> allows the attorney general 30 days to respond to the pleading or represent or supervise the interests of the state.

<u>Proposed law</u> also allows the attorney general to directly appeal adverse rulings to the supreme court of Louisiana for a supervisory review whether or not the attorney general participated in the underlying proceeding.

(Amends R.S. 49:257(C) and C.C.P. Art. 1880; Adds C.C.P. Art. 855.1 and 1845 and C.Cr.P. Art. 62(D))

Summary of Amendments Adopted by House

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

1. Add technical changes.

The House Floor Amendments to the engrossed bill:

- 1. Make technical changes.
- 2. Add language that would make judgments rendered in a civil proceeding not in compliance with <u>proposed law</u> absolutely null.
- 3. Require only civil actions be brought in an ordinary proceeding.