

2024 Regular Session

HOUSE BILL NO. 227

BY REPRESENTATIVE MUSCARELLO

(On Recommendation of the Louisiana State Law Institute)

CIVIL/PROCEDURE: Provides for continuous revisions relative to civil procedure

1 AN ACT

2 To amend and reenact Civil Code Article 3462 and Code of Civil Procedure Articles 863(A)  
3 and (F), 1425(F)(1) and (2), 1436.1, 2163, 2298, 3136, and 3335, relative to civil  
4 procedure; to provide for continuous revisions to the Civil Code and Code of Civil  
5 Procedure; to provide for the interruption of prescription; to provide for the  
6 electronic signature of pleadings; to provide for the procedure to challenge experts;  
7 to provide with respect to depositions by telephone; to provide for peremptory  
8 exceptions filed in an appellate court; to provide with respect to injunctions  
9 prohibiting sales; to provide with respect to descriptive lists of property in lieu of  
10 inventory; to provide for notice to heirs and residuary legatees; to provide for  
11 comments; and to provide for related matters.

12 Be it enacted by the Legislature of Louisiana:

13 Section 1. Civil Code Article 3462 is hereby amended and reenacted to read as  
14 follows:

15 Art. 3462. Interruption by filing of suit action or by service of process  
16 ~~Prescription~~ Unless otherwise expressly provided by legislation, prescription  
17 is interrupted when ~~the owner commences action against the possessor, or when the~~  
18 ~~obligee commences action against the obligor,~~ an action is commenced in a court of  
19 competent jurisdiction ~~and venue~~. If an action is commenced in ~~an incompetent~~

1 ~~court, or in an improper venue, a court without competent jurisdiction,~~ prescription  
2 is interrupted only as to a defendant served by process within the prescriptive period.

3 Revision Comments - 2024

4 This amendment changes the law. The filing of an action in a court of  
5 competent jurisdiction will interrupt the prescriptive period even if venue is  
6 improper. There are, however, numerous more specific statutes that still require an  
7 action to be filed in a court of both competent jurisdiction and proper venue in order  
8 to interrupt prescription, including R.S. 9:5604 (professional accounting liability),  
9 5605 (legal malpractice), 5606 (professional insurance agent liability), 5607  
10 (professional engineer, surveyor, interior designer, architect, and real estate  
11 developer liability), and 5608 (action against home inspectors).

12 Section 2. Code of Civil Procedure Articles 863(A) and (F), 1425(F)(1) and (2),  
13 1436.1, 2163, 2298, 3136, and 3335 are hereby amended and reenacted to read as follows:

14 Art. 863. Signing of pleadings; effect

15 A. Every pleading of a party represented by an attorney shall be signed by  
16 at least one attorney of record in his individual name, whose physical address and  
17 email address for service of process shall be stated. A party who is not represented  
18 by an attorney shall sign his pleading and state his physical address and email  
19 address, ~~if he~~ the party has an email address, for service of process. If mail is not  
20 received at the physical address for service of process, a designated mailing address  
21 shall also be provided. A party or attorney may sign a pleading by electronic  
22 signature in accordance with Article 253.

23 \* \* \*

24 F. A sanction authorized in Paragraph D of this Article shall not be imposed  
25 with respect to an original petition ~~which~~ that is filed within sixty days of an  
26 applicable prescriptive date and then voluntarily dismissed or transferred to a court  
27 of proper venue within ninety days after its filing or on the date of a hearing on the  
28 pleading, whichever is earlier.

29 \* \* \*

30 Art. 1425. Experts; pretrial disclosures; scope of discovery

31 \* \* \*

1 F.(1) ~~Any party may file a motion for a pretrial hearing to determine~~ A party  
 2 seeking to challenge whether a witness qualifies as an expert or whether the  
 3 methodologies employed by ~~such the~~ witness are reliable under Code of Evidence  
 4 Articles 702 through 705 ~~of the Louisiana Code of Evidence~~ shall file a motion for  
 5 a pretrial hearing. The motion shall be filed not later than sixty days prior to trial  
 6 and shall set forth sufficient allegations showing the necessity for these  
 7 determinations by the court.

8 (2) The court shall hold a contradictory hearing and shall rule on the motion  
 9 not later than thirty days prior to the trial. At the hearing, the court shall consider the  
 10 qualifications and methodologies of the proposed witness based upon the provisions  
 11 of Code of Evidence Articles 104(A) and 702 through 705 ~~of the Louisiana Code of~~  
 12 ~~Evidence~~. For good cause shown, the court may allow live testimony at the  
 13 contradictory hearing.

14 \* \* \*

15 Comments - 2024

16 The amendment to Paragraph F of this Article makes clear that a pretrial  
 17 hearing is necessary to determine whether a witness qualifies as an expert or whether  
 18 the methodologies employed by the witness are reliable. This would change the  
 19 result reached by the First Circuit in Williams v. State Farm Mutual Automobile  
 20 Insurance Company, 322 So. 3d 795, 797 (La. App. 1 Cir. 2021), in which the court  
 21 held that the use of the permissive "may" did not mandate a pretrial motion to  
 22 challenge the qualifications of an expert.

23 \* \* \*

24 Art. 1436.1. Depositions by telephone

25 If agreed upon by every party to ~~a suit~~ an action or if ordered by the court, a  
 26 deposition may be taken by telephone or other remote electronic means.

27 \* \* \*

28 Art. 2163. Peremptory exception filed in appellate court; remand if prescription or  
 29 peremption pleaded

30 A. The appellate court may consider ~~the~~ a peremptory exception filed for the  
 31 first time in that court; if the exception is pleaded prior to a submission of the case  
 32 for a decision; and if proof of the ground of the exception appears of record.

1           B. If the ground for the peremptory exception pleaded in the appellate court  
2           is prescription or peremption, the plaintiff may demand that the case be remanded  
3           to the trial court for trial of the exception.

4   \*       \*       \*

5           Art. 2298. Injunction prohibiting sale; damages

6           A. Injunctive relief prohibiting the sheriff from proceeding with the sale of  
7           property seized under a writ of fieri facias shall be granted to the judgment debtor  
8           or to a third person claiming ownership of the seized property:

9                           (1) When the sheriff is proceeding with the execution contrary to law;<sub>2</sub>

10                          (2) When subsequent to the judgment payment has been made, ~~or~~  
11                          compensation has taken place against the judgment, or ~~it~~ the judgment has been  
12                          otherwise extinguished. If the payment, compensation, or extinguishment is for a  
13                          part of the judgment, the injunction shall be granted to that extent, and the execution  
14                          shall continue for the amount of the excess;<sub>2</sub>

15                          (3) When the judgment is for the payment of the purchase price of property  
16                          sold to the judgment debtor and a suit for recovery of the property has been filed by  
17                          an adverse claimant;~~or~~<sub>2</sub>

18                          (4) When the judgment sought to be executed is absolutely null.

19           B. In the event that injunctive relief is granted to the judgment debtor or third  
20           party claiming ownership of the seized property, if the court finds the seizure to be  
21           wrongful, it may allow damages. ~~Attorney's~~ Attorney fees for the services rendered  
22           in connection with the injunction may be included as an element of the damages.

23   Comments - 2024

24           Paragraph B of this Article, the substance of which was enacted in 1981, is  
25           intended to give the trial judge the discretion to award damages and attorney fees  
26           where the seizure through executory process was wrongful. It is not intended to  
27           require that damages and attorney fees be awarded in every case in which an  
28           injunction is issued, such as when an injunction is issued because of a technical  
29           deficiency or a technical error.

30   \*       \*       \*

1 Art. 3136. Descriptive list of property in lieu of inventory

2 A. Whenever an inventory of succession property otherwise would be  
3 required by law, the person at whose instance the inventory would be taken may file  
4 ~~with the Department of Revenue and~~ in the succession proceeding, in lieu of an  
5 inventory complying with ~~articles~~ Articles 3131 through 3135, a detailed, descriptive  
6 list of all succession property. This list shall be sworn to and subscribed by the  
7 person filing it, shall show the location of all items of succession property, and shall  
8 set forth the fair market value of each item thereof at the date of the death of the  
9 deceased.

10 B. The privilege of filing a descriptive list of succession property, in lieu of  
11 an inventory thereof, may be exercised without judicial authority.

12 \* \* \*

13 Art. 3335. Notice to heirs and residuary legatees

14 A. A copy of any account filed by a succession representative shall be served  
15 upon each heir or residuary legatee, together with a notice that the account may be  
16 homologated after the expiration of ten days from the date of service and that any  
17 opposition thereto ~~must~~ shall be filed before homologation.

18 B. In the case of any account other than the final account, service on either  
19 a resident or nonresident may be made by ordinary mail.

20 C. In the case of a final account, service may be made by either of the  
21 following:

- 22 (a) (1) In accordance with the provisions of Article 1314; ~~or,~~
- 23 (b) ~~By~~ (2) On either a resident or a nonresident, by certified or registered  
24 mail on either a resident or nonresident or by use of a commercial courier that  
25 requires a signed receipt from the addressee upon completion of delivery. The  
26 certificate of the attorney for the succession representative that the notice and final  
27 account were ~~mailed~~ sent to the heir or legatee, together with the ~~return~~ receipt  
28 signed by the addressee, shall be filed in the succession proceeding prior to  
29 homologation of the final account.

1 Comments - 2024

2 In light of the practical difficulties in the modern day of obtaining a "return  
3 receipt signed by the addressee" for certified mail, this Article was revised to allow  
4 for a final account to be served upon an heir or residuary legatee by a commercial  
5 courier that requires a signed receipt from the addressee upon completion of  
6 delivery. Moreover, service by "registered" mail was removed as an option because  
7 the addressee of a parcel sent by registered mail has the ability to waive the signature  
8 requirement and still receive the parcel.

9 Section 3. The Louisiana State Law Institute is hereby directed to delete Comment  
10 (f) of the 1960 Official Revision Comments to Code of Civil Procedure Article 2751.

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#### 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)]

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HB 227 Original

2024 Regular Session

Muscarello

**Abstract:** Provides for continuous revisions relative to civil procedure.

Present law (C.C. Art. 3462) provides that prescription is interrupted when an action is commenced in a court of competent jurisdiction and venue.

Proposed law retains present law but removes the requirement of venue.

Present law (C.C.P. Art. 863) provides for the signing of pleadings and the imposition of sanctions.

Proposed law retains present law but adds that a party or attorney may sign a pleading by electronic signature in accordance with Article 253. Proposed law further provides that sanctions shall not be imposed with respect to an original petition that is filed within 60 days of an applicable prescriptive date and then transferred to a court of proper venue.

Present law (C.C.P. Art. 1425) provides that any party may file a motion for a pretrial hearing to determine whether a witness qualifies as an expert or whether the methodologies employed are reliable under the Code of Evidence.

Proposed law changes present law by requiring a party seeking to challenge whether a witness qualifies as an expert or whether the methodologies employed are reliable under the Code of Evidence to file a motion for a pretrial hearing.

Present law (C.C.P. Art. 1436.1) provides for depositions by telephone.

Proposed law retains present law but makes minor semantic changes.

Present law (C.C.P. Art. 2163) provides that if the ground for the peremptory exception pleaded in the appellate court is prescription, the plaintiff may demand that the case be remanded to the trial court for trial of the exception.

Proposed law retains present law but adds peremption in addition to prescription.

Present law (C.C.P. Art. 2298) sets forth the procedure for injunctions prohibiting sales.

Proposed law retains present law but makes minor semantic changes.

Present law (C.C.P. Art. 3136) provides for the descriptive list of property in lieu of inventory.

Proposed law retains present law but removes an outdated reference relative to the Department of Revenue.

Present law (C.C.P. Art. 3335) provides that in the case of a final account, service may be made in accordance with Article 1314 or by certified mail on either a resident or a nonresident.

Proposed law retains present law but adds that service may be made on either a resident or a nonresident by use of a commercial courier that requires a signed receipt from the addressee upon completion of delivery.

(Amends C.C. Art. 3462 and C.C.P. Arts. 863(A) and (F), 1425(F)(1) and (2), 1436.1, 2163, 2298, 3136, and 3335)