

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

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. Code of Civil Procedure Articles 863(A), 1425(F)(1) and (2), 1436.1,  
13 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

1 shall also be provided. A party or attorney may sign a pleading by electronic  
2 signature in accordance with Article 253.

3 \* \* \*

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

5 \* \* \*

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

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

19 \* \* \*

20 Comments - 2024

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

28 \* \* \*

1 Art. 1436.1. Depositions by telephone

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

4 \* \* \*

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

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

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

13 \* \* \*

14 Art. 2298. Injunction prohibiting sale; damages

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

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

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

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

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

28 B. In the event that injunctive relief is granted to the judgment debtor or third  
29 party claiming ownership of the seized property, if the court finds the seizure to be

1 wrongful, it may allow damages. ~~Attorney's~~ Attorney fees for the services rendered  
2 in connection with the injunction may be included as an element of the damages.

3 Comments - 2024

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

10 \* \* \*

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

12 A. Whenever an inventory of succession property otherwise would be  
13 required by law, the person at whose instance the inventory would be taken may file  
14 ~~with the Department of Revenue and~~ in the succession proceeding, in lieu of an  
15 inventory complying with ~~articles~~ Articles 3131 through 3135, a detailed; descriptive  
16 list of all succession property. This list shall be sworn to and subscribed by the  
17 person filing it, shall show the location of all items of succession property, and shall  
18 set forth the fair market value of each item thereof at the date of the death of the  
19 deceased.

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

22 \* \* \*

23 Art. 3335. Notice to heirs and residuary legatees

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

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

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



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 Dept. 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.P. Arts. 863(A), 1425(F)(1) and (2), 1436.1, 2163, 2298, 3136, and 3335)

#### Summary of Amendments Adopted by House

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

1. Add technical changes.

#### The House Floor Amendments to the engrossed bill:

1. Make technical changes.
2. Remove proposed changes to C.C. Art. 3462 that allowed an interruption of prescription by filing an action in a court of competent jurisdiction without the requirement that the action also be filed in a proper venue.
3. Remove proposed changes to C.C.P. Art. 863(F) that prohibited sanctions from being imposed with respect to an original petition that is transferred to a court of proper venue.