

2024 Third Extraordinary Session

SENATE BILL NO. 8

BY SENATOR MILLER

CIVIL PROCEDURE. Provides for legislative continuances. (Item #20) (gov sig)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17

AN ACT

To amend and reenact R.S. 13:4163, relative to legislative continuances; to provide with respect to continuance and extension of deadlines; to authorize members of the legislature and legislative employees to file legislative continuances in certain circumstances; to provide for peremptory grounds; to provide with respect to time delays and procedures; to provide for a rebuttable presumption; to provide for service of process; to provide for notification and reporting requirements; to provide for electronic transmission; to provide for exceptions; to provide for an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 13:4163 is hereby amended and reenacted to read as follows:

§4163. ~~Ex parte motion~~ **Motion** for legislative continuance or extension of time, legislators or employees engaged in legislative or constitutional convention activities

~~A.(1) A member of the legislature and a legislative employee shall have peremptory grounds for continuance or extension of a criminal case, civil case, or administrative proceeding as provided below. The continuance or extension shall be~~

1 ~~sought by written motion specifically alleging these grounds:~~

2 ~~(2) For purposes of this Section, "legislative employee" means the clerk of~~
3 ~~the House of Representative, the secretary of the Senate, and an employee of the~~
4 ~~House of Representatives, the Senate, or the Legislative Bureau, when such person~~
5 ~~is employed full-time during the legislative session or during any other time in which~~
6 ~~the continuance or extension is being sought.~~

7 ~~B. The peremptory grounds for continuance or extension is available to and~~
8 ~~for the benefit of a member or legislative employee and may only be asserted or~~
9 ~~waived by a member or employee.~~

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

15 ~~(a) Any time between thirty days prior to the original call to order and thirty~~
16 ~~days following the adjournment sine die of any session of the legislature.~~

17 ~~(b) Any time between thirty days prior to convening and thirty days following~~
18 ~~adjournment sine die of any constitutional convention.~~

19 ~~(c) Any time other than those provided in Subparagraph (a) or (b) of this~~
20 ~~Paragraph when such person is engaged in activities, including travel, in connection~~
21 ~~with or ordered by: (i) the legislature; (ii) any legislative committee or subcommittee~~
22 ~~appointed by the president of the Senate or the speaker of the House of~~
23 ~~Representatives; (iii) any committee or commission appointed by the governor or~~
24 ~~other person authorized to make such appointments; or (iv) any constitutional~~
25 ~~convention or commission.~~

26 ~~(2) Such peremptory grounds are available to any member or employee~~
27 ~~enrolled as counsel of record when his participation is required. The availability of~~
28 ~~other counsel to assume the duties or responsibilities of counsel invoking the~~
29 ~~continuance or extension does not negate the peremptory nature of his motion.~~

1 ~~D.(1) A motion for legislative continuance or extension filed by a legislative~~
2 ~~employee shall be accompanied by an affidavit, verifying such employment or~~
3 ~~service, executed by the presiding officer or the clerk or secretary of the respective~~
4 ~~house.~~

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

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

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

18 ~~(c) The provisions of this Paragraph shall not be applied so as to impede the~~
19 ~~peremptory nature of this Section.~~

20 ~~(2) Within seventy-two hours of the filing of a motion for a legislative~~
21 ~~continuance or extension, the court or agency shall grant the continuance or~~
22 ~~extension ex parte as follows:~~

23 ~~(a) If the grounds for the motion are pursuant to Subparagraph (C)(1)(a) or~~
24 ~~(b) of this Section, the continuance or extension shall be granted for a period of not~~
25 ~~less than sixty days from the date of adjournment sine die of the session of the~~
26 ~~legislature or of the constitutional convention.~~

27 ~~(b) If the grounds for the motion are pursuant to Subparagraph (C)(1)(c) of~~
28 ~~this Section, the continuance or extension shall be granted for the day or days the~~
29 ~~member or employee is engaged in such activities.~~

1 ~~F.(1) The provisions of this Section shall not apply to cases in the Supreme~~
2 ~~Court of Louisiana, criminal cases where the death penalty is sought, and~~
3 ~~administrative rulemaking authorized by R.S. 49:961.~~

4 ~~(2) The provisions of this Section shall not apply to cases and proceedings~~
5 ~~wherein a member or employee is called as a witness, in which instances the~~
6 ~~provisions of R.S. 13:3667.1 and 3667.3 shall apply.~~

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

13 ~~H.(1) Any person or attorney who has filed a motion for legislative~~
14 ~~continuance or extension which has been denied or which has not been granted~~
15 ~~within seventy-two hours of filing may apply directly to the Supreme Court of~~
16 ~~Louisiana for supervisory writs to review the action or inaction of the court or~~
17 ~~agency where the motion was filed.~~

18 ~~(2) If a motion filed pursuant to Subsection G of this Section is denied, such~~
19 ~~denial shall be an appealable order.~~

20 ~~I.(1) For sufficient cause shown, the court shall consider a motion for~~
21 ~~legislative continuance or extension at any time prior to the hearing or proceeding.~~

22 ~~(2) The motion for a legislative continuance may be filed by electronic means~~
23 ~~such as facsimile transmission or electronic mail, or any other means authorized by~~
24 ~~law, provided that the mover shall provide all opposing counsel or parties with a~~
25 ~~copy of the motion, simultaneously with the transmission of the motion to the court.~~

26 **A.(1)(a) A member of the legislature or legislative employee shall be**
27 **entitled to peremptory grounds for a continuance of any court or agency**
28 **proceeding or the extension of any legal delay or deadline, excluding civil**
29 **prescriptive or preemptive periods, criminal statutes of limitations, and**

1 criminal cases where the death penalty is sought, if the presence, participation,
2 or involvement of a member of the legislature or legislative employee, who is a
3 party or an attorney for a party is required in any criminal or civil case,
4 including any pretrial or post-trial proceeding, during any legislative session or
5 constitutional convention.

6 (b) Peremptory grounds are available any time between thirty days
7 before the convening of any session of the legislature or constitutional
8 convention and thirty days after the adjournment sine die of any session of the
9 legislature or constitutional convention.

10 (2) The motion for continuance shall be filed no later than five days prior
11 to the proceeding to be continued at no cost and shall be accompanied by an
12 affidavit that the member of the legislature or legislative employee will be or is
13 in actual attendance of a session of the legislature or constitutional convention
14 and that it is the legislator or legislative employee's intention to participate
15 actively in the preparation or presentation of the case.

16 (3)(a) The motion for continuance may be filed electronically in
17 accordance with Code of Civil Procedure Article 253 if the member of the
18 legislature or legislative employee seeking the continuance provides all enrolled
19 counsel or parties with a copy of the motion prior to or simultaneously with the
20 transmission of the motion to the clerk of court.

21 (b) Every motion for a legislative continuance or extension shall be
22 served by transmitting a copy by electronic means to counsel of record, or if
23 there is no counsel of record, to the adverse party, at the number or addresses
24 expressly designated in a pleading or other writing for receipt of electronic
25 service. Service by electronic means is complete upon transmission but is not
26 effective and shall not be certified if the serving party learns the transmission
27 did not reach the party to be served.

28 B.(1) There shall be a presumption that a motion for continuance filed
29 within the period specified in Subparagraph (A)(1)(b) of this Section by the

1 member of the legislature or legislative employee is proper and shall be granted
2 within seventy-two hours of the filing of the motion. The motion shall be
3 granted for a period of not less than sixty days from the date of adjournment
4 sine die of any session of the legislature or of a constitutional convention.

5 (2) The presumption may be overcome by clear and convincing evidence
6 under either of the following circumstances:

7 (a) The motion is being presented for an improper purpose, such as to
8 harass, cause unnecessary delay, or needlessly increase the cost of litigation.

9 (b) The objecting party has a substantial existing right or interest that
10 will be defeated or abridged and will suffer substantial and immediate
11 irreparable harm if the requested continuance is granted.

12 C. If an opposing party files a written opposition to the continuance
13 within forty-eight hours of the motion for continuance being filed, the court
14 shall do both of the following:

15 (1) Hold a contradictory hearing within forty-eight hours in accordance
16 with Code of Civil Procedure Article 1605.

17 (2) Permit the contradictory hearing to be conducted remotely if deemed
18 necessary.

19 D. A court denying a properly filed motion for a legislative continuance
20 shall issue contemporaneous written reasons for the denial which shall include
21 an analysis of Subparagraph (B)(2)(a) or (B)(2)(b) of this Section as applied to
22 the specific facts of the case.

23 E. A member of the legislature or legislative employee who has filed a
24 motion for legislative continuance which has been denied may apply directly to
25 the supreme court for supervisory writs at no cost to review the action or
26 inaction of the court where the motion was filed.

27 F. For good cause shown, the court may consider a motion for legislative
28 continuance or extension at any time prior to the hearing or proceeding.

29 G. If the attorney for a party seeking a continuance under this Section

1 is a member of the legislature, the attorney shall also serve a copy of the motion
2 for a legislative continuance or extension with the judicial administrator for the
3 Louisiana Supreme Court. The copy of the motion shall be sent to the Louisiana
4 Supreme Court contemporaneously with the filing of when the attorney files the
5 motion for legislative continuance or extension with the court.

6 H. The provisions of this Section shall not apply to proceedings wherein
7 a temporary restraining order, protective order, preliminary injunction,
8 permanent injunction, court-approved consent agreement resulting from an
9 action brought, or order issued pursuant to any of the following:

10 (1) R.S. 46:2131 et seq., R.S. 46:2151, R.S. 46:2171 et seq., R.S. 46:2181
11 et seq., R.S. 9:361 et seq., R.S. 9:372, Children's Code Article 1564 et seq., Code
12 of Civil Procedure Articles 3604 and 3607.1, or peace bonds pursuant to Code
13 of Criminal Procedure Article 30(B).

14 (2) Code of Criminal Procedure Articles, including 871.1, regarding the
15 disposition, sentence, or bail condition of a criminal matter.

16 (3) R.S. 46:1846 to prohibit communications between offenders and
17 victims following a charge or after sentencing for any crime of violence as
18 defined in R.S. 14:2, felony sex offense as defined in R.S. 46:1844(W), felony
19 human trafficking-related offense as defined in R.S. 46:1844(W), or a felony
20 offense committed upon a family member, household member, or dating
21 partner as defined by R.S. 46:2132, or upon an immediate family member of
22 such person.

23 (4) R.S. 15:574.4.2(A)(5) as condition of a parole release which requires
24 that the parolee stay away from any specific person, when the order is issued for
25 the purpose of preventing violent or threatening acts, harassment against,
26 contact or communication with, or physical proximity to, another person to
27 prevent witness intimidation, domestic abuse, stalking, dating violence, or
28 sexual assault.

29 I. The provisions of this Section shall not apply to child custody

1 proceedings or proceedings pursuant to the Domestic Violence Prevention
2 Firearm Transfer Act and Code of Criminal Procedure Article 1001 et seq.

3 J. The provisions of this Section shall not apply to proceedings for writs
4 of habeas corpus for the determination and enforcement of rights to the custody
5 of a minor or for the release of a person in custody in which the family court has
6 original jurisdiction.

7 Section 2. This Act shall become effective upon signature by the governor or, if not
8 signed by the governor, upon expiration of the time for bills to become law without signature
9 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
10 vetoed by the governor and subsequently approved by the legislature, this Act shall become
11 effective on the day following such approval.

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Angela L. De Jean.

DIGEST

SB 8 Original

2024 Third Extraordinary Session

Miller

Present law provides a member of the legislature and a legislative employee shall have peremptory grounds for continuance or extension of a criminal case, civil case, or administrative proceeding. Provides that the peremptory grounds for continuance or extension is available to and for the benefit of a member or legislative employee and may only be asserted or waived by the member or employee. Provides that such peremptory grounds are available if the presence, participation, or involvement of the member or employee is required in any capacity, including any pretrial or post-trial legal proceeding, during:

- (1) Any time between 30 days prior to the original call to order and 30 days following the adjournment sine die of any session of the legislature.
- (2) Any time between 30 days prior to convening and 30 days following adjournment sine die of any constitutional convention.
- (3) Any time when such person is engaged in activities, including travel, in connection with or ordered by the legislature, any legislative committee or subcommittee appointed by the president of the Senate or the speaker of the House of Representatives, any committee or commission appointed by the governor or other person authorized to make such appointments, or any constitutional convention or commission.

Proposed law provides that a member of the legislature or legislative employee shall be entitled to peremptory grounds for a continuance of any court or agency proceeding or the extension of any legal delay or deadline, if the presence, participation, or involvement of a member of the legislature or legislative employee, who is a party or an attorney for a party is required in any criminal or civil case, including any pretrial or post-trial proceeding, during any legislative session or constitutional convention. Provides that the peremptory grounds are available any time between 30 days before the convening of any session of the

legislature or constitutional convention and 30 days after the adjournment sine die of any session of the legislature or constitutional convention.

Present law provides that a motion for legislative continuance or extension filed by a legislative employee shall be accompanied by an affidavit, verifying such employment or service, executed by the presiding officer or the clerk or secretary of the respective house. Provides that the motion for legislative continuance or extension shall be filed at no cost to a member, employee, or a client of a member or employee. Requires the filing no later than five calendar days prior to the hearing or proceeding to be continued. Provides special provisions for extraordinary sessions. Provides that the motion for a legislative continuance may be filed by electronic means such as facsimile transmission or electronic mail, or any other means authorized by law, provided that the mover shall provide all opposing counsel or parties with a copy of the motion, simultaneously with the transmission of the motion to the court.

Proposed law provides that the motion for continuance shall be filed no later than five days prior to the proceeding to be continued at no cost and shall be accompanied by an affidavit that the member of the legislature or legislative employee will be or is in actual attendance of a session of the legislature or constitutional convention and that it is the legislator or legislative employee's intention to participate actively in the preparation or presentation of the case. Provides that the motion for continuance may be filed electronically if the member of the legislature or legislative employee seeking the continuance provides all enrolled counsel or parties with a copy of the motion prior to or simultaneously with the transmission of the motion for continuance to the clerk of court. Provides that every motion for a legislative continuance or extension shall be served by transmitting a copy by electronic means to counsel of record, or if there is no counsel of record, to the adverse party, at the number or addresses expressly designated in a pleading or other writing for receipt of electronic service. Service by electronic means is complete upon transmission but is not effective and shall not be certified if the serving party learns the transmission did not reach the party to be served.

Proposed law provides that if the attorney for a party seeking a continuance is a member of the legislature, the attorney shall also serve a copy of the motion for a legislative continuance or extension with the judicial administrator for the Louisiana Supreme Court. The copy of the motion shall be sent to the Louisiana Supreme Court contemporaneously with the filing of the motion for legislative continuance or extension with the court.

Proposed law provides that there shall be a presumption that a motion for continuance filed timely by the member of the legislature or legislative employee is proper and shall be granted within 72 hours of the filing of the motion. Requires the proceeding, legal delay or deadline to be reset to a date not less than 60 days from the date of adjournment sine die of any session of the legislature or of a constitutional convention.

Proposed law provides that the presumption may be overcome by clear and convincing evidence under either of the following circumstances:

- (1) The motion is being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation.
- (2) The objecting party has a substantial existing right or interest that will be defeated or abridged and will suffer substantial and immediate irreparable harm if the requested continuance is granted.

Proposed law provides that if an opposing party files a written opposition to the continuance within 48 hours of the motion for continuance being filed, the court shall do both of the following:

- (1) Hold a contradictory hearing within 48 hours in accordance with present law.

- (2) Permit the contradictory hearing to be conducted remotely if deemed necessary.

Proposed law requires a court denying a properly filed motion for a legislative continuance shall issue contemporaneous written reasons for the denial.

Present law provides that any person or attorney who has filed a motion for legislative continuance or extension which has been denied or which has not been granted within 72 hours of filing may apply directly to the Supreme Court of Louisiana for supervisory writs to review the action or inaction of the court or agency where the motion was filed.

Proposed law provides that a member of the legislature or legislative employee who has filed a motion for legislative continuance which has been denied may apply directly to the supreme court for supervisory writs at no cost to review the action or inaction of the court where the motion was filed.

Proposed law provides that for good cause shown, the court may consider a motion for legislative continuance or extension at any time prior to the hearing or proceeding.

Present law provides that any action taken against a person, including any sanction imposed on an attorney, who has filed a motion for legislative continuance or extension and which results from the failure of such person or attorney to appear or comply with an order of the court or agency or any deadline shall be considered an absolute nullity and shall be set aside by the court or agency upon the filing of a motion by the aggrieved person or attorney.

Proposed law deletes present law.

Present law provides that legislative continuances shall not apply to cases in the Louisiana Supreme Court, criminal cases where the death penalty is sought, and administrative rulemaking. Also, provides that present law shall not apply to cases and proceedings wherein a member or employee is called as a witness, in which instances other provisions of present law shall apply.

Proposed law provides that civil prescriptive or preemptive periods, criminal statutes of limitations, and criminal cases where the death penalty is sought are excluded from legislative continuances. Also provides that proposed law does not apply to proceedings wherein a temporary restraining order, protective order, preliminary injunction, permanent injunction, court-approved consent agreement resulting from an action brought, or order issued pursuant to any of the following:

- (1) Certain present law provisions regarding domestic violence, dating violence, stalking, sexual assault and peace bonds relating for such acts.
- (2) Criminal procedure law regarding the disposition, sentence, or bail condition of a criminal matter.
- (3) Present law prohibits communications between offenders and victims following a charge or after sentencing for any crime of violence, felony sex offense, felony human trafficking-related offense, or a felony offense committed upon a family member, household member, or dating partner.
- (4) Present law provides that as condition of a parole release which requires that the parolee stay away from any specific person, when the order is issued for the purpose of preventing violent or threatening acts, harassment against, contact or communication with, or physical proximity to, another person to prevent witness intimidation, domestic abuse, stalking, dating violence, or sexual assault.
- (5) Child custody proceedings or proceedings pursuant to the Domestic Violence Prevention Firearm Transfer Act.

- (6) Proceedings for writs of habeas corpus for the determination and enforcement of rights to the custody of a minor or for the release of a person in custody in which the family court has original jurisdiction.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 13:4163)