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## DIGEST

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Harrison

HB No. 412

**Abstract:** Provides for the payment by the non-prevailing party of court costs, attorney fees, and expert witness fees and costs incurred in the prosecution or defense of certain civil actions and motions.

Present law provides that if the court determines that a certification of a pleading has been made in violation of the provisions of present law, the court shall impose upon the person who made the certification or the represented party, or both, an appropriate sanction which may include an order to pay to the other party the amount of the reasonable expenses incurred because of the filing of the pleading, including reasonable attorney fees.

Proposed law requires that sanctions include an order to pay to the other party the amount of the court costs and reasonable expenses incurred because of the filing of the pleading, including reasonable attorney fees.

Present law provides that if the grounds of the objection raised through a peremptory exception cannot be removed by amendment of the petition, or if the plaintiff fails to comply with the order to amend, the action, claim, demand, issue, or theory shall be dismissed.

Proposed law retains present law and provides that the dismissal shall be with prejudice, and the court shall award to the exceptor payment by the plaintiff of all court costs, reasonable attorney fees, and expert witness fees and costs reasonably incurred in preparing or responding to discovery requests.

Present law provides that if the order applied for by written motion is one to which mover is clearly entitled without supporting proof, the court may grant the order ex parte and without hearing the adverse party.

Proposed law retains present law and provides that if the court grants such an ex parte order without hearing, the court shall award to the mover payment by the opposing party of all court costs, reasonable attorney fees, and expert witness fees and costs reasonably incurred in preparing and filing the motion.

Present law provides that the court may, at any time and after a hearing, order stricken from any pleading any insufficient demand or defense or any redundant, immaterial, impertinent, or scandalous matter.

Proposed law retains present law and provides that if the court orders redundant, immaterial, impertinent, or scandalous matters stricken from a pleading, the court shall award to the mover payment by the opposing party of all court costs, reasonable attorney fees, and expert witness fees and costs reasonably incurred in filing and hearing of the motion.

Present law provides that any party may move for judgment on the pleadings after the answer is filed, or if an incidental demand has been instituted after the answer thereto has been filed, but within such time as not to delay the trial.

Proposed law retains present law and provides that if the court grants the motion for judgment on the pleadings, the court shall award to the prevailing party the payment by the non-prevailing party of all court costs, reasonable attorney fees, and expert witness fees and costs reasonably incurred in prosecuting or defending the action.

Present law provides that if the court finds at any time that any of the affidavits presented for a motion for summary judgment are presented in bad faith or solely for the purposes of delay, the court immediately shall order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney fees, and present law further provides that any offending party or attorney may be adjudged guilty of contempt.

Proposed law retains present law and includes the payment of court costs and expert witness fees and costs reasonably incurred.

Present law provides that the answer shall set forth affirmatively negligence, or fault of the plaintiff and others, duress, error or mistake, estoppel, extinguishment of the obligation in any manner, failure of consideration, fraud, illegality, injury by fellow servant, and any other matter constituting an affirmative defense.

Proposed law retains present law and provides that all allegations set forth in an affirmative defense are made subject to the obligations and sanctions set forth in C.C.P. Art. 863.

Present law provides that an answer may set forth two or more defenses in the alternative, even though the factual or legal bases thereof may be inconsistent or mutually exclusive, and that all allegations in such cases are made subject to the obligations set forth in C.C.P. Art. 863.

Proposed law retains present law and provides that all allegations in such cases are also subject to the sanctions set forth in C.C.P. Art. 863.

Proposed law requires the several district courts to maintain records of awards of attorney fees and court costs and report such records to the judicial administrator of the supreme court.

(Amends C.C.P. Arts. 863(D), 934, 963-965, 967(D), 1005, and 1006; Adds R.S. 13:63)