

Regular Session, 2014

HOUSE BILL NO. 607

BY REPRESENTATIVE ABRAMSON

(On Recommendation of the Louisiana State Law Institute)

CIVIL/PROCEDURE: Provides for continuous revision of the Code of Civil Procedure

1 AN ACT

2 To amend and reenact Code of Civil Procedure Articles 1035, 1425(C), 1462(B)(1), and
3 1469(4), relative to the continuous revision of the Code of Civil Procedure; to
4 provide for the delay in filing an answer in incidental actions; to provide for the
5 identification of testifying experts in discovery; to extend the delay for the state to
6 respond to a request for the production of documents and things; to authorize the
7 awarding of costs and attorney fees for delay in responding to discovery; and to
8 provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Code of Civil Procedure Articles 1035, 1425(C), 1462(B)(1), and 1469(4)
11 are hereby amended and reenacted to read as follows:

12 Art. 1035. Answer

13 The answer in an incidental action shall be filed within the delay allowed by
14 Article 1001, ~~or at any time prior to a judgment by default against the defendant in~~
15 ~~the incidental action~~, and shall be subject to all of the rules set forth in Articles 1001
16 and 1003 through 1006.

17 Comment – 2014

18 The 2014 amendment to this Article conforms with the rules for answering
19 incidental demands to those provided for the principal demand.

20 * * *

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

2 * * *

3 C. ~~The~~ If the court orders the disclosures of Paragraph B of this Article, they
4 shall be made at the times and in the sequence directed by the court. In the absence
5 of ~~other~~ directions from the court or stipulation by the parties, the disclosures
6 ~~required~~ ordered pursuant to Paragraph B of this Article shall be made at least ninety
7 days before the trial date or, if the evidence is intended solely to contradict or rebut
8 evidence on the same subject matter identified by another party under Paragraph B
9 of this Article, within thirty days after the disclosure made by the other party. The
10 parties shall supplement these disclosures when required by Article 1428.

11 * * *

12 Comments - 2014

13 (a) Contrary to *Quillian v. The Dixie Bonded Warehouse*, 105 So.3d 71 (La.
14 App. 2d Cir. 8/29/12), Article 1425 does not require a party, absent a discovery
15 request or an order requiring an expert report, to identify testifying experts.

16 (b) The identification of testifying expert witnesses is obtained by
17 interrogatories, depositions, requirements in a scheduling order entered pursuant to
18 Article 1551(A)(5) or (8), or by court order under Paragraph B. The preparation and
19 submission of reports of testifying experts is required only if ordered by the court
20 pursuant to Paragraph (B). If expert reports are ordered, the court should set
21 production deadlines in the order; however, if there is no deadline set in the order,
22 then the sequence provided in Paragraph (C) applies by default.

23 * * *

24 Art. 1462. Production of documents and things; entry upon land; procedure

25 * * *

26 B.(1) The party upon whom the request is served shall serve a written
27 response within fifteen days after service of the request, except that a defendant may
28 serve a response within thirty days after service of the petition upon that defendant,
29 and except that the state and its political subdivisions may serve a response within
30 thirty days after service of the request. The court may allow a shorter or longer time.
31 With respect to each item or category, the response shall state that inspection and
32 related activities will be permitted as requested, unless the request is objected to, in
33 which event the reasons for objection shall be stated. If objection is made to part of

1 an item or category, the part shall be specified. The written answer or reasons for
 2 objection to each request for production of documents shall immediately follow a
 3 restatement of the request for production of documents to which the answer or
 4 objection is responding. The party submitting the request may move for an order
 5 under Article 1469 with respect to any objection to or other failure to respond to the
 6 request, or any part thereof, or any failure to permit inspection as requested. If
 7 objection is made to the requested form or forms for producing information,
 8 including electronically stored information, or if no form was specified in the
 9 request, the responding party shall state in its response the form or forms it intends
 10 to use.

11 * * *

12 Comment - 2014

13 The 2014 amendment to Paragraph B extends the period for the state and its
 14 political subdivisions to respond to a request from fifteen days to thirty days so as
 15 to coincide with the period provided in Article 1458 for responses to interrogatories.

16 * * *

17 Art. 1469. Motion for order compelling discovery

18 A party, upon reasonable notice to other parties and all persons affected
 19 thereby, may apply for an order compelling discovery as follows:

20 * * *

21 (4) If the motion is granted compelling the discovery, or if the court finds
 22 that there was unreasonable delay in providing a response to the discovery, the court
 23 shall, after opportunity for hearing, require the party or deponent whose conduct
 24 necessitated the motion or the party or attorney advising such conduct or both of
 25 them to pay to the moving party the reasonable expenses incurred in ~~obtaining the~~
 26 ~~order~~ filing the motion and appearing in court, including attorney's fees, unless the
 27 court finds that the opposition to the motion or delay in providing a response to the
 28 discovery was substantially justified or that other circumstances make an award of
 29 expenses unjust.

1 If the motion is denied, the court shall, after opportunity for hearing, require
 2 the moving party or the attorney advising the motion or both of them to pay to the
 3 party or deponent who opposed the motion the reasonable expenses incurred in
 4 opposing the motion, including attorney's fees, unless the court finds that the making
 5 of the motion was substantially justified or that other circumstances make an award
 6 of expenses unjust.

7 If the motion is granted in part and denied in part, the court may apportion
 8 the reasonable expenses incurred in relation to the motion among the parties and
 9 persons in a just manner.

10 * * *

11 Comment - 2014

12 The 2014 amendment to Paragraph (4) of this Article authorizes the trial
 13 court to award costs and attorney's fees to a party moving to compel discovery when
 14 the other party's delay in responding to the discovery necessitated the motion.

15 * * *

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)]

Abramson

HB No. 607

Abstract: Provides for continuous revision of the Code of Civil Procedure including requiring the deadline for answering incidental demands the same as provided for the incidental demand, clarifying that a party is under no obligation to identify a testifying expert absent a discovery request or order for an expert report, extending the time period within which the state has to respond to a request for production of documents, and authorizing the court to award costs and attorney's fees when a party unreasonably delays the response to discovery.

Present law (C.C.P. Art.1035) provides for answer in incidental demands.

Proposed law makes the deadline for answering incidental demands the same as provided for principal demands.

Present law (C.C.P. Art.1425) provides for identifying testifying experts.

Proposed law specifies that a party is under no obligation to identify a testifying expert absent a discovery request or order for an expert report.

Present law (C.C.P. Art.1462) provides for discovery-production of documents and things.

Proposed law extends the period for the state and its political subdivisions to respond to a request for production of documents and things from 15 to 30 days.

Present law (C.C.P. Art.1469) provides for the motion for an order compelling discovery.

Proposed law authorizes the court to award costs and attorney's fees when a party unreasonably delays the response to discovery.

(Amends C.C.P. Arts. 1035, 1425(C), 1462(B)(1), and 1469(4))