

Regular Session, 2014

SENATE BILL NO. 373

BY SENATOR JOHNS

CIVIL PROCEDURE. Provides relative to motions for summary judgments. (8/1/14)

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AN ACT

To amend and reenact Code of Civil Procedure Article 966, relative to motions for summary judgment; to provide for certain procedures at the hearing on a motion for summary judgment; to provide relative to admissibility of certain evidence; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Code of Civil Procedure Article 966 is hereby amended and reenacted to read as follows:

Art. 966. Motion for summary judgment; procedure

A.(1) The plaintiff or defendant in the principal or any incidental action, with or without supporting affidavits, may move for a summary judgment in his favor for all or part of the relief for which he has prayed. The plaintiff's motion may be made at any time after the answer has been filed. The defendant's motion may be made at any time. **All parties shall be allowed adequate discovery to be conducted within a reasonable period of time in advance of the hearing on the motion for summary judgment.**

(2) The summary judgment procedure is designed to secure the just, speedy,

1 and inexpensive determination of every action, except those disallowed by Article
2 969. The procedure is favored and shall be construed to accomplish these ends.

3 B.(1) ~~The motion for summary judgment, memorandum in support thereof,~~
4 ~~and supporting affidavits shall be served within the time limits provided in District~~
5 ~~Court Rule 9.9. For good cause, the court shall give the adverse party additional time~~
6 ~~to file a response, including opposing affidavits or depositions. The adverse party~~
7 ~~may serve opposing affidavits, and if such opposing affidavits are served, the~~
8 ~~opposing affidavits and any memorandum in support thereof shall be served pursuant~~
9 ~~to Article 1313 within the time limits provided in District Court Rule 9.9.~~
10 **(a) The**
11 **movant in a motion for summary judgment shall file with his motion a**
12 **memorandum and list of the exhibits, along with a copy of all exhibits, he**
13 **intends to offer into evidence at the hearing, which shall be served on all other**
14 **parties at least twenty calendar days prior to the hearing on the motion for**
15 **summary judgment.**

16 **(b) The adverse party shall file and serve his opposing memorandum**
17 **and list of exhibits, along with a copy of all exhibits, he intends to offer into**
18 **evidence at the hearing at least ten calendar days prior to the hearing.**

19 **(c) Documentary evidence may be filed in the record with the motion or**
20 **opposition in any electronically stored format authorized by the local court**
21 **rules of the district court or approved by the clerk of the district court for**
22 **receipt of evidence.**

23 **(d) Movant may file a reply memorandum provided it is filed and served**
24 **on all other parties at least five calendar days prior to the hearing on the motion**
25 **for summary judgment.**

26 **(e) Any party may supplement his list of exhibits provided the**
27 **supplemental list of exhibits, and copy of all exhibits, is filed and served on all**
28 **other parties at least five calendar days prior to the hearing on the motion for**
29 **summary judgment.**

(f) No other exhibits shall be considered by the court at the hearing on

1 **the motion for summary judgment.**

2 **(g) All service requirements shall be made in accordance with Article**
3 **1313.**

4 **(h) The court may set longer time periods herein as it deems necessary.**

5 **(i) All parties shall furnish a copy of their respective pleadings,**
6 **memoranda, lists of exhibits, and copy of all exhibits, to the judge when filed.**

7 **(2) Any objections to any listed exhibits shall be made by a motion to**
8 **strike filed not later than three calendar days prior to the hearing on the motion**
9 **for summary judgment and shall be heard and decided by the court prior to the**
10 **hearing on the motion for summary judgment.**

11 **(3) Only evidence admitted for purposes of the motion for summary**
12 **judgment may be considered by the court in its ruling on the motion.**

13 **(4) A summary judgment may be rendered only as to those issues set**
14 **forth in the motion under consideration by the court at that time.**

15 **(5) The burden of proof remains with the movant. However, if the**
16 **movant will not bear the burden of proof at trial on the matter that is before the**
17 **court on the motion for summary judgment, the movant's burden on the motion**
18 **does not require him to negate all essential elements of the adverse party's**
19 **claim, action, or defense, but rather to point out to the court that there is an**
20 **absence of factual support for one or more elements essential to the adverse**
21 **party's claim, action, or defense. Thereafter, if the adverse party fails to**
22 **produce factual support sufficient to establish that he will be able to satisfy his**
23 **evidentiary burden of proof at trial, there is no genuine issue of material fact.**
24 **The court is not permitted to make a judicial determination of subjective facts,**
25 **such as motive, intent, good faith or knowledge, nor shall it make any credibility**
26 **determinations or weigh the evidence. Factual inferences reasonably drawn**
27 **from the evidence must be construed in favor of the party opposing the motion.**

28 **(2)C.(1)** The judgment sought shall be rendered forthwith if the pleadings,
29 depositions, answers to interrogatories, and admissions, together with the affidavits,

1 if any, admitted for purposes of the motion for summary judgment, show that there
2 is no genuine issue as to material fact, and that mover is entitled to judgment as a
3 matter of law.

4 ~~If the motion for summary judgment is denied, the court should provide~~
5 ~~reasons for the denial on the record, either orally upon rendition or in writing sua~~
6 ~~sponte or upon request of a party within ten days of rendition.~~

7 ~~C.(1) After adequate discovery or after a case is set for trial, a motion which~~
8 ~~shows that there is no genuine issue as to material fact and that the mover is entitled~~
9 ~~to judgment as a matter of law shall be granted.~~

10 ~~(2) The burden of proof remains with the movant. However, if the movant~~
11 ~~will not bear the burden of proof at trial on the matter that is before the court on the~~
12 ~~motion for summary judgment, the movant's burden on the motion does not require~~
13 ~~him to negate all essential elements of the adverse party's claim, action, or defense,~~
14 ~~but rather to point out to the court that there is an absence of factual support for one~~
15 ~~or more elements essential to the adverse party's claim, action, or defense.~~
16 ~~Thereafter, if the adverse party fails to produce factual support sufficient to establish~~
17 ~~that he will be able to satisfy his evidentiary burden of proof at trial, there is no~~
18 ~~genuine issue of material fact.~~

19 ~~D.~~(2) The court shall hear and render judgment on the motion for summary
20 judgment within a reasonable time, but in any event judgment on the motion shall
21 be rendered at least ten days prior to trial. **If a party requests written reasons for**
22 **judgment within ten days of rendition of the judgment, the court shall provide**
23 **written reasons for judgment within ten days of receipt of the request provided**
24 **the court can do so at least ten days prior to trial.**

25 ~~E.~~(3) A summary judgment may be rendered dispositive of a particular issue,
26 theory of recovery, cause of action, or defense, in favor of one or more parties, even
27 though the granting of the summary judgment does not dispose of the entire case as
28 to that party or parties.

29 ~~F.(1) A summary judgment may be rendered or affirmed only as to those~~

1 issues set forth in the motion under consideration by the court at that time.

2 ~~(2) Evidence cited in and attached to the motion for summary judgment or~~
3 ~~memorandum filed by an adverse party is deemed admitted for purposes of the~~
4 ~~motion for summary judgment unless excluded in response to an objection made in~~
5 ~~accordance with Subparagraph (3) of this Paragraph. Only evidence admitted for~~
6 ~~purposes of the motion for summary judgment may be considered by the court in its~~
7 ~~ruling on the motion.~~

8 ~~(3) Objections to evidence in support of or in opposition to a motion for~~
9 ~~summary judgment may be raised in memorandum or written motion to strike stating~~
10 ~~the specific grounds therefor.~~

11 ~~G.(1)D.(1)~~ When the court grants a motion for summary judgment in
12 accordance with the provisions of this Article, that a party or nonparty is not
13 negligent, not at fault, or did not cause, whether in whole or in part, the injury or
14 harm alleged, that party or nonparty shall not be considered in any subsequent
15 allocation of fault. Evidence shall not be admitted at trial to establish the fault of that
16 party or nonparty nor shall the issue be submitted to the jury nor included on the jury
17 verdict form. This Paragraph shall not apply when a summary judgment is granted
18 solely on the basis of the successful assertion of an affirmative defense in accordance
19 with Article 1005, except for negligence or fault.

20 (2) If the provisions of this Paragraph are applicable to the summary
21 judgment, the court shall so specify in the judgment. If the court fails to specify that
22 the provisions of this Paragraph are applicable, then the provisions of this Paragraph
23 shall not apply to the judgment.

24 **E. The time periods set forth in this Article shall supersede and control**
25 **to the extent of conflict with any court rule.**

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Julie J. Baxter.

DIGEST

Johns (SB 373)

Present law provides that the plaintiff or defendant in the principal or any incidental action, with or without supporting affidavits, may move for a summary judgment in his favor for all or part of the relief for which he has prayed. Further provides that the plaintiff's motion may be made at any time after the answer has been filed, and that the defendant's motion may be made at any time.

Proposed law retains present law and adds that all parties shall be allowed adequate discovery to be conducted within a reasonable period of time in advance of the hearing on the motion for summary judgment.

Present law provides that the summary judgment procedure is designed to secure the just, speedy, and inexpensive determination of every action, except those disallowed by C.C.P. Art. 969. Further provides that the summary judgment procedure is favored and shall be construed to accomplish these ends.

Proposed law retains present law.

Present law provides that the motion for summary judgment, memorandum in support thereof, and supporting affidavits shall be served within the time limits provided in District Court Rule 9.9. Present law further provides that, for good cause, the court shall give the adverse party additional time to file a response, including opposing affidavits or depositions. Present law further provides that the adverse party may serve opposing affidavits, and if such opposing affidavits are served, the opposing affidavits and any memorandum in support thereof shall be served pursuant to present law within the time limits provided in District Court Rule 9.9.

Proposed law deletes present law.

Proposed law provides that the movant in a motion for summary judgment shall file with his motion a memorandum and list of the exhibits, along with a copy of all exhibits, he intends to offer into evidence at the hearing, which shall be served on all other parties at least twenty calendar days prior to the hearing on the motion for summary judgment. Further provides that the adverse party shall file and serve his opposing memorandum and list of exhibits, along with a copy of all exhibits, he intends to offer into evidence at the hearing at least ten calendar days prior to the hearing. Further provides that documentary evidence may be filed in the record with the motion or opposition in any electronically stored format authorized by the local court rules of the district court or approved by the clerk of the district court for receipt of evidence.

Proposed law further provides that movant may file a reply memorandum provided it is filed and served on all other parties at least five calendar days prior to the hearing on the motion for summary judgment.

Proposed law provides that any party may supplement his list of exhibits provided the supplemental list of exhibits, and copy of all exhibits, is filed and served on all other parties at least five calendar days prior to the hearing on the motion for summary judgment.

Proposed law provides that no other exhibits shall be considered by the court at the hearing on the motion for summary judgment. Further provides that all service requirements shall be made in accordance with present law.

Proposed law provides that the court may set longer time periods herein as it deems necessary.

Proposed law provides that all parties shall furnish a copy of their respective pleadings, memoranda, lists of exhibits, and copy of all exhibits, to the judge when filed.

Proposed law provides that any objections to any listed exhibits shall be made by a motion to strike filed not later than three calendar days prior to the hearing on the motion for summary judgment, and shall be heard and decided by the court prior to the hearing on the motion for summary judgment.

Present law provides that only evidence admitted for purposes of the motion for summary judgment may be considered by the court in its ruling on the motion.

Proposed law retains present law.

Proposed law further provides that a summary judgment may be rendered only as to those issues set forth in the motion under consideration by the court at that time.

Present law provides that the burden of proof in a motion for summary judgment remains with the movant. Present law further provides that if the movant will not bear the burden of proof at trial on the matter that is before the court on the motion for summary judgment, then the movant's burden on the motion does not require him to negate all essential elements of the adverse party's claim, action, or defense, but rather to point out to the court that there is an absence of factual support for one or more elements essential to the adverse party's claim, action, or defense. Present law further provides that thereafter, if the adverse party fails to produce factual support sufficient to establish that he will be able to satisfy his evidentiary burden of proof at trial, there is no genuine issue of material fact.

Proposed law retains present law, and adds that the court is not permitted to make a judicial determination of subjective facts, such as motive, intent, good faith or knowledge, nor shall it make any credibility determinations or weigh the evidence. Factual inference reasonably drawn from the evidence must be construed in favor of the party opposing the motion.

Present law provides that the judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions, together with the affidavits, if any, admitted for purposes of the motion for summary judgment, show that there is no genuine issue as to material fact, and that mover is entitled to judgment as a matter of law.

Proposed law retains present law.

Present law provides if the motion for summary judgment is denied, the court should provide reasons for the denial on the record, either orally upon rendition or in writing sua sponte or upon request of a party within ten days of rendition.

Proposed law deletes present law.

Present law provides that after adequate discovery or after a case is set for trial, a motion which shows that there is no genuine issue as to material fact and that the mover is entitled to judgment as a matter of law shall be granted.

Proposed law deletes present law.

Present law provides that the court shall hear and render judgment on the motion for summary judgment within a reasonable time, but in any event judgment on the motion shall be rendered at least ten days prior to trial.

Proposed law adds that if a party requests written reasons for judgment within ten days of

rendition of the judgment, the court shall provide written reasons for judgment within ten days of receipt of the request provided the court can do so at least ten days prior to trial.

Present law further provides that a summary judgment may be rendered dispositive of a particular issue, theory of recovery, cause of action, or defense, in favor of one or more parties, even though the granting of the summary judgment does not dispose of the entire case as to that party or parties.

Proposed law retains present law.

Present law provides that a summary judgment may be rendered or affirmed only as to those issues set forth in the motion under consideration by the court at that time.

Proposed law deletes present law.

Present law provides that evidence cited in and attached to the motion for summary judgment or memorandum filed by an adverse party is deemed admitted for purposes of the motion for summary judgment unless excluded in response to an objection made in accordance with present law.

Proposed law deletes present law.

Present law provides that when the court grants a motion for summary judgment in accordance with present law, that a party or nonparty is not negligent, not at fault, or did not cause, whether in whole or in part, the injury or harm alleged, that party or nonparty shall not be considered in any subsequent allocation of fault. Present law further provides that evidence shall not be admitted at trial to establish the fault of that party or nonparty nor shall the issue be submitted at trial to establish the fault of that party or nonparty nor shall the issue be submitted to the jury nor included on the jury verdict form. Present law further provides that present law shall not apply when a summary judgment is granted solely on the basis of the successful assertion of an affirmative defense in accordance with present law, except for negligence or fault. Further provides that when these provisions of present law are applicable to summary judgment, the court shall so specify in the judgment. Further provides that if the court fails to specify that these provisions of present law are applicable, then the provisions of present law shall not apply to the judgment.

Proposed law retains present law.

Proposed law adds that the time periods set forth in proposed law shall supersede and control to the extent of conflict with any court rule.

Effective August 1, 2014.

(Amends C.C.P. Art. 966)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary A to the original bill

1. Adds that all parties shall be allowed adequate discovery to be conducted within a reasonable period of time in advance of the hearing on the motion for summary judgment.
2. Deletes certain proposed procedures in filing a motion for summary judgment and adds that a movant in a motion for summary judgment shall file with his motion a memorandum, list of exhibits and copy of all exhibits he intends to offer into evidence at the hearing, and certain service

requirements and deadlines.

3. Adds certain requirements and deadlines for the adverse party.
4. Allows certain electronic filing.
5. Adds certain procedures for filing a reply memorandum.
6. Adds certain procedures for supplementing of exhibit lists.
7. Designates which exhibits shall be considered by the court at the hearing, and provides for certain service requirements, the setting of longer time periods by the court, and furnishing of a copy of respective pleadings, memoranda, lists of exhibits, and copy of all exhibits, to the judge when filed.
8. Adds that the court is not permitted to make a judicial determination of subjective facts, such as motive, intent, good faith or knowledge, nor make any credibility determinations or weigh the evidence, and that factual inferences reasonably drawn from the evidence must be construed in favor of the party opposing the motion.
9. Adds a procedure for requesting written reasons for judgment.
10. Adds that time periods set forth in proposed law supersede and control to the extent of conflict with any court rule.