

# ACTS OF 2016 OF SPECIAL INTEREST TO THE BENCH AND BAR

H. Alston Johnson

Phelps Dunbar LLP

Adjunct Professor of Law, Hebert Law Center, Louisiana State University

General Session – Number of acts, including five constitutional amendments – 681

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## Civil Code and Related

- 60 – amends La. R.S. 31:149(B) (in Mineral Code) to extend present statute making reserved mineral rights imprescriptible when land is acquired from any person by an “acquiring authority” through act of sale, exchange, donation, or other contract, or by condemnation or expropriation, to acquisition “by appropriation,” so long as acquired land remains with acquiring authority or any successor that is also an acquiring authority; “appropriation” under Article 1, Section 4 of the Louisiana Constitution is the taking of land without compensation, limited to levees and for levee drainage purposes
- 64 – amends La. R.S. 6:653.1(A) and repeals La. R.S. 6:653.1(B), relative to forms for naming beneficiaries of credit union accounts, to delete the requirement that the account holder name the beneficiaries in an affidavit in authentic form when the account is established, and to provide simply that the beneficiaries “shall be specifically named in the share account records” of the credit union
- 76 – amends Civil Code Art. 3367, relative to cancellation of recordation of mortgage, pledge or privilege when effect of recordation has ceased, to extend its provisions to state tax liens and judgments in favor of the state that have prescribed under La. R.S. 9:5685
- 86 – (Law Institute) - amends Civil Code Art. 1522 and Code of Civil Procedure Art. 3396.9, “relative to successions and donations,” to provide that: (1) a disposition *inter vivos* or *mortis causa* by which the usufruct is given to one person and the naked ownership to another is not a prohibited substitution, which is already the law but made somewhat unclear by the present text of the article’s reference to “the same is true” in Article 1521, which was substantially amended in 2001 as to vulgar substitutions; and (2) when a successor whose concurrence is required for independent administration of an estate is an unemancipated minor or an interdict, his natural tutor or curator, as appropriate, may provide that concurrence; query whether this legislation has two objects
- 108 – (Law Institute) – amends La. R. S. 19:2.2, relative to information that must be provided to landowner prior to expropriation by an expropriating authority, to require that the notice to the landowner, in addition to the information presently required, include statements that: (1) owner is entitled to receive just compensation to fullest extent allowed by law; (2) property can be expropriated only by legally-authorized entity; (3) owner is entitled to written appraisal or evaluation of compensation due; (4) website of acquiring authority can be accessed to provide content of authorizing statutes; (5) copies of statutes will be provided upon request; (6) information about agency responsible for regulating the expropriating authority; and (7) owner may hire agent or attorney to negotiate with expropriating authority or represent owner in any legal proceedings; eff. January 1, 2017
- 110 – amends certain Civil Code and Code of Civil Procedure articles, and adds others, relative to mandataries and curators, to provide that a mandatary shall not prevent or limit reasonable communication, visitation or interaction between principal over 18 and another person without prior court approval, unless it was a part of the express authority granted by the mandate that the mandatary could prevent or limit such communication between the principal and a relative by blood, adoption or affinity within third degree or another individual with a relationship “based on or productive of strong affection”; makes similar provisions as to curators and their conduct; permits violation of these provisions

to be grounds for injunction and for removal of curator; and provides cause of action to seek visitation with interdict under certain circumstances; eff. May 19, 2016

- 115 – amends Civil Code Art. 355, relative to continuing tutorships, to provide that measurement of mental capacity is to be in terms of “intellectual functioning” rather than “average mental ability”
- 166 – amends La. R. S. 6:314(A) and 6:766.1(A), relative to payable-on-death bank accounts, to permit account holder to use “act under private signature executed in the presence of an officer or a branch manager . . . and two additional persons” to designate beneficiaries, in addition to affidavit in authentic form
- 179 – (Law Institute) – enacts Sale of Mineral Rights by Mail Solicitation Act, consisting of La. R.S. 9:2991.1 through 9:2991.11, to regulate certain transfers of mineral rights (not including mineral leases) upon mail solicitation of the owner; to provide for a sixty-date right of rescission and for disclosure in the solicitation of that right; if disclosure is absent, rescission rights last for three years and the transferee is liable for attorney fees and costs and possibly other damages; certain terms in sale prohibited, such as choice of law or forum other than Louisiana, choice of venue other than that which would otherwise govern, any requirement that transferor indemnify transferee if there is rescission, and any designation of transferee as mandatory of transferor; eff. May 19, 2016
- 210 – amends Civil Code Arts. 256 and 261, relative to tutorship of certain children, to change references to “illegitimate” children to children “born outside of marriage”
- 309 – (Law Institute) – amends various Civil Code articles and Civil Code ancillaries relative to the filiation of children, to change the commencement of the one-year prescriptive period to file an action of disavowal to “the day of the birth of the child, or the day the husband knew or should have known that he may not be the biological father of the child, whichever occurs later”; provides the revocation of an authentic act of acknowledgment of the child does not rebut a presumption of paternity, and requires that an action of disavowal be timely brought
- 494 – enacts various statutes in the Civil Code ancillaries to define and regulate “gestational surrogacy agreements”; Law Institute is directed to provide comments to the new statutes
- 629 – amends Civil Code Art. 3493.10 and adds Civil Code Art. 3496.2 to provide a three-year liberative prescriptive period for delictual actions against person for any act of sexual assault; time period runs from “day the injury or damage is sustained or the day the victim is notified of the identity of the offender by law enforcement or judicial agency, whichever is later”; provides (inexplicably) that the prescriptive period “shall be subject to any exception of preemption provided by law”

#### Code of Civil Procedure and Related

- 88 – amends La. R.S. 9:5175, relative to debtors discharged in bankruptcy, to provide that debtors discharged under Chapter 13 as well as those discharged under Chapter 7 may obtain partial cancellation of inscription of judgment as it affects property not owned by judgment debtor who has filed a bankruptcy petition
- 101 – amends La. R.S. 13:4163(C)(1), relative to continuances that may be obtained of right by legislators and staff, to extend periods for which they may be granted from 15 days prior to original call to order and 15 days after adjournment to 30 days in each instance, and during any other time, including travel, for legislative committee meetings
- 119 – amends La. R.S. 46:2133, relative to venue for applications for protection from family violence, to permit judge to conduct proceedings in any parish within multiple-parish judicial district if it is in the interest of justice to provide the parties a more expeditious hearing

- 122 – amends Code of Civil Procedure Art. 4551(A) to add to required information in judgment of interdiction the name, domicile, age and current address of the defendant
- 132 – (Law Institute) – omnibus revision of Code of Civil Procedure; amends Arts. 1458, 1462, 1465.1 and 1467 to increase from the present 15 days to 30 days the time for a reply to interrogatories, requests for documents, requests for medical records and requests for admissions; present 30-day period to respond to interrogatories attached to original petition not changed; amends Art. 2541 to clarify that ex parte enforcement of foreign country judgments in a Louisiana state court is not permitted; and amends Arts. 2642 and 2721 to provide that 15-day period for suspensive appeal from order directing issuance of writ of seizure and sale begins to run upon service of notice as provided in Article 2721, and appeal procedure must be described in detail in notice of seizure
- 341 – repeals La. R.S. 13:5105(C), relative to jury trials against public entities, due to its having been declared unconstitutional; the repealed provision provided an exception to the prohibition against jury trials against political subdivisions of the state, to permit either the plaintiff or the city-parish of EBR to ask for a jury trial; that exception has now been repealed, eff. June 2, 2016
- 449 – amends La. R.S. 13:4521, relative to court costs owed by governmental entities, to clarify that state and its political subdivisions are not required to pay such costs during litigation (but must do so if cast for costs in judgment that becomes final), and that such “temporarily deferred” costs must be paid by opposing party if claim against state or its political subdivisions is dismissed; if case is settled and dismissed, public entity must request cost assessment against claimant and if cost assessment is so made, shall withhold costs for any settlement funds and remit them to clerk of court; eff. June 9, 2016

Criminal Law, Criminal Procedure and Related

- 109 – amends Article 14 of the Code of Criminal Procedure, relative to fax filing, to increase from 5 days to 7 days, exclusive of legal holidays, the period of time in which the filing party must follow up the fax transmission with original document; amendment makes time period the same for criminal filings as the time period for civil filings
- 125 – amends Articles 978, 989 and 992 of the Code of Criminal Procedure, and adds Article 976(A)(4), all relative to expungement of arrest and conviction record, to permit person judicially determined to be factually innocent and entitled to compensation for wrongful conviction to seek expungement without regard to time limitations on other expungements, and to permit expungement in certain other instances if other conditions are met (ten years has elapsed from completion of sentence, no other convictions in that ten-year period, employment during that ten-year period and certification from DA of no convictions and no pending charges; eff. May 19, 2016
- 215 – amends La. R.S. 14:130.1, relative to crime of obstruction of justice, to include specifically within definition of crime “inducing or persuading or attempting to induce or persuade any person” to “testify falsely, or without right or privilege to do so, to withhold any testimony” or “absent himself from such proceedings despite having received service of a subpoena”
- 267 – amends La. R.S. 15:553, relative to registered sex offenders, to prohibit them for engaging “in employment as a door-to-door solicitor, peddler, or itinerant vendor selling any type of goods or services including magazines or periodicals or subscriptions” to them
- 357 – amends Articles 404, 412 and 412.1 of Code of Evidence to extend to civil cases brought by victim the prohibition presently applicable in criminal cases involving “sexually assaultive behavior” against evidence of victim’s “past sexual behavior” or attire
- 539 – amends La. R.S. 14:337, relative to crime of unlawful use of unmanned aircraft system, to prohibit its use to conduct surveillance of or collect information about a school or a correctional facility; certain authorized uses excepted

- 541 – amends La. R.S. 14:95, which defines crime of illegal carrying of weapons, to include within long list of public officials permitted to carry a concealed weapon (upon completing annual qualification test) the state attorney general and “designated” assistant attorneys general as well as any retired attorney general or assistant attorney general (the latter not being limited by the adjective “designated”)
- 585 – enacts La. R.S. 14:67.30 to define and punish the crime of theft of animals; definition of animal is “any nonhuman living creature except for livestock as defined in R. S. 14:67.1”
- 635 – amends La. R.S. 14:283 and 284, relative to crimes of “video voyeurism” and being a “Peeping Tom,” to include within the means of committing such crimes the use of an unmanned aircraft system

Torts, Workers’ Compensation, Insurance and Related

- 197 – amends La. R.S. 32:863 and adds 32:863.1.1, relative to evidence of compulsory motor vehicle insurance in vehicle, to provide that if document is not in vehicle, but law enforcement officer can access information electronically, no ticket may be issued for failure to have evidence in vehicle
- 204 – adds La. R.S. 37:213.1, relative to the unauthorized practice of law, to provide a civil remedy for persons damaged by such conduct; potential defendants are those who engage in “unauthorized practice of law” as defined, but attorneys “suspended or disbarred” are (inexplicably) excluded from potential defendants while those “permanently disbarred” or who have “permanently resigned” are included; potential plaintiffs do not include “an attorney or law firm”; injunctive relief is available and may be sought by aggrieved party, attorney general, LSBA or any district attorney; suit by aggrieved party may seek “general damages, special damages and all other damages suffered by the aggrieved party,” along with costs and attorney fees; proper venue is defined; time period for action is essentially same as La. R.S. 9:5605 governing legal malpractice (one year from act or from when victim discovered or should have discovered it, but in no event more than three years from act), except there is no specific reference to peremption and title to bill and new statute refer to “prescription”; specific provision for “continuous conduct causing continuous damage,” in which case time period does not begin to run until conduct is abated
- 226 – adds La. R.S. 9:2800.23, to provide that parent, tutor or curator of student with developmental disabilities is not liable for damage caused by that student to an employee of a school that the child attends when all of listed conditions exist, *viz.*, school had implemented behavioral intervention plan as part of federal statutory scheme, parent, tutor or curator had signed that program and relinquished control of student to school and was not present at time of incident; limitation on liability is not applicable if negligence of parent, tutor or curator caused the damage
- 275 – amends La. R.S. 40:1231.8 and 40:1237.2, relative to filing requirements for medical review panel, to specify that 45-day period from request for review to pay filing fees begins to run upon receipt by claimant of confirmation of receipt for request for review, not from its mailing
- 596 – adds La. R.S. 22:41.1, relative to notice of policy changes, to require insurers to provide policyholder with written notification of any reduction in coverage in policy provisions at time of renewal; failure to comply may subject insurer to administrative fines; eff. January 1, 2017
- 625 – amends La. R.S. 32:411 to provide for a “digitized driver’s license” which can be shown to law enforcement personnel on mobile phone app in lieu of physical license
- 647 – adds La. R.S. 9:2800.23 (Law Institute will have to re-number, see Act 226 above), relative to granting voluntary right of passage to enclosed cemeteries, to provide that owner of property adjacent to enclosed cemetery who grants voluntary right of passage to those desiring access is not liable for any injury to them, and has no duty of care to keep such property safe for them, in the absence of intentional or grossly negligent acts

### Corporate and Business

- 89 – adds La. R.S. 12:1-1443(B)(4), relative to corporation’s juridical personality at time of termination, to provide that its personality continues for the purpose of disposing of immovable property owned by the corporation pursuant to resolution of board of directors
- 107 – amends La. R.S. 12:1-1007 and 1-1621 to permit a corporation’s board of directors to restate its articles of incorporation at any time, with or without shareholder approval, to consolidate the articles and all amendments into a single document
- 170 – amends La. R. S. 12:1333, relative to death or declaration of incompetency of LLC member, to permit the articles of organization or a written operating agreement to provide with respect to such a death, in default of which the statute provides that the member’s succession representative, guardian, conservator or other legal representative will be treated as the assignee of his interest; same provision for juridical person upon its dissolution or termination

### Constitutional Amendment

- 680 – to permit higher education boards to establish tuition and mandatory fee amounts without legislative approval (on November 8, 2016 ballot)

### Other

- 7 – amends La. R.S. 56:143(A) and adds 56:8(14.1) to add “blaze pink” as alternative to “hunter orange” requirements during open gun season
- 33 – adds La. R.S. 1:55(E)(1)(h) to establish the Friday of the Pecan Festival as a legal holiday in Grant Parish “for the purpose of authorizing” the clerk of court of the 35<sup>th</sup> JDC in Grant Parish to close his offices; Grant Parish is sole parish in 35<sup>th</sup> JDC
- 34 – adds La. R.S. 1:55(E)(1)(h) (Law Institute will have to re-number, see Act 33 above) to establish the Friday of the Watermelon Festival as a legal holiday in Union Parish “for the purpose of authorizing” the clerk of court of the 3<sup>rd</sup> JDC in Union Parish to close his offices; 3<sup>rd</sup> JDC is comprised of Lincoln and Union Parishes; eff. May 10, 2016