

ACTS OF 2014 OF SPECIAL INTEREST TO THE BENCH AND BAR

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Regular Session; Total Number of Acts = 875, including six proposed constitutional amendments
(2013 Fiscal Session produced 439 acts)

General Effective Date: August 1, 2014

Civil Code and Related

- 26 – amends Civil Code Art. 356, relative to continuing tutorship proceedings, to provide that the title of the proceedings shall be “Continuing Tutorship of (Name of Person),” deleting additional language “A Mentally Retarded Person”
- 133 – amends Articles 633, 748, 844 and 1018 of Children’s Code to delete requirement that various petitions called for by that code must be verified petitions
- 182 – amends La. R.S. 9:4835, relative to filing of security to effect cancellation of lien or privilege which has been filed under Private Works Act, to delete authority to use federally-insured CD as permissible security
- 279 – amends La. R. S. 9:1113, relative to partition of immovable property, to provide that when such property is susceptible to partition by licitation or private sale pursuant to Civil Code Article 811, and petition to partition property is filed by co-owners owning either aggregate interest of 15% or less of property, or aggregate interest of 20% or less if there was past ownership of the whole by common ascendant, court must allow remaining co-owners to purchase petitioners’ interests at private sale at price determined by court-appointed appraiser (eff. May 28, 2014)
- 316 – amends Civil Code Article 103 to provide two additional grounds for divorce (except for covenant marriage): (1) if spouse has physically or sexually abused spouse seeking divorce or a child of one of the spouses, regardless of whether there was prosecution for the abuse; and (2) a protective order or injunction has been issued, after contradictory hearing or consent decree, to protect spouse seeking divorce or child from such abuse; includes within factors to be considered to determine amount and duration of final periodic support the existence, effect and duration of any act of domestic abuse and in such instance maximum limit of one third of net income of payor spouse may be exceeded
- 356 – (Law Institute) – adds La. R. S. 9:3851 to 9:3856 to permit certain designated persons to sue to have court review acts of mandatory when principal is natural person for whom curator with appropriate authority has not qualified; though title to bill recites that it provides relative to “powers of attorney for the elderly” and the provisions appear to fit best for that situation, the content of the enactments does not appear to be limited in that fashion
- 360 – amends La. R. S. 9:237(C), relative to information required to be conveyed concerning covenant marriage, to require that persons considering such a marriage be told that expenses for additional legal and marital counseling may be incurred by couple in order to obtain legal termination of covenant marriage
- 616 – amends Civil Code Articles 112 and 113, relative to spousal support, to add to considerations for determination of interim and final spousal support “any interim allowance or final child support obligation”
- 651 – amends La. R. S. 9:202(1), relative to authority of religious official to perform marriage ceremony, to provide that official must have attained age of majority

Code of Civil Procedure and Related

- 41 – amends Article 1878 of Code of Civil Procedure, relative to declaratory judgments, to provide that when declaratory judgment as to constitutionality of expenditure of state funds is sought, court shall “set the matter with preference and proceed to hear and determine the matter as expeditiously as the ends of justice may require” without regard to resolution of pending petition for injunction under Article 3601 or petition for mandamus under Article 3862
- 144 – amends Articles 1922 and 4906 of Code of Civil Procedure to provide that the judgments of district, parish and city court judges must contain typewritten or printed name of judge along with judge’s signature, but judgment failing to meet requirement is not invalid for that reason
- 187 – amends Article 966 of Code of Civil Procedure, relative to summary judgment procedure, to permit documentary evidence to be filed in support of motion or opposition in “any electronically stored format authorized by” local court rules or approved by clerk of district court for receipt of evidence; clarifies that objections to proposed evidence in support of or in opposition to motion for summary judgment which are raised in memorandum or in written motion to strike must be served pursuant to Article 1313 of Code of Civil Procedure within time limits specified in District Court Rule 9.9 (at least eight calendar days before scheduled hearing)
- 330 – amends R. S. 13:4611, relative to the specific punishments available for contempt of court, to include an order that person perform litter abatement work or community service in court-approved program for each day he was to be imprisoned, provided total days of jail, such work and service do not exceed maximum allowed sentence
- 379 – amends Articles 1201 and 3955 of the Code of Civil Procedure, and La. R. S. 13:5107, all relative to service of petition on private and public defendants, to provide that if necessity of service is not waived, a request for service of citation on defendant shall be considered timely if requested within time period allowed, notwithstanding insufficient or erroneous service
- 521 – amends La. R. S. 13:4165, relative to appointment of special masters in civil cases, to provide that required consent of parties may be made contingent upon estimate of amount of compensation of special master, identity of special master and court’s anticipated specifications of powers of special master
- 606 – amends Articles 253 and 1922 of Code of Civil Procedure, and La. R. S. 9:2603, to permit use of electronic signatures by judge or justice with respect to any court order, notice, official court document and other required writings
- 618 – amends Articles 3604 and 3606 of Code of Civil Procedure, relative to TRO issued in conjunction with rule to show cause for protective order under Protection from Family Violence Act, to provide that when hearing on rule is continued because of state-declared state of emergency, any TRO remains in force for 5 days after conclusion of state of emergency
- 630 – amends Article 702 of Code of Evidence, relative to expert testimony, to restate *Daubert* principles and bring article closer to language of federal rule; clarifies that witness who is qualified as an expert by knowledge, skill, training or education may testify in form of opinion if (1) his knowledge will help trier of fact understand the evidence or determine a fact in issue; (2) his testimony is based on sufficient data; (3) the testimony is product of reliable principles and methods; and (4) expert has reliably applied principles and methods to facts of the case; legislature states that “no change in law or result in a ruling on evidence admissibility shall be presumed or is intended” by the passage of the act
- 655 – (Law Institute) - amends Articles 1035, 1425(C) and 1462(B) of the Code of Civil Procedure, to provide that an answer in an incidental action must be filed within the delay allowed for answers to main demands; to provide (contrary to *Quillan v. The Dixie Bonded Warehouse*, 105 So.3d 71 (La. App. 2d Cir. 8/29/12)) that absent discovery

request or order requiring expert report, testifying experts need not be identified, but to specify the time periods for their identification if they are required to be identified; and that time for state to respond to request for production of documents is same (30 days from service) as for response to interrogatories

- 758 – amends Article 3191 of the Code of Civil Procedure, relative to administration of successions, to add specific authority for succession representative to deal with any “digital account” of decedent on internet sites
- 793 – amends La. R. S. 13:3822, 13:3823 and 13:3824, and adds 13:3825, all relative to the taking of foreign depositions, to enact the Louisiana Uniform Interstate Depositions and Discovery Act

Torts, Workers’ Compensation and Related

- 315 – adds Article 2315.8 to Civil Code, to permit the award of “exemplary damages” in domestic abuse cases, if injury on which action is based was caused by wanton and reckless disregard for rights and safety of family or household member as defined in La. R. S. 46:2132 (spouse, former spouse, parent, child, step-parent, step-child, foster parent, foster child, any person of opposite sex presently or formerly living in same residence with defendant as a spouse, whether married or not), through acts of domestic abuse resulting in serious bodily injury or severe emotional and mental distress, regardless of whether defendant was criminally prosecuted; upon motion of defendant or on court’s own motion, if court determines “any action alleging domestic abuse” (not simply exemplary damage claim) is “frivolous or fraudulent,” court shall award court costs, reasonable attorney fees and any other related costs, along with any other sanctions or relief requested under Article 863 of Code of Civil Procedure; all but one such article in Civil Code use term “wanton and reckless”; DWI exemplary damage provision uses “wanton or reckless”
- 335 – adds La. R.S. 23:291(E) to provide that any employer, general contractor, premises owner or other third party shall not be liable for damages for negligent hiring or negligent supervision of employee or independent contractor solely because that person had been previously convicted of criminal offense; prohibition against liability inapplicable when act of such person is substantially related to nature of crime for which person was convicted or is a crime of violence or sex offense as defined, and employer or other such party knew or should have known of conviction; prohibition does not affect vicarious liability for conduct of employee or independent contractor
- 400 – amends La. R.S. 30:29 and Article 1563 of Code of Civil Procedure, relative to so-called “legacy lawsuits” to remediate damage from oil and gas production, to clarify and refine procedures passed in previous years; provides that if party makes “limited admission” of liability under Article 1563 and matter is referred to DNR for remediation plan, there is rebuttable presumption that department’s plan is the most feasible remediation plan, and any jury shall be so instructed; limits damage awards to cost of funding feasible plan adopted by court, cost of additional remediation only if required by express contractual provision, cost of correcting environmental damage if caused by unreasonable or excessive operations and the cost of non-remediation damages; not applicable to any case in which court, on or before May 15, 2014 has fixed case for trial, regardless of whether the trial setting is thereafter continued

Insurance and Related

- 21 – adds La. R.S. 22:1295.1 to provide that if operator of vehicle has been designated as person excluded from coverage under liability policy, but then is operating vehicle with express permission of named insured and negligently or intentionally causes damage, the named insured and the operator (but not the insurer, which also has no defense obligation) are solidarily liable for the damage up to mandatory minimum insurance limits (15/30/25); limitation on damages not applicable if named insured is parent, tutor or otherwise vicariously liable for conduct of operator

- 91 – amends La. R.S. 22:1318(D) to clarify that valued policy law applies to all fire coverage regardless of any other coverage that might be provided in the policy, rather than only to a “fire insurance policy”
- 149 – amends La. R.S. 32:866(A)(1), relative to “no play, no pay” concept for enforcement of mandatory liability coverage provisions, to clarify that the bar to recovery of damages up to the minimum liability limits (15/30/25) with respect to a person who does not carry such insurance is mandatory and not merely precatory, replacing the words “should be no recovery” in the statute with “shall be no recovery”
- 541 – adds La. R. S. 22:1054 and 46:2921 to provide that no health care coverage plan may deny coverage based solely on insured’s life expectancy or fact that insured is diagnosed with terminal condition for medically necessary treatment prescribed by physician and agreed to by fully informed insured or appropriate other person; eff. June 5, 2014
- 555 – adds La. R. S. 22:1827 to prohibit health care provider from refusing to submit a claim to health insurer and providing that no such provider who accepts patient’s health insurance coverage may require an insured to consent to responsibility for payment for services as condition for verification of coverage for such services; any contrary provision in contract deemed null

Criminal Law, Criminal Procedure and Related

- 58 – amends La. R.S. 32:414 and 22:667, relative to suspension of driver’s license following second DWI conviction or seizure of driver’s license upon second refusal of breath test, to extend period of time that must pass before prior conviction or seizure is no longer considered, from 5 years to 10 years
- 62 – amends La. R.S. 14:202.1, to re-define crime of home improvement fraud as residential contractor fraud, and to clarify the elements of crime
- 85 – amends Article 559(A) of the Code of Criminal Procedure, relative to withdrawal of guilty plea, to require contradictory hearing before motion of defendant to withdraw plea can be granted; state may waive hearing requirement in writing
- 138 – amends La. R.S. 15:440.5(C), relative to videotaped oral statements of a “protected person,” to provide that if defendant’s counsel is provided copy to review, only persons permitted to review tape are defendant, that counsel, and his or her staff, including paralegals and investigators
- 163 – amends La. R.S. 14:19 and 14:20, relative to justified use of force and justifiable homicide (“stand your ground” concept) to clarify that person seeking to take advantage of concept can do so if he was “lawfully inside” a dwelling, place of business or motor vehicle “when the conflict began” and to provide that the presumption that person held reasonable belief that use of deadly force was necessary occurs “when the conflict began”
- 255 – amends La. R.S. 14:67 to re-define monetary levels for various crimes of theft and their punishments and repeals other theft statutes relative to livestock, animals, crawfish, timber, alligators, rental motor vehicles, motor vehicle fuel, used building components, and copper
- 266 – amends Article 926 of Code of Criminal Procedure, relative to post-conviction DNA testing, to extend time periods for filing application for such testing and for preservation of biological material once application has been filed, from August 31, 2014 to August 31, 2019
- 280 – (Law Institute) – adds La. R.S. 14(2)(B)45 and 14:32.1(C), relative to crimes of violence, to add to list of such crimes vehicular homicide when operator’s blood alcohol concentration exceeds 0.20 percent by weight based on grams of alcohol person 100 cc of blood (eff. May 28, 2014)

313 – amends La. R. S. 14:81.1.1, relative to the crime of “sexting” which is applicable to persons 17 or younger, to clarify that offense is deemed to have been committed at either the place from which the indecent visual depiction was transmitted or at the place where it was received

More Special Firearm Legislation

147 – amends La. R.S. 14:95.5(C), relative to prohibition against firearm possession in alcoholic beverage outlet, to provide that any Louisiana citizen who holds a concealed handgun permit from the Department of Public Safety is exempt from the prohibition with respect to such an outlet which has been issued a Class A Restaurant permit

322 – amends La. R.S. 13:3881, relative to exemptions from seizure, to expand the exemption of a firearm from the present “one firearm with a maximum value of \$500” to “all firearms, arms and ammunition, and accessories thereto, not exceeding a total maximum value of \$2,500, which may be used for any purpose”

603 – adds La. R. S. 40:1379.1.2, 1379.1.3 and 1379.1.4 to authorize the carrying of concealed firearms by “qualified” (as defined) present or retired law enforcement officers with ID “anywhere in the state, including any place open to the public” (whether present officers are on duty or not)

776 – amends La. R. S. 14:95, relative to carrying of weapons, to include within list of those authorized to possess and conceal handguns, members and officers of either house of Legislature, but not in the state capitol (eff. June 19, 2014)

Other

95 – adds La. R. S. 32:43 to prohibit (as of January 1, 2015) parish or municipal authorities from using “automated speed enforcement devices” on interstate highways within their respective corporate or territorial limits; such a device is defined as “an unmanned or handheld camera or optical device installed to work in conjunction with a traffic control signal or radar speed detection equipment” designed to collect photographic evidence of alleged traffic violations “by recording images that depict the license plate” of a vehicle

173 – amends sections of Title 18 to provide that persons who are 16 or older may register to vote, and that driver’s license application shall also serve as voter registration application, but no one under 18 shall be permitted to vote; eff. January 1, 2015

251 – amends La. R. S. 12:1333, relative to LLCs, to provide for authority to act on behalf of LLC upon death or adjudged incompetency of last remaining member; upon death, succession representative of last member has authority to sell immovable owned by LLC and upon incompetency, curator has that authority

261 – amends La. R. S. 12:1301 and 12:1316, and adds La. R. S. 12:1318(E) and 12:1370, all relative to LLCs, to include trust (including voting trust) in definition of “person” under those statutes and to provide for proxy voting by members if articles or operating agreement permit such voting

410 – adds La. R. S. 32:300.8 to prohibit use of wireless telecommunications (cell phone, text-messaging device, PDA, stand-alone computer or similar device that is readily removable from vehicle) in school zones during posted hours; does not include hands-free telephone and the like; exceptions for reporting traffic collision, danger to personal safety or criminal activity; use while parked; and official capacity calls by emergency vehicles; violation is moving violation; first offense not more than \$175 fine, each subsequent offense not more than \$500 fine; signs indicating the prohibition must be posted for statute to apply

438 – adds La. R. S. 32:1306(H) to provide that motor vehicle inspection stations may inspect vehicles when it is raining if conditions are safe and vehicle can be accurately checked

- 598 – adds La. R. S. 24:204 to require Law Institute to make recommendations to legislature on biennial basis for repeal, removal or revisions of provisions of law that have been declared unconstitutional by “final and definitive court judgment”
- 601 – amends La. R. S. 40:1299.53, relative to persons who may consent to surgical or medical treatments for others, to include within prioritized list of such persons “an adult friend of the patient,” meaning “an adult who has exhibited special care and concern for the patient, who is generally familiar with the patient’s health care views and desires, and who is willing and able to become involved in the patient’s health care decisions and to act in the patient’s best interest”; absent all listed persons, attending physician may make decisions but must document in medical chart why it is necessary to make them
- 639 – amends La. R. S. 32:862, 32:863.1, 32:864 and 32:865, all relative to penalties for operating motor vehicle without mandatory levels of liability insurance, to provide that in lieu of monetary fine, court may order violator to purchase insurance and submit proof of it to court; increases monetary fines for continuing violations; eff. February 1, 2015
- 690 – amends La. R. S. 18:1300.13, relative to recall elections, to prohibit recalled public officer from running in special election to fill vacancy created by recall of such officer
- 750 – amends La. R. S. 23:332 and 23:632, relative to payment of wages, to include within definition of unlawful discrimination in employment by an employer the intentional payment of wage to employee at rate less than that of another employee of opposite sex for equal work on jobs in which their performance requires equal skill, effort and responsibility under similar working conditions; employer cannot reduce wage of another employee to comply; provides further that if employer’s dispute over wages owed to employee was in good faith, then penalty wages are not applicable, but if dispute was not in good faith, then such wages are applicable
- 765 – amends Title 32 in several respects to provide for driver’s license renewals every 6 years rather than every 4
- 875 – (Constitutional Amendment on November 4, 2014 ballot) – delete from Louisiana Constitution requirement that judge candidate must be under 70 to stand for election

Miscellaneous

- 377 – adds La. R.S. 49:160.1 to provide that the official state tree shall be the mayhaw fruit tree
- 395 – amends La. R. S. 14:102.23, relative to crime of cockfighting, to define “chicken” for purposes of that statute and to provide that “when more than one chicken is subject to an act that would constitute cockfighting, each chicken involved shall constitute a separate offense”; clarifies that admissible evidence with respect to crime may include “paraphernalia such as spurs, gaffs, knives, leather training spur covers, and other items used in cockfighting”
- 431 – adds La. R. S. 47:463.165 to add “National Rifle Association” plate to long list of “special prestige” motor vehicle license plates, with color and design to be selected by NRA and design must include initials “NRA”
- 552 – adds La. R. S. 49:170.19 to declare that fox pen hunting is part of the folklife heritage of the state and, as such, should be preserved in order to help maintain the folklife culture