

2016 Regular Session

HOUSE BILL NO. 1065

BY REPRESENTATIVE ROBBY CARTER

CIVIL/DISCOVERY: Provides relative to discovery of certain evidence

1 AN ACT

2 To amend and reenact Code of Civil Procedure Articles 1424(A) and 1425(D) and to enact  
3 Code of Civil Procedure Article 1424(E), relative to discovery; to provide relative  
4 to the scope of discovery; to provide for discovery of expert reports; to provide for  
5 discovery of surveillance; to provide for discovery of witness statements; and to  
6 provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. Code of Civil Procedure Articles 1424(A) and 1425(D) are hereby  
9 amended and reenacted and Code of Civil Procedure Article 1424(E) is hereby enacted to  
10 read as follows:

11 Art. 1424. Scope of discovery; trial preparation; materials

12 A. ~~The court shall not order the production or inspection of any writing, or~~  
13 ~~electronically stored information, obtained or prepared by the adverse party, his~~  
14 ~~attorney, surety, indemnitor, or agent in anticipation of litigation or in preparation~~  
15 ~~for trial unless satisfied that denial of production or inspection will unfairly prejudice~~  
16 ~~the party seeking the production or inspection in preparing his claim or defense or~~  
17 ~~will cause him undue hardship or injustice.~~ The court shall order the production or  
18 inspection of any writing, recorded statement, or electronically stored information,  
19 obtained or prepared by any witness unless the witness is a party to the litigation.

20 Except as otherwise provided in Article 1425(E)(1), the court shall not order the

1 production or inspection of any part of the writing, or electronically stored  
2 information, that reflects the mental impressions, conclusions, opinions, or theories  
3 of an attorney.

4 \* \* \*

5 E.(1) If a party requests in writing the production of surveillance materials  
6 from another party, and the responding party is in possession of surveillance  
7 materials, the responding party shall produce the surveillance materials within ninety  
8 days from the date the request is received. The responding party shall be entitled to  
9 take the deposition of the requesting party prior to producing the surveillance  
10 materials. However, the deposition shall be conducted within ninety days of receipt  
11 of the request for surveillance.

12 (2) If a party requests in writing the production of surveillance materials  
13 from another party, and the responding party is not in possession of surveillance  
14 materials, and the requesting party has not been deposed, then any surveillance  
15 conducted after such request shall be produced within ninety days of conduction. If  
16 the requesting party has been deposed at the time the request for surveillance  
17 materials is received, then any surveillance conducted after the request is received  
18 shall be produced immediately by the responding party.

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

20 \* \* \*

21 D.(1) Except as otherwise provided in Paragraph E of this Article, a party  
22 may, through interrogatories, deposition, and a request for documents and tangible  
23 things, discover facts known or opinions held by any person who has been identified  
24 as an expert whose opinions may be presented at trial. If a report from the expert is  
25 required under Paragraph B, the deposition shall not be conducted until after the  
26 report is provided. Upon request, a party shall be entitled to receive a copy of all  
27 reports related to the case at hand which have been prepared by any person identified  
28 as an expert by the opposing party, even if that person is not expected to be called  
29 as a witness at trial.

1           ~~(2) A party may, through interrogatories or by deposition, discover facts~~  
 2           ~~known by and opinions held by an expert who has been retained or specially~~  
 3           ~~employed by another party in anticipation of litigation or preparation for trial and~~  
 4           ~~who is not expected to be called as a witness at trial, only as provided in Article 1465~~  
 5           ~~or upon a showing of exceptional circumstances under which it is impracticable for~~  
 6           ~~the party seeking discovery to obtain facts or opinions on the same subject by other~~  
 7           ~~means.~~

8           ~~(3)~~(2) Unless manifest injustice would result, the court shall require that the  
 9           party seeking discovery pay the expert a reasonable fee for time spent in responding  
 10          to discovery under this Paragraph; and with respect to discovery obtained under  
 11          Subparagraph ~~(2)~~ (1) of this Paragraph; the court shall also require the party seeking  
 12          discovery to pay the other party a fair portion of the fees and expenses reasonably  
 13          incurred by the latter party in obtaining facts and opinions from the expert.

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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)]

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HB 1065 Original

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Robby Carter

**Abstract:** Revises discovery articles related to producing surveillance materials, witness statements, and expert reports.

Present law provides that a defendant may take the deposition of a plaintiff prior to producing surveillance materials.

Proposed law retains present law but requires the defendant to conduct the deposition of the plaintiff within 90 days of receiving the request for surveillance.

Present law provides that expert reports prepared by witnesses who will not testify at trial are not discoverable.

Proposed law entitles a requesting party to all expert reports, even if prepared by a witness who will not testify at trial.

Present law provides that the court shall not order the production of any writings, recordings, or electronically stored information if it has been prepared by the adverse party, his attorney, surety, indemnitor, or agent in anticipation of litigation unless the denial of production or inspection will unfairly prejudice the party or lead to undue hardship or injustice.

Proposed law requires a party to produce all writings, recordings, or electronically stored information unless such writings, recordings, or electronically stored information has been made or prepared by the party.

(Amends C.C.P. Arts. 1424(A) and 1425(D); Adds C.C.P. Art. 1424(E))