

Regular Session, 2010
HOUSE BILL NO. 137

ACT No. 185

BY REPRESENTATIVE ABRAMSON

(On Recommendation of the Louisiana State Law Institute)

1 AN ACT

2 To amend and reenact Code of Civil Procedure Articles 44(B), 596, 1293(B), 1313(A)(4)
3 and (B), 1462(B) and (C), 3652, 3656, 3662, 5152, and R.S.13:3471(8), relative to
4 the continuous revision of the Code of Civil Procedure; to provide for service by
5 private persons; to provide for class action prescription; to provide for service by
6 electronic means; to provide for the right of a surety to plead discussion; to provide
7 for discovery of electronic information; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. Code of Civil Procedure Articles 44(B), 596, 1293(B), 1313(A)(4) and
10 (B), 1462(B) and (C), 3652, 3656, 3662, 5152 are hereby amended and reenacted to read as
11 follows:

12 Art. 44. Waiver of objections to venue

13 * * *

14 B. The venue provided in Articles 2006, 2811, 2812, 3941, ~~3991~~ 3993, 4031
15 through 4034, and 4542 may not be waived.

16 * * *

17 Art. 596. Prescription; suspension

18 A. Liberative prescription on the claims arising out of the transactions or
19 occurrences described in a petition brought on behalf of a class is suspended on the
20 filing of the petition as to all members of the class as defined or described therein.

21 Prescription which has been suspended as provided herein, begins to run again:

22 (1) As to any person electing to be excluded from the class, thirty days from
23 the submission of that person's election form;

1 (2) As to any person excluded from the class pursuant to Article 592, thirty
2 days after mailing or other delivery or publication of a notice to such person that the
3 class has been restricted or otherwise redefined so as to exclude him; or

4 (3) As to all members, thirty days after mailing or other delivery or
5 publication of a notice to the class that the action has been dismissed, that the
6 demand for class relief has been stricken pursuant to Article 592, or that the court has
7 denied a motion to certify the class or has vacated a previous order certifying the
8 class.

9 B. The time periods in Subparagraphs (A)(2) and (3) of this Article
10 commence upon the expiration of the delay for taking an appeal if there is no appeal,
11 or when an appeal becomes final and definitive. The notice required by
12 Subparagraphs (A)(2) and (3) of this Article shall contain a statement of the delay
13 periods provided herein.

14 Comment- 2010

15 (a) Article 596 was amended by the addition of Paragraph B to clarify that
16 the commencement of the thirty day periods provided in Subparagraphs (A)(2) and
17 (3) are suspended by the delays applicable to an appeal from the judgment ruling on
18 class certification.

19 (b) Read literally the prior version of Article 596 gave putative class
20 members receiving notice of the court's denial of certification of their membership
21 in a class action a thirty-day period, commencing upon notice of the judgment,
22 during which prescription applicable to filing individual suits continued to be
23 suspended.

24 (c) The provision created confusion because Article 592(A)(3)(h) authorizes
25 an appeal from a judgment denying certification and Article 596 does not provide
26 that its thirty-day suspensive periods are subject to further suspension by the articles
27 on appeal. Given this uncertainty, a cautious plaintiff's attorney receiving notice of
28 an adverse ruling on class certification might needlessly file an individual suit for his
29 client during the period for taking or completing an appeal to avoid a possible
30 prescription exception.

31 (d) The amendment adding Paragraph (B) to Article 596 clarifies that its
32 thirty-day suspensive periods do not run during the delays applicable to taking or
33 completing an appeal. It also requires the trial court to include in the notice specified
34 in Subparagraphs (A)(2) and (3) a statement of the delay periods provided in this
35 Article.

36 * * *

1 Art. 1293. Service by private person

2 * * *

3 B. In serving ~~citation~~ notice of a summary proceeding as provided by Article
4 2592(6) or (8) or a subpoena which is related to the proceeding, on motion of a party
5 the court shall have the discretion to appoint any person over the age of majority, not
6 a party and residing within the state, to make service of process, notices, and
7 subpoenas in the same manner as is required of sheriffs, without first requiring the
8 sheriff to attempt service. The party making such a motion shall include the reasons,
9 verified by affidavit, necessary to forego service by the sheriff, which shall include
10 but not be limited to the urgent emergency nature of the hearing, knowledge of the
11 present whereabouts of the person to be served, as well as any other good cause
12 shown.

13 Comment- 2010

14 Article 1293(B) has been amended to broaden the grounds on which a court
15 may order service by a private individual in connection with summary proceedings
16 provided in Article 2592.

17 * * *

18 Art. 1313. Service by mail, delivery, or ~~facsimile~~ electronic means

19 A. Except as otherwise provided by law, every pleading subsequent to the
20 original petition, and every pleading which under an express provision of law may
21 be served as provided in this Article, may be served either by the sheriff or by:

22 * * *

23 (4) ~~Facsimile transmission of a copy thereof to the counsel of record at his~~
24 ~~number designated for facsimile transmission, or if there is no counsel of record, to~~
25 ~~the adverse party at his number designated for facsimile transmission, this service~~
26 ~~being complete upon receipt of the transmission.~~ Transmitting a copy by electronic
27 means to counsel of record, or if there is no counsel of record, to the adverse party,
28 at the number or addresses expressly designated in a pleading or other writing for
29 receipt of electronic service. Service by electronic means is complete upon
30 transmission but is not effective and shall not be certified if the serving party learns
31 the transmission did not reach the party to be served.

1 B. When service is made by mail, delivery, or ~~facsimile transmission~~
2 electronic means, the party or counsel making the service shall file in the record a
3 certificate of the manner in which service was made.

4 * * *

5 Comment- 2010

6 Subparagraph (A)(4) and Paragraph B have been amended and broadened to
7 authorize service by "electronic means," which is intended to include e-mail and
8 facsimile transmissions. The prior version of the Article limited electronic service
9 to facsimile transmissions. Service by electronic means must be made to the number
10 or addresses expressly designated for service by electronic means in a pleading filed
11 by the adverse party or in a writing agreed to by the parties. Service is not effective
12 if the serving party learns that the electronic transmission did not reach the party to
13 be served. See FRCP Rule 5(b)(2)(E).

14 * * *

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

16 * * *

17 B.(1) The party upon whom the request is served shall serve a written
18 response within fifteen days after service of the request, except that a defendant may
19 serve a response within thirty days after service of the petition upon that defendant.
20 The court may allow a shorter or longer time. With respect to each item or category,
21 the response shall state that inspection and related activities will be permitted as
22 requested, unless the request is objected to, in which event the reasons for objection
23 shall be stated. If objection is made to part of an item or category, the part shall be
24 specified. The party submitting the request may move for an order under Article
25 1469 with respect to any objection to or other failure to respond to the request, or any
26 part thereof, or any failure to permit inspection as requested. If objection is made to
27 the requested form or forms for producing information, including electronically
28 stored information, or if no form was specified in the request, the responding party
29 shall state in its response the form or forms it intends to use.

30 (2) A party need not provide discovery of electronically stored information
31 from sources that the party identifies as not reasonably accessible because of undue
32 burden or cost. On motion to compel discovery or for a protective order, the party
33 from whom discovery is sought shall show that the information is not reasonably

1 accessible because of undue burden or cost. If that showing is made, the court may
 2 nonetheless order discovery from such sources if the requesting party shows good
 3 cause. The court may specify conditions for the discovery considering the criteria
 4 and limitations of Article 1426.

5 C. A party who produces documents for inspection shall produce them as
 6 they are kept in the usual course of business or shall organize and label them to
 7 correspond with the categories of the request. If a request does not specify the form
 8 or forms for producing information, including electronically stored information, a
 9 responding party shall produce the information in a form or forms in which it is
 10 ordinarily maintained or in a form or forms that are reasonably usable. When
 11 electronically stored information is produced, the responding party shall identify the
 12 specific means for electronically accessing the information.

13 * * *

14 Comment- 2010

15 (a) A new subparagraph modeled on FRCP 26(b)(2)(B) has been added to
 16 Paragraph B authorizing the trial court to weigh and, if appropriate, shift all or part
 17 of the cost or burden of producing electronically stored information to the requesting
 18 party when considering a motion to compel. A similar provision in Article 1354(F)
 19 applies to subpoenas duces tecum.

20 (b) To avoid the type of confusion illustrated in *Evangelist v. Dept. of*
 21 *Police*, ___So. 3d___, 2009 WL 2960707 (La. App. 4 Cir.) a sentence has been
 22 added to Article 1462(C) requiring the responding party to identify the "means" (*e.g.*,
 23 the software program and hardware) which the receiving party must use to fully and
 24 accurately access the electronically stored information being produced.

25 * * *

26 Art. 3652. Same; parties; venue

27 A. A petitory action may be brought by a person who claims the ownership
 28 of only an undivided interest in the immovable property or real right therein, or
 29 whose asserted ownership is limited to a certain period which has not yet expired,
 30 or which may be terminated by an event which has not yet occurred.

31 B. A lessee or other person who occupies the immovable property or enjoys
 32 the real right therein under an agreement with the person who claims the ownership
 33 thereof adversely to the plaintiff may be joined in the action as a defendant.

1 be taken from such judgment only within thirty days of the applicable date provided
2 in Article 2087(1)-(3) (A).

3 * * *

4 Art. 5152. Surety's right to plead

5 When a surety is sued by the creditor on the suretyship obligation, and the
6 right of discussion has been created by contract between the surety and the creditor,
7 the surety may plead discussion to compel the creditor to obtain and execute a
8 judgment against the principal before executing a judgment against the surety.

9 ~~Discussion may not be pleaded by a surety who is obligated solidarily with~~
10 ~~the principal, or who has renounced the benefit of discussion.~~

11 Comment- 2010

12 This Article was amended to conform with Civil Code Article 3045 which
13 abolishes a surety's plea of discussion by operation of law. However, Civil Code
14 Article 3045 does not prohibit a surety from establishing a right to plead discussion
15 by creation of the right in an agreement with the creditor of the suretyship obligation.
16 See Civil Code Article 3040. In such a case, discussion may be pleaded.

17 Section 2. R.S. 13:3471(8) is hereby amended and reenacted to read as follows:

18 §3471. Supplementary rules of service of process

19 The following rules supplement those governing the service of citation and
20 other legal process in a civil action or proceeding contained in the Code of Civil
21 Procedure:

22 * * *

23 (8) Subsequent to service of the original petition in any civil action or
24 proceeding, service of pleadings, documents, or notices that may be served by mail
25 or delivery on an attorney of record may also be made by ~~delivering~~ transmitting a
26 copy to the attorney by electronic means ~~of a telephonic facsimile communication~~
27 ~~device, if the attorney maintains such device at his office and the device is operating~~
28 ~~at the time service is made. When service is made as provided herein, the party or~~
29 ~~attorney making the service shall file in the record a certificate showing service was~~
30 ~~made by telephonic facsimile communication device. at the number or addresses for~~
31 receipt of electronic service expressly designated in a pleading or other writing for

1 receipt of electronic service. Service by electronic means is complete upon
2 transmission but is not effective and shall not be certified if the serving party learns
3 the transmission did not reach the attorney to be served.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____