

2016 Regular Session

HOUSE BILL NO. 285

BY REPRESENTATIVE GAROFALO

(On Recommendation of the Louisiana State Law Institute)

CIVIL/PROCEDURE: Provides for continuous revisions to the Code of Civil Procedure and related provisions of the Revised Statutes

1 AN ACT

2 To amend and reenact Code of Civil Procedure Articles 1458, 1462(B)(1), 1465.1(B),
3 1467(A), 2541, 2642, and 2721(B), and R.S. 13:3852(B), and to enact R.S.
4 13:4611(1)(g), relative to civil procedure; to extend the time delays for responding
5 to discovery requests; to provide for the enforcement of foreign and domestic
6 judgments; to provide for commencement of the suspensive appeal delay from an
7 order of seizure and sale; to provide with respect to the notice of seizure of property;
8 to provide for an award of attorney fees in civil contempt of court proceedings; and
9 to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. Code of Civil Procedure Articles 1458, 1462(B)(1), 1465.1(B), 1467(A),
12 2541, 2642, and 2721(B) are hereby amended and reenacted to read as follows:

13 Art. 1458. Interrogatories to parties; procedures for use

14 Each interrogatory shall be answered separately and fully in writing under
15 oath, unless it is objected to, in which event the reasons for objection shall be stated
16 in lieu of an answer. The written answer or reasons for objection to each
17 interrogatory shall immediately follow a restatement of the interrogatory to which
18 the answer or objection is responding. The answers are to be signed by the person
19 making them. When interrogatories are served on a specific party, that party shall

1 verify he has read and confirmed the answers and objections. The party upon whom
 2 the interrogatories have been served shall serve a copy of the answers, and objections
 3 if any, within ~~fifteen~~ thirty days after the service of the interrogatories, ~~except that~~
 4 ~~a defendant may serve answers or objections within thirty days after service of the~~
 5 ~~petition upon that defendant and the state and its political subdivisions may serve a~~
 6 ~~copy of the answers or objections within thirty days after service of the~~
 7 ~~interrogatories.~~ The court may allow a shorter or longer time. The party submitting
 8 the interrogatories may move for an order under Article 1469 with respect to any
 9 objection to or other failure to answer an interrogatory.

* * *

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

* * *

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

1 specified in the request, the responding party shall state in its response the form or
2 forms it intends to use.

3 * * *

4 Art. 1465.1. Requests for release of medical records

5 * * *

6 B. The party upon whom the request is served, within ~~fifteen~~ thirty days after
7 service of the request, shall provide to the requesting party releases signed by the
8 plaintiff or other authorized person unless the request is objected to, in which event
9 the reasons for the objection shall be stated. The party requesting the release of
10 medical records may move for an order under Article 1469 with respect to any
11 objection or other failure to respond to the request.

12 * * *

13 Art. 1467. Requests for admission; answers and objections

14 A. Each matter of which an admission is requested shall be separately set
15 forth. The matter is admitted unless, within ~~fifteen~~ thirty days after service of the
16 request, or within such shorter or longer time as the court may allow, the party to
17 whom the request is directed serves upon the party requesting the admission a
18 written answer or objection addressed to the matter, signed by the party or by his
19 attorney, ~~but, unless the court shortens the time, a defendant shall not be required to~~
20 ~~serve answers or objections before the expiration of thirty days after service of the~~
21 ~~petition upon him.~~ The written answer or reasons for objection to each request for
22 admission shall immediately follow a restatement of the request for admission to
23 which the answer or objection is responding. If objection is made, the reasons
24 therefor shall be stated. The answer shall specifically deny the matter or set forth in
25 detail the reasons why the answering party cannot truthfully admit or deny the
26 matter. A denial shall fairly meet the substance of the requested admission, and
27 when good faith requires that a party qualify his answer or deny only a part of the
28 matter of which an admission is requested, he shall specify so much of it as is true
29 and qualify or deny the remainder. An answering party may not give lack of

1 information or knowledge as a reason for failure to admit or deny unless he states
2 that he has made reasonable inquiry and that the information known or readily
3 obtainable by him is insufficient to enable him to admit or deny. A party who
4 considers that a matter of which an admission has been requested presents a genuine
5 issue for trial may not, on that ground alone, object to the request; he may, subject
6 to the provisions of Article 1472, deny the matter or set forth reasons why he cannot
7 admit or deny it.

8 * * *

9 Art. 2541. Execution of foreign judgments

10 A. A party seeking recognition or execution by a Louisiana court of a
11 judgment or decree of a court of the United States or a territory thereof, or of any
12 other state, or of any foreign country may ~~either seek enforcement pursuant to R.S.~~
13 ~~13:4241, et seq., or bring an ordinary proceeding against the judgment debtor in the~~
14 proper Louisiana court, to have the judgment or decree recognized and made the
15 judgment of the Louisiana court.

16 B. ~~In the latter case, a~~ A duly authenticated copy of the judgment or decree
17 must be annexed to the petition.

18 C. A judgment, decree, or order of a court of the United States or any other
19 court that is entitled to full faith and credit in this state may also be enforced
20 pursuant to R.S. 13:4241.

21 Comment - 2016

22 Article 2541 was amended to clarify that La. R.S. 13:4241 does not authorize
23 ex parte enforcement of the judgments of foreign countries in a Louisiana state court.
24 See *Baker & Mckenzie Advokathyra v. Thinkstream*, 20 So. 3d 1109 (La. App. 1 Cir.
25 2009).

26 * * *

27 Art. 2642. Assertion of defenses; appeal

28 Defenses and procedural objections to an executory proceeding may be
29 asserted either through an injunction proceeding to arrest the seizure and sale as
30 provided in Articles 2751 through 2754, or a suspensive appeal from the order
31 directing the issuance of the writ of seizure and sale, or both.

1 A suspensive appeal from an order directing the issuance of a writ of seizure
 2 and sale shall be taken within fifteen days of ~~the signing of the order~~ service of the
 3 notice of seizure as provided in Article 2721. The appeal is governed by the
 4 provisions of Articles 2081 through 2086, 2088 through 2122, and 2124 through
 5 2167, except that the security therefor shall be for an amount exceeding by one-half
 6 the balance due on the debt secured by the mortgage or privilege sought to be
 7 enforced, including principal, interest to date of the order of appeal, and ~~attorney's~~
 8 ~~fee~~ attorney fees, but exclusive of court costs.

9 * * *

10 Art. 2721. Seizure of property; notice

11 * * *

12 B. The sheriff shall serve upon the defendant a written notice of the seizure
 13 of the property. Such notice of seizure shall be accomplished by personal service or
 14 domiciliary service. The notice of seizure shall reproduce in full the provisions of
 15 Article 2642 and include information concerning the availability of housing
 16 counseling services, as well as the time, date, and place of the sheriff's sale, in
 17 accordance with the form provided in R.S. 13:3852(B).

18 * * *

19 Section 2. R.S. 13:3852(B) is hereby amended and reenacted and R.S. 13:4611(1)(g)
 20 is hereby enacted to read as follows:

21 §3852. Notices of seizure

22 * * *

23 B. The following form shall be used for these notices by the sheriff:

24 "Notice is hereby given that I am this day seizing, in accordance with the
 25 provisions of R.S. 13:3851 through 13:3861, the following described immovable
 26 property, to wit: _____ as the property of
 27 _____, under a writ of _____, issued on the _____ day of
 28 _____, _____, by the _____ District Court for the Parish of
 29 _____, in the matter entitled _____

1 versus _____, No. _____ of its docket, to satisfy a claim of
2 \$ _____, interest and costs, this ____ day of _____, _____. This matter
3 is scheduled for sheriff's sale on _____ day of _____, _____,
4 at _____ A.M./P.M. Please be aware that the sheriff's sale date may change. You
5 may contact the sheriff's office to find out the new date when the property is
6 scheduled to be sold. The new sale date will also be published in the local newspaper
7 in accordance with R.S. 43:203. If the seized property is residential property, you
8 may be afforded the opportunity to bring your account in good standing by entering
9 into a loss mitigation agreement with your lender, or by paying all of your past due
10 payments plus permitted costs and expenses within the time permitted by law for
11 reinstatement of your account. You are strongly encouraged to seek legal counsel.
12 If you cannot afford to pay an attorney, you may be able to qualify for free legal
13 services. Foreclosure prevention counseling services through a housing counselor,
14 including loss mitigation, are provided free of charge. To find a local housing
15 counseling agency approved by the U.S. Department of Housing and Urban
16 Development, you may contact the U.S. Department of Housing and Urban
17 Development or the Louisiana Housing Corporation.

18 THE FOLLOWING PARAGRAPH APPLIES ONLY TO PROPERTY
19 THAT HAS BEEN SEIZED PURSUANT TO A WRIT OF SEIZURE AND SALE
20 ISSUED IN AN EXECUTORY PROCEEDING: As provided in Louisiana Code of
21 Civil Procedure Article 2642, defenses and procedural objections to an executory
22 proceeding may be asserted either through an injunction proceeding to arrest the
23 seizure and sale as provided in Articles 2751 through 2754, or a suspensive appeal
24 from the order directing the issuance of the writ of seizure and sale, or both. A
25 suspensive appeal from an order directing the issuance of a writ of seizure and sale
26 shall be taken within fifteen days of service of the notice of seizure as provided in
27 Article 2721. The appeal is governed by the provisions of Articles 2081 through
28 2086, 2088 through 2122, and 2124 through 2167, except that the security therefor
29 shall be for an amount exceeding by one-half the balance due on the debt secured by

1 the mortgage or privilege sought to be enforced, including principal, interest to date
2 of the order of appeal, and attorney fees, but exclusive of court costs.

3 _____
4 Sheriff
5 Parish of _____
6 By: _____ "

7 * * *

8 §4611. Punishment for contempt of court

9 Except as otherwise provided for by law:

10 (1) The supreme court, the courts of appeal, the district courts, family courts,
11 juvenile courts and the city courts may punish a person adjudged guilty of a
12 contempt of court therein, as follows:

13 * * *

14 (g) The court may award attorney fees to the prevailing party in a contempt
15 of court proceeding provided for in this Section.

16 * * *

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)]

HB 285 Original 2016 Regular Session Garofalo

Abstract: Provides for continuous revisions to the Code of Civil Procedure and related provisions of the Revised Statutes

Present law (C.C.P. Arts. 1458, 1462(B)(1), 1465.1(B), and 1467(A)) provides for a 15-day time period within which to respond to discovery requests.

Proposed law extends the time period within which to respond to discovery requests to 30 days.

Present law (C.C.P. Art. 2541) provides for the enforcement of foreign and domestic judgments by a Louisiana court.

Proposed law clarifies that unlike state and federal judgments, judgments of a foreign country may not be enforced pursuant to R.S. 13:4241.

Present law (C.C.P. Art. 2642) provides for the signing of the order of seizure and sale as the commencement of the delay for taking a suspensive appeal from the order.

Proposed law changes the commencement of the suspensive appeal delay under present law to run upon service of the notice of seizure as provided in Article 2721.

Present law (C.C.P. Art. 2721) provides for the required contents of the notice of seizure of property.

Proposed law adds to present law that the notice of seizure shall reproduce in full the provisions of Article 2642.

Present law (R.S. 13:3852(B)) provides the form that shall be used by the sheriff for the notice of seizure of property.

Proposed law reproduces in full the provisions of C.C.P. Art. 2642 within the notice of seizure of property required under present law.

Present law (R.S. 13:4611) provides the penalties that may be imposed in a civil contempt of court proceeding.

Proposed law adds an award of attorney fees to the prevailing party in a civil contempt of court proceeding to the penalties permitted under present law.

(Amends C.C.P. Arts. 1458, 1462(B)(1), 1465.1(B), 1467(A), 2541, 2642, and 2721(B), and R.S. 13:3852(B); Adds R.S. 13:4611(1)(g))