

Regular Session, 2012

HOUSE BILL NO. 263

BY REPRESENTATIVE HARRISON

CIVIL/PROCEDURE: Provides with respect to the payment of costs and attorney fees in certain cases

1 AN ACT

2 To amend and reenact Code of Civil Procedure Articles 863(D), 934, 963 through 965,
3 967(D), 1005, and 1006, relative to the payment of certain costs and attorney fees
4 in civil matters; to provide for payment by certain parties under certain
5 circumstances; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. Code of Civil Procedure Articles 863(D), 934, 963 through 965, 967(D),
8 1005, and 1006 are hereby amended and reenacted to read as follows:

9 Art. 863. Signing of pleadings, effect

10 * * *

11 D. If, upon motion of any party or upon its own motion, the court determines
12 that a certification has been made in violation of the provisions of this Article, the
13 court shall impose upon the person who made the certification or the represented
14 party, or both, an appropriate sanction which ~~may~~ shall include an order to pay to the
15 other party the amount of the court costs and reasonable expenses incurred because
16 of the filing of the pleading, including reasonable attorney fees.

17 * * *

1 Art. 934. Effect of sustaining peremptory exception

2 A. When the grounds of the objection pleaded by the peremptory exception
3 may be removed by amendment of the petition, the judgment sustaining the
4 exception shall order such amendment within the delay allowed by the court.

5 B. If the grounds of the objection raised through the exception cannot be so
6 removed, or if the plaintiff fails to comply with the order to amend, the action, claim,
7 demand, issue, or theory shall be dismissed with prejudice, and the court shall award
8 to the exceptor payment by the plaintiff of all court costs, reasonable attorney fees,
9 and expert witness fees and costs reasonably incurred in preparing or responding to
10 discovery requests.

11 * * *

12 Art. 963. Ex parte and contradictory motions; rule to show cause

13 A. If the order applied for by written motion is one to which the mover is
14 clearly entitled without supporting proof, the court may grant the order ex parte and
15 without hearing the adverse party, and, if the court grants such an order, the court
16 shall award to the mover payment by the opposing party of all court costs, reasonable
17 attorney fees, and expert witness fees and costs reasonably incurred in preparing and
18 filing the motion.

19 B. If the order applied for by written motion is one to which the mover is not
20 clearly entitled, or which requires supporting proof, the motion shall be served on
21 and tried contradictorily with the adverse party.

22 C. The rule to show cause is a contradictory motion.

23 Art. 964. Motion to strike

24 A. The court on motion of a party or on its own motion may at any time and
25 after a hearing order stricken from any pleading any insufficient demand or defense
26 or any redundant, immaterial, impertinent, or scandalous matter.

27 B. If the court orders redundant, immaterial, impertinent, or scandalous
28 matters stricken from a pleading, the court shall award to the mover payment by the

1 opposing party of all court costs, reasonable attorney fees, and expert witness fees
2 and costs reasonably incurred in filing and hearing of the motion.

3 Art. 965. Motion for judgment on pleadings

4 A. Any party may move for judgment on the pleadings after the answer is
5 filed, or if an incidental demand has been instituted after the answer thereto has been
6 filed, but within such time as not to delay the trial. For the purposes of this motion,
7 all allegations of fact in mover's pleadings not denied by the adverse party or by
8 effect of law and all allegations of fact in the adverse party's pleadings shall be
9 considered true.

10 B. If the court grants the motion for judgment on the pleadings, the court
11 shall award to the prevailing party the payment by the non-prevailing party of all
12 court costs, reasonable attorney fees, and expert witness fees and costs reasonably
13 incurred in prosecuting or defending the action.

14 * * *

15 Art. 967. Same; affidavits

16 * * *

17 D. If it appears to the satisfaction of the court at any time that any of the
18 affidavits presented pursuant to this Article are presented in bad faith or solely for
19 the purposes of delay, the court immediately shall order the party employing them
20 to pay to the other party the amount of the reasonable expenses which the filing of
21 the affidavits caused him to incur, including reasonable attorney fees, court costs,
22 and expert witness fees and costs reasonably incurred. Any offending party or
23 attorney may be adjudged guilty of contempt.

24 * * *

25 Art. 1005. Affirmative defenses

26 A. The answer shall set forth affirmatively negligence, or fault of the
27 plaintiff and others, duress, error or mistake, estoppel, extinguishment of the
28 obligation in any manner, failure of consideration, fraud, illegality, injury by fellow
29 servant, and any other matter constituting an affirmative defense.

1 B. If a party has mistakenly designated an affirmative defense as a
2 peremptory exception or as an incidental demand, or a peremptory exception as an
3 affirmative defense, and if justice so requires, the court, on such terms as it may
4 prescribe, shall treat the pleading as if there had been a proper designation.

5 C. All allegations set forth in an affirmative defense are made subject to the
6 obligations and sanctions set forth in Article 863.

7 Art. 1006. Alternative defenses

8 An answer may set forth two or more defenses in the alternative, even though
9 the factual or legal bases thereof may be inconsistent or mutually exclusive. All
10 allegations in such cases are made subject to the obligations and sanctions set forth
11 in Article 863.

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)]

Harrison

HB No. 263

Abstract: Provides for the payment by the non-prevailing party of court costs, attorney fees, and expert witness fees and costs incurred in the prosecution or defense of certain civil actions and motions.

Present law provides that if the court determines that a certification of a pleading has been made in violation of the provisions of present law, the court shall impose upon the person who made the certification or the represented party, or both, an appropriate sanction which may include an order to pay to the other party the amount of the reasonable expenses incurred because of the filing of the pleading, including reasonable attorney fees.

Proposed law requires that sanctions include an order to pay to the other party the amount of the court costs and reasonable expenses incurred because of the filing of the pleading, including reasonable attorney fees.

Present law provides that if the grounds of the objection raised through a peremptory exception cannot be removed by amendment of the petition, or if the plaintiff fails to comply with the order to amend, the action, claim, demand, issue, or theory shall be dismissed.

Proposed law retains present law and provides that the dismissal shall be with prejudice, and the court shall award to the exceptor payment by the plaintiff of all court costs, reasonable attorney fees, and expert witness fees and costs reasonably incurred in preparing or responding to discovery requests.

Present law provides that if the order applied for by written motion is one to which mover is clearly entitled without supporting proof, the court may grant the order ex parte and without hearing the adverse party.

Proposed law retains present law and provides that if the court grants such an ex parte order without hearing, the court shall award to the mover payment by the opposing party of all court costs, reasonable attorney fees, and expert witness fees and costs reasonably incurred in preparing and filing the motion.

Present law provides that the court may, at any time and after a hearing, order stricken from any pleading any insufficient demand or defense or any redundant, immaterial, impertinent, or scandalous matter.

Proposed law retains present law and provides that if the court orders redundant, immaterial, impertinent, or scandalous matters stricken from a pleading, the court shall award to the mover payment by the opposing party of all court costs, reasonable attorney fees, and expert witness fees and costs reasonably incurred in filing and hearing of the motion.

Present law provides that any party may move for judgment on the pleadings after the answer is filed, or if an incidental demand has been instituted after the answer thereto has been filed, but within such time as not to delay the trial.

Proposed law retains present law and provides that if the court grants the motion for judgment on the pleadings, the court shall award to the prevailing party the payment by the non-prevailing party of all court costs, reasonable attorney fees, and expert witness fees and costs reasonably incurred in prosecuting or defending the action.

Present law provides that if the court finds at any time that any of the affidavits presented for a motion for summary judgment are presented in bad faith or solely for the purposes of delay, the court immediately shall order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney fees, and present law further provides that any offending party or attorney may be adjudged guilty of contempt.

Proposed law retains present law and includes the payment of court costs and expert witness fees and costs reasonably incurred.

Present law provides that the answer shall set forth affirmatively negligence, or fault of the plaintiff and others, duress, error or mistake, estoppel, extinguishment of the obligation in any manner, failure of consideration, fraud, illegality, injury by fellow servant, and any other matter constituting an affirmative defense.

Proposed law retains present law and provides that all allegations set forth in an affirmative defense are made subject to the obligations and sanctions set forth in C.C.P. Art. 863.

Present law provides that an answer may set forth two or more defenses in the alternative, even though the factual or legal bases thereof may be inconsistent or mutually exclusive, and that all allegations in such cases are made subject to the obligations set forth in C.C.P. Art. 863.

Proposed law retains present law and provides that all allegations in such cases are also subject to the sanctions set forth in C.C.P. Art. 863.

(Amends C.C.P. Arts. 863(D), 934, 963-965, 967(D), 1005, and 1006)