

Regular Session, 2014

HOUSE BILL NO. 607

BY REPRESENTATIVE ABRAMSON

(On Recommendation of the Louisiana State Law Institute)

CIVIL/PROCEDURE: Provides for continuous revision of the Code of Civil Procedure

1 AN ACT

2 To amend and reenact Code of Civil Procedure Articles 1035, 1425(C), and 1462(B)(1) and
3 to enact Code of Civil Procedure Article 1434(A)(3), relative to the continuous
4 revision of the Code of Civil Procedure; to provide for the delay in filing an answer
5 in incidental actions; to provide for the identification of testifying experts in
6 discovery; to extend the delay for the state to respond to a request for the production
7 of documents and things; to provide for persons before whom depositions are taken;
8 and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Code of Civil Procedure Articles 1035, 1425(C), and 1462(B)(1) are
11 hereby amended and reenacted and Code of Civil Procedure Article 1434(A)(3) is hereby
12 enacted to read as follows:

13 Art. 1035. Answer

14 The answer in an incidental action shall be filed within the delay allowed by
15 Article 1001, ~~or at any time prior to a judgment by default against the defendant in~~
16 ~~the incidental action~~, and shall be subject to all of the rules set forth in Articles 1001
17 and 1003 through 1006.

18 Comment – 2014

19 The 2014 amendment to this Article conforms with the rules for answering
20 incidental demands to those provided for the principal demand.

21 * * *

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

2 * * *

3 C. ~~The~~ If the court orders the disclosures of Paragraph B of this Article, they
4 shall be made at the times and in the sequence directed by the court. In the absence
5 of ~~other~~ directions from the court or stipulation by the parties, the disclosures
6 ~~required~~ ordered pursuant to Paragraph B of this Article shall be made at least ninety
7 days before the trial date or, if the evidence is intended solely to contradict or rebut
8 evidence on the same subject matter identified by another party under Paragraph B
9 of this Article, within thirty days after the disclosure made by the other party. The
10 parties shall supplement these disclosures when required by Article 1428.

11 * * *

12 Comments - 2014

13 (a) Contrary to *Quillian v. The Dixie Bonded Warehouse*, 105 So.3d 71 (La.
14 App. 2d Cir. 8/29/12), Article 1425 does not require a party, absent a discovery
15 request or an order requiring an expert report, to identify testifying experts.

16 (b) The identification of testifying expert witnesses is obtained by
17 interrogatories, depositions, requirements in a scheduling order entered pursuant to
18 Article 1551(A)(5) or (8), or by court order under Paragraph B. The preparation and
19 submission of reports of testifying experts is required only if ordered by the court
20 pursuant to Paragraph (B). If expert reports are ordered, the court should set
21 production deadlines in the order; however, if there is no deadline set in the order,
22 then the sequence provided in Paragraph (C) applies by default.

23 * * *

24 Art. 1434. Person before whom deposition taken

25 A.

26 * * *

27 (3) For purposes of this Article, a person who is requested to provide
28 shorthand reporting, or other court reporting services, who does not have actual
29 knowledge of the existence of an employment or contractual relationship, and who
30 has obtained a certification by the requesting entity that they do not have a prohibited
31 employment or contractual relationship with a party litigant, shall not be considered
32 an employee as defined in this Article.

33 * * *

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

2 * * *

3 B.(1) The party upon whom the request is served shall serve a written
4 response within fifteen days after service of the request, except that a defendant may
5 serve a response within thirty days after service of the petition upon that defendant,
6 and except that the state and its political subdivisions may serve a response within
7 thirty days after service of the request. The court may allow a shorter or longer time.

8 With respect to each item or category, the response shall state that inspection and
9 related activities will be permitted as requested, unless the request is objected to, in
10 which event the reasons for objection shall be stated. If objection is made to part of
11 an item or category, the part shall be specified. The written answer or reasons for
12 objection to each request for production of documents shall immediately follow a
13 restatement of the request for production of documents to which the answer or
14 objection is responding. The party submitting the request may move for an order
15 under Article 1469 with respect to any objection to or other failure to respond to the
16 request, or any part thereof, or any failure to permit inspection as requested. If
17 objection is made to the requested form or forms for producing information,
18 including electronically stored information, or if no form was specified in the
19 request, the responding party shall state in its response the form or forms it intends
20 to use.

21 * * *

22 Comment - 2014

23 The 2014 amendment to Paragraph B extends the period for the state and its
24 political subdivisions to respond to a request from fifteen days to thirty days so as
25 to coincide with the period provided in Article 1458 for responses to interrogatories.

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)]

Abramson

HB No. 607

Abstract: Provides for continuous revision of the Code of Civil Procedure including requiring the deadline for answering incidental demands the same as provided for the principal demand, clarifying that a party is under no obligation to identify a testifying expert absent a discovery request or order for an expert report, providing for persons before whom depositions are taken, and extending the time period within which the state has to respond to a request for production of documents.

Present law (C.C.P. Art.1035) provides for answer in incidental demands.

Proposed law makes the deadline for answering incidental demands the same as provided for principal demands.

Present law (C.C.P. Art.1425) provides for identifying testifying experts.

Proposed law specifies that a party is under no obligation to identify a testifying expert absent a discovery request or order for an expert report.

Present law (C.C.P. Art. 1434) requires that a deposition be taken before an officer authorized to administer oaths and who is not an employee or attorney of any of the parties. Further defines an employee to include a person who has a contractual relationship with or is employed part or full time by a person who has a contractual relationship with a party litigant to provide certain reporting services.

Proposed law retains present law and exempts those persons who do not have actual knowledge of the existence of an employment or contractual relationship and who have obtained certification that they do not have a prohibited employment or contractual relationship with a party litigant from those defined as employees.

Present law (C.C.P. Art.1462) provides for discovery-production of documents and things.

Proposed law extends the period for the state and its political subdivisions to respond to a request for production of documents and things from 15 to 30 days.

(Amends C.C.P. Arts. 1035, 1425(C), and 1462(B)(1); Adds C.C.P. Art. 1434(A)(3))

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill.

1. Deleted changes to C.C.P. Art. 1469(4), authorizing the court to award costs and attorney's fees when a response to discovery is unreasonably delayed, from the bill.

Summary of Amendments Adopted by House

House Floor Amendments to the engrossed bill.

1. Added provisions regarding persons before whom depositions are taken, exempting those persons who do not have actual knowledge of the existence of an employment or contractual relationship and who have obtained certification that they do not have a prohibited employment or contractual relationship with a party litigant from those defined as employees.