



SELECTED LEGISLATION
from the
2010 Regular Session
of the
Louisiana Legislature

Prepared by

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2010 REGULAR SESSION

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I. CIVIL LAW AND PROCEDURE
A. SUBSTANTIVE, LIABILITY, AND DAMAGES

1. Willmott (HB 323)

Act No. 465

Provides that a **curator or undercurator** who performs his duties and obligations without compensation shall not be personally liable for any injury, death, damage, civil penalty, or other loss caused by the interdict in his charge, unless it was caused by the gross negligence or willful and wanton misconduct of the curator or undercurator in executing his duties and obligations.

Effective August 15, 2010. (Adds R.S. 9:2800.21)

2. Lopinto (HB 3)

Act No. 459

Provides that, for purposes of the limitation of liability, rendering emergency care, first aid, or rescue shall include the use of an **automated external defibrillator** as defined by R.S. 40:1236.12, and includes the owner of the site in the limitation of liability.

Effective August 15, 2010. (Amends R.S. 40:1236.14; Adds R.S. 9:2793(C))

3. Mills (HB 584)

Act No. 257

Adds law enforcement agencies and officers to the limitation of liability granted to funeral homes, directors, employees or agents participating in **funeral processions**.

Effective August 15, 2010. (Amends R.S. 32:300.3(D))

4. Martiny (SB 606)

Act No. 793

Enacts the **Preservation of Religious Freedom Act (PRFA)** which provides for legislative findings relative to the intent of the legislature and people of Louisiana in 1974 when adopting Article I, Section 8 of the state constitution.

Provides that government shall not substantially burden a person's exercise of religion, even if the burden results from a facially neutral rule or a rule of general applicability, unless it demonstrates that application of the burden to the person is both in furtherance of a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest.

Provides that the standards of a compelling governmental interest, as set forth in R.S. 13:5232, shall be satisfied by any penological regulation or rule which is established by a jail

or correctional facility to protect the safety and security of incarcerated persons, or staff of, or visitors to the jail or correctional facility, or to maintain order or discipline in the jail or correctional facility.

Provides that nothing in the PRFA shall be construed to authorize any relationship, marital or otherwise, that would violate Art. XII, Section 15 of the state constitution, prohibiting same-sex marriages and providing that marriage in the state shall consist only of the union of one man and one woman.

Provides that nothing in the PRFA shall be construed to authorize the enforcement of any law, rule, or legal code or system established and used or applied in a jurisdiction outside of the states or territories of the U.S.

Provides that a person whose religious exercise is being, has been, or is likely to be burdened in violation of the PRFA may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief, not including punitive or exemplary damages, without regard to whether the proceeding is brought in the name of the state or by any other person, and provides for exceptions and additional procedures for filing such actions.

Effective August 15, 2010. (Adds R.S. 13:5230-5241)

5. Roy (HB 773)

Act No. 276

Provides that if a person conducts a **prescribed burn** in accordance with the established rules and regulations for prescribed burnings, there shall be a rebuttable presumption of nonnegligence.

Effective August 15, 2010. (Amends R.S. 3:17(E))

6. Greene (HB 1159)

Act No. 740

Provides that a patient or his attorney has a right to obtain the entirety of the **patient's records** in the form by which they are generated, except microfilm, and specifies the charges authorized for obtaining treatment records which are generated, maintained, or stored in paper form.

Effective August 15, 2010. (Amends R.S. 40:1299.96(A)(2)(b))

7. Gary Smith (HB 987)

Act No. 614

Requires clinical laboratories or medical facilities to **report results directly to the patient** upon request and without prior approval of a health care provider, and requires labs or facilities to provide notice to the health care provider that the patient has requested the test results.

Relative to the requirement to provide health care information to patients, adds "clinical laboratory" or "medical facility" to the definition of health care provider, and adds laboratory and test results to the list of enumerated records that a patient or his legal representative or other statutorily authorized persons may obtain.

Provides that the patient shall not have a right or cause of action against the clinical laboratories or medical facilities for the release of test results in accordance with law.

Effective August 15, 2010. (Amends R.S. 40:1299.96(A)(2)(b) and (B)(1); Adds R.S. 40:1299.96(A)(4))

8. Claitor (SB 217)

Act No. 168

Adopts the **Uniform Prudent Management of Institution Funds Act** and is based upon the Uniform Prudent Management of Institutional Funds Act as approved and recommended by the National Conference of Commissioners on Uniform State Laws in 2006.

Provides rules, procedures, and standards for the management and investment of institutional funds primarily for charitable purposes.

Effective on July 1, 2010. (Amends R.S. 9:2337.1-2337.8; Adds R.S. 9:2337.9 and 2337.10)

9. Chaisson (SB 256)

Act No. 958

Enacts the **Louisiana Exchange Sale of Receivables Act** and provides for legislative intent that specifically rejects common law legal theories under which recourse sales of receivables can be recharacterized as loans or credit accommodations, as being contrary to Louisiana civil law principles that apply to sales of receivables over exchanges located in this state.

Applies to all sales of receivables over exchanges located in Louisiana, irrespective of whether the buyer or the seller of the receivable is a Louisiana resident, business organization or other entity, so long as the buyer and the seller contractually agree that such sales are deemed to be consummated in this state, subject to Louisiana law, and such **sales of receivables result in true sales** for all purposes.

Provides, in part, that all sales of receivables over exchanges located in this state conclusively result in consummated true sales for all purposes, and are not limited to a bankruptcy context, and provides that sales of receivables over exchanges located in this state are **not subject to recharacterization**.

Effective July 6, 2010. (Adds R.S. 9:3131.1-3131.9)

10. J.R. Smith (SB 361)

Act No. 881

Upon recommendation of the Louisiana State Law Institute, provides for the revision of the Civil Code articles on **usufruct**.

Provides, in part, for the following: (1) changes "legal entity" to "juridical person" to be consistent with the definition of "person" in Civil Code Article 24; (2) provides that the usufructuary has the right to exercise rights of other juridical entities that are similar to voting rights in corporations; (3) provides that the usufructuary is responsible to the naked owner for abuse of the property, and provides for the right and the rules for the disposition of nonconsumables by the usufructuary; (4) adds *force majeure* as a cause for need of ordinary repairs for which the usufructuary is responsible and adds *force majeure* to the list of causes of destruction of property for which restoration is not mandatory and as a cause of loss of property for which the usufruct terminates; (5) provides rules for discharge of encumbrances on the property by an inter vivos usufructuary, and allows the usufructuary to obtain reimbursement for any interest paid that accrued prior to the commencement of the usufruct; (6) provides an exception that if the debt is secured by an encumbrance of the thing subject to the usufruct, it may be sold for the payment of the debt; (7) provides rules for the payment of succession debts when there are multiple usufructuaries; (8) provides that the usufructuary may not claim reimbursement for improvements that he does not or cannot remove; (9) deletes the naked owner's authority to also lease, alienate, or encumber the property subject to the usufruct; (10) provides that when the property changes form, the usufruct attaches to the new form received by the usufructuary; (11) provides that the naked owner has the right to demand that the usufructuary give security for the proceeds; and (12) provides that the usufruct terminates by the enforcement of any encumbrance established upon the property prior to the creation of the usufruct.

Effective July 2, 2010. (Amends C.C. Arts. 538, 549, 553, 558, 567-569, 573-575, 577, 580, 581, 583, 584, 586-594, 601, 603, 604, 608, 613, 615, 616, 618-620, and 623-625; adds C.C. Arts. 568.1, 568.2, and 568.3)

11. Harrison (HB 1008)

Act No. 725

Provides that whenever a motor vehicle is damaged through the negligence of a third-party without being destroyed, and the owner can prove by a preponderance of the evidence that, if the vehicle were repaired to its preloss condition, its fair market value would be less than its value before it was damaged, the owner of the damaged vehicle is entitled to recover as additional damages an amount equal to the **diminution in the value of the vehicle**. Specifies that the total damages recovered by the owner cannot exceed the fair market value of the vehicle prior to when it was damaged, and the amount paid for the diminution of value shall be considered in determining whether a vehicle is a total loss pursuant to R.S. 32:702.

Effective August 15, 2010. (Adds R.S. 9:2800.17)

B. MEDICAL MALPRACTICE

1. Willmott (HB 264)

Act No. 568

Adds **licensed respiratory therapists, licensed radiologic technologists, and licensed clinical laboratory scientists** to the definition of "health care provider" for the purposes of the Medical Malpractice Act for both state and private services, and adds occupational therapists to the definition of "state health care provider".

Effective August 15, 2010. (Amends R.S. 40:1299.39(A)(1)(a)(ii)(intro. para.) and 1299.41(A)(10))

2. White (HB 1007)

Act No. 301

Provides that all of the provisions of **the Governmental Claims Act apply to medical malpractice claims** except for the limitations on the recovery of damages against the state.

Effective August 15, 2010. (Amends R.S. 13:5101(B); Adds R.S. 13:5106(F))

3. White (HB 3)

Act No. 398

Specifies that only **medical malpractice claims of prisoners** relating to health care rendered in a correctional facility shall be submitted for administrative review.

Provides that claims of wrongful death and survival related to prisoners shall be submitted to the medical review panel and not to correctional administrative review.

Effective August 15, 2010. (Amends R.S. 40:1299.39(E)(1) and 1299.39.1(A)(1)(a))

4. Johnson (HB 1453)

Act No. 950

Provides that health care providers are not covered by the state or private Medical Malpractice Acts when performing the **elective termination of an uncomplicated viable pregnancy**.

Effective August 15, 2010. (Adds R.S. 40:1299.39(A)(1)(a)(iv)(dd) and 1299.41(K))

5. Ligi (HB 1286)

Act No. 411

Provides relative to the operation of the **Patient's Compensation Fund Oversight Board** and that all funds collected shall be considered self-generated revenues and shall be deposited by the board into the "Patient's Compensation Fund".

Further provides that neither the fund nor the board shall be a budget unit of the state, and changes the entity which will hold the private monies in trust as a custodial fund from the state to the board.

Effective July 1, 2010. (Amends R.S. 36:4(B)(1)(dd), 801.1(A) and 802.3 and R.S. 40:1299.44(A)(1) and (5)(d), (e), and (f) and (D)(1)(a))

6. Murray (SB 514)

Act No. 78

Removes the authority of the Commissioner of Insurance from regulating the rates set by the Patients' Compensation Fund.

Requires the board to cause to be prepared an annual actuarial study of the fund by a qualified competent actuary.

Provides that the surcharge shall be determined by the board in a public meeting, held pursuant to existing law, relative to open meetings and occasions for executive sessions, based upon actuarial principles and reports, experience, and prudent judgment of the board, and provides for rate setting factors and procedures.

Effective August 15, 2010. (Amends R.S. 40:1299.44(A)(2), (5), and (6) and (D)(1)(c) and (2)(b)(iii))

C. PRESCRIPTION AND PEREMPTION

1. Abramson (HB 645)

Act No. 196

Clarifies the retroactive application of the **prescriptive period of five years** to set aside a document or instrument executed under authority of a **power of attorney** to all documents whether recorded prior to or after Aug. 15, 2008; however, as to any documents recorded prior to August 15, 2008, as to which prescription has not already run and become final, the prescriptive period shall become final 10 years from the date the document was recorded or August 15, 2013, whichever occurs first.

Effective August 15, 2010. (Amends R.S. 9:5647)

D. PROCEDURAL LAW

1. Abramson (HB 137)

Act No. 185

Upon the recommendation of the Louisiana State Law Institute, provides for the continuous **revision of the Code of Civil Procedure** as follows:

- (1) Clarifies that the period of suspension of liberative prescription on class action claims is subject to further suspension by the articles regarding appeal.
- (2) Broadens grounds on which a court may order service by a private person in a summary proceeding.
- (3) Provides for service by mail, delivery, or "electronic means".
- (4) Provides for cost-shifting in discovery of electronically stored information and specification of the means for accessing the information.
- (5) Deletes the surety's right to plead discussion by operation of law (abolished by C.C. Art. 3045), and recognizes the surety's right to plead discussion when the right has been created by contract.

Effective August 15, 2010. (Amends C.C.P. Arts. 44(B), 596, 1293(B), 1313(A)(4) and (B), 1462(B) and (C), 3652, 3656, 3662, 5152, and R.S.13:3471(8))

2. Kleckley (HB 214)

Act No. 461

Provides that all pleadings, documents, and exhibits which are required to be filed with the clerk of court, and endorsed and retained for inclusion in the record, **may be transmitted electronically** through a system established by the clerk.

Requires the clerk to adopt and implement procedures and provides that public access to electronically filed documents is the same as access to written filings.

Provides that the electronic record is the official record, and all documents electronically filed are deemed filed on the date and time stated on the confirmation by the clerk of court.

Effective August 15, 2010. (Amends C.C.P. Art. 253(B); Adds C.C.P. Art. 253(C))

3. Martiny (SB 3)

Act No. 55

In **suits against the state**, provides that **when service is not requested** within the required time period, the **dismissal of the action** occurs as to the state, state agency, political subdivision or officer or employee upon whom service was not requested.

Effective August 15, 2010. (Amends R.S. 13:5107(D)(2))

4. Abramson (HB 260)

Act No. 690

Requires all **motions for summary judgment**, memos in support, and opposing affidavits to comply with and be served within the time limits established in the district court rules.

Provides that a summary judgment shall be rendered or affirmed only as to the issues presently before the court.

Provides that when the court determines that a party or nonparty in a motion for summary judgment is not negligent, not at fault, or did not cause the injury or harm alleged, that party or nonparty **may not be considered in any subsequent allocation of fault**, evidence shall not be admitted at trial, and the issue shall not be submitted to the jury.

However, these provisions shall not apply when a summary judgment is granted on the basis of an affirmative defense.

Effective August 15, 2010. (Amends C.C.P. Art. 966(B) and (E); Adds C.C.P. Art. 966(F))

5. Connick (HB 33)

Act No. 682

Relative to **discovery**, requires that the written answer or reasons for objection shall immediately follow a restatement of each interrogatory, request for production of documents, or request for admission.

Provides that when interrogatories are served on a specific party, that party shall verify that he has read and confirmed the answers and objections.

Effective January 1, 2011. (Amends C.C.P. Arts. 1458, 1462(B), and 1467)

6. Connick (HB 38)

Act No. 456

Relative to **depositions**, requires the officer to **cease or suspend recordation** of the testimony, questions, objections, or any other statements only upon agreement of all counsel and parties present at the deposition, or upon termination or suspension of the deposition pursuant to C.C.P. Art. 1444.

Effective August 15, 2010. (Amends C.C.P. Art. 1443(B))

7. Appel (SB 219)

Act No. 540

Provides that the signature of the attorney or party is a **certification that he has read the pleading** but restates the certification requirements by providing that by signing the pleading, the person is certifying that to the best of his knowledge:

- (1) The pleading is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation.
- (2) Each claim, defense, or other legal contention in the pleading is warranted by law or by a nonfrivolous argument for the extension, modification, or reversal of law.
- (3) Each allegation or other factual contention in the pleading has evidentiary support or, for a specifically identified allegation or factual contention, is likely to have

evidentiary support after a reasonable opportunity for further investigation or discovery.

- (4) Each denial in the pleading of a factual contention is warranted on the evidence or, for a specifically identified denial, is reasonably based on a lack of information or belief.

Requires the court when imposing a sanction to describe the conduct that is in violation of law and to explain the basis for the sanction.

Effective August 15, 2010. (Amends C.C.P. Arts. 863(B) and (D); Adds C.C.P. Art. 863(G))

8. Connick (HB 41)

Act No. 458

Requires the court, unless good cause is shown, to order a party making an **objection during a deposition** in violation of the law to pay the costs incurred for editing or redacting the transcript and authorizes appropriate sanctions.

Effective August 15, 2010. (Adds C.C.P. Art. 1443(E))

9. Appel (SB 46)

Act No. 56

Increases the delay for applying for a **new trial in parish and city courts** from three days to seven days, exclusive of holidays, and specifies that "holidays" refers to legal holidays.

Effective August 15, 2010. (Amends C.C.P. Art. 4907(B))

10. Abramson (HB 135)

Act No. 184

Authorizes the court to award **sanctions for frivolous writ applications** and award attorney fees for both frivolous appeals and writ applications.

Effective August 15, 2010. (Amends C.C.P. Art. 2164)

11. Appel (SB 437)

Act No. 651

Provides that if **fraud is alleged in non-residential contracts** in actions commenced **after the five-year peremptive period** and the court determines that the allegation was brought in bad faith and no fraud is found, then the party who made the allegation shall be liable for court costs and attorney fees. If fraud is proven, then the party that has committed the fraud shall be liable for court costs and attorney fees.

Effective August 15, 2010. (Amends R.S. 9:2772(H)(2))

12. Appel (SB 457)

Act No. 545

Relative to the **Louisiana Binding Arbitration Law**, provides that failure to pay within 10 business days any required deposit, fee, or expense shall constitute default in the arbitration proceeding and a party aggrieved by the default shall be entitled to remove the matter to court, and be awarded attorney fees and costs.

Provides that the parties may offer evidence relevant and material to the dispute, and strict conformity to the Code of Evidence shall not be necessary, except for laws pertaining to testimonial privileges.

Requires the arbitrators to determine the admissibility, relevance, and materiality of the evidence offered, including the admissibility of expert evidence, and authorizes the exclusion of evidence deemed to be cumulative or irrelevant.

Effective August 15, 2010. (Amends R.S. 9:4203 and 4206)

13. Greene (HB 327)

Act No. 466

Requires the court to grant a motion by a party to appoint a **private process server** whom the court deems to be qualified when the sheriff has not made service within 10 days after receipt of the process or when a return has been made certifying that the sheriff has been unable to make service, whichever is earlier.

Provides that any person who is a Louisiana licensed private investigator shall be presumed qualified to perform the required duties to make service of process.

Effective June 22, 2010. (Amends C.C.P. Art. 1293(A))

14. Landry (HB 398)

Act No. 695

When a person **fails to pay an open account** and is liable for the **reasonable attorney fees** of the claimant, "reasonable attorney fees" means attorney fees incurred before judgment and after judgment if the judgment creditor is required to enforce the judgment through a writ of fieri facias, writ of seizure and sale, judgment debtor examination, or other post-judgment judicial process.

Provides that if the judgment creditor incurs attorney fees on the principal demand after judgment, the judgment creditor may file a rule to show cause and obtain a judgment for those attorney fees which shall be added to the total to be recovered on the principal demand.

Provides that if the judgment debtor does not timely file a memorandum in opposition, the court may award attorney fees and costs without the necessity of an appearance in court.

Effective August 15, 2010. (Amends R.S. 9:2781(E); Adds R.S. 9:2781(F))

15. Hutter (HB 1423)

Act No. 753

Authorizes an award of **reasonable attorney fees** and court costs when the association of **unit owners of a condominium fails to repair damage** to any common element of the unit or any portion of a unit that falls under the responsibility of the association and the individual unit owner incurs expenses in bringing a claim when a judgment is rendered in the unit owner's favor.

Provides that any contractual provision that attempts to limit, diminish, or prevent the recovery provided by new law shall be prohibited.

Effective August 15, 2010. (Adds R.S. 9:1121.104)

16. Martiny (SB 689)

Act No. 24

Removes the restrictions placed on the type of suits any **partnership, corporation, or other legal entity** may defend on its own behalf through a duly authorized partner, shareholder, officer, employee, or duly authorized agent or representative.

Effective August 15, 2010. (Amends R.S. 37:212(C))

17. Walsworth (SB 169)

Act No. 18

Exempts from seizure the principal of the funeral merchandise trust fund and all income derived therefrom, under any writ, mandate, or process whatsoever, by the creditors of the beneficiaries, the trustee, the cemetery authority, or any person or other entity providing cemetery merchandise or services for which the trust fund was created.

Effective August 15, 2010. (Adds R.S. 8:502.3)

**18. Wooton (HB 701)
Martiny (SB 284)**

Act No. 712

Act No. 878

Provides for the **enforcement of foreign defamation judgments**. Provides that a foreign defamation judgment is not conclusive if: (1) the judgment was rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law; (2) the foreign court did not have personal jurisdiction over the defendant; or (3) the foreign court did not have jurisdiction over the subject matter.

Provides that for the purposes of determining whether the foreign defamation judgment should be deemed recognizable, the courts of this state shall have personal jurisdiction over any person who obtains a judgment in a defamation proceeding outside the U.S. against any person who is: (1) a resident of this state; (2) a person or entity amenable to the jurisdiction of this state; (3) a person who has assets in this state; or (4) a person who may have to take action in this state to comply with the judgment.

Effective August 15, 2010. (Adds C.C.P. Art. 2542)

**19. Wooton (HB 785)
Martiny (SB 460)**

**Act No. 714
Act No. 886**

Defines "foreign law" for the Enforcement of Foreign Judgments Act, as any law, rule, legal code or system established and used or applied in a jurisdiction outside of the states or territories of the U.S. and prohibits the enforcement of a foreign law if doing so would violate a right guaranteed by the constitution of this state or the U.S.

Effective August 15, 2010. (Adds R.S. 9:6000)

20. Claitor (SB 531)

Act No. 658

Creates the **Oil Spill Relief Integrity Act** and authorizes qui tam actions.

Provides that the legislature intends the attorney general and private citizens of Louisiana to be agents of this state with the ability, authority, and resources to pursue civil monetary penalties or other remedies to protect the fiscal and programmatic integrity of oil spill relief programs in Louisiana from persons who engage in fraud, misrepresentation, abuse, or other ill practices, and obtain funds, property, or other compensation to which they are not entitled.

Provides that no person shall knowingly present or cause to be presented a false or fraudulent claim for funds, property, use of property, or other compensation from an oil spill relief program; that no person shall knowingly engage in misrepresentation to obtain, or attempt to obtain, funds, property, use of property, or other compensation from an oil spill relief program; that no person shall conspire to defraud, or attempt to defraud, an oil spill relief program through misrepresentation or by obtaining, or attempting to obtain, payment for a false or fraudulent claim; and that no person shall knowingly make, use, or cause to be made or used a false, fictitious, or misleading statement on any form or document for the purpose of certifying or qualifying any person for eligibility for oil spill relief programs or receiving any funds, property, use of property, or other compensation from an oil spill relief program that he is not authorized to receive.

Creates the Oil Spill Relief Programs Fraud Detection Fund, and provides that monies in the fund shall be appropriated to pay costs or expenses incurred by the attorney general relative to an action instituted pursuant to law, to enhance fraud and abuse detection and prevention

activities, to pay rewards for information, and to provide a source of revenue for oil spill relief programs.

Effective August 15, 2010. (Adds R.S. 39:2165 - 2165.12)

E. EVIDENCE

1. Morrell (SB 377)

Act No. 543

Requires the party seeking to introduce statements under the **forfeiture by wrongdoing hearsay exception** to establish by a preponderance of the evidence that the party against whom the statement is offered engaged in or acquiesced to wrongdoing.

Effective August 15, 2010. (Amends C.E. Art. 804(B)(7))

2. Martiny (SB 229)

Act No. 541

Provides that **electronically generated documents** that are associated with electronically generated seals are included in the provision relative to domestic public documents under seal for self-authentication purposes.

Effective August 15, 2010. (Amends C.E. Art. 902(1))

F. CONTRACTS / CONSUMER PROTECTION

1. Appel (SB 218)

Act No. 638

Provides that under the **Private Works Act** when contracts of \$50,000 or more are entered into between an owner and a contractor and contract funds earned under the terms of the contract are withheld as retainage by the owner, such funds are to be deposited into an interest bearing escrow account. This does not apply to a contract for a single family residence, double family residence, or certain other contracts for construction or improvement.

Effective August 15, 2010. (Adds R.S. 9:4815)

2. Tim Burns (HB 805)

Act No. 601

Relative to the notice of termination of work under the **Private Works Act**, authorizes the new owner or his representative to sign the notice if the immovable has been conveyed.

Effective August 15, 2010. (Amends R.S. 9:4822(E)(2) and (4))

3. Morrell (SB 720)

Act No. 970

Provides that any **contract between a political subdivision** and a person or entity entered into as a result of **fraud, bribery, corruption, or other criminal acts**, for which a final conviction has been obtained, shall be absolutely null, void, and unenforceable as contrary to public policy.

Provides that any person whose conviction causes the nullity of the contract shall be responsible for payment of all costs incurred for the rebidding of the contract.

Effective August 15, 2010. (Adds R.S. 9:2716)

4. Johnson (HB 1489)

Act No. 1046

Provides that it shall be a **violation for a motor vehicle dealer** to sell a new motor vehicle without first supplying a prospective buyer with a **recall notice**, if requested. If the buyer requests the recall notice, the recall notice shall be included in the sales transaction. If the selling dealer performed the repair, the documents supporting the repair shall also be included in the sales transaction.

Effective August 15, 2010. (Adds R.S. 32:1264.1)

5. Martiny (SB 625)

Act No. 492

Provides that any provision in a motor carrier transportation contract or construction contract is null, void, and unenforceable if it purports to indemnify, defend, or hold harmless the indemnitee from any liability for loss or damage where there is negligence or fault (strict liability) on the part of the indemnitee over which the indemnitor has no control.

Provides that any provision in a motor carrier transportation contract or construction contract is null, void, and unenforceable if it requires an indemnitor to procure liability insurance covering the acts or omissions or both of the indemnitee, its employees or agents, or the acts or omissions of a third party over whom the indemnitor has no control.

Effective January 1, 2011. (Adds R.S. 9:2780.1)

6. Abramson (HB 142)

Act No. 186

Upon recommendation of the Louisiana State Law Institute, provides for the **revision of the Civil Code articles on the contract of exchange** by changing certain terminology and making certain changes such as providing that a party evicted may demand the return or the value of the thing he gave, with damages in either case; by providing that a party that gives a corporeal immovable in exchange for property worth less than ½ of the value of the immovable may sue for lesion; and by providing that the contract of exchange is governed by the rules of the contract of sale with the differences provided in the contract of exchange.

Effective August 15, 2010. (Amends C.C. Arts. 2660-2667)

7. McPherson (SB 802)

Act No. 906

Requires any person engaged in commerce that sells, leases, or offers to sell or lease, any products or services to a consumer pursuant to a contract, when the **contract automatically renews** unless the consumer cancels the contract, to disclose the automatic renewal clause clearly and conspicuously in the contract or contract offer, and to disclose clearly and conspicuously how to cancel the contract in the initial contract, contract offer, or with delivery of products or services.

Exempts the La. Rental-Purchase Agreement Act, banks, trust companies, savings and loan associations, savings banks, credit unions, finance or credit companies, industrial loan companies, or any other financial institution licensed or organized under the laws of any state or the United States, or any foreign bank maintaining a branch or agency licensed under the laws of the United States, or any subsidiary or affiliate thereof, insurers licensed under Title 22 of the La. Revised Statutes of 1950, contracts entered into before January 1, 2011, and contracts that allows for cancellation by the consumer by written notice within 30 days or within one month, after the initial period has expired.

Effective on August 15, 2010. (Adds R.S. 9:2716)

8. Arnold (HB 370)

Act No. 247

Relative to **real estate agency relationships and the duties owed to a client**, defines "designated agency" as the agency relationship that shall be presumed to exist when a licensee engaged in any real estate transaction is working with a client, unless there is a written agreement providing for a different relationship; and defines "substantive contact" as the point in any conversation where confidential information is solicited or received, which includes any specific financial qualifications of the consumer, the motives or objectives of the consumer, or other such information, which, if disclosed to the other party to the transaction, could harm the party's bargaining position. This includes any electronic contact, electronic mail, or any other form of electronic transmission.

Effective August 15, 2010. (Amends R.S. 9:3891(8) and (9); Adds R.S. 9:3891(14))

9. Arnold (HB 547)

Act No. 96

Relative to the **Louisiana Consumer Credit Law**, authorizes a federally insured depository institution entering into a consumer credit transaction to contract for and receive fees in any amount agreed to in a written agreement signed by the consumer. Fees charged by a federally insured depository institution shall not be considered loan finance charges or credit service charges.

Effective August 15, 2010. (Adds R.S. 9:3530(G))

10. Ponti (HB 614)

Act No. 195

Prohibits any person acting as a **licensed home inspector** from engaging in or being financially compensated for any home inspection in a transaction in which that person received a fee, commission, or other valuable consideration while acting as a **licensed real estate professional** in connection with the same transaction.

Effective August 15, 2010. (Adds R.S. 37:1490)

II. SUCCESSIONS AND TRUSTS

1. Tim Burns (HB 80)

Act No. 226

Provides that the **judgment of possession** automatically includes all the terms and provisions of the **testamentary usufruct or trust** when it sends petitioners into possession in accordance with the usufruct or trust regardless of whether it restates all of the terms.

Effective August 15, 2010. (Amends C.C.P. Art. 3061)

2. Tim Burns (HB 856)

Act No. 390

Upon recommendation of the Louisiana State Law Institute, provides for the **revision of the Louisiana Trust Code**, by providing, in part, the following:

- 1) The proper court is the district court of the parish designated by an inter vivos trust instrument, and that if the settlor has not designated the proper court for an inter vivos trust, the proper court is any of the following: (a) the district court of the parish in which a settlor was domiciled when the trust was created, (b) if the trust has a trustee domiciled in Louisiana, the district court of the parish in which a trustee is domiciled, and (c) if the trust has no trustee domiciled in Louisiana, the district court in which the agent for service of process of any nonresident trustee is domiciled.
- 2) A class trust may be created with respect to all or a portion of principal, or both, and the members of the class must always be the sole beneficiaries of the portion of the trust of which they are beneficiaries.
- 3) The trust instrument may provide that, except as to the legitime in trust, the interest of a member of the class who dies leaving one or more descendants vests in the beneficiary's descendant heirs, and the trust instrument may provide that the interest of a designated principal beneficiary of a revocable trust shifts to another person or persons, if the substitution occurs no later than the date when the trust becomes irrevocable.
- 4) A beneficiary will not be deemed to have donated property to a trust merely because he fails to exercise a right of withdrawal from the trust.
- 5) The authority to modify the provisions of a trust can be delegated in accordance with R.S. 9:2031, which now provides that a trust instrument may authorize a person other than the settlor to modify the provisions of the trust instrument in order to add or subtract beneficiaries, or modify their rights, if all of the affected beneficiaries are descendants of the person given the power to modify.

Effective August 15, 2010. (Amends R.S. 9:1725(5), 1893, 1895(A), 1971, 2004(2), 2011, 2025, and 2045; Adds R.S. 9:1973(C), 2031, and 2235)

3. Tim Burns (HB 58)

Act No. 224

Requires a **trustee who delegates** the performance of ministerial duties and acts that he may not be reasonably required to personally perform to do so by a **power of attorney**.

Effective August 15, 2010. (Amends R.S. 9:2087(B))

4. Foil (HB 40)

Act No. 457

Authorizes the **seizure of trust assets** if the claim is based upon a judgment for damages arising from a felony criminal offense committed by the beneficiary which results in a conviction or a plea of guilty.

Effective August 15, 2010. (Adds R.S. 9:2005(3))

5. Arnold (HB 115)

Act No. 26

Increases from \$1,000 to \$5,000 the total aggregate amount a depository financial institution is allowed to **transfer to the surviving spouse or heir** of a depositor who died without a will, and retains the requirement to produce an affidavit establishing jurisdiction and relationship

Effective August 15, 2010. (Amends R.S. 6:315.1(A))

6. Marionneaux (SB 343)

Act No. 175

Repeals the references relating to **inheritance taxes** which have been previously repealed.

Effective August 15, 2010. (Amends C.C.P. Arts. 283, 3061, 3228, and 3396.18(B), and R.S. 9:1514(A)(1), (2), and (4), and (B), 1551(B), 1552(C) and (D), 2156(C)(10), 2157, 2431(7), and 3839, and R.S. 23:638, and R.S. 33:1501, 4545.23, 4546.16, and R.S. 47:55(2), 1673 and 2451; Repeals C.C.P. Arts. 2951, 2953 and 2954, and R.S. 6:653.4(F), 765(C), and 767(E), and R.S. 8:814, and R.S. 9:1552(E), 2432 - 2439, and 2449(C), and R.S. 12:603(F), and R.S. 40:33(H))

III. FAMILY LAW

A. MARRIAGE, DIVORCE, AND DOMESTIC MATTERS

1. Greene (HB 830)

Act No. 603

Provides that when a petition for divorce is filed, upon the motion of either spouse, a **judgment of separation of property may be obtained.**

If a separation of property judgment is rendered because the spouses were living separate and apart for at least 30 days from the date of, or prior to, the filing of the petition for divorce, the judgment shall be retroactive to the date the petition for divorce was filed.

Effective June 25, 2010. (Amends C.C. Arts. 2374(C) and 2375(C))

2. Greene (HB 834)

Act No. 604

Provides that the time period shall be 180 days for a divorce when, in accordance with a consent decree, a **protective order or injunction** has been issued. Deletes the requirement that the protective order shall be in effect at the time the petition for divorce is filed.

Provides that the determination of whether there are minor children of the marriage, for determining the time period required for divorce, occurs at the time the rule to show cause is filed in accordance with C.C. Art. 102 or when the petition is filed in accordance with C.C. Art. 103.

Effective June 25, 2010. (Amends C.C. Art. 103.1(1)(c) and (2))

3. Ligi (HB 1261)

Act No. 407

Provides that when a **102 divorce petition** is filed, **service of the petition** shall be requested within 90 days and a defendant may expressly waive the service requirement unless he files a declinatory exception of insufficiency of service of process alleging the failure to timely request service of the petition for divorce.

An action for divorce shall be dismissed if service is not timely requested and a declinatory exception of insufficiency of service is filed.

Provides for prospective application only and directs the La. State Law Institute to prepare comments.

Effective August 15, 2010. (Amends C.C.P. Arts. 925(A)(2) and 1672(C); Adds C.C.P. Art. 3955)

4. Cortez (HB 828)

Act No. 199

Authorizes federal magistrate judges to perform marriage ceremonies within this state from Oct. 1, 2010, through Oct. 31, 2010.

Effective August 15, 2010. (Adds R.S. 9:203(E)(8))

5. Waddell (HB 212)

Act No. 237

Authorizes a judge of a court of the U.S. whose official duty station includes a parish having a population between 250,000 and 275,000 to perform marriage ceremonies within that parish from July 1, 2010, through July 31, 2010.

Effective June 17, 2010. (Adds R.S. 9:203(E)(8))

B. CHILD SUPPORT, VISITATION, AND CUSTODY

1. Baldone (HB 263)

Act No. 913

Provides that when a motion is filed to **change the payee of a child support order** from DSS to an individual or caretaker, the juvenile court no longer has jurisdiction and the individual or caretaker shall be the proper party to enforce the obligation.

Provides that any interested person may obtain from the court, which rendered the support order, an amended order requiring support payments to be made to the individual to whom support is owed, instead of DSS.

Provides that when DSS is not providing enforcement services, an amended support order to change the payee to the individual, shall be transferred to the district or family court in the same parish as the transferring juvenile court.

Additionally clarifies that a modification of an order of child support shall be retroactive to the date of filing for the modification.

Effective August 15, 2010. (Amends Ch.C. Art. 313 and R.S. 46:236.2(B); Adds R.S. 9:311(G))

2. Johnson (HB 741)

Act No. 272

Allows Title IV-D **child support agencies from other states** to place a levy or lien directly on assets held by an obligor in a Louisiana financial institution without requiring a court order.

Effective August 15, 2010. (Amends R.S. 46:236.1.4(B))

3. Morrell (SB 130)

Act No. 872

Enacts the **Louisiana Child Support Collection Protection Act** and requires private child support collection agencies to register with the secretary of state and post a bond or deposit money in the amount of \$50,000.00 and provides requirements for contracts between obligees and collection agencies.

Any contract shall be in writing and include a clear description of the services provided, amount to be collected, all fees and the retention and refund thereof, cancellation, contact information, that services are provided by DSS at little or no cost to the obligee, prohibition of assigning any rights to a third party, and a notice that the collection agency is required to keep case records for a period of two years after the termination of the contract.

Provides that private child support enforcement service contracts shall not include a requirement that the obligee waive any right to file a civil action, agree to resolve disputes in a jurisdiction outside of this state or the application of other state's laws, change the payee, close a case with DSS, or waive rights.

Requires the collection agency to act as a trustee and fiduciary, advise that there is no obligation to hire a private agency to collect support, and provide an accounting. Requires any collection agency to forward collections due to the obligee within 2 days of receipt.

Requires the collection agency to convey any offer of settlement or compromise made by the obligor to the obligee in writing and requires the agency to contact the obligor and provide an opportunity to dispute the existence or amount of the support obligation within 30 days after receipt of the notice.

Provides that a collection agency shall not engage in any acts which violate the Fair Debt Collection Practices Act or the Federal Trade Commission Act.

Provides various civil penalties for violations and authorizes the court to award court costs and attorney fees in certain circumstances.

Effective July 2, 2010. (Adds R.S. 46:236.1.5(D) and R.S. 51:1441-1448)

4. Greene (HB 208)

Act No. 686

Increases the amount of the fine on employers for **willfully failing to withhold or pay support** through an income assignment order from \$25 per day to \$50 per day and deletes the limitation on the total amount to be withheld or paid.

Effective June 29, 2010. (Amends R.S. 46:236.3(K)(2))

5. Quinn (SB 322)

Act No. 173

Requires both the mother and father to sign the acknowledgment as required by the federal government.

Provides that if the court finds there is a substantial likelihood that the adjudicated father is **not the biological father**, it shall order genetic testing and if the results show a 99.9% statistical probability of paternity, a rebuttable presumption of paternity shall be established.

The burden of proof shall be upon the party seeking to set aside or vacate the judgment and proceedings shall be brought within two years from judgment or initiation of action.

If the judgment of paternity is set aside, vacated, or dismissed, the court shall dismiss any obligation of child support.

Effective August 15, 2010. (Amends R.S. 9:392(A)(intro. para.), (7)(a) and (b), and (B) and 399.1(A)(intro. para.), (B), (C), and (D); Adds R.S. 9:399.1(E) and (F))

6. Tim Burns (HB 222)

Act No. 358

When an **employer withholds wages** in accordance with a child support obligation, the amount withheld shall be **forwarded within seven days** in accordance with the income assignment order.

Effective August 15, 2010. (Amends R.S. 46:236.3(E)(3))

7. Greene (HB 259)

Act No. 689

Provides that a proceeding for **modification of support** may be brought in the parish where the person awarded support is domiciled only if the support award has been registered in that parish in accordance with C.C.P. Art. 2785 et seq., regardless of the domicile requirements of 2786(A).

Provides that it is unlawful for any obligor to intentionally fail to pay a support obligation for any child who resides in this state, if the obligation has remained unpaid for a period longer than six months or an amount greater than \$2,500 and provides that the court may not suspend all or any portion of the imposition or execution of the sentence for a second or subsequent offense.

Effective June 29, 2010. (Amends C.C.P. Art. 74.2(C)(1) and R.S. 14:75(B) and (C)(4))

8. Hazel (HB 871)

Act No. 605

Gives the **representative of a child support collection agency** authority to issue, as well as serve, summonses, and provides that the appearance and show cause will be on a date specified by the court.

Allows the district attorney or DSS to file with the court and serve in open court on the defendant any summons served and a rule for contempt.

Effective June 25, 2010. (Amends R.S. 46:236.6(A) and 236.7(B))

9. Morrell (SB 132)

Act No. 873

Provides that the court shall **prohibit visitation and contact** between a family member and a child, if the court finds by a preponderance of the evidence that the family member's **criminal conduct resulted in the death** of a parent of the child.

Effective July 2, 2010. (Amends C.C. Art. 137)

10. Greene (HB 774)

Act No. 277

Provides that it shall be a **defense, not an affirmative defense**, that the **failure to exercise or allow visitation** was by mutual consent, beyond the control of the defendant, or for other good cause shown.

Effective June 17, 2010. (Amends R.S. 9:346(G))

11. Henry Burns (HB 1156)

Act No. 739

Creates the "**Military Parent and Child Custody Protection Act**" which prohibits the court from entering a final order modifying the terms of an existing custody or visitation order until 90 days after the termination of the deployment of a parent unless the matter was fully tried prior to the deployment. Provides that deployment alone shall not constitute a material change in circumstances and provides that an existing order of custody or visitation may be temporarily modified to make reasonable accommodations necessary for the deployment, but it shall provide the deploying parent with custody or visitation during periods of military leave, if the court determines it is in the best interest of the child and if the existing order granted custody or visitation.

Authorizes the court to delegate some or all visitation to a family member with a substantial relationship to the child if it is in the best interest of the child.

Provides for an expedited hearing of any custody or visitation matters, upon the motion of either parent and for good cause shown, when military duties prevent the deploying parent from personally appearing at the hearing.

Provides that a temporary modification terminates by operation of law upon the completion of deployment and requires the prior order to be reinstated and authorizes an expedited hearing regarding the termination of the temporary order and the reinstatement of the prior order if immediate danger or irreparable harm to the child is alleged. Provides that the court may grant an ex parte order of temporary custody in accordance with C.C.P. Art. 3945.

Provides for the appointment of counsel for the child when the court declines to grant or extend a stay of proceedings in accordance with the Servicemembers Civil Relief Act, 50 U.S.C. Appendix §521-522.

Provides that the absence of a child from this state during the deployment of a parent shall be a "temporary absence" for the purposes of the Uniform Child Custody Jurisdiction and Enforcement Act.

Provides for attorney fees and costs when either party causes unreasonable delays, fails to provide information in accordance with the law, or in any other circumstance in which the court deems appropriate.

Provides that the provisions of this Act shall not apply to any custody or visitation order requested in a verified petition alleging the applicability of the Domestic Abuse Assistance Act, Ch. C. Art. 1564, or the Post-Separation Family Violence Relief Act.

Effective August 15, 2010. (Adds R.S. 9:359-359.13)

12. Tim Burns (HB 221)

Act No. 238

Makes technical changes to inaccurate citations and references in child support provisions.

Effective August 15, 2010. (Amends R.S. 9:303(C) and 315.11(A), R.S. 13:1621(B)(3) and (4), R.S. 15:305(D) and (E)(1), R.S. 46:236.1.2(D)(2) and (J), 236.7(A)(1) and (B), and 236.11.1(C)(3), Ch.C. Art. 311(B)(1)(a), and C.E. Art. 902(10))

13. N. Gautreaux (SB 53)

Act No. 425

Authorizes DSS to **intercept and seize certain gaming winnings** for the payment of child support and overpayments owed to the department.

Authorizes the Gaming Control Board to adopt rules establishing a procedure requiring the withholding by licensed entities of payments and progressive slot machine annuities and cash gaming winnings of persons who have outstanding child support arrearages or owing child support overpayments, on payments for which the entity is required to file form W2-G with

the Internal Revenue Service. Further provides that the board may require the agency reporting current child support arrearages or overpayments to provide real-time or immediate electronic database access by the licensed entity to such information and, if the agency does not, the entity shall not be responsible for withholding cash gaming winnings.

Provides for deduction of the child support arrearage or overpayment from the payment of the progressive slot machine annuity or cash gaming winnings, with the deducted amount being forwarded to DSS within seven days and payment of the remainder to the person who has outstanding child support arrearages or owes child support overpayments. If the remainder is equal to zero, no payment shall be made. Also provides for an administrative fee by the entity, not to exceed \$35.00.

Authorizes DSS to intercept and seize casino winnings over \$1,200 from individuals in arrears in support or owing overpayments to the department.

Effective June 22, 2010. (Amends R.S. 46:236.15(D)(1)(intro para) and (a); Adds R.S. 27:2(C) and (D) and 24(A)(5))

14. Johnson (HB 964)

Act No. 299

Requires that **medical support be provided for children** subject to child support orders and provides that a medical support award shall be separate from the child support order and not included in child support calculations.

When a child support order has been established, a court may order each party to pay a percentage of extraordinary medical expenses as cash medical support and when a child support order has not been established, a court may order each party to pay a percentage of total medical expenses not covered by insurance as cash medical support.

Effective August 15, 2010. (Amends R.S. 46:236.1.1; Adds R.S. 46:236.1.2(L))

15. Broome (SB 281)

Act No. 171

Extends to **grandparents with custody the right to confer the power of provisional custody** by mandate for the care, custody, and control of a minor child, but it may not be conferred upon a parent or other person previously denied custody by court order.

Effective August 15, 2010. (Amends R.S. 9:951(A), 952(B)(1) and (3) and 954); Adds 9:951(c))

16. Broome (SB 57)

Act No. 867

Establishes the **Council on the Status of Grandparents Raising Grandchildren** within DSS and requires the members to serve without compensation. The council is required to meet at least quarterly and a majority of the council shall constitute a quorum.

Requires the council to make, or cause to be made, all such studies, reviews, or analysis which it finds necessary to effect its purpose and authorizes the council to receive and expend funds appropriated or otherwise made available by the legislature or from any other source, including donations or gifts of money or services from public or private organizations or from any other sources, to be utilized for the purposes of the council.

Requires the council to issue its first annual report by March 1, 2011, and by January first each following year, stating the findings, conclusions, and recommendations of the council. The report shall be submitted to the governor, the president of the Senate, the speaker of the House of Representatives, and the appropriate legislative committees.

Effective July 2, 2010. (Adds R.S. 36:478(L) and R.S. 46:2901-2903)

C. ADOPTION, CHILD IN NEED OF CARE, JUVENILES

1. Landry (HB 319)

Act No. 190

Allows collaterals who are related within the twelfth degree (fifth cousins) to petition for **intrafamily adoption**.

Effective August 15, 2010. (Amends Ch.C. Art. 1243(A))

2. Landry (HB 1146)

Act No. 738

Provides a procedure for **opposing an intrafamily adoption** by filing an answer and opposition within 15 days of service of a petition, provides for the appointment of counsel for the child, provides a due process determination for the parent regarding the appointment of counsel, and provides for notice to all parties.

Adds to the notice that if the parent does not file a written answer and opposition to the adoption within 15 days of receiving the notice, he will lose the right to object to the adoption and if the person chooses to file a written answer and opposition to the adoption that it must be filed with the clerk of court.

Requires the court to hear the petition within 60 days if there is no opposition or within 90 days if there is opposition.

Repeals the law which authorized the court to remove the child from the petitioner and reinstate the legal custodian or appoint a custodian when the court refused to grant an interlocutory or final decree of adoption.

Effective August 15, 2010. (Amends Ch.C. Arts. 1244(A), 1245(A), 1247(B) and 1253(A); Adds Ch.C. Art. 1244.1; Repeals Ch.C. Arts. 1245.1 and 1258)

3. Mount (SB 196)

Act No. 64

Expands the definition of a "**child-placing agency**" to include any institution, society, agency, corporation, facility, person or persons, or any other group engaged in placing youth in transitional placing programs.

Provides that child-placing agencies within DSS shall be exempt from the provisions of law and DSS shall perform its child-placing functions in accordance with the standards promulgated by the department for licensed child-placing agencies.

Effective October 1, 2010. (Amends R.S. 46:1403(A)(2) and 1404(B); Adds R.S. 46:1403(A)(11); Repeals R.S. 46:1451-1459)

4. Templet (HB 651)

Act No. 266

Upon recommendation of the Louisiana State Law Institute, clarifies that voluntary registration **requires both the adopting person and surrendering parent to register** and comply with registration requirements. Adds common disease names to the medical terms and a section for prenatal drug use to the Statement of Family History form.

Modernizes terminology by changing "birth" to "biological", adds legislative findings regarding the death of a person authorized to use the registry, and adds descendants of deceased biological parents and adopted persons to those eligible to use the registry.

Provides that once the death of a biological parent or adopted person is disclosed, a registered person shall be given the option of availing himself of any contact opportunity through the registry.

Requires DSS to indicate whether it has recommended filing the petition for voluntary transfer of custody and if so, requires the name of person making the recommendation and the reasons and whether petitioners know of their right to an attorney or have consulted with an attorney.

Adds that the court may order the parent to contribute to the costs of raising the child when a transfer is granted.

Effective August 15, 2010. (Amends Ch.C. Arts. 1122(B)(8), (F)(12), (G)(12), 1125(B), 1189(3), 1270, 1271(A) and (B), 1272, 1273, 1276, 1515(B)(VI), 1517(A), 1518(B), 1519, 1520(B)(intro. para.) and (C), and 1522(B); Adds Ch. C. Arts. 1515(A)(7) and 1517(E))

5. Landry (HB 397)

HB No. 192

Provides **uniformity in all types of adoption proceedings** by requiring the sheriff or the office of state police, La. Bureau of Criminal Identification and Information, to conduct the **records check for all federal arrests and convictions and all state arrests and convictions** in this and any other states in which either of the prospective adoptive parents has been domiciled and by requiring the prospective adoptive parents to submit a set of fingerprints to the sheriff or the office of state police.

Requires the office of state police, La. Bureau of Criminal Identification and Information, to accord priority to these orders and to provide a certificate indicating all information discovered or that no information has been found.

Effective August 15, 2010. (Amends Ch.C. Arts. 1131(E)(1) and (G) and 1243.2(A)(1) and (C))

6. Willmott (HB 504)

Act No. 471

Requires designated emergency care facilities (**safe haven relinquishment sites**) to provide periodic instruction to employees on infant relinquishment procedures and provides that a designated emergency care facility or its employees or volunteers shall not be held liable for any civil penalty for failure to comply with the provisions of law.

Requires DSS to make safe haven training materials available for download on its website, and to provide notice to the public of the existence of designated emergency care facilities and the use of safe havens through the DSS website and through the establishment of a toll-free telephone number.

Effective August 15, 2010. (Amends Ch.C. Arts. 1152(B), (C), (D), (E), (F), and (G) and 1160(1) and (2); Adds Ch.C. Art. 1152(H) and (I))

7. Greene (HB 215)

Act No. 462

Eliminates the right of any other authorized person to file a **child in need of care petition**, but authorizes DSS to seek leave of court to file a CINC proceeding if reasonable grounds exist.

Provides that at any stage of the CINC proceeding, upon written motion of counsel for the child or his parent, the DA or DSS, after a contradictory hearing and good cause shown,

except if all parties agree, the court shall permit counsel to obtain certain discovery which is relevant to the subject matter of the adjudication hearing.

Provides that all parties have reciprocal discovery rights and that discovery shall not include any matter that is privileged, including attorney-client privileges or information protected by law.

Prohibits the court from ordering the production or inspection of any information which contains identifying information regarding a victim of domestic abuse or victim of dating violence or the location of a shelter or other facility.

Makes the party requesting discovery responsible for any copying costs according to the uniform fee schedule. Further specifies that an indigent child or parent is not responsible for any costs.

Effective June 22, 2010. (Amends Ch.C. Arts. 631(A) and 652(C), (D), and (E); Adds Ch.C. Art.652(F) and (G))

8. Broome (SB 644)

Act No. 893

Enacts a **new Interstate Compact on the Placement of Children** and provides that the compact shall apply to placement of a child due to allegations or findings of abuse, neglect, or deprivation, an adjudication of delinquency, or a preliminary step to a possible adoption.

Provides that the compact shall not apply to placement of a child in a custody proceeding in which a public child placing agency is not a party, with a non-relative by a parent with legal authority, by one relative with lawful authority, into a residential facility by his parent, with a noncustodial parent in certain circumstances, for foreign adoption, or by an agency for a visit.

Creates the Interstate Commission for the Placement of Children and requires each member state to establish a central state compact office, which shall be responsible for state compliance with the compact and the rules of the commission.

Provides that the compact shall become effective when the 35th state enacts the compact.

Provides that rules adopted by the Commission shall not supersede state law and shall not be binding unless also promulgated by this state in accordance with the APA.

Effective upon adoption by the 35th state. (Adds Ch.C. Arts. 1623-1643; Repeals Ch.C. Arts. 1608-1622)

9. Leger (HB 663)

Act No. 593

Upon recommendation of the Louisiana State Law Institute, **for purposes of appointment of counsel, children are presumed to be indigent.**

Provides that the child is entitled to representation at the state's expense and that the court shall appoint counsel or refer the child to the district public defender and provides that representation by appointed counsel continues until retained counsel enrolls as of record.

Provides for the admissibility of a child's confession in juvenile court, provides that the state has the burden to prove admissibility beyond a reasonable doubt, and further provides factors for the court to consider in determining the admissibility of the confession.

Effective August 15, 2010. (Amends Ch.C. Arts. 320, 321, and 809; Adds Ch.C. Art. 881.1)

10. Leger (HB 702)

Act No. 594

Upon recommendation of the Louisiana State Law Institute, when a child is charged with certain offenses, the court shall **notify the child of the registration requirements for a sex offender** and provide the child with written requirements and the form.

Adds illegal possession of a firearm to the definition which categorizes the action as a delinquency case rather than a FINS case.

Adds that a medical examination may not occur until the clerk of court gives five-days notice to all parties, unless waived, and provides that any incriminating statement made by the child shall not be used against him in a subsequent proceeding.

Effective August 15, 2010. (Amends Ch.C. Arts. 305(A)(1)(b) and (B)(1)(b), 804(3), 841(A) and (C), 855(B)(7), 858(B), 860(A) and (B), and 867(A) and (C); Adds Ch.C. Arts. 841(D) and 884.1)

11. Hines (HB 1335)

Act No. 314

When a **family has been adjudicated to be in need of services** or after adjudication of a misdemeanor-grade delinquent act, the court may require the caretaker or parent to perform community service.

Effective August 15, 2010. (Amends Ch.C. Art. 899(B)(2)(b); Adds Ch.C. Art. 779(B)(5))

IV. PROPERTY

1. Tim Burns (HB 66)

Act No. 225

Provides that a **subsequent alienation** or encumbrance of an immovable by a donee is **considered acceptance of the donation** and shall be effective against third parties when recorded, regardless of form, in the parish in which the immovable is located.

Effective August 15, 2010. (Amends R.S. 9:2371)

2. Fannin (HB 1449)

Act No. 994

Allows a **riparian owner to assign access rights for surface water** adjacent to his riparian land for any agricultural or aquacultural purpose by the non-riparian owner provided such withdrawal of running surface water is environmentally and ecologically sound, would not adversely impact the sustainability of the water body, or have undue impacts on navigation, public drinking water supplies, stream flow energy, sediment load and distribution, and certain other circumstances.

Defines "agricultural or aquacultural purpose" and prohibits any state fee from being charged for usage except where the state contracts or assigns rights for withdrawal.

Provides that new law shall become null and of no effect on Jan. 12, 2035.

Effective July 6, 2010. (Adds R.S. 9:1103)

3. Harrison (HB 495)

Act No. 193

Provides that the owner of the land or water bottom is the owner of any monetary compensation derived from the land or water bottom through **carbon sequestration**, and provides two exceptions: (1) when contractually assigned to another party and (2) when the sequestration is attributable to Coastal Protection and Restoration Authority projects. In that case, the monetary compensation derived from such a project is the property of the state.

Effective August 15, 2010. (Adds R.S. 9:1103)

4. Foil (HB 751)

Act No. 274

Defines "**solar collector**" and prohibits any person or entity from unreasonably restricting the right of a property owner to install or use a solar collector, but also provides that the provisions of new law shall not supersede zoning, servitude, or building restrictions requiring approval prior to installation or to historic districts, historical preservations or landmarks.

Effective August 15, 2010. (Adds R.S. 9:1255)

5. Kleckley (HB 31)

Act No. 181

Authorizes the expropriation by a declaration of taking, "**quick-take**", by the city of **Lake Charles** in order to acquire property for street, drainage, water, utility, or sewerage projects.

Effective June 9, 2010. (Amends the heading of Part III-E of Title 19 of the L.R.S. of 1950, R.S. 19:134, 134.1(A), and 134.2(3)(b) and (c))

6. Cromer (HB 782)

Act No. 198

Authorizes the expropriation by a declaration of taking, "**quick-take**", by the parish of **St. Tammany** in order to acquire property for road, drainage, or sewerage projects, and repeals the termination date for the authority to expropriate by a declaration of taking.

Effective June 9, 2010. (Amends R.S. 19:351 and 352(A))

7. Richmond (HB 1324)

Act No. 853

Relative to **expropriation for the construction and maintenance of levees**, repeals provision which authorized compensation to the owner only when and if, in its discretion, the legislature, the levee board, or the federal government appropriates the funds for the compensation.

Effective August 15, 2010. (Repeals R.S. 38:301(C)(2)(e))

8. Tim Burns (HB 807)

Act No. 1028

Requires a **title opinion** to contain a search of the mortgage records for a **period of 20 years for federal judgments**, and further provides that such time period requirement does not apply to any transaction made prior to and on Jan. 1, 2013, by the Road Home Corporation, The La. Land Trust, or any political subdivision, of property originally acquired in connection with the Road Home Program.

Specifies that in **sales transactions, the minimum search period must be 30 years**, or longer, in order to reach an arms-length sale between unrelated, third parties, and further provides if only a mortgage is being insured, then the search must be for a minimum of 10 years or two links in the chain of title, whichever is greater. It also provides that such minimum search periods for a sale or mortgage does not apply to any transaction made prior to and on Jan. 1, 2013, by the Road Home Corporation, The La. Land Trust, or any political subdivision, of property originally acquired in connection with the Road Home Program.

Applies to all transactions occurring on or after Sept. 1, 2010, except as otherwise provided by R.S. 22:512(17)(b)(vi)(bb) and (gg).

Effective August 15, 2010. (Amends R.S. 22:512(17)(b)(intro. para.) and (vi)(bb) and (gg))

9. Murray (SB 189)

Act No. 537

Removes the requirement in Orleans Parish that notaries public **file acts of sale of immovable property with the assessor.**

Effective January 1, 2011. (Amends R.S. 13:4405 and R.S. 35:199(A)(2)(b))

V. MORTGAGES, SECURITY DEVICES, AND PRIVILEGES

1. Edwards (HB 484)

Act No. 378

Upon recommendation of the Louisiana State Law Institute, provides for the **revision of various laws on security devices**, such as providing that the filing officer in Orleans Parish, as in every other parish, is the clerk of court; providing that Chapter 22-A of Title 3 applies to all security devices affecting farm products, regardless of filing; providing that an unfiled financing statement is ineffective against buyers in the ordinary course of business; defining "agricultural laborer"; adding an agricultural laborer's privilege to the security interests that are perfected upon attachment which allows the agricultural laborer's privilege to be perfected without the necessity of any filing; deleting agricultural liens and restricting the ability of privileged creditors to follow crops into the hands of third persons; and placing the ranking rules on crops within Chapter 9 of the UCC and placing emphasis for crop ranking rules upon perfection, not simply filing.

Effective August 15, 2010, except the provisions of R.S. 10:9-501 shall become effective on Jan. 1, 2011. (Amends R.S. 3:3652(9) and (15), 3653, 3656(A)(1) and (D), the heading of Part XIV of Code Title XXI of Title 9 of the L.R.S. and R.S. 9:4770, R.S. 10:9-102(d), 9-308(b), 9-309(13), 9-315(a)(intro. para.) and (1), 9-322(f)(intro. para.) and (5) and 9-501(a)(intro. para.) and (1); Adds R.S. 10:9-322(g) and 9-501(a)(4); Repeals R.S. 9:4521 and 4524 and R.S. 10:9-322(f)(6) and 9-501(a)(2))

2. Tim Burns (HB 802)

Act No. 385

Provides that the effect of **recordation of a mortgage to secure future obligations** is governed by Civil Code Arts. 3357 (10 years from recordation) and 3358 (6 years from maturity date).

Effective August 15, 2010. (Amends C.C. Art. 3298(E))

3. Tim Burns (HB 803)

Act No. 386

Retains existing laws relative to recordation of **bond for deed contracts**, and also provides that any lien, privilege, or judgment purporting to affect immovable property that has not been filed prior to the bond for deed contract shall be subject to the rights created by the bond for deed contract.

Effective August 15, 2010. (Amends R.S. 9:2941.1(A))

4. Tim Burns (HB 808)

Act No. 279

Provides that **liens and privileges** against property granted **in favor of parishes or municipalities** for assessments for public improvements or for certain statutorily authorized charges imposed on property are **not effective against third parties until filed** in the mortgage records.

Provides that if liens or privileges are placed on the ad valorem property tax bill, the sheriff shall remove them upon request of an interested party whose interest in the property was acquired prior to the recording of the lien in the mortgage records.

Effective August 15, 2010. (Adds R.S. 9:5504)

5. Tim Burns (HB 857)

Act No. 284

Upon recommendation of the Louisiana State Law Institute, relocates certain provisions relative to mortgage records from Title 44 of the La. R.S. of 1950 to Title 9 of the La. R.S. of 1950, and that the redesignation of these statutes shall not invalidate a reference to the former citation of the redesignated statute.

Effective January 1, 2011. (Redesignates R.S. 44:104 as R.S. 9:2742, R.S. 44:105 as R.S. 9:2743, R.S. 44:106 as R.S. 9:5169, R.S. 44:107 as R.S. 9:5170, R.S. 44:108 as R.S. 9:5171, R.S. 44:109 as R.S. 9:5172, R.S. 44:109.1 as R.S. 9:5173, R.S. 44:110 as R.S. 9:5174, R.S. 44:111 as R.S. 9:5175, R.S. 44:112 as R.S. 9:5176, and R.S. 44:113 as R.S. 9:2741)

6. Arnold (HB 1133)

Act No. 938

Defines "**private transfer fee**" as a fee or charge required by a private transfer fee obligation and payable upon the transfer of an interest in an immovable, or payable for the right to make or accept such transfer, regardless of whether the fee or charge is a fixed amount or is determined as a percentage of the value of the immovable, the purchase price, or other consideration given for the transfer.

Provides that a private transfer fee obligation does not constitute a real right and is not effective against third persons.

Provides that any person who records or enters into an agreement imposing a private transfer fee obligation in his favor after the effective date of new law shall be liable for any and all damages resulting from the imposition of the transfer fee obligation and all attorney fees, expenses, and costs incurred by a party to the transfer or mortgagee of the immovable to recover any transfer fee paid or in connection with an action to quiet title or to declare the private transfer fee unenforceable.

Requires a seller of an immovable to furnish to any purchaser a written statement disclosing the existence of any private transfer fee obligation, and establishes requirements for the

content and filing of notice of a private transfer fee obligation existing prior to the effective date of new law.

Effective July 2, 2010. (Amends C.C. Articles 651 and 778; Adds R.S. 9:3131-3136)

VI. LABOR AND WORKER'S COMPENSATION

1. Ponti (HB 1088)

Act No. 53

Deletes certain **procedures for initiating mediation**, conducting mediation conferences, and enforcing penalties for failing to appear at a mediation conference.

Provides that, upon joint request of the parties or upon order of the presiding workers' compensation judge, the parties shall engage the services of either a workers' compensation administration mediator with mediation to be held in the district office of the mediator, or a private mediator with mediation to be held at a location mutually agreeable to the parties.

Requires that the selection of the mediator be by mutual agreement of the parties, and that each party provide a representative with authority to negotiate to participate in the mediation conference either in person or via telephone.

Requires the parties, within five days of the conclusion of the mediation conference, to certify to the court when a private mediation has occurred and the results thereof.

Provides that the request for or participation in the mediation **shall not interrupt the running of prescription**.

Provides that failure to attend the mediation conference may result in a fine of up to \$500 and reasonable attorney fees, but that such penalties shall be assessed only after a contradictory hearing.

Effective August 15, 2010. (Amends R.S. 23:1310.3)

2. Riser (SB 106)

Act No. 3

Requires the director, upon application of any party, to order an **independent medical examination** when a dispute arises as to the injured employee's capacity to work or his current medical treatment.

Requires any person, insurer, or members of self-insurance fund who believes that a false, fraudulent, or misleading statement has been knowingly made or has been knowingly omitted with the purpose of affecting the payment of any workers' compensation premium to report such statement or omission within 60 days to the office of workers' compensation administration, at which time the office shall review such reports and determine which reports merit further investigation.

Effective May 11, 2010. (Amends R.S. 23:1123, 1172.2(E), and 1201(A); Repeals R.S. 23:1201.1)

3. Patricia Smith (HB 873)

Act No. 288

Provides for criminal penalties of up to \$250 per day for **willfully failing to provide workers' compensation coverage** and removes the \$10,000 maximum penalty.

Effective August 15, 2010. (Amends R.S. 23:1170(A), 1171.1(C)(1), 1172(A), 1172.1(C), and 1172.2(D))

VII. CRIMINAL JUSTICE

A. NEW CRIMES

1. Sam Jones (HB 79)

Act No. 507

Creates the crime of **aggravated assault with a motor vehicle upon a peace officer**.

Penalties: A fine of not less than \$5,000, imprisonment for not less than one year nor more than 10 years, or both.

Effective August 15, 2010. (Adds R.S. 14:37.6)

2. Burrell (HB 1259)

Act No. 989

Creates the crime of **cyberbullying** and defines it as the transmission of any electronic textual, visual, written, or oral communication with the malicious and willful intent to coerce, abuse, torment, or intimidate a person under the age of 18.

Penalties: A fine of not more than \$500, imprisoned for not more than six months, or both. When the offender is under the age of 17, the disposition of the matter shall be governed exclusively by the Families in Need of Services provisions of the Children's Code.

Effective August 15, 2010. (Adds R.S. 14:40.7 and Ch.C. Art. 730(11))

3. Cheek (SB 769)

Act No. 972

Creates the crime of **simple burglary of a law enforcement vehicle**.

Creates the crime of simple burglary of a law enforcement or emergency vehicle, consisting of the unauthorized entering of any law enforcement or emergency vehicle with the intent to commit a felony or any theft therein.

Penalties: A fine of not more than \$10,000, imprisonment with or without hard labor for not more than 20 years, or both.

Effective August 15, 2010. (Adds R.S. 14:62.9)

4. LaFonta (HB 1264)

Act No. 990

Creates the crime of **criminal damage to historic buildings** or landmarks by defacing with graffiti.

Penalties: A mandatory fine of not more than \$1,000 and a potential term of imprisonment with or without hard labor for not more than two years.

Requires the court to order the offender to perform the following hours of community service as follows:

- (1) For a first conviction, not to exceed thirty-two hours over a period not to exceed 180 days.
- (2) For a second or subsequent conviction, sixty-four hours over a period not to exceed 180 days.

Provides that the fine and community service shall not be suspended.

Effective August 15, 2010. (Adds R.S. 14:56.5)

5. Murray (SB 94)

Act No. 206

Provides that it is unlawful for a person to **knowingly or intentionally buy, sell, produce, manufacture, or distribute, for any purpose, a fraudulent postsecondary education degree** or other document purporting to confer any degree or certify the completion in whole or in part of any course of study.

Penalties: A fine of not more than \$500, imprisoned for not more than six months, or both.

Effective June 17, 2010. (Adds R.S. 14:72.5)

6. Adley (SB 151)

Act No. 62

Provides **enhanced criminal penalties when an Internet, virtual street-level map is used in the commission or attempted commission of an act of terrorism or an offense against a person or property.**

Provides that an additional sentence of not less than 10 years shall be imposed without the benefit of parole, probation, or suspension of sentence when an Internet, virtual street-level map is used in the commission or attempted commission of an act of terrorism. Further provides for an additional sentence of one year shall be imposed when the Internet, virtual street-level map is used in the commission or attempted commission of an offense against a person or property.

Provides that the additional penalties shall be served consecutively to the sentence imposed for the underlying offense.

Effective August 15, 2010. (Adds R.S. 14:73.1(14) and 73.9)

7. Baldone (HB 1357)

Act No. 993

Creates the crime of **sexting** which:

- (1) Prohibits a person under the age of 17 from knowingly and voluntarily using a computer or telecommunication device to transmit an indecent visual depiction of himself to another.
- (2) Prohibits a person under the age of 17 from knowingly possessing or transmitting such image.

Amends the definition of "delinquent act" to include the crime of sexting.

Penalties:

- (1) For a violation of the crime where a person under the age of 17 knowingly and voluntarily transmits an indecent visual depiction of himself to another, the disposition shall be governed by Title VII of the Louisiana Children's Code.
- (2) For a violation of the crime where a person under the age of 17 knowingly possesses or transmits an indecent visual depiction of another person under the age of 17, the penalties are as follows:
 - (a) A first offense provides for a fine of \$100 to \$250, imprisonment for not more than 10 days, or both. The sentence may be suspended if the court orders the offender to perform two eight-hour days of court-approved community service.
 - (b) A second offense provides for a fine of \$250 to \$500, imprisonment for 10 to 30 days, or both. The sentence may be suspended if the court orders the offender to perform five eight-hour days of court-approved community service.
 - (c) A third or subsequent offense provides for a fine of \$500 to \$750, imprisonment for 30 days to six months, or both. The sentence may be suspended if the court orders the offender to perform ten eight-hour days of court-approved community service.

Effective August 15, 2010. (Amends Ch.C. Art. 804(3); Adds R.S. 14:81.1.1)

8. Morrell (SB 381)

Act No. 882

Creates the crime of **crime against nature by solicitation** and defines it as the solicitation by a human being of another with the intent to engage in any unnatural carnal copulation for compensation.

Penalties: On a first conviction, the offender shall be fined not more than \$500, imprisoned for not more than six months, or both.

On a second or subsequent conviction, or when the person being solicited is under the age of 17 years, the offender shall be fined not more than \$2,000, imprisoned, with or without hard labor, for not more than five years, or both. These offenses shall be considered sex offenses as defined in R.S. 15:541 and the offender shall be required to register as a sex offender as provided for in Chapter 3-B of Title 15 of the Louisiana Revised Statutes of 1950.

Effective August 15, 2010. (Amends R.S. 14:89(A); Adds R.S. 14:89.2)

9. Martiny (SB 38)

Act No. 114

Creates the crime of **participation in cockfighting**. Provides that it shall be unlawful for any person to attend a cockfight, bet on a cockfight, or pay admission at any location to view or bet on a cockfight.

Defines "cockfight" and "chicken".

Penalties: A fine of not more than \$500, imprisonment for not more than six months, or both.

Effective August 15, 2010. (Adds R.S. 14:102.24)

10. Mills (HB 271)

Act No. 361

Creates the crime of **unlawfully supplying any product for the purpose of falsifying or altering a screening test**.

Provides that unlawfully supplying any product for the purpose of falsifying or altering a drug, urine, or alcohol screening test is committed when a person intentionally:

- (1) Sells, trades, furnishes, supplies, gives, distributes, or markets human or synthetic urine in this state or transports human or synthetic urine into this state with the intent of using the urine to falsify or alter results in a urine, drug, or alcohol screening test.
- (2) Advertises for sale any product designed to falsify or alter a urine, drug, or alcohol screening test.
- (3) Adulterates a urine or other bodily fluid sample with the intent to falsify or alter results in a urine, drug, or alcohol screening test.
- (4) Possesses adulterants which are intended to be used to adulterate a urine or other bodily fluid sample for the purpose of falsifying or altering results in a urine, drug, or alcohol screening test.

- (5) Sells, trades, furnishes, supplies, gives, distributes, or markets an adulterant with the intent by the seller or marketer that the product be used to adulterate a urine or other bodily fluid sample for the purpose of falsifying or altering results in a urine, drug, or alcohol screening test.

Penalties: A fine of not more than \$500, imprisonment for not more than six months, or both.

Effective August 15, 2010. (Adds R.S. 14:102.24)

11. St. Germain (HB 219)

Act No. 977

Provides that it shall be **unlawful to tie, tether, or restrain any animal** in a manner that is inhumane, cruel, or detrimental to its welfare.

Penalties: A fine of not more than \$300.

Effective August 15, 2010. (Adds R.S. 14:102.24)

12. Baldone (HB 123)

Act No. 351

Creates the crime of **tampering with surveillance, accounting, inventory, or monitoring systems**.

Penalties: A fine of not more than \$1,000, imprisonment with or without hard labor for not more than one year, or both.

Provides for increased penalties including a fine of not more than \$2,000, imprisonment with or without hard labor for not more than two years, or both, if the system is located on the premises of a correctional facility.

Effective August 15, 2010. (Adds R.S. 14:110.3)

13. Riser (SB 801)

Act No. 807

Provides that no person shall use a **tracking device** to determine the location or movement of another person **without the consent of that person**.

Penalties: A fine not less than \$100 nor more than \$500, imprisoned for not more than six months, or both.

Defines a "tracking device" as any device that reveals its location or movement by the transmission of electronic signals.

Effective August 15, 2010. (Adds R.S. 14:323)

14. Little (HB 112)

Act No. 349

Creates the crime of **interfering with a law enforcement investigation** and defines it as the intentional interference or obstruction of an officer conducting investigative work at the scene of a crime an accident by refusing to move or leave the immediate scene of the crime or accident when ordered to do so by the law enforcement officer when the offender has reasonable grounds to believe the officer is acting in the performance of his official duties.

Defines "law enforcement officer" as any commissioned police officer, sheriff, deputy sheriff, marshal, deputy marshal, correctional officer, constable, wildlife enforcement agent, state park warden, livestock brand inspector, forestry officer, or probation and parole officer.

Penalties: A fine of not more than \$500, imprisonment for not more than six months, or both.

Effective August 15, 2010. (Adds R.S. 14:329)

B. OTHER CRIMINAL MATTERS

1. Danahay (HB 554)

Act No. 584

Any defendant who has been arrested for **domestic abuse battery** shall not be released on his own recognizance.

Effective August 15, 2010. (Amends C.Cr.P. Art. 334.2)

2. Schroder (HB 570)

Act No. 479

Prohibits the court from releasing any defendant on the signature of any other person if the person was **arrested for a crime of violence**.

Effective August 15, 2010. (Amends C.Cr.P. Art. 334.2)

VIII. INSURANCE

1. Kleckley (HB 244)

Act No. 912

Extends the age that a **dependent child** will be covered by a parent or grandparent's family group **health or accident insurance** until the age of 26. Removes the requirements that a dependent child or grandchild must be (1) unmarried and (2) a full time student. Exempts insurance coverage provided by the Office of Group Benefits from application of law.

Effective August 15, 2010. (Amends R.S. 22:1000(A)(1)(a)(vi) and (2), 1002, and 1003; Adds R.S. 22:1003.1)

2. Harrison (HB 698)

Act No. 828

Prohibits the use of arbitration or any other type of binding mediation by automobile insurers **to determine fault** for purposes of settling a claim resulting from an automobile accident for the purpose of raising premiums of an insured without notifying the insured as to the percentage of fault prior to arbitration.

Applicable to automobile insurance policies or contracts issued or renewed on or after June 1, 2010.

Effective June 1, 2010. (Adds R.S. 22:1892.1)

3. Harrison (HB 1011)

Act No. 1032

Provides that when an insurer elects a **cash settlement instead of replacement based on the actual cost to purchase a comparable motor vehicle**, such costs shall be derived by using one of the following: (1) A fair market value survey conducted using qualified retail automobile dealers in the local market area; (2) The retail cost as determined from a generally recognized used motor vehicle industry source; or (3) A qualified expert appraiser selected and agreed upon by the insured and insurer.

Effective August 15, 2010. (Adds R.S. 22:1892(B)(5))

4. Hoffman (HB 1247)

Act No. 941

Prohibits the **federal health care reform** plans from providing coverage for elective abortions, except under the following circumstances: (1) when it is necessary to save the life or preserve the health of an unborn child, (2) to remove a dead unborn child, or (3) to terminate a pregnancy where the fertilized egg is implanted outside the uterus.

Effective July 2, 2010. (Adds R.S. 22:1016)

5. Duplessis (SB 150)

Act No. 636

Prohibits insurers from increasing the premium rate or adding a surcharge to a policy of motor vehicle insurance based **solely on consideration of a lapse in coverage**. Further prohibits insurers from denying an application for motor vehicle insurance based solely on consideration of a lapse in coverage. Provides that punishment for violation by an insurer will require the insurer to refund any money to the insured that is in excess of the amount of the premium that would have been charged had the insurer been in compliance with the law. Authorizes the commissioner of insurance to promulgate rules and regulations for enforcement of law.

Effective August 15, 2010. (Adds R.S. 22:1284.1)

6. Hebert (SB 687)

Act No. 895

Increases the **minimum requirements for property damage insurance** from \$5,000 to \$25,000 for owners of certified public carrier vehicles.

Effective August 15, 2010. (Amends R.S. 45:200.4)

IX. JUDICIAL AFFAIRS

A. GENERAL PROVISIONS

1. Murray (SB 750)

Act No. 900

Subject to the approval of the Judicial Council of the Louisiana Supreme Court, the Civil District Court for the parish of Orleans and the clerk of court of the Civil District Court for the parish of Orleans are **authorized to impose additional costs** in all cases in which the court has jurisdiction, and further provides that such monies shall be designated to the development, construction, and operation of a new facility to house the Civil District Court for the parish of Orleans, the office of the clerk of court for Civil District Court for the parish of Orleans, the First City Court, the clerk of the First City Court, the constable of the First City Court, the office of the civil sheriff, the Orleans Parish Juvenile Court, the mortgage office, the conveyance office, the notarial archives, and such other courts and parochial offices as may be necessary.

Increases the compensation paid to jurors in Orleans from \$16 to \$25 and increases the amount required to be paid in the registry of the court from \$192 to \$300 for each day the court estimates the trial will last.

Effective July 2, 2010. (Amends R.S. 13:3105(A); Adds R.S. 13:996.67)

2. Ligi (HB 150)

Act No. 187

Authorizes the **city of Kenner** to adopt an ordinance which provides that on July 1 of each year, the amount of money in the witness fee fund which exceeds \$50,000 shall be transferred to the city's general fund and used to purchase equipment for the police department.

Requires that a balance of \$50,000 shall be kept in the witness fee fund, and provides that under no circumstances shall the balance be reduced to below \$50,000 as a result of a transfer.

Effective August 15, 2010. (Adds R.S. 15:255(N))

3. Foil (HB 266)

Act No. 463

Requires the **LSU Law Library to stop serving as the depository for duplicate copies of transcripts** and briefs of cases finally disposed of by the courts of appeal and the supreme court and prohibits the clerk of the supreme court from transmitting duplicate copies of transcripts and briefs to the library.

Authorizes the LSU Law Library to destroy all duplicate supreme court records received prior to January 1, 1980, but prohibits the disposal of any records or criminal cases previously transferred by the 4th and 5th circuit courts of appeal.

Effective August 15, 2010. (Amends R.S. 13:4682 and 4686)

4. Leger (HB 294)

Act No. 571

Removes the lieutenant governor from the **Juvenile Justice Reform Act Implementation Commission** and provides that either the chief justice of the supreme court or an associate justice shall be a member of the commission.

Adds a representative appointed by the La. District Attorneys Association and a representative appointed by the state public defender to serve on the commission.

Requires the representative appointed by the speaker of the House of Representatives and the senator appointed by the president of the Senate to serve alternating one year terms as chairman.

Effective August 15, 2010. (Amends R.S. 46:2751(B)(1); Adds R.S. 46:2751(B)(3))

5. LaFonta (HB 497)

Act No. 706

Provides when a suit has been filed in state district court for damages arising from an offense or quasi offense, the **clerk of court shall submit information** as required by supreme court rule **to the judicial administrator of the supreme court.**

Provides that a processing fee of \$5 for the clerk of court and \$5 for the office of the judicial administrator shall be taxed as costs of court in each suit on which the required information by supreme court rule is submitted by the clerk of court. Provides that maximum fees per suit shall not exceed \$10.

Repeals provisions of law which provided that information received by the commissioner of insurance is not subject to subpoena, but provides that information received by the judicial administrator pursuant to supreme court rules shall not be subject to subpoena.

Effective January 1, 2012. (Adds R.S. 13:4688; Repeals R.S. 9:2800.7)

6. Lorusso (HB 509)

Act No. 472

Extends the jurisdiction of the **Housing and Environmental Court Division of the Municipal Court of New Orleans** to the trial of ordinance violations of the city of New Orleans and the violations of state statutes which are not triable by a jury in certain criminal matters for civil enforcement of health, safety, and welfare ordinances, for administrative

adjudication for violations of public health, housing, fire code, environmental building code, zoning, historic district, permitting vegetation, and nuisance ordinances.

In Orleans Parish, provides that the public authority may enforce health, safety and welfare statutes or ordinances or otherwise seek to eliminate blighted property, unsafe structures and equipment, unlawful structures and structures unfit for human occupancy, housing violations or public nuisances in the Housing and Environmental Court Division of the Municipal Court of New Orleans.

Effective August 15, 2010. (Amends R.S. 33:1373(D) and 1374(D); Adds R.S. 13:2493.1(D))

7. Thibaut (HB 520)

Act No. 581

Authorizes the board of commissioners of the **Tri-Parish Juvenile Justice District** to enter into a cooperative endeavor agreement with any other state, parish, or local agency to provide for the establishment and maintenance of evidence-based juvenile services and programs, including the district attorney's early intervention program.

Effective August 15, 2010. (Amends R.S. 15:1096.2; Repeals R.S. 15:1093.2)

8. Danahay (HB 623)

Act No. 262

Provides that the judge to whom a **motion to recuse** is assigned shall have full power and authority to act pending the disposition of the motion to recuse.

Effective August 15, 2010. (Amends C.C.P. Art. 153 and C.Cr.P. Art. 673)

9. Kleckley (HB 833)

Act No. 528

Provides that **marshals with the same authority as sheriffs** may demand security as provided in law for sheriffs.

Effective August 15, 2010. (Amends R.S. 13:3883)

10. Abramson (HB 986)

Act No. 835

Provides that **attorneys shall not publicly disclose**, except during trial, the **identity of minor crime victims** or victims of sex offenses, but may lawfully utilize initials, abbreviations, or other forms of indefinite descriptions to prevent the public disclosure of the identity of such victims.

If the identity of a victim must be disclosed in a motion or pleading, that motion or pleading shall be filed with the court under seal.

Effective August 15, 2010. (Amends R.S. 46:1844(W)(1))

11. Greene (HB 1114)

Act No. 736

Requires that **court reporters** and deputy court reporters prepare transcripts to certain specifications. When a transcript is requested by a litigant, the reporter shall be paid in advance and shall prepare the transcript within 30 days or apply to the court for an extension.

Effective June 29, 2010. (Adds R.S. 13:961.2 and 1411)

12. Greene (HB 1435)

Act No. 754

Adds **nonsupport cases** to the exclusive jurisdiction of the **East Baton Rouge Parish Family Court**.

Removes cases involving the **establishment of paternity** and the enforcement of support from the jurisdiction of the **East Baton Rouge Parish Juvenile Court**.

Deletes the concurrent jurisdiction of the juvenile and family courts in the parish of East Baton Rouge.

Effective January 1, 2011. (Amends Ch.C. Art. 311(A)(1)(intro. para.) and (B)(1)(intro. para.), R.S. 13:1401(A)(1) and 1621(A)(3), and R.S. 46:236.2(A)(2) and (B)(2); Repeals R.S. 13:1621(B) and (C))

13. Claitor (SB 572)

Act No. 448

Provides that after the clerk of court receives a copy of an **order authorizing disbursement of funds located in the registry of the court**, the clerk shall within 15 business days disburse the funds by check payable to each entity or person entitled to the funds.

Provides that a person shall be entitled to receive accrued interest if the clerk of court fails to disburse the funds within the required time period.

Effective August 15, 2010. (Adds R.S. 13:918)

B. COURTS OF LIMITED JURISDICTION

1. Montoucet (HB 14)

Act No. 180

Increases the civil jurisdictional amount in dispute for the **City Court of Crowley and the City Court of Rayne** from \$15,000 to \$30,000.

Increases the civil jurisdictional amount in dispute for the **City Court of Baker and the City Court of Zachary** from \$25,000 to \$35,000.

Increases the civil jurisdictional amount in dispute for the **City Court of Baton Rouge** from \$20,000 to \$35,000.

Effective August 15, 2010. (Amends C.C.P. Art. 4843(C), (D), (E), (F), and (G))

2. Morris (HB 18)

Act No. 218

Creates the **Mayor's Court of the Village of Hosston** and provides that the territorial jurisdiction of the court shall extend throughout the Village of Hosston, Caddo Parish.

Effective August 15, 2010. (Adds R.S. 33:454)

3. Pearson (HB 19)

Act No. 219

Provides that in the **City Court of Slidell**, the court shall have the same jurisdictional limit for possession of leased premises in eviction proceedings as a justice of the peace court.

Effective August 15, 2010. (Adds C.C.P. Art. 4844(A)(6))

4. Barras (HB 108)

Act No. 228

Adds the **City Court of Jeanerette** and the **City Court of New Iberia** to those city courts having civil jurisdiction where the amount in dispute or the value of property involved does not exceed \$30,000.

Effective August 15, 2010. (Amends C.C.P. Art. 4843(F))

X. MISCELLANEOUS

1. Landry (HB 1421)

Act No. 417

Defines a "**low-profit limited liability company**" as a limited liability company organized to satisfy each of the following requirements:

- (1) The entity significantly furthers the accomplishment of one or more charitable or educational purposes within the meaning of §170(c)(2)(B) of the Internal Revenue Code and would not have been formed but for the entity's relationship to the accomplishment of charitable or educational purposes.
- (2) No significant purpose of the entity is the production of income or the appreciation of property provided; however, the fact that an entity produces significant income or capital appreciation shall not, in the absence of other factors, be conclusive evidence of a significant purpose involving the production of income or the appreciation of property.
- (3) No purpose of the entity is to accomplish one or more political or legislative purposes within the meaning of §170(c)(2)(D) of the Internal Revenue Code.

Provides that if a company ceases to satisfy any one of the requirements of a low-profit limited liability company, it shall immediately cease to be a low-profit limited liability company, but by continuing to meet all the other requirements, shall continue to exist as a limited liability company, and further provides that the articles of organization shall be amended accordingly.

Provides that the name of each low-profit limited liability company, as set forth in its articles of organization, shall contain the words "low-profit limited liability company", the abbreviation "L3C", or the abbreviation "l3c".

Effective August 15, 2010. (Amends R.S. 12:1306(A)(1) and 1309(A)(intro. para.); Adds R.S. 12:1301(A)(21), 1302(C), 1305(B)(3), and 1309(A)(4))

2. Gallot (HB 357)

Act No. 692

Authorizes a person **licensed to practice law in this state who is not a resident of this state** but who maintains an office for the practice of law in this state, to be a **notary public ex officio** who is authorized and empowered to exercise all the powers and functions of a regularly commissioned notary public in this state in any parish or parishes in which he maintains an office open to the public for the practice of law upon filing a certificate of good standing from the La. Supreme Court with the secretary of state.

Effective August 15, 2010. (Adds R.S. 35:412)

3. B. Badon (HB 855)

Act No. 283

Retains existing law relative to the authority of a **mayor or a chief of police** in a municipality to **appoint an ex officio notary public**, but increases the population limitation from less than 5,000 to less than 15,000.

Effective August 15, 2010. (Amends R.S. 35:407(A) and (B))

XI. CONSTITUTIONAL AMENDMENTS

OCTOBER 2, 2010 BALLOT

1. Riser (SB 5; 2009 R.S.)

Act No. 537

Moves the convening of regular legislative sessions in even-numbered years from noon on the last Monday in March, to noon of the second Monday in March.

Moves the convening of regular legislative sessions in odd-numbered years from noon on the last Monday in April to noon of the second Monday in April.

Effective January 1, 2012. (Amends Const. Art. III, Secs. 2(A)(3)(a) and (4)(a) and 19)

2. Walsworth (SB 209; 2009 R.S.)

Act No. 538

Provides that the director, deputy director and all employees of the **Governor's Office of Homeland Security and Emergency Preparedness** shall be in the unclassified service of the state civil service.

(Amends Const. Art. X, Sec. 2(B)(11) and (12); Adds Const. Art. X, Sec. 2 (B)(13))

NOVEMBER 2, 2010 BALLOT

1. McPherson (SB 67; 2009 R.S.)

Act No. 539

Specifies that a **salary increase for statewide elected officials or members of the legislature** shall not become effective until the commencement of the subsequent term for that office following the adoption or enactment of the increase.

Specifies that an increase in salary provided by law for the public service commission shall not become effective for a member of the commission until the commencement of the term of office for the member of the commission following the enactment of the increase.

(Amends Const. Art. IV, §4; Adds Const. Art. III, §4(G) and Art. IV, §21(F))

2. Gallot (HB 765; 2009 R.S.)

Act No. 541

To decrease the amount of **taxes retained by the state on the severance of natural resources**, other than sulphur, lignite, and timber, and to increase the maximum amount of such revenues which are remitted to the parish governing authority from where the severance

occurs, to be implemented in the event that the official forecast of severance tax revenues for any fiscal year includes an estimate for severance tax collections which will exceed that actually collected by the state in Fiscal Year 2008-2009; to change the annual maximum amount to be remitted to a parish governing authority from eight hundred fifty thousand dollars to one million eight hundred fifty thousand dollars for the first fiscal year of implementation, which amount would increase to two million eight hundred fifty thousand dollars for the following and subsequent fiscal years; to provide for annual adjustment of the maximum amounts in accordance with the consumer price index; to require that of the revenues received by a parish governing authority under these provisions, that portion which is in excess of the amount of such revenues received in Fiscal Year 2011-2012 be used within the parish for the same purposes as monies received from the Parish Transportation Fund; to require that of the severance taxes and royalty revenues retained by the state from activity on state lands within the Atchafalaya Basin, up to ten million dollars per year be deposited into a special fund created in the state treasury to be known as the Atchafalaya Basin Conservation Fund; to provide that monies in this fund be used exclusively for conservation, improvement, and management of the Atchafalaya Basin in accordance with formal state and federal plans; to require legislative approval for and specific limitations on the use of monies appropriated from the fund.

Effective April 1, 2012. (Adds Const. Art. VII, §4(D)(4))

3. Pope (HB 246; 2010 R.S.)

Act No. 1049

To **exempt from ad valorem tax**, in addition to the homestead exemption, the next seventy-five thousand dollars of value of **property which is owned and occupied by a veteran with a service-connected disability** rating of one hundred percent; to authorize the exemption to apply to the surviving spouse of a deceased veteran if the exemption was in effect on the property prior to the death of the veteran and the surviving spouse remains the owner of the property; to require the taxing authority to absorb any decrease in the total amount of ad valorem taxes collected as a result of this exemption; to prohibit the exemption from creating any additional tax liability for other property taxpayers; to prohibit implementation of the exemption from triggering reappraisal of property or adjustment of millages; provides that the exemption shall only extend and apply if established through an election called by the local governing authority and approved by a majority of the registered voters in an election held for that purpose.

(Effective January 1, 2011)(Adds Article VII, Section 21(K))

4. Arnold (HB 903; 2009 R.S.)

Act No. 542

Limits the power of **unelected tax authorities to increase millage rates without voter approval** to annual increases which do not exceed 2.5% of the property tax collections for the immediately preceding calendar year, but excludes fire districts, ports, port harbor, and terminal districts, and millages levied by certain levee districts under authority granted by Const. Art. VI, Sec. 39(A).

Effective January 1, 2011. (Amends Const. Art. VII, Sec. 23(C))

5. Murray (SB21; 2010 R.S.)

Act No. 1050

To authorize **continuation of the homestead exemption and the special assessment level for a homestead that has been destroyed or is uninhabitable due to a disaster** for two years if the homeowner's claim for damages is pending in a formal appeal process with a governmental agency or program offering assistance for repairing or rebuilding homes damaged by the disaster or if a homeowner has a damage claim filed and pending against the insurer of the property; to authorize an assessor to grant up to three additional one-year extensions of the continuation of the homestead exemption and the special assessment level as prescribed by law.

(Amends Article VII, Sections 18(G)(5) and 20(A)(10))

6. Pearson (HB 229; 2010 R.S.)

Act No. 1048

To **require a two-thirds vote** of the elected members of each house of the legislature to enact any benefit provision for members of a **Louisiana public retirement system** if the provision has an actuarial cost.

(Amends Article X, Section 29(E)(5); Adds Article X, Section 29(F))

7. Leger (HB 509; 2009 R.S.)

Act No. 540

Removes the authority of the collector to sell the **least quantity of the tax debtor's property** at ad valorem property tax sales, and provides that if authorized by the state or local tax collector, any bidder may elect to bid down **in increments of .01%, the 5% penalty** provided in La. Const. Art. VII, §25(B)(1).

Requires the payment of penalties in addition to taxes, interest, and costs.

(Amends Const. Art. VII, §25(A)(1) and (E))

8. Leger (HB 276; 2010 R.S.)

Act No. 1052

Provides that property **expropriated for the public purpose of removing a threat to public health or safety** caused by the existing use or disuse of the property shall not be subject to the requirement of offering the property back to the original owner who allowed the property to become a threat to public health or safety or to the requirement of public sale.

(Amends Article I, Section 4(H)(1))

9. Murray (SB 42; 2010 R.S.)

Act No. 1051

To provide that, in civil matters only, when a court of appeal is to modify or reverse an administrative agency determination in a **workers' compensation claim** and one judge dissents, the case shall be **reargued before a panel of at least five judges** prior to rendition of judgment, and a majority shall concur to render judgment.

(Amends Article V, Section 8(B))

10. Montoucet (HB940; 2010 R.S.)

Act No. 1053

To **permit criminal defendants to waive their right to a trial by jury** no later than forty-five days prior to the trial date, except in capital cases.

(Amends Article I, Section 17(A))

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