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March 10, 2016

Senator John A. Alario, Jr.  
President of the Senate  
P.O. Box 94183  
Baton Rouge, Louisiana 70804

RE: SR 199 of 2015

Dear Mr. President:

The Louisiana State Law Institute respectfully submits herewith its report to the legislature in response to 2015 Senate Resolution No. 199, relative to granting attorney fees in civil contempt of court proceedings.

Sincerely,

A handwritten signature in cursive script that reads "William E. Crawford".

William E. Crawford  
Director

WEC/puc

Enclosure

cc: Senator Daniel "Danny" Martiny

email cc: David R. Poynter Legislative Research Library  
[drplibrary@legis.la.us](mailto:drplibrary@legis.la.us)  
Secretary of State, Mr. Tom Schedler  
[admin@sos.louisiana.gov](mailto:admin@sos.louisiana.gov)

**LOUISIANA STATE LAW INSTITUTE  
CODE OF CIVIL PROCEDURE COMMITTEE**

**REPORT TO THE LEGISLATURE  
IN RESPONSE TO SR 199 OF THE 2015 REGULAR SESSION**

**Relative to granting attorney fees in civil contempt of court proceedings**

Prepared for the  
Louisiana Legislature on

**March 10, 2016**

Baton Rouge, Louisiana

**LOUISIANA STATE LAW INSTITUTE  
CODE OF CIVIL PROCEDURE COMMITTEE**

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To: Senator John A. Alario, Jr.  
President of the Senate  
P.O. Box 94183  
Baton Rouge, Louisiana 70804

**REPORT TO THE LOUISIANA LEGISLATURE  
IN RESPONSE TO SR NO. 199 OF THE 2015 REGULAR SESSION**

Senate Resolution No. 199 of the 2015 Regular Session urges and requests the Louisiana State Law Institute to study whether the granting of attorney fees should be allowed in civil contempt of court proceedings. According to the resolution, “no statutory provision exists in the Code of Civil Procedure articles concerning contempt generally or in R.S. 13:4611 for the allowance of attorney fees in a contempt action, thus no attorney fees may be awarded in contempt actions pursuant to those provisions.” As a result, the Louisiana Legislature requested that the Law Institute “study whether the granting of attorney fees should be allowed in civil contempt of court proceedings and, if so, under what circumstances.” In fulfillment of this request, and in light of the subject matter of the resolution, the Law Institute assigned the project to the Code of Civil Procedure Committee.

After conducting research and identifying issues and deficiencies under current law, the Committee met to consider whether the granting of attorney fees should be allowed in civil contempt proceedings. The Committee ultimately concluded that the granting of attorney fees should, in fact, be allowed in civil contempt of court proceedings. However, the Committee decided to limit the granting of attorney fees in civil contempt proceedings, allowing the award to be made only to the prevailing party. The Committee also decided to make the granting of attorney fees in a civil contempt of court proceeding permissive rather than mandatory, leaving the decision of whether to award such attorney fees within the discretion of the court.

A copy of 2015 SR 199 and continuous revision proposed legislation, which includes an amendment to R.S. 13:4611 to allow for the granting of attorney fees in civil contempt of court proceedings, are attached.

SENATE RESOLUTION NO. 199

BY SENATOR MARTINY

A RESOLUTION

To urge and request the Louisiana State Law Institute to study whether the granting of attorney fees should be allowed in civil contempt of court proceedings.

WHEREAS, the power to punish for civil contempt of court is set forth generally in the Code of Civil Procedure, including Articles 221, et seq., and also in R.S. 13:4611, providing specific penalties and procedures; and

WHEREAS, the courts of Louisiana have stated in numerous cases that contempt of court is an affront to the dignity of the court, and that contempt proceedings are "designed for vindication of the dignity of the court rather than for the benefit of a litigant"; and

WHEREAS, cases have additionally pointed out that the Constitution of Louisiana permits the statutory limitation of a court's contempt power, and that the power to punish for contempt generally is limited to Article V courts, with a justice of the peace having only limited powers to punish for contempt; and

WHEREAS, cases have further pointed out that no statutory provision exists in the Code of Civil Procedure articles concerning contempt generally or in R.S. 13:4611 for the allowance of attorney fees in a contempt action, thus no attorney fees may be awarded in contempt actions pursuant to those provisions; and

WHEREAS, the Louisiana State Law Institute should study whether the granting of attorney fees should be allowed in civil contempt of court proceedings and, if so, under what circumstances, and submit a report of its findings to the Legislature no later than February 1, 2016.

THEREFORE, BE IT RESOLVED that the Senate of the Legislature of Louisiana does hereby urge and request the Louisiana State Law Institute to study whether the granting of attorney fees should be allowed in civil contempt of court proceedings and, if so, under what circumstances, and to submit a report of its findings to the Legislature no later than February 1, 2016.

**SR NO. 199**

**ENROLLED**

**BE IT FURTHER RESOLVED** that any recommendations in the report for revisions to current law shall be in the form of proposed legislation containing appropriate substantive text to enact such recommendations in a statutorily consistent and coordinated manner.

**BE IT FURTHER RESOLVED** that a copy of this Resolution be transmitted to the director of the Louisiana State Law Institute.

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**PRESIDENT OF THE SENATE**

Regular Session, 2016

HOUSE BILL NO. \_\_\_\_\_

BY REPRESENTATIVE \_\_\_\_\_

(On Recommendation of the Louisiana State Law Institute)

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

1 AN ACT

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

9 Be it enacted by the Legislature of Louisiana:

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

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

13 Each interrogatory shall be answered separately and fully in writing under oath,  
14 unless it is objected to, in which event the reasons for objection shall be stated in lieu of

1 an answer. The written answer or reasons for objection to each interrogatory shall  
2 immediately follow a restatement of the interrogatory to which the answer or objection is  
3 responding. The answers are to be signed by the person making them. When  
4 interrogatories are served on a specific party, that party shall verify he has read and  
5 confirmed the answers and objections. The party upon whom the interrogatories have  
6 been served shall serve a copy of the answers, and objections if any, within ~~fifteen~~ thirty  
7 days after the service of the interrogatories, ~~except that a defendant may serve answers or~~  
8 ~~objections within thirty days after service of the petition upon that defendant and the state~~  
9 ~~and its political subdivisions may serve a copy of the answers or objections within thirty~~  
10 ~~days after service of the interrogatories.~~ The court may allow a shorter or longer time.

11 The party submitting the interrogatories may move for an order under Article 1469 with  
12 respect to any objection to or other failure to answer an interrogatory.

13 \* \* \*

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

15 \* \* \*

16 B.(1) The party upon whom the request is served shall serve a written response  
17 within ~~fifteen~~ thirty days after service of the request, ~~except that a defendant may serve a~~  
18 ~~response within thirty days after service of the petition upon that defendant, and except~~  
19 ~~that the state and its political subdivisions may serve a response within thirty days after~~  
20 ~~service of the request.~~ The court may allow a shorter or longer time. With respect to  
21 each item or category, the response shall state that inspection and related activities will be  
22 permitted as requested, unless the request is objected to, in which event the reasons for



1 objection shall be stated. If objection is made to part of an item or category, the part shall  
2 be specified. The written answer or reasons for objection to each request for production  
3 of documents shall immediately follow a restatement of the request for production of  
4 documents to which the answer or objection is responding. The party submitting the  
5 request may move for an order under Article 1469 with respect to any objection to or  
6 other failure to respond to the request, or any part thereof, or any failure to permit  
7 inspection as requested. If objection is made to the requested form or forms for  
8 producing information, including electronically stored information, or if no form was  
9 specified in the request, the responding party shall state in its response the form or forms  
10 it intends to use.

11 \* \* \*

12 Art. 1465.1. Requests for release of medical records

13 \* \* \*

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

20 \* \* \*

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

22 A. Each matter of which an admission is requested shall be separately set forth.

1 The matter is admitted unless, within ~~fifteen~~ thirty days after service of the request, or  
2 within such shorter or longer time as the court may allow, the party to whom the request  
3 is directed serves upon the party requesting the admission a written answer or objection  
4 addressed to the matter, signed by the party or by his attorney, ~~but, unless the court~~  
5 ~~shortens the time, a defendant shall not be required to serve answers or objections before~~  
6 ~~the expiration of thirty days after service of the petition upon him.~~ The written answer or  
7 reasons for objection to each request for admission shall immediately follow a  
8 restatement of the request for admission to which the answer or objection is responding.  
9 If objection is made, the reasons therefor shall be stated. The answer shall specifically  
10 deny the matter or set forth in detail the reasons why the answering party cannot  
11 truthfully admit or deny the matter. A denial shall fairly meet the substance of the  
12 requested admission, and when good faith requires that a party qualify his answer or deny  
13 only a part of the matter of which an admission is requested, he shall specify so much of  
14 it as is true and qualify or deny the remainder. An answering party may not give lack of  
15 information or knowledge as a reason for failure to admit or deny unless he states that he  
16 has made reasonable inquiry and that the information known or readily obtainable by him  
17 is insufficient to enable him to admit or deny. A party who considers that a matter of  
18 which an admission has been requested presents a genuine issue for trial may not, on that  
19 ground alone, object to the request; he may, subject to the provisions of Article 1472,  
20 deny the matter or set forth reasons why he cannot admit or deny it.

21 \* \* \*

22 Art. 2541. Execution of foreign judgments

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

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

8 C. A judgment, decree, or order of a court of the United States or any other court  
9 that is entitled to full faith and credit in this state may also be enforced pursuant to R.S.  
10 13:4241.

11 Comment – 2016

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

15 \* \* \*

16 Art. 2642. Assertion of defenses; appeal

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

21 A suspensive appeal from an order directing the issuance of a writ of seizure and  
22 sale shall be taken within fifteen days of service of the notice of seizure as provided in  
23 Article 2721 ~~the signing of the order~~. The appeal is governed by the provisions of

1 Articles 2081 through 2086, 2088 through 2122, and 2124 through 2167, except that the  
2 security therefor shall be for an amount exceeding by one-half the balance due on the  
3 debt secured by the mortgage or privilege sought to be enforced, including principal,  
4 interest to date of the order of appeal, and ~~attorney's fee~~ attorney fees, but exclusive of  
5 court costs.

6 \* \* \*

7 Art. 2721. Seizure of property; notice

8 \* \* \*

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

15 \* \* \*

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

18 § 3852. Notices of seizure

19 \* \* \*

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

21 "Notice is hereby given that I am this day seizing, in accordance with the  
22 provisions of R.S. 13:3851 through 13:3861, the following described immovable

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

21 THE FOLLOWING PARAGRAPH APPLIES ONLY TO PROPERTY THAT  
22 HAS BEEN SEIZED PURSUANT TO A WRIT OF SEIZURE AND SALE ISSUED IN

1 AN EXECUTORY PROCEEDING: As provided in Louisiana Code of Civil Procedure  
2 Article 2642, defenses and procedural objections to an executory proceeding may be  
3 asserted either through an injunction proceeding to arrest the seizure and sale as provided  
4 in Articles 2751 through 2754, or a suspensive appeal from the order directing the  
5 issuance of the writ of seizure and sale, or both. A suspensive appeal from an order  
6 directing the issuance of a writ of seizure and sale shall be taken within fifteen days of  
7 service of the notice of seizure as provided in Article 2721. The appeal is governed by the  
8 provisions of Articles 2081 through 2086, 2088 through 2122, and 2124 through 2167,  
9 except that the security therefor shall be for an amount exceeding by one-half the balance  
10 due on the debt secured by the mortgage or privilege sought to be enforced, including  
11 principal, interest to date of the order of appeal, and attorney fees, but exclusive of court  
12 costs.

13 \_\_\_\_\_,  
14 Sheriff

15 Parish of \_\_\_\_\_

16 By: \_\_\_\_\_"

17 \* \* \*

18 § 4611. Punishment for contempt of court

19 Except as otherwise provided for by law:

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

23 \* \* \*

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

3                    \*           \*           \*

## DIGEST

The digest printed below was prepared by the Louisiana State Law Institute. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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Rep. \_\_\_\_\_      HB \_\_\_\_\_

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

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

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

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

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

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

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

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

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

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

Proposed law reproduces in full the provisions of Code of Civil Procedure Article 2642 within the notice of seizure of property required under present law.

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

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

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