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April 1, 2013

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

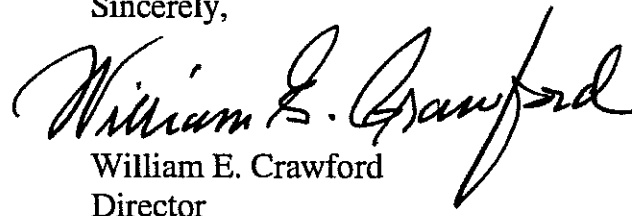
Representative Charles "Chuck" Kleckley
Speaker of the House of Representatives
P.O. Box 94062
Baton Rouge, LA 70804-9062

RE: SCR No. 108 and HCR No. 81 of the 2012 Regular Session, Expedited Jury Trial Studies

Dear Mr. President and Mr. Speaker,

The Louisiana State Law Institute respectfully submits herewith its report to the legislature in response to 2012 Senate Concurrent Resolution No. 108 and House Concurrent Resolution No. 81, relative to expedited jury trials.

Sincerely,


William E. Crawford
Director

WEC/cp

Enclosures

cc: Senator Edwin R. Murray
Representative Mike Huval

e-mail cc: David R. Poynter Legislative Research Library
drplibary@legis.la.us

LOUISIANA STATE LAW INSTITUTE

**REPORT IN RESPONSE TO SCR No. 108 AND HCR No. 81
OF THE 2012 REGULAR LEGISLATIVE SESSION**

Civil Jury Trial Procedure

**Guy Holdridge, Reporter
Claire Popovich, Staff Attorney**

**LOUISIANA STATE LAW INSTITUTE
EXPEDITED JURY TRIALS COMMITTEE**

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Hon. Tiffany Gautier Chase	New Orleans
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Harry T. Widmann	Metairie

Guy Holdridge, Reporter
Claire Popovich, Staff Attorney

1 **REPORT ON SCR No. 108 AND HCR No. 81 OF 2012**

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Senate Concurrent Resolution No. 108 directed the Louisiana State Law Institute to, “study certain aspects of civil jury trial procedure [...] to determine ways in which the present process can be streamlined and made less costly”. And House Concurrent Resolution No. 81 of 2012 directed the Louisiana State Law Institute to, “study jury trial procedures in order to create an expedited or summary jury trial and to make specific recommendations for legislation.” Pursuant to these resolutions, the Law Institute formed a committee to study these issues.

The Expedited Jury Trial Committee has met and Code of Civil Procedure Articles were drafted and approved by the Law institute Council at its March 2013 meeting. The following legislation has been submitted on recommendation of the Louisiana State Law Institute.

1 Regular Session, 2013

2

3 HOUSE BILL NO.

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6 BY REPRESENTATIVE-ABRAMSON

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8 (On Recommendation of the Louisiana State Law Institute)

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12 CIVIL PROCEDURE: Expedited jury trials.

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AN ACT

17 To enact Code of Civil Procedure Article 1553 and Chapter 8 of Title V of Book II of the

18 Code of Civil Procedure, consisting of Code of Civil Procedure Articles 1815

19 through 1838, relative to expedited jury trials; to provide that expedited jury trial

20 be an expedited method of efficiently resolving a controversy in Louisiana; to

21 provide that upon joint motions for an expedited jury trial the court shall set the

22 matter for pre-trial conference; to provide that motions of summary judgment be

23 filed prior to trial; to provided that six jurors shall be chosen; to provide that a cash

24 deposit for all costs associated with jury costs be timely made; to provide that all

25 jurors be served by regular mail; to provide that jurors be sworn prior to

26 examination; to provide that each potential juror be examined; to provide for

27 challenges for cause; to provide for peremptory challenges; to provide for the

28 selection of a foreperson; to provide for a six hour time limit for an expedited trial

29 jury; to provide for expert witnesses, their fees, and the presentation of their

30 evidence; to provide for the admittance of exhibits; to provide for the court to give

31 charges to the jury; to provide for jurors to make use of juror notes; to provide for

32 jurors to take evidence into the jury room; to provide for the number of jurors

33 needed for the court to render a verdict; to provide for general verdicts, and for the

34 court to give verdict forms and interrogatories; to provide for post-verdict relief; to

1 provide for appeals; and to provide for related matters.

2 Be it enacted by the Legislature of Louisiana:

3 Section 1. Code of Civil Procedure Article 1553, and Chapter 8 of Title V of
4 Book II of the Code of Civil Procedure, consisting of Code of Civil Procedure Articles
5 1815, 1816, 1817, 1818, 1819, 1820, 1821, 1822, 1823, 1824, 1825, 1826, 1827, 1828,
6 1829, 1830, 1831, 1832, 1833, 1834, 1835, 1836, 1837, and 1838 are hereby enacted to
7 read as follows:

8 Art. 1553. Expedited jury trial pre-trial conference; order

9 A. If an expedited jury trial has been requested, the parties shall prepare and
10 present to the court at the pre-trial conference a proposed joint pre-trial order containing
11 the following:

12 (1) A list of all witnesses for each party.

13 (2) A list of all exhibits for each party.

14 (3) A list of all experts and a designation as to whether each of them will
15 testify in person, by report, or by deposition.

16 (4) A certification that each party can present its case within the time limits of
17 Article 1828.

18 B. The pre-trial order may, by agreement of the parties, contain additional
19 stipulations, which shall be binding on the court and all parties, including, but not limited
20 to the following:

21 (1) A limitation of damages to an amount not in excess of the stated limits of
22 a policy of insurance.

23 (2) Any maximum or minimum amounts that shall apply to the jury's verdict.

24 (3) A waiver of any right to an appeal or limitations as to appealable issues.

25 (4) A waiver of any right to move for a new trial.

26 (5) A waiver of any provision of the Code of Evidence.

27 (6) An agreement as to the payment of the cash deposit for the jury costs.

1 C. The court shall conduct the expedited jury trial within one hundred twenty
2 days after the pre-trial conference.

3 D. The date of the expedited jury trial shall be set at the pre-trial conference
4 even if discovery has not yet been completed.

5 E. In the pre-trial order, the court shall fix the deadline for filing the cash
6 deposit, which shall be no later than thirty days prior to trial.

7 F. The parties or their attorneys, as well as the court, shall sign the pre-trial
8 order and file it into the record. The signature of a party or his attorney shall constitute a
9 certification that the party agreed to the terms of the pre-trial order and an expedited jury
10 trial.

11 G. The court may amend a pre-trial order at any time, but only with the
12 agreement of all parties.

13 * * *

14 CHAPTER 8. EXPEDITED JURY TRIAL

15 Art. 1815. Expedited jury trials

16 An expedited jury trial is a method of trial by jury in which the parties
17 present their evidence in an efficient, expedited fashion.

18 Art. 1816. Joint motion for an expedited jury trial

19 Upon joint motion of all parties for an expedited jury trial, the court shall
20 set the matter for a pre-trial conference in accordance with Article 1553 to be held
21 within forty-five days after the signing of the order. An expedited jury trial shall
22 be allowed whether or not any party previously requested a trial by jury.

23 Comment – 2014

24 If all parties agree, an expedited jury trial shall be available to the parties
25 even if no party had requested a jury trial in any previous pleadings. Specifically,
26 the time periods for requesting a jury trial in Article 1733 do not apply to an
27 expedited jury trial.

28 Art. 1817. Agreement for an expedited jury trial

29 An agreement to try an action by expedited jury trial may not be made prior

1 to the institution of the action.

2 Art. 1818. Cash deposit; procedure

3 A. The court shall fix the cash deposit for the jury costs at an amount
4 sufficient for payment of all costs associated with the expedited jury trial,
5 including juror fees, and expenses and charges of the clerk of court.

6 B. If the deposit is not timely made, the other parties shall have an
7 additional ten days to make the required deposit.

8 Art. 1819. Motion for summary judgment

9 All motions for summary judgment in which an expedited jury trial has
10 been granted shall be filed at least sixty days prior to the trial date.

11 Art. 1820. Jurors

12 In cases to be tried by an expedited jury trial, six jurors shall be chosen by
13 lot to try all issues.

14 Art. 1821. Service to jurors

15 All jurors shall be served by regular mail.

16 Art. 1822. Swearing of juror before examination

17 Before being examined, every prospective juror shall be sworn and shall
18 affirm to answer truthfully such questions as may be propounded to him.

19 Art. 1823. Examination of juror

20 A. The court shall examine prospective jurors as to their qualifications
21 and may conduct such further examination as it deems appropriate.

22 B. The parties or their attorneys may individually conduct an
23 examination of all prospective jurors, not to exceed a total of twenty minutes for
24 each side.

25 Comment – 2014

26 Efficiency is a hallmark of an expedited civil jury trial. Thus, an expedited civil
27 jury trial is limited to three hours per side. Nevertheless, in the interest of providing

1 parties the opportunity to be fully heard, the twenty minutes allotted for voir dire is not
2 included within the three hours that each party has to present his case.

3
4 Art. 1824. Challenges for cause

5 A juror may be challenged for cause in accordance with Articles 1765
6 through 1767.

7 Art. 1825. Peremptory challenges

8 Each side is allowed two peremptory challenges. If there is more than one
9 party on any side, the court may allow each side one additional challenge.

10 Art.1826. Swearing of jurors; selection of foreperson

11 The jurors shall be sworn and the foreperson shall be selected in accordance
12 with Article 1768.

13 Art. 1827. Alternate jurors

14 No alternate juror shall be called or selected in an expedited jury trial.

15 Art. 1828. Procedure in expedited jury trials

16 Each side shall be allowed three hours to present its case, including opening
17 statements, direct examination, cross-examination, rebuttal, and closing
18 arguments. Opening statements shall not exceed ten minutes for each side side,
19 and closing arguments shall not exceed fifteen minutes for each side. Time spent
20 on objections and bench conferences are not included in the time limits.

21 Art. 1829. Exhibits

22 A. At least thirty days prior to the jury trial, the parties shall exchange
23 copies of all proposed exhibits they plan to offer at trial.

24 B. Objection to exhibits shall be made at least twenty days prior to the
25 trial. At least five days prior to trial, the court shall rule on the admissibility of any
26 exhibit to which an objection has been made. If no objection is made at least
27 twenty days prior to the trial, the exhibit shall be admitted.

1 C. All exhibits shall be marked and admitted into evidence at the
2 beginning of trial.

3 Art. 1830. Expert witnesses

4 A. Expert witnesses may testify in person, or their testimony may be
5 presented by reports, depositions, or video depositions. If an expert witness is
6 called to testify in person at trial, the party calling the expert shall be responsible
7 for all of his expert fees, which shall not be taxed as court costs.

8 B. All motions challenging the qualifications or methodologies of an
9 expert witness shall be filed and heard by the court in accordance with Article
10 1425(F).

11 C. An expert who is listed in the pre-trial order shall be allowed to
12 testify at trial unless the court precludes his testimony by an order issued in
13 response to a pre-trial motion.

14 D. All expert reports to be introduced at trial shall be exchanged prior
15 to the pre-trial conference.

16 Art. 1831. Charge to jury

17 A. At any time during the trial, the court may instruct the jury on the
18 law applicable to any issue in the case.

19 B. After the trial of the case and the presentation of all the evidence and
20 arguments, the court shall give a charge to the jury on the applicable law. The
21 court shall provide to the parties a written copy of the charge prior to the trial.

22 C. The jury may take with them or have sent to them a written copy of
23 all instructions and charges.

24 Art. 1832. Juror notes

25 Jurors shall be permitted to takes notes in accordance with Article 1794.

1 Art. 1833. Taking evidence into the jury room

2 The court shall allow the jury to take with them into the jury room any
3 object, writing, or exhibit, except depositions, that has been admitted into
4 evidence.

5 Art. 1834. Number required for verdict

6 Five of the six jurors must concur to render a verdict unless the parties
7 stipulate otherwise. In the event that one juror becomes unable to serve, four out
8 of the five remaining jurors must concur to render a verdict. If there are fewer
9 than five jurors, a mistrial shall be granted, unless the parties agree otherwise on
10 the record.

11 Art. 1835. General verdict

12 A. The court shall submit to the jury the general verdict form and
13 written interrogatories agreed upon by all parties.

14 B. If the parties cannot agree on a verdict form and interrogatories, the
15 court shall inform the parties, prior to closing arguments, of the verdict form and
16 interrogatories it intends to submit to the jury. The parties shall be given a
17 reasonable opportunity to make any objections to the court's verdict form and
18 interrogatories.

19 Art. 1836. Post-verdict relief

20 After an expedited jury trial, any party may file motions in accordance with
21 Articles 1811, 1814, and 1971 through 1979 unless the parties have waived the
22 right by stipulation in open court or in the pre-trial order.

23 Art. 1837. Appeals

24 Following an expedited jury trial, the parties shall be allowed to appeal in
25 accordance with the procedure for appeals in Book 111 of this Code. The parties
26 may waive the right to appeal in the pre-trial order or by stipulation in open court.

In accordance with Article 1553, the parties may also place limits on appealable issues in their pre-trial order, and those limits will be binding on the appellate court.

Art. 1838. Applicability of general rules of trial by jury

Except as expressly provided in this Chapter, the general rules applicable to trial by jury shall apply.

Section 2. This act shall be effective January 1, 2014, and shall apply to all actions pending on that date or filed thereafter.

DIGEST

The digest printed below was prepared by the Law Institute. It constitutes no part of the legislative instrument.

AUTHOR

HB NO.

Abstract: This bill enacts Articles for the Louisiana Code of Civil Procedure relating to expedited jury trials in accordance with the legislative mandates of H.C.R. No. 108 of 2012 and H.C.R. No. 81 of 2012. These resolutions urged and requested the Louisiana State Law Institute to study and make recommendations on civil jury trial procedure to create an expedited or summary jury trial procedure.

This enactment suggests law providing for expedited jury trials in Louisiana. It provides for instances when parties can motion for and be granted an expedited jury trial for their controversies. Except as expressly provided for in the articles to be enacted, the general rules for jury trials apply.

Proposed law (C.C.P. Art. 1553) provides that the court shall schedule a pre-trial conference with the parties, that the parties shall have a pre-trial order at the pre-trial conference, and that the parties shall certify that they agree to an expedited jury trial.

Proposed law (C.C.P. Art. 1815) provides the policy of an expedited jury trial which emphasizes efficiency and reduced costs to litigants.

Proposed law (C.C.P. Art. 1816) provides that upon a joint motion of all parties the court shall set the matter for a pre-trial conference in accordance with Article 1553 to be held within forty-five days of the signing of the order.

Proposed law (C.C.P. Art. 1817) provides that parties may not agree to an expedited jury trial in advance of the institution of the action.

Proposed law (C.C.P. Art. 1818) provides the amount that the court shall fix for the cash deposit for an expedited jury trial and the time period during which the deposit must be made.

Proposed law (C.C.P. Art. 1819) provides that parties to an expedited jury trial shall file

1 all motions for summary judgment sixty days prior to the trial date.
2
3 Proposed law (C.C.P. Art. 1820) provides that six jurors shall be chosen by lot to try all
4 issues present in an expedited jury trial.
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6 Proposed law (C.C.P. Art. 1821) provides that all jurors of an expedited jury trial shall be
7 served by regular mail.
8
9 Proposed law (C.C.P. Art. 1822) provides that before examination, every prospective
10 juror shall be sworn and affirm to answer truthfully questions propounded to him.
11
12 Proposed law (C.C.P. Art. 1823) provides that the court shall examine prospective jurors,
13 and the parties may conduct an examination of all such jurors but no more than twenty
14 minutes in total.
15
16 Proposed law (C.C.P. Art. 1824) provides that a juror can be challenged for cause in
17 accordance with Code of Civil Procedure Articles 1765 through 1767.
18
19 Proposed law (C.C.P. Art. 1825) provides that each side is allowed two peremptory
20 challenges, but if there is more than one party on either side, the court can allow
21 additional challenges.
22
23 Proposed law (C.C.P. Art. 1826) provides that jurors shall be sworn and a foreperson
24 selected in accordance with Code of Civil Procedure Article 1768.
25
26 Proposed law (C.C.P. Art. 1827) provides that no alternate jurors shall be called or
27 selected in an expedited jury trial.
28
29 Proposed law (C.C.P. Art. 1828) provides that the entire expedited jury trial shall not
30 exceed six hours, wherein the opening statements shall not exceed ten minutes per side,
31 closing arguments shall not exceed fifteen minutes per side, and that time spent on
32 objections and bench conference does not count against the six-hour time limit.
33
34 Proposed law (C.C.P. Art. 1829) provides that no later than thirty days prior to trial the
35 parties shall exchange all exhibits they plan to offer at trial, the time limits during which
36 a party can object to exhibits, when the court must rule on the admissibility of the
37 exhibits, and when exhibits shall be marked and admitted into evidence.
38
39 Proposed law (C.C.P. Art. 1830) provides for expert witnesses to testify in person, by
40 reports, depositions, or video depositions and that each side shall pay for his expert fees,
41 that all motions challenging an expert shall be filed and heard in accordance with Code of
42 Civil Procedure Article 1425(F), and that all expert reports to be used at trial shall be
43 exchanged prior to the pre-trial conference.
44
45 Proposed law (C.C.P. Art. 1831) provides that the court may instruct the jury as to any
46 applicable law, that the court shall provide the parties a written copy of the charge prior
47 to the trial, and that the jury can take with it or have sent to it a written copy of all
48 instructions and charges.
49
50 Proposed law (C.C.P. Art. 1832) provides that, in accordance with Code of Civil
51 Procedure Article 1794, jurors can take notes.
52

1 Proposed law (C.C.P. Art. 1833) provides that jurors can take any object, writing, or
2 exhibit that has been admitted into evidence, with the exception of depositions, into the
3 jury room.

4
5 Proposed law (C.C.P. Art. 1834) provides for the number of jurors that must concur for a
6 verdict to be rendered, and that if fewer than five agree then a mistrial must be granted
7 unless the parties agree otherwise on the record.

8
9 Proposed law (C.C.P. Art. 1835) provides that the court shall submit the general verdict
10 form and interrogatories agreed upon by the parties; otherwise, the court shall give the
11 parties a reasonable time to object to the court's supplied verdict form and
12 interrogatories.

13
14 Proposed law (C.C.P. Art. 1836) provides that unless the parties have waived a motion by
15 stipulation in open court or in the pre-trial order, any party may file a motion in
16 accordance with the Code of Civil Procedure Articles 1811, 1814, and 1971 through
17 1979.

18
19 Proposed law (C.C.P. Art. 1837) provides that unless the parties have waived the right to
20 appeal by stipulation in open court or in the pre-trial order, a party may appeal in
21 accordance with the procedure for appeals in Book III of the Code of Civil Procedure.

22
23 Proposed law (C.C.P. Art. 1838) provides that except as provided for in the Chapter 8 of
24 Title V of Book 11, the general rules applicable to jury trials apply.

25
26 (Adds Code of Civil Procedure Article 1553 and Chapter 8 of Title V of Book II of the
27 Code of Civil Procedure, consisting of Code of Civil Procedure Articles 1815, 1816,
28 1817, 1818, 1819, 1820, 1821, 1822, 1823, 1824, 1825, 1826, 1827, 1828, 1829, 1830,
29 1831, 1832, 1833, 1834, 1835, 1836, 1837, and 1838).

SENATE CONCURRENT RESOLUTION NO. 108

BY SENATOR MURRAY

A CONCURRENT RESOLUTION

To urge and request the Louisiana State Law Institute to study certain aspects of civil jury trial procedure.

WHEREAS, civil jury trials can be complex, lengthy, and involve considerable expense and effort by all parties to an action; and

WHEREAS, the civil jury trial procedure in Louisiana should be studied by the Louisiana State Law Institute to determine ways in which the present process can be streamlined and made less costly; and

WHEREAS, such study should include whether a sliding scale should be instituted providing the required number of jurors to be based upon the amount in dispute, rather than the present law setting forth a fixed monetary threshold and number of jurors required for trial of actions exceeding such threshold; and

WHEREAS, for example, for an amount in dispute within a certain range the trial could be by a four person jury, with three having to concur; within a higher range the trial could be by an eight person jury, with six having to concur; and within the highest range the trial could be by a twelve person jury, with nine having to concur; and

WHEREAS, such study should also include the feasibility of modifying present trial procedures and evidentiary requirements for jury trials having a smaller number of jurors, including increased use of stipulated documents and summaries of testimony without the necessity of subpoena, and greater interaction between jurors, attorneys, and witnesses who do testify; and

WHEREAS, such study should also include the feasibility of using panels instead of jurors under certain circumstances to serve as the trier of fact, for example, a panel composed of the presiding judge and two other attorneys, or authorizing under certain circumstances the use of summary jury trials with binding effects upon the parties.

SCR NO. 108

ENROLLED

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby urge and request the Louisiana State Law Institute to study certain aspects of civil jury trial procedure and to submit their findings or recommended legislation to the legislature not later than February 1, 2013.

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

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

Regular Session, 2012

HOUSE CONCURRENT RESOLUTION NO. 81

BY REPRESENTATIVES HUVAL, ABRAMSON, ARNOLD, BADON, BARROW, STUART BISHOP, BURRELL, CHAMPAGNE, EDWARDS, GAROFALO, HENSGENS, HOLLIS, LEBAS, LEOPOLD, LIGI, MILLER, JAY MORRIS, ORTEGO, PIERRE, THIBAUT, AND ALFRED WILLIAMS

A CONCURRENT RESOLUTION

To urge and request the Louisiana State Law Institute to study jury trial procedures in order to create an expedited or summary jury trial and to make specific recommendations for legislation.

WHEREAS, courts have struggled to design procedures to provide litigants with speedy, inexpensive, and fair resolutions to civil cases; and

WHEREAS, litigants frequently desire to try their cases before a jury, but choose not to due to the increased costs and delays involved in impaneling either a six-person or twelve-person jury; and

WHEREAS, certain states, including South Carolina, New York, and California, have developed expedited or summary jury trial procedures which have been successful in more efficiently using judicial resources; and

WHEREAS, the expedited or summary jury trial is based on a federal model with key features such as short, time-limited trials, relaxed rules of evidence, smaller juries, fewer witnesses testifying, and more control given to the attorneys who participate by mutual consent; and

WHEREAS, expedited or summary jury trial procedures modeled after successful procedures employed in other states and enacted in this state could result in more efficient use of our judicial resources and provide greater access to juries by civil litigants.

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby urge and request the Louisiana State Law Institute to study jury trial procedures in order to create an expedited or summary jury trial process and to make specific recommendations for legislation.

BE IT FURTHER RESOLVED that a suitable copy of this Resolution be transmitted to the director of the Louisiana State Law Institute and that the Louisiana State Law Institute report its findings and recommendations in the form of specific proposed legislation to the Legislature of Louisiana on or before January 1, 2014.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE