

**SELECTED LEGISLATION**

**for presentation by**

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**Prepared by**

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# I. CIVIL LAW AND PROCEDURE

## A. SUBSTANTIVE, LIABILITY, AND DAMAGES

### 1. Walker (HB 1097)

Act No. 394

Changes from a 0.10% to a 0.08% BAC level applicable to the existing exemption from liability for the state, state agencies, and political subdivisions for damages arising from the operation of a motor vehicle when the operator of the motor vehicle was under the influence of alcohol and found to be in excess of 25% negligent as a result of his blood alcohol concentration. Conforms BAC level to that provided in the DWI statute (R.S. 14:98).

Effective August 15, 2004. (Amends R.S. 9:2798.4(A)(1))

### 2. Gallot (HB 150)

Act No. 743

Provides for a refinement rather than a comprehensive revision of the Civil Code articles "**Of Loan**". The major revisions provide as follows:

- (1) C.C. Art. 2892 is new and provides that if no special provision has been provided in the articles on loan for use or loan for consumption, the Civil Code articles on "Obligations in General" and "Conventional Obligations or Contracts" will govern.
- (2) C.C. Art. 2903 fills a gap in existing law. This Article provides a one-year liberative prescription for an action of the lender for damages to the thing lent and for an action of the borrower for reimbursement of expenses.
- (3) C.C. Art. 2906 is new and provides that a loan of a nonfungible thing, in the absence of contrary agreement, is not a loan for consumption, but is a loan for use.
- (4) Redesignates C.C. Art. 2924 which provides for rates of legal and conventional interest as R.S. 9:3500.

Effective January 1, 2005. (Amends Title XII of Book III of the Civil Code (formerly consisting of Arts. 2891-2925) to comprise C.C. Arts. 2891-2913; Redesignates C.C. Art. 2924 as R.S. 9:3500)

**3. Toomy (HB 353)**

**Act No. 827**

Adds the **confirmation of a plan of liquidation** or the **appointment of a trustee** of the partner's estate under Chapter 11 of the Bankruptcy Code as additional causes for the **cessation in the membership in a partnership**. (Existing causes are a partner's: death or interdiction; being granted an order for relief under Chapter 7 of the Bankruptcy Code; interest in the partnership being seized and not released; expulsion from the partnership; withdrawal from the partnership; and as provided in the contract of partnership.)

New law is interpretative and remedial and shall be given retroactive effect.

Effective August 15, 2004. (Amends C.C. Art. 2818)

**4. Hollis (SB 112)**

**Act No. 60**

Clarifies that the existing exemption from seizure by creditors of all individual retirement accounts, includes **ROTH IRA's**.

Effective August 15, 2004. (Amends R.S. 13:3881(D)(3))

**5. Johns (HB 573)**

**Act No. 765**

Provides that a court shall not issue a **temporary restraining order** that will interfere with the enforcement of a child support order, where DSS is providing services, except for good cause shown by written reasons made a part of the record.

Effective July 6, 2004. (Amends C.C.P. Art. 3601; Adds C.C.P. Art. 3603(C))

**6. Dove (HB 793)**

**Act No. 844**

Exempts commercial and marine contractors and real estate licensees representing them, architects, engineers, and persons licensed by the Louisiana Manufactured Housing Commission from damages and claims related to mold or mold damage provided the damages are not caused by workmanship or design.

Effective August 15, 2004. (Adds R.S. 9:2800.14)

**7. Dove (HB 1162)**

**Act No. 792**

Provides that when oil companies and persons performing related services cause damages to **oyster leases** while performing activities such as exploration, excavation, construction, remediation, or transportation of materials to and from a well site, they shall only be liable for the diminution of market value of the leases calculated in accordance with the method used by the Oyster Lease Damage Evaluation Board.

Effective August 15, 2004. (Adds R.S. 9:2800.14)

**8. Bajoie (SB 628)**

**Act No. 76**

Clarifies that no cause of action shall exist against any person or caseworker, acting in good faith, who reports, conducts, cooperates in or participates in a **child abuse investigation** or judicial proceeding and provides that these persons shall have immunity from civil or criminal liability.

Effective August 15, 2004. (Amends Ch. C. Art. 611(A))

**9. Pinac (HB 727)**

**Act No. 587**

Authorizes the commissioner of OFI to disclose **confidential information** for administrative enforcement actions when it is produced by discovery or introduced into evidence at hearings conducted in accordance with the APA and provides that the information shall remain confidential. Provides that OFI does not waive its governmental immunity from suit or damages due to the authorized disclosure of confidential personal financial information.

Effective June 29, 2004. (Amends R.S. 6:103(I) and R.S. 9:3518.1(E); Adds R.S. 6:103(B)(10) and (J))

**10. Daniel (HB 1408)**

**Act No. 351**

Provides that if an **athlete loses his eligibility** to participate in sports as a result of an athlete agent's violation of the rules for the recruitment of student athletes for professional sports teams, the school shall have a **cause of action**, including an action of tortious interference with a contract, against the athlete, agent or other person connected with the violation. Also provides that the athlete and school have independent causes of action, including an action for tortious interference with a contract, against persons who make or offer a monetary payment or anything of value to an athlete.

Effective August 15, 2004. (Amends R.S. 4:420, 421(A)(2)-(9), 422, 423(B), (G)(3), (H) and (I), 424, 426, 432 and 433; Adds R.S. 4:421(A)(10)-(14), 422.1(A)(5), 423(G)(4), 425(D), 427(A)(6) and (7) and (D) and 430(C))

**11. Ansardi (HB 1699)**

**Act No. 447**

Repeals the **Uniform Fraudulent Transfer Act** (added by Act No. 552 of 2003 R.S.) which provided that a transfer made or obligation incurred by a debtor is fraudulent as to a creditor if the debtor made the transfer or incurred the obligation: (1) with actual intent to hinder, delay, or defraud any creditor or (2) without receiving a reasonably equivalent value in exchange and the debtor was engaged in a business where assets were unreasonably small in relation to the business or the debtor intended to incur debts beyond his ability to pay. The Act also provided remedies for the creditor, defenses, liability, and protection of the transferee, and a preemptive period in which to bring an action against a debtor.

Effective August 15, 2004. (Amends C.C. Arts. 2036 and 2037; Repeals R.S. 9:2790.1-2790.12)

## **12. Glover (HB 1636)**

**Act No. 575**

Provides that a person who has been **fully interdicted** shall be ineligible to register to vote, but a person who is subject to a **limited interdiction** shall be permitted to register and vote unless the court specifically suspends the interdicted person's right to vote.

(A person subject to a **full interdiction** (C.C. Art. 389) is one who, due to an infirmity, is unable to consistently make reasoned decisions regarding the care of his person and property, or to communicate those decisions, and whose interests cannot be protected by less restrictive means. A person subject to a **limited interdiction** (C.C. Art. 390) is one who is unable to make reasoned decisions regarding a particular aspect of the care of his person or property, or to communicate those decisions, and whose interests cannot be protected by less restrictive means.)

Effective January 1, 2005. (Amends R.S. 18:102(A)(2), 102.1, 104(A)(6) and 172)

## **B. MEDICAL MALPRACTICE**

### **1. Hines (SB 302)**

**Act No. 306**

Provides that the filing of a request for review by a state medical review panel shall not be reportable by any health care provider or any other entity to the Louisiana State Board of Medical Examiners, to any licensing authority, committee, or board of any other state, or to any credentialing or similar agency, committee, or board of any clinic, hospital, health insurer, or managed care company

Effective August 15, 2004. (Amends R.S. 40:1299.39.1(A)(1)(a) and 1299.47(A)(1)(a))

## 2. Hines (SB 359)

Act No. 309

Provides that a corporation, partnership, or other entity which **fails to provide proof of financial responsibility** upon request of the fund after the filing of a request for review of a claim or after the filing of a lawsuit alleging medical malpractice, **shall not be deemed concurrently qualified** and enrolled as a health care provider.

Provides that the existing filing fee of \$100 per named defendant applies to additional defendants named in an amendment to the request for review by the medical review panel, that the fee is due 45 days from receipt of the amended request for review, that the amendment be filed with the DOA, and that upon receipt, the DOA must forward the amendment to the board within 5 days.

Requires that a physician hold an unrestricted license to practice medicine by the La. State Board of Medical Examiners in order to serve on a medical review panel, but that membership on a medical review panel is **not limited to physicians**.

Effective August 15, 2004. (Amends R.S. 40:1299.44(A)(3)(b) and (6)(a), 1299.45(A)(2), and 1299.47(A)(2)(a) and (b) and (C)(3)(f); Adds R.S. 40:1299.47(A)(1)(g) and (C)(3)(g), (h), (i), and (j))

## 3. Lentini (SB 370)

Act No. 311

Provides that the plaintiff's attorney **may appoint the attorney** member of the panel if an attorney for or representative of any health care provider named in a medical malpractice complaint does not make an appearance in the proceedings or make written contact with the plaintiff's attorney **within 45 days** of the date of receipt of the notification (sent by certified mail, return receipt requested) to the health care provider and the insurer that the required filing fee has been received by the patient's compensation board.

Effective August 15, 2004. (Amends R.S. 40:1299.39.1(A)(4)(intro. para.) and (C)(1)(intro. para.) and R.S. 40:1299.47(A)(4)(intro. para.) and (C)(intro. para.))

## 4. Lentini (SB 371)

Act No. 181

Provides that in all medical malpractice claims the jury in its response to the required special interrogatory inquiring as to the need of **future medical care and related benefits**, or the court in actions tried by the court, shall specify whether or not the patient is in need of future medical care or related benefits that will be incurred after the date of the response to the special interrogatory, or the court's finding, as the case may be.

Clarifies the definition of "future medical care and related benefits" to include all reasonable medical, surgical, hospitalization, physical rehabilitation, and custodial services and includes drugs, prosthetic devices, and other similar materials reasonably necessary in the provision of such services, incurred after the date of the injury and **both up to and after the date of the settlement, judgment, or arbitration award**.

Effective August 15, 2004. (Amends R.S. 40:1299.43(A)(1)-(5), (B)(1), and (C))

**5. Lentini (SB 381)**

**Act No. 182**

Includes in the existing definition of "ambulance service" under the Medical Malpractice Act (MMA) students enrolled in a **qualified emergency medical services educational program** who are under the direct supervision of a licensed health care provider, resulting in the application of the MMA \$500,000 limitation of recovery for malpractice actions against the students.

Effective August 15, 2004. (Amends R.S. 40:1299.41(A)(16))

**6. Lentini (SB 382)**

**Act No. 183**

Provides that the following shall apply when, for the same injury to or death of a patient, a malpractice claim alleges liability of both a state health care provider and a private health care provider:

- (1) Unless all parties have agreed otherwise, only one medical review panel shall be convened in such instance to review the claims.
- (2) The panel shall consist of a single attorney chairperson and three health care providers who hold unlimited licenses to practice their profession in Louisiana.
- (3) The panel shall be considered a joint medical review panel, and its actions shall be deemed to have the same force and effect as if a separate medical review panel had been convened under the provisions for either a state or a private medical review panel.
- (4) The panel shall be governed by the law applicable under provisions relative to state and private medical review panels. In the event of a procedural conflict, the provisions governing private review panels shall prevail.

Effective June 10, 2004. (Adds R.S. 40:1299.39.2 and 1299.49)

## C. PRESCRIPTION AND PEREMPTION

### 1. Bruneau (HB 1430)

Act No. 437

Provides that no action for damages against any **home inspector** duly licensed under the laws of this state or against any home inspection company shall be brought unless filed in a court of competent jurisdiction and proper venue within the **prescriptive period of one year** from the date of the act, omission, or neglect is alleged to have occurred, and provides that the prescriptive period shall not apply in cases of fraud or to any proceedings initiated by the Louisiana State Board of Home Inspectors.

Effective August 15, 2004. (Amends R.S. 37:1483; Adds R.S. 9:5608)

### 2. Gallot (HB 766)

Act No. 769

Provides that a clerk of court is liable for any damages caused by his failure to perform his duties and obligations, subject to the following limitations:

- (1) The liability of the clerk for the obligations of his office **terminate when he ceases to hold office**, and that his successor shall succeed to those obligations.
- (2) Claims are subject to a **4-year prescriptive period**.
- (3) The clerks and employees are **not personally liable** for damages arising from the performance of their official duties, unless caused by their willful, wanton, or intentional actions, and the clerks and employees are **exempt from liability** for improperly filing, or erroneously issuing or failing to issue or cancel any instrument from the records of his office when directed to do so by any court order or writ of a sheriff or other officer, or when requested to cancel from his records any instrument upon presentation of evidence authorizing such cancellation.

Effective August 15, 2004. (Adds R.S. 13:750 and 750.1)

### 3. Fontenot (SB 467)

Act No. 17

Provides a **5-year prescriptive period** for the commencement of actions, suits, or other proceedings for assessment or enforcement of civil fines or penalties under the **LA Environmental Quality Act**, commencing on the date the claim is first reported to DEQ, if the offender is within the United States so that proper service may be made.

Effective(May 12, 2004. (Adds R.S. 30:2025(H))

**4. Barham (SB 635)**

**Act No. 77**

Provides for a **1-year prescriptive** period and a **3-year preemptive** period for filing of malpractice actions against notaries. Provides that the **prescriptive and preemptive periods** shall be **remedial** and shall apply to all causes of action regardless of date of the alleged act, omission, or neglect, and requires that any such act, omission, or neglect occurring prior to 7/1/04 shall be filed on or before 7/1/07.

Provides that the prescriptive and preemptive periods do not apply to notaries who are attorneys.

Effective May 28, 2004. (Amends R.S. 35:200)

**D. PROCEDURAL LAW**

**1. Bruneau (HB 40)**

**Act No. 232**

Provides that, on the hearing of a **special motion to strike**, the court's determination as to the plaintiff's probability of success on the cause of action arising from an act in furtherance of a person's right of free speech (which typically involves a libelous statement of a political issue) shall be admissible in evidence at any later stage of the proceeding, and provides that the prevailing party, not just the prevailing defendant, shall be awarded reasonable attorney fees and costs.

Effective August 15, 2004. (Amends C.C.P. Art. 971(A)(3) and (B))

**2. Faucheux (HB 108)**

**Act No. 741**

Requires that notice of the filing of the **garnishment petition** be mailed or sent by electronic means to the **judgment debtor**, in addition to the existing requirement of service of the citation and petition for garnishment on the **garnishee**.

Effective August 15, 2004. (Amends C.C.P. Arts. 2412(A))

**3. Gallot (HB 148)**

**Act No. 365**

Specifies that **objections in depositions** shall be concise, non-argumentative, and non-suggestive, requires counsel to conduct themselves as required in open court, subject to contempt, provides that **certain objections**, such as to the form of the question or answer or other manner of taking the deposition as provided in C.C.P. Art. 1455, **are waived** unless made at the deposition, and adds that the instruction not to answer may be given **"only"**

**when necessary to preserve a privilege**, and when necessary under other specific, limited circumstances such as to prevent harassing questions or questions which seek inadmissible information.

Effective August 15, 2004. (Amends C.C.P. Art. 1443)

#### **4. Damico (HB 409)**

**Act No. 500**

Provides for the procedures and requirements for the issuance of a subpoena duces tecum to any "governmental entity" under the La. Governmental Claims Act, and defines a governmental entity as a political subdivision and any officer or employee of the political subdivision acting within the course and scope of his employment. The definition does not include the state or state employees. The major provisions are as follows:

- (1) Requires that a subpoena duces tecum be requested at least 15 days prior to the return date specified in the subpoena.
- (2) Requires the governmental entity to be reimbursed for the actual fees and costs, but also requires that documents be furnished without advance payment of costs if the party is given pauper or indigent status.
- (4) Requires that certified copies of documents produced pursuant to a subpoena duces tecum be deemed authentic and admissible into evidence in accordance with C.E. Art. 905, and that the C.E. Art. 1002 requirement of an original is not applicable.
- (5) Authorizes any party to the litigation to file a motion to quash or raise any objection to the production of any document under the existing discovery and evidentiary laws.

Effective June 25, 2004. (Adds R.S. 13:5112.1)

#### **5. Pierre (HB 620)**

**Act No. 217**

Provides that proper **venue** for actions for compensation arising out of an **oyster lease** by a person who has entered into an oyster lease with the state shall be only in the **19th JDC**, for the parish of East Baton Rouge.

Effective August 15, 2004. (Adds R.S. 49:213.10(C))

**6. Lentini (SB 500)**

**Act No. 18**

Clarifies existing law by adding the notice of seizure as a required document to be served upon a garnishee in accordance with C.C.P. Art. 2412.

Provides that all **effects of a seizure by garnishment** of wages, salaries, and commissions **cease if the garnisher fails to obtain a judgment within 180 days** of the filing of answers to interrogatories affirming that the judgment debtor is employed by the garnishee and if no opposition is filed. The garnisher shall then be required to re-serve the garnishee if he again wishes to attempt seizure.

Effective August 15, 2004. (Amends C.C.P. Art. 2411(B))

**7. Ansardi (HB 128)**

**Act No. 322**

Requires a minor's date of birth and the last four digits of the tutor's social security number to be included on the certificate of inventory or detailed descriptive list filed in the mortgage records and provides that the mortgage shall prescribe four years after the minor reaches majority.

Effective August 15, 2004. (Amends C.C.P. Art. 4134(A); Adds C.C.P. Art. 4134(D))

**8. Johns (HB 791)**

**Act No. 334**

Provides that if a specific amount of damages is necessary to establish jurisdiction or the right to a jury trial, an allegation that the claim exceeds or is less than the requisite amount is required.

Effective August 15, 2004. (Amends C.C.P. Art. 893(A)(1))

**9. Ansardi (HB 129)**

**Act No. 476**

Authorizes a judgment debtor to file an affidavit for a **partial cancellation of a judgment** included in the bankruptcy proceeding which affects property purchased by the debtor on or after the date the debtor filed his petition for bankruptcy under Chapter 7 of the U.S. Bankruptcy Code, and requires the clerk of court and ex officio recorder of mortgages and the recorder of mortgages for the parish of Orleans to partially cancel the judgment upon the filing of the affidavit.

Effective August 15, 2004. (Amends R.S. 9:5166)

**10. Johns (HB 677)**

**Act No. 840**

Deletes the \$336 deposit required for juror filing fees. Requires the party requesting the jury trial to post a bond to cover all costs pursuant to C.C.P. Art. 1734 and to post an additional bond if the trial exceeds the estimated number of days. Increases the required cash deposit, when ordered in lieu of a bond, from \$300 per day to an amount not to exceed \$2000 for the first day and \$400 for each additional day the trial is estimated to last. Clarifies that any juror who actually reports for service shall be paid compensation and mileage upon the completion of his duty to attend.

Effective August 15, 2004. (Amends R.S. 13:3049(B)(2)(a) and (e) and C.C.P. Art. 1734.1(A))

**11. Johns (HB 1489)**

**Act No. 814**

Requires a secured party who **seizes collateral** pursuant to a default remedy to file, within three days of taking possession, a "**Notice of Seizure**" with the recorder of mortgages and the constable, marshal or sheriff and pay a certain fee to each. Requires the notice to include the debtor's name, last known address, date of birth and a description of the collateral.

Effective January 1, 2005. (Adds R.S. 6:966.1)

**12. Montgomery (HB 418)**

**Act No. 502**

Requires the clerk of court to provide assistance to complainants applying for a protective order from domestic abuse, stalking or sexual assault.

Effective August 15, 2004. (Amends C.C.P. Art. 3603.1(C))

**13. Adley (SB 805)**

**Act No. 468**

Adds federal earned income tax credit of the debtor as an item exempt from seizure, except by the Department of Revenue or for arrears in child support payments.

Effective June 24, 2004. (Amends R.S. 9:13:3881(A)(intro. para.); Adds R.S. 13:3881(A)(6))

**14. Faucheux (HB 169)**

**Act No. 744**

Existing law provides that service of process on an incarcerated person is made through personal service on the warden or his designee, who in turn personally serves the incarcerated person and then executes an affidavit of service.

Provides that **proof of service made on an incarcerated person** may be made by filing the affidavit in the record when requested by the petitioner or mover. Provides that personal service on the incarcerated person shall be completed promptly, but in no event more than 10 days after service is made on the warden. If service cannot be made within 10 days, the warden shall note the inability to serve on the citation or pleadings and return it to the issuing court. If no affidavit is received, service is deemed to be accomplished 10 days after service on the warden.

Effective August 15, 2004. (Amends C.C.P. Art. 1235.1)

**15. Durand (HB 428)**

**Act No. 152**

Requires a party seeking judicial review or an appeal of a final decision or order of the Board of Medical Examiners to furnish security in favor of the board in an amount equal to or, for good cause shown, 50% more than the monetary award and provides that any judgment by the district court against petitioner shall be paid from the proceeds of the sale of his property or other security.

Effective August 15, 2004. (Adds R.S. 37:1285.3)

**16. Durand (HB 473)**

**Act No. 155**

Provides that no judicial order staying, enjoining, or continuing an adjudication proceeding by the Board of Medical Examiners shall be effective prior to exhausting all administrative remedies. Prohibits the district court from issuing a judicial order to stay a final decision or order of the board unless the stay will not threaten harm or constitute a threat to the health and safety of citizens. Prohibits the court from issuing a stay ex parte and requires the court to grant or deny the order with 5 days of the hearing.

Effective August 15, 2004. (Adds R.S. 37:1285(G), (H) and (I))

**17. Badon (HB 1495)**

**Act No. 877**

After the seizure of property and in addition to notice to the judgment debtor, the occupants or **tenants** of the seized property **shall be served a notice of seizure** either personally or by domiciliary service. If personal or domiciliary notice cannot be accomplished, notice shall be posted upon the principal entrance to the seized premises.

Effective August 15, 2004. (Amends C.C.P. Art. 2293(B))

**18. Toomy (HB 119)**  
**Toomy (HB 121)**

**Act No. 823**  
**Act No. 121**

In conjunction with Const. Art. V, §16(A), Act No. 121 limits the civil jurisdiction of **all parish courts** and Act No. 823 limits the jurisdiction of **First and Second Parish Courts** over **actions against an officer or employee of the state**, state agency, or political subdivision, which arise out of the discharge of his official duties or within the course and scope of his employment, or which is otherwise subject to the provisions of the Governmental Claims Act (R.S. 13:5101 et seq.).

**(Act No. 823)** Effective July 12, 2004. (Amends R.S. 13:1444(7); Adds R.S. 13:1444(8))

**(Act No. 121)** Effective June 4, 2004. (Amends R.S. 13:2561.2(A), 2561.4, 2562.2(A), and 2562.4)

## **E. EVIDENCE**

**1. Ansardi (HB 126)**

**Act No. 475**

Provides that if an instrument has been recorded for not less than 10 years, it shall be received and admitted in evidence and shall be deemed prima facie proof of the contents of the original instrument. Additionally provides that a substitute check, as defined by federal law, shall be considered a reproduction for judicial purposes.

Effective August 15, 2004. (Amends R.S. 13:3727 and 3733.1(A)(4) and (G)(1)(d))

## II. SUCCESSIONS AND TRUSTS

### A. SUCCESSIONS

#### 1. Bruneau (HB 39)

Act No. 231

Clarifies that a person may not be a witness to a testament if that person is a spouse of a legatee at the time of the execution of the testament. In such a case, the legacy to the witness' spouse is invalid, but if the legatee would be an heir in intestacy, the legatee may receive the **lesser of his intestate share or the legacy** in the testament.

Requires that any testamentary terms or conditions placed on the legacy shall remain in effect. New law applies only to testaments executed on or after 1/1/04.

Effective August 15, 2004. (Amends C.C. Art. 1582.1)

#### 2. Burns (HB 1576)

Act No. 884

Existing law (R.S. 47:2401(B) provides that, for deaths occurring after June 30, 2004, **no inheritance taxes are due** if a judgment of possession is rendered or if the succession is judicially opened no later than the last day of the ninth month following the death of the decedent. (However, proof that no inheritance taxes are due was still required by C.C.P. Art. 2951.)

New law removes the requirement of filing **proof** that no inheritance taxes are due **if either** of the following occur within the existing nine month period:

(1) A judgment of possession is rendered or the succession is judicially opened as provided in existing law.

(2) A trust declaration is filed with the secretary of the Dept. of Revenue as provided in new law.

Provides that **no inheritance taxes are due on the trust assets and a trust declaration shall not be required** if a succession is judicially opened within the existing nine month period. (R.S. 47:2401(B)(2))

Provides that no inheritance taxes are due on the trust assets **if a trust declaration has been filed but no succession has been opened** within the existing nine month period. (R.S. 47:2401(B)(3))

Provides for the **filing and contents of a trust declaration** to be signed and filed with the secretary of the Dept. of Revenue by the surviving settlor, trustee, or beneficiary.

Provides that **when a federal estate tax return is required**, the provisions of new law shall not be applicable to deaths occurring prior to January 1, 2005 (the effective date of the repeal of the federal estate transfer tax).

Effective August 15, 2004. (Amends C.C.P. Arts. 2951(A)(1) and 2953, and R.S. 47:2401(B); Adds C.C.P. Art. 2951(C); Repeals C.C.P. Art. 2953, as amended by Act No. 560 of 1972 R.S.)

## **B. TRUSTS**

### **1. Ansardi (HB 254)**

**Act No. 491**

Provides that the **failure of an inter vivos trust instrument** to be in the form of an authentic act or act under private signature, as required by R.S. 9:1752, **shall not be effective against third parties** and that third parties are protected from said failure.

Effective August 15, 2004. (Amends R.S. 9:2092(B)(2))

### **2. Burns (HB 627)**

**Act No. 521**

Provides that the **trustee of a trust may be the settlor, the beneficiary, or both**.

Repeals the authority to seize the interest in assets of the trust when the claim is based on a judgment for an offense or quasi offense committed by the beneficiary or by a person for whose acts the beneficiary is individually responsible.

Effective August 15, 2004. (Amends R.S. 9:1783(A)(1); Repeals R.S. 9:2005(3))

### III. FAMILY LAW

#### A. MARRIAGE, DIVORCE, AND DOMESTIC MATTERS

**1. Lentini (SB 190)**

**Act No. 454**

Authorizes **federal court judges** whose duty station includes a municipality with a population over 470,000 or more to perform marriage ceremonies within their jurisdiction from October 1, 2004, through October 31, 2004, and authorizes federal court judges whose duty station includes the state capital to perform marriage ceremonies within their jurisdiction from December 1, 2004, through December 31, 2004.

Effective June 24, 2004. (Amends R.S. 9:203(E))

**2. Broome (HB 252)**

**Act No. 490**

Provides that the laws governing married couples generally also apply to **covenant marriage spouses** and the spouses owe each other love and respect and are bound to live together, maintain their children and manage their household. Provides that counseling needed to preserve the marriage shall take place after the spouses experience difficulties and shall continue until a judgment of divorce, except if a spouse or child has been abused by the other spouse.

Effective August 15, 2004. (Adds R.S. 9:293-298 and 307(C) and (D))

**3. Bowler (HB 17)**

**Act No. 118**

Clarifies that if a woman is widowed, divorced, or remarried, she may use her maiden name, the surname of her deceased or former spouse, her present spouses's name, or any combination thereof.

Effective August 15, 2004. (Amends R.S. 9:292)

**4. Ellington (SB 146)**

**Act No. 177**

Provides that in a proceeding to partition the community, the court may include the goodwill of the business in the valuation of any community owned corporate, commercial or professional business; however, goodwill attributable to any personal quality of the spouse shall not be included in the valuation.

Effective August 15, 2004. (Amends R.S. 9:2801.2)

**5. Hainkel (SB 177)**

**Act No. 619**

Provides for the form, procedure, conditions and revocability of donations inter vivos made in contemplation of marriage by third persons and interspousal donations inter vivos.

Effective September 1, 2005. (Amends C.C. Arts. 1734-1743 and 1744-1751)

**6. Johns (HB 842)**

**Act No. 530**

Provides that a man may **establish his paternity** of a child presumed to be the child of another man even though the presumption has not been rebutted, within two years from the date of birth of the child, but if the mother in bad faith deceived the father regarding paternity, the action shall be within one year from the date the father knew or should have known of his paternity, but no more than 10 years from the date of birth of the child. This Act shall apply both prospectively and retroactively.

Effective June 25, 2004. (Adds C.C. Art. 191 and R.S. 9:395.1)

**B. CHILD CUSTODY AND VISITATION**

**1. Dardenne (SB 564)**

**Act No. 668**

Provides that in a **shared custodial arrangement**, the court shall order each parent to pay his proportionate share of necessary uninsured medical expenses under \$250. Provides that the **non-domiciliary party** whose child support obligation is 50% or greater, shall be entitled to the federal and state tax dependency deductions if certain criteria are met. Requires the court to determine rent when it awards use and occupancy of the family residence.

Effective July 5, 2004. (Amends R.S. 9:315.9(A)(6), 315.18(B)(1)(intro. para.) and (C), and 374(C); Adds R.S. 9:315.9(A)(7); Repeals R.S. 9:315.18(D))

**2. Hebert (HB 622)**

**Act No. 520**

Provides that the court may require a parent who **violates a visitation order to pay the attorney fees and court costs** of the other parent and provides that a pattern of intentional violations, without good cause, constitutes a material change in circumstances warranting a modification of an existing custody or visitation order.

Effective August 15, 2004. (Adds R.S. 13:4611(1)(e)(iv) and (f) and Ch. C. Art. 1509(E)(4) and (F))

**3. Smith (SB 53)**

**Act No. 25**

Authorizes a person who served as a city, parish, family, or juvenile court judge for at least 10 years and has completed at least 20 hours of specialized mediation training in child custody disputes and no longer serves as a judge, to mediate in custody or visitation proceedings.

Effective August 15, 2004. (Amends R.S. 9:334(A)(4))

**4. Hebert (HB 613)**

**Act No. 519**

Provides that if a parent, guardian, defacto custodian, or any other person exercising care, custody, and control over a minor intentionally violates court ordered visitation, the court may award additional visitation time and reasonable attorney fees to the party whose rights were violated. Provides that a pattern of willful and intentional violations, without good cause, may be grounds for a modification of a custody or visitation order.

Effective August 15, 2004. (Adds R.S. 9:346 and 347)

**C. CHILD SUPPORT**

**1. Johns (HB 532)**

**Act No. 249**

Requires a review of the **child support guidelines** in 2008 and provides for the membership of the review committee.

Effective August 15, 2004. (Amends R.S. 9:315.16)

**2. Bowler (HB 404)**

**Act No. 756**

Provides that when the court is determining the **credit to be given to the nondomiciliary parent** for the amount of time the child spends with the nondomiciliary parent, the court shall also include in such consideration the **continuing expenses of the domiciliary parent**.

Effective August 15, 2004. (Amends R.S. 9:315.8(E)(3)(a))

**3. Johns (HB 531)**

**Act No. 156**

Authorizes the court to use the most recently published **Louisiana Department of Labor Wage Survey to determine a party's income earning potential** and prohibits the imputing of income to a party if it will cause the other party's support obligation to be higher than it would be without imputing the income.

Effective June 10, 2004. (Amends R.S. 9:315.11)

**4. Adley (SB 805)**

**Act No. 468**

Adds the federal earned income tax credit to the existing list of assets which are exempt from seizure, but also provides that the exemption from seizure does not apply to seizures by the Department of Revenue or for the payment of arrears in child support payments.

Effective June 24, 2004. (Amends R.S. 13:3881(A)(intro. para.); Adds R.S. 13:3881(A)(6))

**5. N. Gautreaux (SB 861)**

**Act No. 319**

Adds licenses for the operation of motorboats, personal watercraft, sailboats, all-terrain vehicle, or trailers to those licenses which may be suspended by DSS for the non-compliance of an order of child support.

Effective August 15, 2004. (Amends R.S. 9:315.40(9) and 315.41(A); Adds R.S. 9:315.40(4)(d))

**6. Triche (HB 498)**

**Act No. 510**

Authorizes DSS to make a motion to transfer a support order payable to DSS or a support order amended to change the payee from DSS to the caretaker in courts which retain continuing exclusive jurisdiction to modify and enforce their own orders. Additionally authorizes the service of a notice of an immediate income assignment by regular mail or electronic means.

Effective June 25, 2004. (Amends R.S. 46:236.1.1(1), 236.2(A)(2) and (B)(2) and 236.3(A)(1) and (D)(1))

**7. Bowler (HB 575)**

**Act No. 251**

For purposes of the child support guidelines, defines "**extraordinary medical expenses**" as unreimbursed medical expenses which exceed \$250 per child per year and likewise defines "**ordinary medical expenses**" as unreimbursed medical expenses less than or equal to \$250 per child per year and clarifies that ordinary medical expenses are incorporated into the child support schedule.

Effective August 15, 2004. (Amends R.S. 9:315(C)(3) and 315.5)

**8. Jackson (SB 437)**

**Act No. 186**

Provides that **prescription** shall not begin to run against a judgment by operation of law for **child support arrearage** until the child reaches the age of majority or the obligation to provide support ceases.

Effective June 10, 2004. (Amends R.S. 13:4291(A), (B)(1) and (C))

**9. M. Jackson (HB 577)**

**Act No. 159**

Provides that knowingly making a false statement, misrepresentation, or failing to disclose a material fact to apply for or receive support enforcement services shall constitute constructive contempt of court.

Effective June 10, 2004. (Adds C.C.P. Art. 224(11))

**10. Dardenne (SB 696)**

**Act No. 706**

Provides that in the public retirement system, any retirement allowance, benefit or refund accumulated contributions paid to any member, former member, retiree, spouse or former spouse, shall be subject to garnishment or court-ordered assignment to pay child support.

Effective July 6, 2004. (Amends R.S. 11:292)

**11. Jackson (SB 445)**

**Act No. 652**

Clarifies the definition of "**compliance with an order of support**" relative to the administrative suspension of certain licenses by providing that the support obligor is in compliance if he is no more than ninety days in arrears in making payments in full for current support, **or** in making periodic payments on a support arrearage pursuant to a court order or written agreement with the department, or in making periodic payments as set forth in a court order of support, and has obtained or maintained health insurance coverage if required by an order of support.

Effective August 15, 2004. (Amends R.S. 9:315.40(2))

**12. Kostelka (SB 633)**

**Act No. 801**

Makes it a **crime 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 one year or is greater than \$5000. Provides penalty fines up to \$2500 and jail time up to two years. Provides an affirmative defense of financially unable to pay the obligation.

Effective August 15, 2004. (Adds R.S. 14:75)

**13. N. Gautreaux (SB 861)**

**Act No. 319**

Provides for the **suspension of licenses** for personal watercraft, motorboats, sailboats and all-terrain vehicles or trailers for the nonpayment of child support.

Effective August 15, 2004. (Amends R.S. 9:315.40(9) and 315.41(A); Adds R.S. 9:315.40(4)(d))

**14. Triche (HB 569)**

**Act No. 380**

Authorizes DSS to proceed to establish a court order for child support and medical support against a father whose name appears on the birth certificate, **without establishing paternity**.

Effective June 23, 2004. (Amends R.S. 46:236.1.2(D); Adds R.S. 46:236.1.2(K))

## D. CHILDREN'S CODE

### 1. Irons (SB 169) Ansardi (HB 69)

Act No. 301  
Act No. 321

Requires the court to appoint a qualified, independent attorney for a child in every child in need of care proceeding and proceedings for termination of parental rights.

Effective June 18, 2004. (Amends Ch.C.Arts. 607(A) and 1016(B))

### 2. Fields (SB 65)

Act No. 26

Substitutes the term "**children born of marriage**" for "legitimate children" and "children born out of marriage" for "illegitimate children" and provides for the acknowledgment of children rather than the legitimation of children.

Effective August 15, 2004. (Amends C.C. Art. 90, 891, 1243, 1352, 1724, and 3506(8); C.C.P. Art. 683(B) and (C), 732(B) and (C), 1732(3) and 4061.1(A)(3) and (C); Ch. C. Art. 1106(A), (B), (C), and (D), 1107.5(E)(3)(a), 1132(A), 1141(A)(3), 1193(2) and (4), 1244(B) and (C), and 1281.3(5); C. E. Art. 803(9), (11), and (19), and 804(B)(4)(a); R.S. 9:392(B), 398.2(A)(2) and (F), and 400(A)(6); R.S. 11:403(19), 701(19), 1732(20), 2178(E)(3), 3113(5)(a) and (b), and 3166(E)(2), R.S. 13:2561.4, 2562.4, and 2563.2(B), R.S. 14:78(B), R.S. 17:1685(F), R.S. 23:1021(3), R.S. 29:293(A), R.S. 33:1947(C)(2), R.S. 40:34(B)(1)(a)(iv) and (vii), (B) (1)(h)(vi), and (E)(1), 40(8) and (11), 41(B), 46(A), 46.1(B)(2), and R.S. 46:1802(3); Repeals R.S. 9:391, 9:400(A)(5), and R.S. 13:914.1)

## IV. PROPERTY

### A. GENERAL

#### 1. Johns (HB 1011)

Act No. 24

Repeals the retroactive application provided by Section 2 of Act 1005 of the 2003 R.S., which amended Civil Code Article 2628 to provide that if a time limitation for an **option or a right of first refusal** in a contract for the sale of immovable property exceeded 10 years, that time limitation was required to be reduced to 10 years.

Effective May 20, 2004. (Repeals Section 2 of Act 1005 of the 2003 R.S.)

#### 2. Ansardi (HB 166)

Act No. 481

Authorizes the **waiver of the homestead exemption** from seizure by only one of the spouses if the homestead is the separate property of the spouse signing the waiver.

Effective August 15, 2004. (Amends R.S. 20:1(D))

#### 3. Frith (HB 1480)

Act No. 813

Provides that the owner of an enclosed estate who has no access to his estate other than by way of an existing waterway passing through neighboring property shall have a **right and servitude of passage** on such waterway if the waterway was being used and is still capable of being used for navigation.

Effective August 15, 2004. (Adds R.S. 9:1254)

#### 4. Bruneau (HB 30)

Act No. 819

Requires the purchaser of immovable property at a **tax sale**, to give notice of the sale to the prior owner **within 30 days of the day when the deed is filed** for record in the conveyance office. Provides that the notice shall be mailed to the last known address of the prior owner, but that if the return receipt is not returned within 30 days or if it is returned without a signature indicating completion of delivery, then the purchaser may provide additional notice by delivering the notice to the last known address of the prior owner by personal delivery or by posting the notice in a conspicuous place on the property.

Repeals the requirement that a third notice be mailed by certified mail to the last known address of the prior owner not earlier than six nor more than nine months prior to the expiration of the three-year redemptive period.

Provides that the provisions of new law are procedural and curative and shall be applicable to all sales subject to the provisions of Act 946 of the 2003 R.S.

Effective August 15, 2004. (Amends R.S. 47:2183(C); Repeals R.S. 47:2183(D))

## **5. Malone (SB 695)**

**Act No. 919**

Clarifies that prescription of nonuse of mineral rights in land acquired or expropriated by an **"acquiring authority"** is interrupted, subject to certain exceptions, as long as title to the land remains with the acquiring authority and provides for the commencement and accrual of prescription when the land is divested by the acquiring authority to another who is not an acquiring authority.

Defines "acquiring authority" as the U.S., state of La., and the political subdivisions, departments, or agencies of either, certain legal entities authorized to expropriate, and public charitable organizations certified by the sec. of DNR as a state or national land conservation authority.

Requires and provides procedures for the right of first refusal by the person or entity from whom the land was originally acquired, and excepts DOTD from this requirement.

Directs the Louisiana Mineral Law Institute to prepare revision comments.

Effective August 1, 2004. (Amends R.S. 31:149; Repeals R.S. 31:149.1, 149.2, 149.3, 150, 151, and 152)

## **6. Ansardi (HB 38)**

**Act No. 821**

Revises and reorganizes the **Civil Code Articles on lease** including updating terminology, codifying various jurisprudential rules, clarifying the determination of a term, appropriating the ownership of improvements, extending warranties and guidelines for their waiver, providing when rent is due and procedures for dissolution, and providing for the lessor's privilege and the termination of a lease.

Effective January 1, 2005. (Amends C.C. Arts. 2668-2729, 3219 and R.S. 9:3221; Adds R.S. 9:3259.2; Repeals C.C. Art. 3218)

**7. Schedler (SB 581)**

**Act No. 464**

Provides that if a lessee remains on the property after a final judgment of expulsion has been rendered, he shall be **required to pay any court costs related to his expulsion.**

Effective August 15, 2004. (Adds C.C. Art. 2713(C))

**8. Bowler (HB 576)**

**Act No. 158**

Provides that if the **usufructuary is required to give security** that he will use the property as a prudent administrator and faithfully fulfill all obligations, the court may order security in the form of notes, mortgages, or other documents or a mortgage or lien may be imposed on property. Additionally provides that **security may be dispensed** with by operation of law when: (1) a person has a legal usufruct under C.C. Art. 223 (parents usufruct over minor's property) or C.C. Art. 3252 (a widow's \$1000 usufruct), (2) a surviving spouse has a usufruct over the intestate decedent's share of community property (C.C. Art. 890), unless the naked owner is not a child of the marriage or is a forced heir, (3) when a parent has a legal usufruct over a deceased child's property (C.C. Art. 891) unless the naked owner is not a child of the parent, or (4) when a surviving spouse has a legal usufruct over the marital portion (C.C. Art. 2434) unless the naked owner is not a child of the marriage.

Effective August 15, 2004. (Amends C.C. Arts. 571 and 573; Repeals C.C.P. Art. 3154.1)

**9. Ullo (SB 52)**

**Act No. 452**

Requires the seller of residential real property to include in his disclosure documentation **notification to the purchaser** as to whether he is obligated to be a member of a **homeowners' association** and that the covenants and association governing documents are a matter of public record.

Effective July 1, 2005. (Amends R.S. 9:3198(A))

**10. Murray (HB 390)**

**Act No. 90**

Provides that the **"quick take"** powers of expropriation granted to the city of Alexandria for street, drainage, water, utility, sewerage, or other capital projects shall also be **granted to the city of New Orleans.**

Effective May 28, 2004. (Amends R.S. 19:132, 132.1(A) and 132.8)

**11. Murray (HB 391)**

**Act No. 209**

Provides for the **creation and ranking of liens and privileges** in favor of municipalities with a population greater than 450,000 and for the enforcement of the liens and privileges by procedures for tax sales or ordinary process with citation and petition in accordance with the Code of Civil Procedure. Authorizes the governing authority to waive liens in order to serve the public health, safety and welfare through the financing, reconstruction or rehabilitation of deteriorated housing. Requires the sheriff at public sale to enforce tax and code liens and privileges, give the purchaser a release, and direct the recorder of mortgages to cancel inscriptions of record.

Effective June 14, 2004. (Amends R.S. 9:4821(1) and R.S. 13:2575(B)(2)(f), (C) and (F) and 2576; Adds R.S. 13:4367)

**12. Daniel (HB 1147)**

**Act No. 546**

Requires the property **disclosure document** form prescribed by the Louisiana Real Estate Commission to include a clause for the seller of residential real property to indicate whether the property has ever been **zoned commercial or industrial**.

Effective April 1, 2005. (Amends R.S. 9:3198(A))

**13. Dupre (SB 310)**

**Act No. 633**

Authorizes and provides procedures for the Department of Natural Resources to expropriate, by a declaration of taking, property in the coastal zone needed for barrier island preservation, restoration, or creation for coastal wetlands purposes.

Effective July 5, 2004. (Amends R.S. 49:213.38; Adds R.S. 49:214.52-214.61)

**14. Hollis (SB 768)**

**Act No. 191**

Authorizes the **lessor of a motor vehicle to obtain possession and dispose of the vehicle without judicial process** when the debtor defaults. Requires the security agreement to include statements regarding the rights of the lessor and requires the lessor to send written notice to the debtor of his right before using the repossession procedures. Provides that the lessor may repossess the vehicle without judicial process if it can be done without entering a closed dwelling without authorization or without oral protest by the debtor. Requires the lessor to file a "**Notice of Repossession**" with the recorder of mortgages in the parish where the vehicle is located within 3 days of taking possession. Provides that if the debtor has personal property in the repossessed vehicle, he has 10 days to contact the repossessing creditor and demand the return of his property.

Effective January 1, 2005. (Amends R.S. 6:965(C)(3) and (4) and 966; Adds R.S. 6:965(C)(5) and (D) and 966.1)

**15. Daniel (HB 285)**

**Act No. 203**

Prohibits the surrender of a vehicle placed in a storage facility or repair or body shop until the secured party pays all towing and storage charges and executes a hold harmless agreement to indemnify the storage or shop operator for surrender of the vehicle.

Effective August 15, 2004. (Amends R.S. 32:1720.1)

**16. Daniel (HB 1181)**

**Act No. 430**

Requires the purchaser or donee of any adjudicated property acquired from a political subdivision to include in an affidavit to be recorded in the conveyance records or the records of the recorder of mortgages in Orleans Parish: (1) the type of instrument creating any lien, judgment or security interest, the recordation of that instrument and a request to cancel the inscription and (2) a hold harmless statement in favor of the clerk regarding the affiant's failure to properly notify certain persons. Additionally requires the tax sale purchaser to notify the mortgagee and certain other persons having an interest in the property that the property has been sold for taxes.

Effective June 24, 2004. (Amends R.S. 33:2881 and R.S. 47:2183(C)(1) and (E))

## V. MORTGAGES, SECURITY DEVICES, AND PRIVILEGES

### 1. Crowe (HB 1464)

Act No. 565

Provides that all acts or instruments of writing which import mortgage or privilege filed after Dec. 31, 2004, shall be required to include only the **last four digits of the social security number**, instead of the entire social security number, and requires notaries to insert in their acts by which immovable property is conveyed, transferred, leased, or encumbered, the last four digits of the social security number or employer identification number of the parties thereto.

Effective January 1, 2005. (Amends R.S. 9:5141(C) and (D) and R.S. 35:17(B))

### 2. Ansardi (HB 165)

Act No. 480

Provides for the **erasure of mortgage inscriptions** by the clerks of court or recorder of mortgages upon the presentation of a release in authentic form, or duly acknowledged, executed by the mortgagee or assignee of record, who is the last holder of any note secured by the mortgage, stating that the mortgage has been paid in full and agreeing to indemnify the party responsible for canceling the mortgage.

Provides for an **exemption from liability** for clerks of court and recorder of mortgages for any damages resulting from the cancellation of a mortgage pursuant to new law, and provides for the form to be used for presentation to the clerk of court or recorder of mortgages for cancellation of the mortgage.

Effective August 15, 2004. (Adds R.S. 9:5169.1)

### 3. Dupre (SB 21)

Act No. 294

Existing law requires that, upon receipt of payment in full, a mortgagee servicing agent or any holder of a note deliver to the mortgagor sufficient documentation and instructions regarding the cancellation of the mortgage, regardless of the type of mortgage.

New law limits the existing requirements to mortgages granted by a consumer on **1-to-4 family residential immovable property**, including a mortgage to finance the initial construction of the 1-to-4 family residential immovable property. Further specifies that the prior law shall not apply to collateral mortgages or mortgages to secure future advances.

Effective August 15, 2004. (Amends R.S. 9:5167.2)

#### 4. Dupre (SB 143)

Act No. 62

Resolves the conflict in prior law by excepting acts which fail as to the requirement of form from the existing requirement that acts presented to the clerks of court be promptly recorded. Provides that **clerks of court may refuse to accept certain acts** which lack the required typed or printed name of the notary and witnesses or the notary identification or bar roll number, and provides for an exemption from liability for rejecting any acts which fail as to the required form.

Provides that no state office, agency, department, or political subdivisions shall accept, file, or record any document notarized in this state on or after January 1, 2005, unless the document contains the required typed or printed name of the notary and witnesses, and the notary identification or attorney bar roll number.

Clarifies that documents notarized by clerks of court and their deputy clerks of court who are acting within the course and scope of their employment are valid.

Effective August 15, 2004. (Amends R.S. 9:5212 and R.S. 35:12(D) and 392.1)

#### 5. McPherson (SB 186)

Act No. 179

Specifically includes any person who makes or repairs **marine vessels, marine vessel trailers, or marine vessel equipment in the existing privilege** provided to any person engaged in the making or repairing of movable goods, furniture, upholstery, commodities, equipment, merchandise, machinery, or movable objects or property for the debt due for materials furnished or labor performed.

Effective August 15, 2004. (Amends 9:4502(A)(1))

#### 6. Dardenne (SB 227)

Act No. 303

Provides **relative to security interests under Chapter 9 of the Commercial Laws of Louisiana**, including but not limited to, the rules and requirements for filing and ranking of security interests in movable property, crops, oil and gas privileges, fixtures, life insurance policies, termination statements, and titled motor vehicles, and further provides for the definitions of account, fixture filing, and health-care-insurance receivables.

Effective August 15, 2004. (Amends R.S. 9:1149.5, 4521 (intro para), 4870(B)(intro para) and (3), and 4888(intro para) and (4); R.S. 10:9-102(a)(2), (40), and (46), 9-107.1(b), 9-107.2, 9-109(d)(11)(C), 9-304(b)(1), 9-309(1), 9-311(b), 9-406(f)(intro para), 9-408(c)(intro para) and (d)(intro para), 9-409(a)(intro para), 9-501(a)(2), 9-513(a)(2) and (c)(intro para) and 9-516(a)(2); R.S. 32:706(D) and 710(F); and R.S. 39:1430.1)

## VI. LABOR AND WORKER'S COMPENSATION

### 1. Johns (HB 691)

Act No. 524

Provides that **minors under 16** may not work between 7 pm and 7 am prior to any school day, and between 9 pm and 7 am prior to any other day. **Minors who are 16** and have not graduated from high school can not work between 11 pm and 5 am prior to any school day. **Minors who are 17** and have not graduated from high school can not work between 12 a.m. and 5 a.m. prior to any school day.

Exempts minors employed in the dairy industry. All provisions are subject to local curfew ordinances.

Effective August 15, 2004. (Amends R.S. 23:215(A), (B), and (D); Adds R.S. 23:215(E) and (F))

### 2. Hunter (HB 700)

Act No. 227

Clarifies the **prescriptive period for filing claims for reimbursement** from the Workers' Compensation Second Injury Board. When an employer or his insurer makes payments or becomes liable for payment, the party must notify the board in writing of such facts and furnish such other information as required by the board within one year of the first payment whether it is compensation or medical benefits, whichever occurs first for determination as to whether or not the employer or his insurer is qualified for reimbursement.

Effective June 14, 2004. (Amends R.S. 23:1378(B))

### 3. Hunter (HB 790)

Act No. 256

Establishes the **19<sup>th</sup> Judicial District Court as the proper venue** for appeals from Workers' Compensation Second Injury Board decisions.

Effective June 15, 2004. (Amends R.S. 23:1378(E))

### 4. Hunter (HB 821)

Act No. 416

Authorizes **civil penalties** for the collection of workers' compensation premiums from employees. Would impose civil penalties of not less than \$500 and no more than \$5,000 as well as reasonable attorney fees and restitution. Also, limits restitution awarded to the amount improperly collected from the employee.

Effective June 24, 2004. (Amends R.S. 23:1163(B); Adds R.S. 23:1163(D))

### 5. Murray (HB 823)

Act No. 257

Disputes between health care providers and employees, employers or insurers may be submitted to the office of workers' compensation in the same manner as established for dispute resolution of claims for workers' compensation benefits. Adds that whenever multiple disputes exist between a single health care provider and a single payor, either party has the right to have all such disputes consolidated and tried together in the proper venue.

Effective June 15, 2004. (Amends R.S. 23:1034.2(F) as amended by Act No. 454 of 1989 R.S.; Repeals R.S. 23:1034.2(F) as amended by Act No. 25 of 1989 R.S.)

**6. Hunter (HB 825)**

**Act No. 258**

Insurers must obtain **prior written approval** from the Second Injury Board for the **settlement of an approved claim** prior to submitting the settlement for approval by the workers' compensation court. Further, insurers shall obtain prior written approval from the Second Injury Board for the settlement of an approved claim prior to the approval of the settlement by the workers' compensation court.

Effective June 15, 2004. (Amends R.S. 23:1378(A)(8)(b))

**7. Hunter (HB 907)**

**Act No. 534**

Requires the director of the office of workers' compensation to establish and promulgate the **workers' compensation medical reimbursement schedule**. The schedule is to include charges which reflect the mean of the usual and customary charge for medical care, services, treatment, drugs and supplies.

Effective June 25, 2004. (Amends R.S. 23:1034.2(C))

**8. Hunter (HB 1037)**

**Act No. 341**

Provides that refusal to accept rehabilitation deemed necessary by the worker's compensation judge shall result in a 50% reduction in weekly compensation, and provides that workers' compensation hearings will now be held in the designated workers' compensation district, instead of the judicial district.

Provides that the mediation conference required to be set within 15 days of receipt of the claim form may be waived if all parties agree, but that the pre-trial mediation required to be set not less than 30 days prior to trial shall not be waived.

Provides that certified medical records are now allowed during the taking of medical evidence. Eliminates the requirement to provide sworn narrative reports from all treating and all examining health care providers.

Effective June 18, 2004. (Amends R.S. 23:1127(C)(1), 1226(B)(3)(c) and (E), 1310.3(B)(1) and (C), 1310.4(B), 1316.1(C), and 1317(B))

**9. Shepherd (HB 1356)**

**Act No. 554**

Requires any **health insurer** which contracts for health care benefits for an employee or dependents to be **responsible for the payment of all medical expenses** incurred in the event the workers' compensation payor has denied that the employee's injury is compensable under workers' compensation law. If the company which contracts for health care benefits violates this provision as determined by a district court of competent jurisdiction, the company shall be liable for reasonable attorney fees, costs and medical expenses. Claims filed by health insurers or providers are not subject to timely filing requirements and prescription does not run until the workers' compensation claim reaches resolution by final judgment or settlement.

Effective August 15, 2004. (Adds R.S. 23:1205(C))

**10. Murray (HB 1438)**

**Act No. 561**

Repeals the definition of "**professional athlete**" which was defined as a person who receives any type of remuneration or pay to take part in the competitive sport of football in the National Football League, and repeals the provisions requiring the reduction or offset of workers' compensation benefits payable to a professional athlete when he is receiving payment or remuneration from certain other sources.

Effective August 15, 2004. (Repeals R.S. 23:1021(12) and 1225(D))

**11. Holden (SB 37)**

**Act No. 607**

Requires employers to inform employees, at the time of hire, of their wages, method of payment and frequency of payment. If an employer fails to designate paydays, the employer is to pay on the first and sixteenth day of the month or as near as is practicable to those days.

Every public service corporation and persons engaged in manufacturing of any kind, boring for oil and mining operations who employ ten or more people must fully pay employees for services performed as often as once every two weeks or twice during each calendar month.

Violators shall be fined not less than \$25 nor more than \$250 for each day's violation. A second violation may, in addition to such fines, subject a person to imprisonment of not less than 10 days.

"Employee" does not include individuals employed in bona fide executive, administrative, supervisory or professional capacities or employees considered exempt pursuant to the

federal Fair Labor Standards Act. Employers are required to post notice of wage payment information.

Effective August 15, 2004. (Amends R.S. 23:633)

**12. Jones (SB 432)**

**Act No. 647**

Provides that **fees for an attorney** who renders service for an employee for workers' compensation are **not to exceed 20% of the amount recovered**. The attorney may withhold, as a proposed attorney fee, a sum not to exceed 20% of all amounts recovered in his trust account pending approval of such fees by the workers' compensation judge.

Effective July 5, 2004. (Amends R.S. 23:1141(B) and 1143(B)(1))

**13. Heitmeier (SB 488)**

**Act No. 188**

Existing law provides that an independent contractor is excluded from the Louisiana worker's compensation law unless a substantial part of the work time of the independent contractor is spent in manual labor.

New law clarifies that manual labor does not include the physical operation of a truck tractor or truck tractor trailer for purposes of defining an "independent contractor". Also defines "owner operator" as a person who provides transportation services under written contract to a common carrier, contract carrier, or exempt haulers. Excludes owner operators and drivers provided by owner operators as employees under workers' compensation statutes if they have entered into a written agreement with the carrier or hauler that identifies them as an independent contractor.

Effective June 10, 2004. (Amends R.S. 23:1021(16); Adds R.S. 23:1021(13))

## XII. CONSTITUTIONAL AMENDMENTS

Of the **82 proposed constitutional amendments** filed for consideration during the 2004 Regular Session, the following **5 constitutional amendments will be submitted to the voters**. House Bill No. 61 will be submitted to the voters at the election to be held on **September 18, 2004**, and the remaining amendments will be submitted to the voters at the election to be held on **November 2, 2004**.

### 1. Scalise (HB 61)

**Act No. 926**

Provides that **marriage** in the state of Louisiana shall consist only of the union of **one man and one woman** and prohibits officials or courts from conferring marriage or the legal incidents thereof upon any union other than one man and one woman. Also provides that a legal status similar to that of marriage shall not be valid or recognized for unmarried individuals and prohibits the recognition by any official or court of a marriage contracted in another jurisdiction which is not the union of one man and one woman.

(Adds Const. Art. I, §27)

### 2. Futrell (HB 261)

**Act No. 930**

Provides that persons **who served honorably in the armed forces** of the United States for at least ninety days after September 11, 2001, for reasons other than training are eligible for the veterans' five-point preference for original state police service employment or original civil service employment by the state, by the city of New Orleans, or by any other civil service system governed by the same provisions of the constitution.

Further provides that persons who served honorably in the armed forces of the United States during a war declared by the United States Congress are eligible for the veterans' five-point preference for original state police service employment.

Permits the legislature to provide for the addition of war periods or armed conflicts for such eligibility by state law enacted by a two-thirds vote.

(Amends Const. Art. X, §§10(A)(2) and 48(A)(2))

### 3. McPherson (SB 2)

Act No. 927

Guarantees the **right of every citizen to hunt, fish, and trap wildlife**, including all aquatic life, subject to regulation, restriction, or prohibition as provided by law.

Provides that burden of proof otherwise established by law for any challenge to a law or regulation pertaining to hunting, fishing, or trapping is not altered by the proposed amendment.

Provides that nothing in proposed amendment shall be construed to authorize the use of private property to hunt, fish, or trap without the consent of the owner of the property.

(Adds Const. Art. I, §27)

### 4. Nevers (SB 44)

Act No. 928

Authorizes the legislature to provide by law for a **program to assist Louisiana farmers and fishermen** with support and expansion of their industry.

Establishes the Agricultural and Seafood Products Support Fund as a special treasury fund and provides that the sources of monies in the fund shall be monies received from the licensing of trademarks or labels used in promotion of Louisiana agricultural seafood products, and grants, gifts and donations received by the state and which may be appropriated by the Department of Economic Development for support and expansion of the industries of the farmers and fishermen.

(Adds Const. Art. VII, §10.12)

### 5. Dupre (SB 806)

Act No. 929

Provides that **homestead exempt property** is limited to property owned and occupied by the owners, provides for land classified and **assessed at use value**, provides that a field which qualifies for a homestead exemption may have timber on it, **prohibits granting the homestead exemption to bond for deed property** unless granted before June 20, 2003, prohibits more than one homestead exemption applying to any person, and **requires the homestead exemption to extend to the following:**

- (1) The **surviving spouse** when the homestead is **occupied by the surviving spouse** and title to it is in the surviving spouse's name as owner of any interest or as usufructuary, or in the name of a testamentary trust established for the benefit of the surviving spouse or the descendants, or to the **former spouse when the homestead is occupied by the former spouse** and title to it is in the name of either or both of the former spouses.
- (2) **Property owned by an irrevocable trust** when the principal beneficiary or beneficiaries are the settlor or settlors of the trust and were the **immediate prior**

**owners of the homestead**, and the homestead is occupied as such by a principal beneficiary.

- (3) Property where the **usufruct** has been granted to **no more than two usufructuaries who occupy the homestead** and who were the immediate prior owners of the homestead.
- (4) A **natural person or persons and to an irrevocable trust** created by a natural person or persons in which the beneficiaries of the trust are a natural person or persons if the criteria above is otherwise satisfied.
- (5) Property owned, **limited to the pro rata ownership interest of the person occupying the homestead** unless provided otherwise above.

(Amends Const. Art VII, Section 20(A))