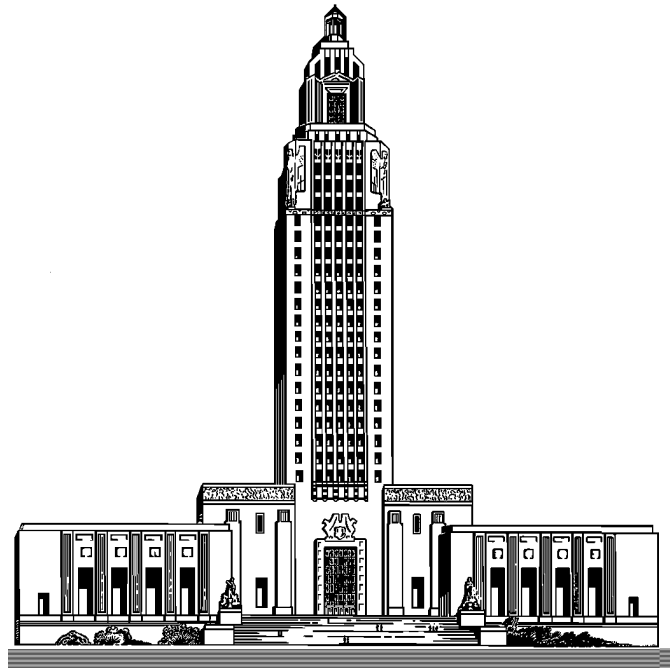


SELECTED LEGISLATION
from the
2003 Regular Session
of the
Louisiana Legislature



Prepared by
House Legislative Services
Louisiana House of Representatives

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I. CIVIL LAW AND PROCEDURE

A. SUBSTANTIVE, LIABILITY, AND DAMAGES

1. Montgomery (HB 128)

Act No. 1011

Provides a limitation of liability for persons engaged in **motorized off-road vehicle (ORV) activities**. Applies to two or four wheeled vehicles powered by a combustible engine and weighing under 1500 pounds.

Provides that an ORV activity sponsor, an ORV activity professional, or any other person shall not be liable for injury or death of a participant in ORV activities resulting from the inherent risks of those activities. Further provides for exceptions to the limitation of liability including recovery under the "La. Products Liability Act".

Requires that ORV professionals and ORV activity sponsors post and maintain **signs warning of the inherent risks** of ORV activities, or that the **written warning** be given to each participant.

Effective August 15, 2003. (Adds R.S. 9:2795.3)

2. Pitre (HB 429)

Act No. 853

Exonerates employers from civil liability arising from the disclosure of **background information** obtained through a lawful background check. This limitation of liability includes all claims arising out of the failure to hire, wrongful termination, and invasion of privacy. This limitation also includes any claims of any owner, operator, or any third person for claims of negligent hiring or negligent retention.

Effective August 15, 2003. (Adds R.S. 23:291(D))

3. Johns (HB 518)

Act No. 158

Provides that any manufacturer, distributor, or seller of a **food or non-alcoholic beverage** intended for human consumption shall **not be subject to civil liability** for personal injury or wrongful death based on an individual's consumption of food or non-alcoholic beverages in cases where the liability is premised upon the individual's weight gain, obesity, or health condition resulting from his **long-term consumption** of a food or non-alcoholic beverage.

Defines "long-term consumption" as the cumulative effect of the consumption of food or non-alcoholic beverages, and not to the effect of a single instance of consumption.

Applies to all claims existing or actions pending or filed on or after its effective date, unless a trial or retrial with regard to the civil action has commenced as of the effective date.

Effective June 2, 2003. (Adds R.S. 9:2799.6)

4. Faucheux (HB 1812)

Act No. 1259

Provides that personal injury, wrongful death, and survivorship actions for damages against a sponsor of a **bonfire presentation** on the Mississippi River levee **shall be available to the plaintiff** if the sponsor of the bonfire activity does any of the following activities and such act or omission is the cause in fact of the injuries sustained by the plaintiff:

- (1) Fails to obtain and comply with a permit.
- (2) Fails to use only approved combustible materials.
- (3) Negligently violates an order from the local governing authority.
- (4) Commits a deliberate and wanton act or gross negligence.

Provides the **exclusive remedies** for bringing a personal injury, wrongful death, or survivorship action against a sponsor.

Provides that any action for damages against a sponsor who is covered by the **Louisiana Governmental Claims Act** shall be subject to the provisions of R.S. 13:5101 et seq., and that the same limitations on the total amount recoverable provided in R.S. 13:5106(B)(1) and (2) shall be applicable to any action for damages against a nonpublic sponsor.

Effective August 15, 2003. (Adds R.S. 9:2796.2)

5. B. Jones (SB 171)

Act No. 475

Provides for a **limitation of liability** for designated **distributors of a food bank**, or against a **donor of wild game** from any damages arising from or caused by the wild game, including the condition of the wild game, which is distributed directly or for redistribution by food banks or their designated distributors, to the needy, the ill, the handicapped, infants or seniors, or to individuals or families who need emergency food assistance, unless the damages resulted from an intentional act or omission of the food bank, its designated distributor, or donor.

Effective August 15, 2003. (Amends R.S. 9:2799(A)(2) and (B)(1))

6. McPherson (SB 354)

Act No. 898

Adds **veterinarian and farrier services** and **bull riding activities** to the limitation of liability provided for farm animal activities.

Enacts a limitation of liability for **equine activities** substantially similar to that provided for farm animal activities. Provides that an equine activity sponsor, an equine professional, or any other person shall not be liable for injury or death of a participant in equine activities resulting from the inherent risks of those activities. Provides that the limitation does not apply to certain acts or omissions, including claims recoverable under the "La. Products Liability Act."

Requires that equine professionals and equine activity sponsors **post** and maintain **signs warning of the inherent risks** of equine activities and include **written warning notices in contracts** entered into by equine professionals or by equine activity sponsors for the providing of professional services, instruction, or the rental of equipment, tack or an equine to a participant.

Effective August 15, 2003. (Amends R.S. 9:2795.1; Adds R.S. 9:2795.1(A)(6)(d) and 2795.3)

7. Ullo (SB 684)

Act No. 793

Provides that the **coroner** may order that a person be taken into **protective custody** and transported for an examination, if such person is gravely disabled or dangerous to himself or others.

Provides that if refused or obstructed from admittance, any elected coroner, supporting staff or law enforcement officer, who has announced his authority and purpose, may apply to a court for an order to **break open an outer or inner door** or window of any vehicle, water craft, aircraft, structure or dwelling in order to restrain and transport the person for protective custody and examination.

Provides for the **immunity from civil liability** for any person required to make a forceful entry to comply with a request and order for protective custody. The immunity **does not extend to** any action:

- (1) For wrongful death occasioned as a result of the restraint and transportation of the person subject to the request and order for protective custody.
- (2) "By any third party" who is physically injured during the execution of a request and order for protective custody.

Effective August 15, 2003. (Adds R.S. 28:53.2(F))

8. Ullo (SB 685)

Act No. 794

Provides that any elected **coroner** and his supporting staff shall be **immune from civil liability** for damages based on the exercise or performance or the failure to exercise or perform policymaking or discretionary acts when the acts or within the course and scope of their lawful powers and duties.

Immunity from liability does not apply to acts or omissions which are not reasonably related to the legitimate governmental object for which the policymaking or discretionary power exists or which constitute criminal, fraudulent, malicious, intentional, willful, outrageous, reckless, or flagrant misconduct.

Provides that the immunity from liability applies only to acts occurring on or after August 15, 2003.

Effective August 15, 2003. (Adds R.S. 33:1563(L))

9. Bruce (HB 939)

Act No. 691

Provides that a nonprofit organization which operates an **animal sanctuary**, as provided for in accordance with 42 U.S.C. 287a-3a (Chimpanzee Health Improvement, Maintenance, and Protection Act), shall **not be liable for any injury**, loss, or damage resulting from certain specified activities sponsored by the organization unless the damage was caused by the deliberate and wanton act or gross negligence of the organization, any officer, employee, or volunteer thereof.

Effective August 15, 2003. (Adds R.S. 9:2796.2)

10. Broome (HB 1048)

Act No. 870

Extends the **limitation of liability** for board-certified social workers to **any social worker**, marriage or family therapist, or licensed professional counselor who **breaches a patient's confidentiality** when the patient has communicated a threat of physical violence, which is deemed to be significant in the clinical judgment of the person treating the patient, against a clearly identified victim or victims, coupled with the apparent intent and ability to carry out such threat.

Effective August 15, 2003. (Amends R.S. 9:2800.2)

11. Peychaud (HB 1255)

Act No. 1077

Provides that when a public entity, **including sewerage and water boards** and their employees, servants, agents, or subcontractors, responds to a report of a defective condition and takes steps to warn the public of the condition, it does not gain custody, care, or garde of the area and a duty

to prevent personal injury or other damages is not created, unless the entity failed to notify the entity responsible for the area.

Defines "public area" as any publicly owned or common thing or any privately owned property to which the public's access is not prohibited.

Effective July 2, 2003. (Amends R.S. 9:2800(C) and (E))

12. Pinac (HB 1487)

Act No. 1099

Clarifies that any person or entity responsible for complying with a compliance order issued by the fire marshal for a violation of a fire protection and prevention statute who fails to comply within the time period stated in the order, shall be liable for all damages resulting from the loss of life or bodily injury suffered by any firemen or first response personnel who respond to an incident that is the proximately caused by the violation.

Provides that as to any loss of life suffered by firemen or first response personnel, there shall be a rebuttable presumption that the death resulted from criminal negligence.

Effective August 15, 2003. (Amends R.S. 40:1622)

13. Daniel (HB 1592)

Act No. 725

Provides that if constructions are placed on **state property** by someone other than the state and the right to keep those improvements on the state property has expired, the state is **not responsible** for damages caused by the improvements unless the state has taken affirmative action to take control of the improvements and use them for the state's benefit.

The provisions of this Act shall be applied **retroactively** to any improvements on state lands or waterbottoms, but shall not apply to damages which have already occurred.

Effective August 15, 2003. (Amends R.S. 9:2800)

14. Johns (HB 714)

Act No. 1033

Extends the **limitation of liability** under the Good Samaritan Law currently provided for physicians and surgeons whose actual duty in the hospital or facility does not require a response to an emergency situation and who in good faith respond to an emergency within the hospital to **on-call physicians** and oral and maxillofacial surgeons who do not have a prior physician-patient relationship with the patient.

Defines "on-call physician" as a physician or oral or maxillofacial surgeon or his professional medical or dental corporation or limited liability company who is not primarily employed or contracted by the hospital or other licensed medical health care facility to treat emergency room or department patients but whose actual duties may include treating emergency room or department patients due to the requirements of 42 C.F.R. 489.24 or R.S. 40:2113.4 and responding to the emergency room or department on an on-call basis and as a condition of the privilege or ability to practice his profession within the hospital or facility.

Effective August 15, 2003. (Amends R.S. 37:1731(A)(2)(a); Adds R.S. 37:1731(A)(2)(c) and (d))

B. MEDICAL MALPRACTICE

1. Johns (HB 520)

Act No. 581

Provides that in a medical malpractice action against a physician, licensed to practice medicine by the Louisiana State Board of Medical Examiners, for injury to or death of a patient, a person may **qualify as an expert witness** on the issue of whether the physician departed from accepted standards of medical care only if the individual is a physician who: **(1)** is practicing medicine at the time such testimony is given or was practicing medicine at the time the claim arose, **(2)** has knowledge of accepted standards of medical care for the diagnosis, care, or treatment of the illness, injury, or condition involved in the claim, **(3)** is qualified on the basis of training or experience to offer an expert opinion regarding those accepted standards of care, and **(4)** is licensed to practice medicine by the Louisiana State Board of Medical Examiners under R.S. 37:1261 et seq., is licensed to practice medicine by any other jurisdiction in the United States, or is a graduate of a medical school accredited by the American Medical Association's Liaison Committee on Medical Education or the American Osteopathic Association.

Defines "practicing medicine" and "medical practice" as including but not being limited to training residents or students at an accredited school of medicine or osteopathy or serving as a consulting physician to other physicians who provide direct patient care, upon the request of such other physicians.

Provides that in determining whether a witness is qualified on the basis of training or experience, the **court shall consider** whether the witness is board certified or has other substantial training or experience in an area of medical practice relevant to the claim, and whether he is actively practicing in that area. Prohibits a physician from being disqualified as an expert witness solely because he is a defendant in a medical malpractice claim.

Effective June 27, 2003. (Adds R.S. 9:2794(D))

2. Johns (HB 599)

Act No. 585

Adds to the definition of "health care provider" under the Medical Malpractice Act, facilities or institutions certified by the state to provide health care or professional services, and also includes **offshore health care providers**.

Defines "offshore health care provider" as any individual or entity which provides any health care service rendered by an emergency medical technician-basic, or at the intermediate or paramedic levels, or one who is a registered nurse, when such **medical care is rendered on a fixed platform** in Louisiana territorial waters or on the Outer Continental Shelf, adjacent to Louisiana territorial waters, or any instance on the Outer Continental Shelf where the applicable law is the law of the state of Louisiana under the Outer Continental Shelf Lands Act, 43 U.S.C. 1331 et seq.

Effective August 15, 2003. (Amends R.S. 40:1299.41(A)(1); Adds R.S. 40:1299.41(A)(21))

3. Baldone (HB 682)

Act No. 644

Authorizes both the state and private medical review panels to consider **evidence discovered by interrogatories**, in addition to the existing ability to consider written evidence submitted by the parties which may consist of medical charts, x-rays, lab tests, excerpts of treatises, depositions of witnesses including parties, affidavits and reports of medical experts, and any other form of evidence allowable by the medical review panel.

Effective August 15, 2003. (Amends R.S. 40:1299.39.1(D)(2) and 1299.47(D)(2))

4. DeWitt (HB 1377)

Act No. 431

Provides that the primary counsel for the Patient's Compensation Fund may be permitted to continue on behalf of the fund when **no conflict or potential conflict exists**.

Authorizes the Patient's Compensation Fund Board to **intervene** in civil actions **challenging the constitutionality of any laws** related to medical malpractice.

Effective June 18, 2003. (Amends R.S. 40:1299.41(J); Adds R.S. 40:1299.44(D)(2)(b)(xii))

5. DeWitt (HB 1408)

Act No. 961

Lists the required minimum allegations to be contained in a request for review of a malpractice claim or complaint under the Medical Malpractice Act and the Malpractice Liability for State Services Act.

Requires the payment of a **\$100 filing fee per named defendant** within 45 days of each request for a review of a claim by a medical review panel under both the state and private medical malpractice acts. Provides that the request for a medical review panel is invalid and without effect, and the time for filing the claim is not suspended if the fees are not timely paid or waived.

Provides for **waiver of the filing fee** upon submission of an **affidavit of any licensed physician** that the particularized allegations of malpractice constitute a breach of the applicable standard of care, or the filing fee may be waived upon submission of an *in forma pauperis* ruling by a **district court**.

Provides for **refund of the filing fee** if the panel opinion concludes that a defendant failed to comply with the appropriate standard of care, or if there is a material issue of fact bearing on liability for consideration by the court.

Provides for prospective application only.

Effective August 15, 2003. (Amends R.S. 40:1299.39.1(A)(1), (2)(b), and (3)(b) and (I)(4) and (5) and 1299.47(A)(1), (2)(b), and (3)(b) and (I)(2)(b) and (3); Adds R.S. 40:1299.39.1(A)(3)(c) and (4) and (I)(6) and 1299.47(A)(3)(c) and (4) and (I)(4))

6. DeWitt (HB 1549)

Act No. 882

Requires notice to the **Patient's Compensation Fund Oversight Board** and opportunity for the board to prepare a defense for a subsequent trial and the right of the fund to request a jury trial. Provides for the following procedures:

- (1) Prohibits the board from filing suit against the health care provider for failure to treat a patient.
- (2) Allows, under certain conditions, the board to assert comparative fault, solidary, or joint and divisible liability in order to offset the percentage of negligence of the health care provider, in which case the fund will have the burden of proving the negligence of the health care provider.

- (3) Requires each health care provider or insurer making any payment in settlement of a claim to send, by certified mail, a written statement fully explaining the reasons for payment and the identity of the payee.
- (4) Allows the board the opportunity to conduct discovery, identify and retain expert witnesses, and prepare a defense prior to a subsequent trial.

Authorizes the board to seek reimbursement and defend the fund from all claims due to the negligence of anyone other than a qualified health care provider.

Effective upon signature of the governor (July 1, 2003). (Amends R.S. 40:1299.44(C)(5) and (D)(2)(b))

7. Walsworth (HB 2014)

Act No. 1263

Provides that under the Malpractice Liability for State Services Act (MLSSA) and the Medical Malpractice Act (MMA), an attorney chairman of a medical review panel shall be appointed within **one year** from the filing of a request for review of the claim. If notice is not received by the board within one year from the filing, the claim shall be dismissed. Provides that the filing of a request for a medical review panel **shall suspend the time** within which a suit must be filed until 90 days after the claim has been dismissed.

Provides that under the MMA or the MLSSA, if a **unanimous opinion** is rendered in favor of the **defendant** healthcare provider, the claimant shall post a cash or surety bond to cover the costs of the medical review panel if the claimant files a suit in a court of competent jurisdiction and proper venue. Under the MMA, a defendant health care provider is required to post a cash or surety bond, if a **unanimous opinion** is rendered in favor the **claimant**; however, the posting of a cash or surety bond is not required by the defendant health care provider under the MLSSA.

Provides for **waiver of payment** of the costs by the claimant upon submission of an *in forma pauperis* ruling by a district court.

Provides for prospective application only.

Effective July 7, 2003. (Amends R.S. 40:1299.39.1(A)(2)(c) and (I)(3), (4) and (5) and 1299.47(A)(2)(c) and (I)(2)(b); Adds R.S. 40:1299.47(I)(2)(c) (d) and (3))

8. Dardenne (SB 257)

Act No. 747

Adds "**licensed perfusionist**" to the definition of "health care provider" under the Medical Malpractice Act.

Effective August 15, 2003. (Amends R.S. 40:1299.41(A)(1))

9. Lentini (SB 322)

Act No. 484

Clarifies that under the Medical Malpractice Act, the medical review panel shall include in their **written reasons whether the plaintiff suffered any disability**, the duration and extent of the disability or any permanent impairment and percentage.

Effective August 15, 2003. (Amends R.S. 40:1299.47(G)(4))

10. Hainkel (SB 748)

Act No. 506

Provides that nursing homes and health care facilities residents' right of action under the Resident's Bill of Rights is a **private and personal right of action**.

Provides that any resident who alleges that his rights have been deprived or infringed upon may assert a cause of action for **injunctive relief** against any nursing home or health care facility responsible for the alleged violation.

Provides that **attorney fees cannot be recovered** in a tort or contract action.

Provides that the **prescriptive period** to bring an action is **one year** from the date of the alleged act, omission or neglect, or within one year from the date of discovery of the alleged act, omission or neglect; however, even as to claims filed within one year from the date of such discovery, in all events such claims shall be filed at the latest within a period of **three years** from the date of the alleged act, omission or neglect.

Effective August 15, 2003. (Amends R.S. 40:2010.8(D)(1) and 2010.9(A) and (B); Adds R.S. 40:2010.9(C))

11. Hainkel (SB 232)

Act No. 479

Amends definitions under the Medical Malpractice Act to include: (1) "management companies and businesses conducted for health care providers" within the definition of a "health care provider"; (2) "nursing home resident" within the definition of a "patient"; (3) "any unintentional violation of a standard of care defined by a Louisiana statute or regulation" and "monitoring and supervising of a patient" within the definition of "malpractice"; and "monitoring and supervising" within the definition of "healthcare".

Effective August 15, 2003. (Amends R.S. 40:1299.41(A)(1), (8) and (9))

C. PRESCRIPTION AND PEREMPTION

1. Hammett (HB 453)

Act No. 854

Provides that no action for damages against any professional engineer, surveyor, professional interior designer, engineer intern, surveyor intern, or licensee, or any professional architect, landscape architect, architect intern, or agent, or other similar licensee under this state, whether based upon tort, or breach of contract, or otherwise arising out of an engagement to provide any manner of movable or immovable planning, construction, design, or building construction, demolition, or work, shall be brought unless filed in a court of competent jurisdiction and proper venue within **five years from the date or discovery of the alleged act**.

Provides that such actions shall be **filed within five years from: (1)** the date of registry of acceptance of the work, or **(2)** the date the owner occupies or takes possession of the improvement if acceptance is not recorded, or **(3)** the date of completion of the service if it is not preparatory or if an inspection of the work is not done.

Provides that the **five-year period of limitation is preemptive** and may not be renounced, interrupted, or suspended.

Supersedes the provisions of R.S. 9:2772 (peremption of actions involving surveying, design, and construction of immovables) **and C.C. Art. 2762** (liability of contractor for badness of work) and 3545 (choice of law tort conflicts are governed by the law of the state whose policies would be most seriously impaired if its law were not applied).

Provides that the preemptive period shall not apply in cases of fraud, to any proceedings initiated by the Louisiana Professional Engineering and Land Surveying Board or the State Board of Architectural Examiners.

Effective August 15, 2003. (Adds R.S. 9:5607)

2. Hammett (HB 551)

Act No. 919

Changes the calculation of time within which to file an action, whether ex contractu, ex delicto, or otherwise, including but not limited to an action for failure to warn, to recover on a contract, or to recover damages against any person performing or furnishing **land surveying services** as follows:

- (1) From not more than seven to **not more than five years** after the date of registry in the mortgage office of acceptance of the work by the owner; or

- (2) From not more than seven to **not more than five years** after the improvement has been thus occupied by the owner, **if no such acceptance is recorded within six months** from the date the owner has occupied or taken possession of the improvement, in whole or in part; or
- (3) From not more than seven to **not more than five years after completion of the surveying or the design and planning** with regard to actions against that person, if the person performing or furnishing the land surveying services does not render the services preparatory to construction, or if the person furnishing such services or the design and planning preparatory to construction does not perform any inspection of the work.

Provides that the time limitations also apply to damages arising out of an engagement of planning, construction, design, or building immovable or movable property which may include, without limitation, consultation, planning, designs, drawings, specification, investigation, evaluation, measuring, or administration related to any building, construction, demolition, or work.

Provides that if injury to the property or to a person or if a wrongful death occurs during the fifth year, an action to recover the damages suffered may be brought within one year after the date of the injury, but in no event more than six years after the date of registry in the mortgage office of acceptance of the work by the owner or six years after the improvement has been thus occupied by the owner, if no such acceptance is recorded within six months from the date the owner has occupied or taken possession of the improvement, in whole or in part.

Effective August 15, 2003. (Amends R.S. 9:2772(A) and (C))

3. M. Smith (SB 64)

Act No. 184

Reduces from 30 years to 10 years the **prescriptive period** for actions on **debts due public institutions of higher education**, other than student loans, stipends, or benefits, provided the debt is evidenced in writing.

Effective June 5, 2003. (Amends R.S. 9:5701)

4. Cazayoux (HB 1931)

Act No. 1154

Provides for **interruption** of the existing one-year prescriptive period for actions alleging malpractice of an attorney **by the filing of a complaint** with the Louisiana State Bar Association Attorney Disciplinary Board, office of disciplinary counsel (ODC), alleging a claim of **theft or misappropriation of a client's funds**.

Provides that the record of the hearing of the ODC on the claim of theft of the client's funds shall be admissible as evidence in the civil suit, and that the court may award reasonable attorney fees to the client whose funds were stolen.

Effective August 15, 2003. (Adds R.S. 9:5605.1)

D. PROCEDURAL LAW

1. Gallot (HB 998)

Act No. 867

Changes the time for **filing a motion for summary judgment** and affidavits from 10 to 15 days before the hearing and changes the time for filing opposing affidavits to at least **eight days** prior to the hearing, unless the Rules for the La. District Courts provide to the contrary.

Effective August 15, 2003. (Amends C.C.P. Art. 966(B))

2. Dardenne (SB 255)

Act No. 806

Provides for **revival of a money judgment** at any time before it prescribes by an interested party by **ex parte motion** brought in the court and suit in which the judgment was rendered.

Provides that **no citation or service of process** shall be required, but the clerk shall send notice of the signing of the judgment to the debtor to his last known address. Provides that the court may order the debtor to pay additional court costs and reasonable attorney's fees in connection with the revival action.

Provides that the judgment debtor may have the judgment of revival annulled upon showing that it was satisfied prior to the signing of the judgment and the owner of the judgment shall then pay all court costs, fees, and attorney fees incurred by the judgment debtor.

Effective August 15, 2003. (Amends C.C.P. Art.2031)

3. Baldone (HB 64)

Act No. 599

Requires the **date of birth** of all parties against whom a money judgment is rendered to be included in the final judgment if the date of birth is **known by the attorney** preparing the judgment. Retains provision stating that the failure to include the date of birth of the judgment debtors does not affect the validity of the judgment.

Effective August 15, 2003. (Amends C.C.P. Art. 1922)

4. Schedler (SB 705)

Act No. 1199

Provides that certain records, including "rap sheets" and fingerprints maintained by the Louisiana Bureau of Criminal Identification and Information shall be **privileged** and not subject to discovery by third parties in **civil proceedings**.

Effective August 15, 2003. (Adds C.C.P. Art. 1422.1)

5. B. Jones (SB 818)

Act No. 545

On recommendation of the Louisiana State Law Institute, provides that **suits against a foreign corporation or foreign limited liability company** not licensed to do business in Louisiana, or against a **nonresident** who has not appointed an agent for service, **shall be brought** in the parish of the plaintiff's domicile or in the parish where process on the defendant may be, or is, served.

Provides that a motion to **set aside a dismissal** may be made only within **30 days** of the date of the sheriff's service of the order of dismissal. If the trial court denies a timely motion to set aside the dismissal, the clerk of court shall give notice of the order of denial and shall file a certificate showing the date notice of the signing of judgment was mailed.

Provides that an **appeal** of an order of dismissal may be taken only within **60 days** of the date of the sheriff's service of the order of dismissal. An appeal of an **order of denial** may be taken only within 60 days of the date of the clerk's mailing of the order of denial.

Clarifies the **exception articles** by providing that the court may now dismiss the "action, claim, demand, issue, or theory" upon sustaining an exception and allows the court to render a **partial judgment** sustaining an exception in part as to one or more but less than all of the actions, claims, demands, issues, or theories in the case.

Provides that the rendition of an interlocutory judgment in open court **constitutes notice**, but a party may request that the judgment be reduced to writing. Requires the clerk to **mail notice** to each party if the interlocutory judgment is one refusing to grant a new trial or a JNOV. Clarifies that the **ten-day period** following the notice of an interlocutory judgment for taking action or filing pleadings **does not suspend** the time for applying for supervisory writs nor affect the time for appealing the interlocutory judgment.

Changes "**dation en paiement**" to "a giving in payment".

Specifies the use of supporting and opposing **affidavits of qualified experts** in summary proceedings, which may set forth their opinions on facts as would be admissible under the Code of Evidence.

Authorizes the **discovery of expert's writings** prepared in anticipation of litigation or in preparation for trial by eliminating expert witnesses' writings from the list of writings that cannot be ordered produced in discovery absent a showing of hardship or injustice.

Removes restrictions on the discovery of testifying expert witnesses and authorizes the parties to require any other party to **identify each party** that may be used at trial to present evidence as an "expert". Authorizes the court to order the parties to provide **written reports for testifying expert witnesses** and authorizes parties to obtain discovery of the opinions of experts and facts known by them.

Authorizes the court to order a **deposition by phone** or other remote electronic means over a parties' objection.

Relative to the Children's Code, provides **delays for appeal** and for applying for new trial run only from the mailing of the notice of the judgment and specifies that notice of judgment shall be as provided in C.C.P. Art. 1913.

Effective August 15, 2003. (Amends C.C.P. Arts. 42(5), 561(A), 932, 933, 934, 967, 1201(A), 1424, 1425, 1436.1, 1914, and 3295, and Ch.C. Art. 332; Adds C.C.P. Arts. 561(A)(3) and 561(A)(4))

6. Walsworth (HB 1237)

Act No. 1072

Provides that if a mortgage on immovable property contains a **waiver of appraisal** and the judgment is being enforced under a **writ of fifa**, no appraisal is required.

Provides that a **copy** of the note, bond, or other instrument evidencing the obligation secured by a mortgage, security agreement, or privilege and certified as such by the notary before whom the act of mortgage, security agreement, or privilege was executed **shall be deemed authentic for executory process**.

Provides that when a mortgagee enforces a mortgage by **ordinary proceeding** and he is unable to obtain a personal judgment against the mortgagor, the judgment shall be **in rem**.

Deletes the requirement that the clerk serve a **demand for payment** upon the defendant before issuing a writ of seizure and sale.

Effective August 15, 2003. (Amends C.C.P. Arts. 2332(A), 2636(1), and 3722; Repeals C.C.P. Art. 2639)

7. Baldone (HB 340)

Act No. 619

Provides that the **service of process over nonresidents** may consist of the mailing or delivery of a certified copy of the citation and petition, a notice of suit and petition in an Art. 102 divorce, or a certified copy of the contradictory motion, rule to show cause, or pleading in summary proceeding under C.C.P. Art. 2592.

Provides that a **hearing** may not be held on a contradictory motion, rule to show cause, or other summary proceeding, except pursuant to the Domestic Abuse Assistance Act, **until 30 days after** the filing of an affidavit declaring that the process was mailed or delivered to the defendant.

Effective August 15, 2003. (Amends R.S. 13:3204(A) and 3205)

8. Johns (HB 1098)

Act No. 1061

Requires suits brought to enjoin the award of a **competitively bid contract** to be instituted in the parish in which the public entity is located.

Effective August 15, 2003. (Adds R.S. 38:2181(D))

9. Barham (SB 104)

Act No. 470

Exempts from seizure, one motor vehicle per household, used by the debtor and his family household, with an equity value of **\$7,500 or less** and provides that the vehicle may be used in exercising a trade, calling or profession or used for transportation to and from the place at which the debtor earns his livelihood.

Exempts from seizure **one firearm** with a maximum value of \$500.

Effective August 15, 2003. (Amends R.S. 13:3881(A)(2)(d); Adds R.S. 13:3881(A)(2)(f))

10. Pinac (HB 686)

Act No. 646

Provides for the **seizure and disposition** of motor vehicles following a default by the debtor, without previous citation and judgment, but with notice to the debtor, to enforce a security interest evidenced by a security agreement importing a **confession of judgment**.

Effective August 15, 2003. (Amends R.S. 6:966(A))

11. Boissiere (SB 969)

Act No. 779

Deletes the requirement that the Judicial Council report to the legislature on the frequency and outcome of **special motions**. (Act 734 of 1999 created a special motion to strike in favor of persons subjected to suits involving rights of petition or free speech.)

Effective June 27, 2003. (Repeals Section 3 of Act 734 of 1999 Regular Session)

12. Baldone (HB 57)

Act No. 152

Clarifies that the exception to the **accountant-client privilege** in domestic proceedings includes the partition of community property and the settlement of claims arising from matrimonial regimes.

Effective August 15, 2003. (Amends C.E. Art. 515(C)(10))

13. Devillier (HB 1617)

Act No. 965

Requires that the legibly hand printed or typed name of each person signing an **authentic act** appear beneath the signature of each person signing the act, and that the failure to do so does not affect the validity of the act.

Provides for prospective application only.

Effective January 1, 2005. (Amends C.C. Art. 1833)

14. Schedler (SB 386)

Act No. 489

Provides that a petition for **name change** may be filed in the parish of the petitioner's birth or the parish that is the venue for the Vital Records Registry.

Effective August 15, 2003. (Amends R.S. 13:4751(B))

15. McPherson (SB 62)

Act No. 467

Permits the mother to act as administrator of the minor's property when the father is mentally incompetent, committed, interdicted, or is an absentee.

Effective August 15, 2003. (Amends C.C.P. Art. 4501)

16. Baldone (HB 72)

Act No. 600

Increases the limitation on actions filed by a **natural tutor** without obtaining prior qualification from \$7,500 to \$10,000 and provides that the limitation is determined after court costs, attorney fees, and other expenses have been deducted.

Provides that a natural tutor acting within the proposed limitation is not required to obtain court approval before entering into a compromise, continuing any business, borrowing money, leasing property, establishing a trust, investing funds, opening a checking account, or for actions affecting the minor's interest.

Effective August 15, 2003. (Amends R.S. 9:196)

17. Murray (HB 223)

Act No. 155

Provides that if the **natural tutor** is the surviving parent of the minor child, the parent under whose sole care the minor child has been placed when the parents are divorced or judicially separated from bed and board, or the mother of her illegitimate child not acknowledged by the father, or acknowledged by him alone without her concurrence, then the natural tutor **may file a petition for damages** to enforce a delictual obligation **without** the necessity of filing a petition for appointment, taking an oath, preparing an inventory or descriptive list, or providing security or a legal mortgage.

Provides that a petition filed by a natural tutor shall contain allegations regarding the natural tutor's ability to **act of right as tutor** of the minor child as well as the facts, including the relationship to the minor child, entitling the petitioner to act as tutor.

Effective August 15, 2003. (Adds C.C.P. Art. 4061.1)

18. Johns (HB 87)

Act No. 1008

Upon recommendation of the Louisiana State Law Institute, provides that a **full interdict** lacks capacity to make a **judicial act** and that a **limited interdict** lacks capacity to make a judicial act regarding the property or aspects of personal care that the judgment places under the authority of his curator, except as provided in C.C. Art. 1482 or the judgment.

Provides that a **full interdict** lacks capacity to make or revoke a donation inter vivos or disposition mortis causa and that a **limited interdict**, with respect to his property under the control of a curator, lacks capacity to make or revoke a donation inter vivos and is presumed to lack capacity to make or revoke a disposition mortis causa.

Clarifies that the petitioner in an interdiction proceeding bears the burden of proof by **clear and convincing** evidence, requires the court to state why a temporary interdiction was ordered without notice and a hearing, and provides that within 15 days from the signing of the judgment modifying or terminating interdiction, the curator **shall record the judgment** in the conveyance and mortgage records of every parish in which the interdict owns immovable property.

Effective August 15, 2003. (Amends C.C. Arts. 395 and 1482, C.C.P. Arts. 4541(intro. para.), 4548, 4549(A)(1), and 4552(B); Adds C.C.P. Art. 4541(B))

19. Powell (HB 179)

Act No. 569

Provides that the **petition for transfer of structured settlement payment rights** may be filed in a court of competent jurisdiction which had jurisdiction over the original tort or workers' compensation claim resolved by the structured settlement, in a jurisdiction where the original claim could have been brought or where the payee resides at the time of filing the petition.

Provides that any person who directly or indirectly acquires structured settlement payment rights in a structured settlement factoring transaction in advance of an order may be subject to federal income tax under the Internal Revenue Code, 25 U.S.C. 5891.

Effective August 15, 2003. (Amends R.S. 9:2715(B)(1); Adds R.S. 9:2715(J))

20. Pinac (HB 1002)

Act No. 1283

Authorizes reasonable **attorney fees and costs** awarded by a court to be assessed or collected on a deferred presentment transaction or small loan. (A "**deferred presentment transaction**" is a transaction made pursuant to a written agreement whereby a licensee: (a) accepts a check from the issuer dated as of the date it was written; (b) agrees to hold the check for a period of time not to exceed thirty days prior to negotiation or presentment; and (c) pays to the issuer of the check the amount of the check less the fee permitted in R.S. 9:3578.4(A). The amount paid to the issuer of the check may not exceed \$350. A "**small loan**" is \$350 or less made for a term of 60 days or less.)

Effective August 15, 2003. (Amends R.S. 9:3578.4(C) and 3578.6(A)(1))

21. Baldone (HB 737)

Act No. 926

Increases the required bond for **non-attorney and ex officio notaries** from \$5,000 to \$10,000 and authorizes the maintenance of \$10,000 in errors and omissions insurance coverage in lieu of a bond.

Effective August 15, 2003. (Amends R.S. 35:1.1(A), 191(C)(3), and 391(6))

22. Bowler (HB 1854)

Act No. 1142

Mandates the use of **notary identification numbers or a Louisiana state bar roll number** on all notarized documents and provides penalties for failure to do so. Prohibits ex officio notaries from using the title, "Notary Public".

Requires the filing of an **annual report with the secretary of state** for the purposes of maintaining a current and accurate database of all **non-attorney notaries** and provides for late fees and sanctions for failure to timely file the annual report.

Provides for the development and implementation of **uniform statewide standards** for notary examinations by the secretary of state and requires the secretary to establish procedures and rules for administering and grading the exam, a system of randomly selecting questions, and a review procedure by the parish examining committee and to publish and make available to the public a document containing all questions and model answers.

Requires the secretary of state to complete development and begin furnishing to the parish examining committees the exams no later than **January 1, 2005**, and allows the secretary of state to charge a fee, not to exceed \$50, for taking the examination.

Effective January 1, 2004. (Amends R.S. 35:12 and 191(C)(2)(a); Adds R.S. 35:202, 215, 216, and 409)

23. Daniel (HB 1333)

Act No. 454

Authorizes the chief of police of a university police department to designate certain officers in his office as **ex officio notaries public**. Provides that the ex officio notary shall serve without compensation and may exercise the functions of a notary only within the jurisdiction of the police department and administer oaths related to the official functions of the police department.

Effective June 20, 2003. (Adds R.S. 35:409)

24. Irons (SB 625)

Act No. 498

Relative to **public nuisances**, provides that if the court issues an order granting a final injunction, the court may (1) award expenses incurred in abating the nuisance, or (2) order a civil penalty of not more than \$10,000.

Authorizes any ten residents of the election precinct wherein any nuisance exists to petition for the issuance of an injunction or order of abatement and authorizes the award of **reasonable attorney fees** in abating a nuisance.

Provides that a petition establishes a **rebuttable presumption** of prohibited activity if it identifies and supports by competent evidence two or more instances of certain criminal activity within the preceding five year period and a petition establishes a rebuttable presumption that a proprietary party knowingly permitted the maintenance of a nuisance on the premises if the petition establishes by competent evidence that the proprietary party received a notice of violation.

Effective August 15, 2003. (Amends R.S. 13:4711(A), 4712, and 4713(A) and (C))

25. Baldone (HB 1934)

Act No. 1260

Adds **defense counsel and defense insurance companies** to the list of interested parties who have a right to obtain copies of **medical, hospital, or other records**, after suit has been instituted. Provides that the **\$15.00** maximum handling charge for copies applies to hospitals, all health care providers, and nursing homes.

Effective August 15, 2003. (Amends R.S. 40:1299.96(A)(2)(b))

26. Johns (HB 1808)

Act No. 1135

Provides that any printout or readable output of data stored in a computer, portable or hand-held computer, or similar electronic storage device is considered an original for purposes of court proceedings.

Effective July 2, 2003. (Amends C.E. Art. 1001(3))

E. EVIDENCE

1. Pitre (HB 1896)

Act No. 1151

Provides that in any action to recover damages for personal injury, death, or property damages against the owner, agent, shipper, transporter, or carrier of material being transported by carrier, the **violation** or alleged violation of a federal or state statute or regulation relating to the transportation of such material is **not considered prima facie evidence** of negligence or fault. Provides that the comparative negligence laws of Louisiana shall apply.

Provides for prospective application only and applies only to a cause of action arising on and after its effective date.

Effective July 2, 2003. (Adds R.S. 9:2800.13)

2. Schedler (SB 383)

Act No. 1187

Includes a member of the clergy as a mental health/social service practitioner and, in that role, **makes a member of the clergy a mandatory reporter** of information regarding the abuse or neglect of a child. Specifies as an exception to such obligation, a confidential communication by the person to a member of the clergy who in the course of the discipline or practice of that church, denomination, or organization is authorized and accustomed to hearing confidential communications and is obligated to keep them confidential.

Effective August 15, 2003. (Amends Ch.C. Art. 603(13)(b), C.E. Art 511(A)(1))

3. M. Jackson (HB 1820)

Act No. 1137

Provides that a trained **peer support member** shall **not be compelled to testify** without consent of the emergency responder making the communication about any communication made to the trained peer support member by the emergency responder while receiving peer support services, and that the privilege only applies to communications made to the trained peer support member.

Provides that the privilege does not apply if the trained peer support member was an initial responder, a witness, or a party to the same incident for which the emergency responder is seeking support. Also provides that the **privilege does not apply** when a communication reveals the **intended commission of a crime** or harmful act and is determined by the trained peer support member to protect any person from harm or injury or forestall a threat to the public.

Defines, in part, a "trained peer support member" as an emergency responder or civilian volunteer of an emergency service agency or entity, who has received training in Critical Incident Stress Management to provide emotional and moral support to an emergency responder who needs those services as a result of an incident in which the emergency responder was involved while acting in his official capacity.

Effective August 15, 2003. (Adds C.E. Art. 518)

II. SUCCESSIONS AND TRUSTS

A. SUCCESSIONS

1. Chaisson (SB 300)

Act No. 482

Provides that the governor shall appoint **public administrators** for each parish of the state with a population of 50,000 or more, according to the last census, and their term of office shall be concurrent with that of the governor.

Effective August 15, 2003. (Amends R.S. 9:1581)

2. Hines (SB 473)

Act No. 495

Provides that any child conceived after the death of a decedent and deemed the legitimate child of decedent, has the **capacity to inherit** from the decedent in the same manner as the child would have if the child had been in existence at the time of death of the decedent.

Changes the time period within which the child must be born from two years to three years of the death of the decedent.

Effective August 15, 2003. (Amends R.S. 9:391.1(A))

3. Irons (SB 1041)

Act No. 74

Provides that a testament, **testamentary provision, legacy, or other appointment** executed prior to January 1, 1998, and valid under the law and jurisprudence prior to that date, when executed, is not invalidated by the passage of Acts 1997, No. 1421. Adds a testamentary provision, legacy, or other appointment to existing provision. (Acts 1997, No. 1421, was the Successions Revision on recommendation of the LSLI.)

Specifies that this Act is intended to be **remedial and curative**.

Effective August 15, 2003. (Amends R.S. 9:2440)

4. Hutter (HB 1145)

Act No. 707

Provides that a **legatee's spouse** may not be a witness to a testament and if the spouse of a legatee is a witness, the legacy is invalid, but the testament is not otherwise invalidated.

Effective January 1, 2004. (Adds C.C. Art. 1582.1)

5. Dardenne (SB 860)

Act No. 548

Provides that the surviving spouse shall have a usufruct for life unless expressly designated for a shorter period, and the spouse **shall not** be required to provide security except as expressly declared by the decedent or as permitted when the legitime is affected.

The provisions of this Act shall be **interpretive and remedial** and shall apply to testaments executed on or after June 18, 1996.

Effective August 15, 2003. (Amends C.C. Art. 1499)

6. Schedler (SB 949)

Act No. 1207

Provides that if security is owed to the naked owner by the usufructuary who is the surviving spouse or if a **forced heir** requests security because a usufruct in favor of a surviving spouse affects his legitime and he is not a child of the surviving spouse, the court may order the **execution of notes, mortgages, or other documents** as it deems necessary, or may impose a mortgage or lien on either community or separate property, movable or immovable, **as security**.

For purposes of determining a "forced heir" persons who are "permanently incapable of taking care of their persons or administering their estates at the time of the death of the decedent" include "descendants who, at the time of the death of the decedent, have, **according to medical documentation, an inherited, incurable disease** or condition that **may** render them incapable of caring for their persons or administering their estates **in the future**."

Provides that the provisions of this Act are **interpretive, procedural and remedial**.

Effective August 15, 2003. (Amends C.C. Art. 1514; Adds R.S. 9:1202 and C.C. Art. 1493 (E))

B. TRUSTS

1. Lentini (SB 251)

Act No. 480

On recommendation of the Louisiana State Law Institute, provides that when a testamentary trust designates as a principal beneficiary a person who is a descendant, a sibling, or a descendant of a sibling of the settlor and who predeceases the settlor, the descendants of that person will become principal beneficiaries in his place, unless the trust instrument provides otherwise. Under prior law, the disposition of principal to the predeceased principal beneficiary would lapse. **(R.S. 9:1809)** **

Eliminates the reference to "accumulated income" because "accumulated income" is no longer treated as equivalent to principal, under R.S. 9:1963. **(R.S. 9:1893)** **

Adds definition of "accumulated income" and provides that objective standards are not required for the accumulation of income or for the distribution of accumulated income. **(R.S. 9:1963 and R.S. 9:2068(A))** **

Provides that if the termination of an income interest is by the death of an income beneficiary and if the descendants of the deceased income beneficiary are the beneficiaries of an interest in trust principal, the descendants of the deceased income beneficiary shall become beneficiaries of that interest in trust income in proportion to their portion of trust principal, unless the trust instrument provides otherwise. **(R.S. 9:1965)** **

Provides that if a person will become a principal beneficiary only by substitution under R.S. 9:1973, he will not be considered a principal beneficiary until the substitution has occurred. (R.S. 9:1979)

Provides that if an income beneficiary refuses his interest, the refusal inures in favor of his descendants in a proportional amount, if those descendants have an interest in trust principal. Also provides that if a principal beneficiary refuses his interest, the refusal inures in favor of his descendants in a proportional amount, if those descendants have an interest in trust principal. **(R.S. 9:1990)** **

Authorizes the modification, division, termination, or revocation of a trust by a testament. (R.S. 9:2051)

Allows the trustee to distribute trust property in full ownership or undivided interest, prorata or non-prorata, after considering tax consequences. (R.S. 9:2131)

Provides that a trustee may not make an adjustment between principal and income under R.S. 9:2158 if the existence or exercise of the power to adjust would cause ineligibility for the estate-tax or gift-tax marital deduction or charitable deduction. (R.S. 9:2159(1))

Provides that the trustee, even if not an individual, has the authority to select the attorney to handle the legal matters relating to the trust, and that the appointment of an attorney in the trust instrument is not binding on the trustee. (R.S. 9:2241)

Provides that federally insured depository institutions or a financial institution or trust company authorized to exercise trust powers may accept, hold, and administer donations and exercise all powers conferred by this Part of the charitable trust laws. (R.S. 9:2273)

**** Amendments applicable to trusts created after August 15, 2003.**

Effective August 15, 2003. (Amends R.S. 9:1893, 1963, 1965, 1990, 2051, 2068, 2159(1), 2241 and 2273; Adds R.S. 9:1809, 1979, and 2131)

2. Capella (HB 1667)

Act No. 731

Provides that the **extract** of a trust instrument shall be executed by either the settlor or the trustee and the signature of each settlor does not have to be included in the extract.

Effective August 15, 2003. (Amends R.S. 9:2092(B)(1)(intro.para.) and (c))

III. FAMILY LAW

A. ADOPTION

1. Ansardi (HB 140)

Act No. 564

Provides a procedure whereby a pregnant person or the mother of a child may execute a nonbinding **intent to surrender** her child for adoption before the actual surrender process begins. The purpose of the process is to begin planning for the child and to provide **early notice** to any alleged or adjudicated father of the mother's intent. Provides for the following:

- (1) This process **may not** be used to terminate a legal father's rights.
- (2) Capacity and counseling requirements for the mother.
- (3) Requires the intent to surrender be filed in a court of proper **venue**.
- (4) Requires certain information declarations including the mother's mental capacity, and understanding of her rights.
- (5) Provides a form and requires it to be in **authentic form**.
- (6) Requires an alleged or adjudicated father to file an **objection** within 15 days of service of the notice of intent to surrender or within five days of the birth of the child to preserve his right to oppose an adoption.
- (7) If the mother does not file an act of surrender, the intent to surrender shall be **dissolved** without legal consequences.
- (8) Within 90 days of the filing of her intent to surrender, the mother may file a **motion for hearing** to determine the father's parental rights and the court shall schedule a hearing within 20 days after the time the father was served with the motion for hearing.
- (9) Provides a **form for notice** of the filing of an intent to surrender to an alleged or adjudicated father.
- (10) Provides for **service** of the notice of filing an intent to surrender.

Effective August 15, 2003. (Amends Ch.C. Art. 1131; Adds Ch.C. Arts. 1107.1-1107.9)

2. Ellington (SB 931)

Act No. 776

Provides that an action to annul a final decree of adoption based on fraud or duress **perpetrated by anyone other than the adoptive parent** shall be brought within six months from discovery and in no event later than **one year** from the signing of the final decree, but an action to annul a final decree based on a claim of fraud or duress **perpetrated by an adoptive parent** shall be filed within six months from discovery and in no event later than **two years** from the signing of the final decree.

Provides a repose provision which requires any action to annul a final decree of adoption rendered between July 1, 2001 and July 1, 2003, for which the time period for bringing such action would otherwise be shortened by this Act to be instituted before July 1, 2004, or the date on which such right would have prescribed under applicable law, whichever occurs first.

Effective July 1, 2003. (Amends Ch.C. Art. 1263)

3. Ellington (SB 318)

Act No. 812

Relative to the **disclosure of adoption records**, requires written **notice** of the date, time, and place to be served and a return made, in the same manner as a petition on the custodian of records, at least **15 days** prior to the hearing.

Effective August 15, 2003. (Amends Ch.C. Arts. 1186(A) and 1190(B) and (C))

B. MARRIAGE, DIVORCE, AND DOMESTIC MATTERS

1. Irons (SB 565)

Act No. 255

Authorizes a federal judge whose official duty station includes a municipality with a population of between 40,000 and 50,000 or 215,000 and 235,000 according to the latest decennial census to perform marriage ceremonies in that municipality within his duty station. This authority **terminates** on December 31, 2003.

Authorizes an officiant, authorized to perform marriage ceremonies in **Orleans**, to waive the 72-hour delay for non-resident parties for serious and meritorious reasons.

Effective June 6, 2003. (Amends R.S. 9:242 and 243; Adds R.S. 9:203(E))

2. Green (HB 397)

Act No. 852

Authorizes a woman to use her maiden name, her present spouse's name, the surname of her deceased or former spouse, or a hyphenated combination thereof.

Effective August 15, 2003. (Adds R.S. 9:292)

3. Townsend (HB 1395)

Act No. 1092

Provides that an award of interim spousal support shall **terminate** upon rendition of a judgment of divorce. However, if a claim for final support is **pending** at the time of the judgement, the

interim award shall not terminate until rendition of a judgment awarding or denying final support or 180 days after the judgment of divorce.

Effective August 15, 2003. (Amends C.C. Art. 113)

4. M. Smith (SB 947)

Act No. 778

Provides a **limitation of liability** for any priest, minister, rabbi, clerk of religious society of friends, or any clergyman of any religious sect, for actions taken or statements made in counseling couples regarding **covenant marriage**, unless the action or statement was maliciously, willfully, and deliberately intended to cause harm, harass, or intimidate the couple.

Effective August 15, 2003. (Adds R.S. 9:275.5)

5. Dartez (HB 1840)

Act No. 1139

Provides for the membership of the **La. Licensed Professional Counselors Board of Examiners**, consisting of 10 members, three of which shall be appointed by the governor from a list of candidates submitted by the executive board of the La. Association for Marriage and Family Therapy. Provides for the filling of any vacancy for the three licensed marriage and family therapists within 30 days.

Effective August 15, 2003. (Amends R.S. 37:1104(A), (B)(1), (2)(a) and (C), 1116(B)(intro. para.) and (C)(intro. para.), 1120(A)(intro. para.), and 1121; Repeals R.S. 37:1104(B)(2)(d) and 1106(A)(9))

6. Dardenne (SB 304)

Act No. 750

Provides that a temporary restraining order issued in conjunction with a rule to show cause for a protective order filed in an action filed pursuant to the Protection from Family Violence Act or the **Protection from Dating Violence Act** shall remain in force until a **hearing** is held on the rule or for **30 days**, whichever occurs first.

Requires the judge to prepare a Uniform Abuse Prevention Order **immediately** upon granting a temporary restraining order or a preliminary or permanent injunction prohibiting a person from harming a family or household member or dating partner.

Provides that **no security or fee** is required for temporary restraining orders or preliminary or permanent injunctions and an applicant for a peace bond is **not** required to prepay or be cast with court costs when the applicant is seeking protection from domestic abuse, dating violence, stalking or sexual assault.

Provides that when a **peace bond** is issued for the purpose of preventing domestic abuse or dating violence, the magistrate or judge shall prepare and sign a **Uniform Abuse Prevention Order** and forward it to the clerk for filing and transmittal to the **Louisiana Protective Order Registry**.

Provides that all **separation, divorce, child custody and child visitation orders and judgments** in family violence cases contain an **injunction** and requires the judge to prepare and sign a Uniform Abuse Prevention Order and forward it to the clerk for filing and transmission to the Louisiana Protective Order Registry.

Provides that the court may grant or restore possession of the residence or household to the petitioner and **evict the defendant**.

Includes dating violence in provisions providing for a **statewide registry** for abuse prevention orders to prevent domestic violence and defines "**dating violence**" to include physical or sexual abuse and any offense against the person as defined by the Criminal Code of Louisiana, except negligent injury and defamation, committed by one dating partner against the other.

Effective August 15, 2003. (Amends C.C.P. Arts. 3603.1(A), 3604(C), 3607.1(A) and (B), and 3610, C.C.P. Arts. 29(B), 30, 327.1, 335.1(A), 871.1 and 895(L)(1), R.S. 9:366 and 372(A), R.S. 13:4243(B) and 4248(A) and (C), R.S. 14:79(A)(1) and (2) and (E), R.S. 46:2135 (A)(2), 2136(A)(2), 2136.2(A), (B) and (F), 2140 (intro para), 2140(1) and (2); Adds R.S. 9:372.1, R.S. 46:1842(9)(d) and 2151(C))

7. Ulló (SB 699)

Act No. 1198

Authorizes service on a defendant of a certified copy of a previously issued temporary restraining order or ex parte protective order, in domestic violence cases, by any law enforcement officer who has been called to any scene where the named defendant is present. Such service shall be deemed sufficient evidence of proper service of process and if noted in the police report shall be admissible in any civil or criminal proceedings.

Effective August 15, 2003. (Amends R.S. 14:79(A)(1))

8. Walsworth (HB 1564)

Act No. 964

Expands the **expedited process** for the determination of paternity and for the establishment and enforcement of support to include other related family and domestic matters including divorces and all ancillary issues, all child-related issues such as paternity, filiation, custody, visitation, and support and certain protective orders.

Authorizes **hearing officers** in district courts to **hear and make recommendations** regarding domestic and family matters including the establishment, modification, and collection of child and spousal support, disputes concerning discovery or the issuance of subpoenas, referrals to or for mediation, medical and psychological evaluation, drug testing, counseling, and substance abuse treatment, protective orders and injunctions, default orders, punishment for constructive contempt, and confirmation of default judgments.

Provides that a **copy of the orders** shall be provided to the parties at the time of the hearing officer's ruling or by service through the clerk of court and if no objection is filed with the clerk of court, the order **shall become a final judgment** of the court and shall be signed and appealable as any other final judgment.

Effective August 15, 2003. (Amends R.S. 46:236.5(C))

C. PATERNITY

1. Johns (HB 876)

Act No. 1239

Provides that on a birth certificate, the **surname** of a child shall be the mother's maiden name if the child is an **illegitimate child**. However, if the natural father is known and he and the mother agree, the surname of the child may be that of the natural father or a combination of his surname and the maiden name of the mother.

Effective July 7, 2003. (Amends R.S. 40:34(B)(1)(a)(iv))

2. Winston (HB 1331)

Act No. 1251

Provides that if the **birth certificate** of an **illegitimate child** fails to list the full name of the father, the full name of the biological father, who is proven so by DNA testing, shall be listed as the father upon submission of a certified copy of the DNA test results, by the father or mother, to the registrar of vital records

Effective August 15, 2003. (Adds R.S. 40:34(B)(1)(h)(vi))

3. Dardenne (SB 983)

Act No. 781

Adds the conviction, commission, aiding or abetting, attempting, conspiring, or soliciting to commit **sexual abuse** toward this child, any other child of the parent, or any other child in his household to the grounds for **termination** of parental rights.

Effective August 15, 2003. (Amends Ch.C. Art. 1015(3))

D. CHILD CUSTODY AND VISITATION

1. Dardenne (SB 975)

Act No. 1209

If both parents have **equal physical custody** of a child, a relocating parent is required to **notify** the other parent of the proposed relocation and then obtain either **court authorization** or the **written consent** of the other parent prior to relocation. The notice shall inform the other parent that an objection to the relocation shall be filed within 30 days of receipt of the notice and he should seek legal advice immediately.

If one parent is entitled to **primary custody** of the child and he **notifies** the other parent of a proposed relocation and the other parent **does not** initiate a proceeding to prevent the relocations within 30 days of receipt of notice, the parent may relocate.

Authorizes the court to grant a **temporary order** allowing a parent to relocate, regardless of whether or not a notice of objection to the relocation has been filed.

Effective August 15, 2003. (Amends R.S. 9:355.1(2), 355.3(B) and (C), 355.7, 355.8(A) and 355.10(A); Adds R.S. 9:355.4(B)(7))

2. Winston (HB 1907)

Act No. 676

When determining the **relocation of a child**, requires the court to consider four new **factors**: (1) the current employment and economic circumstances of each parent and whether the relocation is necessary to improve the circumstances of the relocating parent; (2) the extent to which the objecting parent has fulfilled his financial obligations to the relocating parent and the child; (3) the feasibility of relocation by the objecting parent; and (4) any history of substance abuse or violence by either parent.

Prohibits the court from considering whether the relocating parent will **relocate without** the child if relocation is denied or whether the objecting parent will also relocate if relocation is granted. Requires the court to consider the **benefits** the child will derive from an enhancement in the relocating parent's quality of life when determining if the relocation is in the best interest of the child.

Effective August 15, 2003. (Amends R.S. 9:355.12 and 355.13)

3. Perkins (HB 482)

Act No. 632

Authorizes DSS to develop and implement a program of access and visitation designed to support and facilitate noncustodial parent's access to and visitation of their children. Effective upon receipt of adequate funding specifically covering the costs of the program and approval by the Joint Legislative Committee on the Budget.

(Adds R.S. 46:236.1(B)(4))

E. CHILD SUPPORT

1. Smith (SB 802)

Act No. 1202

Authorizes the court to **deviate** from the mandatory minimum child support award (\$100) if the obligor has a **medically documented disability**.

Effective August 15, 2003. (Amends R.S. 9:315.14)

2. Ellington (SB 855)

Act No. 547

Adds **recurring monetary gifts** to the definition of **gross income** for purposes of calculating child support. However, monetary gifts to the domiciliary party intended to supplement irregular child support payments from the nondomiciliary party are specifically excluded from gross income.

Effective August 15, 2003. (Amends R.S. 9:315(C)(4)(a); Adds R.S. 9:315(C)(4)(d)(iv))

3. Triche (HB 95)

Act No. 355

Repeals the **termination date** of the authority of the Department of Social Services to administratively suspend licenses for nonpayment of child support.

Effective June 18, 2003. (Repeals §2 of Act 612 of 2001 R.S.)

4. Smith (HB 365)

Act No. 622

Authorizes the court to **suspend** an individual's motor vehicle, professional, occupational, business, industrial, or sporting licenses upon proof of a **pattern of nonpayment** evidenced by his failure to pay support on a regular basis, the remittance of payments only after continuous requests or legal action, or the remittance of a de minimis amount of support.

Effective August 15, 2003. (Adds R.S. 9:315.36)

5. Johns (HB 323)

Act No. 618

Provides that when the court orders a parent to enroll a child in a health plan, the insurance company shall allow the **enrollment at any time**, regardless of any enrollment season.

Effective June 27, 2003. (Amends R.S. 46:236.8(G)(2))

6. Triche (HB 449)

Act No. 86

Clarifies that in addition to other legal remedies, DSS shall take all necessary steps and implement a procedure to collect past due child support from **federal tax refunds** in any case where DSS provides services.

Effective August 15, 2003. (Amends R.S. 46:236.1(I)(2))

7. Johns (HB 517)

Act No. 639

Requires financial institutions, through the financial institution data match system, to report a noncustodial parent's **average daily account balance** for the most recent 30 day period if past-due support is owed. Provides that institutions shall not be liable for any previous disclosures of account balances made in cooperation with this Section since the effective date of Act 1278 of the 1997 R.S.

Requires all financial institutions and banks to comply with the provisions of this Act by **January 1, 2005**.

Effective June 27, 2003. (Amends R.S. 6:333(F)(14) and R.S. 46:236.1(D)(1)(d)(ii) and (v))

8. Bowler (HB 303)

Act No. 617

Relative to the **shared custodial worksheet**, clarifies that if parent A's proportionate share of an expense is owed to parent B, because parent B pays child care, health insurance, and extraordinary medical and other extraordinary expenses directly to a third party, parent A should enter zero in the column for the deduction of direct payments.

Effective August 15, 2003. (Amends R.S. 9:315.20 (Obligation Worksheet B))

9. Bowler (HB 1227)

Act No. 1068

Reorganizes R.S. 46:231.1 into ten separate statutes covering the various **family and child support programs** administered by DSS. Retains definitions and authority of DSS to establish programs to enforce and collect support, locate absent parents, establish paternity, obtain and modify support and medical support orders, enter into financial institution data match agreements, and release information regarding support payments to consumer reporting agencies. Authorizes DSS to secure information from various other state agencies, and field officers may make arrests, serve notices, and carry weapons.

Effective July 2, 2003. (Amends R.S. 9:315.40(2); R.S. 46:236.3(A)(1); and R.S. 47:1508(A)(1); Adds R.S. 46:236.1.1-236.1.10; Repeals R.S. 46:236.1)

10. Iles (HB 1259)

Act No. 947

Exempts the office of motor vehicles from including a copy of the certification of nonsupport with its notice of suspension to a licensee.

Effective August 15, 2003. (Amends R.S. 9:315.45(B)(1))

F. CHILDREN'S CODE

1. Ansardi (HB 243)

Act No. 609

Provides a mechanism for the safe, **anonymous relinquishment** of a newborn without fear of prosecution, including the following:

(1) Defines "**designated emergency care facility**" to include any emergency medical service provider, any medical clinic, and any child advocacy center and requires them to appoint an employee who is knowledgeable about the provisions of this Act and to have a representative available after working hours. Defines "**newborn**" as an infant not more than 30 days old and not previously subjected to abuse or neglect because a parent who has abused or neglected a relinquished infant is not exempted from liability.

(2) Provides that a parent may leave a child with a designated emergency care facility or call **911** to transport the child to a hospital.

(3) Requires the department to create a **card**, to provide to the relinquishing parent, containing certain information regarding phone numbers, addresses, the availability of counseling, and parental rights and to establish a toll-free number to direct persons to designated emergency facilities.

(4) Provides that DSS shall immediately be notified of a relinquishment, shall take action to obtain **legal custody**, shall take physical custody within 12 hours of the child's release from the hospital, and shall conduct a hearing within three days of obtaining custody where it must satisfy the **burden** of showing that the child has been relinquished, there is no evidence of abuse, and removal of the child is necessary to safeguard his welfare. Requires the department to conduct a **permanency planning** hearing to develop a plan for the child.

(5) Provides that neither the facility that accepts the child nor the hospital who treats the child **shall not be liable** for carrying out the provisions of this Act except in cases of willful misconduct or gross negligence.

(6) Provides that relinquishment constitutes **consent** for the hospital to perform tests necessary for the care and treatment of the child and requires the hospital to forward information to the Bureau of Vital Statistics to obtain a **birth certificate**.

(7) Provides for the **termination** of the non-relinquishing parents rights if he cannot be identified after a diligent effort. However, if the non-relinquishing parent is identified, notice of the relinquishment and an explanation of his rights (form provided) must be sent to him or a curator must be appointed to represent him.

(8) Allows a relinquishing parent to file a motion evidencing a declaration of **intention to retain parental rights** within 30 days of the relinquishment and authorizes the court to set a hearing within 20 days of the filing and to immediately order blood and tissue tests and a home study of the parent seeking to reclaim parental rights.

(9) Authorizes the court to **terminate parental rights** and certify the child for adoption if no opposition has been filed 45 days after the relinquishment of the infant.

(10) Provides that no action to annul the judgment may be brought for any reason after **90 days** from its signing or after a judgment of adoption, whichever is earlier.

Effective August 15, 2003. (Amends Ch.C. Arts. 424.1(A) and (D), 1015(7), 1101, and 1193(intro. para.); Adds Ch.C. Arts. 1149-1160; Repeals Ch.C. Arts. 1701-1706)

2. Ansardi (HB 171)

Act No. 567

Provides for the continuous revisions of the Children's Code including the following provisions:

(1) Reorganizes the **confidentiality** of records in juvenile court proceedings article and establishes the general principle that juvenile records are confidential and may not be disclosed unless authorized by the Children's Code. Provides **exceptions** to the general rule for nonidentifying information, for parties, counsel, legal representatives, CASA volunteers, child advocacy centers, truancy centers, certain petitioners, certain victims of delinquent acts, district attorneys, and various other state departments. Authorizes the release of **identifying information** to the public to aid in the capture of a child wanted for a felony delinquent act.

- (2) Defines **'institutional abuse or neglect'** as any child abuse which occurs in any public or private residential child care, treatment, or education facility and adds members of the clergy to the definition of **'mandatory reporter'**.
- (3) Requires a facility to formulate a plan of **remedial action** if the department finds a single act of abuse or neglect and requires the facility to make **administrative, personnel, or structural changes** upon a finding of several incidents of abuse.
- (4) Provides that if a report of child abuse or neglect is **inconclusive** the records shall remain **unsealed** for establishing patterns of abuse and may become part of a central registry and, if after an investigation the report is found to be unjustified or false, all records shall be **destroyed** after three years.
- (5) Provides that in predisposition investigations and case plans, the child's established and **significant relationship** with parents, grandparents, siblings, or other relatives should be assessed.
- (6) Provides that after adjudication of a felony or misdemeanor-grade delinquent act, the court may refer the child to other resources available through public and private agencies, not just DSS.
- (7) In procedures to **terminate parental rights** the court shall render its judgment within 30 days of submission, and give written findings. The date the written and signed judgment is entered into the record shall be recorded on the actual judgment and the parties and counsel shall be given a copy of the judgment.
- (8) Requires a **current evaluation**, within the past year, of the adopting parent's home in order to receive preplacement approval and requires the courts placement order to be dated, signed, and authorize placement of the child within one year from the date of the order.
- (9) Narrows the range of professionals eligible to provide **pre-surrender counseling** to surrendering parents and requires the counselor to include the basis for his concerns and any specific recommendation in an affidavit if he questions the mental capacity of a parent to surrender a child for adoption. Provides that the father **may waive** counseling and submit an affidavit, attached to the act of surrender, regarding his understanding of the nature and consequences of his act.
- (10) Provides new **forms** for both of the surrendering parents which include the following declarations: (a) the surrender is without any conditions and (b) the agency or person accepting surrender does not have any knowledge of questions regarding the parents' mental capacity. Also informs the parents that the failure to comply with post-adoption continuing contact agreements will

not revoke the surrender and it is unlawful to make false statements regarding the paternity of a child.

(11) Restricts the **disclosure** of information pertaining to adoptions to the extent necessary to satisfy the petitioner's grounds.

(12) Provides that parents, grandparents, siblings, or other relatives who have an established and significant relationship with the child may have **continuing contact** after the adoption if an agreement for continuing contact is filed within 10 days after the petition for adoption is filed.

Effective August 15, 2003. (Amends Ch.C. Arts. 412, 603(13), 615(E)(2), 616, 668(A), 675(B)(4), 897(D), 899(D), 1037, 1039, 1115(C), 1120, 1122(C) and (F), 1171, 1173(A)(intro. para.) and (3), 1178(B), 1192, 1218(D), 1222(B), 1269.1(A)(intro. para.), and 1269.3(A); Adds Ch.C. Arts. 603(12.1), 612.1, 1122(B)(11), and 1130.1)

3. Mount (SB 303)

Act No. 749

Establishes a **multidisciplinary investigative team response** for the investigation and disposition of all child sexual abuse cases and other physical abuse, neglect or exploitation cases. Authorizes the team to **obtain all information** necessary to perform its official duties from any public agency, department or other organization.

Requires that a copy of the interagency protocols be **filed with the juvenile courts** or the division of the district court that hears juvenile cases, and be provided to every agency involved in the investigation of abuse or treatment of child victims.

Creates child advocacy centers for the purpose of protecting children at risk of harm and provides minimum standards for each center. Provides that the files, reports, records, communications, working papers or videotaped interviews used or developed in providing services at the child advocacy center are **confidential** and not subject to the public records laws.

Grants **immunity from civil liability** to a board member, staff member or volunteer of a child advocacy center and to a multidisciplinary team member, who acts in good faith and while acting in the official scope of his duties.

Effective August 15, 2003. (Amends Ch.C. Arts. 501 and 502; Adds Ch.C. Arts. 507-514, 521-526, and 531-533; Repeals Ch.C. Art. 503)

4. Ansardi (HB 1228)

Act No. 664

Authorizes hearing officers in parishes with a population over 440,000 to **accept mediation** agreements regardless of the stage of the case and to perform other specified duties as may be required by law. **Expires** on January 1, 2006.

Effective August 15, 2003. (Amends Ch.C. Art. 423(A)(2); Adds Ch.C. Art. 423(A)(3))

5. Baylor (HB 1839)

Act No. 891

Authorizes hearing officers to hear and make recommendations regarding **temporary restraining orders and protective orders** in accordance with Ch.C. Arts. 1569 and 1570 (domestic abuse assistance).

Effective August 15, 2003. (Adds Ch.C. Art. 423(C)(6))

6. Schedler (SB 40)

Act No. 5

Exempts information necessary for the operation of child abduction alert system, which assists law enforcement in the successful resolution of child abduction cases, such as the AMBER Alert network, from the confidentiality provisions regarding minors.

Effective August 15, 2003. (Amends R.S. 46:1844(W)(1); Adds Ch. C. Art. 811.1(G)(3))

7. Cravins (SB 332)

Act No. 1185

Replaces the **Interstate Compact on Juveniles** with the Interstate Commission and the State Council for Interstate Supervision, and provides for significant changes to address the management, monitoring, supervision, and return of juveniles, delinquents and status offenders who are on probation or parole and who have absconded, escaped, or run away from supervision and control to a state other than the state where sentenced.

Effective and binding upon legislative enactment of the compact into law by no less than 35 of the states or July 1, 2004. (Adds Ch.C. Arts 1661-1673; Repeals Ch.C. Arts 1623-1657)

8. Landrieu (HB 1105)

Act No. 940

Authorizes juvenile courts to utilize or initiate a **teen or youth** court program and to assess a fee to a participant in the program to offset costs.

Effective August 15, 2003. (Adds Ch.C. Art. 839(C) and 896(G))

9. C. Jones (SB 552)

Act No. 762

Requires the court, in every case or proceeding involving a judgment of disposition of a child, to **refrain** from manifesting by any words or conduct, bias or prejudice based on race, sex, religion, national origin, age, or disability.

Effective August 15, 2003. (Amends Ch.C. Art. 903(A))

IV. PROPERTY

A. GENERAL

1. Bajoie (SB 331)

Act No. 1184

Prohibits antique dealers from accepting **used building components** from any person under 18 years of age, knowingly accepting used building components they knew or should have known were stolen, and falsifying, obliterating, or removing from the records, or failing to include in the report any accounts related to transactions involving used building components.

Defines "**used building components**" and adds them to the items which constitute second hand property bought, sold, traded or otherwise acquired by second hand dealers and to the types of property which constitute "antique property".

Provides that all definitions in the antique dealer law only apply to parishes with a population in excess of **200,000** and requires antique dealers to list the manufacturer, model, model number and serial number, if discernible, when describing items which shall be included in the informational report dealers are required to provide to the chief of police or the sheriff and provides **penalties** for noncompliance.

Effective July 3, 2003. (Amends R.S. 37:1861(A)(1), 1864, 1869, 1871(1), 1874(A) and (B)(13)(a) and (c), 1877, 1879, and 1880; Adds R.S. 37:1861(A)(3) and (4), 1871(3) and (4), 1874(B)(13)(f))

2. Dupre (SB 458)

Act No. 494

Requires mortgagee servicing agents or any holder of a note to deliver the original note and **instructions regarding the cancellation** of the mortgage inscriptions to the mortgagor or his agent within 60 days after receipt of full payment of the balance owed.

Effective August 15, 2003. (Adds R.S. 9:5167.2)

3. Bruneau (HB 479)

Act No. 156

Provides that if immovable property is susceptible to partition by licitation or private sale and a co-owner or co-owners owning an aggregate of **15% or less** of the property petition the court to partition the co-owned property, the court shall allow any of the remaining co-owners to purchase at private sale the petitioners' shares.

Each remaining co-owner shall only be entitled to purchase a portion of the property being sold equal to his **pro rata share** and each remaining co-owner shall have 30 days from the date the last defendant is served with the petition or 30 days from receipt of written notice from a co-owner waiving his right to purchase, whichever is earlier, in which to file the notice to exercise his option to purchase his pro rata share.

Upon the lapse of the 30th day, any co-owner who has failed to exercise his option shall **relinquish his right** to purchase his pro rata share and the relinquishment shall enure to the benefit of the remaining purchasing co-owners, who shall then be entitled to purchase, by pro rata share, the forfeited right to purchase.

The initial calculation of the pro rata share shall be based on the **percentage of ownership** of the potential purchasing co-owners, excluding the petitioning co-owners, and if a potential purchasing co-owner relinquishes his right to purchase, the pro rata share shall be recalculated to include only the remaining purchasing co-owners.

Effective June 2, 2003. (Adds R.S. 9:1113)

4. Bowler (HB 1543)

Act No. 722

Presumes that co-owners acquire immovable property in equal portions, but specifies that for this presumption a husband and wife acquiring together for the community are considered one co-owner.

Effective August 15, 2003. (Adds R.S. 9:2729)

5. Johns (HB 65)

Act No. 1005

Authorizes the **reduction** of a term in an **option or right of first refusal** to the 10-year maximum term if a longer time was stipulated in a contract.

This Act applies to all claims or actions pending on its effective date and all claims arising or actions filed on and after its effective date.

Effective July 2, 2003. (Amends C.C. Art. 2628)

6. Landrieu (HB 2007)

Act No. 984

Authorizes a municipality with a population in excess of 450,000 to **expropriate** abandoned or blighted property by a **declaration of taking** ("quick take") and provides for notification to the landowner by certified mail of the intention to expropriate. Requires the filing of a petition and

resolution regarding the public purpose, depositing an amount equal to the estimated value of the property with the court, and vesting of the title in the municipality.

Grants the defendant an opportunity to contest the validity of the taking, applicability only to blighted property within a **federally-designated census tract** in which 10% or more of the property is blighted, and an equal opportunity for all natural and juridical persons and business entities to **purchase** expropriated blighted property from the governing authority.

The provisions of this Act are not applicable until after the expiration of any applicable redemptive period provided by law.

Effective August 15, 2003. (Adds R.S. 19:136-136.11)

7. DeWitt (HB 280)

Act No. 262

Provides a procedure for acceptance by the state of a **donation** of immovable property. Authorizes the commissioner of administration to evaluate any offer of donation to determine whether or not it is in the best interest of the state to accept the donation. Prior to final acceptance of the donation, it shall receive the **approval** of the House and Senate committees on natural resources. The legislative committees shall have 45 days within which to meet and review the report submitted by the commissioner. If both committees approve the donation or 45 days pass with neither committee disapproving the donation, the commissioner is authorized to accept the donation on behalf of the state.

Requires the division of administration to submit an **annual report** detailing property received by the state through donation, the estimated value of the property, and the agencies receiving the property.

Effective June 10, 2003. (Adds R.S. 41:151)

8. Diez (HB 1171)

Act No. 1065

Relative to expropriation by DOTD, deleted the requirement that DOTD annex a **certificate** to the petition to expropriate property declaring the itemized statement of the amount of money estimated to be the full extent of the owner's loss was mailed to the property owner, by certified mail return receipt requested, not less than 30 days before the petition was filed.

Effective July 1, 2003. (Amends R.S. 48:442(3)(b), (c), and (d); Repeals R.S. 48:442(3)(e))

9. Dartez (HB 1916)

Act No. 981

Provides for the disposition of **noncontraband property** by a local police department by authorizing donation of usable and appropriate property to nonprofit organizations. Provides further that if any property is determined to be unusable, then the property is to be sold or destroyed.

Effective July 1, 2003. (Amends R.S. 33:2333(B)(2)(a); Repeals R.S. 33:2333(B)(3))

10. Diez (HB 763)

Act No. 101

Relative to the Louisiana Towing and Storage Act, changes the requirement that **notices** regarding the storage of vehicles or the disposal of junk or abandoned vehicles be sent by certified mail, return receipt requested, to certificate of mailing.

Effective August 15, 2003. (Amends R.S. 32:1720(A), 1728.2(D)(intro. para.) and (E)(intro. para.), and 1728.3(D)(2) and (E)(intro. para.))

11. Daniel (HB 1373)

Act No. 715

Provides that if improvements are made on the land of another and are not removed within 90 days of written demand, the **landowner may appropriate** them by providing an additional written notice by certified mail, and upon receipt of the certified mail by the owner of the improvements, the landowner obtains ownership of the improvements. However, the improvements shall remain the property of the person who made them until the landowner appropriates them and the person who made the them is solely responsible for any **harm caused** by the improvements.

Effective August 15, 2003. (Amends C.C. Art. 493)

12. Hoyt (SB 923)

Act No. 552

Creates the **Uniform Fraudulent Transfer Act** and provides that a transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

- (1) With actual **intent** to hinder, delay, or defraud any creditor of the debtor; or
- (2) Without receiving a **reasonably equivalent value** in exchange for the transfer or obligation, and the debtor:

- (a) Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or
- (b) Intended to incur, or believed or reasonably should have believed that he or she would incur, debts beyond his or her ability to pay as they became due.

Provides that a transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose **before** the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a **reasonably equivalent value** in exchange for the transfer or obligation and the debtor was insolvent at that time or became insolvent as a result of the transfer or obligation or if the transfer was made to an **insider** for an antecedent debt, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent.

The **cause of action** with respect to a fraudulent transfer or obligation is **extinguished** unless the action is brought within **four years** after the transfer was made or the obligation was incurred or, if later, within one year after the transfer or obligation was or could have been discovered; or within four years after the transfer was made or the obligation was incurred; or within one year after the transfer was made or the obligation was incurred.

Relative to revocatory action, provides that the act of the obligor can be **annulled** when there is a conversion of non-exempt assets into exempt assets as provided for in the Uniform Fraudulent Transfer Act. Provides that an obligor is insolvent when the total of his liabilities exceeds the total of his fairly appraised **non-exempt** assets.

Effective August 15, 2003. (Amends C.C. Arts. 2036 and 2037; Adds R.S. 9:2790.1 through 2790.12)

13. Lentini (SB 410)

Act No. 491

Upon recommendation of the Louisiana State Law Institute, revises the articles on **deposit and sequestration** and provides that a deposit may be either **onerous or gratuitous** and for onerous obligations, the depositary is bound to fulfill his obligation with diligence and prudence and for gratuitous obligations, the depositary is bound by the same diligence and prudence in caring for the thing that he uses for his own property.

Provides that if the thing deposited is **lost or deteriorated** without fault of the depositary, the depositary is nevertheless bound to deliver the depositor whatever value he received as a result of that loss, including insurance proceeds.

Relative to **deposit with innkeepers**, provides that an innkeeper is obligated to accept for deposit the personal belongings of guests, unless he is unable to provide such service because of the excessive value, size, weight, or nature of the things sought to be deposited. Provides that an innkeeper is a **compensated depositary** and if an innkeeper places a safe in the guest's room, he is not a depositary of the things that the guest places in the safe, he is merely providing a service that is accessorial to the contract of lodging.

Relative to **sequestration**, it is governed by the rules applicable to deposit, to the extent that their application is compatible and judicial sequestration is governed by the rules applicable to deposit and conventional sequestration, to the extent their application is compatible. Provides that a judicial depositary is entitled to a **fee** to be paid in accordance with a court order.

Effective January 1, 2004. (Amends Title XIII of Book III of the Civil Code, to comprise C.C. Arts. 2926-2951)

14. McPherson (SB 41)

Act No. 180

For acquisition of a right-of-way or servitude for any highway in the state highway system, DOTD may begin negotiations with the owner to acquire the property upon application of an owner of the property that is needed. Provides that negotiations shall begin after verification through the preliminary planning process that the property is required.

Effective August 15, 2003. (Amends R.S. 48:217(A))

15. K. Carter (HB 1567)

Act No. 1113

Authorizes the commissioner of administration to enter into a cooperative endeavor agreement with the city of New Orleans to utilize the current Louisiana State Supreme Court as the new **civil district court** site.

Requires the city of New Orleans, as part of the agreement, to provide 30,000 square feet of office space to accommodate the needs of the office of public health, vital records, and other offices housed in the state building located at 325 Loyola Avenue in New Orleans.

Effective July 2, 2003.

16. Bowler (HB 1544)

Act No. 723

Provides that land which is described pursuant to a survey, or using metes and bounds, as actually fronting or being bound by a waterway, canal, highway, road, street, alley, railroad or other right-

of-way, shall be construed to **include all of the grantor's interest** in the waterway, canal, highway, road, street, alley, railroad, or other right-of-way.

Effective August 15, 2003. (Amends R.S. 9:2971)

17. Daniel (HB 1432)

Act No. 1254

Establishes the **Louisiana Purchase Commemorative Act Commission** as a state agency in the Dept. of Culture, Recreation and Tourism and charges the commission with the location and identification of monies available to use for the purchase of land for use as **greenspace and public parks** and to identify and purchase such land.

Effective August 15, 2003. (Adds R.S. 36:209(T), 802.18, and R.S. 41:1751-1753)

18. Daniel (HB 1374)

Act No. 716

Provides that an owner has **no responsibility** to keep property which is not used for commercial recreational activities safe for entry or use by others for hunting, fishing, or other outdoor activities whether the **hazardous condition** causing the harm is one normally encountered in the true outdoors or is one created by the placement of structures or conduct of commercial activities. If the owner gives **permission** for another to enter the premises, he does not extend any assurance of safety nor does he assume responsibility for injury.

Effective August 15, 2003. (Amends R.S. 9:2791(A))

B. COASTAL RESTORATION

1. Pitre (HB 424)

Proposed constitutional amendment to authorize the legislature to place **limitations** on the extent of **recovery** for the taking of, or loss or damage to, property rights affected by coastal wetlands conservation, management, preservation, enhancement, creation, or restoration activities. If amendment adopted, HB 531 (Act 583) (see below) limits such judgments to fair market value of the damaged property.)

Provides for submission to the voters at the gubernatorial primary election. (Amends Const. Art. I, §4)

2. Pitre (HB 531)

Act No. 583

Provides that compensation paid for the taking of, or loss or damage to, property is **limited to** the basis in the Fifth Amendment of the U.S. Constitution.

Applies both **prospectively and retroactively** and applies to all pending and existing and future claims and property interests covered by the provisions of this Act.

Effective if and when the constitutional amendment proposed in House Bill No. 424 of this 2003 R.S. is adopted. (Adds R.S. 49:213.9)

3. Pitre (HB 766)

Act No. 652

Reenacts the following provisions in accordance with **La. Const. Art. XII, §10**:

(1) Provides that the state shall be held **free and harmless** from any claims for loss or damages to rights arising under any lease, permit, or license granted to any individual or other entity for any purpose on state lands or water bottoms from diversions of freshwater or sediment, depositing of dredged or other materials, or any other actions taken for coastal restoration.

(2) Requires all departments, agencies, boards, or commissions of the state to include language which shall **hold the state and its political subdivisions harmless** in all leases, permits, or licenses granted to any individual or other entity after July 1, 1995.

The provisions of this Act apply both **retroactively and prospectively** to all pending, existing, and future claims.

Effective June 27, 2003. (Amends R.S. 49:214.5)

4. Landrieu (HB 1116)

Act No. 941

Creates the **America's WETLAND Trail** in the Governor's Office of Coastal Activities in order to heighten awareness of the dramatic coastal land loss occurring in south La. and what that loss means to the entire state and the nation and to promote an understanding of how important the wetlands are to the state and nation and what benefits are derived from the wetlands.

Effective August 15, 2003. (Adds R.S. 49:214.16)

5. Pierre (HB 991)

Act No. 696

Relative to oyster leases, requires the secretary of the Dept. of Wildlife and Fisheries to notify a lease owner that a lease will be temporarily impacted and the lease **will not** be renewed at the end of the lease term, but it may be **eligible for renewal** in the future if the lease is no longer directly impacted.

Requires the leaseholder to stipulate that he accepts the water bottom in the condition it exists on the date of issuance of the new lease with **no ability to take action** against the state for any damage that may have occurred between the end of the previous lease term and the new lease date.

Effective July 1, 2003. (Adds R.S. 56:428.3)

C. BLIGHTED PROPERTY

1. Bajoie (SB 431)

Act No. 1188

Increases the population requirement to **470,000 or more** for the acquisition of an immovable which has been declared **blighted** and which has been improved by the possessor.

Requires the mailing of the judgment, certificate or proof and affidavit within **one week** after the judgment, to the owner of record, owners having a common boundary, and all parties having an interest in the property. Provides that the possessor shall request from the recorder of mortgages a mortgage certificate within **90 calendar days** of the date the affidavit was filed and authorizes the possessor to take corporeal possession no later than **60 days** from the date the mortgage certificate is generated. Deletes the provision allowing the enforcement of the security interest by any party having a security interest in the immovable.

Requires the owner to **reimburse the possessor** for attorney fees and costs, tax statements or researches, mortgage or conveyance certificates, title abstracts, filing fees, postage, copies, printing, and for any other reasonable costs incurred or work done by the possessor if the owner is successful in bringing a real action against the possessor. Authorizes the use of **affidavits** to establish the hourly rate charged for work done and grants the possessor a **lien** for all expenses and monies spent and provides that it may be pledged or assigned to secure any loan or loans made to the possessor for the purpose of financing the acquisition, rehabilitation, demolition, or construction of improvements on or to the immovable.

Provides that if the possessor of any blighted property has met all of the requirements, any mortgage, lien, privilege, judgment, or security interest encumbering the immovable property,

except those imposed by the municipality or parish, shall have **no effect**, the holder may not enforce it by seizure and sale or other in rem action, and the clerk of court or the recorder of mortgages shall **cancel** them from the records.

Clarifies that the definition of "**residential or commercial structure**" shall not include garages, sheds, barns, or other outbuildings.

Provides that the filing of any **forged or wrongfully altered** affidavit, notice of judgment, certificate, proof, mortgage certificate, or notice of judgment containing a false statement or false representation of a material fact, shall be a **felony** pursuant to R.S. 14:133, and shall be actionable under C.C. Art. 2315.

Effective July 3, 2003. (Amends R.S. 9:5633(A)(1), (2)(a), (3), (4), (6), (7), (8)(a), (9) and (10), (D), (E), (F), and (G); Adds R.S. 9:5633(I), (J) and (K))

2. Bajoie (SB 800)

Act No. 307

Relative to the sale of property on which taxes have not been paid, changes the reference to the "three-year" redemptive period to the "**redemptive period**" and provides that a tax debtor, his heir, administrator, executor, assignee, or successor shall not have a **right of redemption**. (La. Const. Art. VII, Sec. 25(B)(2) provides for an 18-month redemptive period for tax sales of abandoned or blighted property.)

Effective June 13, 2003. (Amends R.S. 33:4720.27, 4720.29(A), 4720.30(A) and 4720.32)

3. Bajoie (SB 830)

Act No. 234

Establishes a mechanism whereby parishes and municipalities are empowered to sell **adjudicated vacant lots** to adjoining landowners who have maintained the lots for at least **one year**, but the owner of record remains liable for damages to persons or property during the period between the adjudication and post adjudication sale.

Provides that this adjudication of property to a parish or municipalities for nonpayment of taxes shall be deemed a **tax sale** and requires the governing authority of any parish or municipality to enact an **ordinance** approving these private sales. Provides that the purchaser shall be deemed to have purchased the property at a tax sale and the tax debtor, his heir, administrator, executor, assign or successor shall **not** have a right of redemption after the adjudication.

Provides that the adjudication shall be **recorded** in the conveyance of records of each parish where the property is located and recordation operates as a **cancellation** of all liens, privileges, conventional and judicial mortgages, and other encumbrances recorded against the property sold.

Effective June 5, 2003. (Adds R.S. 33:4720.40 thru 4720.49)

4. Bajoie (SB 902)

Act No. 241

Provides that a political subdivision may sell abandoned property at **public or private** sale and requires them to enact ordinances setting forth a uniform policy for determining the sales price and approving the sale. Emphasizes that no new **redemptive period** begins after a post-adjudication sale of abandoned or blighted property.

Provides that at least 60 days before the **post-adjudication sale**, the political subdivision must **notify** the owner, the mortgagee, and any other person who may have a vested or contingent interest in the property, or who has filed a request for notice in the mortgage or conveyance records of the parish in which the property is located.

Effective June 5, 2003. (Amends R.S. 33:4720.15, 4720.16(A), 4720.17(A), and 4720.18)

5. Peychaud (HB 422)

Act No. 266

Provides that the **proper address** for notifying the property owner prior to a determination that property is blighted and subject to acquisition by the New Orleans Redevelopment Authority is the address of the property owner as listed in the **assessor's** office of the parish.

Provides that if the notice to the owner is returned as undeliverable or as not accepted, notice shall be given in the **official journal** of the municipality.

Effective June 10, 2003. (Amends §8.1(D)(2) of Act No. 170 of the 1968 R.S., as enacted by Act No. 155 of the 1984 R.S. and amended by Act No. 101 of the 1997 R.S.)

6. Broome (HB 883)

Act No. 859

Relative to the post-adjudication sale or donation of adjudicated property, authorizes a purchaser or donee of such property to **record an affidavit** pertaining to notice procedures. Requires clerks of court to **cancel** liens, privileges, mortgages, and other encumbrances recorded against property adjudicated to a political subdivision upon post-adjudication sale or donation. Provides that such adjudicated property is not subject to certain provisions relative to transfer of public property.

Effective July 1, 2003. (Amends R.S. 33:2870, 2891.4, 4720.16(C), and 4720.30(C); Adds R.S. 33:2881, 4720.16(D), and 4720.29(D))

D. COMMUNITY PROPERTY

1. Ellington (SB 844)

Act No. 837

When the court partitions community property, it may include the **goodwill** of a community commercial business in its valuation of the business. However, goodwill **shall not** be included if it results solely from the identity, reputation, or qualifications of the owner or from his relationship with customers.

Effective August 15, 2003. (Adds R.S. 9:2801.2)

2. Townsend (HB 813)

Act No. 1036

Provides that when federal law or pension and retirement plans preempt or preclude community classification of property and the community property consists of social security benefits the court **may** allocate an equal amount of community property to the other spouse.

Effective August 15, 2003. (Amends R.S. 9:2801.1)

E. TAXES

1. Martiny (HB 1177)

Act No. 946

Requires a purchaser of immovable property at a **tax sale** to provide notice of the sale of that property, within 30 days, to the prior owner of the property who failed to pay the taxes by **mailing and delivering** to the prior owner a notice that the property has been sold for taxes, the purchaser's name, address, and telephone number, a copy of the deed of sale received by the purchaser, and inform the prior owner that if he fails to redeem his property within the **three-year redemption period**, the purchaser has the right to confirm the tax title and take actual possession of the property.

Provides that **no earlier than nine months and no later than six months** before the end of the three-year redemption period, the purchaser shall provide a **second notice** of the sale of the property to the prior owner of the property.

Act is not applicable to the sale of any property which occurs prior to August 1, 2003.

Effective July 1, 2003. (Amends R.S. 47:2183)

2. Ellington (SB 1115)

Act No. 791

Provides that when the assessed valuation finally determined by the court is less than the amount determined by the Louisiana Tax Commission, the company shall be entitled to a **credit** and if a company chooses a refund, that refund shall be paid by the tax collector of each affected jurisdiction no later than **March 31st** of the year subsequent to any final determination.

Extends the effective date of Section 2 of Act 1149 of 2001 until July 1, 2005. That Act eliminated certain payment under protest and escrow provisions in the property tax law and allowed expenditure of disputed property taxes for nonrecurring expenses.

Effective June 30, 2003. (Amends R.S. 47:1856(E) and (F)(1)(a)(i), and 1857(B)(2) and Sec. 2 of Act 1149 of 2001)

3. Barham (SB 791)

Act No. 61

Provides that for purposes of local sales and use tax and without regard to the nature of the ownership of the ground, tangible personal property **shall not include** other constructions permanently attached to the ground which are treated as immovable property.

Effective May 23, 2003. (Adds R.S. 47:301(16)(l))

4. Triche (HB 1297)

Act No. 878

Provides that **state tax liens, privileges, and mortgages** upon all property, rights to property, and after-acquired property, whether immovable or movable, arise at the time the tax is assessed or at the time the return is filed, and continue until the liability for the amount assessed or a judgment against the tax debtor is satisfied or becomes unenforceable because of a lapse of time.

Provides that the secretary may **record** the notice of the lien, privilege, and mortgage upon **immovable property** at any time after the tax becomes due or the assessment is made in the mortgage records where the tax debtor owns property and the secretary may record the notice affecting **movable property** with any clerk of court or with the recorder of mortgages in Orleans Parish and all costs associated with filing the notices shall be assessed against the taxpayer. Provides that the lien, privilege, and mortgage **shall not be valid** against any mortgagee, purchaser, secured party, judgment lien creditor, or person holding a repairman's or vendor's privilege whose interest in any property of the tax debtor is **perfected** prior to the time notice is recorded.

Effective July 1, 2003. (Adds R.S. 47:1577)

5. Daniel (HB 1582)

Act No. 670

Provides that individuals filing complaints regarding the **assessment of movable and immovable property** with the local boards of review shall notify the board by personal appearance or by certified mail or facsimile transmission received at the board office no later than seven days prior to the public hearing.

Authorizes a tax assessor and members of his immediate family to own property within the parish or district in the jurisdiction of the assessor, but requires the assessor to assess the property in accordance with all applicable provisions of law and submit the assessments to the tax commission for review.

Effective June 27, 2003. (Amends R.S. 47:1992(C); Adds R.S. 47:1979)

6. Alario (HB 478)

Act No. 88

Adds **Jefferson Parish** to those parishes in which the tax assessor is required to provide forms to property owners for permanent registration of the homestead exemption.

Effective August 15, 2003. (Amends R.S. 47:1703.1(A))

F. CRIMES INVOLVING PROPERTY

1. Johnson (SB 1027)

Act No. 843

Makes it unlawful for any person, with the **intent of intimidating** another person or group of persons to burn, or cause to be burned, a cross on the property of another, a highway, or other public place. Provides a **penalty** of a fine of not more than \$15,000 or imprisonment with or without hard labor for not more than 15 years, or both.

Effective August 15, 2003. (Adds R.S. 14:40.4)

2. Bajoie (SB 476)

Act No. 1190

Creates the crime of **theft of a used building component** and defines it as the intentionally permanent misappropriation or taking of a used building component from immovable property belonging to another, either without the consent of the property owner or by means of fraudulent conduct.

Defines "**used building component**" and provides **penalties** depending upon the value or replacement value ranging from imprisoned, for not more than six months, or fined not more than \$500, or both to imprisonment, with or without hard labor, for not more than ten years or fined not more than \$3,000, or both.

Effective July 3, 2003. (Adds R.S. 14:67.22)

3. Thompson (HB 948)

Act No. 107

Provides that no person, in the course of a sale, attempted sale, delivery, or other completed or attempted transaction involving **forest products**, shall willfully or knowingly make a false statement or cause a false statement to be made with regard to ownership of the forest products, of the land where the forest products were harvested, or with regard to location of the land where the forest products were harvested.

Effective August 15, 2003. (Amends R.S. 14:212(A))

4. Lentini (SB 98)

Act No. 802

Forbids any person from **entering into or upon or remaining in or upon** any structure, watercraft, or movable or immovable owned by another without expressed, legal, or implied authorization. Specifies that in any defense the burden is on the defendant to prove he had **authority**. Grants unrestricted authority to certain persons such as law enforcement officers and firefighters and provides that some people, including land surveyors, deliverymen, pollster and solicitors, have authority unless forbidden by the owner.

Provides increasing **penalties** from not less than \$100 nor more than \$500 or imprisonment for not more than 30 days, or both to not less than \$500 nor more than \$1000 or imprisonment for not less than 60 days nor more than six months, or both and forfeiture of any property seized in connection with the violation.

Regarding **civil liability**, specifies that owners, lessees, and custodians of property are not answerable for damages sustained by a person who enters upon the property without authorization or who remains, without legal authorization, after being forbidden by the owner, but they may be answerable for such damages upon a showing that the damages were sustained as a result of the **intentional acts** of the owner, lessee, or custodian.

Effective August 15, 2003. (Amends R.S. 14:63; Repeals R.S. 14:63.1, 63.2, 63.5, 63.6, 63.7, 63.8, 63.9, 63.10, and 63.12)

5. Martiny (HB 21)

Act No. 596

The failure to return or surrender a rented or leased motor vehicle within **seven calendar days** after **notice** to make such return surrender has been sent by certified mail to the offender's last known address or delivered by commercial courier, shall be **presumptive evidence** of his intent to defraud, and the lessor may report to any law enforcement agency that the rented or leased motor vehicle has been **stolen**.

Effective August 15, 2003. (Amends R.S. 14:220(A))

G. REAL ESTATE

1. Bruneau (HB 176)

Act No. 568

Defines "**home inspector**" as a person who holds himself out to the general public as an inspector, engages in the business of performing home inspections on resale residential buildings for compensation, or who examines any component of a building, through visual means and through normal user controls, without the use of mathematical sciences and requires the inspector to provide a **written report** of the inspection within five calendar days from the date of the inspection.

Requires the board to adopt and approve a **licensing examination** and establish or approve an **association** or associations for the purpose of availing licensees to the benefits of group insurance rates. Exempts from licensure persons who perform certain warranty evaluations and provides that no home warranty company shall refer to a warranty evaluation as a home inspection in any written materials provided by the home warranty company.

Authorizes the board to **fine** any applicant, any other person holding himself out as a home inspector, or any member of the public for aiding or abetting a person to **evade the law** by engaging in conduct or advertising or holding oneself out as engaging in or conducting the business or acting in the capacity of a home inspector without possessing a valid license; or, falsely representing oneself as being the holder of a valid license by using the title "licensed home inspector" or any title, designation, or abbreviation deceptively similar or likely to create the impression that such person is licensed.

Provides for the issuance of a **temporary restraining order** upon proper showing by the board that a person or firm has engaged in a prohibited activity, conduct, or practice and provides for the issuance of preliminary and permanent injunctions.

Effective August 15, 2003. (Amends R.S. 37:1473(4) and (5), 1475(8), 1476(A), 1478(A), 1481(A)(2), and 1485(B); Adds R.S. 37:1483(12), 1485(C) and 1488(C); Repeals R.S. 37:1485(A)(10) and (11))

2. Flavin (HB 1681)

Act No. 1123

Requires the La. Real Estate Commission to approve a **mold informational pamphlet** by April 1, 2004, which may be distributed to buyers by licensees for any real estate transaction entered into on or after July 1, 2004.

Provides that if the licensee **delivers** the pamphlet to the buyer, the licensee is not required to provide any other information to the buyer concerning mold and the licensee is **not responsible** for any error, inaccuracy, or omission concerning the information if it was not within the personal knowledge of the licensee or it was based on information provided to the licensee by the commission, a public agency, or based on the opinion of a qualified expert.

Requires that licensees acting as agents or subagents and **registrants** shall insure that principal parties that sign any document in a real estate transaction are provided a **copy of the signed document** immediately after signing and parties to transactions which involve multiple people shall be provided a copy of the completed document with all the parties' signatures within **five days** after the last signature is affixed to the document.

Effective July 2, 2003. (Amends R.S. 37:1449(A) and (B); Adds R.S. 37:1431(33) and 1470)

3. Pinac (HB 92)

Act No. 308

Requires the seller of **residential real property** to complete a **property disclosure statement** form, promulgated by the Louisiana Real Estate Commission, to the best of his belief and knowledge and deliver it to the purchaser no later than the time an offer is made to purchase the property.

Provides that any rights of the purchaser to terminate the real estate contract are **waived** if not exercised prior to transfer of title or occupancy, whichever is earlier. Provides that a property disclosure **shall not** be considered a warranty by the seller and may not be used as a substitute for any inspections or warranties that the purchaser or seller may obtain.

Exempts a seller from liability for any error, inaccuracy, or omission of any information in the disclosure if it was **not a willful** misrepresentation or it was based on information provided by a public body or by another person with special knowledge that the seller believed to be correct.

Requires a **real estate licensee** to inform his clients of their duties and rights and exempts a licensee representing a seller from any liability, unless he has actual knowledge of an error, inaccuracy, or omission.

Applies to all transfers of interest in residential real property occurring **on and after July 1, 2004**. Provides numerous exemptions including: court-ordered transfers, transfers to a mortgagee by a mortgagor or successor in interest who is in default, transfers of newly constructed property, and transfers from one or more co-owners solely to one or more of the remaining owners.

Effective June 13, 2003. (Adds R.S. 9:3195-3199 and R.S. 37:1455(A)(33))

4. Johnson (SB 840)

Act No. 770

Grants a condominium association, which has managed a property in good faith, an additional separate **privilege** on the condominium parcel for **unpaid assessments** to pay water, sewerage, electrical, or natural gas utilities on behalf of each unit.

Requires a municipal or parish governing authority or other entity to **notify** the condominium association of its **intent to file suit** prior to instituting suit for payment of water, sewerage, electrical, or natural gas service fees to a condominium property and upon receipt of notification the association shall provide the authority a list of individual units for which fees or taxes are **delinquent** or past due and notify each condo owner of institution of the suit.

Authorizes the municipal or parish governing authority to proceed with the **sale of the property** as provided by law if the unit is abandoned property and provides that if a unit is determined to be abandoned or blighted housing property it may be adjudicated to the municipality or parish for nonpayment of such taxes or assessments.

Effective August 15, 2003. (Adds R.S. 9:1123.115.1))

5. Pinac (HB 1838)

Act No. 978

Revises the **Louisiana Timesharing Act**, which applies to the sale, offer to sell, or solicitation of persons for the sale of any timeshare interest in immovable property located in Louisiana and certain timeshare interests located outside of Louisiana.

Provides that no person shall sell, offer to sell, solicit or attempt to solicit prospective purchasers to purchase a timeshare interest in timeshare property to any person located in Louisiana, unless it is pursuant to a **timeshare plan registered with and approved by the La. Real Estate Commission** and requires developers to **file a public offering statement** with the La. Real Estate Commission for its approval prior to offering any timeshare interest and requires the Commission to review all registrations required under the Timesharing Act.

Provides that a developer who uses a **prize or gift promotional** in connection with the offering of a timeshare interest shall **clearly disclose** that the purpose of the promotion is to sell timeshare interests, the name of each developer and the name of each person paying for the promotion, the

complete rules of the promotion, the method of awarding the prize, gift, or other benefit, if a game of chance, the odds of winning, and other disclosures as provided by rule.

Provides that a purchase **contract may be voided** by either party, without penalty, within seven calendar days after the receipt of the public offering statement or the execution of the contract, whichever occurs later. Cancellation must be accomplished by **written notice, hand-delivered** to the other party.

The provisions of this Act shall not apply to any timeshare project, plan, or developer which has filed and been approved to operate as a timeshare project by the La. Real Estate Commission on or before June 1, 1985, and whose developer has not been suspended by the commission, and if approved prior to July 20, 1984, has been actively and continuously marketed as a timeshare project or plan.

Effective August 15, 2003. (Amends R.S. 9:1131.2(20) and (22), 1131.4(A), (B), (C)(2), (5), and (6), and (D), 1131.8, 1131.9(B) and (C), 1131.10.1, 1131.12(B), (C)(3), (D)(intro. para.), (E)(6), (F), and (G)(2) and (3), 1131.13(A), (B), and (E), 1131.20(B), (C), (D), (J), and (K), 1131.21(B) and (C), 1131.23 (A)(intro. para.) and (G), and 1131.28(A) and R.S. 37:1437.1(B)(1)(a) and (C); Adds R.S. 9:1131.3(E)-(H), 1131.4(F), 1131.9.1, 1131.9.2, 1131.12(D)(3)-(7), and 1131.16.1 and R.S. 37:1437.1(G); Repeals R.S. 9:1131.4(C)(7)-(13), 1131.10, 1131.12(E)(14) and (18), 1131.12(G)(4)-(8), 1131.13(F), 1131.14, 1131.15, 1131.16, 1131.20(E)-(I), 1131.21(D), and 1131.28(B) and (C))

6. Flavin (HB 452)

Act No. 321

Provides that a real estate salesperson or an associate broker shall be deemed to be an **independent contractor** of the broker if: (1) the salesperson is a licensee, (2) substantially all remuneration for the services performed are directly related to sales or other output rather than the number of hours worked, and (3) there is a written agreement between the salesperson and the broker specifying that the salesperson will not be treated as an employee.

Effective August 15, 2003. (Adds R.S. 37:1446(H))

7. McPherson (SB 421)

Act No. 902

Exempts owners of property who assume charge of the construction, repair, improvement, or any other construction undertaking on their property for their own use, and which will not be for sale or rent and the control of access to which shall be controlled by the owner so that only employees and non-public invitees are allowed, from obtaining a contractor's license from the Louisiana State Licensing Board of Contractors.

Effective August 15, 2003. (Amends R.S. 37:2157(A)(2))

8. Flavin (HB 943)

Act No. 333

Expands the definition of "owner" under the **New Home Warranty Act** to include heirs, invitees, and assigns to a home. Provides that **mold and mold damage** shall not be warranted by a builder unless the parties otherwise agree in writing. Provides that the New Home Warranty Act provides the exclusive **peremptive** periods between builders and owners relative to home construction and no other provisions of law regarding warranties and redhibitory vices and defects shall apply.

Effective August 15, 2003. (Amends R. S. 9:3143(6), 3144(A)(2), and 3150; Adds R.S. 9:3144(B)(19))

V. MORTGAGES, SECURITY DEVICES, AND PRIVILEGES

1. Fruge (HB 1103)

Act No. 873

Deletes the requirement that the name of the person alleged to be liable to the injured person be included in the written notice in order to effectuate the **privilege of the health care provider**, hospital, or ambulance service on the payment of proceeds recovered by the injured person. **(Same provision as found in HB 1884 by Hebert, see below)**

Effective August 15, 2003. (Amends R.S. 9:4753)

2. Hebert (HB 1884)

Act No. 979

Establishes a **privilege for state-certified real estate appraisers** for the amount of fees on all real estate on which an appraisal is performed pursuant to a written legal agreement between the appraiser and a person having legal capacity to transfer the real estate or a person who has valid title to the real estate as owner.

Provides that valid, recorded privileges and all mortgages recorded prior or subsequent to the appraiser's privilege shall have priority over the appraiser's privilege.

Provides that a notice of appraiser privilege shall be **filed at least five days prior to the sale** and provided to the purchaser or **owner of the real estate by certified mail**.

Requires the person claiming the privilege to **file a complaint within one year** after the filing of the notice, and failure to do so extinguishes the lien.

Deletes the requirement to include the name of the person alleged to be liable to the injured person in the written notice to effectuate the **privilege of the health care provider**, hospital, or ambulance service on the payment of proceeds recovered by the injured person.

Effective August 15, 2003. (Amends R.S. 9:4753; Adds 9:2781.2)

3. Capella (HB 1637)

Act No. 729

Adds the **demolition of existing structures** to the list of activities considered preparatory to construction and which **do not constitute work under the Private Works Act**.

Provides that if work has not been done and materials have not been placed on a site, a notice of contract may be mutually released and the contract will not have any effect and the recorder of mortgages shall cancel it upon the filing of the release.

Provides that once the period for preserving privileges has expired and no liens have been timely filed, the area described in the notice of termination shall be free from claims.

Effective August 15, 2003. (Amends R.S. 9:4808(C), 4820(A)(2), and 4822(F); Adds R.S. 9:4811(E))

4. Capella (HB 1634)

Act No. 728

Provides that if a **minor has no assets**, then the **natural tutor shall not be required to file a certificate** of the clerk setting forth the total value of the minor's property according to the inventory or detailed descriptive list filed in the tutorship proceeding, and that if the only asset of the minor is a contested claim, the certificate shall be **filed when the claim is recovered**.

Clarifies that the certificate operates as a **legal mortgage** only for the amount of the certificate.

Effective August 15, 2003. (Amends C.C.P. Art. 4134(A) and (C))

5. B. Jones (SB 968)

Act No. 1208

Provides that **DHH will not lose its right to recover** assistance payments and medical expenses the department has paid or is obligated to pay on behalf of an injured, ill, or deceased person if the department does not intervene or file its own cause of action or take any other action allowed under the assignment of rights provision of R.S. 46:153(E) or R.S. 46:446.

Effective August 15, 2003. (Adds R.S. 46:153(H))

6. Hopkins (HB 1850)

Act No. 998

Authorizes a **repair or body shop operator** to surrender a vehicle to a lienholder if the lienholder makes a complete payment of towing and storage and executes a hold harmless agreement.

Effective August 15, 2003. (Amends R.S. 32:1720.1)

7. Hainkel (SB 929)

Act No. 840

Creates the “**Marina and Boatyard Storage Act**” which provides for a **privilege** upon the property of a lessee who rents space for the storage of a boat or other accessories in a marina if the owner is in default for more than 180 days. Requires **notice** of the privilege to be made a part of the rental agreement or for notice to be sent to the lessee upon default in payment and establishes a process for sale of the property.

Effective July 1, 2003. (Adds R.S. 9:4780-4785)

VI. LABOR AND WORKER'S COMPENSATION

1. Fields (SB 336)

Act No. 485

Provides that when the workers' compensation judge finds that a delay for surgery would cause death, permanent disability or irreparable harm to a claimant, regardless if the judgment is in favor of the employee or the employer, any **appeal shall be expedited** and the record shall be filed within **15 days** of granting the appeal and the court shall hear the case within **30 days** after filing the appellee's brief.

Effective August 15, 2003. (Amends R.S. 23:1310.5(E))

2. Fields (SB 771)

Act No. 1201

Provides that when an employee or his agent schedules a communication or conference between the vocational rehabilitation counselor and any health care provider for the purpose of providing rehabilitation services, the health care provider shall only charge a **single reasonable fee** regardless of the number of persons attending the conference.

Effective August 15, 2003. (Amends R.S. 23:1127(C)(2))

3. Jack Smith (HB 1770)

Act No. 428

Provides that any person or corporation who sells the goodwill of a business may agree with the buyer that the seller **or other interested party to the transaction** will refrain from engaging in a similar business or from soliciting customers of the business being sold within specified parishes, not to exceed a period of two years from the date of sale.

Provides that a person **who becomes the employee of a competing business** may be deemed to be carrying on or engaging in a business similar to that of the party having a contractual right to prevent that person from competing, regardless of whether the employee is an owner or equity interest holder.

Effective August 15, 2003. (Amends R.S. 23:921(B); Adds R.S. 23:921(H))

4. Heitmeier (SB 824)

Act No. 510

Clarifies that the law prohibiting teachers from receiving unemployment benefits during the summer vacation covers any service performed in an instructional, research, or principal administrative capacity including that performed by a temporary or uncertified teacher or instructor.

Effective June 20, 2003. (Amends R.S. 23:1600(6)(a)(i))

5. Tucker (HB 1031)

Act No. 699

Provides that when an employee separates from employment, regardless of reason, the employer shall pay the amount then due, whether the employment is by the hour, day, week, or month, on or before the next regular payday **for the pay cycle during which the employee was working** at the time of separation or no later than 15 days after separation, whichever occurs first.

Effective August 15, 2003. (Amends R.S. 23:631(A)(1))

6. Guillory (HB 1643)

Act No. 671

Relative to **employment of minors**, eliminates the requirement that an employer keep on file a work permit for each minor and that employment certificates be in triplicate.

Requires the school superintendent to complete and **electronically** submit the Employment Certificate Interactive Form as of January 1, 2004, but the original certificate must be signed by the minor and the issuing authority and delivered to the employer.

Prohibits minors who have **not graduated from high school** from working after 10:00 p.m. on any day prior to a day during which school is in session, or after midnight on any day prior to a day during which school is not in session. Minors under the age of 16 who have not graduated from high school are prohibited from working before 7:00 a.m. or after 7:00 p.m. on any day prior to a day during which school is in session or after 9:00 p.m. on any day prior to a day during which school is not in session.

Effective June 27, 2003. (Amends R.S. 23:151, 182, 183, 188, and 215; Repeals R.S. 23:189)

7. Bowler (HB 1294)

Act No. 709

Clarifies that when a **motion for new trial** is filed, the Louisiana Code of Civil Procedure shall govern the delays for filing an appeal.

Effective August 15, 2003. (Amends R.S. 23:1310.5(B))

8. Marionneaux (SB 801)

Act No. 796

Authorizes employers or their representatives to **obtain criminal records** from the Bureau of Criminal Identification and Information if the applicant seeking employment signs a consent form authorizing the acquisition.

Effective August 15, 2003. (Adds R.S. 15:587(E))

9. Michot (SB 788)

Act No. 306

Extends the catastrophic injury sunset provision until July 1, 2006.

Effective August 15, 2003. (Amends R.S. 23:1221(4)(s)(v))

10. Dardenne (SB 819)

Act No. 1204

Provides that the **failure to approve** the employee's request to select a treating doctor or change doctors when approval is required, will result in a penalty up to the greater of **12% of any unpaid compensation** or medical benefits or **\$50** per calendar day, for each day approval is not given, plus attorney fees. The maximum amount of penalty imposed at a hearing is **\$8,000** and attorney fees shall be res judicata as to any and all claims for penalties imposed.

Provides that if an employer or insurer **discontinues payment** of claims and the discontinuance is arbitrary, capricious or without probable cause, a **penalty** not to exceed \$8,000 plus reasonable attorney fees will be imposed. Provides that **only one reasonable attorney fee** may be imposed against an employer or insurer in a hearing when there is a disputed claim filed.

Effective August 15, 2003. (Amends R.S. 23:1201(F)(intro. para.); Adds R.S. 23:1201(I) and (J); Repeals 23:1121(C) and 1201.2)

11. Murray (HB 301)

Act No. 616

Repeals provision that reduces workers' compensation benefits if the employee receives old-age insurance benefits.

Effective August 15, 2003. (Repeals R.S. 23:1225(C)(1)(b))

12. Pitre (HB 1097)

Act No. 702

In worker's compensation claims, requires the employee's consent to release wage records and information.

Effective August 15, 2003. (Amends R.S. 23:1131(B)(1) and (2) and 1208(G))

13. Powell (HB 1355)

Act No. 455

Requires the payment of outstanding claims on a **pro rata basis** when the bond is insufficient, in accordance with rules promulgated by the director.

Effective August 15, 2003. (Amends R.S. 23:1168(D)(1))

14. Strain (HB 1656)

Act No. 886

Provides that if an employee is treated by a physician, that physician will be regarded as an **injured employee's choice of treating physician** if that employee was not specifically directed to that physician by the employer or insurer. If the employer or insurer specifically directs the employee to a physician, that physician may be deemed the employee's choice of physician if the employee has received **written notice** of his right to select a physician and then chooses the employer's referral. This selection must be made on a choice of physician form which shall be provided to the employee. However, these provisions will not apply to physicians to whom the employee is referred by the physician selected by the employer unless the employer or his insurer has received a separate choice of physician form for any physician after the initial medical examination.

Requires an authorized representative of the employer or insurer to attest, by signature on the choice of physician form, that he has **reasonably read and explained** the form to any employee who is illiterate or has a language barrier.

Allows the employer or insurer to seek an **expedited hearing** to be held within 10 days if an employee fails or refuses to sign the choice of physician form. Upon court order, an employee's medical benefits may be suspended until the employee complies.

Effective August 15, 2003. (Amends R.S. 23:1121(B))

15. Scalise (HB 1712)

Act No. 733

Repeals the provision allowing notice filed with a compensation insurer to constitute a claim for disability.

Effective August 15, 2003. (Amends R.S. 23:1031.1(E))

16. Pitre (HB 1898)

Act No. 980

Provides that an employee may **file a claim** to review the quality of services provided if a dispute arises concerning the work of a **vocational counselor** and the hearings shall be expedited.

Provides that an employee must exhaust the administrative remedy before having a right of action against a vocational counselor for tort damages related to the performance of vocational services and suspends the running of prescription during the pendency of the administrative proceedings.

Provides that an employer may utilize the expedited procedure to require an employee's cooperation in the rehabilitation process and to order the 50% reduction in weekly compensation, including supplemental earnings benefits for each week of noncooperation.

Effective August 15, 2003. (Amends R.S. 23:1226(B)(3))

17. Guillory (HB 1642)

Act No. 730

An employer can **withhold the costs** associated with preemployment medical exams and drug tests from an employee's wages if he **resigns** from the job within 90 working days, if the employee has previously signed a contract to this effect.

Effective June 27, 2003. (Adds R.S. 23:897(M))

18. Guillory (HB 1644)

Act No. 457

Provides that upon the commencement of payment of a unemployment compensation claim, the administrator shall issue a determination of chargeability of benefits to base-period employers. The employer has **20 days** after the date of mailing the determination to request an initial review or the administrator's determination becomes conclusive and binding.

The proceedings are to be held as **summary proceedings** and given precedence over all other civil cases, the administrator's findings of fact shall be considered **prima facie evidence** if supported by substantial and competent evidence, and the parties have a right to appeal the decision of the district court. The final decision of the administrator or court shall be binding upon the employer upon receipt of the quarterly state of benefit charges. An employer shall not have standing in any administrative or judicial proceeding to contest chargeability to his record of any such paid benefits for which he previously sought review or appeal and was given notice pursuant to this statute.

Effective June 20, 2003. (Adds R.S. 23:1541.1)

19. Guillory (HB 1645)

Act No. 458

Relative to unemployment compensation, provides that an employer may contribute any amount to his experience-rating account within 30 days of mailing or 25 days of the delivery of the **annual rate notice**.

Effective June 20, 2003. (Amends R.S. 23:1541(5)(a))

20. Guillory (HB 1646)

Act No. 459

Provides that **unemployment compensation judicial review** can be sought in the district court of the domicile of the claimant or if the claimant is not domiciled within the state, it may be filed in the district court of the parish where the claimant was domiciled at the time the claim was filed or in the parish in which the Dept. of Labor is domiciled.

Effective June 20, 2003. (Amends R.S. 23:1634(A))

21. Guillory (HB 1647)

Act No. 460

Provides that if the employing unit acquires the employees of another employing unit, then the experience-rating records shall be transferred as well. Provides that employees will be considered assets of a business.

Effective June 20, 2003. (Amends R.S. 23:1539(A))

22. Guillory (HB 1648)

Act No. 461

Provides that for the successful collection of delinquent contributions of unemployment compensation, attorneys may charge a **contingent fee** that does not exceed the amount of the penalty or **10%** of the total amount collected, whichever is smaller.

Effective June 20, 2003. (Amends R.S. 23:1669(C))

VII. DWI AND OTHER CRIMINAL MATTERS

A. DRIVING WHILE INTOXICATED

1. Chaisson (SB 767)

Act No. 543

Creates the crime of **unlawful refusal to submit to chemical test** to determine blood alcohol content after an arrest for a **DWI** offense when the offender has refused to submit to such test on **two separate and previous occasions** of any previous such violation.

Provides a penalty of a fine of not less than **\$300 nor more than \$1000 and imprisonment for not less than 10 days nor more than 6 months**. **Prohibits suspension of sentence** unless the offender serves two days and is ordered to and completes certain programs or is placed on probation and completes specified community service.

Provides that the person **must be informed of his rights and possible penalties** and that his refusal after having refused on two separate and previous occasions of any previous DWI violation is a crime and of the penalties resulting from such crime.

Effective August 15, 2003. (Amends R.S. 32:666(A); Adds R.S. 14:98.2 and R.S. 32:661(C)((1)(f))

2. Dupre (SB 71)

Act No. 533

Requires the law enforcement officer **direct that a chemical test be performed** to determine the blood alcohol content of any person who is involved in a **traffic accident** in which either a **fatality or serious injury** occurs and for whom there is **probable cause** to believe he has violated any provision which prohibits **operating a vehicle while intoxicated**. Further clarifies that such traffic accident shall include any accident involving a motor vehicle, aircraft, watercraft, vessel, or other means of conveyance. Requires that a person requested to take a test under such conditions be informed of the consequences of his refusal to submit to such test.

Provides that any such person who **refuses to submit to the chemical test** required by a law enforcement officer shall be subject to the same penalties which are imposed for a first offense violation of driving while intoxicated which is a **fine of not less than \$300 nor more than \$1000 and imprisonment for not less than 10 days nor more than 6 months**.

Provides that imposition or execution of sentence **shall not be suspended** unless:

- (1) The offender is placed on probation with a minimum condition that he serve 2 days in jail and participate in a court-approved substance abuse program and participate in a court-approved driver improvement program; or
- (2) The offender is placed on probation with a minimum condition that he perform 4 eight-hour days of court-approved community service activities, at least half of which shall consist of participation in a litter abatement or collection program, participate in a court-approved substance abuse program, and participate in a court-approved driver improvement program. Provides that a participant in a litter abatement or collection program shall have no cause of action for damages against the entity conducting the program or supervising his participation for any injury or loss suffered by him during or arising out of his participation in the program, unless the injury or loss was caused by the intentional or grossly negligent act or omission of the entity.

Effective August 15, 2003. (Amends R. S. 32:666(A))

3. Dupre (SB 143)

Act No. 535

Changes the criminal penalties and period of driver's license suspension for operating a vehicle while intoxicated when the offender has a blood alcohol concentration (**BAC**) level of **0.20 percent** or more, including but not limited to the following:

- (1) Increases the criminal fines to a fine of not less than \$750 nor more than \$1,000 for a first offense and \$1,000 for a second offense.
- (2) Increases the length of a driver's license suspension to **two years for a first offense and four years for a second offense**. Contains provisions regarding the issuance of a hardship license and the use of ignition interlock devices in each case.

Effective August 15, 2003. (Amends R.S. 14:98(B)(2), (C)(2), and (K), R.S. 15:306(A), and R.S. 32:378.2(A)(2)(a)(i) and 667(B)(1) and (3); Adds R.S. 32:414(A)(1)(c))

4. Chaisson (SB 320)

Act No. 752

Relative to the crime of operating a vehicle while intoxicated involving the **influence of drugs** which are legally obtainable with or without a prescription, provides for an affirmative defense to such charge that the label on the container or the manufacturer's package of the drug does not contain a warning against combining the medication with alcohol.

Effective September 30, 2003. (Amends R.S. 14:98(A)(1)(d))

B. OTHER CRIMINAL MATTERS

1. Welch (HB 1956)

Act No. 894

Requires that any applicant **being hired by a law enforcement agency** as a peace officer on or after August 15, 2003, provide the law enforcement agency with a sample of his **DNA** material and **fingerprint** prior to the commencement of the discharge of his duties. Requires the submission of a biological sample for DNA testing and the conducting of a **criminal background check** of all persons hired as peace officers on and after August 15, 2003.

Authorizes any person currently employed prior to August 15, 2003, as a peace officer **to elect to provide** the law enforcement agency with which he is employed with a sample of his DNA and which he may elect to submit by a biological sample.

Authorizes the testing of a peace officer's DNA only **upon a probable cause** showing before the judge who issues the court order authorizing the testing of the DNA, if the peace officer **has not consented** in writing to the testing.

Provides that the DNA of a peace officer **may only be used, tested, or released upon a finding of probable cause by a judge in a criminal case** that the peace officer has committed a criminal act, unless the peace officer has consented to the taking in writing, or upon the death of the peace officer and the use of his DNA is necessary to provide a positive identification of the decedent. Provides criminal penalties of a **fine not to exceed \$5,000 or imprisonment for not more than three years or both** for the unauthorized use of DNA samples.

Requires the division of public safety services, office of state police, after receiving input from local law enforcement agencies and local law enforcement officers, to **adopt a uniform system for testing of DNA** material in accordance with the Administrative Procedure Act.

Effective August 15, 2003. (Adds R.S. 40:2405.4)

2. Dardenne (SB 346)

Act No. 487

Requires the **collection of DNA** samples from persons who are **arrested or convicted** of felony offenses and other specified offenses for inclusion in the state DNA database. Provides that juveniles arrested for a covered offense or adjudicated delinquent for a felony-grade delinquent act shall also be required to provide a DNA sample.

Extends the time period in which sex offense prosecutions may be commenced when the identity of the offender is established after the expiration of the statutory time limitation through the use of a DNA profile. (*Note: A similar California statute was declared unconstitutional by*

the United States Supreme Court on June 26, 2003, in the case of Stogner v. California, No. 01-1757.)

Provides for retroactive application.

Effective June 20, 2003. (Amends R.S. 15:603(8), (9), (10), and (11), and 609(A), (B), and (C) and C.Cr.P. Art 572; Adds R.S. 15:603(12) and (13) and 609(F), (G), (H), and (I))

3. Dardenne (SB 295)

Act No. 809

Extends the time period in which sex offense prosecutions may be commenced when the identity of the offender is established after the expiration of the statutory time limitation through the use of a DNA profile. *(Note: A similar California statute was declared unconstitutional by the United States Supreme Court on June 26, 2003, in the case of Stogner v. California, No. 01-1757.)*

Provides for retroactive application.

Effective July 1, 2003. (Amends C.Cr.P. Art. 571.1 and 572; Adds C.Cr.P. Art. 572.1)

4. Devillier (HB 1017)

Act No. 698

Prohibits the **death penalty** from being imposed on **mentally retarded persons**. Requires a capital defendant claiming to be mentally retarded to file a motion within 15 days after arraignment. Provides that the jury shall try the issue of mental retardation unless the state and the defendant agree that the issue shall be tried by the judge.

Effective August 15, 2003. (Adds C.Cr.P. Art. 905.5.1)

5. Landrieu (HB 2018)

Act No. 1225

Creates the **Juvenile Justice Reform Act of 2003** upon recommendation of the Juvenile Justice Commission. Provides for the closure of Swanson Correctional Center for Youth-Madison Parish Unit as a facility for juveniles. Requires a single state entity to develop uniform standards and licensing procedures for local juvenile detention facilities. Creates the Juvenile Justice Reform Act Implementation Commission for the purpose of implementing the recommendations contained in the Juvenile Justice Reform Act of 2003 and related resolutions pertaining to the continued reform of the state's juvenile justice system. Provides that the commission shall address among other things, the creation of a single state entity for providing services to children and their families and the closure of the Swanson/Tallulah as a facility for children. Also, establishes the Louisiana Juvenile Justice Planning and Coordination Board as an interim, planning, and coordination board

of the Children's Cabinet. Establishes nine regional service areas and provides for specified agencies to develop a plan for the delivery of services in the state's regional service areas.

Effective August 15, 2003. (Amends R.S. 46:2601(A)(1), 2603(A) and (B)(2), 2604, and 2607; Adds R.S. 15:902.2, 902.3, and 1110, and 1461-1464, R.S. 17:251 and 252, R.S. 36:4(E), R.S. 46:2600, 2605.1, 2605.2, 2605.3, 2608-2610, and 2751-2757)

VIII. INSURANCE

A. MOTOR VEHICLE

1. Fields (SB 53)

Act No. 532

Excludes motor vehicle accidents in which the motor vehicle is **not being operated** on a public road at the time of the accident and is not in violation of the Louisiana Highway Regulatory Act from the limitation of recovery provisions under “**No Pay, No Play**”(limits recovery of uninsured motorist involved in accidents in excess of first \$10,000 for bodily injury and \$10,000 for property loss.)

Effective August 15, 2003. (Amends R.S. 32:866(A)(3))

2. Fields (SB 55)

Act No. 298

Prohibits an insurer from **canceling** an automobile insurance policy solely on the ground that the insured has **submitted a claim** for damage incurred or arising from the operation of an automobile, but does not prohibit an insurer from **increasing** the policy premium based on the number of such claims submitted by the insured.

Effective August 15, 2003. (Adds R.S. 22:636.1(L))

3. Boissiere (SB 773)

Act No. 508

Provides that in a parish with a population exceeding 475,000, the local police department may charge a reasonable fee, not to exceed **\$20**, for accident reports. Exempts state departments and agencies from paying the fee.

Effective August 15, 2003. (Amends R.S. 32:398(K)(1))

4. Boissiere (SB 1110)

Act No. 790

Requires the commissioner of the Department of Insurance to formulate criteria to develop and initiate a request for proposals to procure and implement a **real-time system** to quickly and accurately identify and verify the existence of motor vehicle insurance or other security required in compliance with the **Motor Vehicle Safety Responsibility Law**.

Effective August 15, 2003. (Amends R.S. 22:658(A)(4) and (B)(1); Adds R.S. 22:25.1 - 25.2)

5. Erdey (HB 1419)

Act No. 1093

Relative to the making of rates for casualty insurance, provides that the office of state police may promulgate rules and regulations to establish criteria and standard for the approval and certification of **defensive driving courses** and the expenses shall be funded through an interagency agreement with the Dept. of Insurance, contingent upon the appropriation of funds by the legislature.

Effective August 15, 2003. (Amends R.S. 22:1404(3)(c)(i) and (d)(i))

B. HEALTH

1. Ansardi (HB 841)

Act No. 858

Authorizes an insurer or agent to utilize **commercial carriers** or other commercially recognized carriers to **deliver** a health and accident insurance policy to the policyholder. Requires the insurer or agent to maintain documentation of actual delivery for **three years**. Additionally authorizes an insurer or agent to **electronically deliver** a health and accident insurance policy to a policyholder if both parties agree to such delivery and documentation is maintained for three years.

Effective August 15, 2003. (Amends R.S. 22:212(7)(c))

2. Bowler (HB 1149)

Act No. 659

Provides that any health insurance issuer who is in compliance with state law adopted pursuant to the Federal Health Insurance Portability and Accountability Act (HIPAA) **shall be deemed to be in compliance** with certain requirements of the Federal Gramm-Leach-Bliley Act (GLB).

Defines a **medical savings account policy** as a high deductible health plan qualified to be used in conjunction with a medical savings account as provided by federal law. Provides that group and individual medical saving account policies are excluded from the laws on premium rating of small group and individual health insurance policies.

Effective August 15, 2003. (Adds R.S. 22:228.1(B)(12) and (C) and 250.20)

3. Hebert (HB 1438)

Act No. 424

Authorizes the Dept. of Insurance with the Dept. of Health and Hospitals to establish a pilot health insurance program for **small employers** and provides that the program may limit participation to those who have not offered their employees group health insurance for at least two years.

Effective June 18, 2003. (Amends R.S. 22:245(A) and 246(1), (2), and (9))

4. Tucker (HB 1538)

Act No. 1106

Requires that each health maintenance organization (HMO) **maintain certain levels of capital** in comparison to its total adjusted capital and requires the capital and surplus requirement be three million dollars or the amounts required by law. Provides for a **phased-in increase** of risk-based capital level over two years.

Requires **annual submission** to the commissioner of insurance and **quarterly reports** to the Department of Insurance (DOI) by each HMO of a risk-based capital report and provides that if the commissioner determines it is in the best interest of the policyholders, creditors, and the public, he may place a health organization under **regulatory control**.

Provides that the commissioner shall assure any payments authorized by DOI and issued prior to any order of liquidation are **honored** and provides for the **priority of distribution** of assets as follows: (a) the commissioner's costs and expenses of administration; (b) compensation due HMO employees; (c) claims for covered benefits filed within 90 days of an order of liquidation; (d) claims for unearned premiums or other premium refunds; and (e) all other creditors.

Specifies that the **19th Judicial District Court** shall have exclusive jurisdiction over any suit arising from such takeover and liquidation.

Effective December 31, 2003. (Amends R.S. 22:2010(C)(intro. para) and (1) and (G) and 2013(E) and (F); Adds R.S. 22:2036.1-2036.10)

5. Morrish (HB 1606)

Act No. 1115

Provides that, notwithstanding any other provision of law to the contrary, a health insurance issuer **shall not be required** to deliver, issue, or renew a health benefit plan on or after January 1, 2004, and before Dec. 31, 2008, that includes any additional mandate benefit or option beyond those statutory requirements in effect for health benefit plans on July 2, 2003. Provisions are **applicable** to any health benefit plan delivered or issued for delivery in this state.

Effective July 2, 2003. (Amends R.S. 22:230.5(C); Adds R.S. 22:230.5(D) and (E) and 2016.1)

6. G. Smith (HB 1877)

Act No. 1149

Requires each health care provider or hospital to supply the **claim form** and an **itemized statement** of all charges, after the initial claim, to any person who received services from that health care provider or hospital **within 10 days** of receipt of a written request from that person or his authorized representative.

Effective August 15, 2003. (Adds R.S. 22:214.3(C))

7. Hebert (HB 1966)

Act No. 1157

Enacts the **Health Care Consumer Disclosure and Protection Act**, to provide for the billing of insureds and enrollees by health care providers. Requires health care providers to clearly identify activity statements from statements which are bills owed by the enrollee. Specifically prohibits “discount billing” and “dual billing”. Authorizes the commissioner of insurance and the attorney general to enforce these provisions.

Effective January 1, 2004. (Adds R.S. 22:250.41-250.47; Repeals R.S. 22:230.3)

8. Hebert (HB 1989)

Act No. 528

Creates the **Louisiana Safety Net Health Insurance Program** to require certain employers to offer **minimal benefit hospital and medical insurance policies** for employees. Also authorizes the program to be offered by the Office of Group Benefits to certain state employees.

Effective June 24, 2003. (Adds R.S. 22:231(H), 236(10), and R.S. 22:3101-3112)

9. Heitmeier (SB 666)

Act No. 829

Requires health maintenance organizations, self-insurers, and self-insurance plan to provide coverage, up to \$200 per month, for **medically necessary low protein food products** for treatment of inherited metabolic diseases, if they are obtained from a source approved by the organization, insurer, or plan. Applicable to any new policy, contract, program, or plan issued on or after January 1, 2004 and existing policies shall comply with these provisions on their renewal date, but no later than January 1, 2005.

Effective August 15, 2003. (Amends R.S. 22:2002(3) and (6); Adds R.S. 22:2004.2 and 3018.1)

10. McPherson (SB 420)

Act No. 68

Requires the Department of Insurance to establish and maintain an information collection program to track and evaluate state and federal legislation to provide for a **uniform patient bill of rights** and annually submit a written report to the Senate and House Committees on Insurance.

Effective August 15, 2003. (Adds R.S. 22:10)

11. Ansardi (HB 1765)

Act No. 672

Provides that a health care provider shall be allowed **30 days** from receipt of written notification of recoupment **to appeal** the health insurance issuer's action and provide the health insurance issuer the name of the patient, the date or dates of health care services rendered, and an explanation of the reason for the appeal.

Provides that recoupment of a health insurance claim payment shall not result in any increased **liability** of an insured unless the recoupment directly affects the payment responsibility of the insured.

Effective August 15, 2003. (Amends R.S. 22:250.38(B) and (E); Adds R.S. 22:250.38(F))

12. Hebert (HB 2005)

Act No. 294

Requires a dental service contractor or a contract of dental insurance to establish and maintain **appeal procedures** for any **dental claim** that is denied based upon lack of medical necessity. Requires that any such denial be based upon a determination by a dentist who holds a nonrestricted license in the same or an appropriate specialty that typically manages the dental condition, procedure, or treatment under review.

Effective August 15, 2003. (Adds R.S. 22:1513.1)

C. OTHER INSURANCE MATTERS

1. Erdey (HB 887)

Act No. 378

Provides that insurers transacting property, casualty, accident, health, or bond business in this state recognize a **producer of record** when selected in writing by the owner of the policy for the purpose of providing quotations, proposals or writing policies or bonds and to retain information of the producer for the full term of the contract.

Provides that if the insurer receives a producer of record letter for an application, he shall provide the producer a quotation or proposal **regardless** of any other outstanding **quotations or proposals**. If the insurer receives a written request by the insured to change the producer of record, the insurer shall **notify** the initial producer of record **15 days in advance** of the change or removal and make any required change of producer effective on the inception date of the policy.

Provides that property, casualty, and bond **commissions shall be paid** to the original producer of record at the policy inception for the full term of the policy, unless such policy is written for more than one year and accident, health or benefits commissions shall be paid to the current producer of record and shall change when the producer of record changes.

Effective January 1, 2004. (Amends R.S. 22:1150)

2. Hebert (HB 1508)

Act No. 456

Provides that the **office of property and casualty** in the Dept. of Insurance shall facilitate the functions and activities of the Louisiana Insurance Rating Commission and authorizes either of them to employ an attorney.

Authorizes the office to **request a hearing** before the commission on a filing that is effective if it finds that the filing does not meet the requirements of law and authorizes an insurer who was denied a deviation to apply for a hearing before the commission. Provides that the office is to place **applications for deviations** on the regular agenda of the commission and it is to review and approve territorial plans for all casualty insurance as incorporated in the rate filings submitted by insurers. Exempts insurers of excess coverage from having to **file** with the office of property and casualty and allows only those workers' compensation insurers whose rates are subject to regulation to file and use the rates.

Effective August 15, 2003. (Amends R.S. 22:1401(E) and (F), 1404(5), 1405(C), 1406(A), (B), and (D)(1)(a)(ii) and (c)(i)(intro. para.), 1407(A)(1) and (2)(intro. para.), (B), (C), (D), (E), (G), (H), and (K), 1408, 1409(A), (B), (D), and (G)(2), 1410, 1411, 1413(B), (C), and (D), 1414(B), 1415, 1416, 1418, 1419(A)(1) and (B), and 1422; Repeals R.S. 22:1401(G) and (H), 1406(C) and (D)(7), 1407(J) and (L), 1417.1, and 1420)

3. Hebert (HB 1509)

Act No. 135

Provides that the Louisiana Insurance Code is Title 22 instead of Chapter 1 of Title 22.

Effective August 15, 2003. (Amends R.S. 22:1)

4. Hebert (HB 1434)

Act No. 124

Prohibits an insurer from prohibiting an assignment to a **viatical settlement** provider of a policy otherwise assignable.

Effective August 15, 2003. (Amends R.S. 22:642)

5. Hebert (HB 1691)

Act No. 343

Regulates **viatical settlement contracts**, including the licensing of persons who operate as viatical settlement providers or brokers. (A "**viatical settlement contract**" is a written agreement between a viatical settlement provider and a life insurance policy owner who has a catastrophic, life threatening, or chronic condition. The contract establishes the terms under which the viatical settlement provider will pay compensation in return for the policyowner's assignment, transfer, sale, devise, or bequest of the death benefit or ownership of his insurance policy to the viatical settlement provider.)

Effective August 15, 2003. (Adds R.S. 22:191-200 and R. S. 27:1078(B)(19) and (20); Repeals R.S. 22:201-210.1)

6. Morrish (HB 1833)

Act No. 293

Provides for a fee assessment on insurance companies to fund the enforcement of insurance fraud laws and provides that if a law enforcement entity expends its allocation, it is to receive at least the same allocation for the next year.

Effective August 15, 2003. (Amends R.S. 22:1142(A)(intro. para.) and (4) and R.S. 40:1428(A)(3))

7. Hainkel (SB 721)

Act No. 351

Provides that the Louisiana Insurance Rating Commission may approve not more than one rate increase per classification in **12 months** and allows insurance companies to **adjust their own rates** in any 12 month period by up to 10% above or 10% below the rate that is in effect without prior approval, and it will become **effective** at least 30 days after the filing of the rate change with the commissioner. However, if the rate filing is outside of the limit it is subject to prior approval by the commission.

Requires rate changes within the limitations to be **stated in the notice** to the policyholder.

January 1, 2004. (Amends R.S. 22:1401(J)(1), (2), (3), (4), and (5)(b) and (c); Adds R.S. 22:1401(J)(6))

8. Winston (HB 1039)

Act No. 421

Repeals the prohibition against group property and casualty insurance. Effective August 15, 2003. (Repeals R.S. 22:1534 as enacted by Act No. 320 of the 1970 R.S. and R.S. 22:1534 as enacted by Act No. 738 of the 1970 R.S.)

9. Hebert (HB 1448)

Act No. 1256

Limits the use of **credit information** by insurance companies for the issuance, denial, cancellation, and nonrenewal of personal insurance, including homeowners and automobile insurance, effective on or after **May 15, 2004**.

Requires insurance companies to begin reevaluating renewal policies with regard to credit scoring by August 15, 2006 and requires the insurer to **re-rate** the consumer and make adjustments if it is found that the credit information is incorrect or incomplete through a dispute resolution process under the federal Fair Credit Reporting Act.

Requires the insurance company to **disclose** to the consumer at the time of an application that it will obtain credit information and requires insurers to provide **reasonable exemptions** from the use of credit information if the consumer can show their credit history is unduly influenced.

Provides that an insurer or credit information provider is not required to **indemnify** producers (agents) except to the extent of the producer's negligent failure to comply with the procedures established by the insurer or credit information provider.

Effective August 15, 2003. (Adds R.S. 22:1481-1494)

10. Flavin (HB 618)

Act No. 410

Specifies that certain **life and health insurance agents** may obtain information from an applicant in person, by telephone, or by any other means of direct communication between the agent and the applicant.

Effective August 15, 2003. (Amends R.S. 22:1460)

11. Hebert (HB 1435)

Act No. 171

Provides that the **mortality standards** which are consistent with the prevailing generally accepted actuarial assumptions at the time of issue apply to policies issued outside of the U.S. and its territories.

Effective August 15, 2003. (Amends R.S. 22:163(A)(1))

12. Hebert (HB 1436)

Act No. 125

Requires standard life policies and standard group life policies to give the beneficiary the option to receive benefits in a **lump sum**.

Effective August 15, 2003. (Adds R.S. 22:170(D) and 176(14))

13. Hebert (HB 1446)

Act No. 128

Prohibits provisions in group life insurance policies that **exclude or restrict** payment of death benefits due to a certain cause of death or the status of the insured, except for war, serving in military, suicide within two years, aviation, and residing in certain foreign countries. Provides that when there is a death due to war, suicide within two years, aviation, and residing in certain foreign countries and there is an exclusion for such death, the insurance company **must pay** the reserve on the face amount of the policy, the paid-up additions, and any dividends, less indebtedness due.

Effective August 15, 2003. (Adds R.S. 22:176.1)

14. Hebert (HB 1476)

Act No. 994

Allows unauthorized insurers to **file lawsuits and enter pleadings** without posting a bond, if placed on an approved list by the Dept. of Insurance. Act is **procedural** and applies to all matters pending on the effective date and subsequent matters; except for those in which a request for a bond was filed prior to May 5, 2003.

Effective July 2, 2003. (Amends R.S. 22:1254 and 1255(A))

15. Hebert (HB 1512)

Act No. 137

Requires insurers to provide **proof of loss forms** to persons claiming a loss under a contract of insurance.

Effective January 1, 2004. (Amends R.S. 22:650)

16. Crowe (HB 2004)

Act No. 1224

Requires the Dept. of Insurance to maintain a **central database** to contact life insurers upon a request to search for life insurance policies covering a decedent and requires the department to transmit the request to all life insurance companies having policies in force in Louisiana.

Effective August 15, 2003. (Amends R.S. 22:1138.1(A)(2); Adds R.S. 22:10)

17. Hebert (HB 1477)

Act No. 130

Requires **foreign and alien insurers** to show a deposit of \$100,000 with the application for certificate of authority and requires the filing of biographical information of officers within 60 days of appointment.

Effective August 15, 2003. (Amends R.S. 22:982(A)(13) and 983(B); Adds R.S. 22:987(A)(19))

18. Dupre (SB 150)

Act No. 148

Defines a "**public adjuster**" as a person, except an attorney, who negotiates or effects the settlement of a claim on behalf of an insured for compensation and provides that **contingency fee** agreements between them and insureds are contrary to public policy.

Effective August 15, 2003. (Adds R.S. 22:1476)

IX. JUDICIAL AFFAIRS

Several bills of note affecting the judiciary, the district attorneys, and the clerks of court were passed during the 2003 Regular Session of the Legislature

1. Act 163 requires the Judicial Council of the Supreme Court of La. to adopt **guidelines for approving requests to create new judgeships** and new offices. Effective August 15, 2003. (Adds R.S. 13:61)
2. Act 803 authorizes each judicial district court to establish a **job intervention program** and requires the defendant to satisfy certain criteria to be considered eligible. Effective July 1, 2003. (Adds R.S. 15:571.50 - 571.52)
3. Act 1247 authorizes the judges of the **19th JDC** to assign civil, criminal, or drug court cases to a specified division with the consent of the judge of that division, but that all divisions retain general jurisdiction over all matters. Effective August 15, 2003. (Amends R.S. 13:982(G)(1)(a) and (I)(2)(b); Adds R.S. 13:501(B)(3)(d) and (e) and 587.3; Repeals R.S. 13:982(E))
4. Act 824 provides that the judges of the courts of appeal shall be **reimbursed**, out of self-generated funds, for expenses incurred while on official duty. Effective August 15, 2003. (Amends R.S. 13:352(C))
5. Act 1025 specifies that a judge or court officer who is a member of LASERS may remain in office after his **70th birthday** if the constitution allows him to do so. Effective July 1, 2003. (Amends R.S. 11:558(A)(4) and (5); Adds R.S. 11:558(A)(6) and 562(C))
6. Act 493 provides that upon the favorable passage of a local ordinance by a parish governing authority, a justice of the peace shall have **concurrent jurisdiction** over removal, disposition, and abandonment violations and provides that if a person is found liable in a justice of the peace court for these violations he shall have the right of direct appeal to the district court. Effective August 15, 2003. (Amends R.S. 13:2586(D); Adds R.S. 13:2586(C)(4) and 2587.2)
7. Act 901 provides that the board of aldermen of the village with a population greater than three hundred ten and less than three hundred twenty-five, shall, upon request of the mayor, appoint a court magistrate. Effective August 15, 2003. (Adds R.S. 33:441.30).

8. Act 613 authorizes the clerk of the City Court of Houma to **destroy records** concerning suits for eviction of tenants and occupants and criminal records concerning misdemeanor convictions upon consent of the judge. Effective August 15, 2003. (Adds R.S. 13:1904(C), (D), and (E))
9. Act 264 requires a person qualifying for the office of justice of the peace to possess a **high school diploma** or its equivalent by the date of qualification to run for the office in the year 2008. Effective August 15, 2003. (Amends R.S. 13:2582(A))
10. Act 589 authorizes the first appearance hearing officer of the Municipal Court of New Orleans to **fix bail and impose sentence**. Effective August 15, 2003. (Adds R.S. 13:2496.3(G)(6) and (7); Repeals R.S. 13:2496.3(H))
11. Act 627 authorizes the clerk of the Orleans Parish Civil District Court to purchase or lease **two motor vehicles** for office use. Effective August 15, 2003. (Adds R.S. 13:1222)
12. Act 1031 provides that a **juror's compensation** in a criminal or civil case shall be \$25 for each day of attendance and requires the party paying for a **civil jury** to deposit in the registry of the court the amount ordered and pay to the clerk \$336 for juror filing fees. Requires the judges for the judicial district court for Orleans to adopt a schedule of costs applicable in each criminal case. Effective August 15, 2003. (Amends R.S. 13:3049(B)(1)(b) and (2)(a); Adds R.S. 13:3049(B)(1)(e))
13. Act 678 provides that a person may apply for a **24-month waiver** of petit jury service if he has a mental or physical condition that causes him to be incapable of performing jury service or if service will cause undue or extreme physical or financial hardship to the juror or a person under his care and allows jurors to **postpone** the date of their jury service one time only. Provides for the establishment of a **Lengthy Trial Fund** to provide full or partial wage replacement or supplementation to jurors who serve as civil and certain criminal petit jurors for more than 10 days. Effective August 15, 2003. (Amends R.S. 13:3041, 3042, 3044(C), and 3106 and R.S. 23:965(A)(1); Adds R.S. 13:3042.1 and 3050)
14. Act 556 authorizes the attorney general, a designated representative of the New Orleans Police, a designated representative of state police, or any district attorney or sheriff to provide for the **security of a witness**, potential witness, or any member of such witness's immediate family in any **criminal or civil** proceeding or investigation if his testimony may subject him to danger or bodily injury. Effective August 15, 2003. (Adds R.S. 15:262)

15. Act 1230 creates the **Governor's Advisory and Review Commission on Assistant District Attorneys** and prohibits the legislature from enacting an additional position of **ADA** to be paid by the state without approval of the commission. Effective August 15, 2003. (Adds R.S. 16:54)
16. Act 202 provides that legislation to enact a **new court cost or fee** or to increase an existing cost or fee shall first be submitted to the Judicial Council for review and recommendation to the legislature. Effective August 15, 2003. (Adds R.S. 13:61)
17. Act 518 increases the court fees for the **City Court of Houma** from \$10 to \$20 and requires the money to be placed in an account dedicated to the acquisition, leasing, construction, equipping, and maintenance of any new or existing city court. Effective August 15, 2003. (Adds R.S. 13:1910.1)
18. Act 530 authorizes the judge of the **Morgan City Court** to assess a \$20 nonrefundable fine in all criminal matters to be used solely for the purposes of providing services for juvenile delinquents, children in need of supervision, families in need of services, or any other related juvenile matter. Effective June 27, 2003. (Adds R.S. 13:2150))
19. Act 641 provides that the defendant is responsible for payment of recording fees when a victims records **restitution orders**. Effective August 15, 2003. (Adds R.S. 46:1844(M)(3))
20. Act 877 authorizes the Jefferson Parish Council, with the concurrence of the judges of the 1st and 2nd Parish Courts of Jefferson Parish, to enact an ordinance to impose a **security service fee** not to exceed \$5 per filing to be used for the purchase, maintenance, and operation of court security devices for the courts. Effective July 1, 2003. (Amends R.S. 13:2562.24(D); Adds R.S. 13:2562.24(E))

IX. MISCELLANEOUS

1. Pinac (HB 514)

Act No. 638

Repeals the **Collection Agency Regulation Act** in its entirety.

Effective August 15, 2003. (Repeals R.S. 9:3554.2(B) and 3576.1-3576.24)

2. Tucker (HB 150)

Act No. 991

Prohibits a telephonic subscriber conducting business in this state from making a **telephonic solicitation to any wireless telephonic subscriber** residing in this state. It further provides that a person or entity offering wireless service shall **not be held responsible** for the transmission of a solicitation to a subscriber, unless the solicitation is transmitted at the direction of that person.

Provides **exemptions** for certain existing business situations and for telephone solicitations where a **sales presentation is not completed** and the solicitation is made in contemplation of the sales presentation being completed during a later **face-to-face meeting**.

Provides that the **Louisiana Public Service Commission shall investigate** any complaints received concerning violations. The commission may impose an administrative **penalty** for violations not to exceed **\$1,500 for each violation**.

Provides that any solicitor who refuses to pay the fine assessed shall be assessed additional **costs and reasonable attorney fees** related to the collection of the fine.

Effective August 15, 2003. (Adds R.S. 45:844.4 and 844.8)

3. Pinac (HB 173)

Act No. 912

Adds another **exemption** to the **Telephone Solicitation Relief Act of 2001** for communications made **without completing or attempting to complete a sale**, when the sale is to be completed only after a **face-to-face meeting** between the solicitor and the person called. The call must be the result of a referral to the solicitor of the person called or the call must be placed to an individual who is personally known to the telephonic solicitor. If the call is placed as a result of a referral, the telephonic solicitor shall provide to the person called the name of the person making the referral. This exemption shall not apply if directly following the sale, the solicitor attempts to or causes another to deliver an item or collect payment from the person called.

Effective August 15, 2003. (Adds R.S. 45:844.12(4)(g))

4. Pinac (HB 684)

Act No. 353

Clarifies the "**political activity**" exemption from the **Telephone Solicitation Relief Act of 2001** by providing that political activity communications include the following:

- (1) Communications made for the sole purpose of urging support for or opposition to a political candidate or ballot issue provided that the caller identifies himself.
- (2) Communications made for the sole purpose of conducting political polls or soliciting the expression of opinions or votes.
- (3) Communications made by any newspaper or periodical which is qualified to be the official journal of the state or any parish, municipality, school board, or other political subdivision.

Effective June 17, 2003). (Amends R.S. 45:844.12(4)(f))

5. LaFleur (HB 2015)

Act No. 1275

Provides that any **sender of unsolicited commercial e-mail ads** either from Louisiana or to a Louisiana electronic mail address shall comply with certain restrictions including maintaining a functioning **return e-mail address or website** where a recipient may reply to indicate that he no longer wishes to receive any further unsolicited mail.

Prohibits a person from **selling or providing a list of e-mail addresses** to be used to initiate the transmission of unsolicited ads from Louisiana or to Louisiana e-mail addresses.

Provides that a person whose property or person is injured by reason of a violation of the statute may recover for any **damages** sustained and the costs of suit, including **attorney fees and costs**, and may elect, in lieu of actual damages, to recover **the lesser of \$10 for each and every unsolicited e-mail transmitted, or \$25,000 per day**.

Effective August 15, 2003. (Adds R.S. 51:1741-1741.3)

6. Pinac (HB 515)

Act No. 1027

Revises the **Credit Reporting Services Organization Act**. Requires persons operating a credit repair service to **obtain a license** from the commissioner of the Office of Financial Institutions and pay an application **fee of \$500**.

Effective December 31, 2003. (Amends R.S. 9:3573.1, 3573.2(A)(4) and (B)(2), 3573.4(A) and (B), 3573.9, 3573.10(C), 3573.11, and 3573.14; Adds R.S. 9:3573.2-A, 3573.3(7), (8), (9), and (10), 3573.4(G), and 3573.17; Repeals R.S. 9:3573.5(D) and (E))

7. Diez (HB 973)

Act No. 934

Provides for protection for the victims of **identity theft**. Provides for filing police reports, information to be made available by creditors, security alerts, and damages. Requires each creditor who grants credit as a result of information which was obtained through an identity theft shall make available to the victim of the identity theft certain information in the possession of the creditor which the victim needs to undo the effects of the identity theft.

Effective August 15, 2003. (Adds R.S. 9:3568 and 3571.1(H)(3) and (I)-(L))

8. Pinac (HB 1328)

Act No. 880

Requires the **licensure** of all persons engaged in the practice of **mold remediation**. Licenses shall be issued by the State Licensing Board for Contractors.

Effective August 15, 2003. (Adds R.S. 37:2181-2192)

9. Daniel (HB 2022)

Act No. 1166

Provides that in actions to recover **damages for contaminated ground water**, the Department of Environmental Quality and Department of Natural Resources shall be notified by the plaintiff and the departments may intervene or be made party to the suit. Any award for such damages shall be placed in the registry of the court and may **only be expended to remediate or protect usable ground water**.

Effective July 2, 2003. (Adds R.S. 30:2015.1)

XI. CONSTITUTIONAL AMENDMENTS

The following constitutional amendments are in the order in which they will appear when they are submitted to the voters at the gubernatorial primary election to be held October 4, 2003.

1. Dupre (SB 214)

Act No. 1302

Changes cap on the amount of mineral revenues in the **Wetlands Conservation and Restoration Fund** from \$40 million to an amount set by law but **not less than \$500 million** and **requires annual transfer of \$35 million** from the Mineral Revenue Audit and Settlement Fund to the Wetlands Conservation and Restoration Fund. Also authorizes allocation of nonrecurring monies to the Wetlands Conservation and Restoration Fund, and to highway construction if federal matching funds are available.

(Amends Const. Art. VII, §10.2(B) and (C) and 10.5(B) and (C); Adds Const. Art. VII, §10(D)(2)(e) and (f))

2. Dardenne (SB 213)

Act No. 1300

Creates the **Louisiana Coastal Restoration Fund** and provides that if after July 1, 2003 the state securitizes any remaining portion of the **tobacco settlement**, up to 20% of such funds shall be **transferred from the Millennium Trust Fund** to the Coastal Restoration Fund as needed to match federal coastal restoration monies.

(Effective January 1, 2004) (Adds Const. Art. VII, §10.11))

3. Pitre (HB 424)

Act No. 1295

Authorizes the legislature to **establish limits** on such judgments for the taking of, or loss or damage to, property rights affected by coastal wetlands conservation, management, preservation, enhancement, creation, or restoration activities. (If amendment ratified, HB 531 (Act 583) (see p. 46) limits such judgments to fair market value of the damaged property.)

(Amends Const. Art. I, §4)

4. Theunissen (SB 225)

Act No. 1293

Authorizes **BESE to supervise**, manage, and operate or to provide for the supervision, management, and operation of **any public elementary or secondary school determined to be failing** and authorizes BESE to receive and expend certain MFP and local funds to accomplish this purpose.

(Amends Const. Art. VIII, §3(A))

5. DeWitt (HB 282)

Act No. 1294

Replaces a the member of the board of directors of the **LWCC** who was the representative of insurers licensed by the Dept. of Insurance to issue worker's compensation insurance with a person selected from a **list of three submitted by the board of directors** of LWCC.

Removes a representative of the **office of risk management** from the board of directors of the LWCC and **adds two citizens representing the state at large**.

(Amends Const. Art. XII, §8.1(C)(1)(f) and (g); Repeals Const. Art. XII, §8.1(C)(1)(h))

6. Barham (SB 223)

Act No. 1301

Makes minor changes to three specific projects that are part of the **TIMED (Transportation Infrastructure Model for Economic Development) program**, one of which adds approximately seven miles to the program, but the net fiscal impact of the three changes is estimated to be a cost savings of \$62.6 million.

(Amends Const. Art. VII, §27(B))

7. Heitmeier (SB 177)

Act No. 1299

Provides an **exception to the constitutional prohibition against loaning, pledging, or donating a thing of value belonging to the state** or a local government by allowing the state infrastructure bank, which is created by law to finance certain highway construction and other infrastructure projects, to enter into financial arrangements, such as loan guarantees, for such projects.

(Amends Const. Art. VII, §14(B))

8. Pitre (HB 425)

Act No. 1297

Authorizes an **exemption from property taxes for drilling rigs** used exclusively outside the territorial limits of the state but which are being stored, converted, renovated, or repaired in the state, however, the exemption is **subject to voter approval in each particular parish**

Effective January 1, 2004. (Adds Const. Art. VII, §21(J))

9. Farrar (HB 583)

Act No. 1305

Requires, consistent with current practice, annual appropriation of available monies in the **Lottery Proceeds Fund** solely for the purposes of the **minimum foundation program** and up to \$500,000 for services related to compulsive and problem gaming as may be provided by law.

Effective July 1, 2004. (Amends Const. Art. XII, §6(A))

10. Bowler (HB 601)

Act No. 1298

Authorizes the legislature to create a system of administrative law to commence and handle adjudications in the manner required by the **Administrative Procedure Act**, to provide for the employment, qualifications, and authority of administrative law judges, and to provide for access to the courts by a governmental agency or public official seeking judicial review of an administrative agency determination.

(Adds Const. Art. XII, §15)

11. LeBlanc (HB 637)

Act No. 1307

Eliminates the potential double counting of certain nonrecurring mineral revenues in calculating deposits to the **Budget Stabilization Fund** by excluding such revenue from the calculation of total mineral revenues received by the state and changes an incorrect reference to the Budget Stabilization Fund.

(Amends Const. Art. VII, Sections 10.3(A)(2)(a)(intro. para.) and 10.5(B))

12. Devillier (HB 604)

Act No. 1304

Provides that "**personal effects, other than contraband, shall never be taken**". This is the same language as that in the 1973 constitution; however, in 1989, the language was expanded to **include a list of contraband, mainly drug-related property.**

(Amends Const. Art. I, §4)

13. Faucheux (HB 370)

Act No. 1303

Provides an **exception to the constitutional prohibition against loaning, pledging, or donating a thing of value belonging to the state** or a local government by allowing municipalities and parishes to **use tax revenues dedicated to industrial or economic development** or proceeds from bonds secured by such revenues to acquire or maintain immovable property and to grant use of such or other immovable property to a person or entity that, by **cooperative endeavor agreement**, agrees to locate or expand industrial enterprises within the area.

(Amends Const. Art. VII, §14(B))

14. LeBlanc (HB 576)

Act No. 1306

Prohibits the **legislative auditor** and any employee in the office of the legislative auditor from **participating or engaging in political activity**; being a candidate for nomination or election to public office; or being a member of any national, state, or local committee of a political party or faction; making or soliciting contributions for any political party, faction, or candidate; or taking active part in the management of the affairs of a political party, faction, candidate, or any political campaign.

Specifies that the legislative auditor or any employee in the office of the legislative auditor is **not prohibited from exercising his right as a citizen** to express his opinion privately, to serve as a commissioner at the polls, and to cast his vote as he desires.

Defines "political activity" as an effort to support or oppose the election of a candidate for political office or to support a particular political party in an election. Provides that these prohibitions shall be administered and enforced by the Louisiana Board of Ethics as provided by law.

Additionally provides that no former legislative auditor shall, for a period of **two years following the termination** of his service as legislative auditor, be eligible to **qualify for elected public office.**

(Amends Const. Art. III, §11)

15. Frith (HB 19)

Act No. 1296

Allows a **judge who reaches the age of 70** while in office **to complete his term** of office rather than vacating the office as currently required.

Effective January 1, 2004. (Amends Const. Art. V, §23(B))