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I. CIVIL LAW AND PROCEDURE

A. SUBSTANTIVE, LIABILITY, AND DAMAGES

1. LaFleur (HB 230)

Act No. 504

Expands the limitation of liability for farm animal activities provided by R.S. 9:2795.1 to include **Courirs de Mardi Gras and Courir de Mardi Gras Associations**, and authorizes the required warning notice to be written and distributed to the participants.

Expands the existing limitation of liability for Mardi Gras krewes, organizations, and members provided by R.S. 9:2796(A) to groups traditionally referred to as Courirs de Mardi Gras. Includes rural Courir de Mardi Gras parades, runs, or processions whereby the participants ride on horseback, march, walk, ride in horse-drawn floats, or ride in wheeled beds. Limitation of liability does not apply to a **compensated employee** of a krewe, organization or courir operating a motor vehicle within the parade.

Effective August 15, 2001. (Amends R.S. 9:2795.1(A)(3)(a) and (4), (E), (F) and 2796(A))

2. Flavin (HB 626)

Act No. 584

Prohibits a **credit card provider** from printing or otherwise producing or reproducing, or permitting the printing or other production or reproduction of the last five digits or other characters or the credit card expiration date on any receipt or other writing provided or made available to the cardholder. Excludes transactions in which the sole means available of recording the account number is by handwriting or imprinting the credit card and those made with electronic benefits transfer cards in accordance with federal law.

Provides for coverage of damages or expenses, or both, by the cardholder or the issuer for unauthorized use of the information.

Provides that this Act shall be operative on January 1, 2004, with respect to any cash register or other machine or device that electronically prints receipts for credit card transactions that is in use prior to January 1, 2002. Further provides that the provisions of this Act shall be operative on January 1, 2002, with respect to any cash register or other machine or device that electronically prints receipts for credit card transactions that is first put into use on or after January 1, 2002.

Effective August 15, 2001. (Adds R.S. 9:3518.3)

3. Perkins (HB 757)

Act No. 840

Provides for immunity from civil liability for law enforcement officers taking runaway children into custody or otherwise assisting them when the law enforcement officer is acting in good faith upon the request of a parent or guardian and exercises due care. Excludes acts of negligence or those constituting a violation of state law.

Effective August 15, 2001. (Adds Ch.C. Art. 736.1)

4. McMains (HB 759)

Act No. 841

Codifies the **judicial interest rate** at 7.3% for 1998, 6.73% for 1999, 7.285% for 2000, and 8.241% for 2001, and further provides, since the formerly used treasury bill rate is no longer available, that on and after January 1, 2002, the judicial interest rate shall be equal to the rate as published annually by the commissioner of financial institutions who shall set the judicial interest rate at 3.25 percentage points above the discount rate approved by the Federal Reserve Board of Governors as published in the Wall Street Journal on the first business day of October of each year.

Effective August 15, 2001. (Amends R.S. 13:4202(B)(1); Adds R.S. 13:4202(A)(13)-(16))

5. Ansardi (HB 804)

Act No. 305

Provides that the right of preference of the original obligee to the balance of a partially paid debt shall not be waived or altered if the original obligation arose from injuries sustained or loss occasioned by the original obligee as the result of the negligence or intentional conduct of the original obligor.

Effective August 15, 2001. (Amends C.C. Art. 1826)

6. Lancaster (HB 1209)

Act No. 527

Provides that if a person prevails in a civil action to require a state government entity to conduct an adjudication through the division of administrative law, the person shall be entitled to the **award of reasonable attorney fees** to be taxed as costs in the matter.

Effective August 15, 2001. (Amends R.S. 49:992(E) and (F); Adds R.S. 49:992(G))

7. Quezaire (HB 1917)

Act No. 1199

Clarifies that the limitation of liability for owners of property, including public parks, extends to both urban and rural property used for recreational purposes, extends the limitation of liability to **buildings, structures, machinery, or equipment** on public parks

owned, leased, or managed by the state or any of its political subdivisions. Excludes **playground equipment or defective stands**.

Provides that the provision of supervision on any land managed as a public park by the state or any of its political subdivisions does not create any greater duty of care, or a duty of care or basis of liability for personal injury or for damage to personal property caused by the act or omission of any person responsible for security or supervision of park activities.

Effective August 15, 2001. (Amends R.S. 9:2795(A)(1) and (3) and (E)(2)(a)-(c))

8. Michot (SB 431)

Act No. 478

Provides, in addition to damages allowed by existing law, that any tax that the owner of property damaged paid at the time of purchase shall be included and recovered as damages, Includes any sales tax that was paid by the owner on the repair or replacement of the property damaged.

Effective August 15, 2001. (Amends C.C. Art. 2315)

9. Ellington (SB 713)

Act No. 108

Includes **nursing homes and certified nurse assistants** in the list of entities defined as health care providers for purposes of inclusion **in the Medical Malpractice Act**. Includes as malpractice, acts or omissions in the training or supervision of health care providers.

Effective August 15, 2001. (Amends R.S. 40:1299.41(A)(1) and (8))

10. Schedler (SB 750)

Act No. 725

Relative to the Patient's Compensation Fund, provides that any self-insured health care provider who has **agreed to settle its liability** on a claim, and has been released by the claimant for such claim or any other claim arising from the same cause of action, shall be **removed as a party to the petition**, and his name removed from any judgment that is rendered in the proceeding. Requires that the release be filed with the clerk of court in the parish in which the petition is filed upon the filing of a properly executed, sworn release and settlement of claim.

Effective June 25, 2001. (Adds R.S. 40:1299.44(C)(9))

11. Dardenne (SB 955)

Act No. 494

Defines "vitamins" and extends the existing limitation of liability provisions for **food banks and distributors** of food banks to donated vitamins distributed through a food bank.

Effective June 21, 2001. (Amends R.S. 9:2799(A)(1) and (B))

12. Pinac (HB 888)

Act No. 244

Adopts the **Uniform Electronic Transactions Act (UETA)**, which provides for the implementation and use of **electronic records and electronic signatures** in order to form a valid and binding contract. UETA provides for definitions and general concepts which **allow the parties to choose** whether or not to form the contract by electronic means as well as the technology and **security procedures** employed to form the contract. An "electronic signature" is defined as an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

Effective July 1, 2001. (Adds R.S. 9:2601-2620)

13. Fruge (HB 1863)

Act No. 1105

Provides that whenever a **contract between an owner and a contractor** for the construction of any work requires the **withholding of sums for retainage** until after the recordation of formal acceptance of such work, or notice of default, or substantial completion, or final payment exclusive of nonconforming work, the **contractor may elect to furnish a retainage bond**, at the contractor's cost, equal to the amount of the retainage required by the contract.

Provides that if the contractor elects to furnish a retainage bond, it shall be in a form designated by the contracting agency from a surety, within their underwriting limits, with at least an **A- rating** in the latest printing of the A.M. Best's Key Rating Guide, and provides for prospective application only.

Effective June 28, 2001. (Adds R.S. 9:4822(M))

14. Johns (HB 474)

Act No. 577

Relative to the limitation of liability for community health care clinics, provides that the clinic shall conduct a screening to determine whether a patient is enrolled in a public entitlement program including those for **gratuitous medical or dental treatment**, and provides that community health care clinics **shall not provide services for patients who are enrolled for benefits under any such entitlement program.**

Effective August 15, 2001. (Amends R.S. 9:2799.5(B)(3))

B. PRESCRIPTION AND PEREMPTION

1. Ellington (SB 497)

Act No. 95

Adds **nursing homes** to the list of defendants against whom claims must be filed **within one year** from the date of discovery of the alleged act, omission, or neglect, but in **no event later than three years** from the date of the alleged act, omission, or neglect. Existing law already includes physicians, chiropractors, nurses, hospitals, and community blood centers or tissue banks in these one year prescriptive and three year preemptive periods.

Effective August 15, 2001. (Amends R.S. 9:5628)

2. Clarkson (HB 1046)

Act No. 871

Provides for a prescriptive period of **ten years** for enforcement of a **zoning violation** when the property or area involved has been identified as **historical** preservation, historic district, or landmark by a municipality or parish, or other entity responsible for zoning, planning, or building restrictions.

Effective August 15, 2001. (Amends R.S. 9:5625(G))

3. Pinac (HB 1129)

Act No. 179

Provides that **residential building contractors** are **not liable** for work constructed in accordance with **another's plans** and the preemptive periods for actions involving deficiencies in surveying, design, supervision, or construction of immovables or improvements are applicable to residential building contractors.

Requires every builder to **warrant** that the home will be free from major structural defects due to noncompliance with building standards or other defects for **seven years** following the warranty commencement date. Any action to enforce a warranty under the New Home

Warranty Act is subject to a **peremptive period** of 30 days after the expiration of the appropriate time period to bring any action.

Effective August 15, 2001. (Amends R.S. 9:2771, 2772(A)(intro. para.) and (B), 3144(A)(3), and 3146)

4. McMains (HB 2071)

Act No. 1126

Provides for the applicability of prescriptive periods to all business organizations formed under the laws of this state, excluding claims against a corporation or shareholders involving the unlawful distribution, payment, return, or receipt of corporate dividends or assets.

Provides for a **one year prescriptive period** and a **three year peremptive period** for an action for damages for a **negligent** unlawful distribution, return of an unlawful distribution, or breach of fiduciary duty, and provides for a **two year prescriptive period** and a **three year peremptive period** for **intentional** tortious misconduct, or for an **intentional** breach of a duty of loyalty, or for bad faith acts or omissions, **fraud**, or violation of law.

Provides that the prescriptive and peremptive periods shall not be subject to suspension or interruption on any grounds, except by timely suit.

Applies both retrospectively and prospectively with respect to claims to which a vested right has not attached; however, with respect to any alleged act, omission, or neglect for which the time period for bringing an action would otherwise be shortened by this Act, such action shall be filed in a court of competent jurisdiction and proper venue on or before the earlier of the end of the time period for bringing such action prior to the enactment of this Act or September 1, 2002, without regard to the date of discovery of the alleged act, omission, or neglect.

Effective June 28, 2001. (Adds R.S. 12:1501 and 1502)

5. LeBlanc (HB 1103) (last action 6/18/01)

Act No. 1167

Provides that the **failure to file any return** reporting **any state tax** (as compared to any state income or corporation franchise tax as provided under prior law) required to be filed by Subtitle II of Title 47 shall **interrupt the running of the 3 year prescriptive period**, and shall not commence to run again until the subsequent filing of the return.

Provides that the running of prescription shall not apply to periods for which the secretary and the taxpayer have entered into a valid and enforceable voluntary disclosure agreement.

Provides that this Act **shall apply to any state tax, excise, interest, penalty, or other charge**, and shall also apply to **use tax returns**, but only when the amount due exceeds \$500.

Effective June 29, 2001. (Amends R.S. 47:1580(A)(4) and (C))

6. B. Jones (SB 659) (last action 5/15/01)

Act No. 103

Provides that the **failure to file any return** reporting **any state tax** (as compared to any state income or corporation franchise tax as provided under prior law) required to be filed by Subtitle II of Title 47 shall **interrupt the running of the 3 year prescriptive period**, and shall not commence to run again until the subsequent filing of the return.

Provides that the running of prescription shall not apply to periods for which the secretary and the taxpayer have entered into a valid and enforceable voluntary disclosure agreement.

Provides that this Act is only applicable to use tax returns when the amount due exceeds \$500.

Effective July 1, 2001. (Amends R.S. 47:1580(C))

C. PROCEDURAL LAW

1. Bruneau (HB 20)

Act No. 23

Provides that **venue** is proper in an action against a **foreign corporation** or **limited liability company** licensed to do business in this state when the action is filed in the parish where its primary business office is located as designated in its application to do business in the state or, if no such designation is made, then in the parish where the primary place of business is located.

Legislatively overrules "heart of corporation" decision in *Dorsey v. McDermott*, 750 So.2d 996 (La. App. 4 Cir. 1999).

Effective August 15, 2001. (Amends C.C.P. Art. 42(4))

2. Pinac (HB 1306)

Act No. 543

Provides that the address of the registered agent for a **foreign limited liability company** shall be the address of the **principal** business establishment, if no address is listed for such on the application.

Effective August 15, 2001. (Amends R.S. 12:1345(A)(5))

3. Bruneau (HB 21)

Act No. 24

Provides that a **judgment of eviction** shall be effective for not less than **90 days**.

Effective August 15, 2001. (Amends C.C.P. Art. 4732)

4. Faucheux (HB 168)

Act No. 289

Provides that if the lessee does not comply with the **judgment of eviction** within 24 hours after receiving **notice** of the judgment the judge or justice of the peace may order the **expulsion** of the lessee.

Effective August 15, 2001. (Amends C.C. Art. 2713)

5. Bruneau (HB 241)

Act No. 407

Provides that if a person attempting to make **service** certifies that he is unable, after due diligence, to make service on a manager, member, or employee of a **limited liability company**, service of process may be made on the **secretary of state** or on a person in his office designated to receive service of process on limited liability companies, who shall then forward the citation to the limited liability company at its last known address.

Effective August 15, 2001. (Adds C.C.P. Art. 1267; Repeals C.C.P. Art. 1266(B)(4))

6. Daniel (HB 339)

Act No. 571

Provides that any **immunity** which may extend to an **expert** appointed by the court pursuant to Code of Civil Procedure Article 373 shall not extend to acts which constitute **perjury**.

Effective August 15, 2001. (Adds C.C.P. Art. 376)

7. McMains (HB 982)

Act No. 249

Provides that the state, a state agency, or state employee who is being indemnified and defended under R.S. 13:5108.1 or the Patients Compensation Fund shall not be required to post any bond, cash deposit, or other charge whatsoever to obtain a trial by jury.

Provides that if the state or the fund is ordered to pay court costs, it shall pay all jury costs directly associated with that trial within 30 days after mailing of the notice of judgment of the trial court.

Effective August 15, 2001. (Adds R.S. 13:5105(E))

8. McMains (HB 747)

Act No. 417

Provides that if a **motion to recuse** a judge is filed, or if a judge recuses himself, a judge ad hoc shall be selected by a **random reassignment** process to hear the motion to recuse or the trial of the case.

Provides that if a motion to recuse a judge is granted, a new judge shall be selected by a **random reassignment** process to try the case.

Effective August 15, 2001. (Amends C.C.P. Arts. 155 and 157(A) and C.Cr.P. Arts. 675 and 676(A)-(D); Adds C.Cr.P. Art. 676(E))

9. Townsend (HB 1844)

Act No. 932

Requires a judge who **recuses** himself to provide **written reasons** specifying the grounds of his recusal under C.C.P. Art. 151 within **15 days** of rendering the order to recuse.

Effective August 15, 2001. (Adds C.C.P. Art. 152(D))

10. McMains (HB 722)

Act No. 588

On recommendation of the Louisiana State Law Institute, permits the sale of **mortgaged property** under a **writ of fifa** in an ordinary proceeding **without appraisal** when the appraisal has been waived and when the judgment limits the right of enforcement to the security or collateral for the amount of the judgment.

Provides that if a **personal obligation** is secured by other mortgages or interests not recognized in the judgment, the judicial sale of the property securing the personal obligation shall not prevent **in rem** enforcement of the other mortgages or interests.

Effective August 15, 2001. (Amends C.C.P. Arts. 2332 and 2336)

11. McMains (HB 721)

Act No. 587

On recommendation of the Louisiana State Law Institute, provides that when a party files a timely application for a **writ of certiorari** any other party may also apply for certiorari within **30 days of notice** of judgment and opinion of the court of appeal, or within **10 days** of the **mailing** of the notice of the first application for certiorari, whichever is later.

Effective August 15, 2001. (Amends C.C.P. Art. 2166(D); Adds C.C.P. Art. 2166(E))

12. McMains (HB 997)

Act No. 250

Provides that service of **garnishment** petitions involving employees within the **executive branch of state government** shall be made: (1) on the **office** of statewide uniform payroll, if the employee is paid through the office of statewide uniform payroll, and (2) for all other employees, on the **secretary** of the department employing the debtor.

Provides that notice of the intent to file a contradictory motion against a garnishee for the amount of the unpaid judgment shall be **mailed** to the party designated for service of garnishment petitions.

Effective August 15, 2001. (Amends C.C.P. Arts. 2412(B) and 2413(A))

13. McMains (HB 720)

Act No. 512

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

- (1) Provides that **service on a limited partnership** (partnership in commendam) is made by personal service on a general partner.
- (2) Specifies that **notice** of the signing of the final judgment of a 103 divorce is not required.
- (3) Provides that **notice** of the date of entry of the default judgment must be given to the party in **default** who made an appearance of record at least **seven days** prior to the confirmation of the default judgment.
- (4) Requires **notice** of the signing of a final judgment in all "**contested**" cases, except as otherwise provided by law and provides for the **mailing** of the notice of a **default judgment** against a defendant who was personally served and who filed no exceptions or answer.
- (5) Authorizes the court to award reasonable **attorney fees** incurred by the prevailing party in an action to annul a judgment for **fraud or ill practices**.

- (6) Requires the procedure for **notice of judgments** in parish, city, and justice of the peace courts to conform to those specified in C.C.P. Art. 1913.

Effective August 15, 2001. (Amends C.C.P. Arts. 1263, 1314, 1701(B), 1702(A), 1913, 2004, 3612, 4905, and 4922)

14. Riddle (HB 883)

Act No. 597

Provides for the transfer of **structured settlement payment rights** as follows:

- (1) Defines "structured settlement payment rights" to mean the rights to receive periodic payments, including lump-sum payments under a structured settlement, whether from the settlement obligor or the annuity issuer, if the transferee or payee is domiciled in this state, the structured settlement agreement was approved by a court in this state, or the settled claim was pending before a court of this state when the parties entered into the structured settlement agreement.
- (2) Requires prior **approval** of the transfer by ex parte **order of a court** of competent jurisdiction which had jurisdiction over the original tort or workers' compensation claim resolved by the structured settlement or in which the original tort or workers' compensation claim could have been brought. Requires the transferee to file a **petition** for transfer **20 days** prior to the effective date of the transfer.
- (3) Requires the transferee to include the **amounts and due dates** of the structured settlement payments to be transferred and an itemization of the various costs payable by the payee, and the net amount payable to the payee after deduction of all commissions, fees, costs, expenses, and charges. (R.S. 9:2715(B)(1)-(10))
- (4) Authorizes the court to enter an order authorizing the transfer if certain criteria are met.
- (5) Provides that all **costs of court** for filing the petition for transfer of structured settlement rights shall be paid by the **transferee**.
- (6) Provides that after the transfer has been authorized, neither the annuity issuer nor the structured settlement obligor shall have any **liability** to the payee or to any other party for any payment made to the transferee in accordance with the authorization.

Effective August 15, 2001. (Adds R.S. 9:2715)

15. Ansardi (HB 743)

Act No. 839

Increases the handling **fees** charged by **hospitals** for copies of medical records from \$10 to \$15 and increases the handling fees charged by other health care providers from \$5 to \$7.50.

Provides that in addition to the reasonable reproduction costs for copies of X-rays, microfilm, and electronic and imaging media, a hospital may charge a handling **fee** of **\$15** and other health care providers may charge a handling fee of **\$7.50**.

Effective August 15, 2001. (Amends R.S. 40:1299.96(A)(2)(b))

16. Lentini (SB 393)

Act No. 396

Provides that a health care provider must **receive an affidavit** that attests to the fact that a subpoena is for the records of a party to the litigation and that notice of the subpoena has been mailed by registered or certified mail to the patient or his attorney at least **seven days** prior to the issuance of the **subpoena** before a patient's medical or hospital records will be disclosed.

Prohibits a clerk from issuing a subpoena for a patient's medical or hospital records unless the required affidavit is included with the request.

Effective August 15, 2001. (Amends R.S. 13:3715.1(B(1)))

17. Lancaster (HB 1825)

Act No. 1103

Provides that a retired **justice of the peace** with 18 years of service retains his authority to **perform marriage ceremonies** within the territorial limits if he registers with the clerk of court or the office of the state registrar of vital records, as required by law.

Effective August 15, 2001. (Amends R.S. 9:203(C))

18. Michot (SB 453)

Act No. 771

Relative to a **motion for summary judgment**, requires the court to give the adverse party additional time to file a response, including affidavits or depositions, for good cause shown.

Provides that if the adverse party serves **opposing affidavits** and any memorandum in support thereof, they shall be filed at least **four days** prior to the date of the hearing unless there are local rules of court to the contrary.

Effective August 15, 2001. (Amends C.C.P. Art. 966(B))

19. Lentini (SB 963)

Act No. 741

Prohibits a **natural parent** of a minor child from being appointed **tutor** if the parent was convicted of a felony involving theft or misappropriation of funds, a crime of violence as defined in R.S. 14:2(13), a sex offense as defined in R.S. 15:542 or 46:1844, or any other crime against an individual under the age of 18.

Effective August 15, 2001. (Amends C.C.P. Art. 4231)

20. Dupre (SB 1080)

Act No. 762

Provides that the civil **jurisdiction** of any **city court** with a territorial jurisdiction throughout the parish having a population of not less than 101,000 and not more than 125,000 according to the latest census, is **concurrent** with the district court in cases where the amount in dispute or value of the property involved does not exceed **\$20,000**.

Effective June 25, 2001. (Amends C.C.P. Art. 4843(E)(2) and (F))

21. Dupre (SB 653)

Act No. 713

Increases the **jurisdictional amount** over suits for the possession or ownership of movable property from \$2,000 to **\$3,000** in justice of the peace courts.

Provides that a **judgment of ownership** of a vehicle by a justice of the peace court shall be recognized by the Office of Motor Vehicles in accordance with the provisions of vehicle certificate of title law.

Increases the jurisdictional amount, in a justice of the peace court, over suits by landowners or lessors for the **eviction** of occupants or tenants of **leased commercial premises or farmlands** from monthly rentals that do not exceed \$2,000 to rentals that do not exceed **\$3,000** per month, regardless of amount of rent due or the rent for the unexpired term of the lease.

Effective June 25, 2001. (Amends C.C.P. Art. 4912)

22. C. Fields (SB 898)

Act No. 1134

Provides that an **appeal** from a judgment rendered by a **city court** located in the 19th JDC shall be taken to the **district court** of the parish in which the court of original jurisdiction is located.

Provides that an **appeal** from a judgment in a **criminal** case triable by jury from a **city court** located in the 19th JDC, except in capital cases, shall be taken to the **19th JDC** in East Baton Rouge parish.

Effective August 15, 2001. (Amends C.C.P. Art. 5001 and C.Cr.P. Art. 912.1(B))

23. Lentini (SB 1017)

Act No. 1214

Authorizes a payment from the **judicial expense fund** to defray expenses of the court, including salary supplements for personnel, upon the agreement of a **majority** of the judges of any municipal court in a parish with a population of not less than 470,000.

Authorizes the **filing** of documents by **facsimile** transmission in civil actions with the First and Second Parish Courts of **Jefferson Parish** and authorizes the clerk to purchase the necessary equipment and supplies. The filing is deemed **complete** at the time the facsimile is **received** and a receipt has been transmitted to the sender. A facsimile transmission has the same force and effect as when an original is filed.

Provides that within **five days** of receiving the transmission, exclusive of holidays, the party filing the document shall forward to the clerk: (1) the original signed document, (2) the applicable filing fee, and (3) a five dollar transmission fee. However, the **failure** to comply with these requirements results in the facsimile filing having no force and effect.

Authorizes the boards of aldermen of Lutchet and Gramercy to appoint an attorney as court magistrate who will serve at the pleasure of the mayor and may preside over the mayor's court.

Effective June 29, 2001. (Adds R.S. 13:2496.2, 13:2562.25, 33:441.28, and 33:441.29)

24. Lentini (SB 293)

Act No. 319

Authorizes the **filing** of pleadings and documents in **traffic or criminal** cases to be made by **facsimile** transmission if permitted by the policy of the clerk of court. Provides that such filings shall be complete at the time of **receipt** in the clerk's office and requires an acknowledgment of receipt to be forwarded to the sender. Requires the sender to forward the following to the clerk within **five days** of the facsimile transmission to continue the force and effect of the transmitted document: (1) the original signed document, (2) the applicable filing fee, and (3) a transmission fee of \$5.00, if the defendant has not been declared indigent by the court.

Requires the clerk of court to make available the necessary equipment for receipt of the transmission and authorizes equipment purchases at the clerk's discretion.

Effective August 15, 2001. (Amends C.C.P. Art. 253; Adds R.S. 13:1381.6 and C.Cr.P. Art. 14.1)

25. Donelon (HB 1245)

Act No. 1075

When a person fails to pay an **open account** within 30 days after the claimant **sends** written demand which correctly sets forth the amount owed, that person shall be **liable** to the claimant for reasonable attorney fees for the prosecution and collection of such claim. However, if the demand is made by **citation and service** of a petition, the person shall be entitled to pay the account without court costs and attorney fees by delivering **payment** to the claimant or his attorney within **30 days** after service.

Provides that citation and service of a petition shall be deemed written demand and **receipt** of written demand by the person is not required.

Provides that if the demand is forwarded to the person by **first class mail** to his last known address, a copy of the demand may be introduced as **evidence** of written demand on the debtor.

Effective August 15, 2001. (Amends R.S. 9:2781 and C.C.P. Art. 1702.1(A))

26. McMains (HB 975)

Act No. 1057

McMains (HB 976)

Act No. 1058

McMains (HB 977)

Act No. 1059

Provides that the Office Facilities Corporation, the Louisiana Office Building Corporation, and the Correctional Facilities Corporation are entitled to assert any **defense or limitation** available to the State or any state agency against claims in **tort or workers' compensation**, including but not limited to R.S. 13:5101-5113 (suits against the state, state agencies, or political subdivisions) and R.S. 23:1021-1415 (workers' compensation).

Provides that any claim or lawsuit against either corporation, arising out of **personal injury or death** of officials or employees, shall be governed by the workers' compensation law (R.S. 23:1021-1415).

Effective June 28, 2001. (Amends R.S. 39:1798.5; Adds 39:1797.1 and 1785(E) and (F))

27. McMains (HB 996)

Act No. 861

Provides that the settlement or compromise of claims of medical malpractice against the state **exceeding \$25,000** is binding on the claimant and the state without court approval.

Clarifies that the compromise or settlement of any claim of medical malpractice against the state exceeding \$25,000, exclusive of interest and costs, is governed by the provisions of R.S. 39:1535(B)(6) and (D)(1).

Effective August 15, 2001. (Amends R.S. 40:1299.39(I)(2) and (J))

28. McMains (HB 1524)

Act No. 450

Provides in the case where the amount of the **judgment exceeds \$150 million**, and except for litigation related to the Master Settlement Agreement (tobacco) and any litigation where the state is a judgment creditor, the court may, in the exercise of its broad discretion, fix the **security** in an amount sufficient to protect the rights of the judgment creditor.

Permits an aggrieved appellant to **challenge** the trial court's determination of the amount required to be furnished as security and provides for the application of **supervisory writs** to review the trial court's determination of the appropriate amount of security to be furnished.

Effective June 19, 2001. (Amends C.C.P. Art. 2124(B)(1), (C), and (D); Adds C.C.P. Art. 2124(E))

29. Lentini (SB 489)

Act No. 697

Provides that any petition filed and any proceeding held resulting from a medical malpractice claim once the parties have certified to the court that discovery is complete, be given priority, to the extent practicable, over any other civil action before the court, except those given preference for parties who are 70 years of age or who have a terminal illness.

Effective August 15, 2001. (Adds R.S. 40:1299.39(E)(3) and 1299.41(E)(4))

30. Riddle (HB 6)

Act No. 553

Provides that a **final judgment** may be **rendered and signed** by the court when the court imposes sanctions pursuant to C.E. Art. 510(G) against an attorney for a violation of the health care provider-patient privilege.

Effective August 15, 2001. (Amends C.C.P. Art. 1915(A)(6))

31. Triche (HB 1807)

Act No. 669

Provides that the security required for **suspensive appeal** involving a signatory or successor to a signatory to the **Master Settlement Agreement** executed on November 23, 1998, except for litigation related to the Master Settlement Agreement, or any litigation where the state is a party, shall not exceed **\$50 million**.

Requires the court to enter necessary orders to prevent dissipation or diversion of the assets, including but not limited to requiring that bond be posted equal to the full amount of security required by C.C.P. Art. 2124(B).

Applicable to all pending actions on or after the effective date of the Act

Effective June 25, 2001. (Adds R.S. 39:98.6)

D. EVIDENCE

1. M. Jackson (HB 1899)

Act No. 941

Provides that an **electronically imaged record**, document, or other information which accurately reproduces the original **qualifies as a duplicate** for evidentiary purposes.

Defines "**electronic imaging**" as the process of storing and retrieving any record, document, data, or other information through the use of electronic data processing, or computerized, digital, or optical scanning, or other electronic imaging system.

Provides that an electronically imaged **business record** kept by a business is subject to the **same rules of admissibility** as provided in existing law.

Effective August 15, 2001. (Amends C.E. Arts. 1001(5) and 1003 and R.S. 13:3733(A), (B), and (D)(intro. para.); Adds C.E. Art. 1001(6))

2. DeWitt (HB 2049)

Act No. 954

Provides for an **accountant-client privilege** and provides that a client **may refuse to disclose** any confidential communication made to his accountant. Provides for **exceptions** to the privilege if the communication is made as follows: in furtherance of a crime or fraud; with a now deceased client between parties who are making claims through that decedent; relevant to a breach of duty by an accountant; relevant to the authenticity or capacity of an accountant who signed as a witness; relevant to the common interests of two or more clients; concerning the identity of the client; concerning information required to be disclosed by

accounting profession standards; concerning an investigation of the State Board of CPAs; concerning disclosures in ethical investigations or peer review; or related to a domestic proceeding.

Provides for subpoena procedures for civil and criminal cases and waiver of the privilege.

Effective August 15, 2001. (Amends R.S. 37:86(A); Adds C.E. Arts. 515-517)

3. Dardenne (SB 442)

Act No. 1130

Adds a provision that when an offender is charged with **sexually assaultive behavior** or acts that constitute a sex offense involving a victim who is under 17 years old, evidence of an accused's commission of **other sexual offenses may be admissible** to the balancing test in Article 403. Requires the prosecution to give reasonable notice of the intent to introduce such evidence upon the request of the accused.

Effective August 15, 2001. (Adds C.E. Art. 412.2)

4. Ellington (SB 763)

Act No. 206

Adds **nursing homes** to the list of organizations whose peer review committees can have **access to the surveys** to be made confidential, and **permits disclosure of surveys**, statements of deficiencies and records pertaining to the results of investigations or surveys conducted by or on behalf of any governmental regulatory agency in a civil action against a healthcare provider if the records or surveys are **directly related to the type of injury** allegedly sustained by the patient at issue in the civil action, and the deficiencies have either been admitted by the healthcare provider or been declared valid through the appellate process established by the administrative agency in charge of reviewing the survey.

Effective August 15, 2001. (Amends R.S. 13:3715.3(intro. para.) and (A)(2); Adds R.S. 13:3715.3(G)(4)(e))

II. SUCCESSIONS AND TRUSTS

A. SUCCESSIONS

1. Ansardi (HB 595)

Act No. 509

On recommendation of the Louisiana State Law Institute, provides that a judgment of **interdiction** removes the interdict's capacity to make a **donations inter vivos**.

Repeals C.C. Art. 1482 as amended by Act No. 25 of 2000 1st E.S. which would have become effective on July 1, 2001, and provided that (1) the lack of capacity of a donor at the time he made a donation or executed a testament must be proven by clear and convincing evidence; and (2) a person who makes or revokes a disposition mortis causa while interdicted is presumed to lack capacity, which presumption may be rebutted by clear and convincing evidence.

Effective June 1, 2001. (Amends C.C. Art. 395; Repeals C.C. Art. 1482, as amended by Act No. 25 of 1st E.S.)

2. Pitre (HB 66)

Act No. 556

Provides that prior to the qualification of a succession representative, a successor may exercise **rights of ownership** with respect to a **thing of the estate** and his interest in the estate as a whole, however if a successor exercises his rights after the qualification of a succession representative, the effect is subordinate to the administration of the estate. Legislatively overrules the decision in *Succession of Stoufflet*, 665 So.2d 98 (La.App. 1 Cir. 1995).

Provides that an alienation, lease, or encumbrance of immovable property made by a successor prior to the effective date of this Act that would be valid under prior law, is valid.

Provides that an action to **annul** an alienation, lease, or encumbrance of immovable property made by a successor prior to the appointment of a succession representative must be brought within a **one year preemptive period** from the effective date of this Act.

This Act is remedial and interpretative and shall be applied **retroactively**.

Effective June 22, 2001. (Amends C.C. Art. 938; Adds R.S. 9:2502)

3. Bruneau (HB 191)

Act No. 560

Provides that testate and intestate **succession rights**, including the right to claim as a forced heir, are **governed** by the law in effect on the **date of the decedent's death**.

Provides that the rules for **interpretation** of testaments also apply to the interpretation of **revocations and modifications** of legacies or testaments, and repeals the law relative to the construction of testaments.

Provides that when a testament uses a **term** and the legal effect changes after the execution of the testament, the court may consider the law in effect at the time the **testament was executed** to ascertain the testator's intent.

This Act shall not apply to successions which have been judicially opened prior to its enactment.

Effective June 22, 2001. (Amends C.C. Arts. 870 and 1611; Adds C.C. Art. 1484; Repeals R.S. 9:2501)

4. Ansardi (HB 360)

Act No. 572

On recommendation of the Louisiana State Law Institute, provides that **confusion** does not take place until a successor has formally or informally **accepted** the succession.

Repeals Civil Code articles and statutory provisions providing for benefit of inventory.

Effective August 15, 2001. (Amends C.C. Art. 767, 1228, and 1829; Repeals C.C. Art. 337, 877, 878, and 879 and R.S. 9:1421)

5. Ansardi (HB 361)

Act No. 573

On recommendation of the Louisiana State Law Institute, provides for the **disinherison** of forced heirs by amending and reenacting the disinherison articles which were mistakenly repealed when the successions revision became effective on July 1, 1999.

Provides that a forced heir is deprived of his legitime if: (1) he is **expressly disinherited** by the testator (a parent or grandparent), (2) the disinherison is for a **just cause** expressly recognized by law and explained in the instrument, (3) the disinherison is in one of the **forms** for testaments, and (4) the forced heir is **identifiable** from the instrument.

Provides that for a disinherison to be valid, the cause must have occurred **prior** to the execution of the instrument and a person may be disinherited even though he was not a forced heir at the time of the act alleged to constitute just cause.

Provides that **reconciliation** may overcome the disinherison, **mental ability** may be used as a defense to disinherison, and this Act may be applied **retroactively** in certain cases.

Effective June 22, 2001. (Adds C.C. Arts. 1617-1626 and R.S. 9:2502)

6. McMains (HB 634)

Act No. 825

On recommendation of the Louisiana State Law Institute, clarifies the law by specifically defining "**prohibited substitutions**" as dispositions which donate a thing in full ownership to a first donee (institute) with instructions to **preserve** the thing and deliver it to a second donee (substitute) upon the death of the institute.

Provides that when a third person is called to take a gift or legacy which was not taken by the donee or legatee, it is not a prohibited substitution.

Clarifies the law by expressly providing when **vulgar substitutions** are to be considered valid.

Effective August 15, 2001. (Amends C.C. Arts. 1520 and 1521)

7. Riddle (HB 1788)

Act No. 641

Requires the **judgment of possession** to include the last known **address** of at least one of the heirs or legatees or the surviving spouse sent into possession of the property, however the failure to include the address shall not affect the **validity** of the judgment.

Effective August 15, 2001. (Amends C.C.P. Art. 3061)

8. McMains (HB 632)

Act No. 974

On recommendation of the Louisiana State Law Institute, provides definitions and procedures for the **independent administration of estates**. This is a more relaxed procedure because it permits the succession representative to act without the expense and delays involved in waiting for objections or applying for court approval. However, the testator may expressly **disallow** independent administration.

Provides that when the testament so provides, the court shall enter an appropriate order granting independent administration and issue Letters of Independent Administration or Executorship.

Provides the procedure to obtain independent administration when the testament does not expressly authorize independent administration of the estate, when no executor is designated, when the decedent dies intestate, or when the decedent dies part testate and part intestate.

Provides that the **trustee** is the proper party to consent to independent administration when a testamentary trust is created or the trustee is a legatee, and when a usufruct is created in the testament, and concurrence is required, consent of the usufructuary and all the naked owners must be obtained.

Provides that when the testament provides that a legatee must survive the testator by a certain period, the legatee living at the time of filing the application for independent administration is the proper party to give consent to the independent administration.

Provides that a subsequent **renunciation** of the person that consented to the independent administration has no effect on the **validity** of the administration.

Provides rules for the death of a successor before the filing of an application for independent administration, for the posting of **security** by the independent administrator, and for the **removal** of a succession representative and the **termination** of independent administration.

Provides that the independent administrator: (1) shall generally have all the rights, powers, and duties of a succession representative, (2) is not required to file an interim accounting, (3) shall file an inventory or sworn descriptive list before the succession is closed, and (4) shall file a final account with the court.

Effective August 15, 2001. (Adds C.C.P. Arts. 3396-3396.20 and 5251(14))

9. McMains (HB 633)

Act No. 824

On recommendation of the Louisiana State Law Institute, provides numerous revisions relative to various succession articles.

Authorizes the court to appoint an attorney to represent a **minor or interdicted** person who wishes to investigate or pursue an action to declare a successor **unworthy**.

Provides that when testamentary **accretion** is applicable the result is the same as if the unworthy successor had **predeceased** the testator.

Provides that an **acceptance or renunciation** of rights to succeed by intestacy is **null** if a testament is subsequently **probated** or given the effect of probate.

Provides that **accretion** is to benefit the person that would have succeeded to the legacies if the legatee had predeceased the decedent, and where the legatee is a child or sibling of the testator and the legacy lapses, accretion takes place in favor of the legatee's descendants by roots.

Provides that **universal successors** are **liable** to creditors of the estate to the extent of the **value of the property** received by them.

Relative to **olographic** testaments, provides that although the **date** may appear anywhere in the testament, the testator must **sign** the testament at the **end** of the testament, and if anything is written by the testator after his signature, the testament shall not be invalid and such writing may be **considered by the court** as part of the testament. Provides that the **date** is sufficiently indicated if it can be reasonably **ascertained** from information in the testament as clarified by extrinsic evidence.

Provides that a **legacy** is **not extinguished** when the **object** of the legacy has been **transformed** into a similar object or has been **condemned or expropriated** and an uncollected award or right of action is available.

Provides that the same **grounds** for the revocation of donations inter vivos are sufficient to **revoke testamentary dispositions**.

Effective August 15, 2001. (Amends C.C. Arts. 942, 946, 952, 965, 1416, 1575, 1577, 1593, and 1597; Adds C.C. Art. 1610.1)

B. TRUSTS

1. McMains (HB 1083)

Act No. 520

On recommendation of the Louisiana State Law Institute, provides that when there is more than one beneficiary, a trustee shall **administer** the trust **impartially**, based on what is **fair and reasonable** to all of the beneficiaries, except as provided by the trust instrument.

Provides that a **corporate trustee** may retain its own securities if acquired other than by purchase by that trustee, and may invest in its own mutual funds if the compensation is **reasonable and disclosed** to all beneficiaries.

Incorporates all **delegation concepts** into a single statute and provides that a trustee may delegate investment and management functions that a **prudent** trustee of comparable skills could properly delegate under the circumstances. In doing so, the trustee has the duty to exercise **reasonable care, skill, and caution** in selecting the agent and establishing the scope and terms of the delegation, to review periodically the actions of the agent, and in the event of a breach of the agent's duties discovered by the trustee, to take such action to remedy the breach. In performing a delegated function, an agent owes a **duty** to the trustee and to the beneficiaries to exercise reasonable care and skill and he submits to the jurisdiction of the courts of this state.

Replaces the prudent man rule with a new standard which provides that a trustee shall administer the trust as a **prudent person** would administer it. The trustee shall exercise reasonable care and skill, considering the purposes, terms, distribution requirements, and other circumstances of the trust. However, if a trustee has **special skills or expertise**, or has held himself out as having special skills or expertise, he has a duty to use those skills or expertise.

Provides that unless the trust instrument provides otherwise, a trustee is to invest and manage trust property as a **prudent investor**. The trustee's decisions are evaluated in the context of the trust property as a whole and as part of an **overall investment** strategy having risk and return objectives reasonably suited to the trust.

Provides that in the absence of any direction in the trust instrument or the Trust Code, **receipt or disbursement** of income and principal is allocated to **principal**.

Authorizes a trustee to make an **adjustment** between **income and principal** if the current amount payable to a beneficiary is determined by the income of the trust and the allocation rules do not provide fairly for both principal and income. However an adjustment between income and principal is not allowed: (1) for certain tax considerations, (2) when the trust instrument forbids adjustments, or (3) when it would benefit the trustee, directly or indirectly, unless all of the current beneficiaries consent or the proper court authorizes such adjustment after notice to all current beneficiaries.

Requires a **court order** to make adjustments if the adjustment would cause the income for the year to exceed 5% of the value of the trust, or if it would cause the income for the year to be reduced to less than 5% of the value of the trust.

Effective August 15, 2001. (Amends R.S. 9:2082, 2086, 2087, 2090, 2127, and 2142; Redesignates Subpart E of Part V of Chapter 1 of Code Title II of Code Book III of Title 9 as Subpart F; Adds R.S. 9:2158-2163; Repeals R.S. 9:2116)

2. McMains (HB 846)

Act No. 594

On recommendation of the Louisiana State Law Institute, requires **express authority** from the principal for a mandatary to make a donation inter vivos and to impose conditions on the donation that are not contrary to the other express terms of the mandate.

When a trustee accepts a trust established pursuant to this Code, he submits to the **jurisdiction** of the courts of **this state**.

Provides that a trustee shall be **removed** in accordance with the trust **instrument** or by the proper **court** for sufficient cause, and also provides an additional method to remove a corporate trustee.

Provides for a **class trust** consisting of some or all of his children, grandchildren, great grandchildren, nieces, nephews, grandnieces, grandnephews, and great grandnieces and great grandnephews, or any combination thereof. Permits the settlor to include **three younger generations** of beneficiaries within the class but does not require the existence of a member of the youngest permissible generation in order to validate the class as to that generation.

Provides that the form for both the addition of property and the acceptance of the addition can be the same as if the donation was made free of trust.

Authorizes a settlor to give a **trustee**, who is not a beneficiary of the trust, discretion to **allocate income** in different amounts among the income beneficiaries or to allocate some or all of the income to principal. Also provides methods to allow a settlor to delegate the right to **revoke** a trust.

Provides for the **termination or modification** of a trust if the market value of the trust is less than \$100,000.

Provides for **division** of trusts and for **combination** of trusts.

Provides that if the trust is **revocable**, the trustee has a duty to **account** to the settlor only.

Effective August 15, 2001. (Amends C.C. Art. 2997, R.S. 9:1789, 1891(A), 1932, 1961(C), 2026(2), 2030, 2045, and 2088(A); Adds R.S. 9:1784)

3. Cazayoux (HB 1267)

Act No. 890

Defines a "**foreign trust**" as a trust which by the terms of the instrument is governed by the law of a jurisdiction other than Louisiana, or a trust of which the settlor was domiciled in a jurisdiction other than Louisiana at the time the trust was created.

Provides that if the trust includes **property** in Louisiana, the title to which must be recorded, the trustee shall **file** the trust instrument, or an extract of the instrument, in each parish in which the property is located.

Provides that an **extract** of a trust instrument shall be in such form and contain such information as required by the law of the jurisdiction which the parties have expressly chosen to govern the trust, or that the extract shall be executed by either the settlor or the trustee and shall include the name of the trust, if any, the names of the settlor, the trustee, and the

beneficiary, the date of the trust instrument, a statement regarding revocability, a description of the property subject to the trust, and any other information deemed useful.

Provides that a trust instrument executed outside of this state in the manner prescribed by the law of the place of its execution, or the law of the settlor's domicile, at the time of its execution shall be **deemed to be legally executed** and shall have the same force and effect in this state as if it were executed in the manner and prescribed by the laws of this state, provided the trust instrument is in writing and subscribed by the settlor.

Effective August 15, 2001. (Adds R.S. 9:2262.1-2262.4)

4. B. Jones (SB 254)

Act No. 684

Provides that a **bank or trust company** authorized to exercise fiduciary powers under the laws of Louisiana, another state, or of the United States may serve as a **trustee** of a trust.

Effective August 15, 2001. (Amends R.S. 9:1783(A)(2))

III. FAMILY LAW

A. ADOPTION

1. Ansardi (HB 318)

Act No. 568

Amends certain provisions of the Children's Code relative to adoption. Provides for **continuing contact with relatives** after adoption in agency adoption cases and authorizes agreements, procedures and a form of the agreement. Requires a continuing contact assessment in the predisposition report, case plan and permanency hearing in child in need of care cases. Requires the court to determine in a hearing whether any proposed continuing contact agreement is in the best interest of the child.

Effective January 1, 2002. (Amends Ch.C. Arts. 668, 675(B)(4), 702(E)-(H), 1218, and 1240; Adds Ch.C. Arts. 675(B)(5), 702(I), 1042(D), 1146(D), 1208(D), and Chapter 14-A of Title XII of the Children's Code, comprised of Arts. 1269.1- 1269.7)

2. Sneed (HB 740)

Act No. 838

Provides that an **action to annul** an adoption based on fraud or duress by an adoptive parent or by anyone else shall be brought **within six months of the discovery** of the fraud or duress or **two years from the signing of the final decree** or mailing of the judgment when required.

Provides a repose provision which requires any action to annul a final decree of adoption rendered between July 1, 1997 and July 1, 2001, for which the time period for bringing such action would otherwise be shortened by the provisions this Act, to be instituted before January 1, 2002, or the date on which such right would have prescribed under applicable law, whichever occurs first.

Effective July 1, 2001. (Amends Ch.C. Art. 1263)

3. McMains (HB 1041)

Act No. 1064

Removes the domiciliary requirement in adoption proceedings that the child be born in Louisiana. Adds requirement that either a surrendering parent or a prospective adoptive parent must be **legally domiciled in Louisiana for at least eight months**.

Effective August 15, 2001. (Amends C.C.P. Art. 10(A)(1) and Ch.C. Arts. 1109, 1117, and 1122(B)(9) and (F)[Mother's and Father's Surrender Form])

4. McMains (HB 1602)

Act No. 910

Requires notice of the hearing of the opposition to a surrender of parental rights to be served by **registered or certified mail**, return receipt requested, **on the mother** of the child in addition to the notice already required to be served on the opposing father, the legal custodian, and counsel appointed for the child. Allows the mother of the child to **offer rebuttal evidence** and provides that the primary consideration shall be and the court shall accept evidence concerning the best interests of the child.

Provides that upon filing the act of voluntary surrender, the court of competent venue and jurisdiction wherein the surrender is filed shall have **exclusive, original jurisdiction over all issues of custody and adoption** of the child during the pendency of the proceedings, unless the child is in the custody of the Dept. of Social Services.

Effective August 15, 2001. (Amends Ch.C. Arts. 1124(B) and (C), 1137(D), 1138(C) and (E), and 1139(A); Adds Ch.C. Arts. 1180(C) and R.S. 46:1402.1)

B. MARRIAGE AND DIVORCE

1. Dardenne (SB 922)

Act No. 738

Redesignates "interim periodic support" as "**interim spousal support**" and provides that an award of interim spousal support shall **terminate** upon the rendition of a **judgment** awarding or denying final spousal support or **180 days** from the rendition of judgment of divorce, whichever occurs first.

Effective August 15, 2001. (Amends C.C. Art. 113)

2. Devillier (HB 744)

Act No. 1049

Requires a **material** change in circumstances for an award of periodic support to be modified or terminated.

Effective August 15, 2001. (Amends C.C. Art. 114)

3. Perkins (HB 234)

Act No. 561

Requires the license-issuing officer to **deliver**, in person or by registered mail, to each prospective spouse a printed **summary** of the **covenant marriage laws** of this state.

Requires the summary to emphasize: (1) premarital counseling is mandatory, (2) the couple agrees to take all reasonable steps to preserve their marriage if difficulties arise, and (3) divorce in a covenant marriage is restricted to fault and living separate and apart for two years.

Effective August 15, 2001. (Amends R.S. 9:237)

4. Dardenne (SB 954)

Act No. 493

Provides that the provisions of a **domestic relations order** or other judgment which divides retirement or other deferred work benefits between former spouses shall be **interlocutory** until it has been granted "qualified" status by either the plan administrator or other state or federal authority.

Provides that any **amendments** to the provisions of the domestic relations order or judgment shall be made with the **consent** of the parties or following a **hearing** by the court which issued the order.

Effective August 15, 2001. (Amends R.S. 9:2801)

5. Dartez (HB 1843)

Act No. 1195

Provides for the **licensure and regulation of marriage and family therapists** and creates the Marriage and Family Therapy Advisory Committee, within the La. Licensed Professional Counselors Board of Examiners, consisting of seven members appointed by the governor.

Requires a marriage and family therapist to apply to the advisory committee and furnish evidence that they are of good moral character, not engaged in any practice or conduct which would be grounds for refusing to issue a license, and qualified pursuant to the requirements of the Chapter.

Effective August 15, 2001. (Amends R.S. 37:1102, 1103, and 1104(A) and (B); Adds R.S. 37:1105(G), 1106(A)(9), and 1116-1122)

C. PATERNITY

1. Hines (SB 494)

Act No. 479

Provides that a husband is **presumed** to be the **father** of a child if: (1) a husband **consents** in writing to the use of his gametes to conceive a child after his death, (2) a child was born

to the surviving spouse using the decedent's gametes, and (3) the birth is within **two years** of the husband's death.

Provides that an heir or legatee of the decedent whose interest in the succession will be reduced has **one year** from the birth of such child to file suit disavowing paternity.

Effective August 15, 2001. (Adds R.S. 9:391.1)

2. Murray (HB 981)

Act No. 426

Provides that for **hearings** using an expedited process for the establishment of **paternity** and establishment or enforcement of **support**, the delay for serving and filing an objection shall be established pursuant to **local rules** pursuant to R.S. 46:236.5.

Effective June 15, 2001. (Amends Ch.C. Art. 423(F))

3. Pratt (HB 1771)

Act No. 639

Establishes the **Fatherhood Initiative program** for promoting stronger father-child relationships and enhancing men's parenting skills and abilities to provide support for their children.

Establishes the Fatherhood Council to develop and implement the Fatherhood Initiative plan and requires the council to present an interim report in 2002 and a final report in 2003 to the legislature through the secretary of DSS.

Effective August 15, 2001. (Adds R.S. 46:261)

4. Sneed (HB 2018)

Act No. 953

Creates the **crime** of giving false statements concerning **paternity** and defines it as willfully and knowingly making a written or oral false statement regarding either of the following: (1) Biological paternity in or in support of a certificate, record, or report required by the provisions of Chapter 2 of Title 40 of the Louisiana Revised Statutes of 1950 (Vital Statistics Law), or (2) The surrender of parental rights pursuant to the provisions of Title 11 of the Louisiana Children's Code.

Provides **penalties** of up to a **\$10,000 fine**, imprisonment for not more than **five years**, or both and requires the affidavit of legal counsel and the act of surrender to recite that counsel has explained to the surrendering parent the penalties.

Effective August 15, 2001. (Amends Ch.C. Art. 1121(C); Adds R.S. 14:125.2 and Ch.C. Art. 1122(B)(10))

5. Ansardi (HB 57)

Act No. 555

Deletes the **condition** that the other parent must have refused or failed to visit, communicate, or attempt to communicate with the child without just cause for a period of 10 years before the custodial parent may **change the name** of the child **without the consent** of the other parent.

Effective August 15, 2001. (Repeals R.S. 13:4751(C)(2)(d))

6. Townsend (HB 2017)

Act No. 1118

Provides that in the case of an otherwise legitimate child, where there is both a presumed and a biological father, the **surname** of the **child's biological father**, who has been judicially declared to be the father of the child in a filiation or paternity proceeding initiated either prior or subsequent to the birth of the child, shall be the **surname of the child** if the biological father has sole or joint custody of the child and the presumed father is no longer married to the mother.

Effective August 15, 2001. (Amends R.S. 40:34(B)(1)(a)(vi) and (vii))

7. Lentini (SB 391)

Act. No. 397

Provides that neither hospitals, their agents, nor employees shall be held civilly or criminally **liable** for actions or omissions arising out of the performance of duties imposed under the **hospital-based paternity program**, unless their conduct is intentional.

Effective August 15, 2001. (Adds R.S. 40:46.1(G))

8. B. Jones (SB 335)

Act No. 690

Provides that for the registering, recording, and preserving reports of birth, death, fetal death, marriage, divorce, dissolution of marriage, or annulment, and data related thereto, the information may be transferred by **electronic** means.

Effective August 15, 2001. (Amends R.S. 40:34(A) and (B)(intro. para.))

D. CHILD CUSTODY AND VISITATION

1. Broome (HB 409)

Act No. 410

Authorizes a **non-legal custodian**, other than a foster parent, to give legal **consent** for any **educational or medical** services for a child in his custody by executing an affidavit. The affidavit shall not be valid for more than one year, and a non-legal custodian's decision shall be superseded by any contravening decision of the child's parent or legal guardian.

Good faith reliance on a properly executed affidavit precludes imposition of criminal prosecution, civil liability, or professional disciplinary action, as long as the person did not have any **actual knowledge** of facts contrary of those stated in the affidavit or of any contrary wishes of the child's parent or legal guardian.

Effective June 15, 2001. (Adds R.S. 9:975)

2. Broome (HB 947)

Act No. 857

Redesignates the "Grandparent Subsidy Program" as the "**Kinship Care Subsidy Program**" and expands the program to include any caregiver who is an adult relative within the **fifth degree of consanguinity** to the child, and has legal custody or guardianship or gains legal custody or guardianship of a child living in his home within one year of enrolling in the program.

Effective June 26, 2001. (Amends R.S. 46:237)

3. Murray (HB 978)

Act No. 425

Provides that in addition to or in lieu of the penalties for contempt, when a parent has **violated** a child **visitation order**, the court may order **any or all** of the following: (1) require the custodial parent to allow **additional visitation** days to replace those denied the noncustodial parent; (2) require one or both parents to attend a parent **education course**; and (3) require one or both parents to attend **counseling** or mediation.

Effective June 15, 2001. (Adds Ch.C. Art. 1509(E) and R.S. 13:4611(1)(e))

4. Hoyt (SB 1076)

Act No. 499

Provides that if a child was conceived through the commission of a **felony rape**, the natural parent who committed the felony rape shall be **denied visitation** rights and the commission of the rape shall be grounds for **termination** of parental rights.

Effective August 15, 2001. (Adds C.C. Art. 136.1 and Ch.C. Art. 1015(8))

E. CHILD SUPPORT

1. Clarkson (HB 1398)

Act No. 1082

Specifically **overrules** a portion of *Stogner v. Stogner*, 98-3044 (La. 7/7/99), 739 So.2d 762 which stated that a change in circumstances does not require proof of a substantial change by requiring the party to prove a **material** change in circumstances for modification of a child support award. Also provides that the mover may be required to pay **costs and attorneys fees** of the other party if the motion to modify is dismissed prior to a hearing or the court does not find good cause to modify an award, and the court determines the motion was frivolous.

Provides that a showing of good cause on a motion for an **accounting** of child support payments is based upon the expenditures of child support for the **six months** immediately prior to the filing of the motion and if an accounting is ordered, it shall be in the form of an expense and income affidavit for the child. Authorizes the payment of the court **costs and attorney fees** of the recipient of child support if the court determines the movant's motion was frivolous.

Explains the basic principles and the incomes shares approach that is incorporated into the guidelines.

Establishes a mandatory **\$100 minimum** child support award.

Defines **multiple families** as cases involving one or more families where none of the children live with the noncustodial/nondomiciliary parent but there are existing child support orders and authorizes the court to **deviate** if the existing orders reduce the obligor's income below the lowest income level on the schedule.

Clarifies that net child care costs, which are added to the basic child support obligation, are those costs determined by applying the **Federal Credit for Child and Dependent Care Expenses** to the total or actual child care costs.

Redefines "**other extraordinary expenses**" to include expenses of tuition, registration, books, and supply fees required for attending a special or private elementary or secondary school to meet the needs of the child.

Provides that benefits received by a child from **public assistance** programs, including but not limited to Family Independence Temporary Assistance Programs (FITAP), food stamps, or any means-tested program shall **not** be considered **income** of the child which may be deducted from a support obligation.

Defines "**joint custody**" as a joint custody order that is not shared custody and defines "shared custody" as a joint custody order in which each parent has physical custody of the child for an **equal** amount of time. Defines "**split custody**" as an arrangement whereby each party is the sole custodial or domiciliary parent of at least **one child** to whom support is due. Provides for the calculation of the total support obligation in joint custody, shared custody, and split custody situations and also provides Worksheet A and Worksheet B to be used for these calculations.

Authorizes the court, upon considering certain criteria, to order a **credit** to the support obligation if under a joint custody order, the nondomiciliary parent's **visitation** exceeds **73 days**.

Authorizes the court to consider a **subsequent family** as a **defense** to the modification of an existing order when the obligor has taken a second job or works overtime to provide for the subsequent family.

Clarifies that the party receiving the tax dependency deduction shall not be considered as having received payment of a thing not due.

Extends the **schedule** for determining the support obligation when the parties' combined adjusted monthly gross income is between **\$10,050 and \$20,000**, and **adjusts** the existing schedule for determining the obligation for incomes between **\$7,800 and \$10,000** to accommodate the extension of the schedule.

Effective August 15, 2001. (Amends R.S. 9:311, 312, 315-315.20, 315.22(C), and 374(A) and (B) and C.C. Art. 142; Repeals R.S. 9:337)

2. Riddle (HB 1667)

Act No. 459

Provides that although when good cause is shown the court has discretion to set the **effective date** of a **judgment** of child support, in **no** instance shall the effective date be set prior to the date of **judicial demand**.

Effective August 15, 2001. (Amends R.S. 9:315.21(A), (B)(2), (C), and (E))

3. Durand (HB 341)

Act No. 408

Extends the **alimentary obligation** of a parent to include the education of a child who has not yet attained **22 years of age** and has a **developmental disability** as defined in R.S. 28:381.

Extends an award of **child support** until the age of 22 for a child who is a full-time student, in high school, and has a **developmental disability** as defined in R.S. 28:381.

Effective August 15, 2001. (Amends C.C. Art. 230(B); Adds R.S. 9:315.22(D))

4. Green (HB 262)

Act No. 564

Provides that an **income assignment** order may be **terminated** by order of the court or by the **obligor** if he: (1) provides the payor and the obligee with an **affidavit** for termination which states that current support is no longer due and there are no arrears, and (2) sends the affidavit, or a true copy thereof, by certified mail to the payor and the obligee within three days of execution, and (3) files the affidavit, or a true copy thereof, with the court which issued the income assignment order. The obligee has **30 days** from the day the affidavit was executed to notify the payor and the obligor of any objections to the termination of the order.

Provides that if the payor does not timely receive notification of an objection by the obligee the payor shall terminate the order, however if the payor receives an objection from the obligee after the income assignment has been terminated, but within 90 days from the day the affidavit was executed, the assignment shall be reinstated by the payor. However, if the payor does timely receive notification of an objection by the obligee, the payor shall continue to withhold income according to the assignment order until further order of the court.

The nonprevailing party shall pay all **court costs and attorney fees** of the prevailing party.

Effective August 15, 2001. (Amends R.S. 46:236.3(E))

5. Salter (HB 94)

Act No. 501

Provides that when a non-domiciliary party's child support obligation is between **50 and 70%** of the total child support obligation, he is entitled to claim the federal and state **tax dependency deduction** if: (1) he is current in his child support payments, and (2) the judge finds that such deduction would substantially benefit the non-domiciliary party without significantly harming the domiciliary party.

Provides that when a non-domiciliary party's child support obligation **exceeds 70%** of the total child support obligation, he is **automatically** entitled to claim the federal and state tax dependency deduction if no arrearages are owed by the obligor.

Effective August 15, 2001. (Amends R.S. 9:315.13(B)(1)(intro. para.); Adds R.S. 9:315.13(C))

6. Murray (HB 979)

Act No. 859

Requires the payor to include the **case number** or numbers on all **payments** made to the **department** in accordance with income assignment orders.

Effective June 26, 2001. (Amends R.S. 46:236.3(E)(3))

7. Triche (HB 980)

Act No. 612

Provides for the **suspension** of any license, certification, registration, permit, approval, or other similar document evidencing admission to or granting authority to engage in a profession, occupation, business, industry, operate a motor vehicle, or participate in any sporting activity, including hunting and fishing for **nonpayment** of child support. If a licensee objects, an administrative hearing shall be conducted in accordance with the Administrative Procedure Act.

Provides that the licensing authority shall specify an **exact date** and hour of suspension, and the notice provided to the licensee shall state the effective date of the suspension and how to apply for reinstatement.

Provides that if the suspension is of the licensee's license to operate a **motor vehicle**, DSS may recommend the suspension be restricted to **specific** time periods in order to allow the licensee to travel to and from his place of employment and if the licensee is an attorney, a judgment of noncompliance shall be mailed to the state supreme court and the Louisiana State Bar Association.

Effective June 22, 2001. (Amends R.S. 9:315.40(4), (5), and (8), 315.41, 315.42(B), 315.43, 315.44(A)(intro. para.) and (3), 315.45, and 315.47; Adds R.S. 9:315.40(9); Repeals R.S. 9:315.48)

F. DOMESTIC ABUSE AND PROTECTIVE ORDERS

1. Durand (HB 1182)

Act No. 430

Provides that a complainant seeking protection from domestic abuse, stalking, or sexual assault **shall not** be required to prepay **court costs** or costs of service or subpoena for the filing of the petition or the issuance of a temporary restraining order, a preliminary or permanent injunction, or a protective order in matters of domestic abuse, and provides that the clerk of court shall immediately file and process the petition and temporary restraining order issued in matters of domestic abuse, regardless of the ability of the plaintiff to pay court costs.

Effective August 15, 2001. (Adds C.C.P. Art. 3603.1(C) and R.S. 46:2134(F))

2. Clarkson (HB 1517)

Act No. 1180

Provides that a victim of a dating partner is eligible to receive all services, benefits, and other assistance provided to family and household members under the Protection from Family Violence Act, and defines a "dating partner" as any person who is or has been in a social relationship of a romantic or intimate nature with the victim and where the existence of a relationship is determined based on the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

Effective August 15, 2001. (Adds R.S. 46:2151)

3. Murray (HB 1731)

Act No. 997

Authorizes and provides procedures and forms for the **payment of mediator fees** and certain attorney fees through the Department of Social Services, office of community services, in certain child protection proceedings.

Effective on October 1, 2001, to be applied to all counsel or curator appointments made on or after that date.

(Amends R.S. 46:460.21(A), (B)(2), (C)(1), (2)(b)(iii), and (3), (D), and (E); Adds R.S. 46:460.21(B)(6))

G. CHILD IN NEED OF CARE AND FAMILIES IN NEED OF CARE

1. Ansardi (HB 316)

Act No. 567

On recommendation of the Louisiana State Law Institute, amends various provisions of the Children's Code and the Code of Civil Procedure to implement the Adoption and Safe Family's Act of 1999 (ASFA) to provide for children in need of care (CINC), court appointed and court approved administrative bodies, instant orders, continued custody, informal adjustment agreements, assignment of custody of children reunification efforts and permanency hearings, and to provide for the selection and qualification of mediators, mediation agreements, jurisdiction and informal family services plan agreements and other agreements and to provide for procedures for interim continuing contact, for notice of opposition to adoption, fee disclosure, petitions in intrafamily adoptions, the statement of family history, filing of the act of surrender, and service of petitions.

Effective August 15, 2001. (Amends Ch.C. Arts. 303(7), 424.7(A), 438(C) and (D), 439(C), 443, 603(8), 619(C), 620(B), 624(C), (D), and (E), 626(B), 629, 630, 672, 672.1(D), 688, 702(C)- (G), 710(A)(intro. para.) and (C), 745(C), 776(A), 841(C), 1004(G), 1037.1, 1128, 1131(A), 1137(C), 1144(B), 1146(B) and (C), 1195(C), 1196(D), 1223(B)(4), 1223.1(C)(1)(A), 1243(A) and (C), and 1249 and C.C.P. Art. 10(A)(1); Adds Ch.C. Arts. 438(E), 439.1, 624(F), 710(D), and 1196(E); Repeals Ch.C. Arts. 617(G) and (H), 618(G) and (H), and 702(H))

IV. PROPERTY

A. GENERAL

1. Pinac (HB 1024)

Act No. 866

Provides for valid **sale/lease-back** commercial transactions involving movable and immovable property located in the state with a fair market value in excess of \$25,000. Provides that such transactions shall not be presumed to be simulations.

Effective August 15, 2001. (Adds R.S. 9:3370 and 3371)

2. Bruneau (HB 96)

Act No. 791

In the parish of Orleans, the judicial **advertisement** of **movable property** is not required to be inserted in an auxiliary journal.

Provides that if one of the two required **notices** contains an **error** or omission which makes the notice legally deficient, but the other notice is legally **sufficient**, the notice requirements are considered **fulfilled**.

This Act provides for **retroactive application** and is intended to validate all past judicial advertisements that did not comply with the dual publication requirements.

Effective August 15, 2001. (Amends R.S. 43:202(B); Adds R.S. 43:202(C))

3. Downer (HB 42)

Act No. 790

Authorizes a member of the **armed forces** of the United States to terminate his residential **lease** if he is notified of the availability of government-supplied quarters and provides certification that the quarters were not available at the time the lease was executed and he provided the lessor with written notification regarding his pending application for government quarters.

Effective August 15, 2001. (Amends R.S. 9:3261(B); Adds R.S. 9:3261(A)(5))

4. McCallum (HB 231)

Act No. 797

Increases the fee for the **appraisal of movables** from not less than five dollars nor more than \$15 to **\$25** and increases the fee for the appraisal of **immovable property** from not less than \$25 nor more than \$75 to not less than **\$100** nor more than **\$350**.

Effective August 15, 2001. (Amends R.S. 13:4366(A)(1) and (2))

5. Daniel (HB 338)

Act No. 963

Provides that **mineral leases** and the rights of the lessors and lessees remain **valid** on lands that have changed ownership due to accretion, dereliction, erosion, subsidence, or other actions caused by a navigable stream, bay, lake, **sea, or arm of the sea**.

Effective August 15, 2001. (Amends R.S. 9:1151)

6. Pinac (HB 659)

Act No. 1047

Provides that the Dept. of Environmental Quality's **lien** against immovable property for the costs of **remediation** of that property is perfected by filing a **notice** containing a property description and the name of the current record owner.

Provides that any **security interests** filed before the state's lien has **priority** over the state's lien but only to the extent of **fair market value** of the property prior to the remediation by the state, but prior recorded security interests are subordinate to the state's lien for any amount in excess of such pre-remediation fair market value.

Effective August 15, 2001. (Amends R.S. 30:2281)

7. Schwegmann (HB 1190)

Act No. 378

Although a portion of the **lakefront** along Lake Pontchartrain in New Orleans is reserved and dedicated by the Orleans Levee District for public parks, parkways, boulevards, playgrounds, aviation fields, places of amusement, and beach purposes, **one acre** may be sold or leased to the University of New Orleans to be used as a **parking area** for university research and the general public.

Effective June 13, 2001. (Amends R.S. 38:336(B)(2)(b))

8. L. Jackson (HB 1460)

Act No. 155

Authorizes political subdivisions to obtain, sell, or otherwise **dispose of abandoned** properties. Whenever any property is adjudicated to a parish or municipality more than five

years previously for nonpayment of taxes, charges, or paving and other local improvement assessments, the political subdivision may declare by **ordinance** that the property is needed for a "valid public purpose."

Requires the ordinance to be registered in the conveyance records of the parish and provides for notice to owners and interested parties within **30 days** after registration. The owner or interested parties have **120 days** from recordation to contest the acquisition by filing suit. If no suit is filed, the ordinance becomes operative, the parish or municipality acquires a good, valid, and merchantable **title** to the property, subject to no encumbrance, and the acquisition cannot be contested for any reason.

Provides that the property may be donated to nonprofit organizations in accordance with La. Const. Art. 7, §14 and statutes governing the disposition of abandoned and blighted property.

Applicable to tax adjudications of property which may have occurred prior to, or which occurs on or subsequent to the effective date of this Act, and on which a period of five or more years has run since the adjudication.

Effective August 15, 2001. (Adds R.S. 33:2881.1-2881.4)

9. Pinac (HB 1924)

Act No. 943

Revises the procedures for **repossession of motor vehicles** under the Louisiana Motor Vehicle Sales Finance Act. **Deletes exclusion for Orleans Parish.** Authorizes a creditor to seize and dispose of a motor vehicle following a default by the debtor, without previous citation and judgement, after service upon the debtor of a petition to obtain possession. Provides for an **immediate issuance** to the creditor of an **order to obtain possession**, and provides for graduated fees paid by the creditor to the sheriff for executing the order based upon the time period that lapses between the issuance of the order and the actual seizure. Provides that the clerk shall collect only those fees due to the sheriff and the clerk's office for any filing made pursuant to a repossession proceeding. Graduated fees are as follows:

- (1) \$400 if seized within 10 days of receipt of the order.
- (2) \$300 if seized within 15 days of receipt of the order.
- (3) \$200 if seized within 20 days of receipt of the order.
- (4) \$100 if seized after 20 days of receipt of the order.

Deletes requirements that persons taking possession of a repossessed vehicle hold a repossession license issued by the commissioner of financial institutions.

Effective August 15, 2001. (Amends R.S. 6:965(C) and 966(A) and (D)-(M); Repeals R.S. 6:966(N))

10. Fontenot (SB 1031)

Act No. 496

Provides that when a **vehicle** stored or left for repair at a motor vehicle dealer or repair shop has been placed in storage as a result of **nonpayment** and the dealer or repair shop **notifies** the vehicle owner and no payment is made within **45 days** of the notice, the dealer or repair shop may **dispose** of the vehicle and collect the cost of storage, not to exceed the maximum charge set by the Public Service Commission for towing facilities.

Effective August 15, 2001. (Amends R.S. 32:1726(B))

11. Landrieu (HB 2025)

Act No. 1204

Authorizes the governing authority of a municipality or parish, who donates abandoned property, to **cancel such liens and privileges for taxes**, paving and other assessments, interest, and penalties due the state or any political subdivision as it deems appropriate.

Requires the governing authority to establish and publish a fair and equitable **policy** which shall have **uniform** application for determining the amount of taxes, paving and other assessments, interest, and penalties that are to be canceled in each case.

Provides special requirements for the donation of abandoned or blighted property to a **not-for-profit** organization.

Requires the post-adjudication donation to state the **extent** to which such liens and privileges are to be **canceled**. The **recordation** of the post-adjudication donation operates as the cancellation of those liens and privileges.

Effective August 15, 2001. (Amends R.S. 33:4720.29, 4720.30(C), and 4720.31(A))

12. Flavin (HB 624)

Act No. 973

Requires operators taking or producing oil or gas from lands who do not market through a pipeline to submit monthly reports by certified mail. Requires detailed statement of costs, total production, and price received to be sent to owners of unleased mineral interests within a drilling unit within 90 days after receiving a request by certified mail. Provides for delays for forfeiture of right of contribution from owners for failure to comply with reporting requirements.

Effective August 15, 2001. (Amends R.S. 30:103, 103.1 and 103.2)

13. Clarkson (HB 1281)

Act No. 261

Prohibits any person from soliciting a **referral fee** unless the person introduced the client to the realtor or had a written contract which provides for the payment of a referral fee, and the realtor received the referral before the client contracted to buy or list real estate.

Provides that the threat of or actual reduction of relocation benefits based upon a realtor's refusal to pay or return a referral fee is considered **interference** with a real estate brokerage relationship and is **unlawful**. Also provides that it is unlawful for another realtor to interfere with a contract between a realtor and a client.

Provides that in addition to bringing the action in court, violations may be addressed through **mediation** services and the prevailing party may be awarded actual **damages** and reasonable **attorney fees**.

Effective August 15, 2001. (Adds R.S. 37:1447)

14. Michot (SB 627)

Act No. 711

Any person performing the work of a **residential building contractor** shall be **licensed** by the State Licensing Board of Contractors, **unless** he is a homeowner who supervises, superintends, oversees, directs, or in any manner assumes charge of the construction, alteration, repair, improvement, movement, demolition, putting up, tearing down, or maintenance of his personal residence, provided he does not build more than **one residence** per year. Provides that the one-year period shall commence on the date of occupancy of the residence and if a homeowner has a change in **marital status** or a change in **employment** location in excess of fifty miles from his personal residence, he may build more than one personal residence in a one-year period without a license.

Effective August 15, 2001. (Amends R.S. 37:2170(A)(1))

15. Murray (HB 731)

Act No. 366

Provides that if property that has been **seized** for the failure to pay certain fines has been advertised once and offered for sale and has failed to sell, then the **New Orleans Redevelopment Authority may purchase** the property for an amount equal to the greater of **one-third** of its appraised value and the sum of any taxes and charges imposed pursuant to R.S. 33:1236 and paying or other local assessments on the property, but not to exceed two-thirds of its appraised value.

Effective August 15, 2001. (Amends R.S. 13:2576(H)(2)(h))

16. Murray (HB 434)

Act No. 232

Provides that under the **criminal blighting of property** statute, the period of time that an offender can be ordered to occupy blighted property shall not exceed **60 days**.

Effective August 15, 2001. (Amends R.S. 14:107.3(D))

17. Clarkson (HB 1095)

Act No. 178

Requires every written contract of **lease** executed by any licensee or sale of residential immovable property, entered into on or after January 1, 2002, to contain an adequate **notice** to inform the buyer or transferee of the availability of the statewide **sex offender database** and its telephone number and Internet address.

Provides that the notice shall not give rise to a cause of action against the discloser.

Effective August 15, 2001. (Adds R.S. 37:1469)

18. Thompson (HB 1136)

Act No. 523

Whenever property, other than highway rights-of-way, is acquired by a **state agency** or political subdivision and the agency or subdivision then desires to transfer said property to a third person, it shall first offer to **sell the property**, at the fair market value, back to the **original owner** or his successors in title unless the contractual agreement by which the property was acquired otherwise stipulates and unless the property was acquired by a reservoir district created by the state.

This Act applies to the sale of property acquired prior to or after the effective date of this Act and sold after such date.

Effective August 15, 2001. (Amends R.S. 41:1338(A); Adds R.S. 41:1338(D))

19. L. Jackson (HB 1812)

Act No. 462

Provides that **notice provisions** for the post-adjudication sale or donation of unredeemed immovable property adjudicated to a political subdivision are **sufficient** in order to proceed and it is **not necessary** to determine whether **notice** of the tax sale was given.

Provides that at least **60 days** prior to the sale, the political subdivision shall give **notice** to 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. Provides that **no further notification** is required upon any person acquiring a vested or contingent interest subsequent to the

recordation of the notice in the conveyance records of the parish in which the property is located.

Provides that abandoned property may be **redeemed** at any moment **before the sale** by the tax debtor, his heir, administrator, executor, assignor, or successor upon payment of all applicable taxes, interest, costs, penalties, and charges.

Requires a political subdivision to **notify** the tax collector, parish, or municipality of all requests for **post-adjudication sales** and the tax collector shall not allow abandoned property to be redeemed until it has been **confirmed** that all sums assessed against the property have been paid.

Effective August 15, 2001. (Amends R.S. 33:4720.17(A) and 4720.31(A) and R.S. 47:2261(B)(1); Adds R.S. 47:2261(C) and (D))

20. Pratt (HB 1211)

Act No. 1073

Governing authorities of any municipality, incorporated town, lake commission, parish council, or similar governmental unit may **establish and regulate**, within its borders, an **historic preservation district** to promote the educational, cultural, economic, and general welfare of the public.

Although certain areas of **New Orleans** are **exempted** from the application of certain laws relative to such districts, the construction of any **new structures** and any demolitions of existing structures within the exempted area may be **regulated**.

Effective August 15, 2001. (Amends R.S. 25:745(A)(3) and 767(B))

21. K. Carter (HB 704)

Act No. 832

Licensed hospitals are authorized to sell **abandoned property** at a public sale if the owner or the next of kin has been **notified** by certified mail, return receipt requested, that the property is in the hospital's possession, and the property is not claimed within **30 days** if the owner was discharged from or died in the facility, or within **130 days** if the owner is anyone other than a person who was discharged or died in the facility.

Authorizes a hospital to **dispose** of any soiled clothing which is considered abandoned property.

Effective August 15, 2001. (Amends R.S. 40:2811(A)(1) and (2); Adds R.S. 40:2811(C) and (D))

22. McDonald (HB 233)

Act No. 406

Provides a **procedure** for applying for the constitutional "**special assessment level**" for **homestead exempt property** owned and occupied by a person who is 65 years of age or older, or his surviving spouse age 55 or older or who has minor children. The application form shall be designed by the Louisiana Tax Commission and provided to every assessor in the state. Qualifying persons shall **annually** complete the application form at the assessor's office or mail it to the assessor by first class mail. Forbids the assessor from keeping a copy of the applicant's federal or state income tax return or picture identification.

Effective July 1, 2001. (Adds R.S. 47:1712)

23. Pinac (HB 1313)

Act No. 544

Requires banks to **annually appraise** immovable property owned by the bank and valued at \$100,000 or more, within a reasonable time as determined by the commissioner.

Authorizes a bank to hold immovable property in **perpetuity** if it transfers the property into a **subsidiary** of the bank and all other requirements are met.

Applies the same procedures, rules, and regulations governing the holding of immovable property by banks to **savings and loan associations**, and provides that savings banks may hold immovable property for office and rental purposes.

Effective June 21, 2001. (Amends R.S. 6:243(B)(2) and (4), and (D)(1)(intro. para.), 822(3)(d), and 1230(A); Adds R.S. 6:243(D)(1)(c))

24. Johnson (SB 987)

Act No. 1226

Provides that ownership of an **immovable**, located within a municipalities or parish having a population of 425,000 or more, which has been declared **blighted** and which has been **improved** by the possessor may be acquired by prescription of **three years** without the need of just title or possession in good faith, subject to enumerated requirements.

Provides that in the event a judgment is rendered finding a **violation** of any public health, housing, fire code, environmental, or historic district ordinance of the municipality where the property is situated after the date that the possessor took corporeal possession, possession and the running of prescription and the effect of the affidavits shall **cease**, and all rights which may have accrued shall be **null and void**.

Prohibits the possessor from **demolishing** any structure on the immovable unless the hearing officer finds the structure to be a public **nuisance** and the possessor obtains all required permits.

Provides that if the **owner** is successful in bringing a real action against the possessor, the owner shall **reimburse the possessor** for all taxes, interest, and penalties paid by the possessor, the value of any improvements, and the cost of any repairs, rehabilitation, maintenance, removal, or demolition to the extent not otherwise included in the value of the improvements.

Provides that if the possessor has met the requisites, the expenses shall be secured by a first **lien** superior to all prior and subsequent mortgages, judgments, and liens on the immovable.

Provides that the rules governing acquisitive prescription of 10 and 30 years apply to the prescription of three years to the extent that their application is compatible.

Effective August 15, 2001. (Adds R.S. 9:5633)

25. Schwegmann (HB 501)

Act No. 118

Changes the **geographical boundaries** of the Lake Oaks Subdivision Improvement District.

Effective August 15, 2001. (Amends R.S. 33:9075(B))

26. Futrell (HB No. 425)

Act No. 56

Requires DOTD, upon the owner's request, to provide a copy of the **estimate** prepared by each estimator of property **expropriated** by the department.

Effective August 15, 2001. (Adds R.S. 48:443(C)(4))

27. W. Fields (SB 372)

Act No. 473

Requires entities expropriating under R.S. 48:441 et seq (**quick take**) to attach to the petition a **certificate** signed by the real estate administrator or his assistant declaring that the itemized statement, the methodology used in the estimate, and all of the other required information relative to who did the estimate, has been **mailed** to the owner of the property by certified mail return receipt requested not less than **30 days** before the petition was filed.

Effective June 21, 2001. (Amends R.S. 48:442(3)(d); Adds R.S. 48:442(3)(e))

28. Ellington (SB 321)

Act No. 4

Authorizes any domestic or foreign corporation created for the purpose of transmitting or distributing electricity and steam for power, lighting, heating, or other such uses to **expropriate** property needed for its purposes. Act is a result of FERC Orders 888, 889, and 2000 which mandated the **unbundling of utilities** and the creation of independently owned

and operated transmission companies, which must be operational by January 1, 2002. A utility that generates, distributes, and transmits (bundled) electrical power currently has general expropriation authority.

Effective May 8, 2001. (Amends R.S. 19:2(7))

29. Ullo (SB 645) (last action 5/9/01)

Act No. 101

In municipalities with a population of less than 400,000, changes time period from ten to seven days after notice has been given by advertisement in the official journal of the municipality or by registered mail that a property owner has to remove noxious weeds, grass, or other growths; thereafter, the municipality may do so at the owner's cost.

Effective August 15, 2001. (Amends R.S. 33:5062(B))

30. Alario (HB 456) (last action 6/18/01)

Act No. 1159

In municipalities with a population of less than 400,000, changes time period from ten to five days after notice has been given by advertisement in the official journal of the municipality or by registered mail that a property owner has to remove noxious weeds, grass, or other growths; thereafter, the municipality may do so at the owner's cost.

Effective June 29, 2001. (Amends R.S. 33:5062(B))

B. COMMUNITY PROPERTY

1. Hill (HB 101)

Act No. 558

Requires the **consent** of both spouses for the alienation, encumbrance, or lease of standing, cut, or fallen **timber** and provides that the **concurrence** of both spouses is required to **harvest** community timber.

Clarifies that the sale of an undivided timber interest that constitutes community property is governed by the Civil Code Articles relative to the legal regime of community of acquets and gains.

Effective August 15, 2001. (Amends C.C. Art. 2347; Adds R.S. 3:4278.2(F))

2. Riddle (HB 1793)

Act No. 642

Provides that when federal law or the provisions of a statutory **pension or retirement** plan, state or federal, including social security, preempt or preclude community classification of property that **would have been classified as community** property under the principles of the Civil Code, the spouse of the person entitled to such property shall be allocated or assigned the ownership of community property **equal in value** to such property prior to the division of the community property.

Effective August 15, 2001. (Adds R.S. 9:2801.1)

3. Winston (HB 1439)

Act No. 903

Provides that in a proceeding for **divorce** or thereafter where a community property regime existed and a formal partition is pending, either party may request a **summary proceeding**, to be undertaken by the court within **60 days** of filing for divorce, to allocate the use of **community property**, including monetary assets, bank accounts, savings plans, and other divisible movable property.

Provides that upon court order each spouse shall provide the other a complete **accounting** of all community assets. Requires the court to consider custody of the children, possession of the home, total community assets, and the need for legal representation in determining the allocation of community assets.

Effective August 15, 2001. (Adds R.S. 9:374(E))

V. MORTGAGES, SECURITY DEVICES, AND PRIVILEGES

1. McMains (HB 679)

Act No. 128

On recommendation of the Louisiana State Law Institute, revises and recodifies **Chapter 9 of Louisiana's Commercial Laws** and related statutes with respect to **secured interests on movable property**. Provides numerous additional definitions. The more important substantive changes are as follows:

- (1) Changes the **filing** of the notice of the security interest to the state **where the debtor is located**, instead of where the collateral is located.
- (2) Removes the necessity of signing the filed notice of the security interest.
- (3) Eliminates the requirement of social security numbers in the filed notice of security interest.
- (4) Increases the fees for filing the various notices and amendments to security interests filed with the clerk of court.
- (5) Allows health care insurance receivables to be used as collateral.
- (6) Expands and clarifies the secured party's right to proceeds of collateral.
- (7) Expands the notice provisions and other protections for debtors to include guarantors.
- (8) Clarifies the perfection and priority rules for specialized collateral such as bank deposit accounts and life insurance policies.

Provides for **transition rules** with respect to the continued validity, effectiveness, and priority of transactions occurring prior to the July 1, 2001, effective date.

Repeals provisions relative to certain interests in movable property, including accounts receivable, incorporeal rights, securitized financings, crop pledges, and chattel mortgages which are inconsistent or superseded by the provisions of this Act.

Effective July 1, 2001, at 12:01 a.m. (Amends R.S. 10:9-101-9-710, R.S. 3:207 and 3652(14), R.S. 6:312(E) and 664(E), R.S. 9:3306(26), 3342(B), 4865(A)(2), 4870(B)(3), 4888(B)(4), 5001(A), 5551(A) and (C), R.S. 10:1-105(2)(e), 1-201(9), (32), and (37), R.S. 10:4-210(c)(1), R.S. 10:7-503(1), R.S. 10:8-103(f), 8-106(d) and (f), 8-110(e), 8-301(a), 8-302(a), and 8-510, R.S. 12:702(A) and (B), R.S. 23:1546(A), R.S. 32:708(B)(2)(b), 710, and 728(9), R.S. 37:218(A), R.S. 39:1421(2), R.S. 40:2601(1), R.S. 46: 236.16(A), and C.C.P. Arts. 2721(C) and 2725(B); Adds R.S. 10:5-118 and R.S. 39:1430.1; Repeals R.S. 9:2737, 3101-3112, 4321- 4391, 4421, and 5351-5373, R.S. 12:704, and R.S. 32:704(B))

2. Pinac (HB 1314)

Act No. 545

Requires the **transferor of a note** secured by property to **notify an insurer** of such property upon the transfer of the note. Requires that the notification be in writing, list the names and

addresses of the transferee and transferor, and the effective date of the transfer. Also requires the transferee to notify the agent of record, within 30 days of the transfer, of the new loan number and the name and address of the entity to which all insurance information and products are sent.

Effective August 15, 2001. (Amends R.S. 9:4332(B); Adds R.S. 9:4332(C))

3. DeWitt (HB 1386)

Act No. 899

Provides for a **privilege on the aircraft** in favor of a repairman or materialman for the amount due under the contract for the repairs or maintenance performed and the fuel or materials supplied, or, if no amount is specified by contract, an amount that is reasonable under the circumstances.

Provides that any person claiming a privilege on an aircraft may record the privilege on the aircraft by **filing a notice or a claim with the FAA** - Aircraft Registry not later than the 90th day after the labor, services, fuel, and materials were furnished, and provides for the various procedures for enforcement of the privilege.

Effective August 15, 2001. (Adds R.S. 9:4511-4513)

4. McMains (HB 1526)

Act No. 274

Provides that upon written application, the recorder of mortgages shall **cancel in full** from the records of his office the **inscription of any mortgage** affecting the property as to which the effect of recordation has ceased and which has not been reinscribed at the time of such application, whether by a timely or untimely reinscription.

Effective August 15, 2001. (Amends R.S. 9:5161)

5. Pinac (HB 1747)

Act No. 925

Reduces the **minimum grace period** in which a borrower may **repay a loan** from 13 weeks to 61 days.

Effective August 15, 2001. (Amends R.S. 6:824(A)(1))

6. Ellington (SB 365)

Act No. 770

Provides that the clerks may charge **increased fees** for the filing and recordation of a **multiple indebtedness mortgage** executed in accordance with Civil Code Article 3298 as follows:

- (1) The fee for the filing and recordation of those mortgages from \$18 to \$25.
- (2) The fee for each subsequent page from \$6 to \$10.
- (3) The fee for each name after the first name that is required to be indexed from \$3 to \$5.

Provides an additional noncompliance fee of \$10 per document for any document not in compliance with the form which is required for multiple indebtedness mortgages.

Effective August 15, 2001. (Amends R.S. 9:5217(A); Adds R.S. 9:5217(C))

VI. LABOR AND WORKER'S COMPENSATION

1. Scalise (HB 1735)

Act No. 1189

Presumes that if an employee has been working for an employer for less than 12 months and contracts an **occupational disease**, the disease was not contracted while in the course and scope of such employment. However, an employee may be compensated if he proves, by a **preponderance of evidence**, he contracted the disease during that period of employment. Requires all claims for **disability or death** arising from an occupational disease to be filed within **one year** from the date of disability, death, manifestation of disease, or reasonable grounds to believe the disease is occupational or death resulted from it.

Provides that pleadings, evidence, or any records involving prior benefits paid by the employer to the claimant shall be made **available** once an employer begins to pay benefits to an employee or a claim for benefits is made by the employee.

Provides that a **motion for modification** for an award of temporary total disability benefits is to be filed under the same **caption** in the same court making the award. Provides for **expedited hearing** on motions for modification in accordance with the procedure established in R.S. 23:1124(B).

Effective June 29, 2001. (Amends R.S. 23:1031.1(D), (E)(intro. para.), and (F) and 1293(B)(1); Adds R.S. 23:1310.8(F))

2. Guillory (HB 957)

Act No. 423

Provides that for the purposes of making quarterly wage and contribution reports, employers must **round off** to the next nearest dollar any employee's wages, if the amount is not an even dollar amount.

Effective June 15, 2001. (Adds R.S. 23:1554)

3. Bowler (HB 596)

Act No. 361

Authorizes workers' compensation judges to entertain hearings on **motions for new trial** in workers' compensation disputes.

Effective August 15, 2001. (Amends R.S. 23:1310.5(B))

4. Guillory (HB 954)

Act No. 604

Provides that employment agencies shall not make a direct payroll **deduction** of any fee or a total of fees through a payment schedule that **exceeds 20%** of an applicant's gross wages per pay period.

Effective June 22, 2001. (Amends R.S. 23:111(E); Adds R.S. 23:111(F))

5. Scalise (HB 1740)

Act No. 1190

Provides that any agreement, contract, understanding, or practice in any form between any employer and labor organization made in violation of Louisiana's **right to work law** is not enforceable.

Provides that **governmental bodies** are **prohibited** from passing any law, ordinance, or regulation, or imposing any condition on employers' or employees' freedom to act under federal labor laws.

Authorizes both employers and employees to seek **injunctive relief** to prevent violations of this Act and invokes the police powers of this state.

Effective June 29, 2001. (Amends R.S. 23:984)

6. Riddle (HB 1384)

Act No. 546

Provides that **wages withheld** at the choice of the employee to fund a nontaxable or tax deferred benefit, including but not limited to, any wages withheld to fund any health insurance benefit provided by the employer, shall be **included** in the calculation of the employee's wage.

Effective August 15, 2001. (Amends R.S. 23:1021(10)(f))

7. Pitre (HB 1121)

Act No. 522

Provides that when an employer has a **substance abuse policy** that requires employee drug testing, and an injured employee fails such testing upon his return to work, the obligation for all **benefits**, except to provide reasonable and necessary medical treatment, are **terminated** and the employee shall be subject to the terms and conditions of the employer's policy.

This Act shall not apply to an employee who fails an employer-administered drug test as a result of taking prescribed dosages of medication.

Effective August 15, 2001. (Adds R.S. 23:1221(3)(g))

8. Pitre (HB 808)

Act No. 593

Requires all workers' compensation opinions from the circuit **courts of appeal** to be **published** and to **identify** the workers' compensation district from which the appeal was taken and the judge who rendered the judgment.

Effective August 15, 2001. (Adds R.S. 23:1310.5(F))

9. Chaisson (SB 1088)

Act No. 205

Prohibits insurers writing **umbrella policies** from establishing criteria, policies, or procedures that **discriminate** against any employer based on its method used to secure workers' compensation coverage. However, a review of financial statements, actuarial evaluations, and excess insurance is acceptable.

Authorizes insurers to establish separate **criteria, policies, and procedures** to evaluate workers' compensation insurance providers that are members of LIGA or other state guaranty fund. Provides that a violation of this Act is an unfair trade practice.

Effective August 15, 2001. (Amends R.S. 23:1174.1(A))

10. Marionneaux (SB 50)

Act No. 672

Increases the amount an attorney may withhold as proposed **attorney fees** for services rendered on behalf of a claimant for compensation, from the sum of 20% of the first \$10,000 recovered, to 20% of the first \$20,000 recovered.

Effective August 15, 2001. (Amends R.S. 23:1143(B)(1))

11. Riddle (HB 1385)

Act No. 898

Provides that the employer is **liable** for expenses incurred by an employee for **mileage** in order to obtain medical services, medicines, and prosthetic devices which the employer is required to furnish under this Section.

Effective August 15, 2001. (Amends R.S. 23:1203(D))

12. Michot (SB 332)

Act No. 768

Provides that no person, acting either for himself or as agent or otherwise, shall assess any **fin**es against his employees or deduct any sum as fines from their wages, except in cases where the employees **wilfully or negligently** damage goods or works or damage or break the

property of the employer, or the employee is convicted or pleads guilty to the crime of theft of the employer funds.

Effective August 15, 2001. (Amends R.S. 23:635)

13. Scalise (HB 1811)

Act No. 1100

Exempts **musicians and performers** working under a performance contract from coverage under the workers' compensation law.

Effective August 15, 2001. (Amends R.S. 23:1035(B))

14. Erdey (HB 419)

Act No. 1156

Provides that each surviving **parent** of a deceased employee who leaves no legal dependents be paid a lump sum of **\$75,000** and that sum shall constitute sole and exclusive compensation.

Effective August 15, 2001. (Amends R.S. 23:1231(B)(2))

15. Guillory (HB 953)

Act No. 1165

Provides that the secretary of DOL shall be responsible for the appointment of **appeal referees** and shall designate alternates when necessary. Provides that each referee shall be selected in accordance with R.S. 23:1656 and 1657.

Effective June 29, 2001. (Amends R.S. 23:1628)

16. Stelly (HB 1295)

Act No. 1171

Requires that an employee who is **discharged** be **compensated** on or before the next regularly scheduled payday or no later than 15 days after being discharged.

Effective August 15, 2001. (Amends R.S. 23:631(A)(1)(a) and (C))

17. Nevers (HB 435)

Act No. 967

Increases the maximum amount employers are required to pay for the reasonable **burial expenses** of employees killed in work-related accidents from \$5,000 to **\$7,500**.

Provides that if the burial expenses are less than \$7,500, the **difference** between the expenses and \$7,500 shall be paid to the **heirs** in addition to any other benefits.

Effective August 15, 2001. (Amends R.S. 23:1210)

18. McMains (HB 1516)

Act No. 1084

Provides that a **challenge** of the **constitutionality** of any workers' compensation provision a particular allegation must be **specially pleaded** in the original petition, an exception, written motion, or answer.

Provides that within **30 days** of the filing of any pleading raising the unconstitutionality of a workers' compensation provision, the moving party must file a petition in a proper state **district court** for adjudication and such claims of unconstitutionality shall have **priority** and be heard within 10 days of being presented to the district court. Provides that failure to follow the procedures bars any constitutional claim.

Effective August 15, 2001. (Adds R.S. 23:1310.3(F))

19. Hines (SB 220)

Act No. 318

Exempts any landman and all persons operating under the auspices of an **independent or lead broker** landman in the state of Louisiana from workers' compensation coverage.

Effective August 15, 2001. (Adds R.S. 23:1048)

20. Hines (SB 725)

Act No. 443

Provides that, due to exposure to blood and saliva of accident and crime victims, when a **firefighter or policeman**, contracts Hepatitis B or Hepatitis C, such disease shall be deemed an **occupational disease** or infirmity and is presumed to have been caused by or resulted from such work performed as a firefighter or policeman.

Effective August 15, 2001. (Adds R.S. 33:2012)

21. Hines (SB 651)

Act No. 330

Forbids **genetic discrimination** and limits genetic **testing** in the workforce by prohibiting discrimination by an employer on the basis of protected genetic information. Provides for exceptions and requires the posting of a notice prepared by the Department of Labor.

Effective August 15, 2001. (Amends R.S. 23:302; adds R.S. 23:368 and 369)

22. Michot (SB 331)

Act No. 1014

Provides that in occupational disease claims, the **date of the accident** for determining the employee's average weekly wage is the date of the employee's **last employment** with the employer from whom benefits are claimed or the date of his **last injurious exposure**, whichever is later.

Authorizes an employee to **elect** the provisions of Louisiana's workers' compensation law as his **exclusive compensation remedy** upon compliance with certain criteria.

Authorizes a **principal contractor** sued by an independent contractor, who is a sole proprietor and has elected not to be covered by worker's compensation law, to call the independent contractor as a **co-defendant** and the principal contractor shall be entitled to indemnity.

Deletes the provision that no compensation shall be allowed for an injury caused by the injured employee's deliberate failure to use an adequate guard or protection against accident provided for him.

Authorizes an independent contractor, who is a sole proprietor and has elected not to be covered by the Labor Organizations and Labor Disputes Chapter of Louisiana's workers' compensation law, to enter into a contract with his principal making the **contractor responsible** for securing insurance or self-insurance.

Provides that the right to **supplemental earnings** benefits shall not exceed **520 weeks**, but shall terminate when the employee retires.

Provides relative to the **procedure** for approval of lump sum or compromise **settlements**, when the employee is or is not represented by counsel. Provides that if a suit has been filed against a third party, the district court shall have the authority to approve a settlement of the workers' compensation claim and approve the attorney fees. Requires the payor to pay all compensable medical expenses incurred prior to the date of the settlement, unless the terms of the settlement specify otherwise.

Provides for at least 10 workers' compensation judge positions.

Effective June 27, 2001. (Amends R.S. 23:1021(12), 1035(A), 1063, 1081(1)(c), 1163(B), 1221(3)(d)(iii), 1272, and 1310.1(A); Adds R.S. 23:1021(10)(g) and 1035.1(4); Repeals 23:1021(13), 1081(1)(d), and 1144)

VII. DWI, DRIVING CONCERNS, AND CRIMES OF INTEREST

A. DRIVING WHILE INTOXICATED

1. Odinet (HB 665)

Act No. 1163

Provides that 30 days of a sentence for **3rd offense DWI** and 60 days of a sentence for **4th and subsequent DWI** shall be served without the benefit of probation, parole, or suspension of sentence, and in both cases the remainder of the sentence shall be **suspended** with the additional requirement that the offender undergo an **evaluation of substance abuse**.

Provides that upon successful completion of the inpatient substance abuse treatment, the **3rd offense DWI** offender shall be sentenced to **home incarceration** for the remainder of the suspended sentence, while **4th and subsequent DWI** offenders shall be sentenced to **home incarceration for not less than 1 but no more than 5 years**.

Provides for certain other conditions during the period of home incarceration, and that if the offender **fails to complete the substance abuse treatment**, he shall be sentenced to imprisonment for the remainder of the suspended sentence **without credit** for time served in home incarceration.

Provides that a **4th or subsequent DWI offender** shall not be sentenced to substance abuse treatment and home incarceration if he has **previously** been required to participate in substance abuse treatment and home incarceration.

Provides that the **offender shall pay all costs** of substance abuse treatment and home incarceration unless the court determines the offender is unable to pay.

Provides that conviction of a **3rd or subsequent DWI offense** is **presumptive evidence of the existence of a substance abuse disorder** in the offender which poses a threat to the health and safety of the public.

Provides that the minimum mandatory sentence shall not be suspended in certain DWI offenses **where a child, twelve years of age or younger, was a passenger** at the time of the commission of the offense.

Provides that upon conviction of a third or subsequent DWI offense, the offender shall, after a 1-year driver's license suspension, have an **interlock device** installed on his vehicle(s) and operative until the offender has completed the requirements of substance abuse treatment and

home incarceration. Further provides that upon proof to the Dept. of Public Safety and Corrections that the vehicle(s) have an interlock device installed, the offender shall be issued a restricted driver's license for the period of time that his driver's license is suspended.

Amends Sections 5 and 6 of Act 781 (S.B. 881) of 2001 R.S. and changes the effective date from September 30, 2003 to August 31, 2001 to apply to only those provisions of that Act which provided that an operator violates the offenses of vehicular homicide, vehicular negligent injuring, first degree vehicular negligent injuring, and DWI when the operator is under the influence of alcohol and drugs which are not controlled dangerous substances or under the influence of one or more drugs that are not controlled dangerous substances and the operator knowingly exceeds the dosage. Deletes the applicability that these provisions terminate in the event Section 351 of P.L. 106-346 regarding the withholding of federal highway funds for failure to enact a 0.08 percent blood alcohol level is repealed or invalidated for any reason.

Effective August 15, 2001. (Amends C.Cr.P. Art. 894.2(J), R.S. 14:98(D)(1), (E)(1) and (3), (G), (I), (J) and (K), and Sections 5 and 6 of Act 781 of 2001 R.S.; Adds C.Cr.P. Art. 894.2(K) and R.S. 14:98(D)(3) and (E)(4))

2. Chaisson (SB 881)

Act No. 781

Reduces the **blood alcohol level (BAC)** for the crime of adult DWI from 0.10% to **0.08%**, but maintains the BAC of 0.02% for the crime of underage DWI which applies to operators under the age of 21.

Reduces the BAC for the crimes of third degree feticide, vehicular negligent injuring, and drunken or reckless driving (R.S. 29:211- La. Code of Military Justice) from 0.10% to 0.08%.

Provides the two following additional criteria for which an operator may be convicted of the crimes of DWI, vehicular homicide, vehicular negligent injuring, and first degree negligent vehicular injuring:

- (1) The operator is under the influence of a **combination of alcohol and one or more drugs which are not controlled dangerous substances** which are legally obtainable with or without a prescription and the label on the container contains a warning against combining the medication with alcohol.
- (2) The operator is under the influence of **one or more drugs which are not controlled dangerous substances** and which are legally obtainable with or without a prescription and the influence is **caused by the operator knowingly consuming quantities of the drug or drugs which substantially exceed the dosage** prescribed by the physician or the dosage recommended by the manufacturer of the drug.

Reduces the BAC level from 0.10% to 0.08% for purposes of the existing legal presumptions regarding whether or not a person is presumed to be under the influence of alcoholic beverages as well as for the required 90 day suspension of the offender's driver's license when the BAC test shows a level in excess of the legal BAC limit.

Effective on September 30, 2003 or, if vetoed and subsequently approved by the legislature, on September 30, 2003 or the day following such approval, whichever is later. However, this Act provides that if Section of P.L. 106-346 regarding the withholding of federal highway funds for failure to enact a 0.08% BAC is repealed or invalidated, the provisions of this Act shall not become effective.

***** SEE ACT 1163 (H.B. 665) ABOVE regarding the effective date*****

(Amends R.S. 14:32.1(A), 32.8(A)(2)(b), 39.1(A), 39.2(A), and 98(A)(1)(b) and (c), R.S. 23:1081(3)(b) and (c), R.S. 29:211(2) and R.S. 32:378.2(A)(2)(a)(iv), 661(C)(1)(c), 661.1(C)(1)(c), 662(A)(1)(b) and (c), 667(A)(intro), (A)(3) and (B)(1), 668(A)(4) and (B)(1)(b), 670, and 853(A)(1)(c)(i); Adds R.S. 14:98(A)(1)(d) and (e))

B. DRIVING CONCERNS

1. McMains (HB 348)

Act No. 806

Provides that any office of motor vehicles employee or agent in the performance of his duties related to driver's licenses, any law enforcement officer, health care provider, or any family member having first-hand knowledge of any condition of an applicant for a driver's license or of a licensed driver may **file a report** with DPS&C stating he believes the person is **unable to safely operate a motor vehicle**.

Provides that the report must be in the written form prescribed by the department and must state that the person **reasonably and in good faith** believes the applicant for a driver's license or the licensed driver cannot safely operate a motor vehicle, and that the report must be based upon personal observation or physical evidence or upon an investigation by a law enforcement officer.

Provides for procedures for notification and suspension of a driver's license, that **no person, the department, or the board shall be liable for damages** or loss as a result of the failure to file, act upon, or investigate a report, and that any person who makes a report in good faith **shall be immune** from any criminal or civil liability that might otherwise result from making the report.

Effective August 15, 2001. (Adds R.S. 40:1356(E))

2. Diez (HB 934)

Act No. 513

Provides, relative to motor vehicles seized for failure to provide proof of insurance, that the law enforcement officer shall call the next available towing company on the rotation list, if any, to tow the vehicle if the owner or operator does not select a company.

Effective August 15, 2001. (Amends R.S. 32:1735)

3. Diez (HB 1551)

Act No. 456

Provides, in part, that it is **now optional**, instead of required, that the operator of every motor vehicle involved in an accident within this state in which any person was killed or injured or in which property damage exceeded \$500 **to report the accident**, in writing, within 10 days to the commissioner.

Effective August 15, 2001. (Amends R.S. 32:853(A)(1)(a), 871(A) and (D), 872(A), (C)(2) and (3), and (D), 874(B), 875, 876, 877, and 879; Repeals R.S. 32:874(D))

4. Diez (HB 1674)

Act No. 916

Authorizes the office of motor vehicles to **notify** violators of the compulsory liability insurance requirements of their noncompliance **by first class mail**, instead of by registered or certified mail, return receipt requested.

Effective August 15, 2001. (Adds R.S. 32:863(C)(1) and 863.1(C)(1)(a))

5. Chaisson (SB 349)

Act No. 321

Adds negligent injury as a **responsive verdict** to the crimes of vehicular negligent injuring and first degree negligent injuring.

Effective August 15, 2001. (Amends C.Cr.P. Art. 814(A)(7.2) and (7.3))

C. CRIMES OF INTEREST

1. McMains (HB 718)

Act No. 835

Increases the penalties for **solicitation of employment for an attorney** from a fine of not more than \$1,000 or imprisonment for not more than two years, or both, to a fine of not more than **\$5,000 or imprisonment for not more than five years with or without hard labor, or both**.

Retains the penalties for **unlawful payments by attorneys** from a fine of not more than \$5,000 or imprisonment for not more than five years with or without hard labor, or both, and **increases the penalties for second and each subsequent violation to a fine of not more than \$7,000 or imprisonment for not more than seven years with or without hard labor, or both.**

Effective August 15, 2001. (Amends R.S. 37:213 and 219(B); Adds R.S. 37:219(C))

2. LaFleur (HB 669)

Act No. 829

Creates the crime of **computer tampering** and defines "computer tampering" as the intentional commission of any of the following actions which are taken knowingly and without the authorization of the owner of a computer, and includes accessing, copying, otherwise obtaining any program or data contained within a computer.

The penalties for the crime of computer tampering range, depending on the violation, from a fine of not more than \$500 or imprisonment for not more than six months, or both, to a fine of not more than \$10,000 or imprisonment at hard labor for not more than 15 years, or both.

Effective August 15, 2001. (Adds R.S. 14:73.7)

3. Donelon (HB 1661)

Act No. 914

Defines the crime of **theft of a business record** as the misappropriation or taking of a business record belonging to another by any person either without their consent or by means of fraudulent conduct, practice, or representation.

Provides for a penalty of imprisonment for not more than two years, a fine not to exceed \$10,000 or the cost of replacement, reconstruction, or compilation of the business record, whichever is greater, or both.

Effective August 15, 2001. (Adds R.S. 14:67.17)

4. Ullo (SB 104)

Act No. 466

Adds a **criminal penalty** of imprisonment, with or without hard labor, for not more than one year, or a fine of not more than \$1,000 **for executing a false statement** that another person is **mentally ill or suffering from substance** abuse and is in need of immediate treatment to protect the person or others which the affiant knows or should know is false.

Effective August 15, 2001. (Adds R.S. 28:53.2(E))

VIII. INSURANCE

A. MOTOR VEHICLE

1. Schneider (HB 284)

Act No. 227

Requires owners of **vehicles** registered in **other states** or jurisdictions to maintain the liability security and proof of security as required by their respective state or jurisdiction while the vehicle is operated in this state. Failure to comply will subject the owners and operators to sanctions, including the "**no pay, no play**" penalties.

Effective August 15, 2001. (Adds R.S. 32:861(E))

2. Donelon (HB 800)

Act No. 368

Legislatively overrules *Williams v. US Agencies Casualty Insurance Company*, No. 00-C-1693 (La. 2-21-01), which held that the **named insured** could not be **excluded** from an automobile liability policy, by authorizing the named insured, by written agreement with the insurer, to exclude himself and his spouse from the automobile liability policy.

Provides that an **excluded driver** shall be a resident of the **household** at the time the agreement is executed and the exclusion remains effective, regardless of whether or not the driver continues to be a resident.

Effective August 15, 2001. (Amends R.S. 32:900(L))

3. LaFleur (HB 1194)

Act No. 1071

Prohibits motor vehicle liability policies and uninsured motorist coverage from **excluding or limiting** coverage for bodily injury to a **spouse** or resident **relative** of a named insured when the injury was caused by any fault of the named insured.

Provides that any policy contrary to this Act is against public policy, and shall be **null, void, and unenforceable**.

Effective August 15, 2001. (Adds R.S. 22:622.2)

4. Erdey (HB 1754)

Act No. 169

Requires the La. Insurance Rating Commission (LIRC) to **approve** a requested rate **reduction** of up to 10% for motor vehicle liability and physical damage insurance, if

actuarially justified, for the successful completion of either the National Safety Council Defensive Driving Course or a defensive driving course approved and certified by the Dept. of Public Safety and Corrections (DPS&C).

Effective August 15, 2001. (Amends R.S. 22:1404(3)(c) and (d)(i) and (iii); Repeals R.S. 22:1404(3)(d)) as enacted by Act 872 of 1984 R.S.)

5. Diez (HB 942)

Act No. 371

Provides that **sanctions** for failing to cover a vehicle with **compulsory motor vehicle liability security** or allowing required security to lapse shall be imposed until proof of required security is provided to the secretary and all reinstatement fees are paid. Reduces the reinstatement fee to **\$25** per violation if the violation is for a period of 11-30 days, **\$100** for violations of 31-90 days, and **\$200** for violations exceeding 90 days. No reinstatement fee shall be imposed by the secretary for violations of **10 days** or less. Provides that no person shall be required to pay more than \$500 in fees for reinstatement of driving privileges.

Effective August 15, 2001. (Amends R.S. 32:863(A)(3)(a))

6. Diez (HB 1197)

Act No. 883

Requires a person who wishes to **discontinue use of a vehicle** to notify the secretary by sworn **affidavit**, within 10 days of cancellation of liability security on the vehicle, that the vehicle is no longer in use and the period of nonuse and have the agent who issued the policy of insurance on the vehicle to submit an affidavit attesting that the insurance on the vehicle has been **canceled** during the period of nonuse, or surrender the vehicle's license plate.

Requires **sanctions** for violations of required motor vehicle liability security to continue until proof of required liability security is provided and all fees have been paid. Prohibits sanctions and fees from being imposed if the vehicle owner provides evidence that the vehicle was covered by liability security within 10 days after termination or cancellation of previous security.

Repeals the provision which allowed the issuance of a special operator's permit upon proof to the commissioner that a person's livelihood requires the use of a motor vehicle, that use of such motor vehicle is an integral and inseparable aspect of his job, and that suspension of driving privileges would prevent the earning of a livelihood.

Effective August 15, 2001. (Amends R.S. 32:861(A)(3), 863(A)(3)(a), (B)(2)(a), (C)(2) and (4), and 863.2(E)(2); Repeals R.S. 32:863(C)(3) and (D) as amended by Act Nos. 553 and 616 of the 1987 R.S.)

7. Alario (HB 1187)

Act No. 1069

Requires every **self-propelled motor vehicle** registered in the state to be covered by an automobile liability policy, by a motor vehicle liability bond, certificate of self-insurance, or by a certificate of the state treasurer stating that cash or securities have been deposited or securitized with the treasurer.

Requires an applicant to deposit with the treasurer **\$30,000** in cash in lieu of a liability policy, or otherwise pledge, assign or securitize bonds, stocks, or securities of not less than \$30,000.

Effective August 15, 2001. (Amends R.S. 32:861(A)(1) and (C)(1)(a), (c), and (d) and (2))

8. Hudson (HB 653)

Act No. 1211

Requires sellers or lenders to offer **gap insurance** to protect the consumer from liability as a result of the property insurance being insufficient to pay off the unpaid balance of the finance contract if a **total loss** of the vehicle occurs.

Effective August 15, 2001. (Amends R.S. 6:969.26(D))

9. Fontenot (SB 397)

Act No. 1213

Provides that **sellers shall and lenders may** offer gap insurance to protect the consumer from liability as a result of the property insurance being insufficient to pay off the unpaid balance of the finance contract if a total loss of the vehicle occurs.

Provides that this Act **supersedes** the provisions of **HB 653** (Act 1211) of the 2001 R.S.

Effective August 15, 2001. (Amends R.S. 6:969.26(D))

10. Pinac (HB 1850)

Act No. 935

Provides that the Louisiana Public Service Commission shall require **public liability and property damage insurance** coverage for **tow trucks or wreckers** of not less than \$500,000 combined single limits coverage.

Effective August 15, 2001. (Amends R.S. 45:163(D)(1)(b))

11. Donelon (HB 801)

Act No. 1052

Provides that when an insurance policy is **cancelable** at the option of the insurer, **notice** of such cancellation must be **delivered or mailed** at least 30 days prior to the date of cancellation.

Provides that an insurer must **renew** a property or casualty policy **unless** a notice of intention to not renew is delivered or mailed at least 30 days prior to the date of nonrenewal. However, this shall not apply: (1) to certain automobile and commercial policies, (2) if the insurer manifest a willingness to renew, (3) in the case of nonpayment of the premium, (4) if the named insured gives written notice to not renew, (5) in the case of fraud.

Applies the provisions governing the cancellation and renewal of commercial insurance to **workers' compensation** insurance.

Provides that when the cancellation of certain commercial insurance is based on reasons other than nonpayment of the premium, it may be canceled if the notice is **mailed or delivered** at least **30 days** prior to the cancellation. Requires the notice to include the insured's loss run information for up to the last three years of coverage.

Effective August 15, 2001. (Amends R.S. 22:636(A)(1)(a) and 636.4(A), (C)(2)(a), and (D)(1); Adds R.S. 22:636(G) and (H))

B. HEALTH

1. Ansardi (HB 1498)

Act No. 273

Establishes standards for **stop-loss** or **excess insurance** policies. Defines "stop-loss coverage" as insurance covering an insured's loss above a specific amount or a self-insurer for losses over a stated amount. Specifies that stop-loss or excess insurance is not equivalent to reinsurance. Provides that an entity purporting to cover a self-insured group health plan shall be treated as a stop-loss or excess insurer.

Requires providers of stop-loss or excess insurance policies that protect **health care providers** from a portion of the financial risk assumed in managed care contracts with health and accident insurers, health maintenance organizations, and self-insured group plans to: (a) be payable to the insured provider per calendar year; (b) have specific loss amounts of at least \$5,000 and aggregate loss amounts of at least \$50,000 per calendar year; and (c) provide that proof of loss be submitted within 90 days after the loss was incurred or a later period provided in the contract or policy.

Requires a stop-loss or excess insurance policy which covers any other kind of **loss, damage, or liability** to: (a) be written by a property and casualty insurer; (b) insure an individual or business against legal liabilities other than those associated with provision of benefits to employees or members of a health benefit plan or managed care health plan; and (c) provide that payments be made to the insured upon provision of proof of loss.

Effective June 1, 2001. (Adds R.S. 22:675)

2. Johns (HB 830)

Act No. 133

Provides that in certain circumstances individual health insurance coverage may exclude coverage for specific **preexisting medical conditions** for periods of time **longer** than 12 months. Provides coverage for a **newborn** effective upon the birth of the child.

Provides that **individual health insurance** coverage is subject to coordination of benefits with other health insurance coverage and shall be treated as **secondary** to any group health insurance coverage. Provides that a health insurer or HMO shall not be required to pay in excess of the benefit amount that would have been paid under a policy or subscriber agreement if no other group health insurance coverage was in effect.

Effective May 25, 2001. (Amends R.S. 22:250.11)

3. Daniel (HB 461)

Act No. 1045

Prohibits any health insurance policy, contract, or plan which is issued, delivered, renewed, or otherwise contracted for in this state on or after January 1, 2002, from **excluding coverage** for diagnosis and treatment of a correctable medical condition otherwise covered by the policy, contract, or plan solely because the condition results in **infertility**. Specifies that this Act shall not be construed to require coverage of fertility drugs, in vitro fertilization or any other assisted reproductive technique, or reversal of a tubal ligation, a vasectomy, or any other method of sterilization.

Effective August 15, 2001. (Adds R.S. 22:215.22)

4. Donelon (HB 1721)

Act No. 1096

Provides that prior to any **recoupment** of health insurance claims payments, unless the contract between the provider and the health insurance issuer contains provisions governing recoupment, a health insurance issuer shall provide a health care provider with written **notification** that includes an explanation of the reason for recoupment. Provides that if the recoupment directly affects the payment responsibility of the insured, the health insurance issuer shall provide a revised **explanation of benefits** to the covered person for whose claim

the recoupment is being made. Grants the provider **30 days** from written notification to **appeal** the issuer's action.

Provides that a health insurance issuer may consider the recoupment accepted if a health care provider fails to respond timely and in writing to the notice. Upon acceptance of a recoupment, the provider may **remit** the agreed amount to the issuer or permit the issuer to **deduct** the agreed amount from future payments due to the provider. Provides that if a provider disputes the notice it shall be resolved according to the general dispute resolution provisions in the contract, or according to the provisions of the La. Civil Code relative to a thing not owed.

Effective August 15, 2001. (Adds R.S. 22:250.31(7) and 250.38)

5. Hines (SB 781)

Act No. 1027

Provides that after July 1, 2001, DHH shall apply to the Health Care Financing Administration, U.S. Department of Human Services, for authority to implement waivers or demonstration projects to expand **Medicaid eligibility** for parents of **LaCHIP and Medicaid** eligible children.

Effective June 27, 2001. (Adds R.S. 46:976(A)(5)(d))

6. Johns (HB 831)

Act No. 64

Defines "health and accident insurance" as insurance of **human beings** against bodily injury, disablement, or death by accident or **accidental means**, or the expense thereof, or against disablement, or the expense resulting from sickness or **old age**, against **major expenses** incurred by an employee benefit plan due to the illness or injury of a covered employee, or against major expenses incurred by a health care provider at financial risk for provision of health care to persons under an agreement, and all related insurance.

Effective May 24, 2001. (Amends R.S. 22:6(2)(a))

7. Lentini (SB 807)

Act No. 778

Provides that Medical Necessity Review Organizations (MNRO) must **notify** the health care professional or facility and the covered person receiving the service within **one working day** of making the **certification** or adverse **determination** for an extended stay or additional services. Provides that a **copy or fax** of the certification or adverse determination delivered to the professional or facility and addressed to the covered person **constitutes notice** to the covered person.

Effective August 15, 2001. (Amends R.S. 22:3077(C)(2) and (3))

8. Donelon (HB 1479)

Act No. 272

Revises the law relative to **group health insurance coverage** for small employers, businesses with three to 35 employees, and individual coverage. Increases the amount by which premium **rates** may vary and provides that the percentage increase in the premium rate may not exceed the sum of certain factors.

Requires each insurer to provide a reasonable explanation of any rate increase at least 45 days prior to its effective date.

Prohibits a group, individual, family group, or blanket health insurer from **canceling** a policy after the insurer has **received** a **claim** or **notice** of a covered claim for a terminal, incapacitating, or debilitating condition if the insured continues to meet all other eligibility criteria.

Effective January 1, 2002. (Amends R.S. 22:228(A) and (C), 228.1(B)(3), (6), and (10), 228.2(A), 228.4, and 228.6(B) and (C))

C. OTHER

1. Pinac (HB 437)

Act No. 1158

Provides that although insurers, agents, and brokers are prohibited from giving consideration or compensation to any person not licensed for any service performed in negotiating or effecting a contract of insurance, this prohibition does **not apply** to the **distribution of profits** to owners of an insurance agency.

Prohibits persons from committing any **fraudulent insurance acts** with the intention to injure, defraud, or deceive any insurance company or the Department of Insurance.

Provides that **no civil cause of action** shall exist against persons involved in the prevention and detection of fraudulent insurance acts by virtue of filing, providing, or receiving required reports or other information.

Effective August 15, 2001. (Amends R.S. 22:1117(A), 1243(A); Adds R.S. 22:1247(A)(3); Repeals R.S. 22:1148(G))

2. Bowler (HB 1557)

Act No. 158

Enacts the **insurance producer licensing** provisions in response to **federal law** requiring the states to have uniform producer licensing laws.

Provides for producers and conditions which authorize the commissioner to suspend or revoke a producer license, deny a license to an applicant, and suspend or revoke a license.

Effective January 1, 2002. (Amends R.S. 22:1212(F); Adds R.S. 22:737.2 and R.S. 22:1131-1151; Repeals R.S. 22:1111-1119)

3. Erdey (HB 1328)

Act No. 184

Redesignates the office of insurance rating in the Dept. of Insurance as the "**office of property and casualty**."

Effective July 1, 2001. (Amends R.S. 22:8(A) and R.S. 36:681(C)(1) and 688)

4. Bruneau (HB 248)

Act No. 290

Provides that the Dept. of Insurance may grant **continuing education credits** for insurance agents participating in a qualified graduate-level national designation program only if the person **passes** the required test and earns a certificate of completion. Qualified graduate-level national designation programs include Chartered Life Underwriter (CLU), Chartered Property and Casualty Underwriter (CPCU), Certified Insurance Counselor (CIC), and other such national professional designations.

Effective August 15, 2001. (Adds R.S. 22:1193(J))

5. McMains (HB 631)

Act No. 302

Provides **requirements** for keeping books and records of insurers and provides for a **fine** of not more than \$5,000 for any director, officers, agent, or employee who destroys documents without authority of the commissioner or fails to keep the records as required.

Requires domestic companies to keep their **securities** within the state and authorizes domestic insurers to maintain their securities with a corporation authorized to administer trusts.

Effective August 15, 2001. (Amends R.S. 22:39)

6. Donelon (HB 803)

Act No. 61

Authorizes insurers to **invest in securities** that are "eligible" to pay dividends or income, and authorizes life insurers to invest in **American Depositary Receipts**, which are listed on a national securities exchange.

Authorizes domestic insurers to invest in **derivative instruments** which include options, calls and puts, a warrant not otherwise permitted to be held by the insurer, a cap, a floor, a collar, a swap, a swaption, a forward, a future, and any other substantially similar instruments. Allows derivative transactions for hedging and income generation pursuant to a written **policy** by the board of directors of the insurer which is approved by the commissioner of insurance.

Authorizes insurers to enter into **income-generating transactions** with derivative instruments subject to certain **quantitative limits** regarding the sales of call options, puts, caps, and floors; and subject to certain limitations on percent of surplus and the percent of admitted assets. Authorizes insurers to enter into replication transactions with derivative instruments subject to approval by the commissioner.

Provides that an insurer with net capital and surplus of less than \$10 million must file a written **notice** with the commissioner in order to engage in derivative transactions. The commissioner has **90 days** to issue an **order** to prohibit the transaction.

Repeals provisions authorizing insurers to engage in and terminate transactions with put and call options.

Effective August 15, 2001. (Amends R.S. 22:162(A)(1)(a), 842, and 844(C) and (D)(1); Adds R.S. 22:844.2; Repeals R.S. 22:844(J) and (K))

7. Morrish (HB 1252)

Act No. 180

Deletes restriction that for **group life insurance** policies the coverage for the spouse and minor children may not exceed 50% of coverage on the insured employee, and deletes provision that for group life insurance policies children who are full-time students under the age of 24 may be included as eligible dependents.

Effective January 1, 2002. (Amends R.S. 22:175(B)(7))

IX. JUDICIAL AFFAIRS

A. LEGISLATION

Several noteworthy bills were passed during the 2001 Regular Session of the Legislature affecting the judiciary, the district attorneys, and the clerks of court.

1. These Acts provide one **new judgeship** for each of the following:
 - a. Act No. 25, 30th JDC, Vernon Parish
 - b. Act No. 217, 17th JDC, Lafourche Parish
 - c. Act No. 240, 33rd JDC, Allen Parish
 - d. Act. No. 190, 3rd JDC, Lincoln and Union Parishes
 - e. Act. No. 198, 19th JDC, East Baton Rouge Parish
 - f. Act No. 779, 22nd JDC, St. Tammany and Washington Parishes
2. Act 428 provides that the **salary** of the commissioners of the **19th JDC** and the 15th JDC shall be **90%** of the state funded portion of the salary paid to a district judge.
3. Act 279 provides that the **salary** of the commissioners of the **Criminal District Court** for the parish of Orleans shall be **55%** of the salary paid to a judge of the CDC for the parish of Orleans.
4. HCR 30 approves the **salaries** recommended by the Judicial Compensation Commission. Provides that the justices of the supreme court, judges of the appeals courts, judges of the district courts, and judges of the city courts shall receive a **five percent raise** on July 1, 2001, 2002, and 2003.
5. Act 225 increases the membership of the **Judicial Compensation Commission** from 10 to 15 members. Authorizes any increase in judicial salaries to be enacted by the **Legislature** after submission of the report by the commission in an even or odd-numbered year of the regular session or at an extraordinary session. Requires any future recommendation for an increase in salaries to be enacted by **law** by the Legislature, rather than approved by the adoption of a concurrent resolution.
6. Act 750 authorizes the use of certain **fees** in courts of appeal to defray the expenses of **employment benefits** for court employees and for other expenses, as directed by the court.
7. Act 1152 increases the **jurisdictional amount** in the First and Second Parish Courts of **Jefferson Parish** from \$15,000 to \$20,000, and increases the jurisdictional

amount of the **incidental demand** from \$10,000 to **\$20,000** for removal from the parish courts to the district court.

8. Act 1166 requires a clerk of court to **refund** to a plaintiff any unused balance remaining in the clerk's advance deposit fund or to demand payment of accrued costs in excess of the advance deposit not later than **90 days** after receipt of written **verification of final termination** of a civil suit in district court.

9. Act 668 provides for the **expenses** of the judicial branch of government as follows:

Louisiana Supreme Court	\$27,482,179
Courts of Appeal	27,384,625
District Courts	20,398,524
Criminal Court, Parish of Orleans	3,671,735
Juvenile and Family Courts	1,560,960
Other courts (Required by Statute)	1,824,897
Other Courts (Not Required by Statute)	<u>417,303</u>

TOTAL **\$82,740,223**

10. Act 1086 authorizes the judges of **district and family courts** by court rule, to establish legal services **programs** funded by the Legal Services Corporation and by the state's protection and advocacy system for **persons with disabilities**.
11. HCR 14 requests the Louisiana Judicial College to institute mandatory **continuing legal education** for judges on laws on **child support** guidelines and **family law** matters.
12. Act 749 provides that the **clerk of court** for Jefferson Parish shall also serve as the clerk of court for a consolidated **Justice of the Peace Litter Court** of Jefferson Parish.
13. Act 770 increase the **fees** clerks of court may charge as follows: (1) the filing and recordation of **multiple indebtedness mortgages** from \$18 to \$25, (2) for each subsequent page from \$6 to \$10, and (3) for each name after the first name that is required to be indexed from \$3 to \$5. Provides an additional **noncompliance fee** of \$10 for any document not in compliance with the form required for multiple indebtedness mortgages.
14. Act 1012 increases the **service charge** in civil and criminal matters in the **24th JDC** from seven dollars to \$49 per filing, and provides that the monies generated are to be forwarded to the **department of finance** for Jefferson Parish and placed in an

account dedicated to the acquisition, construction, equipping, and maintenance of the 24th JDC building, or any new 24th JDC building.

15. Act 1135 exempts the trial and punishment of **parking violations** committed within the parish of Orleans from the jurisdiction of the Criminal District Court for the parish of Orleans, from the municipal or traffic court of the city of New Orleans, and from the jurisdiction of the district courts of the parishes within the limits of the Port of Orleans when they are committed within the respective districts. Provides that the **Board of Commissioners** of the Port of New Orleans shall have jurisdiction of the adjudication of all parking violations of such ordinances committed in the parish of Orleans through an administrative procedure pursuant to R.S. 13:2571.
16. Act 769 revises the list of **fees** that the clerks of the **district courts** may charge as follows:
 - (1) Increases the fee for **filing and recording** any document from \$2 to \$25 per book for the first page, and \$10 for each subsequent page per book.
 - (2) Deletes the fee for recording acts under private signature acknowledged by an official other than the parish recorder.
 - (3) Increases the fee for **indexing** documents filed for record for each name indexed after the first name required to be indexed, from \$.50 to \$5 per name.
 - (4) Increases the fee for **notarizing** acknowledgments of acts executed under private signature, with seal and certificate, from \$2 to \$5.
 - (5) Increases the fee for a **certificate** of real estate mortgage and lien certificate with seal from \$10 to \$20 for the first name and from \$5 to \$10 for each additional name. Adds an additional charge of \$1 per exception in the event that more than 10 exceptions are contained on a certificate. Deletes the fee for each additional 100 words when the certificate contains more than 150 words and deletes the fee for the first name and each additional name.
 - (6) Deletes the fee for the first name per property and for each additional name for certificate of chattel mortgage with seal, and for certificate of crop lien with seal when the certificate contains more than 150 words.
 - (7) Increases the fee for **canceling** real estate mortgage with original note from \$3 to \$10.
 - (8) Deletes the fees for: (a) canceling chattel mortgages or notices of security interest, (b) canceling a crop lien, (c) each 100 words for recording public acts, and (d) recording any instrument, judgment, or act in any book of the recorders' office when required by law.
 - (9) Increases the fee for making **copies** of all official documents from \$.75 for every 100 words to no more than \$2 per page.
 - (10) Increases the fee for **attesting** any record or copy thereof from \$2 to \$5.

- (11) Increases the fee for **canceling of lien** for paving or installation of sewerage system from \$4 to \$10.
- (12) Deletes the fee charged by clerks of court as ex officio recorders for services enumerated in C.C. Art. 3385.1.

Additionally, Act 769 **requires** every document filed for recordation to be captioned as to **type of act** on the first page, and to have **margins** of two inches at the top on the first page and one inch at the top of other pages and at the bottoms and sides of other pages, and the type size shall not be less than **eight point**. Adds a **noncompliance fee** of \$10 per document for any document not in compliance with these requirements.

B. JURISPRUDENCE

- 1. In *Bourgeois v. A.P. Green Indus., Inc.*, 00-1528, (La. 4/3/01), the Court held that Act 989 of the 1999 Regular Session, amending Civil Code Article 2315 to overrule the holding in *Bourgeois v. A.P. Green Indus., Inc.*, 716 So.2d 355, (La. 1998), that **medical monitoring** is a compensable item of damages, may not be applied retroactively.
- 2. In *Morial v. Smith & Wesson Corp.*, 00-1132, (La. 4/3/01), the Court held that R.S. 40:1799, which purports to preclude a suit by a municipality against the firearms industry for **damages** allegedly suffered by the municipality related to the **manufacture and sale** of unreasonably dangerous firearms, may be applied retroactively, and is a reasonable exercise of the state's police power.
- 3. Regarding the vehicle forfeiture provision of the DWI statute, the Supreme Court in *State v. Norman Edwards*, 00-K-1246, (La. 6/1/01), **upheld** the statute by interpreting the forfeiture as **criminal** in nature and therefore a reasonable exercise of **police power**. The Court also finds that the legislative intent of the statute was to further the state's significant interest of keeping drunk drivers off state highways, thus the forfeiture is justified under that public policy as a **reasonable statutory restriction**.

X. MISCELLANEOUS

1. Iles (HB 175)

Act No. 40

Allows residential telephonic subscribers to be placed on a **"do not call" listing**, which indicates that the subscriber does not wish to receive telephonic solicitations. The subscriber must notify the Public Service Commission (PSC) that he wishes to be placed on the listing which will be renewed every five years upon receipt of a renewal notice and a \$5 fee.

Prohibits telephonic solicitors from making telephonic solicitations to numbers listed on the "do not call" listing. It further prevents any solicitors who sell consumer information from selling the telephonic numbers on the "do not call" listing.

Allows the PSC to investigate any complaints and impose administrative penalties not to exceed \$1,500 for each violation, or \$3,000 for each violation committed against subscribers over age 65. It further provides that any solicitor found by the commission to be in violation of this Act, who refuses to pay the fine assessed, shall be assessed additional costs and reasonable attorney fees related to the collection of the fine.

Effective May 24, 2001. (Adds R.S. 45:844.11-844.15)

2. W. Fields (SB 1075)

Act No. 1038

Provides that a consumer has the **right to cancel a mail and check solicitation sale**, unless the sale was made to and accepted by a customer who has an existing loan, revolving account or other line of credit with the party making the mail and check solicitation sale.

The definition of "mail and check solicitation" includes a consumer credit sale of a thing or service, a consumer credit transaction, a revolving loan account, or a credit card, if such sale, transaction, loan, or the use of such credit card is contracted pursuant to a solicitation received by a consumer through the mail and through the cashing of a check by the consumer that was sent to him with the solicitation.

Effective August 15, 2001. (Amends R.S. 9:3541.1(A), (1) and (E))

3. Triche (HB 1070)

Act No. 519

Authorizes facility administrators or managers of various **developmental centers** to provide **medical consent**, according to a hierarchy, for persons in certain programs in the developmental centers of the office for citizens with developmental disabilities (OCDD), and provides that for purposes of consent to treatment, mentally retarded includes the developmentally disabled.

Effective August 15, 2001. (Amends R.S. 40:1299.58(A)(intro. para.) and (2); Adds R.S. 40:1299.58(F))

4. Landrieu (HB 1662)

Act No. 632

Provides that the **custodian of records for the parish of Orleans** is allowed to appoint only **one deputy** at an annual salary not exceeding \$40,000 (instead of two deputies under prior law), and that any **unexpended or unencumbered funds** remaining at the end of the fiscal year to the credit of the account of monies, fees, or sums collected by the custodian of notarial records shall be **dedicated to microfilming or other imaging projects** to ensure the indefinite survival of the records, instead of being transferred to the general fund of the city of New Orleans as under prior law.

Effective August 15, 2001. (Amends R.S. 35:336(A) and 337(B))

XI. CONSTITUTIONAL AMENDMENTS

1. Toomy (HB 485)

Act No. 1234

Requires the governor to include **full funding of state salary supplements for full-time local law enforcement and fire protection officers** in his annual budget estimate, and requires the legislature, beginning July 1, 2003, to appropriate monies sufficient to provide for payment of such salary supplements. Reduction of the appropriation requires the written consent of 2/3 of the elected members of each house of the legislature.

Ballot - statewide election to be held on November 5, 2002.

(Amends Const. Art. VII, §11(A); Adds Const. Art. VII, §10(D)(3))

2. Daniel (HB 507)

Act No. 1236

Provides that any law establishing a procedure to determine a projected deficit and a **method for adjusting appropriations to eliminate the deficit, shall not be changed** except by specific legislative instrument which receives a favorable **two-thirds vote** of each house, and that any such proposed law may be introduced and considered in **any regular session** of the legislature.

Authorizes **adjustments to any constitutionally protected or mandated allocations** or appropriations, and any transfer of funds associated therewith, when total state general fund allocations or appropriations have been reduced in an aggregate amount equal to at least 0.70% of the total of such appropriations or allocations for that fiscal year. Such adjustments are limited to 5% of the total appropriation or allocation from a fund in the current fiscal year; however, adjustments to the Minimum Foundation Program are limited to 1%. Monies transferred as a result of such budget adjustments are deemed available for appropriation in the year of the transfer, but in no event shall the aggregate amount of any transfers exceed the amount of the deficit.

Provides a procedure for **avoiding a budget deficit in the next fiscal year** if the official revenue forecast for the next fiscal year is at least 1% less than the official forecast for the current fiscal year. An amount equal to no more than 5% of the total appropriations or allocations for the current fiscal year from any fund established by law may be transferred to a fund for which revenues have been forecast to be less than the revenues in the current fiscal year. Such monies would be available for expenditure in the next fiscal year for a purpose other than as specifically provided by law, but in no event shall the aggregate amount of any transfers exceed the amount of the difference between the official forecast for the current fiscal year and the next fiscal year. Further, an amount equal to no more than 1% of the current fiscal year appropriation for the Minimum Foundation Program would be available for expenditure for other purposes in the next fiscal year.

Does not apply to the Bond Security and Redemption Fund or any bonds secured thereby, or any other funds pledged as security for bonds or evidences of indebtedness, severance taxes and royalty allocations to parishes, state retirement contributions, Louisiana Education Quality Trust Fund, Millennium Trust, except for appropriations from the trust, or monies not required to be deposited into the state treasury.

Ballot - statewide election to be held on November 5, 2002.

(Amends Const. Art. VII, §10(F))

3. Daniel (HB 508)

Act No. 1235

Authorizes **higher education institutions** or their respective management boards to **invest in stocks** a portion of certain funds derived from gifts and grants, funds functioning as endowments, or other permanent funds, provided that the amount to be invested in stocks **may not exceed 50%** of the aggregate of all such funds available for investment.

Ballot - statewide election to be held on November 5, 2002.

(Amends Const. Art. VII, §14(B))

4. Hines (SB 4)

Act No. 1231

Removes the subject matter restrictions on sessions convening in **even-numbered years** (only certain fiscal matters under existing law) and makes those restrictions applicable to sessions convening in **odd-numbered years**, but also allows the consideration of five prefiled bills per member which are not within the subject matter restrictions of the session.

Changes the prefiling deadline for bills from no later than 5 p.m. of the Friday before the first day of the session to no later than 5 p.m. on the tenth calendar day prior to the first day of a regular session.

Changes the convening day in **even-numbered years** from the last Monday in April to the last Monday in March, and changes the convening day in **odd-numbered years** from the last Monday in March to the last Monday in April.

Changes the length of the regular session in **even-numbered years** from not more than 30 legislative days in a period of 45 calendar days to not more than 60 legislative days in a period of 85 calendar days.

Changes the length of the regular session in **odd-numbered years** from not more than 60 legislative days during a period of 85 calendar days to not more than 45 legislative days during a period of 60 calendar days.

Changes the deadline for introduction of bills in **even-numbered years** from midnight of the 30th calendar day to 6 p.m. of the 23rd calendar day.

Changes the deadline for introduction of bills in **odd-numbered years** from midnight of the 30th calendar day to 6 p.m. of the 10th calendar day.

Changes that deadline for regular sessions convening in **even-numbered years**, for consideration of matters intended to have the effect of law on third reading and final passage, from midnight of the 27th legislative day to 6 p.m. of the 57th legislative day or the 82nd calendar day, whichever occurs first (retains the exception of a 2/3 vote of both houses).

Changes that deadline for regular sessions convening in **odd-numbered years**, for consideration of matters intended to have the effect of law on third reading and final passage, from midnight of the 55th legislative day to 6 p.m. of the 42nd legislative day or the 57th calendar day, whichever occurs first (retains the exception of a 2/3 vote of both houses).

Ballot - statewide election to be held on November 5, 2002, and specifies that it shall be the first ballot proposition for constitutional amendments to appear on the ballot for such election.

Effective January 1, 2004. (Amends Const. Art. III, §2(A))

5. Ellington (SB 240)

Act No. 1232

Authorizes the treasurer to invest **up to 35%** of the Medicaid Trust Fund for the Elderly **in stocks**.

Ballot - statewide election to be held on November 5, 2002.

(Amends Const. Art. VII, Sec. 14(B))

6. Malone (SB 244)

Act No. 1233

Establishes the Drought Protection Trust Fund as a special treasury fund and provides for sources and use of monies in the fund and specifically authorizes the legislature to provide relative to the fund. Provides that the legislature may provide for assistance to farmers who **voluntarily forgo irrigating with groundwater** for agricultural production rather than forgoing agricultural production.

Ballot - statewide election to be held on November 5, 2002.

(Adds Const. Art. VII, §10.11)

7. Fontenot (SB 163)

Act No. 1230

Provides that in **Livingston Parish** the qualifications for the office of **coroner** in that parish may be established by law.

Ballot - statewide election to be held on November 5, 2002.

(Amends Const. Art. V, Sec. 29)