



**SELECTED LEGISLATION**  
from the  
**2006 First Extraordinary Session**  
and the  
**2006 Regular Session**  
of the  
Louisiana Legislature

**Prepared by**

**House Legislative Services  
Louisiana House of Representatives  
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**AND**  
**2006 REGULAR SESSION**

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# I. CIVIL LAW AND PROCEDURE

## A. SUBSTANTIVE, LIABILITY, AND DAMAGES

### 1. Johns (HB 56)

Act No. 136

Adds horse "**racing**" to the definition of "**equine activity**" and adds "**licensed racetrack**" and "**licensed training center**" to the definition of "equine activity sponsor", all under the existing **limitation of liability** for equine activities.

Effective August 15, 2006. (Amends R.S. 9:2795.3(A)(1), (3)(a), (4), and (7))

### 2. LaFleur (HB 68)

Act No. 326

Provides a **limitation of liability** for any damage, injury, or loss arising out of the exercise of an individual **indigent defender board** member's official functions and duties, except when the damage, injury, or loss was caused by the gross negligence or willful or wanton misconduct of the member.

Authorizes the indigent defender board of Orleans Parish to be composed of not less than three nor more than nine members as determined by the criminal district court.

Effective August 15, 2006. (Amends R.S. 15:144(B); Adds R.S. 9:2800.16)

### 3. Durand (HB 70)

Act No. 244

Provides that during a **declared state of emergency** any health care provider who **voluntarily provides care** to assist a person injured as a result of the emergency, either in the affected area or elsewhere, shall **not be civilly liable** for causing death or injury to a person or property, unless the damage was intentional or caused by a grossly negligent act.

Effective August 15, 2006. (Adds R.S. 29:735.1)

### 4. Toomy (HB 453)

Act No. 696

Provides that any **health care provider** who **voluntarily provides emergency care**, health care services, or first aid during a state of emergency, in areas subject to the **declared state of emergency**, and without charge to the recipient shall **not be civilly liable** for causing death or injury to a person or damage to property, unless the death, injury, or damage was caused by a grossly negligent act of the provider.

Provides that a **health care provider from another state** who is employed by a corporate entity shall be licensed in his home state, be in good standing, and have a copy of his state license and photo identification on his person.

Provides that corporate entities shall be responsible for deploying only licensed health care providers in good standing in their respective states.

Effective August 15, 2006. (Adds R.S. 29:735.1)

**5. Ansardi (HB 76)**

**Act No. 138**

Provides that regardless of the criteria in existing **master-servant** or **employee-employer** tort law, if one political subdivision only acts as **paymaster** for another political subdivision, a master-servant or employer-employee relationship is not established and it shall **not be liable for torts** committed by the other political subdivision or its officers, officials, or employees.

Effective June 2, 2006. (Adds R.S. 42:1441.3(G))

**6. Walker (HB 287)**

**Act No. 753**

Removes the requirement under the existing **exemption from seizure** that the one motor vehicle shall be used for the exercise of a trade, calling, or profession, and provides that the motor vehicle may be used for any purpose, and **also exempts** from seizure \$7,500 in equity value for one motor vehicle which is **handicapped equipped** for the use of the debtor or a member of his family.

Effective August 15, 2006. (Amends R.S. 13:3881(A)(2); Adds R.S. 13:3881(A)(7) and (8))

**7. Duplessis (SB 471)**

**Act No. 601**

**Exempts from seizure the proceeds from any property insurance policy** received as a result of damage caused by a **gubernatorial declared disaster** to a homestead. Further requires that the proceeds be held separately in an escrow account identified as insurance proceeds paid from the damage of the homestead.

Effective August 15, 2006. (Amends R.S. 20:1(A)(2) and (D); Adds R.S. 13:3881(A)(7))

**8. Durand (HB 884)**

**Act No. 836**

Provides a **limitation of liability** for the **United Way, Southern Mutual Help Association, PRC Compassion, Inc.**, certain **Catholic charities**, and their officers, employees, and volunteers who gratuitously render services following a **declared state of emergency**.

Effective August 15, 2006. (Adds R.S. 9:2793.3-2793.6)

**9. K. Carter (HB 892)**

**Act No. 402**

**Limits the liability of the state, political subdivisions, or any public entity** and their agents, employees, contractors, volunteers, or representatives for the death of or injury to a person or damage to property based on decisions or activities in the **aftermath of Hurricanes Katrina and Rita**, except for gross negligence or willful misconduct.

Provides that certain persons attending or visiting a **school within an area affected by Hurricanes Katrina and Rita** shall **not have a cause of action** for damages against the local school district for **failure to warn**, notify, remediate, clean-up, or repair, in its decisions or operations in the aftermath of the hurricanes, except for gross negligence or willful misconduct.

Provides for both **prospective and retroactive application** to August 29, 2005, and for termination of the provisions of this Act on August 28, 2008.

Effective upon signature of governor (June 15, 2006). (Adds R.S. 9:2800.16)

**10. LaFleur (HB 1097)**

**Act No. 786**

Provides **immunity from civil action** for a person who **uses force or violence** for the purpose of preventing a forcible offense against a person or his property, and provides for the awarding of attorney fees and costs and expenses of a defendant who is immune from suit in accordance with law.

Effective August 15, 2006. (Adds R.S. 9:2800.16)

**11. Thompson (HB 1167)**

**Act No. 495**

Provides an **exemption from liability**, except for gross negligence or willful or wanton acts, for a person acting as a **volunteer pilot for Angel Flight or other similar nonprofit organization** providing gratuitous transportation for a child or his family to hospital facilities for medical treatment or evaluation, but limits the exemption to losses or damages incurred by the child or his family.

Effective August 15, 2006. (Adds R.S. 9:2800.16)

**12. Strain (HB 1359)**

**Act No. 741**

Provides a **limitation of liability** for the **Louisiana Girl Scout Councils** and its officers, employees, and volunteers who gratuitously render services following a declared state of emergency.

Effective August 15, 2006. (Adds R.S. 9:2793.5)

**13. Murray (SB 621)**

**Act No. 545**

Provides that, except for gross negligence or willful and wanton misconduct, there shall be **no cause of action** based solely upon the liability imposed **against a public entity** for damages caused by a **vice or defect of a building** within its care and custody when the damage has arisen from **Hurricanes Katrina or Rita**, including after effects of either hurricane and post-hurricane restoration, repair, cleaning, and construction.

Provides for retroactive application to August 26, 2005, and expires on August 30, 2008.

Effective August 15, 2006. (Adds R.S. 9:2800(H))

**14. K. Carter (HB 1217)**

**Act No. 795**

Enacts the **International Commercial Arbitration Act** (the model law on international commercial arbitration which was adopted by the United Nations Commission on International Trade Law in 1985) which applies to and provides procedures for the arbitration of contract disputes between parties who have their places of business in different countries.

Effective August 15, 2006. (Adds R.S. 9:4241-4276)

**15. Scalise (HB 570)**

**Act No. 479**

Enacts the **Hurricane Relief Programs Integrity Act** which prohibits persons from knowingly presenting a **fraudulent claim** for funds or other compensation from **hurricane relief programs** and provides a **prescriptive period of 10 years** from the date of the violation. Requires the attorney general to file an action within one year of the date he knew that the prohibited conduct occurred.

Provides detailed procedures, authorizes certain fines and penalties, and authorizes a private person to institute a civil action, or **qui tam action** to seek recovery on behalf of hurricane relief programs and himself, except for the civil monetary penalty for violations.

Creates the **Hurricane Relief Programs Fraud Detection Fund**, as a special fund in the state treasury to pay costs or expenses incurred by the attorney general in bringing actions.

Authorizes the attorney general to provide a **reward of up to \$2,000 to an individual** who submits information which results in recovery.

Effective June 22, 2006. (Adds R.S. 39:2151-2163)



## B. MEDICAL MALPRACTICE

### 1. Johns (HB 412)

Act No. 694

Includes a **donor of human blood** or blood components in the existing definition of "**patient**" under the **private Medical Malpractice Act**.

Includes all legal responsibility of a health care provider arising from acts and omissions during the procurement of blood or blood components in the existing definition of "**malpractice**" under the private medical malpractice act.

Includes any treatment relating to the procurement of human blood or blood components in the existing definition of "**health care**" under the private medical malpractice act.

Effective August 15, 2006. (Amends R.S. 40:1299.41(A)(3), (8), and (9))

### 2. Lentini (SB 406)

Act No. 323

Clarifies that all parties shall agree for a **waiver of review by a medical review panel** to be effective.

Creates an **expedited risk review panel** process, which is authorized upon agreement of all parties and upon written request to the attorney chairman within 60 days from the notification of the selection of such attorney chairman.

Requires the chairman to establish a **schedule for submission of evidence** to the panel within 90 days after selection of the third physician member of the panel. Further requires that a panel's opinion be rendered within 12 months of the date of notification. Provides that **no extension** shall be given for the deadline, and that, if an opinion is not rendered timely, suit may be filed against the health care provider.

Provides that after the 12-month period, the panel shall be automatically dissolved. Further provides that 90 days after notification to all parties by the attorney chairman of the dissolution, the suspension of the running of prescription, with respect to a qualified health care provider, shall cease.

Requires the chairman to submit a copy of the panel's report to the board, the parties, and the attorneys by registered or certified mail within 5 days of the rendering of the opinion.

Requires the plaintiff to notify the attorney chairman, and the named defendants, of his choice of a health care provider member within 10 days of the request for the expedited process, after which the defendant shall have five days to name his choice for a health care provider panelist. Provides that the selected health care provider panelists shall have 15 days to select the third health care provider panel member. Provides that if the deadlines are not met, the chairman shall make the necessary selections.

Requires the claimant to provide all defendants with the names and addresses of all known health care providers who have **treated** the patient from three years prior to the alleged malpractice until and including the date the list is provided.

Requires the claimant to provide all defendants with a HIPAA Complaint Authorization form to obtain medical records or the panel shall **lose its expedited status** and that notice of this shall be provided to the board and all parties by registered or certified mail.

Prohibits interrogatories to and depositions of parties and witnesses prior to the convening of the panel, and requires that the panel be convened after submission of all evidence and upon ten days notice.

Prohibits the report of the expedited panel's opinion as admissible evidence in any action subsequently brought by the claimant and provides that neither party shall call a member of the panel as a witness.

Effective August 15, 2006. (Amends R.S. 40:1299.47(B)(1)(c); Adds R.S. 40:1299.47(B)(1)(d) and (N))

## **C. PRESCRIPTION AND PEREMPTION**

### **1. Pinac (HB 1250)**

**Act No. 732**

Extends the **five-year preemptive period** for an action for damages against any professional engineer, surveyor, engineer intern, surveyor intern, or licensee, or any professional architect, landscape architect, architect intern, or agent, or professional interior designer, or licensee, **to include real estate developers** relative to development plans which have been certified by a professional engineer or professional architect.

Effective August 15, 2006. (Amends R.S. 9:5607(A)(intro. para.))

### **2. Burns (HB 1302)**

**Act No. 802**

**Prevents the running of prescription for one year** on any insurance claim seeking to recover for loss or damage to property against an insurer on a homeowner's policy, including tenant and condominium, personal property policies, commercial property policies, flood insurance policies on certain automobiles or certain crop or live stock policies, when the loss or damage was caused by or as a **result of Hurricane Katrina or Hurricane Rita**, or both.

Provides that if the claim is not brought on or before August 30, 2007, for claims related to Hurricane Katrina or September 25, 2007, for Hurricane Rita, it shall be forever barred unless a contract or the parties thereto provide for a later date.

Authorizes any person to file a suit seeking a **declaratory judgment** regarding the **constitutionality** of this Act or Acts 2006, No. 739, on or before 10 days after the effective date of this Act. Provides that cumulation of any actions filed pursuant to this Act is permissible.

Effective June 30, 2006.

## **D. PROCEDURAL LAW**

### **1. Baldone (HB 414)**

**Act No. 474**

Requires the court to prepare and **sign a judgment** within 10 days of rendition of the verdict in a jury trial or order counsel to prepare and submit a judgment within 10 days of rendition.

Provides that in all other matters, if the court renders a decision in open court, it shall prepare and sign a judgment within 10 days or it may order counsel to prepare a judgment and submit it to the court within 30 days.

Provides that when the court takes a matter under advisement, it shall render, prepare, and sign a judgment in accordance with law (R.S. 13:4207).

Provides that when parties enter into a compromise agreement which is recited in open court, the court may order counsel to prepare and submit a judgment for signing within 20 days.

Effective August 15, 2006. (Amends C.C.P. Art. 1916)

### **2. Bruneau (HB 174)**

**Act No. 12**

Authorizes service of a **judgment debtor** rule on the debtor's counsel of record.

Effective August 15, 2006. (Amends C.C.P. Art. 2453)

### **3. Bruneau (HB 180)**

**Act No. 337**

Authorizes a **waiver of the notice** of the signing of the final judgment on a contested motion, exception or rule to show cause, when all parties or their counsel are present in court and a final judgment is rendered and capable of being transcribed from the record of the proceeding.

Effective August 15, 2006. (Adds C.C.P. Art. 1913(E))

**4. Martiny (HB 134)**

**Act No. 750**

Provides that the failure to **request service** on a defendant within 90 days is waived unless the defendant files a declinatory exception of improper service of process specifically alleging failure to timely request service.

Effective August 15, 2006. (Amends C.C.P. Arts. 925(A)(2), 932(A), 1201(C) and 1672(C))

**5. Marionneaux (SB 671)**

**Act No. 820**

Provides that when a party purchases a **transcript**, the court reporter shall additionally provide that party with an electronic copy of the transcript at no additional charge.

Effective July 5, 2006. (Adds C.C.P. Art. 372(F))

**6. Greene (HB 598)**

**Act No. 704**

Authorizes the court to appoint a **private process server** in a summary proceeding without first requiring the sheriff to attempt service.

Effective June 29, 2006. (Amends C.C.P. Art. 1293)

**7. Amedee (SB 338)**

**Act No. 653**

Requires a **written judgment** to be rendered within 30 days after the case is submitted, if oral reasons are not rendered in open court and the matter is taken under advisement.

Requires city court judges to pass upon an application for **new trial** within three days.

Changes from 12 months to six months the imprisonment for contempt of court.

Effective August 15, 2006. (Amends R.S. 13:4207 and 4611(1)(b))

**8. Townsend (HB 339)**

**Act No. 690**

Requires the court to hold a hearing prior to **compelling the discovery of a legislator** in his capacity as a state lawmaker when the legislature is not a party in the case.

Specifies that the ability to compel the attendance of a member of the legislature or legislative personnel in **criminal felony case** applies only when the member or legislative personnel is being called as a **material, factual witness to the crime** or any element of the crime.

Requires that the court enter **written reasons for compelling the attendance** of a legislator in a civil or criminal proceeding, and requires and provides procedures for the appointment of a separate judge to hear a motion to compel the attendance of a legislator.

Effective June 29, 2006. (Amends R.S. 13:3667.1(A), 3667.3, and 4163(A)(1)(a) and (B); Adds C.C.P. Art. 1469(5) and C.Cr.P. Art. 740, and R.S. 49:956.1)

**9. Gary Smith (HB 1266)**

**Act No. 498**

Deletes references to *C.C.P. Art. 2639*, which article was repealed by Act No. 1072 of the 2003 R.S.

Effective August 15, 2006. (Amends C.C.P. Arts. 2640 and 2721(A))

**10. Hollis (SB 384)**

**Act No. 534**

Requires any "**collection agency**" or "**debt collector**" doing business in the state to register with the secretary of state and authorizes the secretary of state to promulgate regulations to provide for the registration.

Defines "collection agency" and "debt collector" as "synonymous and interchangeable terms" and as any person, **other than a licensed Louisiana attorney**, who uses any instrumentality of commerce or the mails in the collection of any debts or who regularly collects or attempts to collect debts due another, regardless of whether the person has Louisiana clients, and even if the person has no employees, offices, equipment, or other "physical facilities" in the state.

Provides for the validity of the **assignment of debts to a debt collector** or collection agency by a client or customer and clarifies that the debts are valid and enforceable.

Allows the collection agency or debt collector to represent the original credit grantor in all instances for the purpose of collecting the debt, including the right to bring legal action to collect.

Provides that in the event a legal action is brought by a collection agency or debt collector, the **formal assignment will be presumed valid** if a copy is attached to the petition. If the defendant fails to object to the validity of the assignment prior to filing of an answer, then the assignment is deemed valid.

Provides that the provisions of this Act are remedial in nature and will be **applied retroactively**.

Effective June 22, 2006. (Adds R.S. 9:3534.5)

**11. Ellington (SB 400)**

**Act No. 322**

Changes the commencement of accrual of **legal interest** from the date of presentation of the petition to the date the answer is filed by the defendant if interest is awarded in an **expropriation** by declaration of taking proceeding involving **DOTD**.

Effective July 1, 2006. (Amends R.S. 48:455)

**12. Pinac (HB 203)**

**Act No. 153**

Provides that any domestic limited liability company, business corporation, partnership in commendam, or partnership may **convert to another type of domestic business entity** by submitting an application to the secretary of state, upon approval of the owners or members of the converting entity in the same manner provided by law and by the document governing the affairs of the converting entity, but that an entity **may not convert if an owner or member of the entity, as a result of the conversion, becomes personally liable**, without his consent, for a liability or other obligation of the converted entity.

Provides detailed procedures and requirements for the application for conversion, such as name of the converting entity, statement of the type of the resulting converted entity, the manner and basis of converting the ownership or membership interests into interests of the converted entity, and the treatment of tax classifications, and assets and liabilities.

Requires that a **duplicate certificate** of conversion shall be **filed for record in the conveyance records** of each parish in this state in which the entity has immovable property, title to which will be transferred as a result of the conversion.

Effective June 2, 2006. (Adds R.S. 12:1601-1606)

**13. Gallot (HB 352)**

**Act No. 170**

Requires that a **corporation shall own no immovable property if it is to be dissolved by filing an affidavit** with the secretary of state, in addition to the existing requirement that it is no longer doing business and owes no debts.

Effective August 15, 2006. (Amends R.S. 12:142.1(A))

## E. EVIDENCE

### 1. Townsend (HB 439)

Act No. 826

Provides that the **keyword, one-liner, abstract, digest** and other words and phrases not contained in the sections of a bill following the enacting clause, **do not constitute law**. Provides that audio or video recording of the proceedings of the legislature shall be prima facie proof of the existence and contents of the proceeding.

Requires the court to consider the **intent of the legislature** when the meaning of a law cannot be ascertained by other methods and provides that the text of the law is the best evidence of legislative intent. Provides that **bills which do not become law**, fiscal and actuarial notes, and committee minutes **do not constitute proof or indicia of legislative intent**.

Effective August 15, 2006. (Amends R.S. 1:13 and R.S. 13:3712(A); Adds R.S. 13:3711 and 24:177)

### 2. Martiny (HB 637)

Act No. 191

Provides that the **spousal privilege does not apply** in a criminal case in which one spouse is charged with a **crime against the person of the other spouse** or a crime against the person of a child or either including but not limited to the violation of a preliminary or permanent injunction or protective order for violations of R.S. 14:79 (protective orders).

Effective August 15, 2006. (Amends C.E. Art. 505)

### 3. Lentini (SB 194)

Act No. 580

Provides for **admissibility of the files**, records, and information in any civil litigation or criminal proceeding against **DSS** or its employees wherein work performance or conduct is at issue.

Effective June 23, 2006. (Amends Ch. C. Art. 615(E); Adds 615(F))

## F. CONTRACTS / CONSUMER PROTECTION

### 1. Murray (SB 569)

Act No. 610

Provides that in the event the district court of proper venue is **not operational** due to a declared **state of emergency**, the attorney general, district attorney, or parish attorney may bring the appropriate judicial action to enforce R. S. 29:732 (**price gouging**), and the attorney general may bring the appropriate action to enforce R.S. 51:1405 (**unfair trade practices**) in the 19th J.D.C. in the parish of East Baton Rouge or in the operating judicial district court located closest in geographic distance thereto.

Effective June 22, 2006. (Amends R.S. 29:734(A) and R.S. 51:1407)

### 2. Pinac (HB 119)

Act No. 333

Provides that a licensee of the La. Real Estate Commission representing either the buyer or seller of residential real property shall complete the **Purchase Agreement Form** prescribed by the commission in making an offer to purchase or sell residential real property, however, addendums or amendments to the form may be used.

Provides that the commission shall promulgate the form in accordance with the Administrative Procedure Act no later than July 1, 2007, and that the provisions of this Act shall apply to the sale of residential real property on or after January 1, 2008.

Effective August 15, 2006. (Adds R.S. 37:1449.1)

### 3. Pinac (HB 787)

Act. No. 280

Requires the La. Motor Vehicle Commission to create a **uniform retail installment sales contract** for motor vehicle credit transactions no later than January 1, 2007. Further provides that use of the uniform retail installment sales contract shall constitute **prima facie evidence of compliance** with consumer notice and disclosure requirements of state and federal law.

Effective August 15, 2006. (Adds R.S. 6:969.51)

### 4. Hutter (HB 798)

Act No. 201

Provides that it shall be unlawful for any person, by means of a web page, electronic mail message, or otherwise through use of the Internet, to solicit, request, or take any action to induce another person to provide **identifying information** by representing itself to be a business without the authority or approval of the business (also known as "**phishing**").

Provides that a person who is engaged in the business of providing Internet access service to the public, owns a web page, or owns a trademark that is adversely affected by a violation of this Act may bring an action against a person who is in violation of this Act, and may seek



to recover the greater of actual damages or \$5,000, and in certain cases may recover the greater of **three times the amount of actual damages** or \$5,000 per violation, in addition to costs of suit and reasonable attorney fees.

Also **authorizes the attorney general or district attorney** in the parish where a violation occurs to bring an action to enjoin further violations and to recover a civil penalty of up to \$2,500 per violation.

Effective August 15, 2006. (Adds R.S. 51:1751-1754)

#### 5. Michot (SB 641)

Act No. 549

Creates the "**Louisiana Anti-Phishing Act**". Prohibits a person from sending or causing to be sent, with the intent to engage in conduct involving the fraudulent use or possession of **identifying information**, to an electronic mail address held by a resident of this state, an electronic mail message that is falsely represented as being sent by a legitimate online business, refers or links the recipient to a Web page that is represented as being associated with a legitimate online business, or directly or indirectly induces, requests, or solicits the recipient to provide identifying information for a purpose that the recipient believes is legitimate.

**Authorizes the attorney general**, or an internet service provider or owner of a webpage or trademark who is adversely affected by a violation of this Act, to bring a civil action to seek injunctive relief and to recover damages in an amount equal to the greater of actual damages or \$100,000 for each violation of the same nature or both, in addition to reasonable attorney fees and court costs.

Authorizes the court to increase an award of actual damages to an amount not to exceed **three times the actual damages** sustained if the court finds that the violations have occurred with a frequency as to constitute a pattern or practice.

Effective September 1, 2006. (Adds R.S. 51:1441-1445)

#### 6. Trahan (HB 988)

Act No. 218

Replaces the Governor's Consumer Protection Division with the consumer protection section of the public protection division in the Department of Justice, and provides that the **Attorney General**, not the executive assistant to the governor in charge of consumer affairs, shall have the responsibility to administer and **enforce the Unfair Trade Practices and Consumer Protection Law**.

Provides that the attorney general may request a civil penalty against any person found to have engaged in any method, act, or practice in Louisiana declared to be unlawful, and that if the method, act, or practice was intended to defraud, the court has the authority to impose a penalty not to exceed \$5,000 for each violation.

Provides that if any person engages in an unfair trade practice against a **person aged 65 or over**, a district court may impose an additional penalty not to exceed \$5,000 for each violation.

Also provides that penalties for violations of the Unfair Trade Practices and Consumer Protection Law may include revocation, forfeiture, or suspension of any license, dissolution of domestic corporations or associations, and restitution.

Effective June 2, 2006. (Amends R.S. 51:1402(4), (5), and (6), 1404(A)(intro. para.) and (1)(b) and (6), (B), and (C), 1405, 1406(3), 1407, 1408, 1409(A), (B), and (D), 1410, 1411(A) and (C), 1412(A) and (C), 1416, and 1417; Adds R.S. 51:1403; Repeals R.S. 51:1404(A)(5))

## II. SUCCESSIONS AND TRUSTS

### 1. Walker (HB 288)

Act No. 257

Provides an exception for an ownership interest in any **cemetery space** intended for the interment of the person who died intestate to the prohibition of ownership of immovable property in order to **qualify as a small succession**.

Effective upon signature of governor (June 8, 2006). (Amends C.C.P. Art. 3431(A))

### 2. Walker (HB 309)

Act No. 258

Provides that if a person's absence commenced between 8/26/05, and 9/30/05, and was related to or caused by **Hurricane Katrina or Rita**, the absent person, not currently charged with a felony, shall be **presumed dead** after the passage of two years.

Effective August 15, 2006. (Amends C.C. Art. 54)

### 3. Lentini (SB 35)

Act No. 314

Amends the provisions of C.C.P. Art. 3061, relative to proof that no **inheritance taxes** are due, making it consistent with existing law by providing for proof only when otherwise required by law, as with successions for deaths occurring after 6/30/04, no inheritance taxes will be due if a judgment of possession is rendered or if the succession is judicially opened no later than the last day of the ninth month following the death of the decedent.

Effective August 15, 2006. (Amends C.C.P. Art. 3061)

### III. FAMILY LAW

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

##### 1. Johns (HB 121)

Act No. 249

Clarifies that a **covenant marriage** terminates upon the death of a spouse, divorce, or a declaration of nullity and specifies that a covenant marriage agreement may not be dissolved by the mutual consent of the parties.

Effective August 15, 2006. (Adds R.S. 9:272(C))

##### 2. Alexander (HB 1379)

Act No. 743

Requires that spouses live separate and apart for **365 days**, in order to obtain a divorce if there are **minor children** of the marriage.

Provides that even if there are minor children of the marriage, if the court finds that one party has sexually or physically abused the other spouse or a child of that spouse or, after a contradictory hearing, a protective order or an injunction has been issued against the other spouse for abuse, a divorce may be granted after living separate and apart only 180 days.

Requires the notice of suit and notice of rule to show cause to include appropriate language regarding the required time periods relative to the type of the divorce proceeding.

Provides that a judgment of divorce that is rendered contrary to time requirements is an absolute **nullity**.

Provides that its provisions shall only apply to divorce actions filed on or after the effective date of this Act.

Effective January 1, 2007. (Amends C.C. Arts. 102 and 103(1) and C.C.P. Arts. 3952, 3953(intro. para.) and (1) and (2), and 3956(intro. para.) and (5) and R.S. 13:3491(A)(intro. para.) and (5)(a) and (B) and 3492(A)(intro. para.) and (6)(b) and (B); Adds C.C. Art. 103.1)

##### 3. Greene (HB 128)

Act No. 749

Clarifies that a spouse shall be **free from fault and in need of support**, based on the needs of the party and the ability of the other party to pay, to be awarded final support and the court shall consider certain factors to determine the amount and duration of that support.

Provides that the provisions of this Act are **interpretative** and shall apply to pending claims in which trial has not yet commenced as of the effective date of this Act.

Effective June 30, 2006. (Amends C.C. Arts. 111 and 112)

**4. Hebert (HB 1378)**

**Act No. 742**

Requires the petition in a child in need of care proceeding to be served in a **sealed** envelope.

Effective August 15, 2006. (Amends Ch.C. Art. 638)

**5. Lambert (HB 849)**

**Act No. 777**

Provides that if a temporary restraining order is granted without notice, a hearing shall be set within **15 days**.

Provides that if the court determines that a petition for domestic abuse assistance is frivolous, the court may order the nonprevailing party to pay all **court costs and reasonable attorney fees** of the other party.

Effective August 15, 2006. (Amends Ch.C. Arts.1569(B) and 1570.1 and R.S. 46:2135(B) and 2136.1)

## **B. CHILD SUPPORT, PATERNITY, AND CUSTODY**

**1. Hunter (HB 778)**

**Act No. 772**

Provides that an obligee may file a judgment of past due child support with the **office of motor vehicles**.

Provides that the judgment shall operate as a **privilege** on a motor vehicle owned by the person owing support, and shall not affect liens, privileges, chattel mortgages, or security interests already affecting or burdening the motor vehicle on the date of the filing.

Provides that the motor vehicle shall be subject to **seizure and sale** for the payment of the judgment according to the preference and rank of the lien securing its payment. Further provides that the privilege for child support shall be legally subordinate to motor vehicle purchase money security interests.

Provides that a judgment creditor who has obtained a final judgment for the payment of past due child support which has remained unpaid at least 60 days after the judgment has become final may file the judgment with the office of motor vehicles to create a privilege over the motor vehicle and requires certain documents to be filed to create the privilege.

Provides that the court may order the judgment debtor to surrender the **certificate of title** to the judgment creditor or order the existing lien holder to submit the title to the office of motor vehicles for the addition of the privilege.

Effective August 15, 2006. (Adds R.S. 9:4790 and R.S. 32:708.1)

## 2. Doerge (HB 654)

Act No. 272

Requires the parish or municipality to reimburse the costs incurred by the sheriff when transporting a prisoner who is an incarcerated parent to a termination of **parental rights** proceedings.

Requires an incarcerated parent to provide a **plan for the care of his children** during incarceration and requires DSS to contact the parent and assist in preparing the plan.

Effective August 15, 2006. (Adds Ch.C. Arts. 1024.1 and 1036.2.)

## 3. Gray (HB 90)

Act No. 248

Requires the parent in a **continued custody proceeding** to give the department and their counsel all of their contact information including their cellular and telephone numbers.

Requires the curator in a child in need of care proceeding to **notify** the child's parent of his responsibility to inform the department and counsel of his current whereabouts and the whereabouts of the child's other parent and any relative or other individual able to offer a home for the child.

Directs the court to **inform** the parent and all persons before the court of their responsibility to notify the department of the whereabouts of an absent parent or any other person who may provide a home for the child, and requires the court to **enter findings** regarding the diligent search for the child's parent and to attach a **written advisement** to the judgment of disposition advising the parties of certain enumerated rights and obligations.

Requires the department to continually try to locate the absent parent when reunification is the goal.

Effective August 15, 2006. (Amends Ch.C. Arts. 625, 644(A)(5), 684(D), (E), (F), and (G), 694(B), and 704(B); Adds Ch.C. Arts. 644(A)(6) and (7) and 682(B)(4))

## 4. Ansardi (HB 322)

Act No. 344

Provides that a **formal acknowledgment of paternity** is a legal finding of paternity for child support, custody and visitation purposes and is sufficient to establish an obligation without obtaining a judgment of paternity.

Provides that the filing of a petition for a blood test **suspends** the period for filing a disavowal action.

Provides that a man who may be presumed to be the father, if the mother's husband is successful in a disavowal action, shall be made a party to that action.

Provides that a judgment in a disavowal action **terminates** existing custody, visitation, and support orders, but does not affect amounts owed in arrearage.

Provides the **procedure** for a mother's contestation action including the proper parties, the hearing, the effect of a judgment, and appeals.

Provides that the time periods applicable in an avowal action do apply to cases being administered by DSS.

Provides that a party may **revoke an acknowledgment of paternity** without cause under certain conditions and provides that an act of acknowledgment of paternity may be revoked for fraud, duress, material mistake of fact, or error if the person is not the father of the child. Also provides that a support obligation shall not be suspended during the pendency of the proceeding to revoke an act of acknowledgment of paternity, except for good cause shown.

Provides that a contestation action may affect the surname of the child.

Repeals the requirement for the recording of names in a putative father registry by any person who filed a claim of paternity to a child born outside of marriage, and repeals the statute which provided that filing with the putative father registry created a rebuttable presumption of paternity.

Provides that the provisions of Civil Code Article 196 and R.S. 9:392.1 shall be **retroactive** to June 29, 2005.

Effective June 13, 2006. (Amends C.C. Art. 196, C.C.P. Art. 1061(B), Ch.C. Art. 116(17), R.S. 9:392(A)(intro. para.) and (7), 396(A)(1)(intro. para.), (B)(1), and (C)(1), 398.2(A)(1), and 400(A)(4), R.S. 40:34(B)(1)(h)(I), and R.S. 46:121(3)(b); Adds R.S. 9:392.1 and 401-406; Repeals R.S. 9:305, 395.1, 400(A)(2), and 400.1)

## **5. Ansardi (HB 601)**

**Act No. 481**

Defines "**medical support**" for child support purposes to include both health insurance and the payment of medical expenses.

Provides that when DSS is providing services, each child support order shall also include a medical support order and certain procedures shall be followed when a parent is required to provide medical support.

Provide that if one or more health care plans are available to a parent, DSS shall select a plan without consultation with the custodial parent.

Effective October 1, 2006. (Amends R.S. 9:315.4 and R.S. 46:236.8(A), (B)(1)(intro. para.), (c), (e), (f), and (C), (E), (F), and (G)(6); Adds R.S. 9:315(C)(8))

**6. Greene (HB 538)**

**Act No. 478**

Provides that any party may seek the **collection of past due child or spousal support** by sending a notice to the federal secretary of the treasury that another party owes past due child or spousal support.

Establishes a system whereby persons may claim an **offset from the La. Dept. of Revenue** for any monies due to an individual who owes past due spousal support and defines certain terms.

Provides that child support claims shall have **priority** over spousal support claims and if more than one spousal support claim is filed, the spousal support claims shall be paid in the order in which they were filed.

Effective upon signature of governor (June 22, 2006). (Amends R.S. 47:299.31 and 299.32(1) and (2); Adds R.S. 9:315.26 and 325 and R.S. 47:299.41(C))

**7. Ansardi (HB 186)**

**Act No. 470**

Provides that a court shall **not suspend** a party's responsibilities or obligations while they are in the process of executing a declaration of acknowledgment.

The provisions of this Act shall be applied **retroactively** to June 29, 2005.

Effective June 22, 2006. (Amends R.S. 9:392(A)(intro. para.); Adds R.S. 9:392(A)(7)(c))

**8. N. Gautreaux (SB 154)**

**Act No. 110**

Provides that a military service member on active duty who misses his authorized visitation due to military obligations shall be afforded **compensatory visitation** on a day for day basis for days lost if he so requests.

Requires the custodial or domiciliary parent and the service member to **negotiate** an equitable schedule for compensatory visitation. Further provides that if an equitable schedule cannot be negotiated, the service member may **petition** the court to enforce the visitation order and make adjustments to require the compensatory visitation time.

Effective August 15, 2006. (Adds R.S. 9:348)

**9. Lentini (SB 123)**

**Act No. 315**

Provides that the **basic allowance for housing and subsistence** received by military personnel is **gross income** for the purposes of calculating child support.

Effective June 13, 2006. (Amends R.S. 9:315(C)(3)(a))



## 10. Gray (HB 60)

Act No. 822

Repeals the UCCJA and enacts the new **Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)** which was recommended by the National Conference of Commissioners on Uniform State Laws in 1997 and has been adopted in 42 states.

The UCCJEA:

- (1) Revises the law on child custody jurisdiction in light of federal enactments and almost 30 years of inconsistent case law. Provides **clearer standards** for which states can exercise original jurisdiction over a child custody determination and gives home state jurisdiction priority over other jurisdictional bases. It also provides a standard of continuing **jurisdiction** and clarifies modification jurisdiction.
- (2) Provides a uniform remedial process to enforce interstate child custody and visitation determinations by setting forth a simple procedure for **registering** a custody determination in another state.

Does not authorize public authorities, such as prosecutors, to be involved in the action leading up to the making of the custody determination, except when requested by the court, when there is a violation of the Hague Convention on the Civil Aspects of International Child Abduction, or when the person holding the child has violated a criminal statute.

Does have **international application** to child custody proceedings and determinations of other countries. Another country will be treated as if it were a state of the United States. Custody determinations of other countries will be enforced if the facts of the case indicate that jurisdiction was in substantial compliance with the requirements of law.

Authorizes notice and proof of **service** to be made by any method allowed by either the state which issues the notice or the state where the notice is served.

Effective August 15, 2007. (Adds R.S. 13:1801-1842; Repeals R.S. 13:1700-1724)

## 11. Lentini (SB 407)

Act No. 121

Authorizes DSS to **seize progressive slot machine annuities** from individuals owing child support arrears and directs the Gaming Control Board to develop a procedure for withholding progressive slot machine annuities of persons who have outstanding child support arrearages or child support overpayments.

Effective June 2, 2006. (Amends R.S. 46:236.15(D)(1)(intro. para) and (a); Adds R.S. 27:364(A)(1)(b)(vi))

**12. R. Carter (HB 539)**

**Act No. 386**

Provides that **social security benefits** received by a child due to the earnings of a parent shall be credited as child support to the parent upon whose earning record it is based, by crediting the amount against the potential obligation of that parent. However, if there are arrearages, the court shall grant an evidentiary hearing before any arrearage is reduced.

Effective August 15, 2006. (Adds R.S. 9:315.7(D) and (E))

**13. Ansardi (HB 265)**

**Act No. 471**

Additionally requires **mediators** in child custody proceedings to possess a four-year college degree, but lowers the amount of general mediation training from 16 to 12 hours.

Provides that a person denied listing in the LSBA approved register may request a review of the decision by a panel of three members of the LSBA, Alternative Dispute Resolution Section.

Provides that "an hour" means a period of at least **60 minutes** of actual instruction.

Effective August 15, 2006. (Amends R.S. 9:334)

**14. Gray (HB 1370)**

**Act No. 439**

Provides for a **Foster Parents' Bill of Rights** to ensure that foster parents are recognized as primary care givers to abused and neglected children who have been removed from their home of origin. Requires DSS to promote and support these rights.

Effective August 15, 2006. (Adds R.S. 46:286.2-286.4)

**15. Lentini (SB 193)**

**Act No. 516**

Provides that certain DSS personnel may **administer oaths** in connection with any documents relative to relief or assistance under the provisions of the Social Security Act. Provides that documents passed, acknowledged or sworn and subscribed before certain personnel, shall have the same force and effect as if taken before a duly commissioned notary public.

Effective June 22, 2006. (Amends R.S. 46:236.1.8(D) and (E))

**16. Triche (HB 355)**

**Act No. 375**

Authorizes DSS to obtain certain information, to assist in **locating parents** for support enforcement services, from various state agencies and industries, without first obtaining an order from any judicial or administrative tribunal, including occupational and professional licenses, ownership of business entities, public assistance programs, records of the office of motor vehicles, public utility records, **cable television company records and cellular telephone company records**.

Effective June 15, 2006. (Amends R.S. 46:236.15(C))

**17. Durand (HB 369)**

**Act No. 377**

Expands the definition of biological parents to include a **surrogate birth parent** who is related by affinity.

The provisions of this Act are remedial and shall be applied **retroactively** to October 24, 2005.

Effective August 15, 2006. (Amends R.S. 40:32(1) and 34(B)(1)(a)(viii), (h)(v), (i), and (j))

**C. CHILDREN'S CODE: ADOPTION, CHILD IN NEED OF CARE, JUVENILES**

**1. Scalise (HB 904)**

**Act No. 288**

For purposes of **adoption**, changes the age of a child from a person under 17 years of age to a person under 18 years of age and not emancipated by marriage.

Effective August 15, 2006. (Amends Ch.C. Art. 1169(3) and (5))

**2. Gray (HB 503)**

**Act No. 266**

Regarding **sanity commissions** appointed to determine a child's mental capacity to stand trial, requires that the order set the time and date of the contradictory hearing and that the clerk of court inform Dept. of Health and Hospitals of the date and time of the hearing. Also requires the clerk, the district attorney and counsel for the child to provide certain documents to the commission.

Provides that the child's **mental capacity** shall be determined after a contradictory hearing and provides time limits within which the hearing shall be held.

Provides that if the alleged act is a **felony** and the child lacks capacity the court may dismiss the petition, place the family in Families in Need of Services (FINS), commit the child, or

place him with his parents. However, if the alleged act is a **misdemeanor**, the court may dismiss the petition or place the family in FINS.

Provides that if a child lacks capacity due to immaturity, the court cannot directly commit or place the child, but it may dismiss the petition, place the child's family in FINS, or continue the matter for six months.

Provides that an out-of-home placement or commitment shall be in a separate unit and program from an adult forensic program unless the child is 17 years of age, and the court finds that the child can be treated in an adult forensic program.

Provides the qualifications for **competency restoration** service providers and requires them to submit a report to the court within 90 days after the sanity commission hearing and every 90 days thereafter.

Provides that any statement of the child in the report shall not be used against the child in subsequent proceedings.

Provides that if competency has not been reached in six months, the provider shall predict whether the child will likely reach competency within two years and if not, the court shall conduct a hearing. If at the end of two years, the child has not attained competency, the court shall determine a course of action.

Provides that if the child has **not attained competency** within three years, the court shall either dismiss the petition, place the family in FINS, place the child with his family or other suitable placement, or commit him to a suitable treatment facility.

Provides that when a child is in an out-of-home placement which is no longer necessary, the person making the determination shall file a motion to determine the appropriate placement, and requires certain information to be included in the motion and requires it to be set for **hearing** within 14 days of filing.

Effective August 15, 2006. (Amends Ch.C. Arts. 809(B), 833(A), 834(A), 835(A), 836(A), 837, and 838(D); Adds Ch.C. Arts. 834(F), 834.1, and 837.1-837.6)

### **3. Gray (HB 777)**

**Act No. 278**

Provides that a parent is without authority to place the child after a **child abuse complaint** has been filed and provides that upon presentation of the verified complaint, the court shall immediately determine whether emergency removal is necessary to secure the child's protection.

Defines a **safety plan** and requires it to be signed by the custodian and provides that a suitable individual may obtain an ex parte court order to take provisional custody of a child pending a continued custody hearing.

Gives custodial priority to relatives over other individuals and deletes the priority among relatives.

Provides that the person seeking custody shall demonstrate a willingness and ability to provide a wholesome, stable, and safe environment for the child pending an adjudication hearing, and accept the safety plan.

Requires the court to make the safety plan part of its **order** if it grants custody to a relative or individual.

Effective August 15, 2006. (Amends Ch.C. Arts. 603(18), 619(A), (B), and (C), 620(B) and (C), 621, 622, 624(G), and 627(A) and (B); Adds Ch.C. Arts. 603(19) and 627(F); Repeals Ch.C. Art. 624(H))

#### **4. Winston (HB 652)**

**Act No. 271**

Establishes a **Child Advocacy Program within the Mental Health Advocacy Service** for the purpose of providing qualified legal representation for children in child abuse and neglect cases and provides that neither the child nor anyone acting on his behalf may waive the child's right to counsel.

Effective August 15, 2006. (Amends Ch.C. Arts. 607(A) and (B), 1016(A) and (B), 1404(14) and R.S. 15:151.2(B), R.S. 28:2(13), and R.S. 46:460.21(A); Adds Ch.C. Arts. 551-560 and R.S. 15:151.2(J))

#### **5. Cazayoux (HB 733)**

**Act No. 394**

When a report of **child abuse** is determined to be inconclusive or unjustified, the information shall be maintained for the exclusive use of child protection services and may be released to law enforcement in investigating crimes against children. Requires the files to remain **confidential** and if a court determines they are admissible, they shall be placed under seal.

Provides for the submission of reports of a crime involving sexual abuse of a child to the district attorney and requires him to forward the information to **state police** who will maintain a central registry of all reports. The registry shall be for the exclusive use of child protection and law enforcement for the evaluation of patterns of incidents in pending child abuse cases.

Effective August 15, 2006. (Amends Ch.C. Art. 615(E)(1); Adds Ch.C. Arts. 615(E)(4), 615.1 and 616.2)

**6. Hebert (HB 553)**

**Act No. 764**

**Limits the persons who may be present** at adjudications, case reviews, permanency hearings, and other juvenile court proceedings. Also requires the court to determine whether it is in the child's best interest for the child to remain in the courtroom during the testimony of the witnesses.

Authorizes the court to order that the witnesses, other than parties, be excluded from the courtroom and refrain from discussing the facts of the case with anyone other than counsel in the case.

Defines "**protected person**" as persons who are victims of a crime or who are witnesses in a criminal prosecution and who are 14 years of age or younger or who have a developmental disability or mental retardation.

Effective August 15, 2006. (Amends Ch.C. Arts. 661, 698 and 708; Adds R.S. 15:283(E))

**7. Cazayoux (HB 291)**

**Act No. 372**

Provides that in an action to establish damages against a defendant who has made a **false report of child abuse or neglect**, the plaintiff shall bear the burden of proving that the defendant knew the report was false or that the report was filed with reckless disregard for the truth of the report. Provides that if the plaintiff fails to meet his burden, he shall pay all court costs and attorney fees of the defendant.

Effective August 15, 2006. (Adds Ch.C. Art. 611(C))

**8. Ansardi (HB 266)**

**Act No. 472**

Requires **mediators in juvenile court** disputes to possess a four-year college degree, but lowers the amount of general mediation training from 16 to 12 hours. Requires specialized training to include substantive state and federal law, including the Adoption and Safe Families Act (42 U.S.C. 601).

Requires the LSBA Dispute Resolution Section to maintain a **register** of persons qualified to be juvenile court mediators and make available to the juvenile courts and the parties the register and a summary of the mediators professional qualifications. Provides that a person denied listing in the register may request a review of the decision by a panel of three members of the LSBA, Dispute Resolution Section.

Provides that "an hour" means a period of at least 60 minutes of actual instruction.

Effective August 15, 2006. (Amends Ch.C. Art 439(B); Adds Ch.C. Art. 439(F)(7) and (H)-(K))

**9. Baldone (HB 1193)**

**Act No. 421**

Requires the office of state police, Louisiana Bureau of Criminal Identification and Information, to conduct the **records check** required upon the approval of adoptive placement and requires adoptive parents to submit a set of fingerprints.

Effective August 15, 2006. (Amends Ch.C. Art. 1131(E)(1))

**10. Doerge (HB 215)**

**Act No. 157**

Provides a **definition of prenatal neglect** and requires the reporting thereof. Requires a physician to order a toxicology test if he has cause to believe that a mother unlawfully used a controlled dangerous substance during pregnancy and requires the physician to report a positive toxicology result as soon as possible.

Effective August 15, 2006. (Amends Ch.C. Art. 603(14); Adds Ch.C. Arts. 603(16.1) and 610(G))

## IV. PROPERTY

### 1. Greene (HB 594)

Act No. 765

Provides that things **permanently attached** to a building or other construction are its component parts and that things such as plumbing, heating, cooling, electrical, or other installations are **component parts** of a building or other construction as a matter of law.

Changes the term "immovable" to the phrase "building or other construction".

Provides for retroactive application to June 29, 2005.

Effective August 15, 2006. (Amends C.C. Art. 466)

### 2. Gallot (HB 534)

Act No. 267

Provides that the **notice of pendency of an action** or proceeding in any court affecting the title to immovable property which is recorded in the mortgage office of the parish where the property to be affected is situated **shall cease to have effect after 10 years** from the date of its recordation.

Provides that if the action or proceeding is still pending, the **notice may be reinscribed** by refiling the notice and that a reinscription of the notice that is filed before the effect of recordation ceases **continues that effect for five years** from the day the notice is reinscribed.

Provides that any notice filed before the effective date that would have otherwise terminate by the terms of this Act shall continue for an additional **10 years** from reinscription if the reinscription occurs before August 15, 2007.

Effective August 15, 2007. (Amends C.C.P. Art. 3752(B))

### 3. Gallot (HB 535)

Act No. 701

Provides that an action for the breach or other **failure to perform a contract for the sale, exchange, or other transfer of an immovable is prescribed in five years**, and provides for the procedures and effects of a **one-year reinscription period** for a recorded contract to buy or sell immovable property.

Further provides that the filing of a notice of lis pendens of a suit to enforce a recorded contract to buy or sell the immovable continues the effect of recordation in the manner and to the extent prescribed by C.C.P. Arts. 3751–3753, and that reinscription of the contract is not required.

Effective August 15, 2007. (Adds R.S. 9:5609 and 5645)



**4. Dove (HB 1298)**

**Act No. 431**

Provides that in connection with the construction of any building, structure, or other improvement to immovable property, the **performance of any enforcement procedure** or any provision of a building code **shall not constitute** or be construed as a warranty or **guarantee by a governmental enforcement agency** as to durability or fitness, or that said building, structure, or other improvement to immovable property or any materials, equipment, or method or type of construction used therein is or will be free from defects, will perform in a particular manner, is fit for a particular purpose, or will last in any particular way.

Effective August 15, 2006. (Amends R.S. 40:1730.23(C))

**5. Gallot (HB 706)**

**Act No. 196**

Extends the existing authority of the city of New Orleans to expropriate blighted property by a declaration of taking to the **city of Grambling**.

Effective August 15, 2006. (Amends R.S. 19:136 and 136.1(3))

**6. Baldone (HB 829)**

**Act No. 776**

Retains the existing legal servitude on property adjacent to navigable rivers for public or common utility and making or repairing levees, roads, and other public or common works, and provides that a **legal servitude** also exists on property necessary for the **building of levees** and other water control structures on the alignment approved by the U.S. Army Corps of Engineers as provided by law, including the repairing of hurricane protection levees.

Provides that employees of a levee district performing law enforcement functions shall be continued in their employment if the district is consolidated into the Southeast Louisiana Flood Protection Authority - East Bank; and provides for the transfer of the employees to other public entities for the purpose of performing the same functions.

Effective August 15, 2006. (Amends C.C. Art. 665)

**7. Theunissen (SB 78)**

**Act No. 446**

Adds that a **reservation of mineral rights** in an instrument transferring ownership of land shall include mention of **surface rights** in the exercise of the mineral right reserved if not otherwise expressly provided by the parties, and provides specific approved language which may be included in the instrument in order to comply with this Act.

Provides for **prospective application only** and for reservations of mineral rights in instruments transferring ownership of land confected on and after August 15, 2006.

Effective August 15, 2006. (Amends R.S. 31:11)

## 8. Dupre (SB 64)

Act No. 567

Provides for payment of **compensation for the taking** of, loss or damage to, property rights affected by the construction, enlargement, improvement or modification of federal or non-federal **hurricane protection projects**, including mitigation related thereto, and limits compensation paid for a taking to that authorized by the Fifth Amendment to the U.S. Constitution, unless an exception is provided in the Constitution of Louisiana.

Excludes application of this Act to compensation paid for a building or structure destroyed or damaged by an event for which a **presidential declaration** of major disaster or emergency was issued, if the taking occurs **within three years** of such event.

Effective date **contingent upon the passage** of the proposed constitutional amendment (SB27/Act 853) limiting compensation to that required under the Fifth Amendment of the U.S. Constitution. (Amends R.S. 38:281(3) and (4); adds R.S. 38:249 and R.S. 49:213.10(D))

## 9. Kostelka (SB 473)

Act No. 538

Extends the authority to expropriate property by **quick-taking** from 12/31/06 to 12/31/09 for municipalities with a population between 20,525 and 20,550, and which have ongoing Louisiana Small City Community Development Block Grant projects relating to health and safety.

Effective August 15, 2006. (Amends Sec. 2 of Act 1212 of 2003 R.S.)

## 10. Schedler (SB 560)

Act No. 542

Provides for the expropriation of property by **quick-taking** for sewer, drainage, or road projects, by parishes with a population of not less than 191,000 persons nor more than 241,000 persons, based on the latest federal decennial census, and provides the procedures which include, but are not limited to the following:

- (1) That after negotiations, if the governing authority concludes that it cannot amicably acquire the subject property, it must, at least 30 days prior to filing a petition, notify the owner or owners by certified mail of its intention to expropriate the property. If the notice is returned unclaimed, the governing authority shall mail the letter of notification by regular mail and wait 30 days from the date of mailing prior to filing suit. The letter of notification must also inform the owner that if he does not timely object to the taking on the grounds that it is not for a public purpose, then he will waive all defenses to the taking except claims for compensation or damages.
- (2) That title to the property and the property rights specified in the petition shall vest in the governing authority upon final court order declaring that the property described in the petition has been taken for sewer, drainage, or road projects by the parish and the right to just and adequate compensation to vest in the persons entitled thereto.

- (3) That any defendant contesting the validity of the taking on the ground that the property taken was not for a public purpose shall file a motion to dismiss or other defense to the taking within 30 days after the date on which notice was served. The defendant shall certify that a copy of the motion or other defense has been served personally or by mail on either the plaintiff or his attorney of record in the suit.
- (4) That failure to file the motion within the time provided constitutes a waiver of all defenses to the taking except claims for compensation for damages.

Effective June 22, 2006. (Adds R.S. 19:351-355)

#### **11. Richmond (HB 40)**

**2006 1<sup>st</sup> Extraordinary Session; Act No. 30**

Existing law provides procedures and requirements for the **acquisition of immovable property by the prescription of three years** without the need of just title or possession in good faith in a municipality having a population of 470,000 or more, when the property has been declared or certified blighted pursuant to R.S. 13:2575 or 2576.

New law provides that an affidavit by the **New Orleans Redevelopment Authority (NORA)** stating that all appeal delays have run and that the judgment is final, filed along with a copy of the judgment declaring or certifying the property as blighted prior to August 29, 2005, shall satisfy the requirement of filing an affidavit by the possessor pursuant to R.S. 9:5633(A)(2)(b). Provides that any property acquired by NORA which is still in its possession on or after January 1, 2010, shall become subject to all taxes, interest, and penalties.

Effective April 18, 2006. (Adds R.S. 9:5633(A)(2)(c))

## V. MORTGAGES, SECURITY DEVICES, AND PRIVILEGES

### 1. Dardenne (SB 383)

Act No. 533

**Revises Chapter 1 of the Louisiana Commercial Laws** to conform to revisions in the Uniform Commercial Code.

Provides for definitions and general concepts, including the following: (1) to provide for when value is given; (2) to provide for usages of trade; (3) to provide for when actions are taken within a reasonable time; (4) to provide for the relation to Electronic Signatures in Global and National Commerce Act; (5) to provide for the territorial applicability of the commercial laws and the parties' power to choose applicable law; (6) to provide for the variation of the commercial laws by agreement; (7) to provide for the obligation of good faith; (8) to provide for prima facie evidence by third-party documents; (9) to provide for performance or acceptance under reservation of rights; (10) to provide for the option to accelerate at will; (11) to provide for subordinated obligations; and (12) to provide for the correction of cross referenced citations.

Effective August 15, 2006. (Amends R.S. 10:1-101-1-310, R.S. 9:3306(12) and (26), 3353(A)(8), and 9: 4770(B), R.S. 10:3-101 and 3-103(a)(10), R.S. 10:4-101, 4A-101, 4A-105(a)(6) and (7), 4A-106(a), and 4A-204(b), R.S. 10:5-101, 5-102(b), and 5-103(c), R.S. 10:7-101, R.S. 10:8-102(a)(10), and R.S. 10:9-102(a)(43), Adds 10:5-102(a)(6.1))

### 2. Shepherd (SB 241)

Act No. 582

Provides that upon the recordation in the mortgage and conveyance records of a **bond for deed** contract, any sale, contract, counter letter, lease, or conventional or collateral mortgage executed by the bond for deed seller, and no lien, privilege, or judgment relating to or purporting to affect immovable property that has not been filed previously for registry or recorded in the mortgage records shall be subject to the rights created by the bond for deed contract.

Provides that an instrument or writing that was filed in the mortgage records after the filing of the bond for deed contract **shall be cancelled by the clerk of court** or the recorder of mortgages upon request by affidavit of any interested party, but only insofar as it affects the property described in the bond for deed and subsequent sale, after the note holder or lien holder has been given 30 days written notice and fails to execute a release, and that a copy of the sale by the bond for deed seller to the bond for deed purchaser or his successors or assigns, containing relevant recordation information, shall be attached to the request.

Provides an exception for tax sales or redemptions as provided for by R.S. 47:2171, et seq.

Effective August 15, 2006. (Adds R.S. 9:2941.1)

## VI. LABOR AND WORKER'S COMPENSATION

### 1. Cravins (SB 753)

Act No. 636

Authorizes the **attorney general or local district attorney to issue a cease and desist order** to employers who hire **undocumented aliens**. Provides for a \$10,000 penalty for violations and is applicable to those employers who employ 10 or more employees.

Effective June 23, 2006. (Amends R.S. 23:992, adds R.S. 23:996)

### 2. Nevers (SB 744)

Act No. 633

Extends the date of **reimbursement of unemployment benefits** charged to the state, local governments, or eligible nonprofit organizations as a result of **Hurricane Katrina or Rita** from January 1, 2007, to July 1, 2007.

Effective June 23, 2006. (Amends R.S. 23:1552(B)(6) and (7))

### 3. Hunter (HB 775)

Act No. 486

Provides for worker's compensation **survivor benefits** to be paid directly to a child 18 years or older, except when the dependent is mentally or physically impaired.

Effective August 15, 2006. (Amends R.S. 23:1235)

## VII. CRIMINAL JUSTICE

### A. NEW CRIMES

#### 1. Martiny (HB 512)

Act No. 79

Creates the crime of **aggravated assault with a firearm on a utility service worker** and defines it as an assault committed upon a utility service employee who is acting in the course and scope of his duties when:

- (1) The offender knows the victim is a utility service employee and the assault is committed with the intention of preventing the person from performing his official duties, and
- (2) The assault is committed with a firearm.

Penalties: A fine of not more than \$2,000, imprisonment for not less than one year nor more than three years, with or without hard labor, or both.

Effective August 15, 2006. (Adds R.S. 14:37.5)

#### 2. Hutter (HB 743)

Act No. 199

Defines the **unauthorized entry of a dwelling during an emergency or disaster** as the intentional entry by a person without authorization into any dwelling or other structure belonging to another which is used in whole or in part as a home or place of abode by a person when the dwelling or other structure is located in a parish where the governor has declared a disaster or emergency.

Provides for the following exceptions:

- (1) Any law enforcement or rescue personnel providing rescue or emergency disaster services.
- (2) Any person entering a dwelling for the purposes of survival or awaiting evacuation or rescue within 72 hours of the occurrence of the disaster or emergency which resulted in the declaration of disaster or emergency.

Penalties: A fine of not more than \$1,500, imprisoned with or without hard labor for not more than one year, or both.

Effective August 15, 2006. (Adds R.S. 14:62.7)

### 3. Martiny (HB 879)

Act No. 287

Creates the crime of **filing a false complaint against a law enforcement officer** and defines it as knowingly filing, by affidavit under oath, a false statement or false representation with a law enforcement agency regarding the conduct, job performance, or behavior of a law enforcement officer for the purpose of initiating an administrative action against that law enforcement officer.

Penalties: A fine of not more than \$500 or imprisonment for not more than six months, or both.

Effective August 15, 2006. (Adds R.S. 14:133.5)

### 4. Robideaux (HB 1304)

Act No. 239

Creates the crime of **unauthorized use of the identity of a deceased soldier**. Prohibits the use of the name, picture, or photograph of any deceased soldier for the purpose of advertising for the sale of any goods, wares, or merchandise, or for the solicitation of patronage by any business without prior consent of the soldier or his family.

Penalties: A fine up to \$1,000, imprisonment up to one year, or both.

Effective August 15, 2006. (Adds R.S. 14:102.21)

### 5. Burrell (HB 1381)

Act No. 441

Provides that an **interactive video or computer game** may not be sold, leased, or rented to a minor if the trier of fact determines all of the following:

- (1) The average person, applying contemporary community standards, would find that the video or computer game, taken as a whole, appeals to the minor's morbid interest in violence.
- (2) The game depicts violence in a manner patently offensive to prevailing standards in the adult community with respect to what is suitable for minors.
- (3) The game, taken as a whole, lacks serious literary, artistic, political, or scientific value for minors.

Penalties: A fine of not less than \$100 nor more than \$2,000, or imprisonment, with or without hard labor, for not more than one year, or both.

Effective June 15, 2006. (Adds R.S. 14:91.14)

**6. Dorsey (HB 64)**

**Act No. 137**

Creates the crime of **harboring or concealing a sexual offender**, sexually violent predator, or child predator.

Penalties: A fine of not more than \$5,000 or imprisonment for not more than five years, or both, with at least two years of which shall be served without benefit of parole, probation, or suspension of sentence.

Effective August 15, 2006. (Adds R.S. 15:551)

**B. OTHER CRIMINAL MATTERS**

**1. Durand (HB 290)**

**Act No. 684**

Increases the penalty for **any attorney paying money or giving any other thing of value** to any person for the purpose of **obtaining representation** of any client from a fine not to exceed \$5,000 or imprisonment for not more than five years with or without hard labor, or both for a **first violation**, to a fine of not more than **\$10,000 and imprisonment** with or without hard labor for not less than ninety days nor more than 5 years. Increases the penalty for a **second or subsequent violation** from a fine of \$7,000 or imprisonment for not more than seven years with or without hard labor, or both, to a fine of not more than **\$15,000 and imprisonment** at hard labor for not less than three years nor more than 15 years, **without the benefit of parole**, probation, or suspension of sentence for the first five years.

Effective August 15, 2006. (Amends R.S. 37:219(C))

**2. Nevers (SB 33)**

**Act No. 467**

Permits **abortion only when the life of the mother is in danger** or to prevent permanent impairment of the function of a life sustaining organ or organs, or to prevent a substantial risk of death of the mother.

Provides that the Act will only become effective upon a U.S. Supreme Court decision **overruling *Roe v. Wade***, or upon the adoption of a U.S. constitutional amendment that allows states to prohibit abortions.

**3. Thompson (HB 1364)**

**Act No. 805**

Adds various acts which are designed to **disrupt**, block, or impede certain events associated with a **funeral** as elements to the crime of **disturbing the peace**, and provides for penalties of not more than \$100 or imprisonment for not more than six months, or both.

Effective August 15, 2006. (Amends R.S. 14:103(B); Adds R.S. 14:103(A)(7) and (8))



## VIII. INSURANCE

### 1. Morrell (HB 1289)

Act No. 739

Authorizes any person or entity having a claim for damages pursuant to a homeowners' policy, personal property insurance policy, tenant homeowners' policy, condominium owners' policy, or commercial property insurance policy, and **resulting from Hurricane Katrina** to file a claim with their insurer for damages **through September 1, 2007**, unless a greater time period to file a claim is otherwise provided by law or by contract. Further authorizes any person or entity having a claim for damages resulting from **Hurricane Rita** to file a claim with their insurer for damages **through October 1, 2007**, unless a greater time period to file a claim is otherwise provided by law or by contract.

Directs the **attorney general to file an action**, within ten days of June 29, 2006, seeking **declaratory judgment** to determine the constitutionality of this Act or Act No. 802 of the 2006 R.S.

Effective June 29, 2006. (Amends R.S. 22:629; Adds R.S. 22:658.3)

### 2. Murray (SB 620)

Act No. 813

**Increases the penalties by 25%** for insurers that arbitrarily, capriciously, or without probable cause **fail to make payments or written offers to settle property damage claims** or only make partial payments within 30 days of receipt of satisfactory written proof of loss. Also provides for attorney fees and costs associated with litigation.

Specifies that any penalties awarded to an insured shall not be used by the insurer in computing either past or prospective loss experience for the purpose of setting rates or making rate filings.

Effective August 15, 2006. (Amends R.S. 22:658(B)(1))

### 3. LaBruzzo (HB 17)

2006 First Extraordinary Session; Act No. 23

Prohibits the automatic denial of **coverage for damage** to insured property for failure to timely submit proof of loss for damages caused by a **declared disaster**. Provides for a time limit of not less than 180 days, which does not commence as long as there is a declaration of emergency and civil authorities deny access to the property.

Entitles any policyholder with **replacement cost** provisions up to one year to repair insured property for damages caused by a declared disaster. Entitles the policyholder to receive **full value** for covered damage that has been repaired without reduction due to depreciation.

Applies only to new and renewal policies delivered in this state after April 18, 2006.

Effective April 18, 2006. (Adds R.S. 22:682)

Prohibits an insurer from using the **flood water mark** or the fact that a **home is removed or displaced** from its foundation, without considering other evidence when determining whether a loss is covered or not covered under a homeowner's policy.

Provides that if damage to an immovable is covered, in whole or in part, under the terms of an insurance policy, then the **insurer bears the burden** of establishing any exclusion.

Provides that any clause, condition, term, or other provision contained in an insurance policy which alters or attempts to alter this burden is **null and void**.

Provides that violators acting arbitrarily or without probable cause are subject to **general or special damages** for breach of the duty imposed by this Act, and that a claimant may be awarded **penalties** against the insurer equal to two times the damages sustained or \$5,000, whichever is greater.

Effective February 23, 2006. (Adds R.S. 22:658.2 and 1220(B)(6))

## IX. JUDICIAL AFFAIRS

### A. GENERAL PROVISIONS

#### 1. Mount (SB 645) (Duplicate of HB 514 by Bruneau)

Act No. 621

**Consolidates**, effective Jan. 1, 2009, the **civil and criminal district courts of Orleans Parish** into the 41st Judicial District Court (JDC) and the clerks of those courts in 2010. **Abolishes the Orleans Parish Juvenile Court** and adds the sections of that court as the juvenile section of the 41<sup>st</sup> JDC on Jan. 1, 2015. Abolishes separate offices of civil and criminal sheriffs and **creates one sheriff** of the parish in 2010. Abolishes offices of recorder of mortgages, register of conveyances, and custodian of notarial archives by Jan. 1, 2009, and merges those offices with clerk of civil district court until the clerk of the 41st JDC is created in 2010. **Consolidates**, Jan. 1, 2009, the **judicial expense funds** of the civil and criminal district courts, juvenile court, and the 1<sup>st</sup> and 2<sup>nd</sup> city courts into one judicial expense fund. Beginning Jan. 1, 2007 a committee (three judges from the civil district court, three judges from the criminal district court including the magistrate judge, one juvenile court judge and one judge from the 1<sup>st</sup> or 2<sup>nd</sup> city court) shall review and have an audit conducted of the funds and identify all debts and obligations of the courts and recommend the appropriate level of funding of the courts. Committee reports to Senate Committee on Jud A and House Judiciary Committee by Jan. 1, 2008.

Effective August 15, 2006. (Amends R.S. 13:1, 471, 474, 477(intro. para.), 691(A), 759, 842(A), 846(A)(intro. para.), and 901, R.S. 18:402(D), and R.S. 44:71; Adds R.S. 13:474.1, 477(41), 621.41, 621.42, 621.43, 621.44-621.46, 714.1, 714.2, 751.1, 751.2, 751.3, 751.4, 751.5, 841.3, 983, 996.62-996.64, R.S. 33:1500 and R.S. 44:181-185; Repeals R.S. 9:2745, R.S. 13:1031-1147, 1211-1212.1, 1271-1312, 1335-1347, 1371-1372, 1377, 1381 and 1381.1-1400, R.S. 18:514(B), R.S. 33:1501.1 and 1519.1, R.S. 35:321-338 and R.S. 44:201-268)

#### 2. Toomy (HB 57)

Act No. 243

Revises and consolidates the services for which the **clerk of court** may be entitled to demand and receive specified **fees**. Deletes the provisions authorizing clerks to demand and receive an additional fee in an amount not to exceed 10% of the fees specified.

Repeals provisions pertaining to service by a clerk on the same person in the same proceedings, but in more than one capacity.

Effective August 15, 2006. (Amends R.S. 13:841(A)(intro. para.) and (1)-(10) and (D); Repeals R.S. 13:841(A)(11)-(77) and (E)).

### 3. Marrionneaux (SB 49)

Act No. 644

Requires **unpublished opinions** of the supreme court and courts of appeal to be posted on the Internet websites of the courts and provides that the opinions may be cited as authority.

Effective August 15, 2006. (Adds C.C. P. Art. 2168).

### 4. Lentini (SB 42)

2006 First Extraordinary Session; Act No. 16

Authorizes the **Judicial Council** to conduct a **review of judicial districts** and, not later than 3/1/07, provide information and recommendations to the legislature on the **appropriate number of district court judgeships** within each district based upon caseload, population, or other pertinent factors. Provides that the recommendations may include proposed revisions to specific constitutional or statutory language addressing the number of judges in each district, the need for district merger, and the filling of judicial office vacancies.

Effective April 18, 2006. (Adds R.S. 13:61(E))

## B. COURTS OF LIMITED JURISDICTION

1. Several courts increased the monetary amount in dispute for civil jurisdiction as follows:

City Court of Alexandria	\$49,999	(HB 27 / Act 365)
City Court of Bunkie	\$25,000	(HB 228 / Act 680)
City Court of Pineville	\$49,999	(HB 27 / Act 365)
City Court of Marksville	\$25,000	(HB 229 / Act 681)
City Court of Winnsboro	\$25,000	(HB 27 / Act 365)

## X. MISCELLANEOUS

### 1. M. Powell (HB 1213)

Act No. 793

Authorizes **non-attorney notaries** who have passed the uniform written examination, after June 13, 2005, as provided in R.S. 35:191.1, to **exercise the functions of a notary public statewide**.

Provides that any non-attorney notary public in this state may take the examination provided that he register directly with the secretary of state and pay the examination fee no later than 45 days before the date of a scheduled exam, and further provides that failure of a non-attorney notary to pass the exam shall have no effect on the status of the commission of the notary.

Effective August 15, 2006. (Amends R.S. 35:191(P))

### 2. Bowler (HB 1219)

Act No. 423

Authorizes the secretary of state to act on behalf of the governor in granting a **leave of absence** for a notary and deletes the requirement that a notary designate another notary public to represent him during his absence.

Removes all references to the parish examination committee and replaces it with the **parish application committee** which shall be composed of two members appointed by the court, and who shall serve a term of two years, and authorizes the court to charge a fee for any application, or petition, or both, not to exceed \$35. Provides that administration of the exam shall be conducted by the secretary of state.

Provides that the **notary examination** shall be given at regional testing centers **twice per year** on the first Saturday of June and December and that if the scheduled Saturday is a state holiday, then the next non-holiday Saturday shall be the test date, and increases the examination fee from \$50 to \$75.

Provides that any notary public appointed in and for certain specifically named parishes who were **displaced by Hurricane Katrina or Hurricane Rita may exercise any and all of the functions of a notary public in the parish of their temporary residence**, provided that he registers his temporary address with the secretary of state, however, this authority **expires on January 1, 2007**.

Effective June 15, 2006. (Amends R.S. 35:131-133, 191(C)(1) and (2) and (E), and 191.1; Adds R.S. 35:191(V))

### 3. Gallot (HB 1222)

Act No. 730

Provides that **notaries public shall record all acts of sale, exchange, donation, and mortgage of immovable property** together with all other documents annexed to the acts with the appropriate recorder of the parish in which the immovable property is located or for property located in the parish of Orleans, in the register of conveyances or recorder of mortgages or both.

Provides an **exception from the duty to record** when a commercial lender who is a party to the transaction expressly directs to defer or refrain from recording the instrument.

Repeals provisions applicable in Orleans Parish which provided that whoever violates the recordation requirements was to be fined not more than \$50 or imprisoned in the parish jail for not more than 60 days, or both, and provides for a **uniform fine** of \$200 for each violation, to be recovered before any court of competent jurisdiction, one-half for the benefit of the informer, as well as all damages incurred by the parties.

Effective August 15, 2006. (Amends R.S. 35:199 and 281; Repeals R.S. 9:2741 and 2745 and R.S. 35:282-286)

### 4. Gallot (HB 1223)

Act No. 796

Provides that unless otherwise provided by law, the authority of a **notary public** to exercise any of the functions of a notary public within his jurisdictional limits for any parish in this state shall remain in effect, provided that his bond or errors and omissions insurance is maintained in the amount of \$10,000.

Provides that a notarial commission that has been or is currently suspended by a court of competent jurisdiction, or otherwise by operation of law pursuant to R.S. 35:14, or for the failure of the notary to maintain the required bond or insurance, or for failure to timely file the annual report as provided by law **shall not be deemed an invalid notarial commission** solely for the reason that it is a suspended commission.

Effective August 15, 2006. (Amends R.S. 35:71(A)(1) and (E); Adds R.S. 35:191(A)(3))

### 5. Lentini (SB 73)

Act No. 568

Provides that the **state may represent any officer or employee of the state charged with contempt of court** while in the performance of his duties if the officer or employee's department determines that he was acting in the discharge of his duties and within the scope of his employment and that the charge did not result from his intentional wrongful act or gross negligence.

Effective June 23, 2006. (Adds R.S. 13:5108.3(D))

# CONSTITUTIONAL AMENDMENTS

## SEPTEMBER 30, 2006 BALLOT

### 1. Dupre (SB 27)

2005 1<sup>st</sup> Extraordinary Session; Act No. 69

Changes name of the Wetlands Conservation and Restoration Fund to the Coastal Protection and Restoration Fund, and provides that federal funds received by the state generated from Outer Continental Shelf oil and gas activity shall be used for the purposes of coastal protection and shall be deposited and credited by the treasurer to the Coastal Protection and Restoration Fund.

(Amends Art. VII, Sec. 10(D)(2)(e), 10.2 and 10.5(B) and (C); repeals Act 513 of 2005 R.S.)

### 2. Dardenne (SB 229)

2006 Regular Session; Act No. 854

Requires **20% of any tobacco securitization** occurring after July 1, 2006 to be dedicated and used for **coastal protection and restoration**. The constitutional amendment also authorizes the legislature to appropriate up to 20% of the portion of tobacco securitization proceeds dedicated to coastal protection to the Barrier Island Stabilization and Preservation Fund.

Also repeals the Louisiana Coastal Restoration Fund because there has not been a tobacco securitization since July 1, 2003, and the balance in the Louisiana Coastal Restoration Fund is \$0.00.

(Adds Article VII, Section 10.2(F); Repeals Article VII, Section 10.11)

### 3. Boasso (SB 9)

2006 1<sup>st</sup> Extraordinary Session; Act No. 43

Authorizes the legislature to create **regional flood protection authorities** in the coastal zone of Louisiana. Each authority and all of the individual levee districts within its jurisdiction would be governed by a **single board**, which would be responsible for levee construction, maintenance and flood protection.

Authorizes the governing board to **levy an additional ad valorem tax** throughout the jurisdiction of the flood authority if the tax is approved by a majority of those voting in each parish within the authority.

Authorizes the annual appropriation of up to \$500,000 from the Coastal Protection and Restoration Fund to regional flood protection authorities.

Requires voter approval of any taxes levied by a levee district that is created after Jan. 1, 2006.

(Amends Article VI, Sections 38(A)(1) and 39; Adds Article VI, Section 38.1)

**4. Dupre (SB 27)**

**2006 Regular Session; Act No. 853**

**Limits compensation** paid for the taking of property for hurricane protection projects to the compensation required by the **Fifth Amendment of the Constitution of the United States of America**. The limit specifically would **not apply** to the taking of property that was damaged by an event for which a presidential declaration of major disaster or emergency was issued if the taking occurs within three years of the event.

(Amends Article VI, Section 42(A); Adds Article I, Section 4(G))

**5. McPherson (SB 1)**

**2006 Regular Session; Act No. 851**

**Retains existing restrictions on the expropriation of property** and provides that, except as provided in Art. VI, §21 (purposes of industrial development, operation of public ports, and pollution control facilities), property shall not be taken or damaged by the state or its political subdivisions: (a) for **predominant use by any private person** or entity; or (b) for **transfer of ownership to any private person** or entity. The amendment specifically excludes a "**bona fide homestead**" from expropriation under Art. VI, §21.

Limits "public purpose" and provides that neither **economic development, enhancement of tax revenue, or any incidental benefit** to the public shall be considered in determining whether the taking or damaging of property is for a public purpose pursuant to Arts. I, §4 (B)(1) and VI, §23.

Provides that the "**full extent of loss**" for purposes of determining just compensation shall include, but not be limited to, the appraised value of the property and all costs of relocation, inconvenience, and any other damages actually incurred by the owner due to expropriation.

(Amends Article I, Section 4(B) and Article VI, Section 21(A); Adds Article VI, Section 21(D))

**6. Farrar (HB 707)**

**2006 Regular Session; Act No. 859**

Provides that, except for lease and operations agreements for port facilities, highways, qualified transportation facilities or airports, the state or political subdivision **shall not sell or lease property which has been expropriated** and held for not more than **30 years** without **first offering the property to the original owner** or his heir, or, if there is no heir, to the successor in title at the current fair market value, after which the property can only be sold by competitive bid open to the general public.

Requires that, **within one year** from the completion of the project for which the property was expropriated, the state or its political subdivision shall identify all property which is not necessary and **declare it as surplus**.

Requires that all expropriated property identified as surplus property **shall be offered for sale to the original owner** or his heir, or if there is no heir, to the successor in title at the current fair market value within two years after completion of the project. If the original



owner, heir, or successor in title refuses or fails to purchase the surplus property **within three years** from completion of the project, the surplus property may then be offered for sale to the **general public by competitive bid**.

The amendment also provides that one year after the completion of the project for which property was expropriated, the **original owner** or his heir, or, if there is no heir, the successor in title **may petition** the state or political subdivision to have all or any portion of his property **declared surplus**. If the state or political subdivision refuses or fails to identify all or any portion of the expropriated property as surplus, the original owner or the successor in title may petition any court of competent jurisdiction to have the property declared surplus.

(Adds Article I, Section 4(G))

**7. Daniel (HB 406)**

**2006 Regular Session; Act No. 857**

Authorizes up to **35% of the Medicaid Trust Fund for the Elderly to be invested in equities**. The Medicaid Trust Fund for the Elderly consists of monies received as the result of an intergovernmental transfer program. Monies in the Fund may be used as the source of state matching funds for Medicaid funds to make enhanced payments to local government-owned health care facilities and for certain Medicaid reimbursement for nursing homes.

(Amends Article VII, Section 14(B))

**8. Alario (HB 34)**

**2005 First Extraordinary Session; Act No. 70**

Provides for the continuation of the **homestead exemption** and the **special assessment level** where the homestead has been destroyed or is uninhabitable.

(Adds Const. Art. VII, §§18(G)(5) and 20(A)(10))

**9. Quinn (SB 296)**

**2006 Regular Session; Act No. 855**

Provides that any law requiring **increased expenditures for a local public school system** will become effective only as long as the legislature **appropriates funds to pay the costs** or until a law provides for a local source of revenue to pay the costs. Provides exceptions to the prohibition on increasing the financial burden of the city, parish, and other local public school boards.

(Amends Article VI, Section 14)

**10. Cazayoux (HB 345)**

**2006 Regular Session; Act No. 856**

Authorizes **up to 35%** of state-funded permanently endowed funds of a public or private college or university to be **invested in stocks**. State-funded permanently endowed funds would include state matching grants from funds allocated for the Higher Education Louisiana Partnership Program.

(Amends Article VII, Section 14(B))

**11. Triche (HB 389)**

**2006 Regular Session; Act No. 852**

**Extends the homestead exemption to include revocable trusts.**

The present constitution provides that the **homestead exemption** shall extend only to a natural person or persons and to an **irrevocable trust** when the principal beneficiary or beneficiaries of the trust are the settlor or settlors of the trusts and were the immediate prior owners of the homestead, and the homestead is occupied by a principal beneficiary.

(Amends Article VII, Section 20(A)(3) and (5))

**12. Beard (HB 716)**

**2006 Regular Session; Act No. 858**

Requires that a **vacancy in the office** of lieutenant governor and certain other statewide elective offices be filled by election, if the **unexpired term is more than one year**. The proposal also requires, if a congressional or statewide election is not scheduled within one year of the vacancy, the governor to call a **special election** for the purpose.

(Amends Article IV, Sections 15 and 16)

**13. Greene (HB 13)**

**2006 Regular Session; Act No. 860**

Provides that a judge elected on and after January 1, 2008, shall have been **domiciled in his respective district, circuit, or parish for one year preceding his election** and (1) as a judge of the supreme court or a court of appeals, he shall have been admitted to the practice of law for at least **ten years** preceding his election or (2) as a judge of a district, family, parish, or court having solely juvenile jurisdiction, he shall have been admitted to the practice of law in this state for at least **eight years** preceding his election.

(Amends Article V, Section 24)

## NOVEMBER 7, 2006 BALLOT

### 1. Nevers (SB 89)

2005 Regular Session; Act No. 511

Assessments on residential property shall not be increased beyond a special assessment level determined as the total assessment of the property for the year prior to qualification of the special assessment. Retains the special assessment level for persons age 65 or older who have an adjusted gross income not exceeding \$50,000. Adds the following persons to those qualified to receive the special assessment level:

- (1) Persons with a service-connected disability rating of 50% or more by the U.S. Department of Veterans Affairs.
- (2) Members of the U.S. armed forces or the Louisiana National Guard who owned and last occupied such residence who are killed or missing in action or a prisoner of war for a period exceeding 90 days.
- (3) Persons permanently totally disabled as determined by a final non-appealable court judgement or as certified by a state or federal administrative agency charged with responsibility for making disability determinations.

Applies to the surviving spouse who is over age 45 or who has minor children and who remains the owner of the property.

Requires persons below age 65 who qualify for the special assessment level to qualify each year until age 65.

(Amends Const. Art. VII, Section 18(G)(1)(a)(I) and (iii) and (2)(a); adds Const. Art. VII, Section 18(G)(1)(a)(iv))

### 2. Gallot (HB 714)

2006 Regular Session; Act No. 864

Increases the maximum allocation per parish of **severance taxes for natural resources** other than sulphur, lignite, or timber to \$850,000 effective July 1, 2007.

Provides that the maximum allocation shall be increased each July 1, beginning in 2008, by an amount **equal to the average annual increase in the Consumer Price Index** for all urban consumers, as published by the U.S. Department of Labor, for the previous calendar year, as calculated and adopted by the Revenue Estimating Conference.

(Amends Article VII, Section 4(D))

**3. Adley (SB 32)**

**2005 Regular Session; Act No. 510**

Exempts from ad valorem taxes medical equipment leased, for a term exceeding five years, by a nonprofit corporation or association which owns or operates a small, rural hospital provided the medical equipment is used solely for health care purposes at the hospital. Exemption lasts for the term of the lease. Requires the hospital to satisfy all of the following criteria to be eligible for this exemption: (1) have less than 50 Medicare-licensed acute care beds and (2) be located in a municipality having a population of less than 10,000 which has been classified by the U.S. Health Service as an area with a shortage of health manpower.

(Effective January 1, 2007.) (Amends Const. Art. VII, Section 21(B)(1)(a))

**4. Arnold (HB 187)**

**2005 Regular Session; Act No. 512**

Exempts motor vehicles from municipal ad valorem taxes and removes language that authorizes a municipal governing authority to impose ad valorem taxes on motor vehicles.

(Amends Const. Art. VII, Section 21(E))

**5. Bajoie (SB 200)**

**2005 Regular Session; Act No. 509**

Exempts consigned art from ad valorem property tax; that is, all artworks such as sculptures, glass works, paintings, drawings, signed and numbered posters, photographs, mixed media, collages, or any other item which would be considered as the material result of a creative endeavor.

(Effective January 1, 2007.) (Adds Const. Art. VII, Section 21(C)(19))

**6. R. Carter (HB 206)**

**2006 Regular Session; Act No. 862**

Authorizes the **legislature to establish new judgeships** for district courts as new divisions having limited or specialized jurisdiction over **family or juvenile matters** within the territorial jurisdiction of the district court and subject matter jurisdiction as provided by law. These new judgeships would not have general jurisdiction to hear all matters over which the district court has jurisdiction. Will become effective January 1, 2007, if approved by the electors.

(Amends Article V, Section 15(A))

**7. Duplessis (SB 141)**

**2006 Regular Session; Act No. 863**

Removes the authorization for **seven tax assessors in Orleans Parish** and provides for a single tax assessor in every parish in the state.

Provides that the Orleans tax assessor's term of office shall be four years, and that he shall be elected at the same time as the municipal officers of New Orleans.

(Amends Article VII, Section 24)

**8. White (HB 48)**

**2006 Regular Session; Act No. 861**

Grants to the **Central community school system in East Baton Rouge Parish** the same authority granted parishes for certain school finance purposes, including the minimum foundation program (MFP) formula, funding for school books and instructional materials, and raising certain local revenues for support of elementary and secondary schools.

Prohibits state funds from being used to discriminate or have the effect of discriminating in providing equal educational opportunity for all students.

(Amends Article VIII, Section 13(D)(1))

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