

**2006 LOUISIANA  
LEGISLATIVE ACTS  
SUMMARY**

## 2006 Legislative Acts Summary

This book summarizes those new laws passed by the Louisiana Legislature in 2006 that were deemed material to SPWW's practice of law (along with a few not so material).

The book is organized in a logical fashion, rather than Act number order. Please see the Table of Contents. In addition, the appendices contain selected summaries prepared by other organizations, as well as a very brief summary of all of the Acts passed in 2006 in Act number order.

The summaries are not intended to substitute for careful examination of a new law itself, if it is at issue. For this reason, the book includes the citations to the code and statutory sections added or amended by the new laws, as well as the Act numbers.

All Louisiana laws, once codified, are available at [www.legis.state.la.us/tsrs/search.htm](http://www.legis.state.la.us/tsrs/search.htm). Moreover, even before codification, all Acts are available at [www.legis.state.la.us/home.htm](http://www.legis.state.la.us/home.htm) (scroll down to "Bill Search" and search by "ACT" rather than "HB").

If you have any thoughts on how this book might be improved, please send an email to Mike Landry, John Farnsworth, or Larry Orlansky. We would like to make the book as useful as possible.

### *Credits*

**Emily Brewer and Teena Whitmore** – downloaded the Acts and staff summaries from the Legislature's website

**Melissa Krause** – converted the Legislative staff summaries from PDF to Word documents

**Mike Landry** – selected and edited summaries for inclusion in book

**Emily Brewer, Teena Whitmore, and Lorraine Bourgeois** – implemented the edits and conformed them to a common style sheet

**Lorraine Bourgeois and Emily Brewer** – assembled the summaries in the Table of Contents order, further conformed all submissions, and assembled them into a single book

**Copy Department** – made copies of this book for all attorneys and paralegals and distributed it

**Mike Landry** – provided design and oversight

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APPENDIX B: ACTS OF 2006 FIRST EXTRAORDINARY SESSION

APPENDIX C: ACTS OF 2006 REGULAR SESSION

## **CONSTITUTION**

### **Flood Control Authorities and Coastal Protection and Restoration Fund (Act No. 43)**

Proposed constitutional amendment authorizes the legislature to establish regional flood protection authorities, with territorial jurisdiction limited to parishes and levee districts which are situated entirely or partially within the coastal zone as described in R.S. 49:214.24 as of the effective date of proposed constitutional amendment.

Proposed constitutional amendment authorizes the legislature, by law, to establish regional flood protection authorities for the purpose of constructing and maintaining levees, levee drainage, flood protection, hurricane flood protection and provide for its territorial jurisdiction, governing authority, powers, duties, and functions.

Proposed constitutional amendment (Act 69 of 2005 1ES) pending vote of electorate on September 30, 2006, redesignates the Wetlands Conservation and Restoration Fund as the Coastal Protection and Restoration Fund and provides that the money in the fund may be appropriated for purposes consistent with the Coastal Protection Plan developed by the Coastal Protection and Restoration Authority, or its successor.

Specifies submission of the amendment to the voters at the statewide election to be held on September 30, 2006. (Amends Const. Art. VI, Sec. 38(A)(1) and 39 and adds Const. Art. VI, Sec. 38.1)

### **Homestead Exemption (Act No. 27)**

Proposed constitutional amendment (Act No. 70, 2005 1st Ex. Sess.) provides for the continuation of the homestead exemption and the special assessment level where the homestead has been destroyed or is uninhabitable due to a declared disaster or emergency.

New law directs the La. Tax Commission to provide for the continuation of the homestead exemption and the special assessment level for taxpayers who may not be able to occupy their homes because they were damaged or destroyed during the disaster or emergency declared by the governor because of the hurricanes until such

time as the constitutional amendment proposed in Act No. 70 becomes effective.

Effective upon signature of governor (February 23, 2006). (Amends §2 of Act No. 70 of the 2005 1st E.S.)

### **Specialized Courts (Act No. 862)**

New constitutional amendment authorizes the legislature by law 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.

Provides for submission of the proposed amendment to the voters at the statewide election to be held November 7, 2006.

Effective January 1, 2007. (Amends Const. Art. V, §15(A))

### **Judicial Qualifications (Act No. 860)**

Proposed constitutional amendment provides that the qualifications necessary to run for judicial office require that a person shall have been admitted to the practice of law for at least the number of years specified as follows:

1. For the supreme court or court of appeals - 10 years.
2. For a family, drug, juvenile, or district court - 8 years.

Existing constitution requires a judge to have been domiciled in his district, circuit, or parish for the two years preceding his election and prohibits a judge from practicing law. Proposed constitutional amendment changes the requirement as to domicile in a district, circuit, or parish from two years to one year preceding his election.

Provides for submission of the proposed amendment to the voters at the statewide election to be held September 30, 2006. Effective Jan. 1, 2008. Applicable to any person who qualifies for election to the office of judge on or after Jan. 1, 2008.

(Amends Const. Art. V, §24)

### **Limitation of Expropriation Power (Act No. 851)**

Proposed constitutional amendment retains existing constitution (Art. I, §4(B)) and, except

as provided in Art. VI, §21 (industrial development), prohibits the expropriation of property by the state or its political subdivisions for predominant use by any private person or entity, or transfer of ownership to any private person or entity.

Proposed constitutional amendment provides that, for the purpose of expropriation by the state or its political subdivisions under Art. I, §4(B)(1) and Art. VI, §23 of the constitution, "public purpose" is limited to an enumerated set of purposes.

Proposed constitutional amendment prohibits consideration of economic development, enhancement of tax revenue, or any other incidental benefit to the public in determining whether the expropriation by the state or a political subdivision is a "public purpose."

Proposed constitutional amendment provides that the full extent of the loss includes, but is not limited to, the appraised value of the property, and all costs of relocation, inconvenience, and any damages actually incurred by the owner because of the expropriation.

Proposed constitutional amendment excepts the bona fide homestead as defined in the constitution for homestead exemption purposes (Art. VII, §29(A)(1)) from expropriation under Art. VI, §21 (for industrial development and facilitating the operation of public ports).

Provides for submission of the proposed amendment to the voters at the statewide election to be held September 30, 2006.

(Amends Art. I, §4(B) and Art. VI, §21(A); adds Art. VI, §21(D))

### **Minimal Compensation for Hurricane Protection Expropriation (Act No. 853)**

New law proposes constitutional amendments relative to taking of property for certain hurricane protection projects.

New law proposes constitutional amendment to add language providing that compensation paid for the taking of, or loss or damage to, property rights for the construction, enlargement, improvement, or modification of federal or non-federal hurricane protection projects, including mitigation related thereto, shall not exceed the compensation required by the Fifth Amendment of the Constitution of the United States of America. However, this shall not apply to

compensation paid for a building or structure that was 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.

Specifies submission of the amendment to the voters at the statewide election to be held on September 30, 2006.

(Amends Const. Art. VI, §42(A); adds Art. I, §4(G))

### **Offer Back of Expropriated Property (Act No. 859)**

Proposed constitutional amendment (Adds Art. I, §4(G)) 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 transferred by competitive bid open to the general public. After 30 years have passed from the date the property was expropriated, the state or political subdivision may sell or otherwise transfer the property as provided by law.

- All surplus expropriated 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 2 years after completion of the project. If the original owner, heir, or successor in title refuses or fails to purchase the surplus property within 3 years from completion of the project, then the surplus property may be offered for sale to the general public by competitive bid.

Provides for submission of the proposed amendment to the voters at the statewide election to be held September 30, 2006.

(Adds Const. Art. I, §4(G))

### **One Assessor for Orleans (Act No. 863)**

Proposed constitutional amendment deletes authorization for seven tax assessors in Orleans Parish. Provides for a single tax assessor in Orleans Parish.

Specifies submission of the amendment to the voters at the statewide election to be held on November 7, 2006. (Amends Const. Art. VII, Sec. 24)

#### **Homestead Exemption Trusts (Act No. 852)**

Present constitution extends the homestead exemption to irrevocable trusts when the principal beneficiary or beneficiaries of the trusts 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. Proposed constitutional amendment removes the restriction that the trust be irrevocable.

Present constitution extends the homestead exemption to a natural person or persons and to an irrevocable trust created by a natural person or persons, in which the beneficiaries of the trust are a natural person or persons. Proposed constitutional amendment removes the restriction that the trust be irrevocable.

Provides for submission of the proposed amendment to the voters at the statewide election to be held September 30, 2006.

(Amends Const. Art. VII, §20(A)(3) and (5))

### **CIVIL CODE**

#### **Presumption of Death (Act No. 258)**

Existing law provides that a person who has been absent for five years is presumed to be dead. New law further provides that if the 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 defined as such under state or federal law, shall be presumed dead after the passage of two years.

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

#### **Grounds for Divorce (Act No. 743)**

New law requires that the spouses live separate and apart for 365 days, with some exceptions, in order to obtain a divorce if there are minor children of the marriage.

New law 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 that, 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.

New law provides that a judgment of divorce that is rendered contrary to time requirements is an absolute nullity.

Effective January 1, 2007. (Amends C.C. Arts. 102 and 103(1) and C.C.P. Arts. 3952, 3953, and 3956 and R.S. 13:3491 and 3492; Adds C.C. Art. 103.1)

#### **Alimony Standards (Act No. 749)**

Existing law provides that the court may award final periodic support to a party free from fault, based on need and the ability of the other party to pay. New law clarifies existing law to authorize a court to award final periodic support to a party who does not have sufficient means for support and who is free from fault.

Existing law requires the court to consider certain factors in determining if a party is entitled to final periodic support and the amount and duration of the support. New law 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.

Effective upon signature of governor (June 30, 2006). (Amends C.C. Arts. 111 and 112)

#### **Immovables vs. Movable (Act No. 765)**

Prior law provided that things permanently attached to an immovable were its component parts and that things, such as plumbing, heating, cooling, electrical, or other installations, were component parts of an immovable as a matter of law.

Prior law provided that other things were considered to be permanently attached to an immovable if they could not be removed without substantial damage to themselves or to the immovable or if, according to prevailing notions in society, they were considered to be component parts of an immovable.

New law changes the term "immovable" to the phrase "building or other construction", but otherwise retains prior law.

New law provides for retroactive application of new law to June 29, 2005.

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

### **Levee Servitudes (Act No. 776)**

New law provides that a legal servitude 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.

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

## **CODE OF CIVIL PROCEDURE**

### **Court Reporter Transcripts (Act No. 820)**

Prior law authorized that the court reporter provide a party of a court proceeding a copy of the transcript of the proceeding upon request and payment of necessary fees.

New law retains prior law and requires that when a party to a court proceeding requests and pays for a transcript of such proceeding, he shall be given an electronic copy of the transcript along with the paper copy at no additional charge or cost to the requesting party.

Effective upon signature of the governor (July 5, 2006). (Adds C.C.P. Art. 372(F))

### **Service of Process (Act No. 750)**

New law provides that the declinatory exception of insufficiency of service of process includes the failure to request service of citation on the defendant within the time prescribed by existing law.

New law provides that if the court finds, on sustaining the objection that service of citation on the defendant was not requested timely, it may dismiss the action as to that defendant without prejudice or, on the additional finding that service could not have been timely requested, order that service be effected within a specified time.

New law provides that the 90-day service request requirement of existing law shall be expressly waived by a defendant upon the failure to file a declinatory exception of insufficiency of service of process specifically alleging the failure to timely request service of citation.

New law provides that a judgment dismissing an action without prejudice shall be rendered as to a

defendant for whom service has not been requested within the 90-day period upon the sustaining of a declinatory exception filed by such defendant.

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

### **Service of Process (Act No. 704)**

Existing law provides for service of process by a private process server when the sheriff has not made service within five days after receipt of the process or when a return has been made certifying that the sheriff has been unable to make service.

New law provides the court with discretion to appoint a private process server without first attempting service by the sheriff when serving citation of a summary proceeding as provided by Art. 2592(6) or (8) or a subpoena which is related to the proceeding.

New law provides that the party making the motion for a private process server shall include the reasons, verified by affidavit, necessary to forego service by the sheriff, which shall include the urgent nature of the hearing, knowledge of the present whereabouts of the person to be served, as well as any other good cause shown.

Effective upon signature of governor (June 29, 2006). (Amends C.C.P. Art. 1293)

### **Discovery from and Testimony by Legislators (Act No. 690)**

New law requires the court to hold a hearing prior to compelling discovery from a legislator in his capacity as a state lawmaker when the legislature is not a party in the case.

Existing law (R.S. 13:3667.3), in any civil or criminal misdemeanor case in which a member of the legislature is being subpoenaed to testify, in his capacity as a state lawmaker, (as compared to R.S. 13:3667.1 in which the testimony being sought is that of an ordinary witness, such as an eye witness), requires the requesting party to file a motion and the judge to conduct a hearing prior to the issuance of a subpoena. More specifically, existing law requires the requesting party to set forth the facts which he seeks to elicit from the member, the relevance of those facts to the case, and the basis for the party's belief that the legislator has knowledge of those facts. Existing law requires the judge, if he finds the motion to be well-

founded and a denial would prejudice the requesting party, to hold a hearing. New law retains existing law but applies in any case or administrative hearing and additionally requires the party to show cause why the testimony being elicited from the legislator is not privileged under the privileges and immunities provision (speech and debate clause) of the state constitution. New law requires 15-day notice of the hearing be given to the member, attorney general, and clerk of the House or secretary of the Senate and requires the notice to contain the same information required in the motion. New law provides for supervisory writs to the state supreme court upon the court's decision to hold a hearing or issue the subpoena or order compelling discovery.

Existing law permits an ex parte motion for legislative continuances or extensions of time during session. New law clarifies that the "administrative proceedings" exception (R.S. 13:4163(B)(1)) to this provision actually refers to "rulemaking" under the APA.

New law clarifies that the foregoing provisions apply in cases of legislative continuances

(R.S. 13:4163(B)(2)) and in the issuance of subpoenas pursuant to the Code of Criminal Procedure (C.Cr.P. Art. 740).

New law requires that the court enter written reasons for compelling the attendance of a legislator in a civil or criminal proceeding.

New law requires and provides procedures for the appointment of a separate judge to hear a motion to compel the attendance of a legislator.

New law provides extensive procedures, similar to those provided for civil and criminal proceedings, for the attendance of a legislator in an administrative proceeding.

Effective upon signature of governor (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)

#### **Waiver of Notice of Judgment (Act No. 337)**

Prior law required that notice of the signing of a final judgment was required in all contested cases and was required to be mailed by the clerk of court to the counsel of record for each party and to each party not represented by counsel.

New law provides that 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, the requirement of mailing notice of the signing of the final judgment by the clerk may be waived by either reciting in open court a statement by all parties or their counsel to that effect which statement shall be capable of being transcribed from the record, or by filing in the record a written statement to that effect, signed by all the parties or their counsel.

New law further provides that a waiver of the notice of signing of the judgment shall satisfy the requirement of mailing of the notice of the signing of the judgment by the clerk and shall commence the running of all subsequent delays to take further action; however, the proposed provisions shall not apply to the running of prescription pursuant to Civil Code Article 3501.

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

#### **Judgments (Act No. 474)**

Prior law provided that when a jury returns a general verdict, the court shall sign a judgment within three days and when the jury returns a special verdict, the court may deliberate before signing the judgment.

New law 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.

New law 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.

New law 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).

New law 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)

**Unpublished Opinions to be Posted on Web (Act No. 644)**

New law requires unpublished opinions of the supreme court and the courts of appeal to be posted by such courts on their Internet websites. Further provides that such posted opinions may be cited as authority and, if cited, shall be cited by use of the case name and number assigned by the posting court.

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

**Service on Judgment Debtor's Counsel (Act No. 12)**

Existing law provides that a motion and order to examine a judgment debtor shall be served on the judgment debtor not less than five days from the date the judgment debtor is to appear in court.

New law retains existing law but also authorizes service of process on the counsel of record for the judgment debtor.

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

**Service and Seizures (Act No. 498)**

Existing law provides that citation is not necessary in an executory proceeding.

Prior law provided that the sheriff shall serve upon the defendant the demand for payment provided by C.C.P. Art. 2639, unless waived by the debtor.

New law deletes provision requiring service of the demand for payment under C.C.P. Art. 2639, which article was repealed by Act No. 1072 of the 2003 R.S.

Prior law provided that the sheriff shall seize the property affected by the mortgage, security agreement, or privilege immediately upon receiving the writ of seizure and sale, but not before the expiration of the delay allowed for payment in the demand required by C.C.P. Art. 2639, unless this demand has been waived.

New law deletes language referring to the seizure of property after the expiration of the delay allowed for payment in the demand required by 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))

**Inheritance Taxes (Act No. 314)**

Existing law provides that 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.

Existing law, under the provisions of C.C.P. Art. 3061, provides that prior to the court rendering a judgment of possession in a succession proceeding, proof shall be submitted to the court that no inheritance taxes are due, or if due, that they have been paid.

New law amends the provisions of C.C.P. Art. 3061 making it consistent with existing law by providing for such proof only when otherwise required by law.

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

**Small Successions (Act No. 257)**

Existing law provides, in part, that it shall not be necessary to open judicially the small succession of a person who died intestate leaving no immovable property. New law provides an exception for an ownership interest in any cemetery space intended for the interment of the person who died intestate.

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

**Notice of Lis Pendens (Act No. 267)**

New law provides that a notice of lis pendens shall cease to have effect after 10 years from the date of its recordation.

New law provides that if the action or proceeding is still pending, the notice may be reinscribed by refileing 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.

New law provides that new law shall become effective on August 15, 2007, but that any notice filed before that date that would have otherwise terminated by the terms of the new law shall continue for an additional 10 years from reinscription if such reinscription occurs before August 15, 2007.

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

## **CODE OF CRIMINAL PROCEDURE**

### **Voir Dire Procedure (Act No. 71)**

New law provides that in the jury selection process, the state and the defendant may exercise all peremptory challenges available to each side, respectively, prior to the full compliment of jurors being seated and before being sworn in by the court and the state or the defendant may exercise any remaining peremptory challenge to one or more of the jurors previously accepted. Provides that no juror be sworn in until both parties agree on the jury composition or have exercised all challenges available to them unless otherwise agreed on by the parties.

Effective August 15, 2006. (Adds C. Cr. P. Art. 799.1)

## **CODE OF EVIDENCE**

Nothing of particular interest.

## **CHILDREN'S CODE CIV. PROC. ART.**

### **Mediators of Juvenile Court Disputes (Act No. 472)**

New law provides that a mediator in any juvenile court dispute must hold a four-year college degree in addition to the requirements under existing law but lowers the amount of general mediation training from 16 to 12 hours.

New law provides that, in addition to the requirements under existing law, specialized training in the mediation of juvenile court disputes shall also include substantive state and federal law, including but not limited to Adoption and Safe Families Act (42 USC 601, *et seq.*).

New law provides, for purposes of the required instruction for mediators, 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))

### **Child Advocacy Program (Act No. 271)**

New law establishes a Child Advocacy Program within the Mental Health Advocacy Service for the purpose of providing for an effective and

efficient system of providing qualified legal representation for children in child abuse and neglect cases. New law provides for the program to be governed by an existing board of trustees as defined in R.S. 28:64(A)(3) and enumerates the additional duties of the board and the existing director of the program. New law defines the duties of the program and qualifications of 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))

### **Child Protection (Act No. 278)**

Prior law provided that voluntary placement of a child with a relative during an investigation constitutes a removal. New law provides that a parent is without authority to place the child after a complaint has been filed.

Existing law provides for the taking of a child into the custody of the state upon a showing that there are reasonable grounds to believe that the child is in need of care and that emergency removal is necessary to secure the child's protection. Existing law provides that the court shall immediately determine *ex parte* whether the request for custody is granted or denied after presentation of the verified complaint. New law provides that upon presentation of the verified complaint, the court shall immediately determine whether emergency removal is necessary to secure the child's protection.

Existing law provides for a safety plan for the child that is made an order of the court. New law defines a safety plan and requires the safety plan to be signed by the custodian.

Existing law provides that the court order shall include the court's findings of fact supporting the necessity for the child's removal in order to safeguard his welfare.

New law provides the court order shall also determine the child's custodian.

Existing law provides that a relative may obtain an *ex parte* court order to take provisional custody of a child pending a continued custody hearing. New law allows a suitable individual to do the same.

Prior law provided for the priority of placement of a child with relatives or other individuals.

New law changes existing law by giving custodial priority to relatives over other individuals and by deleting the priority among relatives.

Existing law provides that if the court continues custody, it shall order the child to be placed in the temporary custody of a relative, individual, or the state, and make the safety plan an order of the court.

New law adds that the person seeking custody must 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.

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))

#### **False Reports of Child Abuse (Act No. 372)**

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

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

#### **Locating Missing Parents (Act No. 248)**

New law 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.

Prior law required the department to continually try to locate absent parents and notify the court of their address. New law only 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))

#### **Incompetent Children (Act No. 266)**

Existing law provides for the appointment of the sanity commission, its membership, and the qualifications required of the members.

New law provides that a child's mental capacity shall be determined by the court after a contradictory hearing and provides time limits within which the hearing must be held.

New law 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.

New law 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.

New law 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.

New law 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.

New law 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. New law provides that if at the end of two years, the child has not attained competency, the court shall determine a course of action.

New law provides that if the child has not attained competency within three years, the court must 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.

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)

**Adoption (Act No. 288)**

New law, 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))

**UNCODIFIED**

**New Bonds; Money for Political Subdivisions and Small Businesses (Act No. 41)**

New law authorizes the issuance of state general obligation bonds and other evidences of state debt issued pursuant to new law, Art. VII, §6 of the constitution, and the Gulf Opportunity Zone Act of 2005 to provide relief from natural catastrophes by providing monies for the payment of debt service of affected political subdivisions and the state.

New law authorizes the State Bond Commission to issue general obligation gulf tax credit bonds in an amount not to exceed \$200 million to provide relief from the natural catastrophes of hurricanes Katrina and Rita through the payment of debt service of qualified bonds of affected political subdivisions of the state.

New law authorizes the State Bond Commission to issue general obligation bonds in an amount equal to the amount of gulf tax credit bonds but not to exceed \$200 million, to provide matching funds in accordance with the Gulf Opportunity Zone Act of 2005 to provide relief from the natural catastrophes of hurricanes Katrina and Rita through the payment of debt service of qualified bonds of affected political subdivisions of the state.

New law provides that proceeds of the gulf tax credit bonds and any bonds to provide the required match shall be deposited in the Debt Service Assistance Fund, hereinafter the "fund", which is established in the state treasury. All unexpended and unencumbered monies in the fund at the end of the state's fiscal year shall remain in the fund. New law provides that the monies in the fund shall be used solely as provided in the Act and are appropriated by the legislature to the Office of Community Development, hereinafter "OCD," for distribution to affected political subdivisions pursuant to a program of loans for the payment of debt service. New law further provides that

in lieu of depositing the proceeds of the bonds into the fund, a portion of the proceeds, in the amount determined by the State Bond Commission, may be deposited into the Bond Security and Redemption Fund to be used to pay debt service of the state.

New law provides that monies to be distributed to affected political subdivisions shall be designated by and in such amounts as determined by OCD and approved by the commissioner of administration using criteria to be developed by OCD, without the necessity for compliance with the Administrative Procedure Act. New law provides that the proposed criteria shall be submitted to the Joint Legislative Committee on the Budget for its review and approval prior to implementation of the program.

New law provides that the distribution of monies to pay debt service of an affected public entity shall be approved by the State Bond Commission and the Joint Legislative Committee on the Budget and shall be made with the expectation of payment to the state pursuant to a loan, other evidence of indebtedness, or cooperative endeavor agreement.

New law provides that the issuance of refunding bonds of the state in accordance with the refunding provisions of the Gulf Opportunity Zone Act of 2005 are authorized in such amount as determined by the State Bond Commission and shall be in the furtherance of the providing of relief from the natural catastrophe and therefore may be issued with maturities longer than the refunded bonds and without demonstrating a lower effective interest rate.

New law provides the procedures for the issuance of the bonds and provides that the bonds shall be secured by monies in the Bond Security and Redemption Fund and shall be payable on a parity with all other general obligation bonds of the state.

New law authorizes DED to formulate a program for small businesses, including child care businesses, attempting to recover from damage or destruction caused by wind, water, fire, business interruption, or criminal acts as a result of hurricanes Katrina or Rita. The program may provide loan guarantees or credit enhancements of up to 50% of each loan using

proceeds from funds received or appropriated, not to exceed a total state liability of \$70 million.

Effective upon signature of governor (February 23, 2006).

### **Tolling of Prescription on Katrina/Rita Claims (Act No. 802)**

New law 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 homeowners policies, including tenant and condominium, personal property policies, commercial property policies, flood insurance policies on certain automobiles or certain crop or live stock policies, when such loss or damage was caused by or as a result of Hurricane Katrina or Hurricane Rita, or both.

New law 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.

New law (Section 3) authorizes any person to file a suit seeking a declaratory judgment regarding the constitutionality of new law or Acts 2006, No. 739 that originated as HB No. 1289 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 upon signature of governor (June 30, 2006).

### **Tax Free Shopping Program Extended (Act No. 76)**

Prior law provides that the Louisiana Tax Free Shopping Program, a sales tax refund program for foreign visitors to the state, is effective through July 1, 2007. New law changes the termination date to July 1, 2009.

Effective upon signature of governor (May 25, 2006). (Amends §3 of Act No. 535 of 1988 R.S., as amended by §2 of Act No. 285 of 1992 R.S., §3 of Act No. 1291 of 1997 R.S., §1 of Act No. 50 of 1998 R.S., §1 of Act No. 7 of 2001 1st E.S., and §1 of Act No. 14 of 2004 1st E.S.)

## **TITLE 1: GENERAL PROVISIONS**

### **Interpretation of Statutes (Act No. 826)**

Existing law (R.S. 1:13) states that headings to sections, source notes, and cross references are not law. New law additionally provides that keywords, one-liners, summaries and adjoining information, abstracts, digests, and other words not contained in the sections following the enacting clause of a bill are not law.

Existing law, relative to evidence in a criminal procedure, defines a "conclusive presumption" as one against which no proof can be adjudicated, such as the presumption that attaches to res judicata, to the recitals contained in legislative acts, and to the official journals of legislative proceedings. New law specifically incorporates the conclusive presumptiveness of official journals of legislative proceedings in the evidentiary provisions of courts and judicial procedure (R.S. 13:3711).

Existing law (R.S. 13:3712) provides that certified copies of records and documents of the state and its departments and agencies (and of its political subdivisions and their departments and agencies) which are made self-authenticating under Chapter 9 of the Louisiana Code of Evidence shall be prima facie proof of the existence and contents thereof. New law additionally provides that audio or video recordings or electronic images of the proceedings of either house of the legislature or one of its committees which are made self-authenticating under Chapter 9 of the Louisiana Code of Evidence shall be prima facie proof of the existence and contents of the respective proceeding contained on the recording or image.

Existing law (Civil Code Art. 9) provides that when a law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written and no further interpretation may be made in search of the intent of the legislature. Existing law sets forth rules of interpretation to be applied to the law as written (Civil Code Arts. 10, 11, 12, and 13 and R.S. 1:3 - 17).

New law (R.S. 24:177) provides that when the meaning of a law cannot be ascertained by the application of the existing law provisions of the Civil Code chapter entitled "Interpretation of Laws" or Chapter 1 of Title 1 of the Louisiana Revised Statutes of 1950 entitled "Interpretation

of Revised Statutes", the court shall consider legislative intent.

New law provides that:

1. The text of a law is the best evidence of legislative intent.
2. The occasion and necessity for the law, the circumstances under which it was enacted, concepts of reasonableness, and contemporaneous legislative history may also be considered in determining legislative intent.
3. The legislature may express the intended meaning of a law in a duly adopted concurrent resolution by the same vote and, except for gubernatorial veto and time limitations for introduction, according to the same procedures and formalities required for enactment of that law.
4. The legislature is presumed to have enacted an article or statute in light of the preceding law involving the same subject matter and court decisions construing such law; where the new article or statute is worded differently, the legislature is presumed to have intended to change the law.

New law further provides that:

1. A bill introduced which does not become law is not competent evidence of legislative intent.
2. The keyword, one-liner, summary and adjoining information, abstract, digest, and other words contained outside the sections of the bill following the enacting clause are solely to provide members of the legislature with general indicia of the content of the bill and are not subject to amendment by the legislature or committee thereof and shall not constitute proof or indicia of legislative intent.
3. Fiscal and actuarial notes provide the legislature with an analysis of the potential fiscal impact of a bill and committee minutes are summary reports of committee proceedings and such notes and minutes shall not constitute proof or indicia of legislative intent.
4. Words and phrases not constituting the substance of an amendment or recommendations of a conference committee report and any other legislative staff documents which are not subject to amendment by the legislature or committee

thereof shall 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 R.S. 24:177)

#### **Closing of Courts and their Clerks (Act No. 734)**

Prior law required each clerk of a district, parish, and city court to close his office on any day an emergency had been declared by the governor or the local governing authority and governmental entities, including the courthouse, had been ordered to close.

New law authorizes rather than requires same.

New law provides that no court shall be required to be open if their respective clerk of court's office is closed for a holiday.

Effective August 15, 2006. (Amends R.S. 1:55(E)(1)(b); Adds R.S. 1:55(E)(5))

#### **TITLE 2: AERONAUTICS**

Nothing of particular interest.

#### **TITLE 3: AGRICULTURE AND FORESTRY**

##### **Warehouse Contracts (Act No. 114)**

Prior law required that all contracts, other than contracts for spot sale, in which title passes must be evidenced in writing.

New law retains prior law and additionally requires that warehouseman provide quarterly a written statement to the producer who has contracted for storage. Requires that the statement include all charges and the rate of accrual of the charges.

Effective August 15, 2006. (Amends R.S. 3:3414)

##### **Use of "Cajun" and "Louisiana Creole" (Act No. 661)**

New law prohibits any person from using in commerce the terms "Cajun" or "Louisiana Creole" when such use is likely to deceive the consumer of the association of the goods with Louisiana, or the origin of the goods.

Effective upon signature of the governor (June 29, 2006). (Adds R.S. 3:4617(F))

**Fuel Content Requirements (Act No. 313)**

New law provides that fuel blenders and retailers have six months to meet certain minimum content requirements. Further provides that any combination of alternative fuels, including but not limited to, denatured ethanol, bio-diesel, and alternative renewable fuels, may be used to meet the 2% minimum ethanol, bio-diesel, and alternate renewable fuel requirements.

New law provides that the commissioner shall adopt rules and regulations requiring incentives to compensate for any costs associated with achieving the minimum ethanol and bio-diesel standards.

Effective upon signature of governor (June 12, 2006). (Adds R.S. 3:4674)

**"Cajun" and "Louisiana Creole" Certification Marks (Act No. 124)**

New law provides for the adoption, appropriation and establishment of the "Cajun" and "Louisiana Creole" certification marks.

New law restricts the use of the terms "Cajun" and "Louisiana Creole" to services or goods which originate in, are substantially connected with, or have been substantially transformed in the state of Louisiana; or the goods would qualify for the 10% preference under existing law for products produced in Louisiana.

New law further authorizes the commissioner of agriculture to enforce the provisions of new law.

Effective upon signature of the governor (June 2, 2006). (Adds R.S. 3:4694 - 4698)

**TITLE 4: AMUSEMENTS AND SPORTS**

Nothing of particular interest.

**TITLE 5: AUCTIONS AND AUCTIONEERS (REPEALED)**

Nothing of particular interest.

**TITLE 6: BANKS AND BANKING**

**OFI Disclosure (Act No. 456)**

Existing law authorizes the commissioner of financial institutions, at his sole discretion, to disclose certain information.

New law adds additional information that may be disclosed by the commissioner.

Effective upon signature of the governor (June 15, 2006). (Adds R.S. 6:103(B)(11), (12), (13), (14), and (15))

**OFI Jurisdiction (Act No. 460)**

New law provides that the commissioner of financial institutions has the enforcement powers in existing law with respect to any person subject to licensing, registration, or regulation by the commissioner.

Effective upon signature of the governor (June 15, 2006). (Adds R.S. 6:121.1(D))

**Insurance Settlement Payments (Act No. 21)**

New law provides for endorsement and distribution of insurance settlement payments for residential immovable property damaged in the hurricanes and provides for return of excess funds by mortgage holders.

New law provides that if a mortgage holder is presented with a jointly payable insurance proceeds check or draft for residential immovable property damage resulting from either Hurricane Katrina or Hurricane Rita, or both, which contains the mortgagor's endorsement and the mortgage holder receives a written request from the borrower to release excess funds then, all mortgage holders shall have 30 days after receiving such check or draft to provide their endorsements and return all excess funds.

"Excess funds" shall mean insurance funds in excess of the following: (1) All loan balances of any mortgage holder named as payee on the insurance claim check or draft calculated as of the 30th day following receipt of the request and check or draft, and (2) Six months of future accrued interest as calculated pursuant to the terms of the mortgage loans and calculated from the date of the payoff.

Effective April 1, 2006. (Adds R.S. 6:337; Repeals R.S. 10:9-211)

**Standard Car Sale Contracts (Act No. 280)**

New law requires the La. Motor Vehicle Commission to create a uniform retail installment sales contract for motor vehicle credit transactions. Further provides that the commission shall promulgate the contract and any rules for use of the form no later than January 1, 2007. Further provides that use of the uniform retail installment sales contract by a

lender or seller 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)

### **Car Loans (Act No. 785)**

New law makes various corrections and technical changes to the La. Motor Vehicle Sales Finance Act.

Effective August 15, 2006. (Amends R.S. 6:969.37, 969.38, 969.39, 969.40, and 969.41)

### **Check-Casher Licensing (Act No. 767)**

New law provides that no person shall acquire or control a check-casher license through the acquisition or control of more than 50% of the ownership interest in a licensee without first having obtained written approval from the commissioner of financial institutions, pursuant to an application for a change of control in ownership of the licensee, accompanied by a fee of \$300.

New law provides that a corporation that is a licensee shall notify the commissioner within 60 days of a stockholder becoming a principal stockholder, which is defined as owning 10% or greater of the outstanding stock of the corporation.

Effective August 15, 2006. (Amends R.S. 6:1004.1(A) and (B)(1), 1004.2, 1006(A) and (B)(2), and 1007(A) and (B); Adds R.S. 6:1004(D) and 1006(C))

### **Mortgage Lender and Broker Licensing (Act No. 237)**

Existing law requires an applicant for licensure or renewal of licensure as a mortgage lender or broker to provide certain evidence regarding financial responsibility and solvency, including an audited financial statement prepared by a certified public accountant.

New law further provides that failure to timely submit an audited financial statement could result in a late filing fee not to exceed \$1,000 and could also result in the suspension or revocation of the license.

Existing law provides procedures for the submission of a renewal application. New law further provides that a renewal application will

not require a new licensing decision by the commissioner of financial institutions. Further provides that the application may only be rejected for incompleteness, failure to maintain financial responsibilities, or failure to pay a penalty.

New law authorizes the commissioner to consider the criminal record of an applicant for a new or renewal license. Authorizes the denial of an application if the applicant's criminal record includes any felony within 10 years of the application date.

New law further provides that any person whose new or renewal license application has been denied may not reapply for at least 3 years from the order of denial, unless the commissioner prescribes a different period.

New law prohibits any person who has been denied a license or had a license revoked from being employed as a mortgage loan processor or holding a position that is responsible for the operation of the principal place of business of a branch of any residential mortgage lender.

Existing law details the reasons why the commissioner may suspend or revoke.

New law adds to the list of reasons for suspension or revocation of the license of any residential mortgage lender or originator provided for in existing law as follows:

1. The commissioner discovers any fact or condition currently exists which, if it had existed at the time of the original application, would have warranted denial.
2. The commissioner may order an immediate suspension of the license of a residential mortgage lender or originator who:
  - (a) Fails to maintain financial responsibility as required by law.
  - (b) Commits certain serious violations.
  - (c) Submits a check covering the fee for any application, notification, examination, late fee, or penalty which is returned.

New law provides that any person whose license is suspended pursuant to new law has 30 days from the date of the order to request a hearing.

New law provides for a 5-year period waiting period for reapplication after revocation of a license, unless the commissioner provides for a different period.

New law prohibits the imposition of a prepayment penalty if the prepayment is being made from proceeds paid on an insurance claim.

New law prohibits a mortgage lender from financing or including in the loan amount of a residential mortgage loan certain insurance fees.

Effective August 15, 2006. (Amends R.S. 6:1088(C)(1)(a), (F)(4), and (G) and 1090(B)(1); Adds R.S. 6:1090(H), 1092(A)(16) and (17) and (K), 1092.1, 1092.2, and 1096(E)(3) and (G)(3))

## **TITLE 7: BILLS AND NOTES (REPEALED)**

Nothing of particular interest.

## **TITLE 8: CEMETERIES**

### **Cemeteries (Act No. 609)**

New law authorizes limited liability companies to engage in the cemetery business. Provides for cemetery business operations by directors or trustees of cemetery sales organizations or cemetery management organizations.

New law clarifies that permission to remove the remains of a decedent may be obtained from the surviving spouse if no petition for divorce has been filed by either spouse.

Effective August 15, 2006. (Amends R.S. 8:1(8), (9), (20) and (35), and 76(A) and 659(A)(1))

### **Cemetery Law Exceptions (Act No. 669)**

Existing law provides that the provisions of existing law shall not apply to family burial grounds, fraternal cemeteries, municipal cemeteries, community cemeteries, state cemeteries, federal cemeteries, or religious cemeteries that do not sell cemetery spaces, sell the right of use or interment in any cemetery space, or charge a maintenance fee per cemetery space for an amount in excess of \$300.

New law provides that the provisions of existing law shall not apply to community cemeteries owned and operated by nonprofit corporations in existence prior to January 1, 2007, whose officers and directors serve on a voluntary basis without compensation for their services.

New law provides that the provisions of existing law shall not apply to columbarium facilities owned and operated by churches for the interment of human remains.

Effective August 15, 2006. (Amends R.S. 8:78)

## **TITLE 9: CIVIL CODE ANCILLARIES**

### **Unclaimed Stock, Dividends, and Other Property (Act No. 573)**

New law reduces the time period under which stock or other interest in a business association is presumed abandoned from five years to three years.

New law further provides that any dividend, profit, distribution, interest, redemption, payment on principal, or other sum held or owing by a business association that has not been claimed within three years after the date prescribed for payment or delivery is presumed unclaimed.

Prior law authorized the court to award reasonable attorneys fees to the prevailing party under the Uniform Unclaimed Property Act.

New law changes the award of reasonable attorneys fees to the administrator of the Uniform Unclaimed Property Act, instead of the prevailing party.

Effective August 15, 2006. (Amends R.S. 9:154(A)(3) and 174)

### **Covenant Marriage (Act No. 249)**

Existing law provides that only when a complete and total breach of the covenant commitment in a covenant marriage occurs may a party seek a declaration that the marriage is no longer valid. New law clarifies that a covenant marriage terminates upon the death of a spouse, divorce, or a declaration of nullity.

Existing law provides that a spouse in a covenant marriage may only obtain a divorce upon proving adultery, abandonment, abuse, living separate and apart, or a felony conviction with sentence of death or hard labor. New law additionally 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))

### **Child Support (Act No. 386)**

New law 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.

New law provides that in cases of child support arrearages, the court shall grant an evidentiary hearing before the arrearages may be reduced based upon any lump sum payments received by the child.

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

### **Medical Support for Children (Act No. 481)**

New law defines "medical support" for child support purposes to include both health insurance and the payment of medical expenses. New law provides that when DSS is providing services, each child support order shall also include a medical support order.

Prior law provided certain procedures to address when a noncustodial parent was required to provide medical support. New law changes prior law from noncustodial parent to parent.

Effective October 1, 2006. (Amends R.S. 9:315.4 and R.S. 46:236.8)

### **Child Support by Military Personnel (Act No. 315)**

Prior law provided that gross income, for purposes of child support, is income from any source and provides certain exceptions. New law specifically provides that the basic allowance for housing and subsistence received by military personnel is gross income for the purposes of calculating child support.

Effective upon signature of the governor (June 13, 2006). (Amends R.S. 9:315(C)(3)(a))

### **Child Custody Mediators (Act No. 471)**

New law provides that a mediator in child custody disputes must hold a four-year college degree in addition to the requirements under existing law, but lowers the amount of general mediation training from 16 to 12 hours.

New law provides, for purposes of the required instruction for mediators, that an "hour" means a period of at least 60 minutes of actual instruction.

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

### **Child Visitation Rights of Military (Act No. 110)**

New law further requires that a military service member on active duty who misses his authorized child visitation due to military obligations shall be afforded compensatory visitation on a day-for-day basis for the days lost if he so requests, only if the court determines it is in the best interest of the child.

New law further requires the custodial or domiciliary parent and the service member to negotiate an equitable schedule for such compensatory visitation.

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

### **Declarations of Acknowledgment (Act No. 470)**

Existing law requires a notary to inform parties of certain rights and obligations prior to the execution of a declaration of acknowledgment.

New law additionally provides that a court shall not suspend the parties' responsibilities or obligations while they are in the process of executing a declaration of acknowledgment.

New law provides that the provisions of new law shall be applied retroactively to June 29, 2005.

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

### **Acknowledgments of Paternity (Act No. 344)**

New law (R.S. 9:392.1) 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.

New law provides that the filing of a filiation action suspends the period for filing a disavowal action.

New law (R.S. 9:401) provides that a man who may be presumed to be the father, if the mother's husband is successful in a disavowal action, must be made a party to that action.

New law (R.S. 9:402) provides that a judgment in a disavowal action terminates existing

custody, visitation, and support orders, but does not affect amounts owed in arrearage.

New law (R.S. 9:403) provides the procedure for a mother's contestation action including the proper parties, the hearing, the effect of a judgment, and appeals.

New law (R.S. 9:404) provides that the time periods applicable in an avowal action do apply to cases being administered by DSS.

New law (R.S. 9:405) provides that in child support, custody and visitation cases, an acknowledgment of paternity by authentic act constitutes a legal finding of paternity and is sufficient to establish an obligation to support the child and to establish visitation without obtaining a judgment of paternity.

New law (R.S. 9:406) 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.

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

Effective upon signature of governor (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)

#### **Condo Assessments (Act No. 358)**

New law provides that if a condominium unit owner fails to timely pay the assessments for common elements for a period of six months or more during any eight-month period and notice to the delinquent unit owner is given as provided in new law, the association may accelerate the assessment on the common elements for a 12-month period and file a privilege for the accelerated sums.

Effective August 15, 2006. (Amends R.S. 9:1123.115(A))

#### **Horse Racing Liability Limitation (Act No. 136)**

Existing law provides a limitation of liability for equine activity sponsors and equine professionals from the inherent risks of equine activities if they provide a specific warning to participants.

New law adds racing to the definition of "equine activity" and adds licensed racetrack and licensed training center to the definition of "equine activity sponsor".

New law expands the definition of "participant" to include horses which are stabled, training, or running on a racetrack or at a licensed training center and any jockey, exercise person, trainer, owner, or employees, and agents thereof.

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

#### **Limited Liability Regarding Katrina/Rita (Act No. 402)**

New law 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.

New law 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 Hurricanes Katrina and Rita, except for gross negligence or willful misconduct.

New law provides that the provisions of new law shall have both prospective and retroactive application to August 29, 2005.

New law provides that the provisions of new law shall terminate on August 28, 2008.

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

#### **Government Liability Limited for Katrina/Rita (Act No. 545)**

Prior law provided that a public entity is responsible for damages caused by the condition

of buildings within its care and custody if the public entity had actual or constructive notice of a particular vice or defect and the public entity failed to remedy the vice or defect.

New law provides that, except for gross negligence or willful and wanton misconduct, there shall be no cause of action based solely upon the liability imposed under such prior law provisions when the damage has arisen from hurricanes Katrina or Rita, including after effects of either hurricane and post-hurricane restoration, repair, cleaning, and construction.

New law provides that such limitation of liability shall have retroactive application to 8/26/05, and shall expire on 8/30/08.

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

#### **Self-Defense Immunity (Act No. 786)**

New law provides immunity from civil action for a person who uses force or violence as a defense to certain crimes. New law 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)

#### **Bond for Deed Contracts (Act No. 582)**

Prior law provides for bond for deed contracts for the sale of real property.

New law provides that upon recordation of a bond for deed contract, any sale, contract, counter letter, lease, or mortgage executed by the seller, shall be subject to the rights created by the bond for deed contract.

New law provides that no lien, privilege, or judgment relating to the immovable property subject to the previously recorded bond for deed contract, shall be subject to the rights created by the bond for deed contract.

New law authorizes that, following the sale of a bond for deed contract from the bond for deed seller to the bond for deed purchaser, any such document filed in the mortgage records after the filing of the contract and which records affect property described in the bond for deed and subsequent sale shall be cancelled if requested by affidavit of any interested party, after the note or lien holder has been given 30 days notice and fails to execute a release.

New law further requires that a copy of the sale of the bond for deed containing relevant recordation information be attached to the request.

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

#### **Loan Payment Deferral (Act No. 475)**

New law provides that if a lender requires full payment of the deferred principal and interest upon termination of the deferment period, then the lender shall obtain written approval from the borrower prior to the acceptance of the deferment.

Effective upon signature of the governor (June 22, 2006). (Adds R.S. 9:3509.4)

#### **Consumer Credit Law Changes (Act No. 213)**

Existing law provides that the La. Consumer Credit Law shall not apply to federally related mortgage loans. New law provides that the exclusion does not apply to federally related mortgage loans secured by residential property made specifically subject to the La. Consumer Credit Law by contract.

Existing law provides that the sale and financing of financial and tax services, including the use of debit cards or electronic cash for loan disbursement, shall not be deemed a violation of the La. Consumer Credit Law. New law changes the term "debit card" to "stored value card".

Effective August 15, 2006. (Amends R.S. 9:3512(8), 3515(A)(1)(a), 3561(D)(1), and 3572.1; Adds R.S. 9:3554.2, 3554.3, and 3558(E))

#### **Prepayment Penalties on Consumers and Homeowners (Act No. 188)**

New law provides that, for consumer credit transactions and residential mortgage loans, no prepayment penalty or similar fee or charge shall be due, assessed, charged, collected, paid, held in escrow, or contracted to be paid if all or part of a prepayment of all or part of an outstanding loan balance is made from proceeds paid in full or partial satisfaction of a claim or claims made under a policy or policies of insurance insuring against casualty, flood, or other loss or damage to property securing the loan being prepaid in connection with a gubernatorially declared disaster.

Effective August 15, 2006. (Adds R.S. 6:1096(E)(3) and R.S. 9:3532.1(C))

#### **Debt Collection (Act No. 534)**

New law 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 does any of the following even if the person has no employees, offices, equipment, or other "physical facilities" in the state:

1. Uses any instrumentality of commerce or the mails in any business the principal purpose of which is the collection of any debts.
2. Regularly collects or attempts to collect debts due another, regardless of whether the person has Louisiana clients.

New law provides for the validity of the assignment of debts to a debt collector or collection agency by a client or customer for collection of delinquent amounts owed. Clarifies that such debts are valid and enforceable by the collection agency or debt collector.

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

New law further provides that the foregoing will apply in all instances whether or not the debt is assigned for valuable consideration; whether or not the services performed by the attorney were for the collector alone; whether or not the collector hired the attorney; and whether or not the collector's fees are contingent upon the amount collected by the attorney.

New law provides that in the event a legal action is brought by a collection agency or debt collector to collect the debt of a client, 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 new law is remedial in nature and will be applied retroactively.

Effective upon signature of the governor (June 22, 2006). (Adds R.S. 9:3534.5)

#### **Credit Repair Service Organizations (Act No. 190)**

New law provides that any person whose new or renewal application for licensure under the Credit Repair Services Organizations Act, has been denied for any reason, may not reapply for a license for three years, unless the commissioner prescribes an earlier or later date.

New law provides that no person shall acquire or control a credit repair service organization license through the acquisition or control of more than 50% of the ownership interest in a licensee without first having obtained written approval from the commissioner, pursuant to an application for a change of control in ownership of the licensee, accompanied by a fee of \$300. Any person who acquires controlling interest in a licensee without having filed an application shall be deemed to be operating without proper authority and subject to certain penalties.

New law provides rules for determining when a person acquires or controls a licensee which is a corporation, limited liability company, or limited liability partnership.

New law provides that a corporation that is a licensee shall notify the commissioner within 60 days of a stockholder becoming a principal stockholder.

Existing law provides an exemption from licensure as a credit repair services organization to an attorney or a certified public accountant who is not actively and principally engaged as a credit repair services organization and such attorney's or CPA's credit repair services are ancillary to the providing of other legal services. New law prohibits the exemption when an attorney or CPA is paid a fee by a client solely for the purposes of providing services, directly or indirectly, as a credit repair services organization.

Prior law required all credit repair services organizations to obtain a surety bond in the amount of \$25,000. New law increases the amount of the bond from \$25,000 to \$100,000.

Prior law requires credit repair services organizations to file an annual registration

statement with the Office of Financial Institutions before conducting business. New law repeals prior law.

Effective August 15, 2006. (Amends R.S. 9:3573.2(B)(5) and (7), 3573.4(E), and 3573.11(C)(intro. para.); Adds R.S. 9:3573.1(J) and (K) and 3573.9(M), (N), and (O); Repeals R.S. 9:3573.5)

### **International Commercial Arbitration Act (Act No. 795)**

New law applies to international commercial arbitration, but is subject to any agreement between the U.S. and any other country, and only applies when the arbitration takes place in this state.

New law provides that when an arbitration agreement exists, a court shall first refer the parties to arbitration unless it determines that the agreement is null and void or incapable of being performed.

New law requires potential arbitrators to disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence and provides a procedure to challenge the appointment of an arbitrator.

New law provides for the powers and duties of the arbitral tribunal and provides a procedure for pleading a lack of jurisdiction of the tribunal.

New law provides that the parties may agree to the location of the arbitration, but if they fail to do so, it shall be determined by the arbitral tribunal and the arbitration shall commence on the date a request for arbitration is received by the respondent.

New law provides for the termination of the proceedings in certain circumstances, including settlements, the withdrawal of a claim, the agreement of the parties, or the failure of a party to appear.

New law requires the tribunal to decide the dispute in accordance with the substantive laws chosen by the parties, but if the parties fail to designate a body of law, the tribunal shall use conflict of law rules to determine which substantive law shall be applied.

New law provides that an award made by the tribunal shall be in writing, signed by a majority of the arbitrators, state the date and place, and delivered to each party.

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

### **Child Support Liens on Cars (Act No. 772)**

New law provides that an obligee may file a judgment of past due child support with the office of motor vehicles.

New law 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.

New law 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.

New law 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.

New law 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 created by new law.

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

### **Peremption for Certain Action Against Developers (Act No. 732)**

New law provides for a five-year peremptive period for an action for damages against 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.))

### **Enforcement of Contract to Buy or Sell Immovable (Act No. 701)**

Prior law allowed a party to a purchase agreement to file a suit to enforce his rights

under the agreement for a period of 10 years from the date the other party defaulted under the agreement, pursuant to the prescription for personal actions under C.C. Art. 3499.

New law provides for the procedures and effects of a one-year reinscription period for a contract to buy or sell immovable property.

New law further provides that 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 Arts. 3751 – 3753 of the Code of Civil Procedure, and that reinscription of the contract is not required.

New law also 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.

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

## **TITLE 10: COMMERCIAL LAWS**

### **Uniform Commercial Code (Act No. 533)**

New law (R.S. 10:1-102) provides that this Chapter applies to a transaction to the extent that the transaction is governed by another Chapter of R.S. 10.

Prior law (R.S. 10:1-105) provided that the effectiveness of an agreement by parties to a transaction that the agreement is to be governed by Louisiana law or the law of another state or country depends on whether the transaction bears a reasonable relation to the law of the state involved.

New law (R.S. 10:1-301) provides that the effectiveness of such an agreement is governed by the provisions of Book IV of the Louisiana Civil Code.

Prior law (R.S. 10:1-107) provided that a claim or right arising out of a breach can be discharged without consideration by a written waiver or renunciation signed and delivered by the aggrieved party.

New law (R.S. 10:1-103) retains prior law although omitting the provision as unnecessary since a waiver of a claim is a remission of debt under the Civil Code.

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 R.S. 10:5-102(a)(6.1))

## **TITLE 11: CONSOLIDATED PUBLIC RETIREMENT SYSTEMS**

Nothing of particular interest.

## **TITLE 12: CORPORATIONS AND ASSOCIATIONS**

### **Electronic Filings with Secretary of State (Act No. 256)**

Existing law authorizes the secretary of state to accept any filing by electronic or facsimile transmission. Requires that all electronic filings include an electronic or digital signature. New law provides that such filings may also be a document image attached to an e-mail, provided it meets the signature requirements contained in existing law.

New law authorizes the secretary of state to implement and establish procedures and systems for secure Internet-form filing for any instrument required under existing law. Further allows that any notarization requirement required by existing law may be dispensed with if the instrument is filed and signed electronically as provided in existing law.

New law allows for the in-person filing of any business organization instrument required by existing law without the need to have such instrument notarized, provided such person signs the instrument in the presence of an employee of the secretary of state.

Effective August 15, 2006. (Amends R.S. 12:2)

### **Dissolution by Affidavit (Act No. 170)**

Existing law provides, in part, that a corporation may be dissolved by filing an affidavit with the secretary of state if the corporation is not doing business and owes no debts and provides that the affidavit shall be executed by the shareholders, or by the incorporator if no shares have been issued, attesting to such facts and requesting that the corporation be dissolved.

New law retains existing law but also requires that the corporation own no immovable property

in order to be dissolved by an affidavit filed with the secretary of state.

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

### **Business Entity Conversion (Act No. 153)**

New law 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.

New law provides 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.

New law provides that, unless otherwise agreed, the conversion will not constitute a dissolution of the converting entity, and the converting entity will not be required to wind up its affairs or pay its liabilities and distribute its assets.

New law provides that if the tax classification is different for the converting and converted entities, tax liabilities for the converting entity will be calculated based on the method prescribed by current law for the converting entity's tax classification and will be a liability of the converted entity.

New law provides that all liabilities and obligations of the converting entity shall continue to be liabilities and obligations of the converted entity.

New law provides that if, after effectiveness of the conversion, a shareholder, partner, member, or other owner of the converted entity would be liable under applicable law, in such capacity, for the debts or obligations of the converted entity, then such owner shall be liable for the debts and obligations of the converting entity that existed before the conversion only to the extent that such owner:

1. Agreed in writing to be liable for such debts or obligations.
2. Was liable under applicable law, prior to the effectiveness of the conversion, for such debts or obligations.

3. By becoming a shareholder, partner, member, or other owner of the converted entity, becomes liable under applicable law for existing debts and obligations of the converted entity.

New law provides that short period tax returns must be filed for the converting entity if the converted entity's tax classification is different than the converting entity's classification.

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

## **TITLE 13: COURTS AND JUDICIAL PROCEDURE**

### **Consolidation of Civil, District, and Juvenile Courts in Orleans (Act No. 621)**

New law consolidates the Civil and Criminal District Courts for Orleans Parish, and the clerks of the respective courts into the 41st Judicial District Court, establishes one clerk of court for Orleans Parish, and otherwise establishes the salaries, composition, jurisdiction of judicial officials, and transfers all the duties, powers, and functions of the former offices to the consolidated office, creates the Consolidated Judicial Expense Fund for the 41st Judicial District Court, its authority, practices, duties, and privileges, and otherwise operates under a board, composed of certain judicial officials, and otherwise establishes consolidated public offices similar to the other 40 existing judicial districts in the state.

New law requests the Judicial Council, pursuant to the provisions of R.S. 13:61, as amended by Act 16 of the First Extraordinary Session of 2006, to review new law and make recommendations relative to the number of district court judges in Orleans Parish necessary to effectively and efficiently serve the administration of justice in the parish.

New law transfers the offices of the custodian of notarial records, register of conveyances, and recorder of mortgages and their respective duties and functions to the clerk of civil district court as parish recorder and abolishes such offices effective Jan. 1, 2009. Provides for the clerk to assume the duties of the custodian, the register, and the recorder on that date.

New law abolishes the offices of the custodian of notarial records, the office of the register of conveyances, and the office of the recorder of mortgages in Orleans Parish effective Jan. 1,

2009 (the end of the present terms of office of the register and the recorder; the custodian is an appointed official).

Prior law provided for a civil and criminal sheriff in the Orleans Parish. New law instead provides for one sheriff for Orleans Parish. The election of one sheriff shall be implemented at the election of parochial and municipal officers in the parish in 2010. Provides that the civil and criminal sheriffs elected in 2006 shall continue to serve their term expires.

New law abolishes the Orleans Parish Juvenile Court effective December 31, 2014, vests the jurisdiction of the court in the 41st JDC, and provides for the creation of six new judges of the district court upon abolishment of the juvenile court.

New law provides that certain specific provisions of the Act are effective upon signature of the governor or lapse of time for gubernatorial action (June 23, 2006).

(Amends various sections of Title 13 R.S. 18:402(D), and R.S. 44:71; adds various sections of Title 13 R.S. 33:1500, and R.S. 44:181-185; repeals R.S. 9:2745, various sections of Title 13 R.S. 18:514(B), R.S. 33:1501.1 and 1519.1, R.S. 35:321-338, and R.S. 44:201-268)

#### **Judicial Council Review of Judgeships (Act No. 16)**

New law provides that the Judicial Council has the authority 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 or other actions, and the filling of judicial office vacancies in such district.

(Adds R.S. 13:61(E))

#### **Uniform Child Custody Jurisdiction and Enforcement Act (Act No. 822)**

New law enacts the new UCCJEA which was recommended by the National Conference of Commissioners on Uniform State Laws in 1997 and has been adopted in 42 states.

New law has 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 for purposes of applying new law. 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 new law.

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

#### **Vehicle Exempt from Seizure (Act No. 753)**

New law removes the requirement that the one motor vehicle exempt from seizure must be used for the exercise of a trade, calling, or profession, and provides that the motor vehicle may be used for any purpose.

New law 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 who is physically handicapped and is used to transport such person for any purpose.

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

#### **Time for Judgments and Post-Trial Motions (Act No. 653)**

Prior law required district judges and judges of city courts to render judgments in all cases taken under advisement by them within 30 days from the time the cases are submitted for their respective decisions.

New law provides that if oral reason for judgment is not rendered in open court and the matter is taken under advisement, the district judges and judges of the city courts shall render a written judgment within 30 days of the submission of the case.

Prior law authorized, upon written consent of attorneys representing both sides, an extension of not more than 10 days for the period in which all motions or applications for a new trial shall be passed upon by district judges or judges of the city courts from the time the motions or applications are submitted for decision of the judge. Further provided that all motions or applications for a new trial shall be passed upon by these judges within seven days from the time

such motions or applications for a new trial are submitted to them for their decision.

New law changes prior law to provide that this time period for judges of the city court shall be three days from the time such motions or applications for a new trial are submitted to them for their decision to make new law consistent with other provisions of prior law.

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

#### **Defense of Public Officers (Act No. 568)**

Prior law provided for payment or reimbursement of payment of any legal fees and expenses associated with the defense of any officer, or employee of this state for any criminal action due to conduct arising from acts undertaken in the performance of the duties of his office or employment with the state, and when he has been acquitted or the proceedings or investigation has been dismissed.

New law 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 from his gross negligence.

Effective upon signature of the governor (June 23, 2006). (Adds R.S. 13:5108.3(D))

### **TITLE 14: CRIMINAL LAW**

#### **Anti-Abortion Laws (Act No. 467)**

New law, the "Human Life Protection Act," shall become effective immediately upon, and to the extent permitted, by either:

- A U.S. Supreme Court decision which reverses, in whole or in part, *Roe v. Wade*, thereby restoring to the state the authority to prohibit abortion.
- Adoption of an amendment to the U. S. Constitution which, in whole or in part, restores to the state the authority to prohibit abortion.

Provides that new law shall be effective relative to the appropriation of Medicaid funds, to the extent consistent with any executive order by the U.S. President, federal statute, appropriation

rider, or federal regulation that sets forth the limited circumstances in which states must fund abortion to remain eligible to receive federal Medicaid funds.

Provides that no person may knowingly administer to, prescribe for, or procure for, or sell to any pregnant woman any medicine, drug, or other substance with the specific intent of causing or abetting the termination of the life of an unborn human being.

Provides that no person may knowingly use or employ any instrument or procedure upon a pregnant woman with the specific intent of causing or abetting the termination of the life of an unborn human being.

Provides that any violation of new law shall be prosecuted pursuant to R.S. 14:87.

Provides that nothing in new law may be construed to prohibit the sale, use, prescription, or administration of a contraceptive measure, drug or chemical, if it is administered prior to the time when a pregnancy could be determined through conventional medical testing and if the contraceptive measure is sold, used, prescribed, or administered in accordance with manufacturer instructions.

Provides that it shall not be a violation of new law for a licensed physician to perform a medical procedure necessary in reasonable medical judgment to prevent the death or substantial risk of death due to a physical condition, or to prevent the serious, permanent impairment of a life-sustaining organ of a pregnant woman. However, the physician shall make reasonable medical efforts under the circumstances to preserve both the life of the mother and the life of her unborn child in a manner consistent with reasonable medical practice.

New law permits a physician to perform any of the acts described above if performed under the following circumstances:

- The physician terminates the pregnancy in order to preserve the life or health of the unborn child or to remove a stillborn child.
- The physician terminates a pregnancy for the express purpose of saving the life, preventing the permanent impairment of a life

sustaining organ or organs, or to prevent a substantial risk of death of the mother.

The physician terminates a pregnancy by performing a medical procedure necessary in reasonable medical judgment to prevent the death or substantial risk of death due to a physical condition, or to prevent the serious, permanent impairment of a life-sustaining organ of a pregnant woman.

New law eliminates exceptions for rape.

Effective August 15, 2006. (Amends R.S. 14:87; adds R.S. 40:1299.30)

### **Overly Violent Video Games for Minors (Act No. 441)**

New law 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.

New law provides penalties for violations of 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 upon signature of governor (June 15, 2006). (Adds R.S. 14:91.14)

### **Anti-Flag-Burning Law (Act No. 506)**

New law creates the crime of burning the U.S. flag as intentionally burning or setting on fire a U.S. flag to cast contempt upon the flag. Provides for an exception when the flag is being burned in a respectful retirement ceremony to dispose of a worn or soiled flag. Provides for penalties of not more than \$1,000, or imprisonment for not more than 90 days, or both.

New law shall not take effect unless and until a flag desecration amendment to the federal constitution is proposed and approved.

Effective August 15, 2006. (Adds R.S. 14:116.1)

## **TITLE 15: CRIMINAL PROCEDURE**

### **Bonds and Forfeiture (Act No. 699)**

New law provides that no judgment of bond forfeiture for bonds \$50,000 or greater shall be collected until 10 days after expiration of nine months after the mailing of proper notice of the signing of the judgment of bond forfeiture.

New law further provides that any judgment forfeiting an appearance bond shall at any time more than six months but within nine months after mailing of the notice for the signing of the judgment of bond forfeiture be satisfied and set aside and the surety relieved of its obligations upon the surrender or the appearance of the defendant, and the payment in cash of 10% of the face amount of the bond.

New law provides that the prosecuting attorney may seek a court order prohibiting the execution of criminal bail bonds by a commercial surety company if that company has not satisfied a judgment of bond forfeiture for bonds \$50,000 or greater within 400 days after the notice of the judgment was mailed.

Existing law provides that the court may issue an order prohibiting the execution of criminal bail bonds by a commercial surety company if the court finds that the defendant has neither been surrendered nor appeared within six months of the mailing of the notice of a judgment of bond forfeiture and that 210 days have passed since the mailing of that notice.

New law retains provides that the court may issue an order prohibiting the execution of criminal bail bonds by a commercial surety company if the court finds that the defendant has neither been surrendered nor appeared within six months of the mailing of the notice of a judgment of bond forfeiture for bonds \$50,000 or greater and that 400 days have passed since the mailing of that notice.

New law provides that should the court find that the judgment of bond forfeiture has not been satisfied by payment of the full amount for bonds which have a face value under \$50,000, or

has not been satisfied by the surrender or the appearance of the defendant together with payment in cash of 10% of the total bond amount for bonds which have a face value of \$50,000 or more, if applicable, then the court may issue an order enjoining the commercial surety company from posting criminal bail bonds before the court issuing the judgment of bond forfeiture if the judgment is not satisfied within the 10 days.

Effective August 15, 2006. (Amends R.S. 15:85(7), (10), and (11)(a) and (b)(iv), (v), and (vi))

**Background Checks on Employees who Supervise Children (Act No. 309)**

Existing law requires that any employer of persons applying for a position of supervisory or disciplinary authority over children to request from the La. Bureau of Criminal Identification and Information information on whether such persons have been convicted or pled nolo contendere to certain enumerated crimes.

New law provides that the Bureau shall make available a record of all criminal convictions for the 10-year period prior to the date of the request. Requires the recipient to maintain confidentiality as provided by state or federal law. Requires the bureau to provide only such information as is necessary to specify whether the applicant was convicted or pled nolo contendere and the date on which they occurred.

Effective August 15, 2006. (Amends R.S. 15:587.1(A)(1))

**Wiretapping and Privileged Information (Act No. 292)**

Existing law prohibits the interception and disclosure of wire, electronic, or oral communications, except in certain circumstances.

New law provides that any person who has received any information concerning a wire, oral, or electronic communication, or evidence derived therefrom intercepted in accordance with the provisions of existing law may disclose the contents of that communication while giving testimony.

New law provides that otherwise privileged wire, oral, or electronic communication intercepted shall not lose its privileged status if intercepted in violation of the law.

Effective August 15, 2006. (Amends R.S. 15:1303(D); Adds R.S. 15:1303(C)(7) and (E))

**TITLE 16: DISTRICT ATTORNEYS**

Nothing of particular interest.

**TITLE 17: EDUCATION**

**Hospital Medicaid Reimbursement (Act No. 521)**

Prior law provided that DHH shall not implement a common Medicaid and disproportionate share change in the hospital inpatient or outpatient methodology before 7/1/09. New law removes the deadline for implementation.

New law requires that to ensure compliance with the Rural Hospital Preservation Act, any such methodology applicable to a rural hospital shall maximize Medical reimbursement under prior law.

New law repeals the Healthcare Affordability Act.

Effective August 15, 2006. (Amends R.S. 17:1519.6(C); repeals R.S. 47:8051-8060)

**Proprietary Schools (Act No. 223)**

Relative to proprietary schools:

New law, relative to the Advisory Commission on Proprietary Schools, specifies that the commission shall be advisory in nature, but may have powers and duties set forth by existing law, subject to approval and oversight by the Board of Regents. Provides that the board may ratify, annul, or modify any rule, decision, finding, or order of the commission and that any action by the commission pursuant to existing law shall not be effective until ratified by the board.

Existing law (R.S. 17:3141.18(A)) provides that based on information gathered from investigations of complaints, the Board of Regents shall determine whether a violation has occurred. Specifies that the board shall send a notice of the violation to the school or to the solicitor specifying the standard violated, the remedy proposed, and the procedure by which an administrative hearing may be requested. New law retains existing law except provides for the determination to be made and the notice to be sent by the commission rather than the board.

Effective upon signature of governor (June 2, 2006). (Amends R.S. 17:3141.3(A)(4), 3141.5(C)(4), and 3141.18(A), (B), (C), and (D); Adds R.S. 17:3141.3(G) and R.S. 36:651(L) and 801.5; Repeals R.S. 36:651(G)(1))

**Oversight of Property Leased by State Colleges to Nonprofits (Act No. 758)**

Existing law authorizes the lease of property owned by a college or university to nonprofit organizations, including fraternities, sororities, religious, or benevolent organizations.

New law adds a requirement for design and construction oversight by the office of facility planning and control within the division of administration for construction of improvements on or after January 1, 2007, on property owned by a college or university which is leased to a nonprofit organization.

Effective upon signature of governor (June 30, 2006). (Amends R.S. 17:3361(A)(2))

**TITLE 18: LOUISIANA ELECTION CODE**

**Closed Primaries for Congressional Elections (Act No. 560)**

New law retains prior law for the election of all candidates other than congressional candidates.

New law provides for a closed primary system for the election of congressional candidates, which includes first party primary, second party primary, and general elections.

Effective Jan. 1, 2007. (Amends numerous sections of Title 18)

**Katrina/Rita Kickbacks to Politicians (Act No. 849)**

New law prohibits any person who has entered into a contract or a direct subcontract of such contract or a transaction to provide goods or services related to hurricane rebuilding efforts which contract or transaction is not publicly or competitively bid from making a contribution to an elected official if such contract or transaction is under the jurisdiction or supervision of the agency of the elected official. New law prohibits any elected official from accepting such a contribution. The penalty for violation of new law is twice the amount of the contribution.

New law defines "hurricane rebuilding efforts" as any project for the improvement, construction, erection, reconstruction,

modification, repair, demolition, or other physical change of an immovable or its component parts damaged or destroyed or necessitated by Hurricane Katrina or Hurricane Rita.

New law provides for its provisions to be effective for a period of three years following the effective date of new law.

Effective upon signature of governor (July 10, 2006). (Adds R.S. 18:1505.2(S))

**TITLE 19: EXPROPRIATION**

Nothing of particular interest.

**TITLE 20: HOMESTEADS AND EXEMPTIONS**

**Home Insurance Proceeds Exempt (Act No. 601)**

New law exempts from seizure and sale 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 such proceeds be held separately in an escrow account identified as insurance proceeds paid from the damage of the homestead for its repair or replacement.

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

**TITLE 21: HOTELS AND LODGING HOUSES**

Nothing of particular interest.

**TITLE 22: INSURANCE**

**Directors and Officers of Insurers (Act No. 341)**

Prior law provided that any person who was not a citizen of the U.S. could not be eligible for membership on the board of directors or an officer of a domestic stock insurer or a domestic mutual insurer. Provided that prior law would not apply to any insurer engaged in or maintaining an active insurance or reinsurance business in a country other than the U.S. New law deletes prior law.

Effective upon signature of governor (June 13, 2006). (Repeals R.S. 22:83 and 130)

### **Viatical Settlements (Act No. 499)**

New law makes extensive changes in law governing viatical settlements.

Effective upon signature of governor (June 22, 2006). (Amends R.S. 22:191; Adds R.S. 22:191(5)(f), 192(C), 197(D)(5), and 200.1)

### **Viatical Settlement Provider Licensing (Act No. 371)**

New law changes rules regarding expiration and renewal of licenses of viatical settlement providers, brokers, and investment agents.

Effective upon signature of governor (June 15, 2006). (Amends R.S. 22:191.1(C))

### **Viatical Settlement Annual Reports (Act No. 369)**

Existing law prohibits operation as a viatical settlement provider, broker, or investment agent without a license from the commissioner of insurance of the state of residence of the viator. However, authorizes a person who holds a resident or nonresident insurance producer license for life or annuity to act as a viatical settlement broker.

New law requires that each licensee or other person acting as a viatical settlement provider, broker, or investment agent file an annual statement with the commissioner of insurance by March 1 of each year.

Effective upon signature of governor (June 15, 2006). (Amends R.S. 22:193(A))

### **Grace Periods for Insurance Premiums (Act No. 392)**

New law requires that every insurer issuing a policy of individual, group, family group, blanket, or association health and accident policies include in such policy a provision providing the policyholder a grace period of 30 days from the date the premium was due.

New provides that every HMO issuing a contract for health care services shall include in such contract a provision providing the subscriber or enrollee a grace period of 30 days from the date the prepaid charge was due.

New law requires that every trust issuing a policy of individual, group, family group, blanket, or association health and accident policies include in such policy a provision

providing the policyholder a grace period of 30 days from the date the premium was due.

Effective January 1, 2007. (Amends R.S. 22:213.3, 221(B), 2027(C), and 2059)

### **Group Health Plan Enrollment of Children (Act No. 348)**

New law requires group health plans to provide for a special enrollment period for any dependent child who was previously enrolled in a Medicaid program prior to requesting enrollment in the group health plan, subject to state law group coverage eligibility requirements, but is no longer eligible to be covered under either LaCHIP or a Medicaid program.

Effective upon signature of governor (June 13, 2006). (Amends R.S. 22:250.2(E)(2)(a)(iv), (b)(ii), and (c)(iii))

### **Extension of Time to File Insurance Claims (Act No. 739)**

New law 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 such 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 such claim is otherwise provided by law or by contract.

New law also directs the attorney general to file an action, within ten days of June 29, 2006, seeking declaratory judgment to determine the constitutionality of new law or Act No. 802 of the 2006 R.S.

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

### **Notices of Nonrenewal of Insurance Policies (Act No. 345)**

Existing law prohibits any insurer from failing to renew a property or casualty insurance policy unless a notice of nonrenewal is mailed or

delivered to the named insured at the address shown on the policy at least 30 days prior to the effective date of nonrenewal. Provides for certain exceptions, including certain automobile and commercial policies, when the insurer manifests a willingness to renew, when the insured gives written notice not to renew, or if there is nonpayment of premium or fraud.

New law requires that such notice of nonrenewal additionally be delivered or mailed to each mortgagee, pledgee, or other known person shown by the policy to have an interest in any loss which may occur under the policy. Provides that for purposes of new law, "delivered" includes electronic transmittal, facsimile, or personal delivery. Retains exceptions provided by existing law.

Effective August 15, 2006. (Amends R.S. 22:636(G))

#### **Insurer to Notify Producer of Payments (Act No. 404)**

Existing law provides that insurers pay claims due any insured within 30 days after receipt of satisfactory proofs of loss from the insured or any party in interest.

New law further provides that the insurer shall notify the insurance producer of record of payments made.

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

#### **Insurer Penalties Increased (Act No. 813)**

Prior law provided that upon failure to make a payment to a claimant within 30 days after receipt of such satisfactory written proofs, or failure to make a written offer to settle any property damage claim, including a third-party claim, within 30 days after receipt of satisfactory proofs of loss of that claim, or failure to make such payment within 30 days after written agreement or settlement, when such failure is found to be arbitrary, capricious, or without probable cause, the insurer is subject to a penalty of 25% percent damages on the amount found to be due or \$1,000, whichever is greater.

New law changes the penalty amount from 25% to 50%.

Prior law provided if a partial payment or tender has been made and the court finds damages in excess of the partial payment, 25% of the

difference between the amount paid or tendered and the amount found to be due will be paid as a penalty.

New law changes the penalty amount from 25% to 50%.

New law provides that reasonable attorney fees and costs be paid by an insurer who fails to timely pay claims.

New law specifies that any penalties awarded to an insured to be paid by the insurer 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))

#### **Homeowner Policy Flood Coverage; Burden of Proof of Exclusion of Damage to Immovables; Penalties (Act No. 12)**

New law prohibits an insurer from using the flood water mark without considering other evidence when determining whether a loss is covered or not covered under a homeowner's policy. Prohibits an insurer from using 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.

New law 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 to establish any exclusion under the policy terms. 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 and of no effect.

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

Effective upon signature of the governor (February 23, 2006). (Adds R.S. 22:658.2 and 1220(B)(6))

### **Homeowner Policy Required Disclosures (Act No. 42)**

New law on homeowners' policies requires the insurer to disclose in writing whether there is an increased deductible for wind or named storm damage, the distinction between replacement costs, actual cash value, use of depreciation, and that the policy may have time limits for completion of repairs. Also requires such disclosure to state that the policy determines the process of a notification of a loss and the legal time line for a claim to be adjusted, settled, or paid, including any penalties.

Effective April 18, 2006. (Amends R.S. 22:667.1 and 696; Adds R.S. 22:1477)

### **Time Limits for Proof of Loss; Replacement Costs (Act No. 23)**

New law prohibits the automatic denial of damage to insured property for failure to timely submit proof of loss for damages caused by a declared disaster. Provides that the time limit of not less than 180 days.

New law provides that the time limit for proof of loss does not commence as long as there is a declaration of emergency and civil authorities deny access to the property.

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

New law provides that the provisions of new law only affect future policies or future renewal of policies.

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

### **Investments by Domestic Insurers (Act No. 414)**

New law authorizes domestic insurers to invest in mutual funds that invest in foreign securities. Limits the amount of such investment to 20% of an insurer's admitted assets.

New law further authorizes domestic insurers to invest in collateralized mortgage obligations (CMO), bonds, and other mortgage-backed securities issued by the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National

Mortgage Corporation, and the Vendee Mortgage Trust.

New law creates an exception to existing law by allowing domestic life insurers to invest in the stock of a real estate investment trust (REIT) whose stock is listed on the New York Stock Exchange or the American Stock Exchange, provided such investment shall not exceed 5% of the total number of shares of any one such trust and that not more than 2% of the insurer's admitted assets are invested in shares of any one such trust.

Effective August 15, 2006. (Amends R.S. 22:844(A)(1) and (12), (C)(1), and (D)(1)(a))

### **Qualifying Investments for Insurers (Act No. 587)**

New law expands the qualifying investments in which insurers may invest and receive a reduction in the amount of premium taxes.

Effective August 15, 2006. (Amends R.S. 22:1068(C)(a) and (g))

### **Automobile Service Clubs (Act No. 335)**

Prior law provided for regulation of automobile service clubs by the commissioner of insurance.

New law deletes all provisions of prior law.

Effective upon signature of governor (June 13, 2006). (Repeals R.S. 22:1137(A)(10), 1139(C)(8), and 1751-1770)

### **Industrial Life Insurance (Act No. 605)**

New law authorizes an insurance producer with a license for industrial life insurance to sell life insurance, including funeral benefits, in an amount not to exceed \$15,000 when appointed by an ordinary life insurer and which insurer issues those policies.

Effective upon signature of the governor (June 23, 2006). (Amends R.S. 22:1137(A)(13))

### **Motor Vehicle Title Insurance Producer Licensing (Act No. 360)**

New law provides for specialty limited lines motor vehicle title insurance producer licenses for the sale of motor vehicle title insurance. Requires the motor vehicle title insurance sales to be in connection with retail sales of motor vehicles in which the transaction exceeds \$1,000.

New law authorizes the employees or representatives of a licensed producer to sell the motor vehicle title insurance without being licensed if the employee or representative complies with certain conditions.

New law authorizes licensed producers to receive commissions or other compensation for services rendered in connection with motor vehicle title insurance sales.

Effective upon signature of governor (June 13, 2006). (Adds R.S. 22:1138.2)

### **Public Adjuster Act (Act No. 806)**

Prior law defined a public adjuster as any person, except an attorney at law, who, for compensation negotiates or effects the settlement of a claim on behalf of an insured. Further provides that a contingency fee agreement between a public adjuster and an insured is contrary to public policy and is null and void.

New law repeals prior law.

New law provides for the regulation and licensure of public adjusters by the commissioner of insurance.

Beginning June 30, 2007, new law requires licensure of public adjusters and public adjuster firms by the commissioner of insurance prior to conducting business. However, exempts from licensing an attorney at law admitted to practice in this state and in good standing, a person employed only for the purpose of obtaining facts surrounding a loss or furnishing technical assistance to a public adjuster, and a person employed only for the purpose of obtaining facts surrounding a loss.

New law provides for a written examination which must be successfully passed, unless exempted from examination.

New law provides that evidence of financial responsibility in the form of an irrevocable letter of credit in the minimum amount of \$50,000 be given to the commissioner of insurance and if the letter of credit terminates or is impaired, the public adjuster license shall automatically terminate.

New law authorizes a public adjuster to charge a reasonable fee, but provides that a contingency fee agreement between a public adjuster and an

insured is contrary to public policy and is null and void.

New law provides that all contracts for public adjuster services must be in writing and contain certain elements, including the full names of the parties, the Department of Insurance license number, and full disclosure of the compensation the public adjuster is to receive for services.

New law requires that a public adjuster provide the insured a disclosure document, prior to signing of a contract.

Effective August 15, 2006. (Adds R.S. 22:1210.71-1210.88; Repeals R.S. 22:1476)

### **Claims Adjuster Licensing (Act No. 783)**

New law requires licensing of claims adjusters and claim adjuster firms with the commissioner of insurance prior to conducting business in the state. Specifies that beginning June 30, 2007, any person who is either employed or contracts to perform services in Louisiana as an adjuster shall obtain a license to do so from the Department of Insurance.

New law exempts various categories of persons from claims adjuster licensing requirements, including an attorney at law admitted to practice in this state.

New law provides for resident claims adjuster licenses for individuals and business entities upon payment of fees, successfully passing the adjuster examination, and other requirements such as appropriate age, office location, and office hours.

New law prohibits an insurer from knowingly referring a claim to a person purporting to be an adjuster in this state unless the person is licensed as such. Requires insurers to ascertain from the commissioner of insurance whether a person is licensed.

Effective January 1, 2007. (Adds R.S. 22:1210.71-1210.87)

### **Title Insurance and Opinions (Act No. 828)**

New law authorizes the Louisiana Title Insurance Statistical Services Organization (LTISSO) to make certain filings, including rate filings, on behalf of its members.

New law provides that a title insurer who adopts a rating organization's rating filing or files a deviation to such filing cannot have its rates

declared excessive, inadequate, or unfairly discriminatory.

New law requires that if a title examination and resulting opinion is the basis for a title insurance report or policy, then it shall be written by an attorney.

New law requires that the title opinion contain the following: (1) complete name of individuals with an ownership or other interest in the property; (2) complete list of all encumbrances, mortgages, judgments, liens, and privileges (this list shall contain the name of secured creditors, date filed, amounts, and recordation information); (3) complete list of all servitudes, rights-of-way, leases, options, rights of first refusal, and usufructs encumbering the property; (4) legal description of property examined; (5) any curative measures which are required in order to render title merchantable; (6) all parish and municipal property taxes which are past due; (7) length of examiner's search and date of earliest recorded instrument reviewed by the examiner; and (8) name and attorney bar roll number of the examining attorney.

Effective August 15, 2006. (Amends R.S. 22:1410(A)(1) and 2092.2(17)(b)(vi); Adds R.S. 22:1409(G)(2)(e), 1409.1, and 2092.5.1)

#### **Federal Funds to Benefit Insureds (Act No. 19)**

New law authorizes Louisiana Citizens Property Corporation to seek and accept Community Development Block Grant funds to pay bonds and other cost and obligations that arose due to losses caused by hurricanes in 2005.

New law provides that any funds accepted by the corporation under the new law will be credited, pro-rata, to the insurers who were assessed after the bonds are satisfied. The insurers will return the amounts to the insured.

Effective April 18, 2006. (Adds R.S. 22:1430.6(E))

#### **Fire Insurer Commissions (Act No. 380)**

New law deletes requirement that stock fire insurers file with the fire insurance division of the Louisiana Insurance Rating Commission an annual schedule of uniform commission rates.

New law adds fire insurers to the list of insurers doing business in this state who must pay a commission to producers in the state.

Effective upon signature of governor (June 15, 2006). (Amends R.S. 22:1459)

#### **Additional Premium Explanation (No. 784)**

New law requires an insurance company or its agent provide in a billing notice either an explanation of any premium increase or a statement that asks the insured to contact either the insurance company or its agent if the insured has any questions about the billing notice or the premium increase.

Effective June 30, 2006 (Amends R.S. 22:1464(A)(1))

#### **Additional Premium Explanation (Act No. 787)**

New law provides that in order for an insurance company to be entitled to an additional premium, the insured must receive a billing notice and either an explanation of the premium increase or a statement that requests that the insured contact either the company or the agent if the insured has questions.

Effective August 15, 2006. (Amends R.S. 22:1430.6(C) and (D)(1) and (6), 1430.12(A)(1), and 1464(A)(1); Adds R.S. 22:1430.6(D)(7), and (8), and 1430.22))

#### **Homeowner Policy Disclosure (Act No. 438)**

New law requires homeowners' insurance policies to disclose that the insured may have the option of increasing the deductible and thus lowering the potential cost paid.

Effective August 15, 2006. (Adds R.S. 22:1477(B)(5))

#### **Property Insurance Bills (Act No. 381)**

New law requires that any bill or other notice requiring payment of a premium for a policy of property or casualty insurance sent by an insurer to its policyholder shall identify the property sufficiently to allow the policyholder to identify the property upon which the premium is due, with certain exceptions.

Effective August 15, 2006. (Adds R.S. 22:1478)

#### **Insurers' Catastrophe Response Plans (Act No. 429)**

New law requires insurers writing any form of commercial or residential property insurance, automobile insurance, marine, or inland marine insurance must maintain written catastrophe

response plans describing the insurers response to catastrophes affecting its policyholders.

New law further provides that the commissioner shall review the written catastrophe response plans.

New law also provides that the response plans shall be considered confidential proprietary information, not subject to public records disclosure, and shall not be made public by the commissioner.

Effective August 15, 2006. (Adds R.S. 22:1478)

### **Insurance Premiums (Act No. 688)**

New law provides that insurers shall not use credit information which would increase an expiring premium, due to a change in credit information, for policies that renew between August 15, 2006, and December 31, 2006.

Effective August 15, 2006. (Adds R.S. 22:1484(10))

## **TITLE 23: LABOR AND WORKERS' COMPENSATION**

### **Car Salesmen Protected from Noncompete Clauses (Act No. 436)**

New law prohibits an employer from entering into a noncompete agreement with an automobile salesman to restrain the salesman from selling automobiles.

New law provides for definitions of "automobile" and "automobile salesman".

Effective August 15, 2006. (Adds R.S. 23:921(I))

### **Employment of Illegal Aliens (Act No. 636)**

Prior law prohibited the employ, hire or recruitment for private or public employment, an alien who is not entitled to lawfully reside or work in the United States.

New law retains prior law and adds a requirement for the employer to file an affidavit with their respective annual license renewal agency that the employer has in its files a federal employment eligibility verification form for each employee.

New law enhances enforcement of existing law in various ways.

New law exempts employers with 10 or fewer employees from the provisions of this Chapter.

Effective upon signature of the governor (June 23, 2006). (Adds R.S. 23:996)

### **Workers' Compensation Security Scheme (Act No. 49)**

Existing law, relative to workers' compensation, enumerates the ways of securing compensation to employees to include insuring and keeping insured the payment of employee compensation through workers' compensation insurance or using a combination of life, accident, health, property, casualty or other insurance policies offered or through self-insurance.

New law defines "default" as when a self-insured employer fails to pay benefits owed to an injured worker for undisputed claims and the employer is in bankruptcy, fails to renew its irrevocable letter of credit or fails to substitute acceptable securities for workers' compensation benefits within 30 days prior to the expiration of their current security.

New law defines "administer" or "administration" as the review and determination of the monetary value of a claim.

New law defines "claim" as a claim for workers' compensation benefits.

New law forfeits the security posted with the director if there is a default by the self-insured employer. In the case of a surety bond, the director may sue on the bond.

New law requires the director to retain all proceeds collected for payment of outstanding workers' compensation claims.

New law permits the director to allocate collected funds on a pro rata basis when the amount of the bond is insufficient to meet all of the outstanding claims.

New law requires a self-insured employer who defaults on his workers' compensation obligations to deposit a separate surety bond or other security equal to the amount of security attributable to the defaulting employer in the most recent calculation of a single security deposit.

New law requires the employer whose security was forfeited to provide the office of workers' compensation with copies of any workers' compensation, medical or employment files within 30 days of receiving written notice from the office.

New law directs the director to deposit, in an interest bearing account, the proceeds from the security or bond from the defaulting self-insured employer. Interest earned must be used to offset the administration of claims.

New law empowers the director to audit the books and records of the defaulting employer, to enter into such agreements or contracts as are necessary to carry out the full or partial plan for distribution and to enter into such agreements or contracts as are necessary to carry out the administration of claims.

New law requires the director to deposit all monies collected in one or more state or national banks, savings banks, trust companies, or savings and loan associations chartered to do business in Louisiana.

New law gives the director discretion to deposit monies collected or any part thereof as a trust fund.

New law gives the director the power to contract with or employ clerks or assistants to carry out his duties.

New law allows the director to contract with the department of insurance for the administration of claims.

New law mandates the attorney general to provide representation for the director in all matters involving the seizure and distribution of any security.

New law lists the order of priority of claims as:

1. Claims by injured employees of the self-insured employer.
2. The director's costs and expenses of administration and any claims handling expenses.
3. All other claims.

New law requires the director to notify all persons who may have claims against a defaulting employer to present proof of their claims within four months from the date of the seizure of the security.

New law stipulates that proofs of claim may be filed subsequent to the four month requirement but will not be paid until all other claims are paid in full.

New law specifies that a proof of claim shall consist of a statement under oath, in writing,

signed by the injured employee or his representative setting forth his claim and what payments have been made and what others are still due.

New law permits an injured employee to file an appeal with the 19<sup>th</sup> Judicial District Court when the director provides for pro rata distributions of security proceeds or issues an order which may be adverse to an injured employee.

New law makes all proceedings, hearings, notices, correspondence, reports and other information in the possession of the director relating to the distribution of the security of a self-insured employer confidential. Personnel of the office and its agents shall have access to the proceedings, hearings, notices and correspondence.

New law permits the director to open proceedings or hearings or to disclose information to any department, agency, or other instrumentality of the state or of the United States for the proper enforcement of law.

New law grants immunity to any employee, agent, contractor or representative of the office of workers' compensation in the performance of their duties.

New law requires cooperation by officers, owners and employees of any self-insured employer with the director in the seizure of the security and administration of claims.

New law grants jurisdiction to the 19<sup>th</sup> Judicial District Court to issue orders to enforce the provisions of the new law.

New law makes failure to comply with any court order punishable by civil fine not to exceed \$100,000.

Effective upon signature of the governor (May 16, 2006). (Adds R.S. 23:1168.3-1168.12; repeals R.S. 23:1168(D))

### **Workers' Compensation Risk Pool Operation (Act No. 634)**

New law permits an arrangement to pool workers' compensation liabilities to be operated and administered outside Louisiana, but requires all records and documents to be kept in such a manner that the arrangement's financial condition can be readily verified and its compliance with the law determined, and requires all original or reproductions of records

and documents to be preserved and kept in this state for the purpose of examination until authorization to destroy them is given by the commissioner of insurance.

Effective upon signature of the governor (June 23, 2006). (Amends R.S. 23:1195(A)(5))

#### **Self-Insured Employers (Act No. 387)**

Existing law provides that a self-insured employer must maintain a contract of insurance at all times. New law provides that the contract of insurance can only be purchased from companies having a minimum rating. New law also requires a self-insured employer to maintain a contract of reinsurance at all times meeting certain standards.

Effective upon signature of governor (June 15, 2006). (Amends R.S. 23:1196(A)(5))

#### **Self-Insureds (Act No. 388)**

New law provides that a self-insured must maintain a contract of insurance or reinsurance at all times.

New law provides that the contract of insurance can only be purchased from companies having a minimum rating. New law provides that reinsurance may be purchased from admitted or non-admitted companies.

Effective upon signature of governor (June 15, 2006). (Amends R.S. 23:1196(A)(5) and (H) and 1197(C))

#### **Confidentiality of Workers' Compensation Records (Act No. 16)**

New law adds to the list of confidential records of the office of workers' compensation administration of the Dept. of Labor those submitted to the La. Workers' Compensation Second Injury Board concerning claims for reimbursement arising out of a claim by an employee or his dependent.

New law adds that facts, documents, or other information that is part of an employee's record may be shared with any government entity authorized by law to conduct any audit or investigation in connection with the administration of any state or federally funded program.

New law provides that once a claim for reimbursement is made by an employer, group self-insurance fund, or insurer, information or

documents submitted to the La. Workers' Compensation Second Injury Board related to such claim for reimbursement shall be available to the employer, group self-insurance fund, and insurer or their representatives.

Effective upon signature of governor (May 4, 2006). (Amends R.S. 23:1293(A)(1) and (3); Adds R.S. 23:1293(A)(5))

#### **Workers' Compensation Reports (Act No. 44)**

Existing law, relative to worker's compensation, requires employers to send a report to the insurer within 10 days of actual knowledge of an employee's injury.

New law requires upon receipt of such a report, the insurer or administrator of the employer's workers' compensation claims forward to the office a report that includes:

1. The name, address and telephone number of the insurer, group self-insured fund or self-insured employer.
2. The name, address and telephone number of the administrator or representative of the insurer, group self-insured fund or self-insured employer.

Effective upon signature of the governor (May 16, 2006). (Amends R.S. 23:1306)

#### **Workers' Compensation Procedures (Act No. 48)**

New law allows a claim for benefits, the controversion of entitlement to benefits, or other relief under the Workers' Compensation Act to be made by mailing, faxing, or electronic transmission of the form.

New law provides for the setting of the matter for an initial mediation conference only when the injured employee requests a conference.

New law requires that the mediation be attended in person.

New law allows for a mediator's report to be sent by mailing, faxing, or electronic transmission of the form.

New law adds R.S. 23:1361 as an additional exception to the original, exclusive jurisdiction of the workers' compensation judge over all claims or disputes arising under the Worker's Compensation Law.

New law allows for the filing of an answer by mailing, faxing, or electronic transmission.

New law provides that in cases where the presumption does not apply, timeliness of the mailing shall be evident by receipt of certificate from the U.S. postal service, fax confirmation, or electronic receipt confirmation.

Effective upon signature of the governor (May 16, 2006). (Amends R.S. 23:1310.3(A), (B)(1), (C), (D), and (E))

### **Unemployment Compensation Tax Ratings (Act No. 116)**

New law provides that benefits paid as directed in three executive orders issued by the governor to deal with unemployment resulting from hurricanes Katrina and Rita shall not be charged against individual employers' experience rating records.

New law provides that benefits paid as directed in three executive orders issued by the governor to deal with unemployment resulting from hurricanes Katrina and Rita shall not be recouped through the social charge account and spread to all employers through the social charge tax.

Effective upon signature of the governor (June 2, 2006). (Amends R.S. 23:1541 (intro para) and 1553(C))

### **Unemployment Benefits Reimbursement to State (Act No. 7)**

New law defers, without penalty and interest, until 1/1/07, any unemployment benefit reimbursement owed by state and local governments and eligible nonprofit organizations to the La. Dept. of Labor as a result of hurricanes Katrina and Rita as well as the executive orders issued by the governor after the storms.

Effective upon signature of the governor (February 23, 2006). (Adds R.S. 23:1552(B)(6) and (7))

## **TITLE 24: LEGISLATURE AND LAWS**

### **Lobbying Laws (Act No. 368)**

New law provides that the term "lobbyist" means:

1. Any person employed *or engaged* for compensation to act in a representative capacity for the purpose of lobbying if lobbying

constitutes one of the duties of such employment *or engagement*.

2. Any person who receives compensation of any kind, including reimbursement of expenditures, to act in a representative capacity when one of the functions for which compensation is paid is lobbying and makes expenditures of \$500 or more in a calendar year for the purpose of lobbying.

New law provides that no person shall enter into a contract to act in a representative capacity for the purpose of lobbying and fail to register or fail to file a supplemental registration providing the name and address of the person by whom he is employed or engaged and, if different, whose interests he represents pursuant to such contract as required by existing law. New law further provides that any person who violates this provision of new law shall have engaged in a misrepresentation sufficient to defeat or void the contract and that any effort to register or to file a supplemental registration after any remedy or relief relative to the violation is sought pursuant to any provision of law shall not be sufficient to reverse the misrepresentation.

Effective upon signature of governor (June 15, 2006). (Amends R.S. 24:51(5); Adds R.S. 24:56(G) and 58.1)

### **Legislative Audit of Private Water Supply Systems (Act No. 629)**

New law provides for the financial statements of a private water supply system to be audited or reviewed by licensed certified public accountants or the legislative auditor.

New law requires the legislative auditor to comply with any and all restrictions imposed by law on documents, data, or information deemed confidential by the Rules of Practice and Procedure of the Louisiana Public Service Commission.

Effective August 15, 2006. (Amends R.S. 24:513)

## **TITLE 25: LIBRARIES, MUSEUMS, AND OTHER SCIENTIFIC AND CULTURAL FACILITIES**

Nothing of particular interest.

## **TITLE 26: LIQUORS – ALCOHOLIC BEVERAGES**

### **Wine Laws (Act No. 808)**

New law repeals all provisions of Louisiana's Native Wine Law and repeals provisions providing for an excise or license tax on native wines and provisions providing for an additional tax on manufacturers or retailers of sparkling wine or still wine domiciled outside the state who directly ship to a consumer within the state.

New law excludes the wine producer from the definitions of manufacturer and supplier and defines "wine producer" and "winery".

New law provides that no person shall, at the same time, engage in business as a manufacturer or wine producer and as a wholesaler, as a manufacturer or wine producer and as a retailer, or as a retailer and as a wholesaler of any regulated beverage.

New law authorizes a wine producer to sell or serve its finished product at retail directly to consumers at its winery; to sell or serve its finished product directly to consumers at such places as fairs, festivals, and farmers' markets; and to sell and ship directly to a consumer in La. if the total amount of wine shipped does not exceed forty-eight 750 milliliter bottles per calendar year per adult person per household address.

New law excepts a wine producer from the provisions in existing law prohibiting alcoholic beverage from being sold, offered for sale, shipped or transported into or within the state except to the holder of a wholesaler's permit.

New law authorizes a wine producer to directly ship wine to be sold and shipped to a consumer in La. under the same requirements as a manufacturer or retailer.

Effective upon signature of governor (June 30, 2006). (Amends R.S. 26:2(10) and (17), 85, 142, and 359(B), (C), (D), (E), and (G); Adds R.S. 26:2(21) and (22) and 71(A)(6) and (7); Repeals R.S. 26:321-327 and 341(A)(5) and (B))

### **Alcoholic Beverages Licensing (Act No. 803)**

New law makes numerous changes in classifications of and fees for various types of alcoholic beverage licenses.

Effective August 15, 2006. (Amends R.S. 26:2(12) and 71(A)(3)(c), 71.1(1)(b) and (f) and

(3)(a), 241(8)(12) and (18), 271(A)(1)(4) and (5), and 271.2(1)(b) and (f) and (3)(a); Adds R.S. 26:71(A)(3)(d), 71.2, 73(B)(1)(f), 271(A)(6), 271.3, and 272(B)(1)(f))

### **Restriction on Bars Near Jails or Halfway Houses (Act No. 671)**

New law includes "a correctional facility housing inmates, including a halfway house" within the restrictions prohibiting the issuance of an alcoholic beverage permit for dealers in beverages of high and low alcoholic content within specified distances from schools, public playground, full-time day care centers, churches or synagogues, or public library.

Effective August 15, 2006. (Amends R.S. 26:81(C)(1) and (D) and 281(C)(1)(a) and (2), (D), and (F))

## **TITLE 27: LOUISIANA GAMING CONTROL LAW**

### **Truck Stop Facilities Force Majeure Exception (Act No. 42)**

Existing law provides for the operation of video draw poker devices and requires an on-site restaurant for truck stop facilities.

Existing law requires that for a truck stop to be a qualified facility a restaurant with specified features must be maintained on-site. New law provides an exception to this requirement for reason of force majeure affecting the ability to maintain the on-site restaurant for a reasonable period of time as determined by the division in the office of state police.

New law requires the board or division to allow a licensee to temporarily turn in his license for reasons of force majeure affecting his ability to operate the business described in the application for an indefinite period of time as determined by the division. Permits the licensee to renew a turned in license. Requires the license be returned to the licensee within 10 days of completion of a compliance inspection by the division and the division finds that the licensee is capable of resuming business operations and is in compliance with all applicable physical amenities and permit requirements.

New law requires the board or division to terminate the device operation fees when a licensed device is destroyed as the result of force majeure and in such case, the device operation

fees will terminate in the quarter following the quarter in which the device was destroyed.

Effective upon signature of the governor (May 12, 2006). (Amends R.S. 27:306(A)(4) (c)(ii)(intro para); adds R.S. 27:308(B)(4) and (5))

#### **Qualified Truck Stop Expropriation Excuse (Act No. 679)**

Existing law provides for the licensing of qualified truck stop facilities for the operation of video draw poker devices and provides for criteria for the qualified truck stop.

New law suspends those criteria if any portion of the property is expropriated and the expropriation affects those particular criteria. Allows the licensee to continue to operate video draw poker devices until it is possible for the licensee to meet the criteria.

Effective August 15, 2006. (Adds R.S. 27:306(A)(4)(d))

#### **Specialized Counseling Services (Act No. 612)**

New law provides that no person shall hold himself out to be a counselor with a specific specialty to provide mental health or substance abuse services, or attempt to provide counseling services in this state, and receive fees either from the patient or a third party, unless he is authorized to practice in the specific specialty area by the appropriate state or regulatory authority.

Effective August 15, 2006. (Adds R.S. 28:185)

### **TITLE 28: MENTAL HEALTH**

Nothing of particular interest.

### **TITLE 29: MILITARY, NAVAL, AND VETERANS' AFFAIRS**

#### **Design-Build Projects by Louisiana Military (Act No. 38)**

New law authorizes the adjutant general and the Military Department, with approval of the commissioner of administration, to utilize the design-build method in contracting for construction in areas where a gubernatorial declared state of emergency exists due to Hurricane Katrina or Rita including areas impacted by permanent personnel or unit relocation.

New law shall be void and shall have no effect after June 30, 2008.

Effective upon signature of governor (February 23, 2006). (Adds R.S. 29:42)

#### **Homeland Security and Emergency Preparedness (Act No. 35)**

New law creates a new state agency, the Governor's Office of Homeland Security and Emergency Preparedness, in the office of the governor, which shall be responsible for homeland security and emergency preparedness in the state.

New law grants the director of the office, during a gubernatorially declared disaster or emergency, authority to expend funds for emergency protective measures even if there is no budget authority or funds available. Also requires all state agencies and departments to comply with directives from the office relating to emergency planning and operations.

Effective upon signature of governor (February 23, 2006). (Amends R.S. 29:1(B), 722(A)(1), 724(B)(3), (C), and (D), 725, 726(A), (E)(intro para.), and (F), 727(A), 728(A) and (C), 730(C), 731.1(A), 737(C), 764(A)(1), 766(B), and 767, R.S. 30:2458(A)(9), R.S. 36:4(B)(1)(n), R.S. 40:2841, 2842(3), and 2844(B)(6), and R.S. 49:1055(D); Adds R.S. 36:4(B)(1)(g))

#### **Emergency and Foreign Health Care Providers (Act No. 696)**

New law 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.

New law 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.

New law also requires out-of-state health care providers to present a copy of their state license and photo ID to the appropriate Louisiana

licensing board within two weeks of beginning service.

New law 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)

**Health Care Providers in Emergencies (Act No. 244)**

New law provides that during a declared state of emergency in this state 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 of the provider.

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

**TITLE 30: MINERALS, OIL, AND GAS AND ENVIRONMENTAL QUALITY**

**Noise Pollution (Act No. 445)**

New law repeals until June 30, 2007 the jurisdiction of DEQ relative to the regulation of noise pollution.

New law effective July 1, 2007 requires DEQ to regulate noise pollution and further requires DEQ to adopt and promulgate rules and regulations establishing and implementing a comprehensive program for the control and abatement of environmental noise pollution.

Effective upon signature of the governor (June 22, 2006). (Amends R.S. 30:2011(A)(1) and 2052; repeals R.S. 2011(A)(2), 2053(5), and 2054(B)(7); adds R.S. 30:2011(A)(2), 2053(5), 2054(B)(7))

**Expedited Permitting by DEQ (Act No. 586)**

New law authorizes the secretary of DEQ to develop and implement a program to expedite the processing of permits, modifications, licenses, registrations, or variances for environmental permit applicants who may request such services and requires the secretary to adopt rules in accordance with the APA, which include a notice that indicates such permit is an expedited permit.

Effective August 15, 2006. (Adds R.S. 30:2014.5)

**Environmental Damages to Property (Act No. 312)**

New law provides legislative findings that the natural resources and the environment of the state, including ground water, are to be protected, conserved, and replenished insofar as possible and consistent with the health, safety, and welfare of the people and further mandates that the legislature enact laws to implement this policy. Further provides that it is the duty of the legislature to set forth procedures to ensure that damage to the environment is remediated to a standard that protects the public interest. Further provides that its provisions shall not be construed to impede or limit provisions under private contracts imposing remediation obligations in excess of the requirements of the department or limit the right of a party to a private contract to enforce any contract provision in a court of proper jurisdiction.

New law provides that its provisions shall be the procedure for judicial resolution of claims for environmental damage to property arising from activities subject to the jurisdiction of the Dept. of Natural Resources, office of conservation.

New law defines "environmental damage" as any actual or potential impact, damage, or injury to environmental media caused by contamination resulting from activities associated with oilfield sites or exploration and production sites. Provides that environmental media shall include but not be limited to soil, surface water, ground water, or sediment.

New law sets forth following procedure:

1. Immediately upon the filing or amendment of any litigation or pleading making a judicial demand arising from or alleging environmental damage, the provisions of the new law apply and the party filing same shall provide timely notice to the state of Louisiana through the commissioner of conservation and the attorney general. The litigation shall be stayed with respect to any such judicial demand until 30 days after such notice is issued and return receipt is filed with the court. No judgment or order granting relief or dismissing the litigation may be rendered until timely notice has been given.

2. The department or the attorney general shall have the right to intervene in such litigation. Additionally, they are not precluded from independently bringing any civil or administrative enforcement action, and the department may respond in a timely manner to an inquiry or request by a landowner for investigation. If the court finds that no environmental damage exists, the court may dismiss the department or attorney general from the litigation without prejudice.

3. If at any time during the proceeding a party admits liability for environmental damage or the finder of fact determines that environmental damage exists and determines the party or parties who caused the damage or who are otherwise legally responsible therefor, the court shall order the party or parties who admit responsibility or whom the court finds legally responsible for the damage to develop a plan or submittal for the evaluation or remediation to applicable standards of the contamination that resulted in the environmental damage.

4. The court shall order that the plan be developed and submitted to the department and the court within a time that the court determines is reasonable and shall allow the plaintiff or any other party at least 30 days from the date each plan or submittal was made to review the plan or submittal and provide to the department and the court a plan, comment, or input in response. Provides that the department shall consider any plan, comment or response timely provided. Also provides that the department shall submit to the court a schedule of estimated costs for such review and the court shall require the party admitting responsibility or the party found legally responsible by the court to deposit in the registry of the court sufficient funds to pay the cost of the department's review. Any plan or submittal shall include an estimation of cost to implement the plan.

5. The department shall conduct a public hearing on the plan or plans submitted. The department shall approve or structure a plan based on the evidence submitted which the department determines to be the most "feasible plan" to evaluate or remediate the environmental damage and protect the health, safety, and welfare of the people. The plan approved by the department for submission to the court is not to be considered an "adjudication" subject to direct

appellate review pursuant to R.S. 49:964 or R.S. 30:12.

6. Requires the court to adopt the plan approved by the department, unless a party proves by a preponderance of the evidence that another plan is a more "feasible plan" to adequately protect the environment and the public health, safety, and welfare.

7. Requires an appeal of a plan to the appellate court to be a "de novo" review and requires it to be heard with preference and on an expedited basis. Authorizes the appellate court to affirm or adopt a "feasible plan" in conformity with the new law.

8. Damages or payments in any civil action, including interest, awarded for the evaluation or remediation of environmental damage are to be paid exclusively into the registry of the court in an interest-bearing account with the earnings accruing to the account for "cleanup."

9. The court shall retain jurisdiction over the funds deposited and the party or parties admitting responsibility or the party or parties found legally responsible by the court until such time as the evaluation or remediation is completed. If the court finds the amount of the initial deposit insufficient to complete the evaluation or remediation, the court shall, on the motion of any party or on its own motion, order such party or parties admitting responsibility or found legally responsible by the court to deposit additional funds into the registry of the court.

10. The court and department shall retain oversight to ensure compliance with the plan. The party shall file progress reports periodically as the court or the department may require.

11. A party providing evidence, in whole or in part, upon which the judgment is based shall be entitled to recover from the party admitting responsibility or the party found legally responsible, various costs, and reasonable attorney fees incurred in the trial court and the department.

12. Settlements must be approved by the court. If the settlement is a case in which the department or the attorney general intervened, such agency shall be entitled to recover from the settling defendants all costs, including investigation, evaluation, and review costs;

expert witness fees; and reasonable attorney fees.

New law provides if the owner or operator of any oilfield site or exploration and production (E&P) site covered by the provisions of the new law performs any environmental testing on land owned by another person, results of such environmental testing shall be provided to the owner or owners of the land (and to DNR if the land is an oilfield or E&P site) within ten days from receipt of such results by the owner or operator, regardless of whether or not suit has been filed by the owner or owners of the land.

Effective upon signature of governor (June 8, 2006). (Amends R.S. 30:82(6), 89.1 and 2015.1(B), (C)(1), (2), and (4), (D), (E)(1), (F)(2), (H), (I), and (K); adds R.S. 30:29, 29.1, and 2015.1(L))

#### **Faster DEQ Permit Procedures (Act No. 117)**

Prior law, relative to the Department of Environmental Quality, provided that the completeness review procedure for permit applications for new facilities and applications for substantial permit modifications cannot extend beyond 110 days from the date the application is submitted.

New law requires that certain administrative completeness review on permit application is to be made with 60 days after the application is submitted, except where additional time is required to correct information or deficiencies in the application.

New law changes the number of days from 110 days to 60 days.

Prior law provided that the final decision on the permit applications for new facilities and applications for substantial permit modifications cannot extend beyond 410 days from the date the application is submitted.

New law changes the number of days from 410 days to 300 days, except where additional time is required for the applicant to revise or supplement technical information or deficiencies in the application, or for adjudicatory or judicial proceedings, or for required review by EPA. New law prohibits the extension for consideration of comments from exceeding 45 days.

Effective upon signature of the governor (June 2, 2006). (Amends R.S. 30:2022(B)(1) and (2))

#### **Air & Water Pollution Permits (Act No. 115)**

Prior law, relative to air quality control, required the DEQ secretary to develop permits for certain temporary air emissions of less than 180 days in duration provided the following conditions are satisfied.

New law authorizes the development of regulatory permits by the DEQ secretary and requires various conditions be met.

New law, relative to water quality control, requires that the DEQ secretary develop regulatory permits for certain water discharges provided various conditions are satisfied.

Effective August 15, 2006. (Amends R.S. 30:2054(B)(9); adds R.S. 30:2074(B)(10))

#### **Changes in Duties of DEQ (Act No. 112)**

Prior law required the secretary of DEQ, not later than 1/1/88, in conjunction with the Hazardous Waste Advisory Board begin deliberations concerning the volume and types of solid and hazardous waste reduced, generated, transported, managed, recycled, disposed of, or otherwise handled in the state.

New law requires the secretary of DEQ, not later than 1/1/07, to evaluate the volume and types of hazardous waste managed in-state, including hazardous waste reduced, generated, transported, managed, recycled, disposed of, or otherwise handled in the state.

Prior law required the secretary of DEQ, not later than 1/1/89, to make a determination, with the counsel of the board, relative to the permitted capacity of the state to safely reduce, transport, manage, recycle, dispose of, or otherwise safely handle the solid and hazardous wastes generated within the state.

New law removes prior law and requires the secretary of DEQ, no later than 7/1/07, to determine available permitted capacity for management of hazardous waste.

Prior law required that upon determining the volume and types of solid and hazardous waste generated, reduced, transported, managed, recycled, disposed of, or otherwise handled within the state and upon determining the capacity necessary to safely and judiciously

reduce, transport, manage, recycle, or dispose of these wastes, the secretary will determine the total permitted capacity necessary to manage or dispose of solid and hazardous waste. New law removes those provisions.

Prior law required the secretary ensure that the expansion or modification of existing treatment, storage, or disposal facilities needed to promote improvements in handling, treatment, destruction, or disposal of wastes and the construction of new facilities which would result in the generation of additional waste, be provided for in determining the capacity limits to be permitted.

New law removes those provisions.

New law requires the secretary to consider pending applications for the expansion or modification of existing hazardous waste facilities and approved construction of new hazardous waste facilities when evaluating available permitted capacity.

New law requires the secretary to consider available permitted capacity as it relates to hazardous waste resulting from an emergency situation before issuing additional hazardous waste permits.

New law requires a 15% limitation above the total permitted capacity to be applied on an aggregate basis and prohibits same from being applied individually to a certain facility.

New law waives the 15% limitation during a response to a natural disaster or where such limitation could significantly impede or prevent the protection of human health and the environment.

New law requires the secretary to notify the House Committee on Environment and the Senate Committee on Environmental Quality and provide public notice of any revision of the 15% limitation.

Prior law prohibited the secretary from issuing any permits or licenses for the handling, treatment, destruction, and disposal of solid or hazardous waste which would increase the total permitted capacity of Louisiana to manage or dispose of such waste in an amount in excess of 15% greater than the necessary total permitted capacity of this state as determined by the secretary. Prior law further required the secretary to reassess on a quarterly basis the

capacity necessary to handle, treat, destroy, manage, and dispose of wastes generated in La. and to insure that there is sufficient capacity to maintain the capacity within La. to handle, treat, destroy, manage, and dispose of this waste at the level and in that amount as required. New law removes these provisions.

Prior law authorized the secretary to vary the total permitted capacity above the 15% limitation for any year by rule adopted in accordance with the APA, provided the secretary finds, based on reliable evidence in the record of a public hearing on the proposed rule, that failure to increase the total permitted capacity above the limitation required by law will result within one year in insufficient capacity for the proper handling, treatment, storage, and disposal of solid or hazardous waste generated in the state. New law removes this authorization.

Effective August 15, 2006. (Amends R.S. 30:2179)

#### **DEQ Review of Environmental Conditions (Act No. 778)**

New law authorizes the secretary of the Dept. of Environmental Quality (DEQ) to promulgate rules and regulations to conduct requested reviews of environmental conditions of a specified tract of immovable property, such as no further action letters.

New law requires the secretary to promulgate rules for determining whether environmental media, such as soil and water, are hazardous wastes. Requires the department to collect a fee not to exceed \$3,000 for such determinations.

Effective August 15, 2006. (Amends R.S. 30:2186(A); Adds R.S. 30:2011(D)(25))

#### **DEQ Liens and USTs (Act No. 447)**

New law authorizes the secretary of DEQ to file liens with the same ranking as provided by law to recover expended funds.

New law prohibits DEQ from expending funds on behalf of an owner or operator of an underground storage tank who continues to operate such system.

New law authorizes monies to be expended from the Tank Trust Fund for approved costs up to such sums which are necessary to satisfy federal petroleum underground storage tank financial

responsibility requirements (40 CFR 280.93) or \$1,000,000, whichever is greater.

New law authorizes that a certified copy of the lien authorized by new law be provided with the initial application for reimbursement.

New law provides that a lien filed by the department with the same ranking and privilege as that authorized by law may be substituted for the financial responsibility requirement, but in no case will the lien be substituted on behalf of an owner or operator who continues to operate the system as provided in regulations promulgated by DEQ.

New law restricts the amount of liens that can be substituted for the financial responsibility amount to 20% of the amounts collected in the previous fiscal year.

Prior law provided the amounts of fines for certain violations.

New law provides that after 8/1/06, sites that are determined to be noncompliant with regulations promulgated by DEQ for release reporting, release detection installation operating recordkeeping, release detection reporting, spill and overfill operating requirements, cathodic protection construction, cathodic protection operation maintenance recordkeeping, or proper assessing at closure or change in service, the financial responsibility amount is \$10,000.

New law authorizes the secretary or his designee to exclude from coverage any underground storage tank system whose owner or operator has been found to have consistently failed to comply with the certain requirements provided in law.

New law authorizes the secretary of DEQ or his designee to prohibit the delivery of fuel to any underground storage tank excluded from coverage until such time as the owner operator secures financial assurance that satisfies the federal petroleum underground storage tank financial responsibility requirements.

Effective August 15, 2006. (Amends R.S. 30:2195.2(A)(1)(c)(ii), and (3), 2195.4(A), and 2195.10; adds R.S. 30:2195.9(A)(6))

### **Voluntary Remedial Action Plans (Act No. 645)**

New law requires site investigations to be performed pursuant to work plans that have been approved by DEQ.

New law requires DEQ to review the work plan and either approve such plan or provide written notices of deficiencies in the investigation work plan within 90 days of the department's receipt.

New law requires approval of the voluntary investigation report by DEQ prior to the applicant submitting a voluntary remedial action plan.

New law requires the applicant to submit a voluntary remedial action plan after the investigation report is approved in order to receive immunity from liability under existing law.

Effective August 15, 2006. (Amends R.S. 30:2286.1(A) and (B))

### **Solid Waste Laws (Act No. 829)**

New law makes various revisions to solid waste statutes, definitions of lubricants, used oil, white goods, and recycling statutes.

New law provides that the rules shall require, rather than promote, the use of recycled products and provides that such rules shall include at a minimum EPA's Comprehensive Guideline for Procurement of Products Containing Recovered Materials.

Effective August 15, 2006. (Amends R.S. 30:2411(B)(1), 2412, 2413(A)(8), 2415, 2417(A)(5), 2420(B), and 2421(B); Adds R.S. 30:2162 and 2413(A)(10); Repeals R.S. 30:2412(1.1) and (4.1) and 2417(A)(6) and (7) and (E)(4))

### **DEQ to Develop Debris Management Plan (Act No. 662)**

New law requires the secretary of DEQ to develop and implement a comprehensive debris management plan, consistent with federal law, for debris generated by natural disasters, including debris generated from the rebuilding efforts of disasters.

Effective August 1, 2006. (Adds R.S. 30:2413.1)

## **Louisiana Mercury Risk Reduction Act (Act No. 126)**

On and after 1/1/07, prohibits mercury-added product from being offered for final sale or use or distributed for promotional purposes in Louisiana without prior notification in writing by the manufacturer of the product to DEQ.

Restrictions on the sale of certain mercury-added products:

1. Provides that on and after 7/1/07, no mercury-added novelty shall be offered for final sale or use or distributed for promotional purposes in Louisiana. Requires that manufacturers that produce and sell mercury-added novelties notify retailers about the provisions of this product ban and how to dispose of the remaining inventory properly. Exempts novelties for which the only added mercury comes from a removable mercury-added lamp or mercury-added button cell battery from this requirement if the manufacturer of the mercury-added lamp or mercury-added button cell battery has complied with the applicable provisions of new law.

2. Provides that on and after 1/1/07, no person shall sell or supply mercury fever thermometers to consumers and patients, except by prescription. Requires that the manufacturers of mercury fever thermometers, in addition to providing notice of mercury content and instructions on proper disposal, supply clear instructions on the careful handling of the thermometer to avoid breakage and on proper cleanup should a breakage occur. Mercury fever thermometer manufacturers shall also comply with other applicable provisions of new law.

Exemptions and phase outs:

1. Provides that no mercury-added product shall be offered for final sale or use or distributed for promotional purposes in Louisiana if the mercury content of the product exceeds specified limits.

2. Provides that for a product that contains one or more mercury-added products as a component, this requirement is applicable to each component part or parts and not to the entire product.

3. Provides that for a product that contains more than one mercury-added product as a component, the phase out limits above shall

apply to each component and not the sum of the mercury in all of the components. For a newly manufactured automobile containing mercury-added displays and lighting, the phase out limits would apply to each component separately, and not the combined total of mercury in all of the components.

4. Provides that fluorescent lamps be exempt from the above requirements.

5. Provides that a mercury-added product shall be exempt from the limits on total mercury content, if the level of mercury or mercury compounds contained in the product are required in order to comply with federal or state health, safety, or homeland security requirements.

6. Requires that DEQ promulgate regulations that provide for manufacturers to apply for exemptions.

Labeling of mercury-added products:

1. Provides that no mercury-added product manufactured on and after 7/1/08, shall be offered for final sale or use or distributed for promotional purposes in Louisiana unless both the product and its packaging are labeled in accordance with new law, any adopted rules, or the terms of any approved alternative labeling or notification granted under new law. A retailer may not be found in violation of new law if the retailer lacked knowledge that the product contained mercury.

2. Provides that where a mercury-added product is a component of another product, the product containing the component and the component must both be labeled. The label on a product containing a mercury-added component shall identify the component with sufficient detail so that it may be readily located for removal.

3. Requires that all labels be clearly visible prior to sale and must inform the purchaser, using words or symbols, that mercury is present in the product and that the product should not be disposed of or placed in a waste stream destined for disposal until the mercury is removed and reused, recycled, or otherwise managed to ensure that the mercury in the product does not become mixed with other solid waste or wastewater.

4. Requires that labels affixed to the product be constructed of materials that are

sufficiently durable to remain legible for the useful life of the product.

5. Provides that on and after 7/12/08, any person offering a mercury-added product for final sale or use or promotional purposes to an address in Louisiana shall clearly advise the purchaser or recipient at the point of sale that the product contains mercury. Provides that this requirement shall apply to all transactions where the purchaser or recipient is unable to view the labels on the package or the product prior to purchase or receipt, including but not limited to catalogue, telephone, and Internet sales.

6. Provides that responsibility for product and package labels required by new law be on the manufacturer and not on the wholesaler or retailer unless the wholesaler or retailer agrees with the manufacturer to accept responsibility in conjunction with implementation of an alternative to the labeling requirements of new law.

#### Labeling for specific products:

Requires that labeling of appliances which are sold in a store where the appliance is on display meet all requirements of new law except that no package labeling is required. Labeling of fever thermometers and button cell batteries shall meet all requirements of new law, except that no product labeling is required. Labeling of newly manufactured motor vehicles shall meet all requirements of new law except that the mercury-added components are not required to be labeled. Requires that a doorpost label list the mercury-added components that may be present in the vehicle.

#### Disposal ban and proper management of mercury in scrap metal facilities:

1. No person shall crush a motor vehicle unless the person has made a reasonable effort to remove or verify that the mercury contained within convenience lighting switches and antilock braking system components have been removed.

2. No person shall shred an appliance unless the person has made a reasonable effort to remove or verify that the component mercury-added products have been removed.

#### Collection of mercury-added products:

1. Provides that on and after 7/1/07, no mercury-added product containing more than 10

milligrams of mercury shall be offered for final sale or use or distribution for promotional purposes in Louisiana unless the manufacturer either on its own or in concert with other persons has submitted a plan for a convenient and accessible collection system for such products when the consumer is finished with them and such a plan has received approval of the DEQ. Where a mercury-added product is a component of another product, the collection system shall provide for removal and collection of the mercury-added component. Requires that the DEQ promulgate regulations that provide for the requirements of the collection plan.

2. Within a year of the DEQ approval of the collection system plan, the manufacturer or entity that submitted the plan on behalf of the manufacturer shall ensure that a convenient and accessible recovery system for the users of those products is in full operation.

3. Manufacturers of mercury-added products may apply for an exemption from the collection requirements by forwarding an exemption request to the DEQ.

#### Disclosure for mercury-containing formulated products used in health care facilities:

Provides that on and after 7/1/07, the manufacturers of formulated mercury-added products that are offered for sale or use to a health care facility in Louisiana shall provide both the DEQ and the recipient health care facility a notice of the mercury content of the product, down to a one ppm level. The notice shall report the result of an analysis performed for mercury on the specific batch or lot of that product offered for sale. The batch or lot number of the product shall be clearly identified on the product and on the notice.

#### Limitations on the use of elemental mercury:

1. Provides that on and after 7/1/07, no person shall offer for sale or distribute for promotional purposes or provide elemental mercury without providing a Material Safety Data Sheet, as defined in 42 U.S.C. 11049, and the seller, distributor, or provider shall require the purchaser or recipient at the time of receipt of any elemental mercury to sign a statement,

2. Requires DEQ to promulgate regulations providing for the appropriate manner of disposal of mercury used for medical and dental purposes.

3. Authorizes DEQ to prepare and publish best management practice guidelines for dental offices and laboratories to facilitate compliance with the disposal ban.

Existing inventories:

Provides that mercury-added products with a code or date of manufacture indicating the products were manufactured prior to the effective date of new law, or that are meant to service products manufactured prior to the effective date of new law, are exempt from new law if there are no reasonable non-mercury alternatives.

State procurement preferences:

Requires all state agencies, by 7/1/07, to revise their policies, rules, and procedures to implement the purposes of new law. Requires that in purchasing decisions, state agencies give priority and preference to the purchase of equipment, supplies, and other products that contain no mercury-added compounds or components, unless there is no economically feasible non-mercury-added alternative that performs a similar function.

Water and wastewater system use:

Provides that on and after 8/1/06, no person shall install a mercury switch or mercury containing device in any drinking water system or waste water system including, but not limited to level indicators, float switches, pump control, and pressure sensing systems.

Effective upon signature of the governor (June 2, 2006). (Adds R.S. 30:2571-2588)

### **TITLE 31: MINERAL CODE**

#### **Reservations of Mineral Rights (Act No. 446)**

Prior law, relative to minerals and mineral rights, provided that the owner of land burdened by a mineral right or rights and the owner of a mineral right must exercise their respective rights with reasonable regard for those of the other. Similarly the owners of separate mineral rights in the same land must exercise their respective rights with reasonable regard for the rights of other owners.

New law provides that a reservation of mineral rights in an instrument transferring ownership of land must include mention of surface rights in

the exercise of the mineral right reserved if not otherwise expressly provided by the parties.

New law provides that the provisions of this Act are to be given prospective application only and only apply to reservations of mineral rights in instruments transferring ownership of land confected on and after the effective date of this Act.

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

### **TITLE 32: MOTOR VEHICLES AND TRAFFIC REGULATION**

#### **No Smoking in Cars with Children Present (Act No. 838)**

New law prohibits the operator or any passenger in a motor vehicle from smoking cigarettes, pipes, or cigars in a motor vehicle, passenger van, or pick-up truck, when a child under the age of 13 is present, regardless if the windows of the motor vehicle are down.

New law provides for a fine of \$150 per violation, or at the discretion of the judge, the offender may be sentenced to no less than 24 hours of community service.

Effective August 15, 2006. (Adds R.S. 32:300.3)

#### **Use of Car Horns (Act No. 488)**

New law exempts mobility impaired persons from the prohibition on using a motor vehicle horn for purposes other than safe operation of the vehicle.

Effective August 15, 2006. (Amends R.S. 32:351(A))

#### **Sun Screen Devices (Act No. 459)**

Prior law provided that any seller, installer, manufacturer, or distributor of a sun screening device who violates prior law shall be fined not more than \$500 for a first offense, not more than \$1,000 for a second offense, and not more than \$1,500 for a third or subsequent offense.

New law requires a fine of \$1,000 for a first offense, \$2,000 for a second offense, and requires that the offender be prohibited from conducting any business specified in prior law for a third or subsequent offense.

Effective August 15, 2006. (Amends R.S. 32:361.1(G))

**Liability for Unlicensed Minor Drivers (Act No. 650)**

New law provides that any person who causes or who knowingly permits an unlicensed minor to drive a motor vehicle or power cycle on a public road or highway and the owner of vehicle who knowingly gives or furnishes a motor vehicle or power cycle to an unlicensed minor is jointly and severally liable for damages caused by the negligence or willful misconduct of the minor driving the vehicle.

Effective August 15, 2006. (Amends R.S. 32:402(B)(1)(a) and (c), 416, 417(A), and 427(A)(1); adds R.S. 14:92.2(A)(4) and (B)(3) and R.S. 32:417(D) and (E))

**Class A Commercial Driver's Licenses (Act No. 97)**

New law authorizes a person to take a skills test for a Class "A" commercial driver's license in a vehicle other than a tractor-trailer combination. Such person shall be issued a license with a restriction prohibiting the operation of a tractor-trailer combination. The restriction may be lifted if a skills test for a tractor-trailer combination is later taken.

Effective August 15, 2006. (Amends R.S. 32:408(B)(2)(a))

**Post-Accident Drug Testing (Act No. 523)**

New law requires postaccident drug testing of the operator of any motor vehicle which is involved in a collision that results in a fatality.

New law requires that the test or tests be administered at the direction of a law enforcement officer having reasonable grounds to believe the person to have been driving or in actual physical control of a motor vehicle which is involved in a fatal collision.

New law requires, in the case of all traffic fatalities, the coroner to perform or cause to be performed a toxicology screen on the victim or victims of all traffic fatalities for determining evidence of the presence of any abused substance or controlled dangerous substance or any other "impairing substance," which includes the extracting of all bodily substance samples necessary for such toxicology screen.

New law provides for the provisions of the postaccident drug test be administered in the same manner and subject to the same

requirements of tests for suspected drunken drivers.

Effective August 15, 2006. (Adds R.S. 32:681)

**Auto Title Company Regulation (Act No. 409)**

New law provides that only those auto title companies who have confected a contract with the Department of Public Safety and Corrections shall be allowed to issue temporary registrations.

New law changes various provisions of existing law to reflect the change from licensed to contract auto title companies.

New law provides that any person whose contract has been suspended, canceled, or revoked during the effective term of the contract may request an administrative hearing to review the department's action and a request for administrative review shall stay the action of the department.

Effective August 15, 2006. (Amends R.S. 32:735 and 737(A)(intro. para.) and (2), (4), (10), and (11), (B), and (C) and R.S. 47:532.1(A)(1); Adds R.S. 32:737(A)(12))

**Recreational and Used Vehicle Laws (Act No. 440)**

New law reorganizes and modifies the Louisiana Recreational and Used Motor Vehicle Commission law.

New law provides that "recreational products" means new and unused motorcycles, all-terrain vehicles, marine products, recreational vehicles, and trailers as defined in existing law.

Effective August 15, 2006. (Adds R.S. 32:781-822; Repeals R.S. 32:751-766 and 771-780)

**Insurance of Water-Damaged Vehicles (Act No. 692)**

New law provides an exemption for water-damaged vehicles from compulsory motor vehicle insurance requirements.

New law provides that the exemption only applies if the registered owner of a water-damaged vehicle applies for a certificate of destruction in accordance with procedures established by the secretary.

New law is effective for the period 8/15/06 until 8/15/07.

Effective August 15, 2006. (Amends R.S. 32:861(A)(2))

**Exception from Required Car Insurance (Act No. 406)**

Existing law requires insurance coverage or other liability security on motor vehicles.

New law provides that sanctions will not be imposed for failure to maintain security on vehicles damaged in a natural disaster.

Effective August 15, 2006. (Amends R.S. 32:863(B)(3), (C), and (D)(1); Adds R.S. 32:863(E))

**Motor Vehicle Dealer Laws (Act No. 352)**

New law removes unused motor vehicles from the definitions of "distributor", "wholesaler", and "motor vehicle dealer".

New law removes specific references to corporations from the definition of "motor vehicle lessor". Existing law requires that applications for license as a motor vehicle lessor be accompanied by the filing with the commission of a bona fide contract or franchise in effect between the applicant and a motor vehicle lessor franchisor of the new motor vehicle or vehicles proposed to be dealt in for a specific location in the state of Louisiana. New law retains existing law but provides that any bona fide contract between the applicant and the motor vehicle lessor franchisor is sufficient.

Effective August 15, 2006. (Amends R.S. 32:1252(8), (22)(a), and 23(a) and 1254(J)(4)(a))

**TITLE 33: MUNICIPALITIES AND PARISHES**

**Zoning Law Changes (Act No. 185)**

New law eliminates the requirement that lot boundary changes do not involve the creation of any new street or other public improvement.

New law additionally provides that the administrative procedures for the approval or certifying of plats involving minor modifications of existing parcels may provide for the dedication, acceptance, relocation, or deletion of public utility servitudes, other than streets, or the deletion of gas, electric, or telephone utility servitudes acquired by private act or pursuant to the provisions of R.S. 19:1, *et seq.* (expropriation) on the property being resubdivided.

Effective upon signature of governor (June 2, 2006). (Amends R.S. 33:113.1(A)(1)(a) and (B); adds R.S. 33:113.1(C))

**Parish Manager Ethics (Act No. 85)**

New law no longer allows a parish manager or assistant parish manager to be a member of the police jury.

New law no longer provides an exemption from the dual officeholding prohibitions to allow an elected police juror to be employed as a parish manager or assistant parish manager.

New law provides that any member or former member of a parish governing authority who was serving as a parish manager prior to the effective date of new law (May 25, 2006) may continue to serve as parish manager. Requires recusal of such member from any vote regarding his employment as parish manager.

Effective upon signature of governor (May 25, 2006). (Amends R.S. 33:1236.1; Adds R.S. 42:1121.1; Repeals R.S. 42:66(E))

**Less Time to Dispute Abandonment of Property (Act No. 18)**

New law shortens the period of time for owners or other interested parties to contest the acquisition of abandoned property by a parish or municipality from 120 days after recordation of the ordinance acquiring same to 60 days.

Effective April 18, 2006. (Amends R.S. 33:2891.3(C))

**Governmental Energy Efficiency Contracts (Act No. 814)**

Existing law authorizes a request for proposals process for award of certain performance-based energy efficiency contracts by political subdivisions.

New law adds detailed provisions defining energy efficiency contracts and other terms and regulating the request for proposals process.

New law requires that full capabilities to operate, maintain, repair, update, reconfigure and engineer changes necessary to accommodate facility or operational changes or incorporate new energy savings control strategies be provided for any system proposed pursuant to existing law to the using political subdivision or its designee.

New law provides that the guarantee of energy savings be for at least the term of the bonds sold or financing arrangement of the political subdivision to support the terms of the energy performance contract.

Effective July 1, 2006. (Amends R.S. 33:4547.1(B), 4547.2(B) -(E), and 4547.3; adds R.S. 33:4547.1(C) and (D), and 4547.2(F) - (H))

**Redevelopment Authority Bonds (Act No. 666)**

New law authorizes the New Orleans Redevelopment Authority to issue bonds for commercial projects and to facilitate new markets tax credit financed projects.

Effective upon signature of the governor (June 29, 2006). (Amends R.S. 33:4720.55(D), (E), (F)(1), 4720.57(F) and 4720.71(1)-(21); adds R.S. 33:4720.57(G), 4720.71(22)-(30), and 4720.71.1)

**Nonconforming Uses Stopped by Katrina/Rita (Act No. 737)**

New law prohibits a municipal or parish governing authority and any municipal or parish agency from allowing or causing any building or land to lose its nonconforming use status because, during all or part of the period of August 29, 2005, through August 28, 2007, as a result of damage caused by Hurricane Katrina or Hurricane Rita, it is temporarily vacant or because the operations normally carried on in such building or on such land have been temporarily discontinued, notwithstanding any contrary law or municipal or parish ordinance or resolution.

New law authorizes the governing authority of any parish with a population greater than 400,000 according to the latest federal decennial census to reduce by ordinance the time period provided in new law, notwithstanding the provisions of new law.

Effective upon signature of governor (June 29, 2006). (Adds R.S. 33:4882)

**Inclusionary Zoning and Workforce Affordable Housing Act (Act No. 810)**

New law authorizes any municipality or parish that adopts land use or zoning ordinances, resolutions, or regulations to adopt ordinances to provide for inclusionary zoning to increase the availability of affordable dwelling units.

Effective July 1, 2006. (Adds R.S. 33:5001-5003)

**Tax Increment Financing (Act No. 850)**

For the purpose of conforming existing law relative to certain tax increment financing with La. Supreme Court decisions in the *Bass Pro* and *World Trade Center* cases, provides that a tax levied pursuant to certain existing law shall supersede and be in lieu of only such other existing taxes that do not secure authorized bonds and that have not been dedicated by law or by a vote of the electors and that are not based on a per head or per person basis. Further requires that the tax rate shall be such that the aggregate rate of all taxes of the same kind collected within the taxing district or area shall be at least equal to the rate of similar taxes levied by all taxing authorities in the district or area before the tax was levied. Also provides for a taxing district in Jefferson Parish with authority for tax increment financing.

Effective upon signature of governor (July 11, 2006). (Adds R.S. 33:9033.4 and 9038.1)

**Local and Regional Economic Development District Act (Act No. 839)**

New law authorizes the creation of local and regional economic development districts for the following purposes: (1) to facilitate the creation of jobs and to lower unemployment and underemployment by coordinating and facilitating local and regional efforts for economic development programs and projects; (2) to act as the coordinating entity in acquiring and developing real estate needed to grow the economy; (3) to receive public and private funds for such purpose; and (4) to assist businesses within the district. New law contains extensive, detailed provisions regarding the organization and powers of such districts.

Effective upon signature of governor (July 5, 2006). (Adds R.S. 33:9039.101-9039.112)

**TITLE 34: NAVIGATION AND SHIPPING**

Nothing of particular interest.

## **TITLE 35: NOTARIES PUBLIC AND COMMISSIONERS**

### **Notarial Commissions (Act No. 796)**

New law provides that a validly appointed notary public is a person who currently holds a valid notarial commission.

New law provides that a valid notarial commission is one which has not been revoked or resigned and that was issued to a person who, at the time of issuance possessed the qualifications for office set forth in prior law, and who is currently possessed of those qualifications.

New law 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, solely for the reason that it is a suspended commission, be deemed an invalid notarial commission.

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

### **Statewide Notaries (Act No. 793)**

New law authorizes non-attorney notaries who have passed the written examination, as provided in existing law after June 13, 2005, to exercise the functions of a notary public statewide.

New law provides that any non-attorney notary public in this state may take the examination provided that he register directly with the secretary of state on a form provided for that purpose and pay the examination fee authorized by law no later than 45 days before the date of a scheduled examination.

New law further provides that failure of a non-attorney notary to pass the examination shall have no effect on the status of the commission of the notary.

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

### **Recordation of Acts Affecting Immovables (Act No. 730)**

New law 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.

New law provides exceptions for cemetery plots and for inventories or partitions or any other act required by law to be performed by notaries or parish recorders under any order of court, and 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.

New law provides that notaries violating the provisions of new law shall be subject to a 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 such 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)

## **TITLE 36: ORGANIZATION OF EXECUTIVE BRANCH OF STATE GOVERNMENT**

Nothing of particular interest.

## **TITLE 37: PROFESSIONS AND OCCUPATIONS**

### **Accountants (Act No. 214)**

New law adds the Public Company Accounting Oversight Board as an organization whose standards may be adopted by the board of certified public accountants.

New law provides that an "active certificate" is granted to, or renewed by, a person who has met all requirements pursuant to the provisions of new law, including the experience requirement. A holder of a valid active certificate is licensed to use the certified public accountant or CPA title in Louisiana. Such a person is referenced in new law as a licensee.

New law provides that an "inactive certificate" is one held by a person who registers with the board in inactive status. This applies to persons who held an unlicensed certificate under the prior accountancy act or to persons granted an exemption from continuing education pursuant

to existing law. Such a person may use the designation "CPA Inactive".

New law provides that a licensee is not precluded from issuing a report with respect to a compilation of financial statements for a governmental entity with respect to which the licensee is not independent so long as the licensee specifically discloses the lack of independence prior to such engagement.

Prior law provided that prescription for claims against a certified public accountant or firm shall be suspended upon receipt from a claimant of a request for review by the society. Prescription for claims against a certified public accountant or firm shall resume when the claimant receives the final report of the review panel or when the review process required has been terminated.

New law deletes prior law and provides that a claimant's filing with the society of a written request for review and paying to the society of the \$100 filing fee shall be deemed that claimant's exercise of his right to seek judicial cognizance of the claim or claims described in the written request for review.

New law provides that after the selection of the attorney member of the public accountant review panel, each party to the action shall send to the society a deposit of \$1,200 to defray the costs of the panel. When there are multiple claimants or defendants, there shall be only one deposit required per side.

Prior law provided that a panelist or the attorney chairman shall disclose in writing to the parties, prior to the hearing, any employment relationship or financial relationship with the claimant, the certified public accountant or firm against whom a claim is asserted, or the attorneys representing the claimant or certified public accountant or firm, or any other relationship that might give rise to a conflict of interest for the panelist. New law deletes prior law.

Prior law provided for extinguishment of claims. New law repeals prior law.

New law provides if a review panel decides some claims in favor of the claimant and some claims in favor of the certified public accountant or firm, then the panel shall have the right, authority, and duty to order each party to pay such portion of the costs of the panel as the panel deems appropriate.

New law provides if the claims against a certified public accountant or firm are settled prior to the rendering of an expert opinion by a panel, then the cost of the panel shall be paid 50% by the claimant and 50% by the certified public accountant or firm.

New law provides that any portion of the deposits made by each party pursuant to new law remaining after the payment of the costs of the panel shall be refunded to each party.

Effective August 15, 2006. (Amends R.S. 37:73, *et seq.*)

#### **Increased Penalties for Attorney Runners (Act No. 684)**

Existing law provides that it shall be unlawful for any attorney to pay money or give any other thing of value to any person for the purpose of obtaining representation of any client.

Existing law prohibits any person, firm, or entity from soliciting employment for a legal practitioner, except for communications governed by the Louisiana State Bar Articles of Incorporation. Provides an exception that this prohibition does not prevent any corporation or voluntary association formed for benevolent or charitable purposes and recognized by law from furnishing an attorney at law to give free assistance to persons without means.

New law increases the penalty 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 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))

#### **Dental Licensing (Act No. 329)**

New law permits an applicant who has successfully completed any national, regional, or independent third-party clinical dental licensing examination approved by the Louisiana State Board of Dentistry and who otherwise satisfies all requirements for a dental license be granted a license by examination by applying for licensure in Louisiana within one year following the

successful completion of such clinical licensing examination.

New law permits an applicant who has successfully completed any national, regional, or independent third-party clinical dental hygiene licensing examination approved by the board and who otherwise satisfies all requirements for a dental hygiene license be granted a license by examination by applying for licensure in Louisiana within one year following the successful completion of such clinical licensing examination.

New law permits the dental hygienist, in accordance with the dentist's treatment plan, to carry out authorized procedures although the dentist is not required to be present in the dental office or treatment facility during the performance of such supervised procedures.

Effective August 15, 2006. (Amends R.S. 37:756(A), 760(A)(1), and 766; Adds R.S. 37:753(C)(4), 760(A)(15), 761(C), 764(D), 795(B)(2)(a)(iii) and (iv) and (3)(a)(iii) and (iv), and (C))

#### **Retired Volunteer Dental Licensing (Act No. 167)**

New law permits the La. State Board of Dentistry to issue a retired volunteer dental license to an applicant to practice dentistry in community health care clinics upon submission of and application to the board with a notarized statement that they shall not accept any form of remuneration directly or indirectly for providing dental services.

Effective August 15, 2006. (Adds R.S. 37:761.1 and 795(B)(1)(l))

#### **Discounted Health Care Services to Uninsureds (Act No. 744)**

New law allows licensed physicians and dentists to discount health care services rendered to uninsured individuals and further provides that such discounts shall not reduce the amount of reimbursement due physicians relative to the provisions of a contract for the delivery of health care services.

Effective June 29, 2006. (Amends R.S. 37:766; Adds R.S. 37:771.1 and 1302)

#### **Casket Marking (Act No. 330)**

New law provides that funeral establishments operating in the state shall affix, on a permanent-

type material, certain specified information on all caskets used by such establishment for burial.

Effective upon signature of governor (June 13, 2006). (Adds R.S. 37:853)

#### **Optometry Licensing (Act No. 596)**

New law extensively revises the professional licensing and conduct law for optometrists.

Effective August 15, 2006. (Amends R.S. 37:1041(B), (C)(4)(b), (5), 1048(intro para), 1048(4), (5)(a), 1057, 1061, 1063, 1065, and 1068(intro para); adds R.S. 37:1048(7)-(14), and 1063.1)

#### **Pharmacy Licensing (Act No. 164)**

New law defines approved college of pharmacy as a college or school of pharmacy which is accredited by the Accreditation Council for Pharmacy Education.

New law requires that in order for a pharmacist currently licensed in another jurisdiction to obtain a license as a pharmacist by reciprocity in this state, the applicant shall present to the board evidence of any disciplinary, criminal, or other adverse action, including arrests taken against him by another licensing jurisdiction, government agency, law enforcement agency, or court. Such action may serve as grounds for the denial of reciprocity to an applicant.

New law eliminates the effectiveness of the licensure for the remainder of the life of the registrant. Requires pharmacists desiring to continue to practice pharmacy to file the annual renewal application and meet all other requirements for active licensure.

Existing law requires a prescriber to perform certain acts in compliance with federal law in order for the pharmacist to receive reimbursement for prescriptions by Medicaid or Medicare. New law removes references to Medicare contained in existing law.

Effective August 15, 2006. (Amends R.S. 37:1164(2)(a), 1203(A)(7), 1209, 1232(B), and 1241(A)(17)(c))

#### **Physician Referrals (Act No. 819)**

New law provides relative to rural hospitals and physician referral practices.

New law provides prohibitions for physicians and healthcare facilities, with respect to referral of patients, as well as exceptions.

New law excludes from the definition of "healthcare facility," the ownership of which may restrict the ability of a physician to refer patients to the facility, the following:

1. Community healthcare clinics and rural care clinics.
2. A physician's practice or group practice, when the "practice" is owned and operated exclusively by physicians and is not licensed or Medicare-certified as a "rural health clinic."
3. A rural hospital operating as such as of 4/1/06, or the replacement of such facility.
4. A rural hospital that is a replacement facility of a rural hospital damaged or destroyed in Hurricane Katrina or Hurricane Rita.
5. Any facility "under development" as defined in the new law, including services provided by a mobile unit which is a part of an existing facility, as of 4/1/06, or operating as of 4/1/06.
6. An entity owned or operated by the state or the United States.

New law provides for the method by which a "health care facility" which desires to be removed from the referral restrictions of this law shall offer to the rural hospital, an interest in the "health care facility."

New law provides that when a rural hospital is offered the option to participate in the ownership of a healthcare facility, the offer must be for a price that is commensurate with the interest offered to such rural hospital, whether such purchase price is in the form of cash or debt, and in the case of a rural hospital that has received a 501(c)(3) determination from the IRS or is a political subdivision of the state, such interest offered is not less than a majority interest of the facility.

Effective August 15, 2006. (Adds R.S. 37:1306-1310)

#### **Real Estate Listing Agreement (Act No. 351)**

New law provides that a real estate listing agreement shall only be valid if signed by all owners or their authorized attorney.

Effective August 15, 2006. (Amends R.S. 37:1431(30))

#### **Real Estate Salespersons (Act No. 332)**

Existing law provides that a real estate salesperson or associate shall be an independent contractor of the broker with whom he is affiliated if certain conditions are met. New law clarifies existing law by providing that the real estate salesperson or associate shall be an independent contractor for all purposes and shall not be an employee of the broker if all of the conditions of existing law are met.

Effective July 1, 2006. (Amends R.S. 37:1446(H))

#### **House Purchase Agreement Forms (Act No. 333)**

New law 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.

New law 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 new law 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)

#### **Unlicensed Real Estate Agents (Act No. 343)**

Existing law provides that no person engaged in real estate activity without a currently valid license shall have the right to receive any compensation for services so rendered. Existing law also provides that any person engaging in real estate activity without a license shall return any fees collected for engaging in real estate activity.

New law adds that the commission may require the return of any fees collected by an unlicensed person engaging in real estate activity.

Effective August 15, 2006. (Amends R.S. 37:1459(D))

#### **Lifestyle Modification Recommendation Disclosures (Act No. 655)**

Prior law provided that vendors of food, dietary supplements or homeopathic remedies who

provide information or make recommendations regarding food, dietary supplements, or homeopathic remedies for a fee to make certain disclosures to their consumers.

New law requires persons who provide information or make recommendations regarding lifestyle modifications to make certain disclosures.

New law defines "lifestyle modifications" as the broad domain of traditional or homeopathic health care practices and other complementary health practices and services provided by a person who is not licensed, certified or registered to perform any of the following designated services or practices: (1) performing surgery and practicing medicine, (2) prescribing or administering any procedure involving ionizing radiation, (3) prescribing, dispensing, administering, or recommending the discontinuance of a prescription drug or device, (4) performing a chiropractic adjustment of the articulations of the joints or spine, or (5) holding out, stating, indicating, advertising, or otherwise implying to any person that he or she is a health care provider.

Effective August 15, 2006. (Amends R.S. 37:1742.1)

### **Pawnbroker Reporting (Act No. 183)**

New law provides that record entries required of pawnbrokers shall include specified personally identifiable information and the transactional information for each pawn transaction. New law further provides that personally identifiable information and transactional information shall in no event be made available to the public.

Existing law provides that every pawnbroker shall provide the information required by existing law to the chief of police or the sheriff of the parish in which he is doing business, by placing such information in the U.S. mail either in printed form or in such other form acceptable to the chief of police or sheriff.

New law provides that the required information pawnbrokers must report to the police may be provided by electronic transmission or facsimile.

Effective August 15, 2006. (Amends R.S. 37:1782(14), 1796(A), and 1798(A); Adds R.S. 37:1782(15) and (16))

### **Certified Nurse Aid Registry (Act No. 107)**

New law allows the Board of Examiners of Nursing Facility Administrators to maintain the Certified Nurse Aide Registry through an interagency agreement with DHH in accordance with applicable federal regulations.

New law further allows the board to issue certificates or other paraphernalia, which indicate registration status on the Certified Nurse Aide Registry to certified nurse aides upon request. Authorizes the board to charge an amount not to exceed the cost of providing such certificates or certification cards.

Effective upon signature of the governor (June 2, 2006). (Adds R.S. 37:2504(D) and (E))

### **Auctions (Act No. 550)**

New law redefines "auction" to be the sale by competitive bid of any property consisting of a series of invitations for offers to purchase property made by the auctioneer and offers to purchase made by members of the audience culminating in the acceptance by the auctioneer of the highest or most favorable bid.

Effective August 15, 2006. (Amends R.S. 37:3103(A)(3), (3.1) and (4))

### **Private Security Regulation (Act No. 206)**

New law authorizes a person with three years of experience with a U.S. military law enforcement agency to be licensed as a security business and/or qualifying agent of a security business.

New law authorizes classroom training by a licensed instructor who has a minimum of 3 years experience with a U.S. military law enforcement agency.

Effective August 15, 2006. (Amends R.S. 37:3276(F) and (G) and 3284(B)(3), (E)(3), (F)(2), and (J); Adds R.S. 37:3274(B)(11) and 3291(B)(12))

### **Private Security Licensing (Act No. 94)**

New law provides that no person may be eligible to apply for or be granted a license under the Private Security Regulatory and Licensing Law if convicted in any jurisdiction of any crime of violence as defined by R.S. 14:2(13).

New law provides that all licensees and persons required to be qualified under the Private Security Regulatory and Licensing Law shall have a continuing duty to inform the board of

any action which they believe would constitute a violation of such law and shall not be discriminated against because of supplying such information.

New law provides that every person who has or controls directly or indirectly more than a 5% ownership, income, or profit interest in an entity which has or applies for a license, or who receives more than 5% revenue interest related to the private security business, or every person who is an officer or a director of the company, or who has the ability, in the opinion of the board, to exercise a significant influence over the activities of a licensee, shall meet all suitability requirements and qualifications for licensees.

Effective August 15, 2006. (Adds R.S. 37:3276.1)

#### **Private Security Regulation (Act No. 198)**

Existing law provides that any person who is determined by the board, after reasonable notice and opportunity for a fair and impartial hearing, to have committed an act that is a violation of is subject to an administrative penalty of not more than \$500 per violation per day.

New law creates a new category of violations of the Private Security Regulatory and Licensing Law for certain egregious acts and provides for an administrative penalty of not more than \$5,000 per violation per day and revocation of license.

New law increases the administrative penalty for non-egregious acts in violation of existing law from \$500 to not more than \$1,000 per violation per day.

Effective August 15, 2006. (Amends R.S. 37:3288(A))

#### **Prevention Professionals (Act No. 427)**

Prior law provided for the application process and requirements for qualifications for the profession of a certified prevention specialist, registered preventionist and prevention specialist-in-training. New law repeals prior law.

New law provides for the recognition of the professions of licensed prevention professional, certified prevention professional, registered prevention professional, prevention services assistant and certified prevention supervisor.

Effective August 15, 2006. (Amends R.S. 37:3386.1(3), (10), and (14), 3387.1(A) and (E)(2), 3387.2(A) and (E)(1), 3388.2(A), (B), and (D), and 3389; Adds R.S. 36:259(E)(24) and R.S. 37:3387.10-3387.14; Repeals R.S. 37:3386.1(13) and R.S. 37:3387.7-3387.9)

#### **Real Estate Appraiser Licensing (Act No. 389)**

New law provides the real estate appraiser board may impose a civil penalty not to exceed \$5,000 and costs and attorney fees upon any person who is found to have engaged in real estate appraiser activity without a license.

New law provides that a person engaged in real estate appraiser activity without a license shall not have the right to receive any compensation for services so rendered. New law provides that in addition to any other penalties imposed under existing law, the board may require any person engaged in real estate appraiser activity without a license to return any fees collected for such activity.

New law provides that effective Jan. 1, 2008, the minimum education, examination, and experience requirements for a real estate appraiser licenses of various types shall be those mandated by the federal Appraiser Qualification Board (AQB) and published in the 2006 Real Property Appraiser Qualification Criteria or any subsequent amendments and regulations issued pursuant thereto.

Effective August 15, 2006. (Amends R.S. 37:3397(B)(1)(intro. para.) and (c), (C)(1)(intro. para.) and (c), and (D)(1)(intro. para.) and (c), and 3406(D); Adds R.S. 37:3393 (I), (J), (K), and (L) and 3397 (B)(6), (C)(5), and (D)(5))

#### **TITLE 38: PUBLIC CONTRACTS, WORKS, AND IMPROVEMENTS**

##### **Jefferson Parish Single Design-Build Contract (Act No. 33)**

New law authorizes the governing authority of Jefferson Parish to let a single contract combining the design and construction phases for hurricane protection and flood control projects that are undertaken in preparation for the 2006 hurricane season.

New law supersedes conflicting provisions of law relative to advertising, bidding, and letting contracts for public works.

Effective April 18, 2006. (Adds R.S. 38:85)

#### **DOTD and Hurricane Flood Protection (Act No. 6)**

New law reorganizes the Dept. of Transportation and Development (DOTD) office of public works and intermodal transportation into the office of public works, hurricane flood protection, and intermodal transportation and authorizes the assistant secretary for such office to administer all matters, including engineering related to the programs of the state with respect to the design, construction, extension, improvement, repair, and regulation of hurricane flood protection, including but not limited to the construction and design of a hurricane flood protection system consisting of levees and associated elements to provide protection against tidal surges within the coastal zone. DOTD is also responsible for the inspection of hurricane flood protection levees and structures within the coastal zone.

New law prohibits any hurricane flood protection construction project within the coastal zones except those included in the annual plan finally approved by the legislature regardless of the source of funds for the project. All projects undertaken pursuant to the provisions of new law are to be either funded through the Coastal Protection and Restoration Fund or other sources of funding including direct federal aid, grants, gifts, and other donations received by the state.

New law provides that nothing in new law is intended to interfere with or impede any flood protection project undertaken by any levee district within the coastal zone which is initiated prior to Jan. 1, 2006.

Effective April 18, 2006. (Amends R.S. 36:501(B) and (C)(1), 502(A) and (B), and 508.3, and R.S. 49:213.1(D), 213.4(A)(3) and (4), and 213.6(D)(1) and (2); Adds R.S. 36:509(B)(5) and R.S. 38:241-248)

#### **Reorganization of Levee Districts (Act No. 1)**

New law replaces and reorganizes various levee districts in southeast Louisiana.

Provides that, in accordance with the requirements of the Department of Defense, the Coastal Protection and Restoration Authority

("CPRA") is empowered to serve as the single entity responsible to act as the local sponsor for construction, operation, and maintenance of all hurricane, storm damage reduction, flood control, and coastal restoration projects under its jurisdiction, including the greater New Orleans and southeast Louisiana area.

Provisions of new law would become effective if the proposed constitutional amendment of Article VI, Sections 38(A)(1) and 39(A) and the addition of Article VI, Section 38.1 of the Constitution of Louisiana is adopted at the statewide election to be held on September 30, 2006.

(Amends R.S. 38:291(D)(2), (G)(2), (K)(2), and (R)(2), 301(B), 304(A) and (B), 305, and 313(C), R.S. 42:808(A)(10), and R.S. 49:213.1(C), 213.4(A)(2), 213.5(A)(10), and 213.6(A)(2)(b); adds R.S. 38:291(V) and (W), 304(D), R.S. 38:330.1-330.13, and R.S. 49:213.1(E) and 231.4(A)(7); repeals R.S. 38:291(D)(3), 304.2, and 304.3)

#### **Compensation for Takings (Act No. 567)**

New law is enabling legislation for constitutional amendments proposed in Act 853 and provides relative to taking of property for certain hurricane protection projects.

New law provides that pursuant to Article 1, Section 4(G) and Article VI, Section 42(A) of the Constitution of Louisiana, compensation paid for the taking of, or 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, shall not exceed the compensation required by the Fifth Amendment of the Constitution of the United States of America. New law further provides that its provisions shall not apply to compensation paid for a building or structure that was 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.

Provides for effective date contingent upon passage of the proposed constitutional amendments contained in Act 853 of the 06RS. (Amends R.S. 38:281(3) and (4); adds R.S. 38:249 and R.S. 49:213.10(D))

**Coastal Louisiana Levee Consortium (Act No. 10)**

Creates and provides for the Coastal La. Levee Consortium comprised of those levee districts and parishes situated in coastal south Louisiana to facilitate communication and coordination of efforts of the coastal levee districts and parishes.

Effective upon signature of governor (February 23, 2006). (Adds R.S. 38:331)

**Reporting of Katrina/Rita-Related Public Contracts (Act No. 726)**

New law applies to any state contract for a public work or for procurement of goods or services, which contract is let without competition pursuant to an executive order issued by authority granted under the Louisiana Homeland Security and Emergency Assistance and Disaster Act. Such provisions apply to contracts which have been or will be let without competition pursuant to executive orders related to Hurricane Katrina or Rita.

New law requires that for any contract subject to the provisions of new law, certain information shall be provided by the primary contractor to either the Office of Contractual Review, Office of State Purchasing, or Office of Facility Planning and Control, depending on the type of contract.

New law requires that such information be furnished no later than 45 days after the effective date of the contract or 45 days after the effective date of this Act, whichever is later.

New law requires that the contracting state agency notify the primary contractor for each contract subject to the requirements of new law. The notification shall be made no later than 10 days after the effective date of this Act for contracts which are currently in effect. Otherwise, the notification shall be made prior to execution of the contract.

New law requires that the Office of Contractual Review, Office of State Purchasing, and Office of Facility Planning and Control each maintain a listing or registry of all information reported to them pursuant to the provisions of new law.

New law provides that failure of a primary contractor to submit all of the information required as provided in new law shall be grounds for debarment. New law deems it unlawful for any person to intentionally fail to

submit such information. New law provides for fines not to exceed 1/2 of the contract amount and imprisoned for not more than six months, or both for violations.

Effective upon signature of governor (June 29, 2006). (Adds R.S. 38:2182 and R.S. 39:1518.1 and 1658)

**Public Bid Law (Act No. 102)**

Existing law (public bid law) requires state agencies and local government entities to publicly advertise any public work that will cost more than \$100,000 including labor and materials and to let the contract for the work to the lowest responsible bidder. If the project is estimated to cost less than \$100,000, the entity may undertake the project with its own employees.

New law excepts from the requirements of existing law projects for repairs of damage caused by Hurricanes Katrina and Rita administered by the office of facility planning and control.

New law provides that the office of facility planning and control shall not be allowed to negotiate contracts for public works. Requires the office to publicly advertise public works projects in the official journal of the locality of where the repairs are being performed and also in the state's official journal. Provides that if there are no bidders for such public works projects, the office may enter into competitive bidding negotiations with no fewer than two contractors.

Effective upon signature of governor (May 31, 2006). (Adds R.S. 38:2212(D)(1)(c))

**Design Professional Services (Act No. 407)**

New law states that it is the policy of the state and its agencies and political subdivisions to select providers of design professional services on the basis of competence and qualifications for a fair and reasonable price. Further prohibits the state and any of its agencies or political subdivisions from selecting providers of design professional services where price or price-related information is a factor in the selection.

New law has no effect on and does not supersede existing law relating to the authority of the Dept. of Transportation and Development to enter into design-build contracts, the authority of the La. Transportation Authority to enter into

public-private partnership contracts, the authority of the Military Dept. to enter into design contracts, or the authority for certain political subdivisions to enter into design-build contracts.

New law declares state policy that all records involved or dealing with the selection of design professional services shall be open to the public in accord with existing constitution and existing law regarding the inspection of public records.

Effective July 1, 2006. (Adds R.S. 38:2318.1)

## **TITLE 39: PUBLIC FINANCE**

### **Local Government Budget Act Changes (Act No. 363)**

The Local Government Budget Act requires the chief executive or administrative officer for a political subdivision subject to public participation to advise the governing authority or independently elected official in writing of certain budget problems.

New law provides that the written notification and the resulting budget amendment shall only be required for a special revenue fund with anticipated expenditures that equal or exceed \$500,000 rather than \$250,000.

Effective August 15, 2006. (Amends R.S. 39:1311(B))

### **Government Professional Services Procurement (Act No. 273)**

Existing law relative to professional, personal, consulting, and social services procurement, exempts contracts of a higher education entity to procure services with federal funds.

New law expands the exemption in existing law for federal funds to also include private grant funds. Requires procurements be made in accordance with all necessary grant or federal requirements.

Effective August 15, 2006. (Amends R.S. 39:1482(K))

### **Professional Government Contracts (Act No. 592)**

Existing law requires an agency seeking approval to enter into a proposed professional, personal, consulting, or social service contract in excess of \$5,000 to certify to the director of the office of contractual review that certain requirements have been met.

Prior law required the agency to certify that a short-and long-term cost-benefit analysis had been conducted which indicated that obtaining services from the private sector was more cost effective than providing such services from the agency or another state agency.

New law requires such cost-benefit analysis to be conducted only on a proposed professional, personal, consulting, or social service contract that exceeds \$50,000 and has a term of more than six months. Requires the office of contractual review to promulgate rules and regulations relative to the form and content of the cost-benefit analysis.

Effective August 15, 2006. (Amends R.S. 39:1497)

### **Long-Term Government Professional Contracts (Act No. 65)**

Existing law limits government contracts for professional, personal, consulting, or social services to periods of three years or less and provides for various exceptions.

New law adds an exception for contracts or amendments to existing contracts issued by institutions of higher education under the authority of grants or joint agreements issued by federal agencies or private grants. New law also adds an exemption for contracts or amendments to existing contracts issued to institutions of higher education under the authority of the Board of Regents for educational and research purposes supported by monies from the Louisiana Quality Education Support Fund, the Louisiana Fund and the Health Excellence Fund.

Effective May 23, 2006. (Amends R.S. 39:1514(A)(1)(d))

### **Procurement Code Fix (Act No. 96)**

Existing law, R.S. 49:965 of the Administrative Procedure Act, relative to judicial review, authorizes any aggrieved party to obtain a review of any final judgment of the district court by appeal to the appropriate circuit court of appeal.

Existing law, R.S. 49:965.1 of the Administrative Procedure Act, provides for the right of a small business to recover expenses incurred for administrative hearings when the small business prevails.

Prior law, relative to damages, provided that R.S. 49:965 did not apply to actions instituted pursuant to the La. Procurement Code. New law changes the reference from R.S. 49:965 to R.S. 49:965.1.

Effective on July 1, 2006. (Amends R.S. 39:1678.1(C))

**Hurricane Relief Programs Integrity Act (Act No. 479)**

New law prohibits persons from knowingly presenting or causing to be presented a false or fraudulent claim for funds, property, use of property, or other compensation from hurricane relief programs. Further prohibits persons from knowingly engaging in misrepresentation to obtain, or attempt to obtain, funds, property, use of property, or other compensation from hurricane relief programs.

New law authorizes the attorney general to institute a civil action in the courts of this state to seek recovery from persons who violate the provisions of new law.

New law provides that actual damages, plus legal interest, incurred as a result of a violation shall be recovered only once on behalf of the hurricane relief programs and shall not be waived by the court. Authorizes a civil fine in an amount not to exceed three times the amount of actual damages sustained by the hurricane relief programs as a result of violation. Authorizes civil monetary penalties of not more than \$10,000 for each false or fraudulent claim, misrepresentation, illegal remuneration, or other prohibited act. Provides that any person who is found to have violated it shall be liable for all costs, expenses, and fees related to investigations and proceedings associated with the violation, including attorney fees, which shall be subject to review by the court.

New law 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. Provides detailed procedures for filing the action, including intervention by the attorney general, determination of qui tam plaintiff's award.

New law provides for whistleblower protection. Affords the right to treble damages for any person aggrieved by any of the prohibited actions.

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

**TITLE 40: PUBLIC HEALTH AND SAFETY**

**ICF/MR is Now ICF/PDD (Act No. 163)**

New law changes all references from intermediate care facilities for the mentally retarded to intermediate care facilities for people with developmental disabilities.

Effective August 15, 2006. (Amends R.S. 28:454.15 and 824(A), R.S. 40:1300.51(2)(b), (3), and (5), 2006(A)(2)(k), (B)(2)(d), and (E)(2)(j), 2007.1(A)(1)(j), 2116(G) and (J)(1), 2120.4(B)(10)(c), 2180(2), 2180.1(intro. para.), and 2180.4(B), and R.S. 46:2622(6) and 2625(A)(1)(intro. para.) and (b))

**Small Restaurant Bathrooms (Act No. 846)**

New law prohibits rules that require retail food establishments which serve alcoholic beverages and consist of 500 square feet or less of usable floor area to have more than one restroom facility consisting of one water closet and one lavatory, excluding food establishments with wet bars.

Effective August 15, 2006. (Adds R.S. 40:4(A)(1)(c))

**Hand-Washing Signs (Act No. 384)**

New law requires all food services establishments to post a sign at the self-service buffet which encourages individuals to wash their hands prior to serving themselves.

Effective August 15, 2006. (Adds R.S. 40:5.5.1)

**Surrogate Birth Parent (Act No. 377)**

Existing law defines biological parents as a husband and wife who provide sperm and egg for in vitro fertilization when the fetus is carried by a surrogate birth parent who is a blood relative. New law expands the definition of biological parents to include a surrogate birth parent who is related by affinity. The provisions of the Act are remedial and are to be applied retroactively to October 24, 2005, as well as prospectively.

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

**Road Home Housing Corporation Act (Act No. 654)**

New law, Road Home Housing Corporation Act, provides for a nonprofit corporation to address housing needs as defined in the Road Home Program.

Effective upon signature of the governor (June 29, 2006). (Amends R.S. 40:600.6(A)(22); adds R.S. 40:600.26(G) and R.S. 40:600.31 - 600.38)

**Louisiana Housing Preservation Act (Act No. 355)**

New law defines a number of terms for purposes of new law, including:

Blighted housing property (a) any residential housing property for which environmental remediation is required by state law, rule, or regulation and the condition of which is found or declared by the public officer to be harmful to the health or welfare, including the economic welfare, of the residents of the local governmental subdivision (parish or municipality) wherein the residential property is located, (b) any residential housing property that, as of June 13, 2006, had been determined to be a blighted property or an adjudicated property by the local governmental subdivision, (c) any residential housing property that (i) is offered by a party in interest for inclusion on a blighted housing properties list and (ii) the current condition of which is declared by the local governmental subdivision to be below minimum habitability standards and unfit for human habitation, occupancy, or use, or (d) any residential housing property that (i) has not been legally occupied for 18 months prior to the time a public officer makes a determination that the property has been vacant for such 18-month period and (ii) has been determined to be a public nuisance by the local governmental subdivision, except no residential housing property in an area impacted by Hurricane Katrina or Hurricane Rita which was occupied as of August 28, 2005, shall be included if the owner is eligible for and receives assistance under the Road Home Housing Program.

Public officer - An officer of the parish or municipality qualified to inspect housing properties to determine compliance with building and health and safety codes and designated by resolution of the governing body.

Qualified rehabilitation entity - Any person or entity designated by the local governmental subdivision or the state housing agency (La. Housing Finance Agency) on the basis of having demonstrated knowledge and substantial experience in the construction or rehabilitation of residential housing properties, the provision of affordable housing, the restoration of blighted property, the revitalization and improvement of neighborhoods and that is well qualified by virtue of its staff, professional consultants, financial resources, and prior activities to carry out the rehabilitation of blighted residential housing properties.

Receivership - The judicially established framework for real property interest which is created by the court with respect to a blighted housing property pursuant to which a receiver is designated to preserve, rehabilitate, restore, and operate the blighted housing property.

New law authorizes a local governmental subdivision (parish or municipality) to adopt an ordinance directing a public officer to identify residential housing properties below minimum habitability standards for the purpose of establishing a blighted housing property list.

New law provides that the ordinance may direct the public officer to exclude from such inventory any property for which the expense to the local governmental subdivision of determining the cost of environmental remediation required by state or federal law would be excessive in the judgment of the local governing body.

New law provides that no residential housing property in an area impacted by Hurricane Katrina or Hurricane Rita which was occupied as of August 28, 2005, shall be included on the inventory as a blighted housing property if the owner is eligible for and receives assistance under the Road Home Housing Program.

New law provides that residential housing properties that were adjudicated or declared blighted by the local governmental subdivision as of June 13, 2006 may be added to the blighted housing property list without any additional notice to the owner or secured parties.

New law authorizes the local governmental subdivision to add properties to the blighted housing property list at any time and to delete properties at any time when the public officer finds that the property no longer meets the

definition of a blighted housing property. Authorizes any party in interest to request including a residential housing property below minimum habitability standards on the blighted housing property list by filing an affidavit with the public officer certifying the basis for such person being a party in interest and the conditions of the property that make it unfit for human habitation, occupancy, or use. Upon receipt of such affidavit, authorizes the public officer or any qualified rehabilitation entity designated by the local governmental subdivision to inspect the property and determine if it should be on blighted list. New law prohibits listing a residential housing property that is below minimum habitability standards on the blighted housing property list if the owner is rehabilitating it in a timely manner, as evidenced by building permits and diligent pursuit of work authorized by those permits, or by filing a rehabilitation plan approved by the court.

New law requires the state housing agency (La. Housing Finance Agency), in conjunction with the state departments of environmental quality and health and hospitals (DEQ and DHH) to adopt rules and regulations prescribing guidelines and criteria for assessing and determining if a residential housing property is harmful to the health or welfare, including the economic welfare, of the residents of the local governmental subdivision or unfit for human habitation, occupancy, or use, and whether rehabilitation is taking place timely. Requires the public officer to apply such standards in conducting any inventory pursuant to new law.

New law authorizes an owner or secured party to challenge inclusion of his property on the blighted housing property list by appealing to the hearing officer within 60 days of receipt of the certified notice. Provides, if a notice was returned as undeliverable or an owner's identity was not known to the public officer, that the owner has 90 days from the date the notice was published or posted, whichever is later, to challenge. Requires the hearing officer, within 30 days of receipt of an appeal request, to schedule a hearing at which the owner or any party in interest may present oral or written testimony that the property should not be included on the list.

New law authorizes the property owner to challenge an adverse determination of an appeal with the hearing officer by instituting a proceeding in the court in the parish in which the property is located.

New law provides that prior to a local governmental subdivision filing an action with the owner's consent to establish a receivership in connection with a property on a blighted housing property list, the designated official shall serve notice on the secured party.

New law requires that notice be served on the secured parties by registered or certified mail, postage prepaid, addressed to their last known addresses. New law requires that any notice served be filed with the recorder of mortgages where the property is located. Provides that once filed, the notice shall be deemed notice to all subsequent transferees. Provides that any transferee of such property takes the property subject to all recorded liens, mortgages, and notices.

New law authorizes a local governmental subdivision to bring an action to establish a receivership that transfers possession and control of blighted housing property to a local governmental subdivision or a qualified rehabilitation entity in the court in the parish where the blighted housing property is located.

New law provides that if the court finds that the property is blighted property and that the secured party has failed to submit an acceptable alternate plan or to take any action to restore the blighted housing property to minimum habitability standards, the court shall authorize the local governmental subdivision or a qualified rehabilitation entity designated by the local governmental subdivision to take possession, control, and use of the blighted housing property for the receivership term and to implement the rehabilitation plan.

New law provides that rehabilitation costs in the plan submitted for court approval shall be a lien against the property.

New law requires the court to grant possession of the property to the local governmental subdivision if certain conditions are met.

New law authorizes the court to approve the borrowing of funds by a local governmental subdivision to rehabilitate the property and to grant a lien or security interest in the property

for the amount borrowed. The local governmental subdivision must have the owner's consent and having exhausted all grant opportunities prior to borrowing funds.

New law provides that no lien authorized by the court shall take effect unless recorded in the mortgage office of the parish in which the property is located.

New law authorizes an owner to petition for reinstatement of the owner's control and possession of the property at any time during the receivership term.

New law authorizes a local governmental subdivision, at the end of the receivership term, to petition the court to sell the property if the owner has not petitioned for reinstatement of ownership. Further requires that any sale of property pursuant to new law be for the fair market value of the rehabilitated property, but not less than the amount necessary to recoup the rehabilitation costs. Requires that any sale proceeds in excess of the amount necessary to recoup the rehabilitation costs be returned to the property owner.

Effective upon signature of governor (June 13, 2006). (Adds R.S. 40:600.31-600.44)

#### **Carding by Pharmacists (Act No. 600)**

New law requires every pharmacist to require every patient or the patient's agent purchasing, receiving, or otherwise acquiring any controlled dangerous substance to produce a photo identification unless the patient or the patient's agent is known to the pharmacist.

Effective August 15, 2006. (Adds R.S. 40:971(D) and (E))

#### **Drug Prescription Monitoring Program (Act No. 676)**

New law creates an electronic system for the monitoring of controlled substances and other drugs of concern dispensed in the state or dispensed to an address within the state.

New law provides for specific information that each dispenser must include in reporting each prescription dispensed for a drug monitored by the program.

New law permits the Louisiana Board of Pharmacy to provide a report containing prescription monitoring information upon application of local, state, and federal law

enforcement or prosecutorial officials engaged in the administration, investigation, or enforcement of the laws governing controlled substances or other drugs of concern.

New law permits the LABP to provide prescription monitoring information to an individual who requests his personal prescription monitoring program information in accordance with procedures established by regulations.

Effective July 1, 2006. (Amends R.S. 40:975(G)(1) and R.S. 44:4.1(B)(24); Adds R.S. 40:1001-1014)

#### **Legend Drug Laws (Act No. 565)**

New law prohibits the sale, distribution, or possession of a legend drug without prescription or order. New law does not apply to the sale, delivery, or possession by drug wholesalers or drug manufacturers whose possession of any legend drug is in the usual course of business or employment.

New law provides that no person shall knowingly or intentionally acquire or obtain possession of a legend drug by misrepresentation, fraud, forgery, deception or subterfuge.

Effective August 15, 2006. (Adds R.S. 40:1238.1, 1238.2, and 1238.3)

#### **Blood Donation (Act No. 694)**

New law includes in the definition of "patient" a donor of human blood or blood components.

New law includes in the definition of "malpractice" all legal responsibility of a health care provider arising from acts and omissions during the procurement of blood or blood components.

New law includes in the definition of "health care" any treatment relating to the procurement of human blood or blood components.

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

#### **Expedited Medical Malpractice Review Procedure (Act No. 323)**

Existing law requires that all medical malpractice claims, whether against the state or against a private health care provider, shall be reviewed by a medical review panel.

New law creates an expedited risk review panel process, which is authorized upon agreement of all parties.

New law provides that 90 days after notification to all parties of the dissolution of the panel, the suspension of the running of prescription with respect to a qualified health care provider shall cease.

New law provides that the suspension of the running of prescription shall not cease until 90 days following the notification to the claimant or his attorney of the issuance of the opinion.

New law 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))

#### **Hospital Reporting of Wanted Persons (Act No. 327)**

New law provides that a hospital shall notify the requesting law enforcement agency that a doctor has ordered the discharge of a patient from the hospital as soon as reasonably possible after the order has been written if certain conditions are met.

Effective August 15, 2006. (Adds R.S. 40:1300.251)

#### **Smokefree Air Act (Act No. 815)**

New law prohibits smoking in public places, including restaurants, schools, school buses, and school campuses, public buildings, and enclosed areas within places of employment.

New law does not prohibit smoking in various places, including:

- A hotel or motel room designated as a smoking room and rented to a guest, provided that a maximum of 50% of rooms at the discretion of the hotel owner or general manager available for rent to guests may be designated as smoking.
- Any bar.
- The outdoor area of any business, except that the owner or manager of such business may

post signs prohibiting smoking in any such outdoor area, which will have the effect of making that outdoor area a non-smoking area.

- Private and semiprivate rooms or apartments in assisted living residences, or any other long-term care facility that is occupied by one or more persons who are all smokers and who have requested in writing to be placed in a smoking room.
- Designated and well ventilated smoking rooms in nursing homes which permit smoking.
- An outdoor patio, whether or not food is served.

New law prohibits an individual, person, entity, or business subject to the smoking prohibitions to discriminate or retaliate in any manner against a person for making a complaint of a violation or furnishing information concerning a violation to a person, entity, or business or to an enforcement authority.

New law prohibits this Act from being construed to restrict the power of any parish, city, town, or village to adopt and enforce additional local laws, ordinances, or regulations that comply with at least the minimum applicable standards to establish smokefree public places.

New law subjects any person who smokes in a prohibited area to a penalty of \$25 for the first violation, \$50 for a second offense, and \$100 for all subsequent offenses. Subjects any employer who knowingly permits smoking in the enclosed area of a place of employment to a penalty of \$100 for a first offense, \$250 for a second offense, and \$500 for all subsequent offenses.

New law repeals prior law provisions regulating smoking in the office workplace and in certain public places to avoid any confusion or conflict with the Louisiana Smokefree Air Act.

Effective January 1, 2007. (Adds R.S. 40:1300.251-1300.253, 1300.255, 1300.261 - 1300.263; repeals R.S. 40:1300.21-1300.28 and R.S. 40:1300.41-1300.48)

#### **Mattress and Box Springs (Act No. 557)**

New law requires that any mattress or box spring sold at retail after 1/1/07, shall be fire retardant in accordance with the standards of resistance to open flames. Further provides that

new law will not apply to any mattress or box spring manufactured prior to 1/1/07.

Effective August 15, 2006. (Adds R.S. 40:1614)

### **Life Safety and Property Protection Licensing Act (Act No. 307)**

New law provides that the fire marshal is authorized to cause the inspection and testing of all life safety systems and equipment in the state.

New law deletes requirement that securities contractors maintain errors and omissions insurance.

New law provides that certain enumerated felony crimes against property will also disqualify an applicant regardless of whether 10 or more years has elapsed.

New law provides that all employee licenses shall expire on the same date as the firm license. New law provides that individuals hired throughout the year shall have their fees prorated to coincide with the firm's expiration date.

Effective January 1, 2007. (Amends R.S. 36:409(M) and 919.3 and R.S. 40:1646; Adds R.S. 40:1664.1-1664.16; Repeals R.S. 40:1625-1638, 1651-1661, and 1662.1-1662.19)

### **Building Code Enforcement (Act No. 458)**

New law clarifies that all municipalities and parishes in the state must enforce the construction codes provided for in prior law.

New law further provides that liability will not be imposed for the performance or non-performance by a governmental agency, contract employee, or official regarding the enforcement of any construction code when such acts are within the scope of their lawful powers and duties.

New law provides that the statewide adoption of the International Building Code will not include the administrative or accessibility chapters, and the statewide adoption of the International Existing Code will not include the administrative chapter of that code.

Effective upon signature of the governor (June 15, 2006). (Amends R.S. 40:1730.23(A) and (C) and 1730.28(A)(1) and (2))

### **Third-Party Inspections of Houses (Act No. 11)**

Existing law allows a commercial or residential contractor to establish agreements with certified third-party providers to conduct plans review and inspections. For purposes of the emergency provisions, a third-party provider must be either a Louisiana licensed architect or engineer or certified by the International Code Council.

New law retains existing law and adds licensed contractors to the list of certified third-party providers in order to conduct plans review and inspections of residential single-family dwellings for purposes of the emergency provisions, provided that contractors can not inspect their own work. Authorizes parishes and municipalities to prohibit contractors from acting as certified third-party providers by local ordinance.

New law further prohibits an architect, contractor, or engineer from inspecting the work of a contractor who is an immediate family member.

Existing law provides that after the emergency provisions of the State Uniform Construction Code lapse, the Louisiana State Uniform Construction Code Council will set the requirements for certificates of registration for third-party providers who wish to conduct plans review and inspections.

New law retains existing law and clarifies that on and after January 1, 2007, the council will set the requirements for third-party providers. Also authorizes the state fire marshal to adopt rules to provide temporary additional third-party provider options for implementation of the code by municipalities and parishes for the purposes of emergency wind and flood provisions in existing law.

Effective upon signature of the governor (February 23, 2006). (Amends R.S. 40:1730.24(B))

### **Building Codes (Act No. 769)**

Prior law required that the emergency wind and flood building requirements adopted in prior law remain in force until the La. State Uniform Construction Code Council adopts the latest editions of both the International Building Code and the International Residential Code. New law changes prior law by clarifying that the

emergency provisions shall remain in force until January 1, 2007.

Existing law provides for criminal penalties for unregistered persons practicing as code enforcement officers in this state. New law clarifies that criminal penalties are not enforceable until January 1, 2007.

Effective upon signature of the governor (June 30, 2006). (Amends R.S. 40:1730.27(B), 1730.35(A) and (C), and 1730.36)

#### **No Need for Architect (Act No. 420)**

New law provides that no municipality or parish shall require that residential building plans for one and two family dwellings be prepared or stamped by a certified architect or engineer if the dwelling falls within the prescriptive standards of the latest edition of the International Residential Code or its referenced amendments as provided for in existing law.

New law provides that the provisions of new law shall be effective for both the duration of the emergency wind and flood mitigation provisions and after the building code becomes effective statewide.

Effective upon signature of governor (June 15, 2006). (Adds R.S. 40:1730.23(D))

#### **Protection for Government Contractors (Act No. 431)**

Existing law provides that in connection with the construction of any building, structure, or other improvement to immovable property, neither the performance of any enforcement procedure nor any provision of a building code shall constitute or be construed as a warranty or guarantee by a governmental enforcement agency as to durability or fitness, or as a warranty or guarantee by a governmental enforcement official 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.

New law provides that existing law shall also apply to a third-party provider who contracts with a municipality or parish.

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

#### **Nursing Home Sprinkler Systems (Act No. 824)**

New law provides that by January 1, 2008, all nursing homes must be protected throughout by a supervised automatic fire sprinkler system. Further requires that completed sprinkler plans for these systems be submitted to the secretary for review and approval by December 31, 2006.

New law contains detailed provisions regarding how Medicaid-certified nursing homes will be reimbursed for installing a sprinkler system.

Effective August 15, 2006. (Adds R.S. 40:2009.4.1)

#### **Nursing Home Evacuation (Act No. 540)**

New law requires DHH, in consultation with the Governor's Office of Homeland Security and Emergency Preparedness to promulgate rules and protocol for the evacuation or sheltering in place of nursing homes in the event of a hurricane, by 4/1/07.

New law requires DHH to assist an evacuating nursing home with the transportation or placement of residents with medically complex needs, if the nursing home is unable to find satisfactory placement for that resident.

New law requires DSS to assist an evacuating nursing home in locating an alternative shelter site when the nursing home is unable to proceed to its sheltering host site.

New law requires local or parish offices of homeland security and emergency preparedness to assist an evacuating nursing home with transportation when the nursing home encounters problems with obtaining transportation from its transportation service provider.

New law requires nursing homes that participate in mandatory evacuations or act as shelter sites submit their costs directly related to the evacuation or sheltering to DHH. New law further requires DHH to seek reimbursement on behalf on the nursing home from FEMA.

New law further requires the state to be reimbursed by any nursing home for all costs incurred by the state for the evacuation and sheltering of the nursing home's residents less any reimbursement received by the state from other sources for purposes of evacuating and sheltering said nursing home's residents.

New law allows nursing homes required to evacuate to request that family members of residents accept personal responsibility for evacuation of the resident when it is clear that the resident would be safer with the family.

New law requires that nursing homes located in certain parishes which are susceptible to hurricanes develop an emergency preparedness plan and submit the plan to DHH by 8/1/06.

New law requires that each emergency preparedness plan be reviewed and updated by the nursing home annually.

Effective upon signature of the governor (June 22, 2006). (Adds R.S. 29:766(G) and R.S. 40:2009.25)

#### **Nursing Home Need Review and Moratorium (Act No. 847)**

Prior law required critical review of nursing facility beds to determine if there is a need for additional beds to be licensed and enrolled in the Title XIX program.

New law eliminates the requirement that nursing facility beds be licensed and enrolled in the Title XIX program.

New law requires DHH to place a moratorium on additional beds for nursing facilities from 7/1/1996 until 7/1/2012, and the moratorium applies on the replacement of existing facilities until 6/30/2008.

Effective August 15, 2006. (Amends R.S. 40:2116(A), (B)(2) and (D)(2)(intro para))

#### **Brain Injury Facilities (Act No. 105)**

Prior law provided for the operation of community-based adult brain injury facility with a primary physician who is responsible for overseeing the decision making process for admission and care of clients. New law changes any references of "primary physician" to "primary provider."

Effective August 15, 2006. (Amends R.S. 40:2120.33(13), (14)(c), and (16))

#### **Adult Day Health Care Provider Licensing (Act No. 637)**

New law provides that no one may establish or operate an "adult day health care provider" or be reimbursed under the Medicaid program for such services unless licensed to perform such

services by the department as provided in the new law.

New law defines "adult day health care" as a "medical model adult day care program" designed to provide services for medical, nursing, social, case management, and personal care needs to adults who are physically or mentally impaired. Such services "are rendered" for five or more hours during a 24-hour day by utilizing licensed professionals in a center-based nursing facility.

New law requires DHH to implement a moratorium on adult health care providers enrolled in the Title XIX program and not approve or enroll any new or additional providers beginning 8/15/06 until 7/1/08 unless it determines that there is a need for new or additional providers in a certain geographic location.

Effective upon signature of the governor (June 23, 2006). (Adds R.S. 40:2120.41 - 2120.47)

#### **Assisted Living Facility Licensing (Act No. 210)**

New law imposes misdemeanor charges on an individual who operates an adult residential care home without a valid license. Such person convicted shall be fined not more than \$100 a day for each day of operation up to a maximum of \$1,000 or imprisonment for not more than six months, or both.

Effective August 15, 2006. (Adds R.S. 40:2160(D))

#### **Assisted Living Licensing Laws (Act No. 433)**

New law provides that no facility, agency, provider, institution, society, corporation, partnership, company, entity, residence, person or persons, or any other group providing adult residential care may be established, operated, or reimbursed under the Medicaid program for such care unless licensed to perform such care by the Department of Health and Hospitals (DHH).

New law provides that the license issued shall be valid for only one geographic location, issued only for the person and premises named in the license application, valid for one year from the issue date unless previously revoked, not transferrable or assignable, and posted in a conspicuous place on the licensed premises.

New law requires DHH, after receipt of the completed application and licensing fee, to perform an on-site survey and inspection.

New law authorizes DHH to adopt and impose fees for community-based services provided by the Medicaid program on every adult residential care provider and to adopt rules and regulations relative to the imposition of such fees in an amount not to exceed the total cost of providing the care and not to exceed 6% of the gross revenues of the provider.

Effective upon signature of governor (June 15, 2006). (Amends R.S. 40:2116(B)(1); Adds R.S. 40:2163.1-2163.8)

#### **Pain Management Clinic Licensing (Act No. 665)**

New law requires that all pain management clinics be licensed by DHH.

New law requires that no pain management clinic shall be owned, either in whole or in part, by or have any contractual relationship, whether through employment or by independent contract, with a physician who, during the course of his practice, has had board action taken against his medical license as a result of dependency on drugs or alcohol.

Effective August 15, 2006. (Amends R.S. 40:2198.11(4) and 2198.12(A) and (D)(1))

#### **Advanced Practice Registered Nurses (Act No. 106)**

Prior law provided that qualified basic benefit plans under a health care cost control program shall not exclude direct reimbursement health care services provided by an advanced practice registered nurse that provides health care services under the direction of a physician.

New law retains prior law, except that the health care services provided by an advanced practice registered nurse must be in accordance with the collaborative practice agreement rather than under the direction of a physician.

Effective August 15, 2006. (Amends R.S. 40:2212(C)(1))

#### **Judicial Agency Referral Residential Facility Regulatory Act (Act No. 660)**

New law provides that any facility, not otherwise required to be licensed by DHH or DSS, that provides housing or temporary

residence for individuals who have been arrested for the commission of a crime who are referred by any judicial agency shall be regulated by rules adopted by the DPS&C for the operation of such facilities.

Effective upon governor's signature (June 29, 2006). (Adds R.S. 40:2851 and 2852; repeals R.S. 40:2155(B)(9))

### **TITLE 41: PUBLIC LANDS**

#### **DNR Mineral Rights Agreements (Act No. 626)**

Existing law provides relative to reclamation and restoration of certain lands lost through erosion, compaction, subsidence, and sea level rise. Authorizes the secretary of the Dept. of Natural Resources to enter into certain agreements with owners of land contiguous to and abutting navigable water bottoms belonging to the state who have the right to reclaim or recover such land, including all oil and gas mineral rights.

New law changes "coastal restoration projects" to "coastal conservation, restoration and protection plans and projects, including hurricane protection and flood control" and retains remainder of existing law.

Effective upon signature of the governor. (June 23, 2006) (Amends R.S. 41:1702(D)(2)(a))

### **TITLE 42: PUBLIC OFFICERS AND EMPLOYEES**

#### **Ethics Tweak (Act No. 408)**

New law additionally excludes from the definition of "substantial economic interest" for purposes of the Code of Governmental Ethics the interest that an elected official who is elected to a house, body, or authority has in a position or office of such house, body, or authority which is required to be filled by a member of such house, body, or authority by law, legislative rule, or home rule charter. Otherwise retains existing law.

Effective August 15, 2006. (Amends R.S. 42:1102(21))

#### **Exception for Pre-Election Contracts (Act No. 773)**

New law allows an elected official, for a period of not more than 90 days following the first day

of his initial term of office, to receive compensation from a person from whom he would otherwise be prohibited from receiving a gift for the completion while in office of any contract or subcontract which was entered into prior to his initial election to office, provided that such contract or subcontract is in writing with established terms for compensation and completion and that such contract or subcontract shall not be renewed after his initial election. Requires the elected official to file notice of such contract or subcontract with his governmental entity and the Board of Ethics within 30 days of taking office, setting forth the nature of the contract or subcontract, the established completion date, and the established compensation therefor.

Effective upon signature of governor (June 30, 2006). (Adds R.S. 42:1111(C)(4))

#### **Recusal Allowed for Certain Zoning Commissioners (Act No. 798)**

New law provides an exception to the Code of Governmental Ethics to provide that an appointed member of a parish planning or zoning commission which acts solely in an advisory capacity to the parish governing authority in a parish with a population of less than 50,000 may recuse himself from voting on a matter which vote would otherwise violate the prohibited participation provisions of the Code of Governmental Ethics (rather than resign).

Effective upon signature of governor (June 30, 2006). (Amends R.S. 42:1112(D); Adds R.S. 42:1120.3)

#### **Post-Public Office Services (Act No. 525)**

New law specifies that such former public employee is prohibited for two years after termination of his public service from rendering any service, which he had rendered to his agency during the term of his employment, on a contractual basis to, for, or on behalf of his former agency, regardless of the parties to the contract.

Effective August 15, 2006. (Amends R.S. 42:1121(B))

#### **Governmental Employer Liability (Act No. 138)**

New law provides that regardless of the criteria in existing 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 upon signature of governor (June 2, 2006). (Adds R.S. 42:1441.3(G))

#### **TITLE 43: PUBLIC PRINTING AND ADVERTISEMENTS**

Nothing of particular interest.

#### **TITLE 44: PUBLIC RECORDS AND RECORDERS**

##### **Government Credit Card Information (Act No. 424)**

New law provides that the laws relative to public records shall not apply to the following information related to a credit card issued to a public body: the entire credit card number, the credit card expiration date, the passcode or access code, the credit card personal identification number or "PIN", or any other information which could be used to make a charge to the credit card account or otherwise access the credit card account information. New law specifies that public records laws shall apply to all other information regarding the credit card and credit card account.

Effective upon signature of governor (June 15, 2006). (Adds R.S. 44:4(41))

##### **Applications for Public Positions (Act No. 746)**

New law specifies that the name of each applicant for a public position of authority or a public position with policymaking duties and such applicant's qualifications and relevant employment history or experience shall be available for public inspection, examination, copying, or reproduction as provided in existing law.

New law prohibits a public body or agent acting on behalf of a public body from utilizing only oral contacts and interviews of applicants considered for such positions or any other means to circumvent the provisions of new law. New law specifically does not prohibit oral only contact prior to a person becoming an applicant nor oral contact which may result in written documents and additionally specifies that this

particular provision of new law shall not require a particular method or procedure for filling vacancies as long as not exclusively by use of oral contact.

Effective August 15, 2006. (Adds R.S. 44:12.1)

#### **Cost of DOTD Projects (Act No. 321)**

New law provides that preconstruction estimates for certain projects advertised by DOTD shall not be available for examination, inspection, copy or reproduction until the bids are opened regardless of a request. New law also provides that the estimated cost for a department project shall be available upon request.

Effective upon signature of the governor (June 13, 2006). (Amends R.S. 44:23)

#### **Address Confidentiality Program (Act No. 613)**

New law establishes a detailed statutory program that provides for the confidentiality of the physical addresses of program participants who are victims of abuse, sexual assault, or stalking.

New law provides that any person who is a victim of abuse, sexual assault, or stalking and fears for his or her safety may apply to participate in the address confidentiality program, and also a parent on behalf of his minor child, if such child is the victim of abuse, sexual assault, or stalking, and for whom the parent fears for the safety, or a guardian on behalf of a minor or incapacitated person in his care, if such minor or incapacitated person is a victim of abuse, sexual assault, or stalking, and for whom the guardian fears for the safety.

New law requires an application to the secretary of state for certification to participate in the address confidentiality program to include the following:

Effective August 15, 2006. (Adds R.S. 18:154(F) and 1303(H) and R.S. 44:44 - 49)

### **TITLE 45: PUBLIC UTILITIES AND CARRIERS**

#### **Telemarketing (Act No. 418)**

Prior law provided that any residential telephone subscriber that has previously requested that their number shall be listed as private or unlisted will automatically be placed on a "do not call" list. New law deletes prior law.

Prior law provided that a telephonic solicitor shall be required to maintain a bond in the amount of twenty thousand dollars to guarantee the payment of any administrative penalties assessed pursuant to prior law. New law changes prior law to provide that a telephonic solicitor may maintain such bond.

Prior law provided that no person or entity that sells, leases, or rents telephonic solicitation listings, except for directory assistance and telephone directories sold or distributed by local exchange companies or their affiliates, shall include in such listings any residential telephonic number, if the number appears on the commission's then current "do not call" listing. New law repeals prior law.

Effective August 15, 2006. (Amends R.S. 45:844.14(A)(1) and (3)(b) and 844.31(A); Repeals R.S. 45:844.14(B))

#### **La. Electric Utility Storm Recovery Securitization Act (Act 64)**

Defines the term "commission" to mean the Public Service Commission, or solely with respect to an electric utility furnishing electric service within the city of New Orleans, and the council of the city of New Orleans.

New law authorizes an electric utility to petition the commission for a financing order. Further provides that no electric utility or affiliate or other assignee shall issue any storm recovery bonds until it has been specifically authorized to do so by order of the commission.

New law provides that the commission may grant an application in whole or in part by a financing order, upon such terms and conditions as the commission prescribes, and may make supplemental orders.

New law provides that an aggrieved party or intervenor may as its sole remedy, within 15 days after the financing order or a supplemental order, file a petition for redress in the district court of the domicile of the commission.

New law provides that all storm recovery property shall constitute an existing, present contract right constituting an individualized, separate incorporeal movable susceptible of ownership, sale, assignment, transfer, and security interest and shall continue to exist until the storm recovery bonds issued pursuant to the

financing order are paid in full and all financing costs of the bonds have been recovered in full.

New law provides that any portion of storm recovery property specified in a financing order may be sold, assigned, or transferred to a successor or an assignee, including an affiliate or affiliates of the electric utility created for the limited purpose of acquiring, owning, or administering storm recovery property or issuing storm recovery bonds under the financing order.

New law provides that if an electric utility defaults on any required payment of charges arising from storm recovery property specified in a financing order, the court, upon application by an interested party, shall order the sequestration and payment of the revenues arising from the storm recovery property to the financing parties or their representatives.

New law provides that any right that an electric utility has in the storm recovery property prior to its sale, assignment, or transfer is incorporeal movable property in the form of a vested contract right notwithstanding any contrary treatment thereof for accounting or tax purposes. Further provides that the ownership of an interest in storm recovery property is voluntarily transferred by a contract between the owner and the assignee that purports to transfer the ownership of that interest.

New law provides that the Uniform Commercial Code—Secured Transactions does not apply to storm recovery property or any right, title, or interest of a utility or assignee therein. Further provides that such right, title, or interest pertaining to a financing order shall not be deemed proceeds of any right or interest other than of the financing order and the storm recovery property arising from the financing order.

New law provides that the creation, attachment, granting, perfection, and priority of security interests in storm recovery property to secure storm recovery bonds is governed solely by new law and not by the Uniform Commercial Code—Secured Transactions.

New law provides that a security interest in storm recovery property is valid and enforceable against the electric utility and its successor or an assignee and third parties and attaches to storm recovery property only after all of the following conditions are met:

1. The issuance of a financing order.
2. The execution and delivery of a security agreement with a financing party in connection with the issuance of storm recovery bonds.
3. The receipt of value for the storm recovery bonds.

New law provides that a security interest in storm recovery property is perfected only if it has attached and a financing statement indicating the storm recovery property collateral covered thereby has been filed. Provides that the interest of a secured party is not perfected unless a financing statement sufficient under new law and otherwise in accordance with the Uniform Commercial Code—Secured Transactions is filed, and after perfection the secured party's interest continues in the storm recovery property and all proceeds of such storm recovery property, whether or not billed, accrued, or collected, and whether or not deposited into a deposit account and however evidenced.

New law provides that the priority of the conflicting security interests of secured parties in the same interest or rights in any storm recovery property is determined as follows:

4. Conflicting perfected security interests of secured parties rank according to priority in time of perfection.
5. A perfected security interest of a secured party has priority over a conflicting unperfected security interest of a secured party.
6. A perfected security interest of a secured party has priority over a person who becomes a lien creditor after the perfection of such secured party's security interest.

New law provides that if a default occurs under the terms of the storm recovery bonds, the secured party may foreclose on or otherwise enforce the security interest in any storm recovery property as if it was a secured party under the Uniform Commercial Code—Secured Transactions.

New law authorizes a security interest in after-acquired collateral, which is not invalid or fraudulent against creditors solely because the grantor or the electric utility as collector or servicer has the right or ability to commingle the collateral or proceeds, or collect, compromise, enforce, and otherwise deal with collateral.

New law provides that any action arising to enforce a security interest or an interest in, or a right in, to or against any storm recovery property, shall be brought in the district court of the domicile of the commission.

New law provides that storm recovery bonds are not a debt or a general obligation of the state or any of its political subdivisions, agencies, or instrumentalities and are not a charge on their full faith and credit. Further provides that an issue of storm recovery bonds does not obligate the state or any agency, political subdivision, or instrumentality of the state to levy any tax or make any appropriation for payment of the bonds, other than for paying storm recovery charges in their capacity as consumers of electricity.

New law provides that the state pledges to and agrees with bondholders, the owners of the storm recovery property, and other financing parties that the state will not:

7. Alter the provisions of new law which create a contract right by the issuance of a financing order, to create storm recovery property, and to make the storm recovery charges imposed by a financing order irrevocable, binding, and non-bypassable charges;

8. Take or permit any action that impairs or would impair the value of storm recovery property; or

9. Except for adjustments under any true-up mechanism, reduce, alter, or impair storm recovery charges that are to be imposed, collected, and remitted for the benefit of the bondholders and other financing parties until any and all principal, interest, premium, financing costs, and other fees, expenses, or charges incurred, and any contracts to be performed, in connection with the related storm recovery bonds have been paid and performed in full.

Effective upon signature of governor (May 22, 2006). (Adds R.S. 10:9-109(c)(6) and R.S. 45:1230-1240)

## **TITLE 46: PUBLIC WELFARE AND ASSISTANCE**

### **Foster Parents' Bill of Rights (Act No. 439)**

New law provides for various rights to be granted to foster parents by the Department of Social Services.

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

### **Time for Post-TRO Hearing (Act No. 777)**

Prior law provided that if a temporary restraining order is granted without notice, a hearing shall be set within 20 days. New law changes prior law from 20 days to 15 days.

New law 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)

### **Nursing Home Medicaid Reimbursement (Act No. 848)**

Prior law provided for the case mix reimbursement methodology for nursing facilities.

New law provides for payment and resource requirements to be adjusted quarterly. New law provides for a floor for median direct care costs, provides relative to maximum and minimum square footage per bed to be allowed. New law provides relative to depreciation, renovation of facilities, property insurance pass-through, and support of long-term ownership. New law provides for allowable costs and the impact of budget reductions on nursing home reimbursement rates not to be reduced to below 90% of the median.

Effective August 15, 2006. (Amends R.S. 46:2742(B)(intro para), (1), (2), (4)(intro para), (5)(a), (b) and (c), (6) and (8); adds R.S. 46:2742(B)(5)(d) and (10) and(C))

## **TITLE 47: REVENUE AND TAXATION**

### **Severance Tax Payment Credit (Act No. 26)**

New law provides that severers may apply the one-time severance tax payment required by

R.S. 47:635(A)(3) and the one-time severance tax payment required by R.S. 47:640(B) to future severance tax liabilities.

Effective upon signature of governor (February 23, 2006). (Amends R.S. 47:635(A)(3) and 640(B)) //

### **One Assessor for Orleans (Act No. 622)**

New law deletes authorization for the election of seven tax assessors in Orleans Parish.

New law provides for changes to various provisions of law pertaining to assessment of property for ad valorem tax purposes to reflect a single assessor in Orleans Parish.

Effective if the proposed amendment of Article VII, Section 24 of the Constitution of Louisiana contained in the Act which originated as SB 141 of the 2006 R.S. becomes effective.

(Amends R.S. 9:1425, R.S. 11:1481(2)(b)(i), (c), and (d)(i), R.S. 13:4405, R.S. 18:602(C), R.S. 35:281, R.S. 42:261(D)(2), R.S. 44:205, various sections of Title 47; repeals various sections of Title 47)

### **Deadline to Seek Waiver of Penalties (Act No. 33)**

Prior law provides that an application for waiver of penalties due as a result of the underpayment of estimated income taxes by an individual must be filed on or before December 31 of the year in which the tax return associated with the underpayment is due.

New law changes the due date of an application for waiver of penalties due as a result of the underpayment of estimated taxes by an individual from December 31 of the year in which the tax return associated with the underpayment is due to one year from the statutory due date of the return associated with the underpayment.

Effective for taxable periods beginning after December 31, 2005. (Amends R.S. 47:118(I)(intro. para.))

### **Electronic Filing (Act No. 452)**

New law authorizes the secretary of revenue to require electronic filing of tax returns or reports under a variety of circumstances.

New law provides that the electronic filing requirements shall be implemented by rule

adopted pursuant to the Administrative Procedure Act.

New law authorizes the secretary to require various employers to file both their annual or final returns and their receipts on magnetic media or by other electronic means at various times.

The secretary is authorized to prescribe the types of media and record layout to be used in the submission of the returns and receipts consistent with the IRC requirements.

Effective upon signature of the governor (June 15, 2006). (Amends R.S. 47:144(F)(2) and 1520(A) and (C))

### **Corporate Income Tax Penalty (Act No. 320)**

Prior law provided for installment payments of estimated income tax by corporations, failure by a corporation to pay estimated income tax, and adjustment of overpayment of estimated income tax by corporations. New law changes the language associated with prior law provisions to specify that the amount to be paid if there is an underpayment of tax or an adjustment is a "penalty" to be consistent with the equivalent individual income tax penalty provisions in prior law.

Effective upon signature of the governor (June 13, 2006). (Amends R.S. 47:287.655(A), (D)(intro para), and (G)(1); repeals R.S. 47:120, 120.1, and 120.2.)

### **Income Tax Reductions (Act No. 25)**

Existing law provides that for the individual income tax the amount of the deduction for federal income tax is the amount of tax due to the U.S. Except in the case of current year casualty losses and disaster relief credits related to Hurricane Katrina or Rita presidential disaster areas, when a state income tax return is filed reporting an amount of federal income tax as a deduction and that federal income tax is later reduced, the La. federal income tax deduction is reduced and additional La. income tax is due. Existing law is effective for taxable years beginning in 2005.

New law provides that the prior year federal income tax deduction claimed by an individual on a La. tax return shall not be reduced by any casualty loss. Deletes the restriction that the casualty loss be related to Hurricane Katrina or

Rita. Makes provisions effective for taxable years beginning in 2004.

Existing law exempts from state income tax the first \$30,000 of income received by military personnel for active duty service outside of the state. This exemption expired Dec. 31, 2004. New law extends the exemption to taxable periods ending before Jan. 1, 2008, and makes it retroactive to Dec. 31, 2004.

New law provides a deduction for certain expenses which would otherwise be deductible under federal law but for the disallowance provisions of I.R.C. Section 280 C which provides for certain expenses for which federal credits which would otherwise be allowable.

Effective upon signature of governor (February 23, 2006). (Amends R.S. 47:293(3)(b)(i) and (7); adds R.S. 47:293(6)(a)(ix) and (f))

#### **Child and Spousal Support (Act No. 478)**

New law 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.

Existing law establishes a procedure whereby persons may claim an offset from the Dept. of Revenue for any monies due to an individual who owes past due child support. New law adds past due spousal support.

Existing law provides for the ranking and priority of child support claims filed against an individual's income tax return. New law 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))

#### **Legend Drugs for Livestock (Act No. 41)**

New law provides that legend drugs administered to livestock used for agricultural purposes are not required to be registered with the Dept. of Agriculture and Forestry and are not exempt from sales tax.

Effective August 15, 2006. (Amends R.S. 47:301(16)(f))

#### **Sales Tax Exemption for Certain Drugs (Act No. 608)**

New law exempts from all local sales and use taxes prescription drugs purchased through or pursuant to a Medicare Part D plan.

Effective July 1, 2006. (Amends R.S. 47:318(B)(2)(a)(ii); adds R.S. 47:337.9(F))

#### **Sales Tax Exemption for Certain Drugs (Act No. 411)**

New law exempts prescription drugs from all local sales and use taxes purchased through or pursuant to a Medicare Part D plan.

Effective July 1, 2006. (Adds R.S. 47:337.9(F))

#### **Deadline to Certify Wells for Reduced Taxes (Act No. 38)**

Prior law requires that incapable and stripper wells be certified by the Department of Revenue for reduced severance tax rates on or before the 15th day of the second month following the month of production. New law changes this to the 25th day of the second month following the month of production.

Effective July 1, 2006. (Amends R.S. 47:633(7)(b) and (c)(i)(aa))

#### **Wholesale Tobacco Dealers (Act No. 454)**

New law makes various minor changes to laws regarding wholesale tobacco dealers.

Effective upon signature of the governor (June 15, 2006). (Amends R.S. 26:924 and 47:843, 848(B), and 851(B)(2); repeals R.S. 47:844(A)(5))

#### **Tobacconists (Act No. 108)**

New law adds that a "wholesale dealer" shall include a bona fide tobacconist engaged in receiving bulk smoking tobacco for the purpose of blending such tobacco for retail sale at a particular retail outlet where 50% or more of the total purchases for the preceding 12 months were purchases of tobacco products, excluding cigarettes.

New law authorizes the commissioner of alcohol and tobacco control to examine invoices and sales and tax records of the holder of any permit issued under the existing law.

New law provides that nothing shall prohibit any tobacconist at a particular retail outlet from purchasing tobacco products for such retail

outlet from any manufacturer, wholesale dealer who has a valid, unsuspended certificate or permit, or other supplier. Defines a "tobacconist at a particular retail outlet" as a bona fide retail dealer engaged in receiving bulk smoking tobacco for the purpose of blending such tobacco for retail sale at a particular retail outlet where 50% or more of the total purchases for the preceding 12 months were purchases of tobacco products, excluding cigarettes.

New law requires the commissioner of the office of alcohol and tobacco control to suspend or revoke any permit of any dealer that fails to pay taxes due to the state.

New law requires every person who sells or is about to engage in the business of selling at retail, at wholesale, or by vending machine, or is about to engage in the business of receiving unstamped or nontax paid cigarettes, cigars, or other tobacco products, or who is engaged in the business of receiving stamped cigarettes at wholesale must apply first for and obtain a permit for each place of business and each vending machine from the office of alcohol and tobacco control.

Effective July 1, 2006. (Amends R.S. 26:901(16) and 909 and R.S. 47:843(C)(5), 844, 848(B), and 859(A)(1); adds R.S. 26:907.1 and 916(H))

#### **Direct Deposit of Tax Refunds (Act No. 702)**

New law requires taxpayers who have a personal checking account and are filing for a state individual income tax refund using a Federal/State E-file Program to direct deposit the state tax refund when the federal tax refund is directly deposited.

Effective for tax years beginning on or after January 1, 2006. (Adds R.S. 47:1520.1)

#### **Deadline to Protest Tax Assessment (Act No. 34)**

New law increases the time authorized for a taxpayer to protest a tax assessment from 15 to 30 days of the notice of the reassessment.

Effective upon signature of governor (May 12, 2006). (Amends R.S. 47:1562(A), 1563, and 1564)

#### **Tax Dispute Settlement (Act No. 119)**

Prior law provided procedure for protesting secretary of Dept. of Revenue determination of tax due.

New law requires that written settlement offers be submitted on matters in litigation to the secretary.

New law provides that if the secretary fails to accept, reject or make a counteroffer within a three-month period, the secretary's conduct constitutes unreasonable delay (under R.S. 47:1601(A)(2)(d)) and interest shall be abated from the date the taxpayer's settlement offer was received through the date a written acceptance, rejection, or counter offer is provided to the taxpayer.

Effective upon signature of the governor (June 2, 2006). (Amends R.S. 47:1576.1)

#### **Interest on Tax Obligations (Act No. 180)**

New law provides that the interest rate on final and nonappealable tax obligations will be the same as the interest rate on tax obligations which are not final and nonappealable.

Effective Jan. 1, 2007. (Amends R.S. 47:1601(A)(2))

#### **Penalty Safe Harbor (Act No. 77)**

Prior law provides for penalties for failure to timely file tax returns or failure to pay taxes in full by the date the return is due.

New law provides that the penalties are not due if at least 90% of the total tax due on the return is paid on or before the due date of the return. Also provides that extensions of time are to be considered when determining whether the payments were made on or before the due date.

Effective for taxable periods beginning after December 31, 2005. (Amends R.S. 47:1602(A)(2))

#### **Non-current Tax Data Available (Act No. 799)**

Existing law establishes a program for the creation of a statewide ad valorem tax assessment database. Provides that the database shall be comprised of information from assessment rolls of parishes participating in the program, utilizing the assessment rolls submitted to the tax commission under R.S. 47:1993(A). Such parishes participating in the program are

required to submit their tax rolls to the Louisiana Tax Commission in electronic form or in a format designated by the Louisiana Tax Commission for viewing and inspection. Provides that the database with the tax information from such parishes shall be published on the Internet for public inspection by December 1st. Further provides that the ad valorem tax assessment database shall not include any tax information which is deemed confidential under any other provision of law.

New law provides that upon request, the Louisiana Tax Commission may convey or transfer to any taxpayer, in electronic form, historical information held by the commission pursuant to existing law and viewable from the commission's website, if the information is at least one year old at the time of the request.

Effective upon signature of governor (June 30, 2006). (Amends R.S. 47:1837.1(F); Adds R.S. 47:1837.1(G) and 6024)

#### **Tax Commission Fees (Act No. 179)**

Prior law authorizes the Louisiana Tax Commission to assess fees in connection with services performed by the commission from July 1, 2004, through June 30, 2006. New law extends the authorization to assess fees through June 30, 2008.

Effective July 1, 2006. (Amends R.S. 47:1838 (intro. para.))

#### **Ad Valorem Taxes on Maritime Entities (Act No. 268)**

Existing law for purposes of ad valorem taxation defines public service property to include barge line and towing companies. Existing law provides procedures for assessment of public service properties by the Louisiana Tax Commission. Present constitution provides that public service properties be assessed at 25%.

New law includes water transportation companies in the definition of barge line and towing companies. Excludes from this definition supply vessels and crew vessels.

New law excludes locally assessed vessels from definition of "public service properties".

Effective August 15, 2006. (Amends R.S. 47:1851(B) and (M))

#### **Ad Valorem Taxes (Act No. 31)**

New law specifies that only pro rata assessment provisions of existing law do not apply to lands or property in any parish for which the assessment rolls for tax year 2005 were certified, or partially or conditionally certified, by the La. Tax Commission prior to the effective date of existing law. Removes restriction of application of assessment procedures in existing law to such lands.

New law authorizes tax payers claiming tax credits for certain ad valorem taxes paid to elect to treat payments of such taxes made after December 31, 2005, but before April 16, 2006, as being made on December 31, 2005. Provides that this provision is applicable to taxable periods beginning after December 31, 2004.

Effective upon signature of governor (February 23, 2006). (Amends R.S. 47:1978.1(A)(1)(b) and (3)(b), (B)(1) and (2), and (C)(1)(a); Adds R.S. 47:1978.1(C)(4); Repeals R.S. 47:1978.1(D))

#### **Attorney Fees for Assessor (Act No. 390)**

Existing law provides for the procedures for instituting suit to contest the correctness of a property assessment. New law provides for the payment of all attorney fees, expert fees, and costs incurred by the assessor in defending a subsequent action contesting an assessed valuation previously upheld by the Louisiana Tax Commission and a court of competent jurisdiction, under certain conditions.

Effective August 15, 2006. (Adds R.S. 47:1998(G))

#### **TITLE 48: ROADS, BRIDGES AND FERRIES**

##### **Design-Build Contracts with DOTD (Act No. 305)**

Existing law grants the Dept. of Transportation and Development limited authority to let design-build contracts in which a single contract is entered with a single entity for the design and construction portions of a project. New law changes requirements for qualification and method of soliciting bids and eliminates right of bidder to request a hearing.

Effective August 15, 2006. (Amends R.S. 48:250.3)

## **Public-Private Transportation Facilities (Act No. 304)**

Existing law provides for the establishment of the Louisiana Transportation Authority (the authority), to promote, finance, plan, develop, construct, control, regulate, operate, and maintain any tollway or transitway to be constructed within the state.

New law requires that the authority approve any proposal to develop or operate a transportation facility as a public-private partnership.

New law authorizes a private entity to submit an unsolicited proposal to the authority to develop or operate a transportation facility. Requires the authority to advertise any such unsolicited proposal for the purpose of receiving competitive proposals for the project.

New law authorizes the authority to solicit proposals from private entities.

New law authorizes the authority to approve the development or operation of a transportation facility by a private entity if it serves a public purpose. Additionally provides that approval is subject to the private entity's entering into a comprehensive agreement with the authority.

New law authorizes the private entity to develop or operate the qualifying transportation facility, impose user fees, and enter into service contracts in connection with the use of the transportation facility.

Effective August 15, 2006. (Amends R.S. 48:2073; Adds R.S. 48:2072(C) and (D) and 2084-2084.15)

## **TITLE 49: STATE ADMINISTRATION**

### **Lobbying (Act No. 748)**

New law provides instead that the term "lobbyist" means:

1. Any person employed or engaged for compensation to act in a representative capacity for the purpose of lobbying if lobbying constitutes one of the duties of such employment or engagement; however any person who is engaged or employed to provide a professional service and incidental to such service such person communicates with, makes an appearance, or assists in an appearance with an executive branch agency or official shall not be a lobbyist unless such person or the person who

engaged or employed him makes an expenditure as defined by existing law.

2. Any person who receives compensation of any kind, including reimbursement of expenditures, to act in a representative capacity when one of the functions for which compensation is paid is lobbying and makes expenditures of \$500 or more in a calendar year for the purpose of lobbying.

New law additionally provides that no person shall enter into a contract to act in a representative capacity for the purpose of lobbying and fail to register or fail to file a supplemental registration.

New law provides that any person who violates the provisions of new law shall have engaged in a misrepresentation sufficient to defeat or void the contract and that any effort to register or to file a supplemental registration after any remedy or relief is sought pursuant to any provision of law shall not be sufficient to reverse the misrepresentation. New law requires the board to afford any person accused of violating new law a due process hearing in accordance with existing law and, if the board finds a violation, to order that the contract entered into for the purpose of lobbying by such person is void and the provisions thereof unenforceable. New law additionally provides that new law regarding the defeat or voidability of the contract shall be in addition to any other applicable penalties or any other remedy or relief provided by law.

Effective January 1, 2007. (Amends R.S. 49:72(7); Adds R.S. 49:78.1)

### **State Flag and Seal (Act No. 92)**

Existing law provides the depiction of to consist of a solid blue field with the coat-of-arms of the state, the pelican feeding its young, in white in the center, with a ribbon beneath, also in white, containing in blue the motto of the state, "Union, Justice and Confidence", the whole showing as below.

New law provides that the official flag and seal of Louisiana show the pelican tearing at its breast to feed its young with an appropriate display of three drops of blood.

Effective August 15, 2006. (Amends R.S. 49:151(A) and 153(A); Adds R.S. 49:151(C))

**Coastal Protection and Restoration Authority  
(Act No. 66)**

New law, relative to the Coastal Protection and Restoration Authority, provides that, in accordance with the requirements of the Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act of 2006, the authority is established, authorized, and empowered to carry out any and all functions necessary to serve as or designate the single entity responsible to act as the local sponsor for construction, operation, and maintenance of all of the hurricane, storm damage reduction, and flood control projects in areas under its jurisdiction, including the greater New Orleans and southeast Louisiana area.

New law further provides that the authority may enter into any contract with the federal government or any federal agency or any political subdivision of the state or private individual for the construction, operation, or maintenance of any coastal restoration, hurricane, storm damage reduction, or flood control project and to this end, may contract for the acceptance of any grant of money upon the terms and conditions, including any requirement of matching the grants in whole or part, which may be necessary.

New law repeals R.S. 49:213.1(E) and 213.4(A)(7) as enacted by Act 1 of the 2006 1st ES.

Effective upon signature of the governor (May 25, 2006). (Adds R.S. 49:213.1(E) and 213.4(A)(7); repeals R.S. 49:213.1(E) and 213.4(A)(7) as enacted by Act 1 of 2006 1st E.S.)

**Louisiana Recovery Authority (Act No. 5)**

New law creates the Louisiana Recovery Authority ("LRA") as a state agency within the Office of the Governor (as was formerly established by Executive Order No. 63 of 2005) to assist with state activities related to recommendations and coordination of state and other entities' efforts, programs and funding with respect to recovery from Hurricanes Katrina and Rita (the "recovery").

New law provides for powers and duties of the board, including recommendation and promotion of priorities and plans for the recovery, identification of funding sources and innovative

financing alternatives to fund the recovery, recommendations regarding how monies received by the state for the recovery shall be utilized, recommendation of recovery-related policy for all agencies of the state, coordination with local governments and metropolitan planning commissions to develop community-driven local and regional plans for recovery, and reports to the governor and the legislature no less than quarterly on the progress of the recovery.

Effective upon signature of governor (February 23, 2006). Adds R.S. 36:4(H) and R.S. 49:220.1-220.7; repeals R.S. 36:4(H) and R.S. 49:220.1-220.7)

**Reporting of Attorneys Fees for Government Service (Act No. 611)**

New law requires accurate data on legal costs in all litigation for which private legal counsel is appointed or employed to represent a state agency, board, or commission, including levee boards, be maintained and be reported quarterly in writing to the attorney general by such agency, board, or commission including levee boards. New law requires that the requirement for such data maintenance and reporting be implemented no later than 7/1/07.

Effective August 15, 2006. (Amends R.S. 49:257(B), (C), (D), (E) and (F); adds R.S. 49:257(G))

**Fidelity Bonds for Couriers of Public Funds (Act No. 695)**

New law provides every commercial courier who has charge or custody of, transports, receives, delivers, or handles public funds, including cash and securities, shall obtain and maintain a fidelity bond.

New law provides that the bond may be in the form of individual bonds on individual persons, a schedule fidelity bond, or a blanket bond covering all such persons. The bond shall be in an amount not less than \$100,000 and shall run to the state of Louisiana.

Effective August 15, 2006. (Adds R.S. 49:331)

**TITLE 50: SURVEYS AND SURVEYORS**

Nothing of particular interest.

## **TITLE 51: TRADE AND COMMERCE**

### **Michot (SB 578) Act No. 543**

New law requires applicants for registration as an investment adviser representative to pass a written examination.

Effective upon signature of the governor (June 22, 2006). (Amends R.S. 51:703(D))

### **Securities Law Technical Changes (Act No. 544)**

New law makes various technical changes to the Louisiana Securities Law.

Effective upon signature of the governor (June 22, 2006). (Amends R.S. 51:703(G)(intro para), 705(D)(2), 706(A) and (D)(intro para), 708(3), 709(15), and 724)

### **Securities Commissioner Powers (Act No. 361)**

Existing law provides that the commissioner of the Office of Financial Institutions shall also be the commissioner of securities for the state and shall administer the provisions of the La. Securities Law and is granted certain powers, duties, and obligations.

New law authorizes the commissioner to issue interpretive opinions and no-action determinations that he will not institute proceedings.

New law provides that oral or informal opinions provided by the commissioner or his staff are nonbinding unless confirmed in writing by the party requesting such opinion.

New law authorizes the commissioner to publish information regarding any orders or rules issued by him in the course and scope of implementing his duties.

New law authorizes the commissioner, following notice and opportunity for hearing, to assess a civil monetary penalty against any issuer, broker-dealer, agent, investment adviser, or investment adviser representative who violates any provision of the La. Securities Law. Such penalties may not exceed \$5,000 per violation, plus certain costs.

Effective upon signature of governor (June 13, 2006). (Amends R.S. 51:710(A); Adds R.S. 51:710.1)

### **Securities Law Filings Revealed (Act No. 464)**

New law provides that except as otherwise specified, records obtained by the commissioner of securities, including a record contained in or filed with a registration statement, application, notice filing, report, the Central Registration Depository or the Investment Adviser Registration Depository, are public records and are available for public inspection.

New law further provides that if disclosure is for the purpose of a civil, administrative, or criminal investigation, action, or proceeding or to a person specified as a state, federal or foreign securities administrator, the commissioner may disclose a record obtained in connection with an examination or investigation.

Effective upon signature of the governor (June 15, 2006). (Amends R.S. 44:4.1(B)(31); adds R.S. 51:710.1)

### **Office of Entertainment Industry Development (Act No. 346)**

Prior law provided for the Governor's Office of Film and Television Development.

New law changes prior law by expanding office to include digital media and music and renames the office as the Office of Entertainment Industry Development.

Effective August 15, 2006. (Amends R.S. 51:938.1)

### **Small and Emerging Businesses (Act No. 434)**

New law changes prior law to provide that a business can qualify as a "small and emerging business" if it is more than 50% owned and controlled by emerging business persons and has its principal place of business in the state.

New law establishes the mentor-protégé program within the division of small and emerging business development.

New law provides that any state agency may develop a plan for participation in the mentor-protégé program.

Effective August 15, 2006. (Amends R.S. 39:1503.1(A)(intro. para.) and R.S. 51:941(3); Adds R.S. 51:946, 947, and 1926(A)(5))

### **Unfair Trade Practices (Act No. 218)**

New law 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.

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

New law provides that if any person engages in any method, act, or practice in Louisiana declared unlawful under the Unfair Trade Practices and Consumer Protection Law and the violation was committed against a person aged 65 or over, a district court may impose an additional penalty not to exceed \$5,000 for each violation. Further provides several factors for the court to consider when deciding to assess such a penalty.

New law authorizes as remedies for violations:

1. Revocation, forfeiture, or suspension of any license, charter, franchise, certificate, or other evidence of authority of any person to do business in the state.
2. Appointment of a receiver.
3. Dissolution of domestic corporations or associations.
4. Suspension or termination of the right of foreign corporations or associations to do business in this state.
5. Restitution.

Effective upon signature of governor (June 2, 2006). (Amends R.S. 51:1401, *et seq.*)

#### **Unfair Trade Practices Exemptions (Act No. 171)**

Existing law provides that the provisions of La. Unfair Trade Practices Act shall not apply to actions or transactions subject to the jurisdiction of the Louisiana Public Service Commission or other public utility regulatory body, the commissioner of financial institutions, the insurance commissioner, the financial institutions and insurance regulators of other states, or federal banking regulators who possess authority to regulate unfair or deceptive trade practices.

New law adds any federally insured financial institution, its subsidiaries, and affiliates or any licensee of the Office of Financial Institutions, its subsidiaries, and affiliates.

Effective August 15, 2006. (Amends R.S. 51:1406(1))

#### **Stored Communication Act Enforcement (Act No. 556)**

New law provides that a violation of the federal "Stored Communications Act" by a provider of Internet service involving information relating to a resident of Louisiana shall constitute a deceptive and unfair trade practice.

New law provides that any violation of new law will be a deceptive and unfair trade practice and will subject the violator to any and all penalties provided for in existing law.

New law does not prohibit a provider of Internet service from disclosing information to a state, or local agency when the request for such is otherwise authorized in law.

Effective August 15, 2006. (Adds R.S. 51:1425)

#### **Internet Anti-Fraud Laws (Act No. 549)**

New law provides that a person may not, with the intent to engage in conduct involving the fraudulent use or possession of another person's identifying information:

1. Create a Web page or Internet domain name that is represented as a legitimate online business without the authorization of the registered owner of the business; and
2. Use that Web page or a link to the Web page, that domain name, or another site on the Internet to induce, request, or solicit another person to provide identifying information for a purpose that the other person believes is legitimate.

New law 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:

1. Is falsely represented as being sent by a legitimate online business.

2. Refers or links the recipient of the message to a Web page that is represented as being associated with the legitimate online business.
3. Directly or indirectly induces, requests, or solicits the recipient of the electronic mail message to provide identifying information for a purpose that the recipient believes is legitimate.

New law authorizes that the following persons may bring a civil action for violations of new law:

1. A person engaged in the business of providing Internet access service to the public who is adversely affected by the violation.
2. An owner of a Web page or trademark who is adversely affected by the violation.
3. The attorney general.

New law provides that a person bringing an action under new law may:

1. Seek injunctive relief to restrain the violator from continuing the violation.
2. Recover damages in an amount equal to the greater of actual damages arising from the violation, or \$100,000 for each violation of the same nature or both.
3. Seek both injunctive relief and recover damages.

New law provides that a court may 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.

New law authorizes a plaintiff who prevails to recover reasonable attorney fees and court costs.

New law is inapplicable to a telecommunications provider's or Internet service provider's good faith transmission or routing of, or intermediate temporary storing or caching of, identifying information.

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

## **Unfair Computer Practices Law (Act No. 392)**

New law provides a person or entity that is not an authorized user shall not knowingly or willfully cause computer software to be copied or procure the copying onto the computer of an authorized user in this state and use the software to do any of the following acts:

1. Modify through deceptive means any of the settings related to the computer's access to or use of the Internet.
2. Collect through deceptive means personally identifiable information.
3. Prevent through deceptive means an authorized user's reasonable efforts to block the installation of or to disable software by causing software that the authorized user has properly removed or disabled to automatically reinstall or reactivate on the computer without the authorization of an authorized user.
4. Misrepresent that software will be uninstalled or disabled by an authorized user's action with knowledge that the software will not be so uninstalled or disabled.
5. Through deceptive means, remove, disable, or render inoperative security, anti-spyware, or anti-virus software installed on the computer.

New law provides that a person or entity that is not an authorized user shall not knowingly or willfully cause computer software to be copied or procure the copying onto the computer of an authorized user in this state and use the software to do any of the following:

1. Take control of the authorized user's computer.
2. Modify settings related to the computer's access to or use of the Internet.
3. Prevent, without the authorization of an authorized user, an authorized user's reasonable efforts to block the installation of or to disable software.

New law provides that a person or entity who is not an authorized user shall not do any of the following:

1. Induce an authorized user to install a software component onto the computer by misrepresenting that installing software is necessary for security or privacy reasons or in

order to open, view, or play a particular type of content.

2. Cause the copying and execution on the computer of a computer software component with the intent of causing an authorized user to use the component in a way that violates any other provision of this Section.

New law provides that nothing in new law shall apply to any monitoring of or interaction with a user's Internet or other network connection or service, or a protected computer with respect to activities prohibited by new law, by cable operators, computer hardware or software providers, or certain other providers.

New law provides nothing in new law shall limit the rights of providers of wire and electronic communications under federal law.

New law provides that the district attorney of a parish where a violation occurs and the attorney general shall have the authority to investigate and institute criminal proceedings for any such violation.

New law provides that a violation of new law shall be considered an unfair trade practice and such violation shall subject the violator to all of the provisions of the Unfair Trade Practices and Consumer Protection Law.

New law provides that except for an action or other relief brought under the Unfair Trade Practices and Consumer Protection Law, the following persons may bring a civil action against a person who violates new law.

1. A provider of computer software who is adversely affected by the violation.
2. An Internet service provider who is adversely affected by the violation.
3. A trademark owner whose trademark is used without the authorization of the owner to deceive users in the course of any of the deceptive practices prohibited by new law.
4. The attorney general.

New law provides that a person bringing an action under new law may apply for injunctive relief to restrain any violation and seek to recover damages not to exceed \$100,000 for each violation.

New law provides that the court may increase an award of actual damages in an action brought to an amount not to exceed three times the actual

damages sustained if the court finds that the violations have occurred with such frequency with respect to a group of victims as to constitute a pattern or practice.

New law provides that a plaintiff who prevails in an action is entitled to recover reasonable attorney fees and court costs.

New law provides that in the case of a violation of new law that causes a communications provider to incur costs for the origination, transport, or termination of a call triggered using the modem of a customer of the communications provider as a result of a violation, the communications provider may bring a civil action against the violator to recover any or all of the following:

1. The charges the carrier is obligated to pay to another carrier or to an information service provider as a result of the violation.
2. Costs of handling customer inquiries or complaint with respect to amounts billed for calls.
3. Costs and reasonable attorney fees.
4. An order to enjoin the violation.

Effective August 15, 2006. (Adds R.S. 51:1441-1449)

### **Internet Fraud (Act No. 201)**

New law 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.

New law 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 new law may bring an action against a person who violates or is in violation of new law. New law provides that a person who brings an action may seek to recover the greater of actual damages or \$5,000.

New law provides that an individual who is adversely affected by a violation of new law may bring an action, but only against a person who has directly violated new law. New law provides that a person who brings an action may

seek to enjoin further violations and seek to recover the greater of three times the amount of actual damages or \$5,000 per violation.

New law provides that the attorney general or a district attorney in a parish where a violation occurs may bring an action against a person who violates or is in violation of new law to enjoin further violations and to recover a civil penalty of up to \$2,500 per violation.

New law provides for increase of recoverable damages to an amount up to three times the damages otherwise recoverable under new law in cases in which the defendant has engaged in a pattern and practice of violating new law.

New law awards costs of suit and reasonable attorney fees to a prevailing plaintiff.

New law provides that remedies provided for in new law do not preclude the seeking of any other remedies, including criminal remedies, provided by existing law.

New law provides that under certain circumstances, multiple violations of new law resulting from any single action or conduct shall constitute one violation.

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

#### **Enterprise Zone Act (Act No. 844)**

Existing law, the Louisiana Enterprise Zone Act, specifies a number of incentives for business to locate in an enterprise zone. One of these incentives calls for the rebate of sales and use taxes when a contract is entered into by the Board of Commerce and Industry.

Prior law limited the participating local governments to municipalities and parishes and in some instances port districts and industrial development boards. New law clarifies that any political subdivision can participate including law enforcement and other special districts.

New law further provides that a political subdivision shall promptly rebate the sales and use taxes collected by it when the terms and conditions of the contract are met.

New law further provides that it is applicable to tax years beginning on and after January 1, 2004.

Effective upon signature of the governor (July 5, 2006). Amends R.S. 51:1783 and 1787

#### **TITLE 52: UNITED STATES**

Nothing of particular interest.

#### **TITLE 53: WAR EMERGENCY**

Nothing of particular interest.

#### **TITLE 54: WAREHOUSES**

Nothing of particular interest.

#### **TITLE 55: WEIGHTS AND MEASURES (REPEALED)**

Nothing of particular interest.

#### **TITLE 56: WILDLIFE AND FISHERIES**

##### **Computer-Assisted Remote Hunting (Act No. 745)**

New law prohibits computer-assisted remote hunting as well as providing or operating such services that allow others to engage in computer-assisted remote hunting.

Effective August 15, 2006. (Adds R.S. 56:116.5)

##### **Soft Shell Crab Shedding Facilities (Act No. 401)**

Existing law provides that a "wholesale/retail seafood dealer" includes but is not limited to the owner or operator of any fish factory, platform, or other processing plant.

New law adds the owner or operator of a soft shell crab shedding facility to the definition of seafood dealer. Thus, new law requires the operator of a soft shell crab shedding facility to purchase the wholesale/retail seafood dealer's license.

Effective November 15, 2006. (Amends R.S. 56:306(A)(2)(a), 306.2(A)(3), 306.6(A), and 332(K); Repeals R.S. 56:309 - 309.4)