

**2008 LOUISIANA  
LEGISLATIVE ACTS  
SUMMARY**

# 2008 Legislative Acts Summary

## Contents

This book summarizes those new laws passed by the Louisiana Legislature in 2008 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 various summaries prepared by other organizations, as well as a very brief summary of all of the Acts passed in 2008 in Act number order.

## Warning

The summaries are not intended to substitute for careful examination of a new law itself, if it is at issue. Our summaries are based on more detailed summaries prepared by the Legislative staff, which are available at [www.legis.state.la.us/home.htm](http://www.legis.state.la.us/home.htm) (scroll down to "Bill Search", search by "ACT" rather than "HB", and print the latest "Digest"). We have not attempted to verify the accuracy of the summaries prepared by the Legislative staff; we have simply edited them down. The summaries prepared by other organizations obviously vary widely in quality, scope, and perspective.

## Where to Find Full Text of Acts and Laws

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").

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).

## Feedback

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*

**Erin Hebert** – downloaded Legislative staff summaries from the Legislature's website and implemented edits

**Justin Swaim** – downloaded Legislative staff summaries from the Legislature's website, implemented edits and conformed them to a common style sheet

**Emma Grimshaw** – downloaded Legislative staff summaries from the Legislature's website, implemented edits and conformed them to a common style sheet, found summaries by other organizations

**Emily Brewer** – downloaded Legislative staff summaries from the Legislature's website, implemented edits and conformed them to a common style sheet, found summaries by other organizations, assembled the summaries in the Table of Contents order, and assembled all the parts into a single book

**Mike Landry** – selected and edited legislative staff summaries for inclusion in book, and provided design and oversight

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

TABLE OF CONTENTS

	<u>Page</u>
Constitution.....	1
Civil Code .....	2
Code of Civil Procedure.....	5
Code of Criminal Procedure .....	9
Code of Evidence.....	10
Children's Code.....	10
Uncodified.....	13
Title 1: General Provisions .....	14
Title 2: Aeronautics.....	14
Title 3: Agriculture and Forestry .....	14
Title 4: Amusements and Sports .....	16
Title 5: Auctions and Auctioneers .....	16
Title 6: Banks and Banking.....	16
Title 7: Bills and Notes .....	17
Title 8: Cemeteries.....	18
Title 9: Civil Code Ancillaries .....	19
Title 10: Commercial Laws .....	23
Title 11: Consolidated Public Retirement Systems.....	23
Title 12: Corporations and Associations.....	24
Title 13: Courts and Judicial Procedure.....	25
Title 14: Criminal Law.....	28
Title 15: Criminal Procedure.....	30
Title 16: District Attorneys .....	31
Title 17: Education.....	31
Title 18: Louisiana Election Code .....	35
Title 19: Expropriation.....	39
Title 20: Homesteads and Exemptions.....	39
Title 21: Hotels and Lodging Houses .....	39
Title 22: Insurance .....	39
Title 23: Labor and Workers' Compensation .....	48
Title 24: Legislature and Laws .....	50
Title 25: Libraries, Museums, and Other Scientific and Cultural Facilities .....	52
Title 26: Liquors – Alcoholic Beverages .....	53
Title 27: Louisiana Gaming Control Law .....	53
Title 28: Mental Health.....	53
Title 29: Military, Naval, and Veterans' Affairs .....	55
Title 30: Minerals, Oil, Gas and Environmental Quality .....	57
Title 31: Mineral Code.....	58
Title 32: Motor Vehicles and Traffic Regulation.....	59
Title 33: Municipalities and Parishes.....	63
Title 34: Navigation and Shipping .....	66
Title 35: Notaries Public and Commissioners.....	66
Title 36: Organization of Executive Branch of State Government .....	68
Title 37: Professions and Occupations.....	69
Title 38: Public Contracts, Works and Improvements .....	74
Title 39: Public Finance .....	75
Title 40: Public Health and Safety .....	78

TABLE OF CONTENTS

(continued)

	<u>Page</u>
Title 41: Public Lands .....	86
Title 42: Public Officers and Employees .....	86
Title 43: Public Printing and Advertisements .....	95
Title 44: Public Records and Recorders .....	95
Title 45: Public Utilities and Carriers .....	96
Title 46: Public Welfare and Assistance .....	98
Title 47: Revenue and Taxation .....	99
Title 48: Roads, Bridges and Ferries.....	107
Title 49: State Administration.....	107
Title 50: Surveys and Surveyors .....	109
Title 51: Trade and Commerce .....	109
Title 52: United States .....	111
Title 53: War Emergency .....	111
Title 54: Warehouses .....	111
Title 55: Weights and Measures.....	111
Title 56: Wildlife and Fisheries .....	111
Louisiana Administrative Code .....	113

APPENDIX A: SUMMARIES BY OTHER ORGANIZATIONS

APPENDIX B: ACTS OF 2008 FIRST EXTRAORDINARY SESSION

APPENDIX C: ACTS OF 2008 SECOND EXTRAORDINARY SESSION

APPENDIX D: ACTS OF 2008 REGULAR SESSION

## CONSTITUTION

### **"Offer-Back" Provisions Exception (Act No. 936)**

Proposed constitutional amendment provides that in the city of Baton Rouge or the city of New Orleans or in Jefferson parish, when property is taken for the public purpose of removal of a threat to public health or safety caused by the existing use or disuse of the property, the property shall be exempt from the recent constitutional amendments granting the prior owner a right of first refusal.

New law specifies submission of the amendment to the voters at the statewide election to be held on November 4, 2008. (Adds Art. I, §4(H)(5))

### **Proclamation of Emergency Sessions of Legislature (Act No. 937)**

Present constitution, relative to extraordinary sessions of the legislature, provides that the legislature may be convened by the governor and shall be convened by the presiding officers of both houses upon written petition of a majority of the elected members of each house. Present constitution requires that at least five days prior to convening the legislature in an extraordinary session, the governor or the presiding officers, as the case may be, shall issue a proclamation stating the objects of the session, the date on which it shall convene, and the number of days for which it is convened.

Proposed constitutional amendment requires that at least five calendar days elapse after the day the proclamation is made public and prior to the day convening the legislature in extraordinary session, and that the governor or the presiding officers, as the case may be, issue and make public the proclamation stating the objects of the session, the date on which it shall convene, and the number of days for which it is convened.

New law specifies submission of the amendment to the voters at the statewide election to be held on November 4, 2008. (Amends Const. Art. III, Sec. 2(B))

### **Term Limits for Certain Board Members (Act No. 935)**

Proposed constitutional amendment provides that no person who has served three complete consecutive terms on various boards or commissions, including the Public Service Commission, may serve a succeeding term. Proposed constitutional amendment further provides that any person serving as a member on the effective date of proposed constitutional amendment may complete the term. Proposed constitutional amendment provides that the term limits provided for by proposed constitutional amendment shall not apply to any person elected or appointed to a board or commission prior to the effective date of proposed constitutional amendment unless and until that person is re-elected or reappointed after his current term expires.

New law specifies submission of the amendment to the voters at the statewide election to be held on November 4, 2008. (Amends Art. IV, Sec. 21(A), Art. VIII, Sec. 3(B), 5(B), 6(B), 7(B), and 7.1(B), Art. IX, Sec. 8(B), and Art. X, Sec. 3(B) and 43(B))

### **Severance Taxes for Parishes (Act No. 932)**

Present constitution provides that 1/5 of the severance tax on all natural resources other than sulphur, lignite, or timber shall be remitted to the governing authority of the parish in which severance or production occurs. The initial maximum amount remitted to the parish in which severance or production occurs shall not exceed \$850,000.

Proposed constitutional amendment increases the maximum amount to \$1,850,000, effective July 1, 2009, and then to \$2,850,000, effective July 1, 2010.

Proposed constitutional amendment provides that at least 50% of the excess severance tax revenues received by a parish pursuant to proposed constitutional amendment shall only be used within the parish in the same manner and for the same purposes as money received by the parish from the Parish Transportation Fund.

Proposed constitutional amendment provides that, after all other severance tax allocations have been satisfied, 50% of the revenues received from severance taxes collected on state lands, not to exceed \$10 million, within the Atchafalaya Basin shall be deposited into the Atchafalaya Basin Conservation Fund, and contains further provisions regarding the use of such fund.

New law provides for submission of the proposed amendment to the voters at the statewide election to be held Nov. 4, 2008. (Amends Const. Art. VII, §4(D)(3); Adds Const. Art. VII, §4(D)(4) and (5))

**Investment of Public Post-Employment Funds in Equities (Act No. 934)**

Present constitution prohibits the state and its political subdivisions from subscribing or purchasing the stock of a corporation or association or for any private enterprise, except for the investment in equities of up to 35% of university endowments and other specified special treasury funds.

Proposed constitutional amendment additionally authorizes the investment in equities of any monies of the state and a political subdivision reserved to provide for post-employment benefits other than pensions.

New law provides for submission of the proposed amendment to the voters at the statewide election to be held Nov. 4, 2008. (Amends Const. Art. VII, §14(B))

**Transferable Assessment Levels (Act No. 933)**

Proposed constitutional amendment provides that the special assessment level on property that is sold to or expropriated by a federal, state, or local governing authority or political subdivision shall be transferred to the new property of the owner entitled to the special assessment level and shall remain in effect on the new property at the same special assessment level of the property that was sold or expropriated, provided the owner entitled to the special assessment level remains the owner of the new property.

Proposed constitutional amendment further requires that the new property acquired by an owner entitled to the special assessment be acquired no later than 24 months after the expropriation or sale becomes final and funds have been disbursed and which is similar in nature, has a fair market value which does not exceed 200% of the fair market value of the property sold or expropriated, and is intended to replace the property sold to or expropriated by the federal, state, or a local governing authority or political subdivision.

New law provides for submission of the proposed amendment to the voters at the statewide election to be held Nov. 4, 2008. (Adds Article VII, §18(G)(6))

**CIVIL CODE**

**Emancipation (Act No. 786)**

New law provides that there are three kinds of emancipation – judicial emancipation, emancipation by marriage, and limited emancipation by authentic act.

New law provides for the limited emancipation of a minor, who is sixteen years of age or older, by an authentic act executed by the minor, and his parents or tutor. The authentic act of limited emancipation shall specify the kinds of juridical acts that the emancipated minor shall have the capacity to make. All other effects of minority shall continue.

Present law provides for the emancipation of a minor against the will of his father and mother, when they ill treat him, or refuse him support, or give him corrupt examples. New law is silent. However, new law provides that a minor may petition for his emancipation.

New law provides that a judicial emancipation and an emancipation by authentic act may be terminated or modified for good cause. New law provides that an emancipation by marriage may not be modified or terminated. Present law provides that a minor who has been emancipated by marriage may appear in court without the assistance of a curator. New law is silent.

New law provides that the father and mother are not responsible for the damage occasioned by their minor child who has been emancipated by marriage, by judgment of full emancipation, or by judgment of limited emancipation that expressly relieves the parents of liability for damages occasioned by their minor child.

New law provides that a minor can petition for emancipation without the participation of his tutor or administrator, that the parents or the tutor of a minor can petition for the emancipation of the minor, and that a minor and his parents or tutor can file a joint petition for judicial emancipation of the minor. New law provides that a court may order the full or limited emancipation of a minor for good cause.

New law provides that the emancipation hearings shall be a summary proceeding; except for good cause shown, the minor shall be present; and with the consent of all parties and the court, a judicial emancipation may be granted without a hearing.

New law provides that a court may modify or terminate its judgment of emancipation or an act of limited emancipation by authentic act when the court finds good cause.

Effective January 1, 2009. (Amends Chapter 2 of Title VIII of Book I of the Civil Code formerly comprised of Arts. 365- 385, to comprise Arts. 365 -371, C. C. Art. 2318, and Title V of Book VII of the Louisiana Code of Civil Procedure, formerly comprised of Arts. 3991-3994, to comprise Arts. 3991-3998)

#### **Domicile (Act No. 801)**

New law provides that the domicile of each person is the place of his habitual residence. New law provides that persons may not have more than one domicile.

New law provides that the domicile of an unemancipated minor is that of the parent or parents with whom the minor usually resides, the domicile of the person to whom legal authority has been granted, the domicile of the tutor of the minor, or the domicile of the tutor

with whom the minor usually resides, unless the court directs otherwise.

New law provides that the domicile of a full interdict is that of his curator, that the domicile of a limited interdict is governed by the judgment of limited interdiction, and that the domicile of a person under continued or permanent tutorship is that of his tutor.

Prior law provided that laborers or servants have the domicile of those for whom they serve, provided that they reside with them. New law deletes prior law.

New law provides that spouses may have common or separate domiciles.

Existing law provides for the domicile of military personnel. New law retains existing law, but moves it to the Code of Civil Procedure.

Existing law provides that a change of domicile is produced by moving from one parish to another, combined with the intent to make that new establishment his domicile. New law retains existing law, but deletes the term "parish". New law provides that the proof of a person's intent to change his domicile depends upon the circumstances and that a signed, recorded declaration may be considered evidence. New law provides that a person who holds a temporary position retains his domicile unless he demonstrates a contrary intent.

Prior law provided for domicile for persons who accept a lifetime office or who perform duties throughout the state. New law deletes prior law. Prior law provided for circumstances when persons are absent on business for the state or the U.S. New law deletes prior law.

Effective January 1, 2009. (Amends C.C. Arts. 38-46; Adds C.C.P. Art. 11)

#### **Adoption of Adults (Act No. 351)**

New law requires court authorization of the adoption of an adult if the adoptive parent is not the spouse or the surviving spouse of a parent of the person to be adopted.

Effective January 1, 2009. (Amends C.C. Art. 214, C.C.P. Art. 10(A)(1) and R.S. 9:461 and 462; Adds C.C. Arts. 212 and 213, C.C.P. Art. 74.5, and R.S. 9:463-465)

**Component Parts of Buildings and Other Constructions (Act No. 632)**

Prior law provided that things permanently attached to a building or other construction were its component parts. New law requires that the thing be attached to a building and be considered, by prevailing usage, as serving to complete a building of the same general type to be component parts. New law provides that things are component parts of a construction other than a building if: (1) they are attached to the construction and (2) serve the principal use of the construction.

Prior law provided that things such as heating, cooling, electrical, or other installations were component parts of a building or other construction as a matter of law. New law eliminates such provision.

New law provides examples of things that serve to complete a building and may consequently become component parts.

Existing law provides that things are component parts by permanent attachment if they cannot be removed from a building or other construction without causing substantial damage to themselves or the building or other construction. New law retains existing law.

Prior law provides that things are component parts of an immovable or other construction if, according to prevailing societal notions, they are considered to be its component parts. New law eliminates the category of component parts according to prevailing societal notions.

New law provides that if the principal thing is a movable construction permanently attached to the ground, its accessories include things that would be component parts if the construction were immovable.

New law provides that the provisions of new law relative to the sales and use tax shall not be

interpreted to change the characterization of movables as tangible personal property prior to their attachment to a building or other construction.

Effective upon signature of governor (July 1, 2008). (Amends C.C. Arts. 466 and 508)

**Donations (Act No. 204)**

Prior law provided that if the right of return is stipulated and the thing is returned to the donor, it be returned free and clear of encumbrance. New law changes the law in that the right of return is subject to the right of a good faith transferee for value, and provides that the donee and his successors are held accountable for losses sustained by the donor when the thing cannot be returned due to the rights acquired by a good faith transferee.

Prior law provided that a donation of an incorporeal movable, such as rents, credits, rights, or actions, shall be made by notarial act. New law further requires that a donation of an incorporeal movable evidenced by a certificate, document, instrument, or other writing may be made by authentic act or as provided in special rules applicable to the particular kind of movable. New law provides that investment property may be donated by a document directing the transfer of the property in favor of the donee or for his benefit.

Prior law provided that an act of donation shall contain a detailed estimate of the things given. New law clarifies that the act of donation shall identify both the donor and the donee and describe the object that is given and provides that the codal identification requirements are satisfied if the identity of the parties and the object of the donation are reasonably ascertainable from information contained in the act.

Prior law provided that grounds for revocation or dissolution of a donation are the donee's ingratitude, the nonfulfillment or nonperformance of conditions to which the donation was subject, or the legal or conventional return. New law eliminates the



legal or conventional return as a ground for invalidating a donation.

Prior law provided that a donation may be revoked for ingratitude when the donee has attempted to kill the donor, has engaged in cruel treatment towards the donor, or has refused the donor food when in distress. New law eliminates failing to provide food to the donor as a ground for revoking a donation for ingratitude.

Prior law provided that in case of revocation, the donee shall return the value of the thing given, along with the fruits from the day the action for revocation was brought. New law clarifies that in cases of revocation, the donee's principal obligation is to return the thing.

Prior law provided that an action for revocation or rescission of a donation based on the nonperformance of conditions imposed on the donee is subject to the usual prescription. New law clarifies that such an action is subject to the prescription of five years.

Prior law provided that in case of revocation or dissolution of a donation of an immovable for non-execution of the conditions, the property shall be returned to the donor unless the donee has alienated the property by onerous title; in the latter case, the donee shall return the value of the immovable at the time of the donation. New law provides that when the donee fails to fulfill the conditions, the immovable donated shall be returned to the donor, even if the donee had alienated, leased, or encumbered the immovable.

Prior law provided that in cases of revocation, the donee need not return the fruits gathered prior to the filing of the suit for revocation. New law provides the trial court has discretion to award restoration of fruits and products if the donee's failure to perform was due to his fault. New law provides that when the donee is unable to return the thing in the condition that it was at the time of the donation, the donor may require its return and hold the donee accountable for any diminution in value.

Effective January 1, 2009. (Amends C.C. Arts. 1467-1469 and 1523-1569.1)

### **Declarations of Paraphernality (Act No. 855)**

Present law relative to community property provides that the natural and civil fruits of the separate property of a spouse, minerals produced from or attributable to a separate asset, and bonuses, delay rentals, royalties, and shut-in payments arising from mineral leases are community property. Nevertheless, a spouse may reserve them as his separate property by a declaration made in an authentic act or in an act under private signature duly acknowledged.

New law adds that a copy of the declaration shall be provided to the other spouse prior to filing of the declaration.

Present law further provides that as to the fruits and revenues of immovables, the declaration is effective when filed for registry in the conveyance records of the parish in which the immovable property is located. As to fruits of movables, the declaration is effective when filed for registry in the conveyance records of the parish in which the declarant is domiciled. New law retains present law.

Effective August 15, 2008. (Amends C.C. Art. 2339)

### **CODE OF CIVIL PROCEDURE**

#### **Discovery from Legislative Employees (Act No. 374)**

New law in civil proceedings requires a hearing prior to issuance of an order compelling discovery of a legislative employee when the legislature is not a party in the case.

New law requires that no criminal subpoena or order compelling discovery shall issue to compel the attendance of a legislative employee except in strict conformity with R.S. 13:3667.3.

New law provides extensive procedures, similar to those of R.S. 13:3667.3 for courts, for compelling discovery in an administrative hearing.

Effective upon signature of governor (June 21, 2008). (Amends R.S. 13:3667.3, R.S. 49:956.1,

C.C.P. Art. 1469, and C.Cr.P. Art. 740; Adds R.S. 13:3667.3(D) and (E))

**Open Account or Note Suit Venue (Act No. 357)**

Prior law provided that an action to collect an open account could have been brought in the parish where the open account was created, where the services were to be performed, or in the parish of the domicile of the debtor.

New law provides that an action to collect on a promissory note may be brought in the parish where the promissory note was executed or in the parish of the domicile of the debtor.

Effective upon signature of governor (June 21, 2008). (Amends C.C.P. Art. 74.4)

**Recusal of Judges (Act No. 663)**

Prior law provided that a judge of any court, trial or appellate, *shall* be recused when he was a witness in the cause.

New law provides that a judge of any court, trial or appellate, *shall* be recused when he:

1. Is a witness in the cause;
2. Has been employed or consulted as an attorney in the cause or has previously been associated with an attorney during the latter's employment in the cause and the judge participated in representation in the cause;
3. Is the spouse of a party or of an attorney employed in the cause, or the judge's parent, child, or immediate family member is a party or attorney employed in the cause; or
4. Is biased, prejudiced, or interested in the cause or its outcome or biased or prejudiced toward or against the parties or the parties' attorneys or any witness to such an extent that he would be unable to conduct fair and impartial proceedings.

Prior law provided that a judge of any court, trial or appellate, *may* be recused when he:

1. Had been employed or consulted as an attorney in the cause, or had been associated

with an attorney during the latter's employment in the cause;

2. At the time of the hearing of any contested issue in the cause, had continued to employ, to represent him personally, the attorney actually handling the cause (not just a member of that attorney's firm), and in that case the employment shall be disclosed to each party in the cause;

3. Had performed a judicial act in the cause in another court; or

4. Was the spouse of a party, or of an attorney employed in the cause; or was related to a party, or to the spouse of a party, within the fourth degree; or was related to an attorney employed in the cause; or to the spouse of the attorney, within the second degree; or

5. Was biased, prejudiced, or interested in the cause or its outcome or biased or prejudiced toward or against the parties or the parties' attorneys to such an extent that he would have been unable to conduct fair and impartial proceedings.

New law partially retains (1) above, retains (2) and (3) above, deletes prior law in (4) and (5) above, and adds a new provision which provides that a judge of any court, trial or appellate, *may* be recused when he is related to: a party; the spouse of a party, within the fourth degree; an attorney employed in the cause; or the spouse of the attorney, within the second degree; or if the judge's spouse, parent, child, or immediate family member living in the judge's household has a substantial economic interest in the subject matter in controversy sufficient to prevent the judge from conducting fair and impartial proceedings in the cause.

Effective August 15, 2008. (Amends C.C.P. Art. 151)

**Mandatory Interpreters in Court (Act No. 882)**

New law requires in civil and criminal proceedings a judge to appoint a competent interpreter to interpret or to translate the proceedings to a non-English-speaking person who is a principal party in interest or a witness

in a proceeding before the court and to interpret or translate his testimony.

New law in civil and criminal proceedings requires the court to order reimbursement to the interpreter for his services at a fixed reasonable amount. New law specifically provides that in civil proceedings this amount shall be taxed by the court as costs of court.

Effective August 15, 2008. (Adds C.C.P. Art. 192.2 and C.Cr.P. Art. 25.1)

### **Electronic Filing of Conveyance and Mortgages (Act. No. 368)**

Prior law authorized a clerk of court, as ex officio recorder, the Orleans Parish register of conveyances, or the Orleans Parish recorder of mortgages to adopt and implement a published plan which provides for the acceptance of an electronic record of any recordable written instrument. Prior law excepted but did not limit documents such as original maps, plats, property descriptions, or certain survey photographs. Required the filer of such an electronic record to certify to the recorder that the written instrument from which the electronic record is taken conforms to all applicable laws relating to the form and content of instruments which are submitted in writing.

New law provides that a recorder is authorized, but not required, to adopt a written contract between the clerk of court, the Orleans Parish register of conveyances, or its successor, or the Orleans Parish recorder of mortgages, or its successor, and the filer which complies with the La. Uniform Electronic Transactions Act. New law authorizes any person to file the electronic instrument. New law deletes language providing that the prior law list of exceptions is nonexclusive and otherwise retains prior law.

Prior law provided that an electronic record shall be effective with respect to a third person from the time of its filing in the same manner as if the written instrument had been filed, provided the written instrument from which the electronic record is taken, except for instruments releasing mortgages and privileges and those instruments filed after July 1, 2006, is filed within 10 days of

the electronic filing. New law repeals the requirement to file the written instrument from which the electronic record is taken within 10 days of the electronic filing.

(Amends C.C.P. Art. 258)

### **Civil Procedure (Act No. 824)**

New law adds "peremption" and "discharge in bankruptcy" to the list of peremptory exceptions and permits the court to supply those objections and the objection of res judicata.

New law eliminates arbitration and award, transaction or compromise, assumption of the risk, discharge in bankruptcy, and division from the list of affirmative defenses; replaces the term "contributory negligence" with "negligence, or fault of the plaintiff..."; and allows the court to consider an affirmative defense as either an incidental demand or a peremptory exception, in the interest of justice.

New law adds "electronically stored information" to the provision for subpoena duces tecum and provides for compliance and objections to the subpoena duces tecum in line with federal procedure, mainly by including requests for electronically stored information, and by allowing the subpoenaed party to reply to a subpoena duces tecum with written objections.

New law adds provisions for the service of subpoenas by private persons without the need of a motion and order.

New law provides that sanctions are generally not available against a person who fails to provide electronically stored information which was lost as a result of the routine, good-faith operation of an electronic information system.

New law adds issues that can be considered in a pretrial conference, including those relating to discovery of electronically stored information, and the form in which it should be produced; issues relating to claims of privilege or protection of trial preparation material; and issues relating to the presentation of testimony or other evidence by electronic devices.

Existing law provides that when two or more separate actions are pending in the same court, the section or division of the court in which the first filed action is pending may order consolidation of the actions for trial after a contradictory hearing, and upon a finding that common issues of fact and law predominate. New law provides that if a trial date has been set in any of the subsequently filed actions that have not yet been consolidated, then the written consent of each section or division of the court shall be required.

Prior law allowed for the waiver of notice of the signing of final judgments. New law repeals prior law.

Prior law provided that when the court rendered a decision in open court and a judgment was not signed immediately, the court was required to prepare and sign a judgment within 10 days of rendition in open court, or the court could order counsel for a party in the case to prepare and submit a judgment to the court for signature no later than 30 days after rendition in open court. New law repeals prior law to eliminate the conflict with Article 1914(B).

New law authorizes summary proceedings in an action for dissolution or specific performance of a compromise entered pursuant to Article 1916(B) or by consent judgment.

Effective January 1, 2009. (Amends C.C.P. Arts. 927, 1005, 1354, 1355, 1471, 1551, 1561, 1916, and 2592; Repeals C.C.P. Art. 1913(E))

### **Pretrial Expert Qualification Hearings (Act No. 787)**

Present law requires the written report for testifying expert witnesses to be filed at least 90 days before the trial date or the date the case is to be ready for trial. New law extends the deadline for filing the written report from 90 days to 120 days.

New law provides for a hearing to be held upon motion of any party at least 90 days before trial to present evidence on why an expert qualifies as an expert and why their methodologies are reliable under Articles 702-705 of the Code of

Evidence, concerning opinions and expert testimony.

New law requires a judge to provide written reasons for determining whether a person qualifies as an expert by providing the following:

1. The elements required to be satisfied in order for a person to testify under Articles 702-705 of the Code of Evidence.
2. The evidence that has been presented at the hearing by a party in order to satisfy the requirements of Articles 702 -705 of the Code of Evidence at trial.
3. A decision by the judge as to whether or not a person shall be allowed to testify under Articles 702-705 of the Code of Evidence at trial.
4. The reasons of the judge detailing in law and fact why a person shall be allowed or disallowed to testify under Articles 702-705 of the Code of Evidence based upon the evidence presented at this hearing.

New law provides for the availability of an interlocutory appeal at the discretion of the appellate court, and provides that a party's right to appeal a ruling on the admissibility of expert evidence after an entry of judgment in the case shall not be waived by either a party's failure to seek an interlocutory appeal nor an appellate court's decision to deny a motion for interlocutory appeal.

New law shall be given prospective application only and shall apply only to an action commenced on and after the effective date of the proposed law.

Effective upon signature of the governor or lapse of time for gubernatorial action. (Amends C.C.P. Art. 1425)

### **Default Divorce Judgments (Act No. 354)**

Existing law provides that to confirm a C.C. Art. 103(1) default divorce judgment, the plaintiff submits an affidavit and a proposed final judgment to the court and, if no answer is filed within two days of rendering a preliminary

default, the court shall render and sign the proposed final judgment or conduct a hearing.

New law retains existing law but additionally requires the plaintiff to submit to the court a certification which includes information regarding the type and date of service, the date a preliminary default was entered, a certification by the clerk that the record was examined, and a statement that no opposition has been filed.

Effective upon signature of governor (June 21, 2008). (Amends C.C.P. Art. 1702)

### **Suspensive and Devolutive Appeals (Act No. 658)**

Existing law provides that in order to perfect a suspensive appeal, an order of appeal shall be granted and the appeal bond shall be timely filed.

New law retains existing law and provides that if the suspensive appeal is not perfected due to failure to file the bond, the trial court maintains jurisdiction to convert the suspensive appeal to a devolutive appeal.

Effective August 15, 2008. (Adds C.C.P. Art. 2088(B); Designates intro. para. as C.C.P. Art. 2088(A))

### **Notice of Seizure of Property - Cancellation and Prescription (Act No. 828)**

New law provides that cancellation of a mortgage, whether legal, judicial, or conventional, shall allow any interested party to cancel the notice of seizure of property affected by the mortgage upon submitting a request to cancel evidencing that the mortgage has been canceled and upon submitting evidence that all costs due to the clerk of court and sheriff are paid in full.

New law requires a notice of seizure to prescribe 10 years after the date of recordation unless reinscribed in the same manner as an instrument creating a mortgage.

New law provides that any interested party may obtain cancellation of the notice of seizure on

the basis of prescription of 10 years without submitting evidence that all costs due to the clerk of court and sheriff have been paid in full.

Effective August 15, 2008. (Amends C.C.P. Art. 2293)

### **Injunctions Involving Interdicts (Act No. 806)**

New law provides that, except for good cause shown, all proceedings for injunction, including ancillary proceedings, involving an interdicted person as applicant or as an adverse party, shall be conducted by the court and division or section rendering the interdiction judgment.

Effective upon signature of governor (July 7, 2008). (Amends C.C.P. Art. 4553)

### **Justice of the Peace Jurisdiction (Act No. 338)**

New law increases the civil jurisdictional amount in dispute from \$3,500 to \$5,000 for justice of the peace courts.

Effective August 15, 2008. (Amends C.C.P. Arts. 4911 and 4912)

## **CODE OF CRIMINAL PROCEDURE**

### **Peremptory Challenges in Voir Dire (Act No. 669)**

New law prohibits peremptory challenges motivated in substantial part by race or gender. New law requires the court to allow to stand a challenge exercised for a race or gender neutral reason disclosed by counsel when required by the court, unless the objecting party establishes that the challenge was motivated in substantial part by the race or gender of the juror.

Proposed law requires that jurors that were improperly challenged be returned to the jury panel.

Effective August 15, 2008. (Amends C.Cr.P. Art. 795)

### **Mutual Mistakes in Sentencing (Act No. 395)**

New law adds that in the event a defendant alleges mutual mistake in the sentence imposed

upon conviction pursuant to C.Cr.P. Art. 893 was in error and the prosecuting authority, the court, and the defendant intended that the imposition of sentence was to be deferred pursuant to that Article, such defendant may file a motion to reconsider the sentence for the sole purpose of considering that issue. The motion shall be filed within two years of the date of successful completion of the probation imposed in the sentence. If the court finds that a mutual mistake exists and that the defendant was in all other respects eligible for the benefits of C.Cr.P. Art. 893, the defendant is entitled to the benefits of the Article.

Effective upon the signature of the governor (June 21, 2008). (Adds C.Cr.P. Art. 881.1(A)(3))

## **CODE OF EVIDENCE**

### **Foreign Business Records (Act No. 178)**

New law provides that in a criminal proceeding a foreign record of regularly conducted business activity, or a copy of such record, shall not be excluded as evidence by the hearsay rule if a foreign certification attests to certain facts.

Effective August 15, 2008. (Adds Code Evid. Art. 803.1)

## **CHILDREN'S CODE**

### **Juvenile Court Jurisdiction; Support Services (Act No. 532)**

New law gives a court exercising juvenile jurisdiction concurrent jurisdiction in proceedings brought by DSS to establish paternity or to establish, modify, or enforce support and in proceedings brought by the district attorney to modify support.

New law with regard to child support enforcement and family and child support programs defines "Support Services" and "Support Enforcement Services" as any action taken by DSS, upon receipt of an application or referral for services or a request made under the Uniform Interstate Family Support Act, in accordance with the federal requirements of

Title IV-D of the Social Security Act and corresponding state laws and regulations, which shall be considered as providing support services and support enforcement services, without regard to whether there is any existing court order, delinquency, or presumption of paternity.

(Amends Ch.C. Art. 311, R.S. 6:333, R.S. 44:4.1 and R.S. 46:236.1.9; adds R.S. 46:236.1.1(8); repeals Ch.C. Art. 311(A)(1)(c))

### **Attorney Participation in Child Abuse & Neglect Cases (Act No. 752)**

New law provides that attorneys and other professionals should participate in multidisciplinary interaction concerning a child in child abuse and neglect cases.

Effective August 15, 2008. (Amends Ch.C. Art. 551)

### **Child Abuse & Neglect Attorneys (Act No. 567)**

New law provides that an attorney representing a child in a child abuse and neglect case, together with other professionals involved with the child, should participate in multi-disciplinary interaction concerning the child, including but not limited to interdisciplinary communication, investigation, discovery, meetings, conferences, proceedings, and administrative hearings.

Effective upon signature of the governor or lapse of time for gubernatorial action. (Adds Ch. Code Art. 554)

### **Competency Proceedings (Act No. 222)**

New law provides for a competency commission rather than a sanity commission.

New law adds further proceedings when a competency or sanity exam is ordered.

New law adds that the burden of proof is a preponderance of the evidence.

New law adds the child must establish insanity by a preponderance of the evidence.

New law authorizes the court, after a contradictory hearing, to determine if the commission may interview the victim or witnesses.

New law provides that the Commission's report is admissible at the hearing and that commission members may be called to testify.

New law deletes the requirement that if the report concludes the child does not possess the capacity to proceed that it also include a prognosis type of remediation. New law deletes the prohibition against the report containing any of the child's statements about offense and using any statement in the proceedings.

Effective on lapse of time for governor's action (June 16, 2008). (Amends Ch.C. Arts. 834, 834.1, 836, 837, 837.1, 838, and 869; adds Ch.C. Arts. 305(E), 869.1, 869.2, and 869.3)

#### **Paternity (Act No. 561)**

New law requires an acknowledgment of a child by authentic act to be filed with the state registrar, office of vital records, the central repository for paternity acknowledgments if the child is born in Louisiana.

New law requires a judgment of filiation rendered by a court which recognizes a father as having formally acknowledged a child born outside of marriage and in which the father is adjudged the parent of the child to be filed with the state registrar, office of vital records, the central repository for adjudications of paternity.

New law requires that if a child is born outside of marriage, the full name of the father is to be included on the record of birth of the child only if the father and mother have signed a voluntary acknowledgment of paternity or a court of competent jurisdiction has issued an adjudication of paternity.

New law repeals provision that in the case of a child born of a surrogate birth parent who is related by blood or affinity to a biological parent, the full name of the biological parent who is proven to be the father by DNA testing

shall be listed as the father on the birth certificate.

Present law provides that in the case of a child born outside of marriage whose certificate of birth fails to list the full name of the father, the full name of the biological father who is proven to be the father by DNA testing shall be listed as the father upon submission, by the mother or father of the child born outside of marriage, to the registrar of vital records for the Department of Health and Hospitals of a certified copy of the DNA test results establishing paternity of the biological father.

New law requires all acknowledgments of paternity properly executed in Louisiana and adjudications of paternity adjudged in Louisiana to be filed with the state registrar, office of vital records, in a central repository pursuant to federal statute.

Effective August 15, 2008. (Amends Ch.C. Arts. 1106, and R.S. 40:34; adds R.S. 40:34(F))

#### **Child Surrender (Act No. 584)**

New law provides that if the surrendering parent is not domiciled in this state, the agency shall be domiciled in this state or accept the surrender of a child in the custody of DSS. New law provides that an agency accepting an act of surrender shall be licensed by DSS.

Effective August 15, 2008. (Amends Ch.C. Arts. 1117, 1121, 1122 and 1130; Adds Ch.C. Arts. 1130(E) and 1131(H))

#### **Child Surrender and Adoption (Act No. 583)**

New law requires additional declarations in the act of surrender, including whether the parent wants to be notified of any opposition to the adoption, wants the future release of identifying information in the event of a medical necessity to treat the child, and that the Statement of Family History will be given to the adoptive parents and may be given to the adopted person.

New law adds that a copy of the Act of Surrender shall be made available to a surrendering parent.

New law adds that the surrendering parent shall receive a notarized statement that the final judgment of adoption was legally rendered, but it shall not identify the adoptive parents.

New law adds that the Statement of Family History may be made available to the adopted person when he reaches the age of 18.

New law adds that a minor adopted person may make the request for the disclosure of nonidentifying medical or genetic information, that the request may also be made to a firm or lawyer, and that compliance with the request shall include a search of all records and sources similar to the Statement of Family History.

New law adds firm or lawyer to those having the duty to maintain medical records, and also includes information on the adopted person's relatives, and adds fulfilling the duty may include providing updated information and facilitating the exchange of information. The duty to maintain the records may be transferred.

New law requires a psychologist, psychiatrist, or social worker to be licensed before conducting a home study and adds a social worker in the employ of a licensed adoption agency and a licensed marriage and family therapist to the list of persons who may conduct a preplacement home study.

Existing law authorizes certain persons to have access to confidential reports rendered in adoptions. New law specifies that the access is to the court's confidential records and that the department's reports shall be retained in the court's records.

New law adds that the prohibition against disclosure of confidential information applies to identifying information and obligates the person to whom adoption records are transferred to assume the responsibility for providing nonidentifying information as provided for in the Children's Code.

New law requires an adoptee to file a motion instead of a petition for disclosure of information regarding his adoption and

authorizes siblings or descendants of the adoptee to file a motion for disclosure.

New law requires the court to grant a motion seeking nonidentifying medical or genetic information.

New law permits a continuing contact agreement between the adoptive parent and any relative or foster parent.

New law authorizes foster parents to enter into continuing contact agreements. New law provides that continuing contact agreements are not against public policy if the voluntary agreement is done in conformity with the provisions of the Children's Code.

New law adds additional persons who may use the voluntary registry and adds additional information the registry will disclose in response to a written request for disclosure.

New law adds disclosure of the adopted person's death and authorizes a firm or lawyer to make that disclosure.

New law changes registration from the office of human development to the office of community services.

Effective August 15, 2008. (Amends Ch.C. Arts.1122, 1123, 1124, 1125, 1126, 1127, 1127.1, 1137, 1172, 1173, 1185, 1186, 1188, 1189, 1190, 1191, 1192, 1269.1, 1269.2, 1269.6, 1270, 1272, and 1276; Adds Ch.C. Arts. 1122(B)(12), (13), and (14), (F)(18), (19), and (20), (G)(18) and (19), and (H), 1123(D), 1190(D), 1269.1.1, and 1270(F))

### **Intrafamily Adoption (Act No. 778)**

New law provides that a petitioner who seeks to adopt a child in an intrafamily adoption proceeding may be required to pay the costs of counsel for the child, as well as counsel for the natural parent whose parental rights are sought to be limited by the adoption or termination.

New law requires that the child and the parent each have the right to be represented by separate counsel in an intrafamily adoption proceeding



that seeks to or may result in the termination of parental rights, and requires the court to appoint an attorney to represent the child and also counsel to represent the parent, if the court determines that the parent is financially unable to afford counsel.

New law requires that the consent of the parent may be dispensed with upon proof of clear and convincing evidence and adds an as additional element that there have been actions by the parent that are considered grounds for termination of parental rights.

New law also provides that if the elements can only be proven by a preponderance of the evidence, the court may grant an adoption to a petitioner without terminating the parental rights of the natural parent.

New law requires a specific notice to be served with a petition for intrafamily adoption and summons on every parent whose parental rights are sought to be or may be terminated in connection with an intrafamily adoption proceeding, detailing the rights of the natural parent.

New law provides that if the parent has not surrendered the child or consented to the adoption and the elements required for dispensing with the parent's consent have not been proven by clear and convincing evidence, the court may grant the adoption without terminating the parental rights of the natural parent, or it may deny the adoption.

Effective August 15, 2008. (Amends Ch.C. Arts. 1245 and 1255; adds Ch.C. Arts. 1243.3, 1245.1, 1248.1, and 1256(E))

## **UNCODIFIED**

### **Tax Free Shopping Program Extension (Act No. 232)**

Prior law provided that the Louisiana Tax Free Shopping Program, a sales tax refund program for foreign visitors to the state, is effective through July 1, 2009. New law changes the termination date to July 1, 2013.

Effective upon signature of the governor (June 17, 2008). (Amends Act 535 of 1988 R.S., Sec. 3; Act 285 of 1992 R.S., Sec. 2; Act 1291 of 1997 R.S., Sec. 3, Act 50 of 1998 R.S., Sec. 1; Act 7 of 2001 1st E.S., Sec. 1; Act 14 of 2004 1st E.S., Sec. 1; Act 76 of 2006 R.S., Sec. 1)

### **Military Use of Design-Build (Act No. 317)**

New law extends to June 30, 2010 the period during which the adjutant general and the Military Department, with approval of the commissioner of administration, may utilize the design-build method to construct infrastructure construction projects in areas where a gubernatorially declared state of emergency exists due to Hurricane Katrina or Rita.

Effective upon signature of governor (June 17, 2008). (Amends §2 of Act No. 38 of the 2006 1st E.S.)

### **Capital Improvement Program Bonds (Act No. 39)**

New law provides for the implementation of a five-year capital improvement program; provides for the repeal of certain prior bond authorizations; provides for new bond authorizations; provides for authorization and sale of such bonds by the State Bond Commission; and provides for related matters.

Effective upon signature of governor (July 6, 2008).

### **Agency Ancillary Funds (Act No. 49)**

New law provides for the establishment and reestablishment of agency ancillary funds, to be specifically known as internal service funds, auxiliary accounts, or enterprise funds for certain state institutions, officials, and agencies. New law requires the appropriated funds, to the extent deposited, unless otherwise specified, to be used for working capital in the conduct of business enterprises rendering public, auxiliary, and interagency service. New law requires receipts from the conduct of such businesses to be deposited to the credit of each ancillary fund.

New law requires all funds to be expended in accordance with public bid laws.

New law provides that all money from federal, interagency, statutory dedications, or self-generated revenues of an agency be deemed available for expenditure in the amounts appropriated, and any increase in such revenues over the amounts appropriated shall only be available for expenditure by the agency with approval of the division of administration and the Joint Legislative Committee on the Budget (JLCB).

New law provides that the number of employees approved for each agency may be increased by the commissioner of administration when appropriate documentation is deemed valid; however, any request which exceeds five positions requires approval of the division of administration and the JLCB.

New law requires any agency with an appropriation level of \$30 million or more to include positions within its table of organization which perform internal auditing services.

Effective July 1, 2008.

**Funding for the Courts (Act No. 59)**

Funding for the ordinary operating expenses of the judicial branch of government is provided as follows:

1. Louisiana Supreme Court \$ 64,720,808
2. Courts of Appeal \$40,329,998
3. District Courts \$30,750,018
4. Criminal Court, Parish of Orleans \$5,315,673
5. Juvenile and Family Courts \$2,118,335
6. Other Courts (Required by Statute) \$2,521,581
7. Other Courts (Not Required by Statute) \$601,349

TOTAL \$ 146,357,762

Effective July 1, 2008.

**TITLE 1: GENERAL PROVISIONS**

Nothing of particular interest.

**TITLE 2: AERONAUTICS**

**Aircraft Laws Repealed (Act No. 326)**

New law repeals existing law regarding registration of aircraft; exceptions; certificates; fees; penalties; delinquent or late registration; nonpayment of license tax; sale of seized aircraft; assignment of registration certificate; filing by mail; total loss of aircraft; abandoned aircraft; unregistered and improperly registered aircraft; nonapproved fuel tanks; dealers' duties and requirements; hearings and procedures for the DPS&C; qualifications of pilots; possession and display of license.

Effective August 15, 2008. (Repeals R.S. 2:1(5) and 2-4)

**TITLE 3: AGRICULTURE AND FORESTRY**

**Fertilizer Law (Act No. 61)**

New law provides that findings of violations and imposition of penalties may be made only by a ruling of the Fertilizer Commission based upon an adjudicatory proceeding held in accordance with the APA.

New law allows the commissioner to institute civil proceedings in any court of proper jurisdiction and venue in order to: (1) enforce the rulings of the commission; or (2) collect any fee, penalty or cost due; or (3) seek injunctive relief to restrain and prevent violations of the rules and regulations.

New law prohibits municipalities, parishes, local governmental entities or governing authorities of any group or association, private or public, having jurisdiction over a specific geographic area from enacting ordinances, laws, subdivision restrictions or regulations regarding fertilizers

that in any way affects the registration, sale, or application of fertilizer.

New law makes a series of minor amendments to the fertilizer laws, including procedure for appeal of deficiency assessments, fines for violations, methods of proof, and technical corrections.

Effective upon signature of the governor (June 5, 2008). (Amends R.S. 3:1311, 1312, 1313, 1314, 1316, and 1317; adds R.S. 3:1316.1-1316.3 and 1319; repeals R.S. 3:1312(G))

#### **Boll Weevil Eradication Commission (Act No. 64)**

New law provides the powers and duties of the commission and of the commissioner.

Effective upon signature of the governor (June 5, 2008). (Adds R.S. 3:1604(J) and 1604.1)

#### **Breeding Dog Limit (Act No. 894)**

New law prohibits an individual or business that breeds, buys, or sells dogs from maintaining more than 75 dogs over the age of one year at any time for breeding purposes.

Effective August 15, 2008. (Amends R.S. 3:2772; Adds R.S. 3:2772(G), (H), and (I))

#### **Grain Storage Contracts (Act No. 299)**

New law authorizes use of an oral contract or agreement for the sale of grain evidenced by a written, unsigned confirmation of sale mailed or electronically transmitted to the producer of the grain within five business days

Effective August 15, 2008. (Adds R.S. 3:3414(C))

#### **Right to Farm Expanded (Act No. 515)**

Present law provides for the Right to Farm which protects agricultural operations from being deemed a nuisance.

New law expands the definition of "agricultural operation" to include any facility used for the production and processing of crops or products

thereof, livestock or products thereof, farm raised fish or fish products, wood, timber or timber products, fowl or plants for breeding or sales, and poultry or poultry products for commercial or industrial purposes, and expands the definition to include the use of farm machinery, equipment, devices, chemicals, products for agricultural use, materials, and structures designed for agricultural use and used in accordance with traditional farm practices.

Effective August 15, 2008. (Amends R.S. 3:3602, 3603, 3604, and 3607; adds R.S. 3:3601(B)(3) and 3602(16), (17), (18), (19) and (20))

#### **Landscaping and Horticulture Combined (Act No. 63)**

New law consolidates the professions of horticulturist and landscape contractor into one licensed profession known as "landscape horticulturist."

New law authorizes a landscape horticulturist's license holder to do the following:

1. Implement plans, studies, surveys, specifications, and designs prepared by a licensed landscape architect.
2. Recommend and implement measures for interior and exterior beautification and development through the use of nursery stock.
3. Sell or lease nursery stock from one place of business and to recommend and execute measures for the maintenance of nursery stock.
4. Prepare drawings to indicate the placement of nursery stock. No fee shall be charged for preparing a drawing. A drawing shall not be used by any person to solicit bids for the sale of materials or rendering of services.

New law provides that any person holding either a horticulturist license or landscape contractor's license prior to February 1, 2009, and who is eligible to renew his license shall be issued a landscape horticulturist license in place of the old license without further application or examination upon the payment of any required renewal fee.

Effective upon signature of the governor (June 5, 2008). (Amends R.S. 3:3801, 3803, 3804, 3807, 3808 and 3815; repeals R.S. 3:3807(B)(6) and 3808(F))

#### **Flower Vending Machines (Act No. 227)**

New law authorizes a person engaged in the profession of retail florist to operate a vending machine at a location remote from the person's place of business for the sale of cut flowers and floral designs, subject to various restrictions.

New law deletes present law that requires each cut flower dealer to sell from a place of business or from a mobile pushcart meeting various restrictive requirements. New law instead prohibits the holder of a cut flower permit to sell cut flowers within 300 feet of the place of business of another person engaged in the profession of retail florist.

Effective upon signature of the governor or lapse of time for gubernatorial action. (Amends R.S. 3:3801, 3803 and 3808; adds R.S. 3:3803(17), 3808(B)(4), (5), and (6))

#### **Horticulture Law (Act No. 229)**

New law provides for a list of fairly generic violations of the Horticulture Law, such as engaging in a regulated profession or occupation without the appropriate license.

New law requires that findings of violations and imposition of penalties may be made only by a ruling of the Horticulture Commission based upon an adjudicatory proceeding held in accordance with the APA.

New law increases the possible civil penalties for repeat offenders.

New law provides that the Horticulture Commission may issue a cease and desist order and the commissioner of agriculture and forestry may issue a stop order or notice of non-compliance to stop or prevent a violation.

Effective on lapse of time for governor's action (June 16, 2008). (Amends R.S. 3:3801, 3803(14), and 3810; adds R.S. 3:3810.1-3810.3)

### **TITLE 4: AMUSEMENTS AND SPORTS**

#### **Video Bingo Machines (Act No. 630)**

New law provides that an electronic video bingo machine shall not contain entertainment display features simulating slot reels or card games.

New law provides that electronic video bingo machines authorized by new law may only be placed at a location approved by the office on or prior to August 15, 2008, or a location for which a completed application to conduct charitable gaming at a specific location has been received by the office on or prior to August 15, 2008, provided such locations shall have received final approval from the office and must be occupied by August 15, 2009.

Effective upon signature of governor (July 1, 2008). (Amends R.S. 4:724; Adds R.S. 4:724(J) and (K))

### **TITLE 5: AUCTIONS AND AUCTIONEERS**

Nothing of particular interest.

### **TITLE 6: BANKS AND BANKING**

#### **Employment References by Trust Company (Act No. 124)**

New law allows trust companies to provide employment references to other financial institutions as present law allows among other financial institutions.

(Amends R.S. 6:2 and 4; Adds R.S. 6:2(17))

#### **State Financial Institutions as Informants (Act No. 345)**

New law provides that, if requested by the commissioner, a state-chartered financial institution, trust company, and money transmission or sale of checks licensee shall provide the office of financial institutions with information relating to suspicious activity that a state-chartered entity may be required by federal law or regulation to submit to any federal agency, but shall incur no liability to its customer for compliance with the reporting

requirements imposed by new law or by federal law or regulation.

Effective upon signature of governor or lapse of time for gubernatorial action. (Amends R.S. 6:420; Adds R.S. 6:420(F))

**Payment of Motor Vehicle Loans (Act No. 236)**

New law provides that if the consumer or his designee tenders to the lender or holder payment in full in an amount derived from the outstanding balance information, then the lender or holder shall accept the amount as payment in full. Upon such payment, the lender or holder shall release the lender's or holder's lien against the motor vehicle, and return the title (or a lien satisfaction certificate with sufficient funds to obtain a duplicate title) to the consumer or his designee no later than 14 days after the date on which payment in full was received.

Effective August 15, 2008. (Adds R.S. 6:969.20(D))

**Money Transmission (Act No. 26)**

New law redefines the terms "money transmission" and "person" and adds the definitions of "agent", "applicant", "control", "currency", "electronic instrument", "executive officer", "location", "money" or "monetary value", "outstanding", "payment instrument", and "principal".

New law adds to the list of persons who are not required to be licensed to transmit money or sell checks.

New law authorizes the commissioner to issue a temporary license to a person that is engaging in money transmission under specified circumstances.

New law prohibits a person from directly or indirectly acquiring control of a licensee or a person in control of a licensee without the prior written approval of the commissioner, except as provided by law.

New law provides that a proposed person in control is subject to the same standards and qualifications that apply to a principal of an applicant for a new license.

New law requires the commissioner to approve a proposed change of control if he determines that the proposed person in control has the financial responsibility, financial condition, business experience, competence, character, and general fitness to warrant the belief that the business of the licensee will be conducted in compliance with applicable state and federal law and that the change of control will not jeopardize the public interest.

New law authorizes a licensee, before filing an application for approval of a proposed change of control, to submit a written request for an advisory opinion from the commissioner to determine whether a person would be considered a proposed person in control of the licensee and whether the requirements of proposed law apply to the proposed transaction.

(Amends R.S. 6:1032 and 1034; Adds R.S. 6:1038.1 and 1054)

**Home Mortgage Lender Examinations (Act No. 531)**

New law seeks to require the commissioner of financial institutions to examine all currently licensed residential mortgage lenders at least once every three years.

New law requires the commissioner to include the dates of each licensed residential mortgage lender's last two examinations, beginning with examinations conducted after 1/01/08, on the active residential mortgage lenders listing that is maintained by OFI, and accessible to the general public.

Effective upon signature of the governor or lapse of time for gubernatorial action. (Amends R.S. 6:1091)

**TITLE 7: BILLS AND NOTES**

Nothing of particular interest.

## **TITLE 8: CEMETERIES**

### **Cemetery Receiverships (Act No. 541)**

New law requires the La. Cemetery Board to notify the attorney general of the potential need for the establishment of a receivership if the board finds that a cemetery meets one or more of certain conditions.

New law allows the attorney general to apply, ex parte, to the district court for the jurisdiction in which the cemetery is located, but only after a reasonable attempt is made by the board to force compliance, for an order appointing a receiver of the assets of the cemetery, or for a temporary restraining order to protect the assets of the cemetery, or both.

New law requires that the court shall issue an order appointing the receiver or issue the temporary restraining order, or both, or set a time for a hearing.

New law grants the court the authority to impound the property and business of the cemetery.

New law provides that upon restoration of the cemetery to compliance with applicable law and rules, the court shall terminate the receivership.

New law provides that upon good cause shown, the court may terminate the receivership to allow for the sale of the cemetery to a qualified purchaser who will then complete the requirements for compliance with applicable law and rules.

New law provides that if the owner of the cemetery cannot obtain a certificate of authority to operate the cemetery from the board, the cemetery property and assets shall be sold at a judicial sale.

New law provides that any remaining funds held by the cemetery or funds realized through the sale of the cemetery shall be used to satisfy the reimbursement and compensation of the receiver, the cemetery's consumers or beneficiaries of the consumers, and the cemetery's creditors.

New law provides that upon payment of the receiver, consumers or beneficiaries of the consumers, and the creditors, the remaining funds acquired through the judicial sale of the cemetery shall be disbursed as follows:

- 40% of the amount remaining shall be placed in the registry of the court for a period of two years to cover any unfunded liability that is not discovered during the receiver's review of the cemetery's records.
- The remaining 60% shall be dispersed to the owner against whom the receivership was instituted.
- Following the two-year period, any funds remaining in the registry of the court may be released to the owner unless there is a reasonable showing that outstanding unfunded liabilities continue to exist.

Effective upon signature of the governor or lapse of time for gubernatorial action. (Adds R.S. 8:69.2)

### **Cemetery Contracts (Act No. 188)**

New law requires that a cemetery authority offering to provide burial rights, or a cemetery authority or other entity offering cemetery related merchandise and services, provide to the customer, upon purchase, a written contract that complies with the requirements set forth in existing law and the rules and regulations of the Louisiana Cemetery Board.

Effective upon signature of the governor (June 13, 2008). (Adds R.S. 8:206)

### **Cemetery Dedication (Act No. 423)**

New law requires the filing of an official act of dedication of cemetery property with the clerk of the district court for the parish in which the cemetery is located and with the Louisiana Cemetery Board.

Effective upon signature of the governor (June 21, 2008). (Amends R.S. 8:304)

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

### **Child Support Cases (Act No. 886)**

New law requires DSS to prepare and distribute information regarding modifications and material change in circumstances in child support cases and how to proceed *in forma pauperis*. New law requires the clerks of court to provide information, rules, and forms regarding modifications of support.

New law requires the court or DSS to provide this same information to the parties when the initial support order is entered.

Effective August 15, 2008. (Amends R.S. 9:311)

### **Child Support Obligations (Act No. 579)**

New law provides that special expenses intended to enhance the health, athletic, or social development of the child may be added to the basic child support obligation.

New law gives the court the option of placing a portion of the obligation in a spendthrift trust for the child.

Effective August 15, 2008. (Amends R.S. 9:315.1, 315.6, and 315.13)

### **Improper Data Match Disclosure (Act No. 578)**

New law provides that if any state employee or any person working with the state knowingly, or by reason of gross negligence, discloses data match information of an individual, he may bring a civil action for damages.

New law provides that no liability shall arise with respect to any disclosure which results from a good faith, but erroneous, interpretation except in cases of gross negligence.

New law provides that in any action for unauthorized disclosure, upon a finding of liability on the part of the defendant, he shall be liable to the individual in an amount equal to the greater of \$1000 for each act of unauthorized disclosure or the actual damages sustained by the individual.

New law provides that in the case of a willful disclosure or a disclosure which is the result of gross negligence, the defendant shall be liable for punitive damages and all costs and attorney fees.

Effective August 15, 2008. (Amends R.S. 9:315.5 and 315.16; Adds R.S. 9:315.16(B)(11) and R.S. 46:236.1.11)

### **Mediation (Act No. 631)**

New law makes a few minor changes to the qualifications for mediators.

Effective August 15, 2008. (Amends R.S. 9:334 and Ch.C. Art. 439)

### **Child Visitation (Act No. 671)**

New law provides that a child has a right to time with his parents. Accordingly, when a court-ordered schedule of visitation, custody, or time to be spent with a child has been entered, a parent shall exercise his rights to the child in accordance with such schedule unless good cause is shown. Neither parent shall interfere with the visitation, custody or time rights of the other unless good cause is shown.

New law provides that an action for contempt for the failure to exercise or to allow child visitation, custody or time rights pursuant to a court-ordered schedule may be instituted against a parent.

New law provides that if the action is for the failure to *exercise* child visitation, custody or time rights pursuant to a court-ordered schedule, and the petitioner is the prevailing party, the defendant shall be held in contempt of court and the court shall award to the petitioner costs for counseling for the child, actual expenses a reasonable sum for a caretaker of the child, and attorney's fees and costs of the proceeding.

New law provides that if the action is for the failure to *allow* child custody, visitation, or time rights pursuant to a court-ordered schedule, and the petitioner is the prevailing party, the defendant shall be held in contempt of court and the court shall award to the petitioner: actual

expenses, additional visitation, custody or time rights with the child equal to the time lost, and attorney's fees and costs of the proceeding.

New law provides that the court may award attorney's fees and costs of the defendant if he is the prevailing party, based upon actual expenses incurred.

New law provides that it shall be an affirmative defense that the failure was by mutual consent or was beyond the control of the defendant.

New law also provides that a pattern of willful and intentional violation of the proposed law, without good cause, may be grounds to allow a party to move for modification of a custody or visitation decree.

Effective August 15, 2008. (Amends R.S. 9:346; Adds CC Art. 136.1; Repeals R.S. 9:347)

#### **Relocation of Child in Custody (Act No. 751)**

New law requires a parent entitled to primary custody of a child to obtain either a court order or the consent of the other parent prior to relocation.

Effective upon signature of governor (July 3, 2008). (Amends R.S. 9:355.3, 355.6, and 355.8; Repeals R.S. 9:355.3(C) and 355.7)

#### **Community Property Allocation Pending Divorce (Act No. 408)**

New law provides that in a proceeding for divorce or thereafter, a summary proceeding shall be undertaken by the court upon request of either party to allocate the use of community property, including monetary assets, bank accounts, savings plans, and other divisible movable property, pending formal partition proceeding.

Effective August 15, 2008. (Amends R.S. 9:374)

#### **Child Support Garnishment Orders (Act No. 444)**

New law makes various minor changes to the laws regarding "income assignment orders" (apparently, child support garnishment orders).

Effective August 15, 2008. (Amends R.S. 9:397.1, R.S. 13:4291, and R.S. 46:236.3)

#### **Establishment of Paternity (Act No. 533)**

New law provides that a judgment establishing paternity may be set aside or vacated by the adjudicated father of a child, the child, the mother of the child, or the legal representative of any of these persons if genetic testing conducted in accordance with law indicates that the adjudicated father of a child is not the biological father of the child.

New law provides that if an order of support is dismissed on the basis of non-paternity of the adjudicated father, the court shall nullify the judgment of paternity. A judgment dismissing an established order of support does not affect any child support payment or arrearages paid, due or owing prior to the date the action to set aside or vacate the judgment of paternity was filed.

An authentic act of acknowledgment may, without cause, be revoked by the person executing it within 60 days of execution upon submission of a sworn statement.

If the voluntary acknowledgment is revoked by order of the court based upon tests conducted which excluded a person as parent and an order of support has not been established, no further action may be initiated against the excluded person.

(Amends R.S. 9:406; adds R.S. 9:399.1)

#### **Manufactured Home Taxes (Act No. 463)**

New law prohibits an action to collect a tax applicable to movables which is purported to be due on a purchase between 9/1/05 and 12/31/06 of any manufactured home used solely as residential housing in certain parishes defined by population which were impacted by hurricanes Katrina and Rita, if the basis of such action is the date upon which the declaration of immovability is recorded in the conveyance or mortgage records.

Effective 7/1/08. (Adds R.S. 9:1149.4(C))



### **Employment Settlement Trusts (Act No. 325)**

New law provides for the appointment of an agent for service of process when a trust is created for the payment of settlement of claims or judgments or to pool liabilities on account of personal injury and occupational disease arising out of or incurred during the course and scope of the employment relationship.

Effective August 15, 2008. (Adds R.S. 9:2242)

### **Trusts (Act No. 637)**

Prior law provided that a person could make a donation to a trustee or trustees for educational, charitable, or literary purposes. New law revises the language of the law to provide that a charitable trust is created when a person makes a donation in trust for the relief of poverty, the advancement of education or religion, the promotion of health, governmental or municipal purposes, or other purposes the achievement of which is beneficial to society, or to benefit one or more institutional beneficiaries.

Existing law provides that the donor may prescribe the number of trustees, the causes for which any trustee shall cease to be such, the manner in which vacancies shall be filled, and the manner and formalities according to which the trustees shall meet and transact business. New law retains existing law and provides procedures to select trustees when the trust instrument does not set forth an effective procedure.

Existing law provides that a federally insured depository institution organized under the laws of La., another state, or of the U.S., or a financial institution or trust company authorized to exercise trust or fiduciary powers under the laws of La. or of the U.S. may serve as a trustee. New law clarifies existing law to explicitly provide that a natural person enjoying full capacity to contract who is a citizen or resident alien of the U.S. may serve as a trustee.

New law provides for the circumstances when the La. Trust Code should be applied.

New law provides for persons having standing and actions to enforce a trust.

Existing law provides for the contents of a trust instrument. New law retains existing law, revises the language of existing law to provide correct references to the I.R.C. of the U.S., and eliminates the requirements that certain amendments to the trust instrument be filed with the attorney general of La.

Prior law provided a charitable trust continued forever as long as there was a competent person or institution to administer it. New law provides that a charitable trust shall have perpetual duration unless the trust instrument provides otherwise.

Effective Jan. 1, 2009. (Amends R.S. 9:2271-2275, 2283, and 2291; Adds R.S. 9:2290; Repeals R.S. 9:2276-2280 and 2292-2295)

### **Secretary of State Fees (Act No. 913)**

Prior law provided specific amounts for fees to be collected by the secretary of state in various titles of the La. Revised Statutes. New law specifies such fees in one provision of law (R.S. 49:222).

Effective August 15, 2008. (Amends R.S. 9:2447, 3410, and 3432, R.S. 12:23, 171, 205.1, 263, 316, 419, 469, and 1364, R.S. 14:325, R.S. 49:222, and R.S. 51:214, 216, and 217)

### **Limited Liability for Religious Emergency Assistance (Act No. 318)**

New law provides a limitation of liability for religious organizations who render evacuation services and other assistance prior to a storm declared by NOAA and for services rendered during a declared state of emergency.

Effective August 15, 2008. (Adds R.S. 9:2793.9)

### **Agritourism (Act No. 591)**

New law provides that an agritourism professional is not liable for injury to or death of a participant resulting from the inherent risks of agritourism activities, provided that a warning is

posted in compliance with new law, and subject to various exceptions.

New law requires that every written contract entered into by an agritourism professional for the providing of professional services, instruction, or the rental of equipment to a participant shall contain in clearly readable print the warning notice specified in new law.

Effective August 15, 2008. (Adds R.S. 9:2795.5)

#### **New Home Warranties (Act No. 387)**

New law requires a homebuilder to give the owner notice of the New Home Warranty Act at the time of execution of the construction contract between a builder and a owner.

Effective August 15, 2008. (Amends R.S. 9:3145)

#### **Meth Lab Disclosure on Sale of Real Estate (Act No. 681)**

New law requires the seller of real estate to disclose to the buyer whether or not an illegal laboratory for the production or manufacturing of methamphetamine was in operation on the property.

Effective August 15, 2008. (Amends R.S. 9:3198; adds C.C.P. Art. 2332.1)

#### **Hidden Prepaid Finance Charges OK (Act No. 50)**

New law deletes the provision in existing law that prepaid finance charges shall not be included in the contract rate.

Effective January 1, 2009. (Amends R.S. 9:3516)

#### **Credit Repair Organizations (Act No. 858)**

New law retains present law providing for regulatory oversight on credit repair organizations; however, new law changes oversight from regulatory to statutory. Present law provides for licensure by the office of financial institutions; new law deletes these provisions.

Present law provides that credit repair service organizations shall be regulated by the office of financial institutions. New law provides for regulation by the attorney general of Louisiana.

Present law requires an organization to buy a surety bond or establish a trust account. New law eliminates the trust account.

Effective August 15, 2008 (Amends R.S. 9:3573.1, 3573.2, 3573.3, 3573.4, 3573.6, 3573.10, 3573.11, 3573.13, and 3573.16, repeals R.S. 9:3573.9 and 3573.17)

#### **Mortgages and Lost Promissory Notes (Act No. 651)**

New law provides that when a promissory note paraphed for identification with a mortgage or act creating a vendor's privilege on immovable property has been lost or destroyed, the maker of the note or any interested party may prove its payment by presentation of the sworn affidavit of the obligee of record specifically attesting to the truth of a set of allegations required by new law.

New law provides that an affidavit executed according to the provisions of new law may be substituted for the original paraphed note.

New law provides that the clerk of court and ex officio recorder of mortgages shall not refuse to accept an affidavit and shall not require the filing of a mandamus proceeding as a condition of canceling the inscription of a mortgage or vendor's privilege.

New law creates a cause of action, for any person in whose favor a cancelled inscription was recorded, against the affiant and provides a prescriptive period.

New requires the affiant to indemnify persons relying upon the cancellation for any damages that they suffer as a consequence of their reliance.

New law provides for retroactive application.

Effective August 15, 2008. (Adds R.S. 9:5168)

**Prescriptive Period Shortened to Set Aside Acts Affecting Real Estate (Act No. 367)**

Prior law provided a 10-year prescriptive period to set aside a sale, transfer, lease, mortgage, encumbrance, or other document affecting immovable property due to lack of authority. New law changes the prescriptive period from 10 years to 5 years.

Prior law provided a 10-year prescriptive period to set aside a sale, transfer, or other conveyance to or from any legal entity or unincorporated association affecting any immovable property due to lack of recordation. New law changes the prescriptive period from 10 years to 5 years.

New law provides that the prescriptive periods provided in new law shall be *retroactive* and shall apply to all documents recorded prior to or after August 15, 2008, but if prescription has not already run and become final, the period in new law shall not become final until 10 years from recordation or *August 15, 2013*, whichever occurs first.

Effective August 15, 2008. (Amends R.S. 9:5681(A) and (D))

**Prescriptive Period Shortened to Set Aside Instrument Executed under POA (Act No. 371)**

Prior law provided for a prescriptive period of 10 years to set aside a document or instrument executed under a power of attorney on the ground that the power of attorney was without authority to do so or that the power of attorney was not valid. New law changes the prescriptive period to 5 years.

New law provides that new law establishing the 5-year prescriptive period shall be *retroactive* and shall apply to all such documents whether recorded prior to or after Aug. 15, 2008, but further provides that as to any documents as to which prescription has not already run and become final, this prescriptive period shall not become final and complete until 10 years from the date the document was recorded or *Aug. 15, 2013*, whichever occurs first. New law provides that as to any document or instrument executed

prior to Aug. 15, 2008, prescription shall not become final and complete until *one year from Aug. 15, 2008*.

Effective August 15, 2008. (Amends R.S. 9:5682)

**Prescription of Judgments for State (Act No. 848)**

Prior law provided that all judgments in favor of the state shall prescribe by the lapse of 10 years from the date of the signing or rendition of the judgment.

New law provides that as used in new law "state" shall include agencies, departments, and political subdivisions of the state, and "political subdivision" and "municipality" shall have the same meanings as provided in La. Const. Art. VI, §44(2) and (3), respectively.

New law provides that the effect of recordation of a judgment in favor of the state ceases 10 years after the date the judgment was rendered. New law provides that the judgment may be reinscribed by political subdivisions or municipalities as provided by law.

New law provides that the effect of recordation of all liens and privileges in favor of the state ceases 10 years after the date of recordation of the privilege or lien, or the lapse of a shorter prescriptive period applicable to the claim secured by the lien or privilege. New law provides that the lien and privilege may be reinscribed by political subdivisions and municipalities only.

Effective August 15, 2008. (Amends R.S. 9:5685)

**TITLE 10: COMMERCIAL LAWS**

Nothing of particular interest.

**TITLE 11: CONSOLIDATED PUBLIC RETIREMENT SYSTEMS**

Nothing of particular interest.

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

### **Unincorporated Association Act (Act No. 877)**

New law enacts Louisiana Unincorporated Association Act and provides that immovable and movable property in this state may be acquired, held, encumbered, and transferred by an unincorporated association.

New law provides that an unincorporated association is a legal entity separate from its members for the purposes of acquiring, holding, encumbering, donating and otherwise transferring immovable and movable property and that it may acquire, hold, mortgage, hypothecate, encumber, donate or otherwise transfer its interest in immovable or movable property.

New law authorizes an unincorporated association to be a beneficiary of a trust and to have the capacity to receive donations inter vivos and mortis causa. New law prescribes methods for proof of authority to act for an unincorporated association.

New law provides that an unincorporated association is a legal entity separate from its members for the purposes of determining and enforcing rights, duties, and liabilities in contract and tort.

New law provides that a person is not liable for a breach of an association's contract merely because the person is a member, is authorized to participate in the management of the affairs of the association, is considered to be a member by the association, or made the contract or incurred the obligation on behalf of the association, if the fact that the person was acting for the association was disclosed to, known by or reasonably should have been known by the other party to the contract or to the party owed performance.

New law provides that one is not liable for a tortious act or omission for which an association is liable merely because the person is a member, is authorized to participate in the management of the affairs of the association, or is considered to

be a member by the association. New law provides that a tortious act or omission of a member or other person for which an association is liable is not imputed to a person merely because the person is a member, is authorized to participate in the management of the affairs of the association, or is considered to be a member by the association.

New law authorizes a member of, or a person considered to be a member by, an unincorporated association to assert a claim against the unincorporated association and vice versa.

New law provides that an unincorporated association may institute, defend, intervene, or participate in a judicial, administrative, or other governmental proceeding or in an arbitration, mediation, or any other form of alternative dispute resolution, and assert a claim in its own right.

New law provides that a judgment or order against an unincorporated association is not by itself a judgment or order against a member or a person authorized to participate in the management of the affairs of the association.

New law provides that if an unincorporated association has been inactive for three years or for a longer or shorter period as specified in a document of the association, then a person in possession or control of movable property of the association may transfer custody of the property to the person specified to receive it under these circumstances or if no person is specified, then to an unincorporated association or nonprofit corporation pursuing broadly similar purposes or to a government or governmental subdivision, agency, or instrumentality.

New law authorizes the unincorporated association to file in the secretary of state's office a statement appointing an agent authorized to receive service of process.

New law provides that a claim for relief against an unincorporated association is not affected merely by a change in its members or persons

authorized to manage the affairs of the unincorporated association.

New law retains existing law as to the involuntarily dissolution and liquidation of unincorporated associations and the grounds for such dissolution. New law provides that any money or property remaining be administered by an incorporated association or non-profit corporation that broadly pursues similar purposes that is capable of administering the funds or property for purposes germane to the purposes for which they were originally given. New law provides that such monies may also go to the government, a government subdivision, agency, or instrumentality which is capable of administering the funds or property of the dissolved association.

New law does not affect an action or proceeding commenced or right accrued prior to its effective date.

Effective August 15, 2008. (Amends R.S. 12:501-505; adds R.S. 12:506-520)

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

### **Splitting and Merging of Courts (Act No. 621)**

New law requires the Judicial Council of the Supreme Court of La. to adopt determinate standards and guidelines which shall be applied by the council in determining whether to approve the necessity of splitting or merging any courts of appeal, district courts, city courts, parish courts, juvenile courts, family courts, traffic courts, and municipal courts.

Effective August 15, 2008. (Amends R.S. 13:61)

### **41st JDC Environmental Docket (Act No. 792)**

New law creates the environmental docket of the Forty-First Judicial District Court. New law provides that the environmental docket shall be heard by a division of the civil district court.

Effective January 1, 2009. (Adds R.S. 13:621.41.1)

### **CDC Partition Proceedings; 41st JDC (Act No. 879)**

Present law provides jurisdiction of the civil district court for the parish of Orleans to include partition proceedings following separation from bed and board. New law deletes this provision.

New law provides that a magistrate elected or appointed to the Forty-First Judicial District Court, who was sitting as an elected or appointed magistrate of the civil and criminal district courts for Orleans Parish at the time of qualifying for the new judicial term commencing on January 1, 2009, shall automatically revert back to the section or division in which he was assigned in the civil and criminal district courts of Orleans Parish for the duration of his term or as otherwise provided by law, if Act 621 of the 2006 Regular Session of the Louisiana Legislature which creates the Forty-First Judicial District is held unconstitutional.

New law provides various technical changes to law regarding 41st JDC.

Effective August 15, 2008. (Amends R.S. 13:621.41, 621.43, 621.45(B), 1136, 1137, 1140, 1335, and 1336; adds R.S. 13:621.49 )

### **Orleans Juvenile Court Judges (Act No. 674)**

Present law provides that the Orleans Parish Juvenile Court is abolished effective 12/31/14. The terms of office of the judges of the juvenile court now in office shall be extended until 12/31/14. After the effective date of present law, no judge shall be elected to the Orleans Parish Juvenile Court except to fill a vacancy and in such case the term of office shall expire on 12/31/08. New law changes the expiration of the term of office of a judge elected to fill a vacancy from 12/13/08 to 12/13/14.

Effective upon signature of the governor or lapse of time for gubernatorial action. (Amends R.S. 13:621.44)

### **41st JDC (Act No. 873)**

New law relative to the 41st Judicial District Court provides that if Act 621 of the 2006

Regular Session of the Louisiana Legislature which creates the 41st Judicial District is held unconstitutional, then judges elected to the 41st JDC for a six year term commencing January 1, 2009, who were sitting judges of the civil and criminal district courts for the parish of Orleans at the time of the qualifying for the term, shall automatically revert to the section or division which the judges were assigned in the civil and criminal courts of Orleans Parish for the duration of the judge's six year term.

New law provides that a magistrate elected or appointed to the Forty-First Judicial District Court, who was sitting as an elected or appointed magistrate of the civil and criminal district courts for Orleans Parish at the time of qualifying for the new judicial term commencing on January 1, 2009, shall automatically revert back to the section or division in which he was assigned in the civil and criminal district courts of Orleans Parish for the duration of his term or as otherwise provided by law, if Act 621 of the 2006 Regular Session of the Louisiana Legislature which creates the Forty-First Judicial District is held unconstitutional.

Effective upon signature of the governor or lapse of time for gubernatorial action. (Adds R.S. 13:621.48)

#### **Orleans Judges (Act No. 675)**

New law changes the effective date of provisions relating to district court judges to January 1, 2010. New law provides that the judges elected to take office on January 1, 2009, and presiding over Divisions A through N of the Civil District Court for the parish of Orleans shall continue to preside over those divisions until January 1, 2010, at which time they shall preside over Divisions A through N of the 41st JDC. The judges shall continue to serve until December 31st of the year in which their terms expire.

New law provides that the judges elected to take office on January 1, 2009, and presiding over Divisions A through L of the Criminal District Court for the parish of Orleans shall continue to

preside over those divisions until January 1, 2010, at which time they shall preside over Divisions O through Z of the 41st JDC. The judges shall continue to serve until December 31st of the year in which their terms expire.

New law provides that if Act 621 of the 2006 Regular Session of the Louisiana Legislature is held unconstitutional, a magistrate elected or appointed to the 41st JDC who was sitting as an elected or appointed magistrate of the civil and criminal district courts for Orleans Parish at the time of qualifying for the new judicial term commencing on January 2009, shall automatically revert back to his assigned section or division in the civil and criminal district courts of Orleans Parish.

Effective upon signature of the governor or lapse of time for gubernatorial action. (Amends Section 22 of Act No. 621 of the 2006 R.S.; adds R.S. 13:621.49)

#### **Purging of Court Records (Act No. 625)**

Existing law provides that with the consent of the judge, clerks of court may destroy the following records if they are deemed to have no further value and when no action has been taken on them for at least 25 years: suits on open accounts, suits involving tort claims, and suits on workers' compensation, unsecured notes, promissory notes, chattel mortgages, and eviction of tenants and occupants. Also provides that no cause of action shall exist against any clerk or judge for the destruction of such records in accordance with the provisions of existing law. New law changes the time elapsed for the destruction of records from 25 years to 10 years.

Effective August 15, 2008. (Amends R.S. 13:917; Adds R.S. 13:2562.26)

#### **Health Records as Evidence (Act No. 679)**

Present law provides for the admissibility into evidence of certain hospital or health care provider charts or records. Present law provides that a certified copy of a scientific analysis report from the office of state police crime laboratory of a person's blood alcohol concentration (BAC) test received into evidence

in any civil action is prima facie proof of the contents of such report, provided the party against whom the report is sought to be used may summon and examine those making the report as witnesses under cross-examination.

New law provides that if the BAC test results are from a source other than the office of state police crime laboratory and a timely challenge is raised in a court of competent jurisdiction to the authenticity, reliability or accuracy of the test results, or to the lack of a proper foundation for the admissibility of such test results into evidence, then the court shall conduct a hearing to determine the validity of such challenge and, if it finds, by a preponderance of the evidence, that the challenge is well-founded, may rule the blood alcohol concentration (BAC) test results inadmissible.

Effective upon signature of the governor or lapse of time for gubernatorial action. (Adds R.S. 13:3714(C))

**Accountant's Quality Review Repealed (Act No. 200)**

Present law provides that a review committee may conduct a quality review of the professional work of a person or firm engaged in the practice of public accountancy. Present law provides that the proceedings, records, reports, letters, and papers of a review committee shall be privileged and shall not be subject to discovery or subpoena. New law repeals present law in its entirety.

(Repeals R.S. 13:3737)

**Legislative Continuances and Extensions in Cases (Act No. 865)**

New law allows a member of the legislature and a legislative employee to have peremptory grounds for continuance or extension of a criminal case, civil case, or administrative proceeding, to be sought by written motion specifically alleging the grounds for continuance, with such grounds for continuance or extension to be available if the presence, participation, or involvement in any capacity of such person is required in any criminal case,

civil case, or administrative proceeding, including pre-trial and post-trial proceedings, during certain prescribed periods.

Present law provides that a motion for legislative continuance or extension is timely filed within five calendar days of the hearing or proceeding to be continued or within four calendar days of the committee notice or call for an extraordinary session of the legislature. New law deletes present law.

New law provides that within seventy-two hours of the filing of a motion for a legislative continuance or extension, the court or agency shall grant the continuance or extension ex parte for a period of not less than 60 days from the date of adjournment sine die of the session of the legislature or of the constitutional convention, or for a period of not less than 60 days from the date the activities giving rise to the need for the continuance or extension cease.

Present law provides that these provisions shall not apply to cases in the state supreme court, criminal cases where the death penalty is sought, and administrative rulemaking authorized by R.S. 49:953 or to cases and proceedings wherein a member or employee is called as a witness, in which instances the provisions of R.S. 13:3667.1 and 3667.3 shall apply. New law retains present law.

New law provides that any action taken against a person, including any sanction imposed on an attorney, who has filed a motion for legislative continuance or extension, resulting from the failure of such person or attorney to appear or comply with an order of the court or any deadline shall be considered an absolute nullity and shall be set aside by the court upon the filing of a motion by the aggrieved person or attorney.

New law provides that any person or attorney who has filed a motion for legislative continuance or extension which has not been granted within 72 hours of filing may apply directly to the state supreme court for supervisory writs to review the action of the court where the motion was filed and if a motion for legislative continuance or extension is denied

or if a motion to remove a sanction against a person who filed a motion for legislative continuance or extension is denied, such denial shall be an appealable order.

Effective August 15, 2008. (Amends R.S. 13:4163)

#### **Public Sales by Auctions (Act No. 623)**

Existing law provides that all public sales by auctions shall be advertised to take place at the courthouse or some other public place in the vicinity of the courthouse and requires certain procedures for conducting the sale. New law additionally authorizes public sales to be advertised to be held at the courthouse annex if it is located in the same parish as the courthouse but separated by a navigable river.

Effective August 15, 2008. (Amends R.S. 13:4341)

#### **Cancellation of Erroneous Mortgages (Act No. 339)**

New law provides that, for immovable property procured pursuant to a judicial sale under a writ of fieri facias or a writ of seizure and sale, the clerk of court or the recorder of mortgages shall partially cancel from a mortgage certificate the inscription of any legal or judicial mortgage, lien, or privilege appearing on the certificate, upon the filing of an affidavit executed by an officer of a licensed title insurer to the effect that the individual against whom the mortgage, lien, privilege, or other encumbrance was recorded is not the same person whose property is being sold at the judicial sale for which the mortgage certificate was issued.

New law provides a cause of action against the title insurer in the event the legal or judicial mortgage, lien, or privilege partially canceled from the clerk's certificate was legally enforceable against the property because the obligor under the mortgage, lien, privilege, or other encumbrance was in fact the same person whose property was sold. New law provides that the cause of action prescribes on the same date that the cause of action to enforce the underlying

legal or judicial mortgage, lien, or privilege prescribes.

New law provides that a title insurer which provides an affidavit containing incorrect statements to the clerk of court or the recorder of mortgages causing the recorder to incorrectly delete the inscription of a mortgage or privilege from the certificate is liable to and shall defend and indemnify the clerk of court or the recorder of mortgages, the sheriff, and any person relying upon the cancellation for any damages that they may suffer as a consequence of such reliance.

New law provides an exemption from liability to the clerk of court and the recorder of mortgages for any damages resulting to any person or entity as a consequence of deleting from the certificate a legal or judicial mortgage, lien, or privilege pursuant to an affidavit which complies with new law.

Effective August 15, 2008. (Adds R.S. 13:4344.1)

#### **Public Nuisances (Act No. 650)**

New law makes various minor changes to the law regarding abatement of public nuisances.

Effective August 15, 2008. (Amends R.S. 13:4711, 4712, 4713, and 4715)

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

#### **Noose - Drawing Act No. 643**

New law provides that it shall be unlawful for any person, with the intent to intimidate any person or group of persons, to etch, paint, draw, or otherwise place or display a hangman's noose on the property of another, a highway, or other public place.

Effective August 15, 2008. (Adds R.S. 14:40.5)

#### **Community-Based Services Licensing (Act No. 839)**

New law consolidates licensing of community-based services providers, including personal care attendant services agencies, respite care services agencies, supervised independent living



programs, adult day care agencies, and family support agencies.

New law changes references in prior law from "mentally retarded" to "developmentally disabled".

New law allows home- and community-based service provider workers to administer medication to patients. New law allows consent to be given by the manager of a home- and community-based service provider for any surgical or medical treatment on behalf of any developmentally disabled person if he is a recipient of service from a home- and community based provider.

New law defines home- and community-based services as including one or more of the following services: personal care attendant services, respite care services, supervised independent living services, family support services, adult day care services, and waiver program services. New law further defines such services.

New law provides that a home- and community-based service provider seeking licensure must provide the department with proof of financial viability.

New law allows licensure procedures and requirements to include provisions for granting deemed status to home- and community-based service providers that obtain accreditation through a recognized national, not-for-profit accrediting body. New law also provides that deemed status shall not be available to persons or entities seeking initial licensure with the department.

New law prohibits a home- and community-based service provider from operating without a license, regardless of provider payor source, and stipulates that each day of violation of operating without a license constitutes a separate offense.

New law shall not be implemented, applied, or enforced until the adoption of rules and regulations, and requires DHH to immediately begin the process of promulgating rules and

regulations upon the effective date of new law. Effective upon signature of governor (July 8, 2008).

(Amends R.S. 14:67.21, R.S. 28:825, R.S. 40:1299.58, 1300.51, 1300.122, 1300.123, 2006, 2009.20, 2120.1, 2120.2, 2120.3, 2120.4, 2120.5, 2120.6, and 2120.7, and R.S. 46:2624; Repeals R.S. 40:1299.58(G), 1300.51(2)(d), (i), and (j), 2006(E)(2)(t), (u), (v), and (w), 2120.2(6), (7), and (8), 2120.3(H), 2120.11-2120.16, and 2120.21-2120.26)

#### **No Body Armor at School (Act No. 747)**

New law prohibits wearing or possessing of body armor on school property, at school-sponsored functions, and in firearm-free zones.

Effective August 15, 2008. (Adds R.S. 14:95.9)

#### **Witness Intimidation (Act No. 4)**

Existing law prohibits persons from intimidating, impeding, or injuring witnesses with the intent to influence testimony, the reporting of criminal conduct, or the appearance at a judicial proceeding. Existing law also prohibited persons from injuring an officer of a court with the intent to influence the performance of his duties.

New law makes existing law applicable to the immediate family member of a witness or officer of the court.

New law retains prior law penalties when the intimidation occurs in a civil proceeding, and provides for increased penalties when the intimidation occurs in a criminal proceeding, which vary according to the severity of the underlying crime.

Effective August 15, 2008. (Amends R.S. 14:129.1)

#### **Official Coercion (1st Ext. Sess. Act No. 22)**

New law provides that no public officer or public employee shall knowingly and intentionally use the authority of his office or position, directly or indirectly, to compel or coerce any person to provide the public officer,

public employee, or any other person with anything of apparent present or prospective value when the public officer or employee is not entitled by the nature of his office to the services sought or the object of his demand.

Effective upon signature of the governor (March 11, 2008). (Adds R.S. 14:134.3)

## **TITLE 15: CRIMINAL PROCEDURE**

### **Public Defender Board Employees (Act No. 2)**

New law provides that the executive staff; regional directors; and secretarial, clerical, and other personnel directly employed in the operations of the Louisiana Public Defender Board shall be state employees. All other personnel employed or who serve under contract in a district office shall not be state employees and shall be considered local employees of the district. Authorizes the Joint Legislative Committee on the Budget to approve other employees hired pursuant to the La. Public Defender Act as state employees upon recommendation of the board.

Effective on lapse of time for governor's action (May 24, 2008). (Amends R.S. 15:152; adds R.S. 15:147(E))

### **No Child Care by Criminals (Act No. 649)**

New law provides that employers of persons who have authority over children shall request information from the Bureau of Criminal Identification and Information to determine whether a person has been arrested for or convicted of, or has pled nolo contendere to, any criminal offense.

New law prohibits the hiring of potential employees and volunteers by various organizations if such persons have been convicted of or pled nolo contendere to any of a number of crimes.

New law requires teachers or other school employees to report a conviction, guilty plea, or nolo contendere of any criminal offense.

Effective August 15, 2008. (Amends R.S. 15:587.1, R.S. 17:15, and R.S. 46:51.2)

### **Rates for Medical Care of Prisoners (Act No. 730)**

New law provides that DPS&C and parish governing authorities shall not be liable to pay to a healthcare provider for health care services provided to a prisoner in an amount greater than the lesser of the actual amount billed by the health care provider, 110% of the Medicare rate of compensation, or the health care provider's actual costs, unless the rate of compensation is subject to a contractual agreement between the parish governing authority and the health care provider.

Effective August 15, 2008. (Amends R.S. 15:824 and 831; Adds R.S. 15:705(E))

### **Immunity for Regional Juvenile Justice Commissions (Act No. 190)**

New law provides for immunity from suit and liability for the members of the regional juvenile justice commissions, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of any actual or alleged act, error or omission that occurred within the scope of regional juvenile justice commission employment, duties or responsibilities, except if caused by the intentional or willful and wanton misconduct of any such person.

Effective August 15, 2008. (Adds R.S. 15:1093.1)

### **Inmate Labor (Act No. 106)**

New law creates the inmate rehabilitation and workforce development program to be administered by DPS&C.

New law provides that DPS&C may enter into cooperative endeavors or contracts with the La. Dept. of Labor, the La. Dept. of Education, and the La. community and technical colleges, educational institutions, training facilities, and employers to provide the intensive training programs necessary for proper certification or

licensing of skilled craftsmen and to provide substance abuse treatment and counseling or halfway housing to inmates who participate in the program.

New law authorizes DPS&C and sheriffs to administer a workforce development work release program for graduates of the inmate rehabilitation and workforce development program.

New law provides that the wages of an inmate so employed shall be not less than the customary wages for an employee performing similar services. Deductions for room, board, and other administrative costs resulting from participation in a workforce development work release program shall not exceed 75% of the wages received by an inmate.

New law requires that as a condition of supervised parole, the inmate maintain employment as a skilled craftsman at a location approved by the department.

Effective upon signature of governor (June 6, 2008). (Adds R.S. 15:1199.1-1199.16)

#### **Securities Law Penalties Increased (Act No. 149)**

Existing law prohibits persons from receiving proceeds derived from or participating in a pattern of racketeering activity, and provides criminal penalties which include a fine of not more than \$1 million, imprisonment at hard labor for not more than 50 years, or both. New law adds violations of La. Securities Law to the definition of "racketeering activity".

New law increases prior law penalties for a willful violation of a provision of the La. Securities Law to include a fine of not more than \$10,000, imprisonment at hard labor for not more than 5 years, or both. New law authorizes court to order the offender to pay restitution. New law provides that each violation shall constitute a separate offense.

Existing law provides that the penalties for a willful violation of a rule of order of the commissioner of securities shall include a fine of

not more than \$500, or imprisonment for not more than six months, or both. New law adds the court may order the offender to pay restitution, and provides that each violation shall constitute a separate offense.

Effective August 15, 2008. (Amends R.S. 15:1352 and R.S. 51:723; Adds R.S. 15:1352(A)(18))

#### **Racketeering (Act No. 157)**

Prior law defined "racketeering activity" as including solicitation for murder, first degree murder, second degree murder, assault by drive-by shooting, aggravated kidnapping, second degree kidnapping, aggravated arson, carjacking, extortion, theft, certain controlled dangerous substance violations, pandering, and money laundering. New law adds the crime of identity theft to the definition of "racketeering activity".

Effective August 15, 2008. (Adds R.S. 15:1352(A)(18))

#### **TITLE 16: DISTRICT ATTORNEYS**

Nothing of particular interest.

#### **TITLE 17: EDUCATION**

##### **Term Limits for Board Members (Act No. 875)**

New law is partly the companion bill to a proposed constitutional amendment to impose term limit members of certain elected and appointed boards and commissions.

New law makes the necessary statutory changes to present law provisions regarding the term of members of the Public Service Commission, the Louisiana Forestry Commission, BESE, the Board of Regents, the LSU Board of Supervisors, the Southern University Board of Supervisors, and the Board of Supervisors of Community and Technical Colleges, all of which are established in the constitution. New law provides that membership on these boards shall be subject to term limitations in accordance with proposed constitutional amendment.

New law provides that no person appointed or elected to a board or commission within the executive branch of state government shall serve in such position for more than three consecutive terms, unless another term limit is provided by law, nor shall any person serving at the pleasure of an appointing authority serve more than 12 consecutive years.

New law shall not prohibit any person in office on the effective date of proposed law that has served more than three consecutive terms, or whose service extends beyond 12 consecutive years in the case of a person serving at the pleasure of an appointing authority, from continuing to serve in that position for the remainder of their term or until a successor is appointed.

The term limits provided for by new law shall not apply to any person elected or appointed to a board or commission prior to the effective date of proposed law unless and until that person is re-elected or re-appointed after his current term expires.

New law shall not prohibit any person from serving on a board or commission by virtue of the position or office which he holds.

(Amends R.S. 17:2, 3121, 1453, 1851 and 1871, R.S. 42:2, and R.S. 45:1161.1; adds R.S. 3:4272(D) and R.S. 42:3.2)

#### **Recovery School District (Act No. 737)**

New law provides relative to the time period of jurisdiction of the RSD over a school transferred to it and permits return of such school at the end of the initial transfer period unless the school is continued in the RSD in accordance with certain guidelines and procedures for additional transfer periods of five years.

Effective upon signature of governor or lapse of time for gubernatorial action. (Amends R.S. 17:10.7(C))

#### **Naming of Public School Athletic Facilities After Living Persons (Act No. 841)**

New law provides that any school board may name an athletic facility after a living person.

Effective upon lapse of time for governor's action (July 9, 2008). (Amends R.S. 17:85; Repeals R.S. 17:85.1, 85.2, 85.3, 85.5, 85.8, 85.11, and 85.12)

#### **Public School Superintendents (Act No. 78)**

New law makes provisions relative to specified duties and responsibilities of a parish public school superintendent, including but not limited to serving as school board secretary, applicable to Orleans Parish and to city and other local public school superintendents by removing certain exceptions, prohibitions, and alternative requirements.

Effective July 1, 2008. (Amends R.S. Title 17:91)

#### **School Board Funds (Act No. 77)**

New law provides that the superintendent of a city, parish, or other local public school board shall be the treasurer of all school funds appropriated by the state for the school board or raised, collected, or donated for the support of the public schools under the jurisdiction of the board. New law further provides that the superintendent shall provide receipts for all such funds to the state treasurer, the collector of parish taxes, and others as may be appropriate or required.

New law requires that the school treasurer give an indemnity bond in such sum as may be determined by the parish school board, made in favor of the governor or his successors in office. New law provides that the school board shall pay the premium of said bond.

Eff. July 1, 2008. (Amends R.S. 17:95)

#### **School Board Use of Public Benefit Corporations (Act No. 739)**

New law authorizes each city, parish, and other local public school board to create one or more

public benefit corporations for the purpose of entering into agreements and engaging in financing arrangements to plan, renovate, construct, lease, sublease, manage, and improve schools and school property within the jurisdiction of each respective school board.

Effective upon signature of governor (July 6, 2008). (Adds R.S. 17:100.10)

#### **Electronic Transfer of Immunization Records by Schools (Act No. 73)**

New law provides that chief administrators of elementary and secondary schools, kindergartens, colleges, universities, proprietary schools, vocational schools, and licensed day care centers shall electronically transmit immunization compliance reports when the school operates an existing student-specific electronic data system.

(Amends R.S. 17:170(D))

#### **HPV Education for Parents (Act No. 210)**

New law requires certain school boards to provide information about human papillomavirus (HPV) and immunization against it to the parent or legal guardian of a student in grades 6-12.

Effective upon signature of governor or lapse of time for gubernatorial action. (Adds R.S. 17:170.3)

#### **Vaccinations (Act No. 342)**

New law requires students in public and nonpublic schools to be vaccinated against meningococcal disease as a condition of entry into sixth grade (or, if 11 years old but entering another grade, as a condition of entry into such grade), and requires 11-year-olds in approved home study programs to be vaccinated against such disease.

Effective upon signature of governor or lapse of time for gubernatorial action. (Adds R.S. 17:170.3)

#### **Abolishment of Boards, Etc. (Act No. 815)**

New law provides for the abolition of certain boards, commissions, political subdivisions, authorities, and like entities; in some cases also abolishes the functions and responsibilities of the entity; in other cases provides that some other person or entity is responsible for the functions and responsibilities of the abolished entity.

Effective August 15, 2008. (Amends R.S. 17:185.3, R.S. 36:4, R.S. 40:1299.40, and R.S. 46:2352; Repeals R.S. 17:3397.3(C), R.S. 25:1231-1237, R.S. 36:4.1(D)(7), 109(B)(1) and (2), 209(Q), 259(JJ) and (KK), 509(D) and (V), 919.8, and 919.10, R.S. 37:2301-2319, R.S. 38:3087.321-3087.335, R.S. 39:301, R.S. 40:31.2 and 1236.15-1236.29, R.S. 46:2355, 2525.1, and 2616-2618, R.S. 48:1831-1836, 2001-2006, and 2061-2067, and R.S. 51:971-978, 1371-1377, and 3051-3056)

#### **Military Kids Excused (Act No. 142)**

New law provides that a child whose parent is a member of the U.S. Armed Forces or the National Guard of a state, and such parent has been called to duty for or is on leave from overseas deployment to a combat zone or combat support posting, shall be granted excused absences, not to exceed five school days per school year, for the day or days missed from school for the child to visit with his parent prior to the parent's deployment or during the parent's leave. New law specifies that upon returning to school, the child shall be permitted to complete all class assignments, including all tests, missed while the child was absent pursuant to proposed law.

Effective upon signature of governor or lapse of time for gubernatorial action. (Adds R.S. 17:226(A)(2)(e))

#### **Science Education (Act No. 473)**

New law requires BESE, upon request of a local school board, to allow and assist teachers, principals, and other school administrators to create and foster an environment within public elementary and secondary schools that promotes critical thinking skills, logical analysis, and open

and objective discussion of scientific theories being studied, including evolution, the origins of life, global warming, and human cloning.

New law provides that a teacher shall teach material presented in the standard textbook supplied by the school system and thereafter may use textbooks and other instructional materials, as permitted by the local school board.

New law shall not be construed to promote any religious doctrine, promote discrimination for or against a particular set of religious beliefs, or promote discrimination for or against religion or nonreligion.

Effective upon signature of the governor or lapse of time for gubernatorial action. (Adds R.S. 17:285.1)

#### **Teacher Bill of Rights Act No. 155**

New law changes the name of listed teachers' rights from "Educators' Right to Teach" to "Teacher Bill of Rights", adds that teachers have the right to qualified immunity and to a legal defense, and requires school boards to post copies of rights in school buildings and provide copies to parents.

Effective upon signature of governor or lapse of time for gubernatorial action. (Amends R.S. 17:416.18)

#### **Recovery School District (Act No. 485)**

New law authorizes the Recovery School District to contract with for-profit providers for the operation of schools under its jurisdiction.

(Amends R.S. 17:1990)

#### **Recovery School District (Act No. 767)**

New law requires the Recovery School District (RSD) and each local public school board that has had one or more schools transferred to the RSD to enter into a cooperative agreement to allow any student enrolled in a school under the jurisdiction of one of these entities to enroll in a school under the jurisdiction of the other, provided there is sufficient capacity at the appropriate grade level in the requested school.

New law specifies that the chartering authority of any charter school under the jurisdiction of the RSD or a local public school board that enters into a cooperative agreement pursuant to new law also shall be bound by the terms of such agreement.

New law provides that the RSD and local public school boards retain the right to establish attendance zones for schools under their respective jurisdictions in accordance with established policy and any federal court order, judgment, or consent decree.

Effective August 15, 2008. (Adds R.S. 17:1990(F)(4))

#### **Dual High-School/College Enrollment (Act No. 460)**

The dual enrollment initiative is a program which currently provides an opportunity for high school juniors and seniors to earn postsecondary credit while still in high school.

New law provides that a student enrolled in a nonpublic high school or participating in a home school program who meets the prescribed eligibility requirements is eligible to participate and dually enroll in postsecondary coursework, but state funds shall not be used to pay the tuition of such a student. New law provides that the tuition charged to such students shall be the same as that paid by the state on behalf of a public high school student.

Effective August 15, 2008. (Adds R.S. 17:3137)

#### **College Support Foundations (Act No. 505)**

New law provides that any alumni association, alumni foundation, or other private, nonprofit alumni organization that raises private funds for the support of a public institution of higher education which receives \$75,000 or less in funds in a fiscal year is not required to have an audit, but shall execute a certification indicating that it received \$75,000 or less in funds in the fiscal year and prepare a sworn financial statement in accordance with generally accepted accounting principles and include the disclosures required by state and federal regulations. The

statement shall include a recital that it presents fairly, in all material respects, the financial condition and results of operations of the organization; that the organization has maintained a system of internal control structure sufficient to safeguard assets and comply with laws and regulations; and that the organization has complied with all laws and regulations or shall acknowledge exceptions thereto. Copies of the certification and statement must be furnished to the legislative auditor.

Effective upon signature of governor (June 25, 2008). (Amends R.S. 17:3390; Adds R.S. 17:3390(D)(3))

#### **College Support Foundations (Act No. 505)**

New law provides that any alumni association, alumni foundation, or other private, nonprofit alumni organization that raises private funds for the support of a public institution of higher education which receives \$75,000 or less in funds in a fiscal year is not required to have an audit, but shall execute a certification indicating that it received \$75,000 or less in funds in the fiscal year and prepare a sworn financial statement in accordance with generally accepted accounting principles and include the disclosures required by state and federal regulations. The statement shall include a recital that it presents fairly, in all material respects, the financial condition and results of operations of the organization; that the organization has maintained a system of internal control structure sufficient to safeguard assets and comply with laws and regulations; and that the organization has complied with all laws and regulations or shall acknowledge exceptions thereto. Copies of the certification and statement must be furnished to the legislative auditor.

Effective upon signature of governor (June 25, 2008). (Amends R.S. 17:3390; Adds R.S. 17:3390(D)(3))

#### **More Charter Schools (Act No. 321)**

New law increases the limitation on the number of charter school proposals that can be entered into from 42 to 70.

(Amends R.S. 17:3983(A)(4))

#### **Charter School Busing (Act No. 458)**

New law specifies that a charter school shall reimburse the local board for the actual cost of providing student transportation. New law does not apply to agreements between a charter school and a school board for the provision for transportation services in effect on August 15, 2007.

Effective August 15, 2008. (Amends R.S. 17:3991)

#### **Charter School Renewals (Act No. 202)**

New law permits charter school renewal for additional periods of not less than 3 nor more than 10 years instead of for additional 10-year periods.

Effective upon signature of governor or lapse of time for gubernatorial action. (Amends R.S. 17:3992 and 3995)

### **TITLE 18: LOUISIANA ELECTION CODE**

#### **Election Code (Act No. 136)**

New law makes various minor changes to the Louisiana Election Code.

Effective upon signature of governor or lapse of time for gubernatorial action, except that provisions of proposed law amending R.S. 18:18(A)(8)(b) are effective Jan. 1, 2009. (Amends R.S. 18:18, 51, 108, 110, 115, 154, 171, 172, 193, 196, 425, 443.2, 503, 532, 532.1, 535, 563, 564, 566.2, 571, 1259, 1275.14, 1284, 1299.1, 1306, 1307, 1309, 1313, 1402 and 1903; Adds R.S. 18:2(12), 552(A)(4), 1300.7(C), (D), and (E), 1306(B)(3), 1309(J), and 1332(C); Repeals R.S. 18:532.1(G) and (H))

#### **No More July Proposition Elections (Act No. 134)**

New law repeals the July election date for bond, tax, and other proposition elections.

(Repeals R.S. 18:402(F)(5))

**Candidate Qualification (1st Ext. Sess. Act No. 16)**

New law requires a candidate to certify that he does not owe any outstanding fines, fees, or penalties pursuant to the Code of Governmental Ethics.

Effective January 1, 2009. (Amends R.S. 18:463 and 491; Adds R.S. 18:492(A)(6))

**Qualifying After Candidate Death (Act No. 522)**

Proposed law provides that if qualifying for any public office is reopened pursuant to present law after the death of a candidate, 25 qualified voters in the area from which the public officer is elected are required to timely sign a nominating petition.

Effective July 1, 2008. (Amends R.S. 18:465; adds R.S. 18:465(C)(7))

**Crime Prevention and Security Districts (Act No. 930)**

Present law establishes crime prevention and security districts throughout the state funded by various parcel fees and other revenue. The districts were created, in general, by local bills. New law establishes a procedure for creating neighborhood crime prevention and security districts and levying parcel fees in any parish or municipality without the need for a local bill.

New law authorizes the creation of a neighborhood crime prevention and security district utilizing a procedure requiring approval of the local governing authority, a petition by the voters, and approval in an election.

Effective upon signature of the governor or lapse of time for gubernatorial action. (Adds R.S. 18:1300.31 through 1300.33 and R.S. 33:9097.31)

**Crime Prevention and Security Districts (Act No. 931)**

Present law establishes crime prevention and security districts throughout the state funded by

various parcel fees and other revenue. The districts were created, in general, by local bills.

New law establishes a procedure for creating neighborhood crime prevention and security districts and levying parcel fees in any parish or municipality without the need for a local bill.

New law authorizes the creation of a neighborhood crime prevention and security district utilizing a procedure requiring approval of the local governing authority, a petition by the voters, and approval in an election.

(Adds R.S. 18:1300.31 through 1300.33 and R.S. 33:9097.31)

**Early Voting (Act No. 135)**

New law authorizes the secretary of state to establish a permanent program for the conduct of early voting in any parishes.

Effective upon signature of governor or lapse of time for gubernatorial action. (Amends R.S. 18:1309.2)

**Campaign Telephone Calls (Act No. 810)**

New law prohibits any person from making or causing to be made any telephone call or automated call expressly advocating support of or opposition to a candidate, or elected public official, or ballot proposition unless the call identifies the source of the call. New law provides that it does not apply to:

1. Any telephone call in which the individual making the call is not being paid and the individuals participating in the call knew each other prior to the call.

2. Any telephone call or automated call that is conducted to collect information, including message testing, or for the purpose of polling respondents concerning a candidate, elected public official, or ballot proposition, which is a part of a series of like telephone calls that consists of fewer than 1,500 completed calls that average more than two minutes in duration.

New law prohibits a person from making or causing to be made any telephone call or



automated call that states or implies that the caller represents any candidate, political committee, or any other person or organization unless the candidate, political committee, person, or organization so represented has given specific approval to the person paying for the call in writing to make such representation.

New law requires the person who pays for any call subject to new law to maintain records of all such calls and a copy of all such written approvals he has received, and requires that he file a copy of such approval with the secretary of state before the calls commence. New law prohibits a person from making or causing to be made any telephone call or automated call supporting or opposing a candidate, with the knowledge and cooperation of a candidate or a political committee of a candidate, unless the person has received the prior written approval of such candidate or committee, and requires that a copy of each such written approval be filed with the secretary of state by the candidate prior to the time the calls commence.

Effective August 15, 2008. (Adds R.S. 18:1463.1)

#### **Campaign Laws (1st Ext. Sess. Act No. 14)**

Prior law prohibited a person from causing to be distributed or transmitted, any oral, visual, or written material containing any statement which he knows or should reasonably be expected to know makes a false statement about a candidate in a primary or general election or about a proposition submitted to the voters. New law retains prior law.

Prior law did not apply to statements merely expressing support for or opposition to a candidate or proposition or to statements on bumper stickers, lapel pins and stickers, lawn signs, hat bands, badges, ribbons, or to balloons, matchbooks, pens, pencils, and similar paraphernalia nor to radio and television broadcasters who broadcast paid political announcements or paid advertisements that include the voice or picture of a candidate for public office. New law removes these exceptions.

New law provides that whenever any person, political committee, entity, or organization makes a disbursement for the purpose of the financing of any electioneering communication, the communication must contain certain statements regarding its authority and funding.

The term "electioneering communication" means any broadcast, cable, or satellite communication that refers to a legally qualified candidate for elected office and is broadcast within 60 days before any election in which such candidate is on the ballot.

New law requires any oral, visual, or written material constituting a paid political announcement or advertisement that is distributed for a candidate for political office which is paid for by a third-party entity, to include the "clear and understandable" name of the third-party entity on the face of the written material, political announcements or advertisement and requires that the name be clearly understandable as well as audible and visible for not less than three seconds on such visual and oral political announcements or advertisements.

New law provides, if a third party pays for a political announcement or advertisement for a candidate, that the name of the third-party be displayed on the face of the advertisement.

Effective January 1, 2010. (Amends R.S. 18:1463 and 1505.3; adds R.S. 18:1463(C)(4) and (F))

#### **Campaign Expenditures (Act No. 821)**

New law prohibits a candidate and the principal or any subsidiary political committee of a candidate from using a contribution, loan, or transfer of funds to make any payment or expenditure to any immediate family member of the candidate.

New law repeals the provisions that required any §527 organization to file reports as required for other political committees regarding contributors, the amount of contributions, and the expenditures made by such organization for the purpose of directly or indirectly accepting

contributions or making expenditures, or both, for an exempt function.

Effective upon signature of governor (July 8, 2008). (Amends R.S. 18:1483; Adds R.S. 18:1505.2(I)(5); Repeals R.S. 18:1483(14)(c) and 1501.2)

**527 Political Organizations (1st Ext. Sess. Act No. 26)**

New law, relative to campaign finance, provides that the term "political committee" or "committee" includes a political organization as defined in 26 U.S.C.A. §527(e)(1) and requires any such political organization to file reports as required for political committees regarding contributors, the amount of contributions, and the expenditures made by such organization for the purpose of directly or indirectly accepting contributions or making expenditures, or both, for an exempt function as defined in 26 U.S.C.A. §527(e)(2).

New law requires such 527 political organizations to also file reports during the period beginning at midnight of the 20th day prior to a primary election and extending through midnight of primary election day, and during the period beginning at midnight of the 20th day prior to a general election and extending through midnight of general election day, containing the full name and address of each person from whom the political organization has received and accepted a contribution, or to whom such organization has made an expenditure during such period in excess of \$250.

New law provides that no candidate, political committee, or person who files reports under the CFDA, nor any other person, shall use campaign contributions, loans, or transfers of funds, to pay a fine, fee, or penalty imposed under the Code of Governmental Ethics.

Effective April 26, 2008. (Amends R.S. 18:1483 and 1505.2; adds R.S. 18:1483(14)(c), 1501.2, and 1505.2(I)(4))

**Campaign Finance Disclosure (1st Ext. Sess. Act No. 17)**

New law requires each person and political committee required to file reports pursuant to the CFDA, other than a candidate or an authorized political committee of a candidate or a political committee of a recognized political party, that receives contributions or loans in excess of \$50,000 in a calendar year or which makes expenditures in excess of \$50,000 in a calendar year to file all reports required by the CFDA electronically through the Board of Ethics Computerized Data Management System.

Effective July 1, 2009. (Adds R.S. 18:1485(E))

**Campaign Finance Disclosure (1st Ext. Sess. Act No. 27)**

New law provides that each person, other than a candidate or political committee, who makes an expenditure for purposes of canvassing, irrespective of the amount expended, shall submit in writing to the candidate or political committee on whose behalf such expenditure was made the name, address, and the last four digits of the social security number of each individual to whom such an expenditure was made.

New law provides that a fine, fee, or penalty assessed for a violation of the CFDA shall be paid only by the person against whom the fine, fee, or penalty was assessed and CFDA fines, fees, or penalties may be paid only with the personal funds of such person or with contributions in accordance with prior law.

New law provides that no candidate, political committee, or person who files reports under the CFDA, nor any other person, shall use campaign contributions, loans, or transfers of funds, to pay a fine, fee, or penalty imposed under the Code of Governmental Ethics.

Effective March 30, 2008. (Amends R.S. 18:1501.1, 1505.2, and 1511.6; adds R.S. 18:1483(9.1), 1505.2(I)(4) and 1505.6(D))

**TITLE 19: EXPROPRIATION**

Nothing of particular interest.

**TITLE 20: HOMESTEADS AND EXEMPTIONS**

Nothing of particular interest.

**TITLE 21: HOTELS AND LODGING HOUSES**

Nothing of particular interest.

**TITLE 22: INSURANCE**

**Categorization of Insurers (Act No. 410)**

New law lists the types of insurers and other risk bearing entities that are regulated by specific provisions in the Louisiana Insurance Code.

New law takes effect only if and when the Act which originated as SB 335 of this 2008 RS is enacted and becomes law. (Adds R.S. 22:48)

**Insurance-Funded Funeral Contracts (Act No. 136)**

New law prohibits a funeral establishment (or any entity involved in the marketing, preparation, or funding of a pre-need funeral contract) from being designated as the owner of a life insurance policy or annuity issued to fund that pre-need funeral contract. If a funeral establishment is designated as the primary beneficiary, the payment of the proceeds of the policy or annuity to the funeral establishment shall be conditioned on the funeral establishment's delivery of the funeral services or merchandise. If the funeral establishment named as primary beneficiary does not provide the funeral services or merchandise for the insured, the contingent beneficiary named in the policy or annuity shall receive the proceeds of the policy or annuity.

New law prohibits an insurer from paying the benefits of a life insurance policy or annuity issued or assigned for the purpose of funding a pre-need funeral contract to a funeral establishment unless the insurer receives a certified copy of the death certificate of the insured from that establishment

Effective Jan. 1, 2009. (Adds R.S. 22:170.2)

**Group Life Insurance Policies (Act No. 404)**

New law permits insurance under any group life insurance policy to be extended to various persons and relatives.

Effective upon signature of the governor (June 21, 2008). (Amends R.S. 22:175)

**Termination of Health Insurance (Act No. 199)**

Present law provides that continuation of health insurance is not available to anyone who could be covered by any other coverage within 31 days of termination whether insured or uninsured; whose benefits were terminated as a result of fraud; who failed to pay any required contribution; or who is eligible for continuation under COBRA.

New law retains present law but clarifies that insurance coverage shall not continue for an individual who, within 31 days of termination, is or could be covered by other hospital, surgical, or medical coverage for individuals in a group.

(Amends R.S. 22:215.13(D))

**Health Insurance Coverage for Autism Spectrum Disorders (Act No. 648)**

New law requires that any health coverage plan provide coverage for the diagnosis and treatment of autism spectrum disorders in individuals less than 17 years of age.

New law prohibits any insurer or issuer of a health coverage plan from terminating coverage or refusing to deliver, execute, issue, amend, adjust, or renew coverage to an individual solely because the individual is diagnosed with one of the autism spectrum disorders or has received treatment for an autism spectrum disorder.

New law provides that it shall not apply to any health coverage plan issued to an employer with 50 or fewer employees, as well as individually underwritten, guaranteed renewable health insurance policies.

Prior law included pervasive developmental disorder or autism and Asperger's Disorder among certain severe mental illnesses mandated to be covered by health coverage plans. New consolidates their coverage under the single statutory mandate of new law.

Effective August 15, 2008. (Adds R.S. 22:215.26; Repeals R.S. 22:669(A)(1)(b)(iii) and (viii))

### **Prosthetic Devices and Services as Health Plan Benefits (Act No. 349)**

New law requires that health coverage plans provide coverage for prosthetic devices and prosthetic services, with eligibility and limits for such coverage determined based on medical necessity.

New law allows a plan to require prior authorization for prosthetic devices and services in the same manner that prior authorization is required for any other covered benefit, and authorizes a plan to impose co-payments or deductibles on prosthetic devices and prosthetic services and for repair and replacement of prosthetic devices, but requires that such amounts not be greater or more restrictive than the co-payments and deductibles that apply to other benefits under the plan, unless repair and replacement are necessitated by misuse or loss.

New law requires that coverage of prosthetic devices be no more restrictive than the provisions of a health coverage plan that apply to other benefits, and authorizes a health coverage plan to apply an annual limit of no less than \$50,000 per limb on such coverage.

Effective upon signature of governor or lapse of time for gubernatorial action. (Adds R.S. 22:215.26)

### **Rehab and Therapy Benefits for Health Insurance (Act No. 151)**

Present law requires any group, family group, blanket, or association health and accident insurance policy, including any insurance program, with certain exceptions to include, as an option to be exercised by the policyholder,

covered benefits for speech and language pathology therapy, physical therapy, rehabilitative services, and occupational therapy.

New law provides that, as an alternative to offering this optional coverage, inclusion of these benefits as standard benefits in such health insurance policies and programs shall be sufficient to comply with present law.

(Amends R.S. 22:230.1)

### **Therapy as Insurance Benefit (Act No. 529)**

Proposed law adds that an insurer may include coverage for speech and language pathology therapy, physical therapy, rehabilitative services, and occupational therapy as standard benefits.

Effective upon signature by the governor or upon lapse of time for gubernatorial action. (Amends R.S. 22:230.1)

### **Louisiana Health Plan (Act No. 21)**

New law amends the La. Health Plan which administers the state's high-risk pool, used to provide coverage for those who cannot obtain coverage in the private market due to preexisting conditions, and the HIPAA pool, used to ensure the availability of comprehensive health coverage to those who lose their group health care coverage and are guaranteed access to continuing coverage.

Present law authorizes the plan to utilize alternative funding sources for federally defined individuals (HIPAA pool) to reduce rates from 200% of the standard market average cost for similar coverage. New law authorizes the plan to utilize such alternative funding sources to reduce rates without the imposition of 200% of the standard market average cost for similar coverage.

New law defines and provides with respect to rates for nonfederally defined individuals (high-risk pool).

Present law makes a dependent of a person who is eligible for plan coverage also eligible for plan coverage under the family group. New law

makes such a dependent also eligible for plan coverage, not restricting such coverage to the family group.

Present law provides that a person who ceases to meet the plan's eligibility requirements may be terminated from coverage at the time of renewal. New law provides that such a person may be terminated at the time of loss of eligibility.

Present law requires the board to verify the adequacy of any governmental appropriation, alternative funding sources, or other fees to reduce rates for federally defined individuals below 200% of rates applicable to individual standard risks. New law removes the requirement that 200% of rates be utilized.

New law increases the maximum lifetime benefit per covered person per 12 consecutive months of coverage which the plan may establish from \$100,000 to \$250,000.

New law provides that plan rates shall not be lower than 110% of rates applicable to individual standard risks.

(Amends R.S. 22:231, 232, 234, 236, 237, 239.1, 240, and 242)

#### **Health Insurers and Pharmacies (Act No. 755)**

New law requires that each remittance advice generated by a health insurance issuer or its agent to a pharmacist or his agent or pharmacy or its agent have payment attached and include certain specified information.

Effective July 1, 2009. Additionally makes any contract for payment of a claim in effect on July 1, 2009, subject to the provisions of new law. (Adds R.S. 22:250.52(10), (11), and (12) and 250.56(C), (D), and (E))

#### **Cooperative or Assessment Plan Life, Health, and Accident Insurance (Act No. 416)**

New law repeals prior law that authorized continuation of policies of life, health and accident insurers on a cooperative or assessment

plan that were organized to do business in this state on October 1, 1948.

Proposed law takes effect only if and when the Act which originated as Senate Bill No. 335 of this 2008 RS is enacted and becomes law. (Repeals R.S. 22:391-397)

#### **Health Insurance Denials (Act No. 575)**

New law provides that for health services rendered in good faith and pursuant to the benefit plan, no health insurance issuer shall retroactively deny payment or recoup any monies paid beyond 60 days from the expiration of the allowable 30-day period for the payment of the claim, when the denial or recoupment is based on a determination that the insured was no longer covered under the plan at the time of the service.

New law additionally provides that in order to be eligible for credit of premium by a health insurance issuer, an employer that contracts with an issuer for the issuer's provision or administration of health benefits shall provide notice to the issuer that an employee, dependent, or retiree is no longer eligible for coverage in the group benefit plan within 90 days of such ineligibility.

Effective January 1, 2009. (Adds R.S. 22:250.34(E), (F), and (G))

#### **Insurance Fraud (Act No. 454)**

New law clarifies that a false statement on an application for life or health and accident insurance does not bar one's recovery unless (1) the false statement was made with actual intent to deceive, or (2) the false statement materially affected either the acceptance of the risk or the hazard assumed by the insurer under the policy.

Effective August 15, 2008. (Amends R.S. 22:619)

#### **Homeowner Policy Deductibles (Act No. 854)**

New law permits an insurer to file with the commissioner of insurance a written petition for authorization to increase a policy deductible of not more than 4% of the value of the property

being insured for named storms or hurricanes on a homeowner's policy that has been in effect for more than three years.

New law prohibits a homeowner's policy from containing any provision that would apply more than one deductible to a loss resulting from any single incident.

New law requires any company making a filing with the commissioner for authorization to deviate from existing provisions, to reduce the rates paid by an individual homeowner by the amount determined to be actuarially justified by the commissioner, when the deductible is increased.

Effective upon signature of the governor (July 9, 2008). (Adds R.S. 22:635.3(D), (E) and (F) and 636.2 (E), (F) and (G))

#### **Marriage and Family Therapist Benefits (Act No. 305)**

New law provides that, notwithstanding any contrary provision of a health coverage plan, whenever such plan provides for benefits for health-related services that can be lawfully performed by a licensed marriage and family therapist, the insured or other person entitled to benefits under such plan shall be entitled to benefits for such services performed by a licensed marriage and family therapist. New law requires that such health care provider meet a health insurance issuer's contracting and credentialing requirements in order for a policyholder or covered dependent to be eligible for in-network benefits and for a health care provider to be reimbursed directly by a health insurance issuer.

(Adds R.S. 22:669.1)

#### **Conversion from Mutual to Stock Insurance Company (Act No. 307)**

New law creates a process by which a mutual life insurer and mutual life insurance holding company may reorganize into a stock insurance company that may be or become a subsidiary of a parent corporation or a stock insurance holding company.

Effective upon signature of governor or lapse of time for gubernatorial action. (Amends R.S. 22:806; Adds R.S. 22:822-833)

#### **Change in Directors or Officers (Act No. 11)**

New law requires all foreign and alien insurers to provide to the commissioner of insurance biographical information for all elected or appointed directors and senior officers within 60 days from the effective date of election or appointment.

New law defines "senior officer" to include president, secretary, treasurer, chief executive officer, actuary, controller, or anyone who is responsible for duties in those positions.

(Adds R.S. 22:990.1)

#### **Foreign Insurer Deposit Requirements (Act No. 504)**

New law increases the amount of the deposit of approved securities that a foreign or alien insurer must make from \$20,000 to \$100,000 and deletes the alternative of a surety bond of \$100,000.

New law excepts any insurer which has \$100,000 in capital stock or in surplus above liabilities and which has \$500,000 in approved securities on deposit with the proper official of its home state or state of entry. New law deletes prior law relative to additional deposits.

Effective January 1, 2009. (Amends R.S. 22:1021, 1024, and 1027; Repeals R.S. 22:1023, 1025, and 1026)

#### **Mechanical Breakdown Insurance (Act No. 818)**

New law provides that no mechanical breakdown insurance policy or application form, where written application is required and is to be attached to the policy, or any rider or endorsement of such a contract, shall be issued, delivered, or used unless it has been filed with and approved by the commissioner of insurance.

Effective August 15, 2008. (Adds R.S. 22:1078(B)(26) and 1807.1)

**Property Residual Value Insurance Policy (Act No. 883)**

New law provides that no property residual value insurance policy (or application form, where written application is required and is to be attached to the policy) or any rider or endorsement of such a contract, shall be issued, delivered, or used unless it has been filed with and approved by the commissioner of insurance.

Effective August 15, 2008. (Adds R.S. 22:1078(B)(26) and 1907.1)

**Insurance Fraud (Act No. 15)**

New law specifies that fraudulent insurance acts include abetting another in making a false statement concerning a claim to the Department of Insurance or making a false statement concerning any fact material to an insurance policy.

New law defines the following acts committed knowingly with intent to defraud as fraudulent insurance acts:

1. Manufacturing, selling, distributing, presenting, or causing to be presented a fraudulent proof of insurance card or document.
2. Altering a legitimate proof of insurance card or document.

New law provides that mere possession of a fraudulent proof of insurance card or document shall be punishable by a fine of \$500 or imprisonment for not more than six months, or both, on each count.

Present law makes commission of certain acts relative to insurance policies generally, including any fraudulent insurance act, a felony. New law provides that such acts shall also require payment of restitution to the victim insurance company of insurance payments and the cost associated with the defense of the fraudulent claim.

(Amends R.S. 22:1243 and 1244; Adds R.S. 22:1242(1)(h) and (i))

**Insurer Filing Exemptions (Act No. 471)**

Present law requires the commissioner to grant an exemption from filing requirements if, after written application for an exemption submitted by an insurer, the commissioner determines that compliance with filing requirements would constitute a financial or organizational hardship on the insurer.

New law permits a domestic insurer that is licensed to write business only in the state to make written application to the commissioner for a waiver from filing quarterly statements, analysis accompanying the annual statement, electronic filings with the National Association of Insurance Commissioners, and holding company registrations.

Effective August 15, 2008. (Amends R.S. 22:1324 and 1451)

**LIGA Coverage Reduced (Act No. 109)**

Present law provides that a "covered claim" under the La. Insurance Guaranty Association statute does not include any claim asserted for coverage under a policy held by any insured whose net worth exceeds \$25 million, and specifies that the net worth exclusion includes the aggregate net worth of the insured and its subsidiaries and affiliates calculated on a consolidated basis. New law extends the net worth exclusion in present law to any insured for whom coverage would allegedly be owed.

(Amends R.S. 22:1379)

**LIGA Liability Limits (Act No. 687)**

New law changes the limits of liability of the Louisiana Insurance Guaranty Association from \$150,000 per claim subject to a maximum limit of \$300,000 per accident or occurrence to \$300,000 combined single limits.

New law applies prospectively only and to covered claims which arise out of a liquidation proceeding which is commenced on or after August 15, 2008.

Effective August 15, 2008. (Amends R.S. 22:1382)

### **LIGA and Insurers (Act No. 467)**

Present law provides that the commissioner of insurance shall consult with the board of directors of the Louisiana Insurance Guaranty Association (LIGA) on all applications to do business in this state made by insurers which are prospective member insurers, as well as all applications for modification of existing certificates of authority made by such insurers, and if LIGA recommends against, the commissioner must conduct a hearing on the application.

New law instead simply provides that the commissioner shall notify the board of directors of LIGA of all such applications.

Effective 8/15/08 (Amends R.S. 22:1384(A)(3))

### **Insurance Rates (Act No. 402)**

New law prohibits fines and penalties against an insurer, whether levied by a court or regulatory body, from being used by the insurer or considered in any manner in the loss or expense experience for the purpose of setting rates or making rate filings.

Effective upon signature of the governor (June 21, 2008). (Amends R.S. 22:1402.2)

### **Insurance Rate Reduction for GPS (Act No. 132)**

New law provides that the commissioner of insurance shall authorize a rate reduction, if actuarially justified, on vehicles equipped with a global positioning system (GPS) or vehicle tracking system which helps in recovering stolen vehicles.

Effective upon signature of governor or lapse of time for gubernatorial action. (Amends R.S. 22:1404; Adds R.S. 22:1404(G))

### **Homeowner Policy Discounts for the Military (Act. No. 849)**

New law authorizes insurers that offer homeowner's policies to give a 10% discount to active military personnel who own real estate property in this state.

Effective August 15, 2008. (Adds R.S. 22:1425.1)

### **La. CPIC Appeals (Act No. 388)**

New law prohibits an applicant from appealing the denial of coverage by the Louisiana Citizens Property Insurance Corporation if the applicant has not been denied coverage by another carrier.

Effective upon signature of the governor (June 21, 2008). (Amends R.S. 22:1430.11)

### **CPIC Survey of Insurers (Act No. 211)**

New law authorizes the chief executive officer of the La. Citizens Property Insurance Corporation or his designee to survey all insurers to determine what is necessary to comply with provisions of present law and requires that insurers submit all information needed.

New law provides that all survey information received by the chief executive officer or his designee is proprietary, privileged, and confidential, and shall be exempt from provisions of present law relative to public records, but shall be subject to the legislative auditor's authority pursuant to present law.

New law adds that rates must be effective within 12 months of the prior rate filing's effective date, and that corporations are not required to adopt a rate that is unfairly discriminatory.

(Amends R.S. 22:1430.12 and R.S. 44:4.1(B)(10))

### **Preference for Local Underwriters (Act No. 434)**

Proposed law requires La. Citizens Property Insurance Corporation to grant a preference to underwriters and those engaged in the business of underwriting who have been domiciled in the state for at least five years, provided such is subject to a fee schedule or other fixed fee arrangement.

Effective upon signature by the governor or upon lapse of time for gubernatorial action. (Amends R. S. 22:1430.24)



**Preference for Local Underwriters (Act No. 434)**

Proposed law requires La. Citizens Property Insurance Corporation to grant a preference to underwriters and those engaged in the business of underwriting who have been domiciled in the state for at least five years. provided such is subject to a fee schedule or other fixed fee arrangement.

Effective upon signature by the governor or upon lapse of time for gubernatorial action. (Amends R. S. 22:1430.24)

**Ownership of Insurance Files (Act No. 137)**

Present law provides that, for the purpose of selling, soliciting, or negotiating insurance, an agent or broker has the exclusive use of expirations, records, or other information related to insurance policies written by that agent and prohibits insurance companies from using such information to sell or negotiate renewal of any insurance coverage, with various exceptions, including life and health policies. New law excepts group coverage and health policies.

New law provides that policies providing life insurance, disability income, long-term care, and annuity files are owned by the insurance company to whom they were submitted. New law further provides that for all such policies, the producer who sold the coverage has the right to retain a copy of the file once the affiliation between the producer and insurance company is terminated, unless the policy was issued under the home service marketing distribution system or unless the company and the producer agree in writing that the producer shall not have such right. New law gives the insurance company the right to receive a copy of any files needed from the producer, at the company's expense, upon termination of the producer/company relationship.

(Amends R.S. 1474; Adds R.S. 22:1474(D)(4))

**Catastrophic Response Plans (Act No. 143)**

New law requires any insurer writing life or health and accident insurance to maintain a written catastrophe response plan or plan

describing how the insurer will respond to a catastrophe affecting its policyholders.

New law requires that each health maintenance organization, managing general agent, and third-party administrator shall maintain a written catastrophe response plan or plan that describes how it will respond to a catastrophe affecting its business operations.

(Amends R.S. 22:1479)

**Animal Insurance (Act No. 420)**

New law repeals provisions regarding the licensing and operation of animal insurers.

New law takes effect only if and when the Act which originated as SB 335 of the 2008 RS is enacted and becomes law. (Repeals R.S. 22:1931-1943)

**Discount Medical Plan Act (Act No. 442)**

New law creates the Louisiana Discount Medical Plan Act, the purpose of which is to protect the public from unfair and deceptive marketing, sales, or enrollment practices by discount medical plan organizations.

New law requires every discount medical plan organization to register with the commissioner of insurance.

New law permits a discount medical plan organization to charge a periodic charge as well as a reasonable one-time processing fee. New law provides that if a member cancels his membership by written notice within the first 30 days, the member shall receive reimbursement of all periodic charges and processing fees that exceed \$30.

New law mandates that any marketing and advertising be clear and truthful.

New law prohibits a discount medical plan organization from using various terms in a manner that could mislead a person into believing that the discount medical plan is insurance or has been endorsed by the state, making fraudulent representations regarding the

discount or range of discounts offered by the plan, or having restrictions to access to discount medical plan providers.

New law requires the medical plan organization to disclose in writing on the first page of any advertisements that the plan is a discount plan and not insurance coverage, that the range of discounts will vary, and that the plan member must pay for all discounted medical services.

New law mandates the plan provide to each prospective member written information that describes the terms, conditions and benefits of the plan, including limitations and restrictions, processing fees and periodic charges, waiting periods for certain medical services, procedures for obtaining discounts, and complaint filing, cancellation and renewal procedure.

New law requires each discount medical plan organization to provide the commissioner at least 30 days advance notice of any change in their plan or the organizations' name, address, or Internet website.

Effective January 1, 2009. (Adds R.S. 22:2037.1 through 2037.11)

### **Captive Insurance Companies (Act No. 403)**

New law creates regulations for the formulation and operation of domestic captive insurance companies within the state. A captive insurance company is defined as an insurance company that only insures all or part of the risks of its parent company.

New law applies prior law regarding rehabilitation, liquidation, conservation, dissolution, administrative supervision, acquisition of control or merger, and conversion to captive insurers.

New law prohibits a captive insurer from:

1. Directly providing insurance classified as life, health and accident, title, credit life, health, and accident, credit property and casualty, or annuity.

2. Directly providing personal motor vehicle, homeowners' insurance coverage, or any other noncommercial line of coverage.

3. Directly providing workers' compensation or employers' liability insurance coverage, except in connection with a self-funded insurance program as prescribed in new law.

4. Accepting or ceding reinsurance, except as otherwise provided in new law.

New law permits a captive insurer to provide excess workers' compensation insurance to its parent and affiliated companies under certain circumstances.

New law prohibits a captive insurer from insuring any risks other than those of its parent company, member organization or affiliated companies of the member organization.

New law allows the commissioner to license a captive insurer to provide coverage for unrelated risks if it is appropriate and in the best interest of the public.

New law requires a captive insurer to:

1. Maintain its principal place of business in the state.

2. Make adequate arrangements with a bank located in the state.

3. Employ or enter into a contract with a natural person or business organization to manage the affairs of the captive insurer.

4. Employ or enter into a contract with a certified public accountant and experienced actuary.

New law restricts a captive insurer from paying dividends out of its capital or surplus without prior approval from the commissioner.

New law prohibits a captive insurer from providing reinsurance on risks ceded by any other insurer without approval of the commissioner.

New law requires any policy issued by an association captive insurer to include a statement

that the policy is issued by a captive insurer that may not be subject to all of the insurance laws and regulations of the state and that state insurance insolvency funds are not available to them.

New law subjects captive insurers to taxation at the same rate and subject to the same interest, fines, and penalties for nonpayment as that applicable to domestic insurers, imposes the same assessments of the Louisiana Citizens Property Insurance Corporation under existing law, and requires each association captive insurer to file rates on an actuarially justified basis with the Department of Insurance.

New law requires policy forms to be filed and approved by the commissioner not less than 45 days in advance of any such issuance, delivery or use.

New law contains various other provisions regarding what captive insurers can and cannot do.

Effective January 1, 2009. (Adds R.S. 22:2090.1-2090.26)

#### **Pharmacy Benefits Managers Act No. 386**

New law provides that a pharmacy benefit manager (PBM) shall be deemed to be a third party administrator for purposes of existing law.

Effective January 1, 2009. (Adds R.S. 22:3047)

#### **Medical Necessity Review Organizations (Act No. 443)**

New law defines "evidence based standard" to be the conscientious, explicit and judicious use of the current best evidence based on overall systematic review of the research in making decisions about the care of individual patients.

New law defines "medical or scientific evidence" to be evidence found in certain sources listed.

New law provides for appeal and review of experimental or investigational determinations

by Medical Necessity Review Organizations (MNRO).

New law requires that the MNRO make its decision or recommendations in accordance with prescribed standards.

New law requires that the reviewer, to the extent information or documents are available and considered appropriate, consider various categories of information.

Effective upon signature by the governor or upon lapse of time for gubernatorial action. (Amends R.S. 22:3071; adds R.S. 22:3071(33) and (34) and 3093)

#### **Homeowner Policy Premium Assistance Program (Act No. 390)**

New law creates the homeowner policy premium assistance program for any individuals who paid a homeowner insurance policy premium during the previous 12 calendar months. The program will provide assistance toward payment of a homeowner's insurance policy premium as long as funds are available in the Insure Louisiana Incentive Program Fund or otherwise appropriated by the legislature, and provides that the amount of this assistance equal the pro rata share of funds available. New law requires that the office of the consumer advocacy within the Department of Insurance, through the deputy commissioner for consumer advocacy, coordinate and administer the homeowner policy premium assistance program.

Effective upon signature of the governor (June 21, 2008). (Amends R.S. 22:3304, and , and R.S. 36:696; adds R.S. 22:3309(E) and 3312)

#### **Homeowner Policy Premium Assistance Program (Act No. 469)**

New law creates the homeowner policy premium assistance program for any individuals who paid a homeowner insurance policy premium during the previous 12 calendar months.

Effective August 15, 2008. (Amends R.S. 22:3304 and R.S. 36:696(B); adds R.S. 22:3312)

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

### **Department of Labor Renamed (Act No. 743)**

New law replaces the Department of Labor with the La. Workforce Commission. New law retains existing law but changes all references to the "secretary" to the "executive director" and all references to the "department" to the "commission". New law requests and authorizes the La. State Law Institute to change all references in prior law to the La. Dept. of Labor, secretary of the Dept. of Labor, and La. Workforce Commission to the La. Workforce Commission, executive director, and Louisiana Workforce Investment Council, respectively.

New law expands the powers and duties of the executive director. New law requires the executive director to develop a uniform statewide client application and enrollment process for the determination of workforce training and services eligibility.

New law establishes the components of the local workforce development system. New law allows a local workforce development board to apply for and receive a charter as a private, nonprofit corporation and employ professional, technical, and support staff to carry out its functions.

Effective July 1, 2008.

(Amends R.S. 23:1-12, 14, 15, 16, 71, 72, 73, 74, 75, 76, 1472, 2042-2046, 2047, 2048-2056, 2061-2063, 2065-2067, 2069, 2070, 2091, 2092, 2100, 2151, 2152, 2153, 2191, and 2192, R.S. 36:3, 4, 8, 301-307, 308, 309, 310, 313, and 805, and R.S. 49:191 and 968; Adds R.S. 15:1199.12(F), R.S. 23:17-20, 33, 34, 72(4) and (5), 73(A)(1)(d), 75(E), 77, 78, and 2193- 2212, and R.S. 36:8(E)(2)(j); Repeals R.S. 23:2064, 2068, and 2093-2099 and R.S. 36:4(B)(14), 311, and 312)

### **Employment Discrimination Notice of Claim (Act No. 793)**

Existing law provides for notice of intent to file a civil suit claiming employment discrimination be provided to the person who is claimed to have discriminated at least 30 days prior to the filing

of the petition. New law retains existing law and provides that no interruption of prescription shall flow from either the giving or the failure to give such notice.

Effective August 15, 2008. (Adds R.S. 23:303(E))

### **Noncompete Agreements (Act No. 399)**

New law adds that a noncompete agreement is null and void if it is determined that members of the agreement were engaged in ultra vires acts.

New law provides that members of a noncompete agreement may participate in the transfer, sale, or purchase of stock or interest in publicly traded entities.

New law adds an exception to the prohibition against contracts which restrain the exercising of a lawful profession, trade, or business for a period of two years for shareholders of a corporation, partners of a partnership, or members of a limited liability company who agree with the corporation, the partnership, or the limited liability company, respectively, to refrain from carrying on a similar business within specified parish or municipal areas.

Effective August 15, 2008. (Amends R.S. 23:921; adds R.S. 23:921(J), (K) and (L))

### **Noncompetition Agreements by Employees of Franchisors (Act No. 711)**

Existing law permits parties to a franchise to agree to refrain from competing against one another and provides parameters for such covenants not to compete.

New law allows for agreements prohibiting an employee who is employed by a franchisor from competing against his employer or other franchisees of his employer during the period of his employment by the franchisor. The parties may also agree that for a period not to exceed two years following severance of the employment relationship between the franchisor and the employee, the employee shall refrain from engaging in a similar business, and from

competing with or soliciting the customers of his employer or the franchisees of his employer.

Effective August 15, 2008. (Adds R.S. 23:921(F)(1)(c))

**Penalties for Failure to Secure Workers' Compensation (Act No. 705)**

Prior law, relative to the failure to secure workers compensation for employees, provided that the judge may fine the employer up to \$10,000 or issue a cease and desist order prohibiting operation of the business until compliance, or both.

New law allows the workers' compensation judge to impose the fine and requires that the judge order the employer to secure workers' compensation insurance and file evidence of coverage within 90 days of the order. Should the employer fail to file such evidence, the workers' compensation judge shall issue the cease and desist order prohibiting the employer from continuing its business operations until the employer complies and all fines are paid in full.

Effective August 15, 2008. (Amends R.S. 23:1171.1)

**Division of Post-Death Workers' Compensation (Act No. 703)**

Prior law, relative to the computation and allocation of benefits payable to the dependents of an employee whose injuries resulted in death, provided that the schedule of payments be computed and divided among dependents. New law requires the payments to be computed and divided "equally" among the dependents.

Effective August 15, 2008. (Amends R.S. 23:1232)

**Filing Fees for Workers' Compensation Claim (Act No. 704)**

Prior law provided that the fees for filing a workers' compensation claim shall be collected following a final judgment and paid by the party against whom any award becomes final.

New law requires the collection of filing fees at the time of filing unless the filing party requests a waiver of costs due to his indigent status and such request is granted by the office of workers' compensation administration (OWCA).

Effective upon signature of governor (July 2, 2008). (Amends R.S. 23:1310.11)

**Unemployment Compensation (Act No. 169)**

New law provides for a potential increase in the weekly benefit amount of unemployment compensation, and creates a reduction in unemployment compensation contributions for employers.

Effective upon signature of governor or lapse of time for gubernatorial action. (Amends R.S. 23:1474, 1592, and 1595; Adds R.S. 23:1536(E)(4))

**Unemployment Benefits (Act No. 510)**

Present law requires that employers who pay unemployment claims on a reimbursement basis and who owe reimbursement payments for benefits paid as a result of executive orders KBB 2005-34, KBB 2005-46, and KBB 2005-76 shall make such payments on a quarterly basis beginning July 1, 2008.

New law prohibits recoupment of such reimbursement payments and clearly states that reimbursement for benefits paid as a result of the executive orders shall not be collected.

Effective August 15, 2008 (Amends R.S.23:1552)

**Unemployment Benefits (Act No. 512)**

Prior law requires employers who pay unemployment claims on a reimbursement basis and who owe reimbursement payments for benefits paid as a result of executive orders KBB 2005-34, KBB 2005-46, and KBB 2005-76 shall make such payments on a quarterly basis beginning July 1, 2008. New law repeals the requirement to reimburse those payments.

New law provides in the event any employer was insured by private entities against

unemployment claims chargeable to the employers account, the state shall have the right to recoup such funds from those private entities for repayment of funds paid out of the unemployment compensation trust fund.

Effective upon signature of governor (June 28, 2008). (Amends R.S. 23:1552(intro. para.) and (B)(6); Repeals R.S. 23:1552(B)(7))

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

### **Video Conference Meetings of Legislative Committees (Act No. 185)**

New law allows meetings of legislative committees held between sessions of the legislature and during which no votes on any matters having the effect of law are required to be taken to be conducted by video conference, but requires an in-person quorum be present at the location at which the meeting was advertised to take place.

Effective upon signature of the governor (June 13, 2008). (Adds R.S. 24:7)

### **Reconfirmation of Appointees by Senate (Act No. 528)**

New law provides that all appointees to a board, commission, committee, or district requiring Senate confirmation be reconfirmed at the beginning of each legislative term or at the expiration of their appointed term of office if they continue to serve because no successor has been appointed.

Effective August 15, 2008. (Amends R.S. 24:14; adds R.S. 24:14(K))

### **Lobbying (Act No. 769)**

New law provides that the term "lobbyist" includes contract lobbyist, governmental affairs representatives, and volunteer lobbyists.

New law provides an exception for an expert witness who provides expert testimony to a committee or subcommittee of the legislature and who does not testify more than four days on an annual basis.

New law exempts a person who is not otherwise compensated, with the exception of reimbursement for expenses related to travel to the legislature, phone calls and postage and who makes no expenditures.

New law does not apply to:

1. An elected official or any designees of the elected official.
2. A volunteer lobbyist as defined in proposed law.
3. A person who is employed or who contracts to provide a professional service except those employees who are defined as governmental affairs representatives, when his main duties do not include communicating with, negotiating with, or lobbying legislators, unless the person engages in direct communication with a legislator, makes an appearance before a legislative committee, or assists in an appearance before a legislative committee, and the person makes expenditures.
4. The dissemination of any report, article, or publication that has as its primary focus the nonpartisan analysis, study, or research of issues, irrespective of whether or not such report, article, or publication may recommend a course of action.

Effective upon signature of the governor or lapse of time for gubernatorial action. (Amends R.S. 24:51, 52, and 56)

### **Code of Governmental Ethics – Bribes (1st Ext. Sess. Act No. 19)**

New law removes the cultural or sporting events exception from the definition of expenditure.

New law adds an exception to the Code of Governmental Ethics for the acceptance by an elected official of complimentary admission to a civic, non-profit, educational, or political event when the elected official is a program honoree, is a speech presenter, or is a panel member. New law provides that the exception for acceptance by an elected official of complimentary admission does not apply to any admission into any professional, semi-professional, or collegiate sporting event; or any fishing trip,

hunting trip, or golf outing unless such trip or outing is associated with a candidate's, elected official's, or organization's fund-raising event open to the general public.

Effective upon signature of the governor (March 10, 2008). (Amends R.S. 24:51, 42:1123, and R.S. 49:72)

### **Lobbyists (1st Ext. Sess. Act No. 13)**

New law makes numerous changes to the laws regarding lobbyists, including:

New law defines "business relationship" as any transaction, contract, or activity that is conducted or undertaken for profit and which arises from a joint ownership interest, partnership, or common legal entity between a lobbyist, his employer, or principal and a legislator or his spouse when the legislator or his spouse owns 10% or more of such interest or entity.

New law allows a lobbyist who is compensated for both lobbying and non-lobbying services to reasonably allocate compensation received and report only the amount received for lobbying.

New law provides that the electronic filing by a lobbyist of any required registration information shall constitute a certification that the information is true and correct to the best of his knowledge, information, and belief and that no information required by present law and new law has been deliberately omitted.

New law provides that the electronic filing of any report by a lobbyist shall constitute a certification that the information contained in the report is true and correct to the best of his knowledge, information, and belief; that no reportable expenditures have been made that are not included as required by law; and that no information required by prior law and new law has been deliberately omitted.

New law adds public servants, and spouses or minor children of a legislator/executive branch official, to those individuals to which a lobbyist has to report and attribute any expenditures.

New law requires the board to establish and maintain access to a searchable electronic database available to the public via the Internet, and for lobbyist filings to be filed in an electronic format for use with such electronic database.

New law provides that any person who with knowledge of its falsity files a registration or report that contains a false statement or false representation of a material fact shall be made subject by the board to the civil penalties as provided in the Code of Governmental Ethics or referred by the board to the appropriate district attorney for prosecution pursuant to R.S. 14:133 (filing or maintaining false public records), or both.

Effective January 1, 2009. (Amends R.S. 24:51, 53, 54, and 55, and R.S. 49:72, 74, 75, and 76; adds R.S. 24:51(7), 57(3), and 58(D)(3), (4), and (5), R.S. 42:1123(38), and R.S. 49:77(4), and 78(D)(3), (4), and (5))

### **Lobbyist Law Loosened (Act No. 697)**

Present law, effective January 1, 2008, relative to legislative and executive branch lobbyist, requires that the lobbyist disclosure report include the identity of each legislator or spouse of a legislator with whom he or his employer or principal has, or has had in the preceding 12 months, a business relationship. New law deletes the inclusion of relationship with the lobbyist's principal.

New law provides that if a lobbyist is compensated for lobbying and non-lobbying services, he shall reasonably allocate his compensation and report only the amount received for lobbying.

Effective January 1, 2009. (Amends R.S. 24:53 and R.S. 49:74; adds R. S. 49:74(A)(7))

### **Lobbying (Act No. 709)**

New law provides that a lobbyist may file a registration or renewal of registration form that indicates that he is registering or renewing registration for lobbying both the legislature and the executive branch. New law allows a person

required by both the legislative and executive branch lobbying provisions to file expenditure reports to file a report which contains all of the information required by both provisions of existing law. New law further provides that if a lobbyist is compensated for lobbying and non-lobbying services, he shall reasonably allocate his compensation and report only the amount received for lobbying.

Effective January 1, 2009. (Adds R.S. 24:53(J), 55(H), and 57(4) and R.S. 49:74(A)(7) and (H), 76(H), and 77(5))

#### **Military Absence of Legislators (Act No. 702)**

New law provides that in accordance with proposed constitutional amendment (Const. Art. III, §4(F)), each legislator who is ordered to active duty in the armed services for a period of 180 days or more shall have a designee to act as a temporary successor to his powers and duties during the period the legislator is on active duty.

Effective if and when the proposed amendment adding Article III, §4(F) of the Const. of La. contained in Act No. 931 of the 2008 R.S. (HB 183) is adopted at the statewide election to be held on November 4, 2008, and becomes effective. (Adds R.S. 24:77.1-77.4)

#### **NGO Solicitation of State Funds (Act No. 842)**

New law establishes a process and requirements for the submission of information on the part of nongovernmental entities which plan to seek state funding through direct appropriation in the upcoming fiscal year.

New law requires that no later than the first day of November each year any nongovernmental entity that will be seeking funding from the state through the General Appropriation Bill, capital outlay bill, or any supplemental appropriation bill shall transmit certain information relative to such proposed funding to the House Committee on Appropriations, the House Committee on Ways and Means, the Senate Committee on Finance, and the Senate Committee on Revenue and Fiscal Affairs in a form and manner as shall be prescribed jointly by the committees.

New law shall not apply with respect to appropriations for the payment of money judgments against the state.

New law requires the development of a mechanism to publish the information provided by the nongovernmental entities so that it is available to the public in an online, searchable database.

Effective upon signature of governor (July 8, 2008). (Adds R.S. 24:653(K) and R.S. 39:51.1 and 345.1)

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

#### **Register of Historic Cemeteries (Act No. 600)**

New law provides that the division of historic preservation within the Dept. of Culture, Recreation and Tourism shall be responsible for establishing and maintaining a register of historic cemeteries located in the state.

New law requires the division to establish an application process by which a cemetery may be nominated to the division for placement on the state register.

Effective upon signature of governor (June 30, 2008). (Adds R.S. 25:912(15) and 914)

#### **Neighborhood Revitalization Program (Act No. 431)**

New law creates the Magnolia Street Residential Neighborhood Enhancement Program within the Department of Culture, Recreation and Tourism to assist municipalities in preparing and implementing a revitalization strategy for residential neighborhoods that are in close proximity to either a Louisiana Main Street Program project or an existing commercial district.

New law requires the department to create application forms for the grant program and award grants to municipalities and other eligible entities based on specific criteria.



Effective upon the effective date of the appropriation of funds by the legislature. (Adds R.S. 25:1271.1-1271.4)

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

### **Alcohol Permits for Charitable Gaming (Act No. 844)**

Present law provides for the qualifications of applicants for alcohol permits and qualifications for permits for dealers in beverages of low alcoholic content. New law adds the qualification that the applicant may be a commercial lessor or a noncommercial lessor licensed pursuant to the Charitable Raffles, Bingo and Keno Licensing Law exclusively for and for the sole purpose of conducting charitable gaming.

Effective August 15, 2008. (Amends R.S. 26:80 and 280)

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

### **Riverboat Casino Inspection (Act No. 319)**

Prior law required that riverboat casinos maintain a U.S. Coast Guard Certificate of Inspection (COI). New law authorizes alternative inspections and provides that either a COI or a certificate of compliance utilizing a combination of applicable marine structural and life safety standards, the National Fire Protection Association Life Safety Code, and the International Building Code as adopted in the state and as accepted by the La. Gaming Control Board, which are suitable to the vessel's location and configuration.

New law further provides that the certification by the third-party inspector shall incorporate the standards, conditions, policy letters, alternative examinations, and alternative design approvals placed upon the vessel by the U.S. Coast Guard at the time the third-party inspector began inspecting the vessel.

Effective on lapse of time for governor's action (June 17, 2008). (Amends R.S. 27:44.1)

### **Truck Stop Video Poker (Act No. 209)**

New law makes various minor changes to the manner in which fuel sales are measured for purposes of determining the number of video poker devices a truck stop facility may have.

Effective August 15, 2008. (Amends R.S. 27:306)

## **TITLE 28: MENTAL HEALTH**

### **Behavioral Health Crisis Response Services (Act No. 447)**

New law provides that each human service district, authority, or region of the Department of Health and Hospitals shall develop a plan to operate a crisis network to develop crisis response services, to provide skilled clinical interventions, and to respond quickly and effectively to community crisis situations.

New law provides for each crisis response system to be designed by a local collaborative which shall include various vaguely specified participants.

New law provides that each local crisis system shall adopt standards for the collection of all relevant information related to an individual's entry into the crisis system and shall include the development of an intervention plan which considers the individual's immediate needs.

New law provides that the DHH, in consultation with local planning collaboratives, shall develop a plan for establishment and implementation, subject to appropriation, of DHH-licensed regional crisis receiving centers in each region, district, or authority of the state.

New law defines a "crisis receiving center" as an agency, business, institution, society, corporation, person or persons, or any other group, licensed by the DHH to provide crisis identification, intervention, and stabilization services for people in behavioral crisis. Crisis receiving centers will receive, examine, triage, refer, or treat people in behavioral health crisis.

Effective upon the signature of the governor or the lapse of time for gubernatorial action except for Section 2 of proposed law which becomes effective once the DHH promulgates the required rules and regulations. (Adds R.S. 28:22, R.S. 40:2066(B)(2)(i) and (E)(2)(x), and R.S. 40:2180.6 - 2180.11)

**Supervised Transitional Residential and Aftercare Facilities (Act No. 332)**

New law provides for the licensure by DHH of supervised transitional residential and aftercare facilities.

(Adds R.S. 28:31-37)

**Involuntary Outpatient Treatment Orders (Act No. 407)**

New law provides that a patient may be ordered to obtain involuntary outpatient treatment if the court finds that various conditions apply relating to mental illness and safety.

A petition to obtain an order authorizing involuntary outpatient treatment may be initiated only by the director of a hospital in which the patient is hospitalized, the director of an emergency receiving center in which the patient is receiving services, or the director of the human service district or the regional manager of the office of mental health.

New law provides that if the patient does not appear at the hearing, and appropriate attempts to elicit his attendance have failed, the court may conduct the hearing in his absence and shall set forth the factual basis for conducting the hearing without the presence of the respondent.

If the court finds reasonable cause to believe that the allegations in the petition are true, the court may order law enforcement to take the patient into custody and transport him to a hospital or emergency receiving center for examination by a physician, psychiatric mental health nurse practitioner or psychologist, but retention of the patient shall not exceed 24 hours.

New law provides that the court shall not order involuntary outpatient treatment unless a physician testifies.

New law provides that if the court finds by clear and convincing evidence that the subject meets the criteria for involuntary outpatient treatment, and there is no feasible less restrictive alternative, the court shall order that the patient receive involuntary outpatient treatment for an initial period not to exceed six months.

New law authorizes a court to order the patient to self administer psychotropic drugs or accept the administration of such drugs by authorized personnel.

New law provides for the procedure to be followed before instituting a proposed material change in the involuntary outpatient treatment order unless the change is contemplated in the order.

New law provides for the procedure that must be followed to obtain an extension of involuntary outpatient commitment.

New law provides that when a physician determines that the patient has failed to comply with the treatment, and efforts were made to solicit compliance, and, he determines the patient may be in need of involuntarily admission to a treatment facility, he may execute an emergency certificate or request an order for custody or judicial commitment.

New law provides that any parish coroner or judge of a court of competent jurisdiction may order that a person be taken into protective custody and transported to a treatment facility or the office of the coroner for immediate examination when a doctor, psychologist or assigned case manager pursuant to new law presents the coroner an order of involuntary outpatient treatment pursuant to new law and executes a statement specifying that there is substantial evidence that the patient is not in compliance with the order of involuntary outpatient treatment and there are reasonable grounds to believe that he poses a significant risk of being a danger to self or others.

Effective August 15, 2008. (Amends R.S. 28:53.2; adds R.S. 28:53.2(H), and 67-76)

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

### **Evacuation Law (Act No. 214)**

New law authorizes the parish president, when deemed necessary during a disaster or state of emergency, to issue an evacuation order for all or part of the parish.

New law authorizes a parish president to request the governor to issue a state-forced evacuation order when he determines that the size of the population or geographic area to be evacuated during a forced evacuation exceeds the local government's resources and capabilities.

New law authorizes the governor, when deemed necessary during a disaster or state of emergency, to order a forced evacuation order for one or more parishes or parts thereof.

New law authorizes the governor to utilize the national guard, state police, public safety agencies, or available federal agencies to enforce the evacuation order.

New law authorizes a voluntary evacuation order to be issued when the threat to lives is not yet imminent but conditions exist or such circumstances may exist in the near future.

New law authorizes a mandatory evacuation order to be issued when danger is imminent and conditions exist that seriously imperil or endanger the lives of those in a defined area.

New law provides that a person who refuses to comply with a mandatory evacuation order shall not be forcibly removed from his home; however, that all public services will be suspended during a mandatory evacuation and *those failing to comply with a mandatory evacuation order may not be rescued or provided with other lifesaving assistance.*

New law provides that any nonessential person found traveling through the mandatory evacuation area is subject to arrest or to being

escorted out of and not permitted to reenter the area.

New law provides that essential workforce or critical workforce personnel are an exception to a mandatory evacuation order but are expected to eventually seek adequate shelter prior to the onset of emergency conditions.

New law provides that a mandatory or forced evacuation order may be lifted, in whole or in part, at such time as public services are available in the area and that area is opened for reentry, as determined by either the parish homeland security and emergency preparedness agency or the Governor's Office of Homeland Security and Emergency Preparedness.

New law provides that once out of the evacuation area, no unauthorized person, including residents, shall be permitted to return until conditions permit and the evacuation order is lifted and the area is opened for reentry as determined by the parish homeland security and emergency preparedness agency.

New law provides an unauthorized person found to be on the property of another or on a public street, place, or other public property shall be subject to arrest or forcibly removed from the evacuation area.

New law authorizes a parish president, during a declared disaster or state of emergency, to impose a curfew prohibiting anyone who is not designated as essential workforce or critical workforce to be on a public street or place. The proclamation imposing a curfew may regulate and close places of amusement and assembly, prohibit the sale and distribution of alcoholic beverages, and regulate and control the possession, storage, display, sale, transport, and use of firearms and other dangerous weapons and ammunition. New law requires a 24-hour-per-day curfew to be automatically imposed in the evacuation area during a mandatory or forced evacuation and requires prohibiting the presence on a public street and public place of anyone who is not designated as essential workforce or critical workforce until such curfew is lifted or amended by the parish

homeland security and emergency preparedness agency.

Effective on lapse of time for governor's action (June 16, 2008). (Amends R.S. 29:723(3.1); Adds R.S. 29:723(3.2), (3.3), and (3.4) and 730.3)

#### **Price Gouging in Emergencies (Act No. 756)**

Prior law provided that during a state of emergency or during a named tropical storm or hurricane in or threatening the Gulf of Mexico, the value received for goods and services sold within the designated emergency area may not exceed the prices ordinarily charged for comparable goods and services in the same market area at or immediately before the time of the state of emergency.

New law provides for an exception where the price is attributable to fluctuations in applicable commodity markets, fluctuations in applicable regional or national market trends, or to reasonable expense and charges for attendant business risk incurred in procuring or selling the goods or services during the state of emergency.

New law deletes provisions of prior law that provided that the value received may include reasonable expenses and a charge for any attendant business risk, in addition to the cost of the goods and services which necessarily were incurred in procuring the goods and services during the state of emergency.

New law provides that a violation shall not be deemed to have occurred if the prices charged for goods and services sold within the designated emergency area by an individual in the same market area, at or immediately before the time of the emergency, have not changed, except as allowed by these provisions during an emergency.

Effective August 15, 2008. (Amends R.S. 29:732)

#### **Charitable Emergency Health Care (Act No. 480)**

Present law provides that a person shall not be held liable for death, injury, or destruction to property if they, in good faith and without charge, gross negligence, or willful misconduct, render health care services, first aid, or emergency services to a person injured in a disaster area as a result of the emergency.

New law extends the limitation of liability to emergency health care services rendered anywhere in the state to persons injured as a result of the emergency.

(Amends R.S. 29:735.2(A))

#### **Emergency Medicine Review Before Prosecution (Act No. 758)**

New law establishes an Emergency/Disaster Medicine Review Panel (panel) which shall render an advisory opinion as to whether the clinical judgment of medical personnel was in good faith prior to the institution of criminal prosecution for acts arising out of the rendering of or failure to render medical services during a state of disaster, medical emergency, or public health emergency.

New law provides that the panel process is permissive and the opinion to the prosecuting agency is advisory. New law provides for definitions.

Effective August 15, 2008. (Adds R.S. 29:735.3 and R.S. 40:1299.39.3)

#### **Disaster Medicine (Act No. 538)**

New law provides that during a declared state of emergency, medical personnel immune from liability in R.S. 37:1731, who render or fail to render emergency care, health care services, or first aid, shall not be liable for any civil damages to patients as a result of an evacuation or treatment or failed evacuation or treatment conducted in accordance with disaster medicine protocol and at the direction of military or government authorities, unless such damage or injury was caused by willful misconduct by such medical personnel.

New law provides that "disaster medicine protocol" means the order of evacuation and treatment of patients by priorities in accordance with the recognized triage process applicable when disastrous conditions may prevent evacuation or treatment of all patients.

New law provides that "disaster medicine" means the art and science of patient care under circumstances of stress when the number of patients exceeds the normal medical capacities, in which a sudden concentration of casualties overwhelms existing medical facilities and personnel.

Effective upon signature of the governor or lapse of time for gubernatorial action. (Adds R.S. 29:735.3)

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

### **Unitization Risk Charge Increase (Act No. 115)**

Existing law authorizes the commissioner of conservation to establish drilling units and provides that, if an owner elects not to participate or elects to participate and fails to pay his share, the expenses of the unit, including drilling, testing, completing, equipping, and operating, and a risk charge are recoverable from that tract's share of production. New law increases the risk charge from 100% to 200% of the tract's allocated share of the expenses.

Effective August 15, 2008. (Amends R.S. 30:10)

### **Underground Storage of Liquid Hydrocarbon and CO2 (Act No. 315)**

Existing law provides for the storage of natural gas in underground reservoirs. New law also provides for the storage of liquid hydrocarbons and carbon dioxide in such reservoirs.

New law provides for applications for leases and revised sealed bidding procedures. New law provides the lessor may select the bid or bids that are most advantageous.

New law provides the term is determined by the lessor, not to exceed 25 years. A lease may also provide for an option to renew or for a renewal subject to lessor approval, not to exceed an additional 25 years.

New law provides that the consideration shall be reasonable as set forth in the advertisement and may include bonus, rental, or consideration for injection or withdrawal of stored product.

New law provides that any lease for underground storage shall be granted conditionally and shall not be final until the lessor requests a public hearing where the commissioner must find that the proposed project is in the public interest.

Effective August 15, 2008. (Amends R.S. 30:22, 23, 148.1, 148.2, 148.3, 148.4, 148.5, 148.6, 148.8, and 148.9; Repeals R.S. 30:148.9(B)(1), (2), and (3))

### **Governmental Mineral Leases (Act No. 93)**

New law authorizes, upon request, the State Mineral Board to administer mineral leases of any levee district, state university, state college, state penal or charitable institution, or agency, unit, or institution of the state.

Effective August 15, 2008. (Amends R.S. 30:153)

### **Mineral Board Participation in Oil and Gas Operating Agreements (Act No. 610)**

New law authorizes the State Mineral Board, upon a 2/3 vote of the board and after and a public hearing in the affected parish pursuant to existing law, to enter into operating agreements whereby the state shares in the revenue from stored oil, natural gas, liquid or liquefied hydrocarbons, or carbon dioxide and assumes all or a portion of the risk of cost, where the board determines it is in the best interest of the state.

Effective August 15, 2008. (Adds R.S. 30:209(4)(e))

**Abandoned Mines (Act No. 278)**

New law expands the abandoned mine reclamation program from coal mine operations to solid mineral development operations.

Prior law provided that eligible lands and water are those affected by mining, abandoned or left in an inadequate reclamation status prior to Aug. 3, 1977, and where there is no continuing reclamation responsibility. New law removes the requirement that the land or water be abandoned prior to Aug. 3, 1977.

New law requires the newspaper notice to unknown owners be in the official journal of the parish where the property is located.

Prior law provided that no lien shall be filed against the property of any person who owned the surface prior to May 2, 1977, and neither consented, participated in, nor exercised control of the mining operation which is the subject of the reclamation. New law removes the requirement that the surface be owned prior to May 2, 1977.

Effective August 15, 2008. (Amends R.S. 30:905, 905.1, 905.3, and 905.4; Repeals R.S. 30:905.2 and 905.4 (K))

**Air Quality Standards (Act No. 547)**

New law authorizes the secretary of DEQ to promulgate, adopt, and enforce air quality standards, limitations and other regulations on sources who discharge toxic pollutants into the atmosphere, but are not required to obtain a permit.

Effective August 15, 2008. (Amends R.S. 30:2054)

**Sewage Hauling (Act No. 56)**

New law moves the authority to collect fees and issue licenses to persons who haul sewage from DHH to DEQ and defines such persons as sewage haulers.

Effective July 1, 2009. (Amends R.S. 30:2074, R.S. 36:231 and 258, and R.S. 40:4, 31.31 and 31.32; adds R.S. 30:2074(B)(3)(f) and (11))

**Foreign Radioactive Waste (Act No. 96)**

New law prohibits transporting any radioactive waste generated outside of the U.S. into the state for disposal or storage in this state or elsewhere, but exempts radioactive waste generated by the U.S. Armed Forces.

Effective August 15, 2008. (Amends R.S. 30:2113)

**Statute of Limitations Extended (Act No. 186)**

New law provides that prosecutions for knowing and willful violations of the disposal provisions of the state Hazardous Waste Control Law must begin within 6 years of the discovery that the violation took place, rather than within 6 years of when the violation took place.

Effective August 15, 2008. (Amends R.S. 30:2183)

**(No) "Right-to-Know" Law (Act No. 550)**

New law provides that any release or incident that occurs within the boundaries of a facility and may be subject to reporting will not be reportable by the owner or operator of the facility, or the employees, contractors, non-commercial carriers, or consultants of such owner or operator, unless such release or incident involves a railcar that is in transportation and the owner or operator of the facility is required to report the release or incident under 49 C.F.R. 171.15.

New law provides that the department will not subject an owner or operator to a civil penalty based on any incident or release that was not required to be reported and that was reported by the owner or operator as a courtesy.

Effective upon signature of the governor or lapse of time for gubernatorial action. (Amends R.S. 30:2363 and 2373; adds R.S. 30:2373(B)(6) and (7))

**TITLE 31: MINERAL CODE**

Nothing of particular interest.

## **TITLE 32: MOTOR VEHICLES AND TRAFFIC REGULATION**

### **No Passing While Driving in School Zones (Act No. 757)**

New law provides that while driving on two lane streets or highways in school zones while school is in session, operators of motor vehicles shall not pass other motor vehicles.

Effective upon implementation of the Next Generation Motor Vehicle project of the Department of Public Safety and Corrections, office of motor vehicles. (Adds R.S. 32:77.1)

### **Special Speeding Laws (Act No. 746)**

New law provides that when driving on an interstate highway or other highway with two or more lanes traveling in the same direction as the emergency vehicle, a driver must slow to a speed of 25 miles per hour below the posted speed limit until it is safe to proceed at the posted speed limit.

New law provides that low-speed vehicles can travel on roads with a posted speed limit of 45 miles per hour or less for one quarter of a mile as long as it is doing so in order to get to or from another road with a posted speed limit of 35 miles per hour or less.

(Amends R.S. 32:125(B)(1) and 300.1(A))

### **Riding in Truck Beds (Act No. 612)**

New law prohibits persons from riding as passengers in truck beds while the truck is traveling on interstate highways, except in an emergency situation.

Effective August 15, 2008. (Adds R.S. 32:284(D))

### **Right to Park with Guns (Act No. 684)**

New law authorizes a person who lawfully possesses a firearm to transport or store such firearm in a locked, privately-owned motor vehicle in any parking lot, parking garage, or other designated parking area.

New law provides that no property owner, tenant, public or private employer, or business entity is liable in any civil action for damages resulting from or arising out of an occurrence involving the transportation, storage, possession, or use of a firearm transported or stored pursuant to new law.

New law provides that any person aggrieved by violation of new law has a right to bring a civil action in any court of competent jurisdiction and is entitled to recover actual damages, including lost and back pay and benefits, reasonable court costs and attorney fees, and statutory damages of \$1,000 per violation.

New law does not apply to:

1. Any property where the possession of firearms is prohibited under state or federal law.
2. Any vehicle owned or leased by a public or private employer or business entity and used by an employee in the course of his employment, except for those employees who are required to transport or store a firearm in the official discharge of their duties.
3. Any vehicles on property controlled by a public or private employer or business entity if:
  - Access is restricted or limited through the use of a fence, gate, security station, signage, or other means of restricting or limiting general access to the parking area.
  - The employer or business entity provides an alternate parking area reasonably close to the main parking area in which employees and other persons may transport or store firearms in locked, privately-owned motor vehicles.

Effective on August 15, 2008. (Adds R.S. 32:292.1)

### **Mini-Trucks (Act No. 698)**

New law authorizes "Kie series" mini-trucks powered by a motor with a displacement of 660 cubic centimeters or more on the streets and highways in this state except for interstate highways.

Effective August 15, 2008. (Adds R.S. 32:297.1)

**Texting, IMing, Emailing, or Phoning While Driving (Act No. 665)**

New law prohibits any person from operating a motor vehicle while using a wireless telecommunications device to write, send or read a text message, instant message, or e-mail, with certain exceptions, including using a wireless telecommunications device to report illegal activity; summon medical or other emergency help; prevent injury to a person or property; relay information between a transit or for-hire operator and that operator's dispatcher, in which the device is permanently affixed to the vehicle; navigate using a global positioning system; or using a hands-free wireless telephone.

New law prohibits certain persons holding a Class "E" learner's license or intermediate license from operating a motor vehicle while using a cell phone, with certain exceptions, including using a cell phone to report a traffic accident, medical emergency, or serious road hazard; report a situation in which the person believes his or her personal safety is in jeopardy; report or avert the perpetration or potential perpetration of a criminal act against the minor or another person; or engage in a call while the motor vehicle is lawfully parked.

New law provides for driving while using such device to be a secondary offense in which a driver may only be cited if stopped for a moving violation.

Effective July 1, 2008. (Adds R.S. 32:300.5, 300.6, and 398.10(A)(intro para)(6))

**Using Wireless Devices While Driving (Act No. 666)**

New law prohibits any person who is 17 years old or younger from operating a motor vehicle while using a wireless telecommunications device, unless such device is hands-free.

New law defines "wireless telecommunications device" as any type of instrument, device, or machine that is capable of transmitting or receiving telephonic, electronic, radio, text, or

data communications and includes a cellular telephone, a text-messaging device, a personal digital assistant, a computer, or any other similar wireless device that is designed to engage in a call or communicate text or data.

New law does not prohibit using a wireless telecommunications device to report a traffic crash, medical emergency, or serious road hazard; report a situation in which the person believes his personal safety is in jeopardy; report or avert the perpetration or potential perpetration of a criminal act against the minor or another person; or engage in a call or write, send or read a text message while lawfully parked.

New law provides for driving while using such device to be a secondary offense in which a driver may only be cited if stopped for a moving violation.

Use of a hands-free device by an motor vehicle operator is not considered a violation. It is an affirmative defense for the person to produce documentary or other evidence that the wireless telecommunications device which was the basis of the alleged violation was being used for emergency purposes.

Effective July 1, 2008. (Adds 32:300.5 and 398.10(A)(6))

**Transport of Sealed Intermodal Containers (Act No. 708)**

New law provides that permits issued for the transport of sealed ocean containers be issued for the container, not for the transport vehicle.

New law allows for the transportation of sealed intermodal containers within a 50-mile radius of a statutorily defined port or harbor district within a 50-mile radius of the I-10 Twin Span Bridge until such time as the I-10 Twin Span Bridge is opened to owners or operators of any vehicle transporting sealed intermodal containers.

Effective August 15, 2008. (Amends R.S. 32:387; Adds R.S. 32:387(H)(1)(c) and (K))



### **Traffic Cameras (Act No. 435)**

New law prohibits a judicial officer that has obtained a conviction for a traffic offense, based solely on evidence produced by a traffic camera, from forwarding the record of the conviction to the Department of Public Safety and Corrections.

Effective August 15, 2008 (Adds R.S. 32:393(I))

### **Phoning While Driving (Act No. 667)**

New law prohibits all persons issued a first driver's license, regardless of age, from using a cellular telephone for any purpose while operating a motor vehicle for a period of one year commencing from the date of issuance. New law exempts from the prohibition usage of a cellular telephone equipped with a hands-free device; drivers previously licensed in another jurisdiction, and usage in a driver emergency.

New law provides an exception for persons contacting public safety personnel, persons in a parked motor vehicle, and for emergency response personnel and peace officers while in performance of their duty.

New law provides that any violation shall constitute a non-moving violation and shall be a secondary offense so that the driver may be cited only if stopped for a moving violation.

Effective August 15, 2008 (Amends R.S. 32:398 and Adds 32: 289 and 398.10(A)(6))

### **Driver's Licenses and Students (Act No. 688)**

New law provides for, as a condition for driving privileges, a minor at least 15 years old but younger than 18 years old to be enrolled and attend school or to meet certain other requirements and, subject to a policy of a school board or governing body of a nonpublic school if it elects to adopt such policy, subjects any such minor who drops out of school or who is habitually absent or tardy to denial or suspension of his learner's permit or driver's license.

(Amends R.S. 32:407; Adds R.S. 17:221(J) and 233(C) and 32:407(F), 414(T) and 431.1)

### **Driver's Licenses, Names, and Vehicle Titles (Act No. 594)**

Existing law requires that driver's licenses shall bear an applicant's full legal name. New law provides that an applicant's full legal name shall be defined in compliance with the Real ID Act, if implemented. If, or until such time as the requirements of the Real ID Act are implemented, an applicant's full legal name shall be defined as the given name or names that appear on an official birth certificate together with the surname as it appears on the official birth certificate unless the surname is changed in accordance with R.S. 9:292. No other name shall be permitted to be used unless the applicant provides proof of name change granted by a district court in accordance with law.

New law provides that applications for certificates of title shall include the full legal name and license number of the individual applicant as it appears on his official state driver's license or identification card.

New law provides that an individual applying for initial registration or first renewal thereof of a motor vehicle, trailer, semitrailer, or other vehicle shall provide on the application his full legal name and license number as it appears on his official driver's license or identification card.

New law provides alternate procedures to title motor vehicle trailers which have not been previously titled or licensed in another state and for which no record exists with the department.

New law requires the applicant for a trailer title to sign a hold harmless affidavit, a sworn affidavit describing in full detail the act by which the applicant acquired ownership of the trailer, and a motor vehicle application issued by DPS&C.

New law provides an alternative method for trailer title registration in the event the applicant cannot provide documentation proving ownership of the trailer, which would require the applicant to obtain two sworn affidavits from individuals who shall have personal knowledge of the manner in which the individual applicant acquired the ownership of the trailer. The

affidavit shall include a full description of the trailer and shall be signed in the presence of a commissioned notary.

New law requires the applicant to obtain a physical inspection and NCIC Check of the trailer conducted by a La. P.O.S.T.-certified law enforcement officer.

New law provides that, upon submission of the required documentation, fees or taxes, the owner of the trailer shall be eligible to receive La. registration of the trailer and a vehicle license plate for the trailer. New law further provides that DPS&C shall not issue a certificate of title for the trailer until one year from the date of registration and verification from NCIC Check.

Provisions enacting R.S. 32:740.4 shall be effective August 15, 2008.

Effective when the implementation of the Next Generation Motor Vehicle project of the Department of Public Safety and Corrections, office of motor vehicles, is finalized. (Amends R.S. 32:410 and 707; Adds R.S. 32:707.4 and 47:501(C))

#### **Chemical Testing for Intoxication (Act No. 536)**

Present law provides for chemical analyses of a person's blood, urine, breath, or other bodily substance, to be used as evidence of intoxication.

New law provides that persons performing such chemical analyses shall have a valid permit issued by the DPS&C and use methods approved by the department. New law authorizes DPS&C to use an individual's or a lab's certification by various organizations in its determination of the qualifications and competence of the individuals and labs to whom the permits are issued.

New law provides that the issuance of a permit to such certified individual or lab makes all laboratory forensic test results conducted by such individual or lab valid under present law, and admissible and competent evidence of intoxication in any court of law.

Effective upon signature of the governor or lapse of time for gubernatorial action. (Amends R.S. 32:663)

#### **Auto Hulk Sales (Act No. 586)**

New law requires an owner who sells an auto hulk as scrap to be dismantled or processed for recycling to provide the secondary metal processor or licensed automotive dismantler and parts recycler with a signed and dated affidavit stating that he is the owner of the vehicle or part or has the right to sell or transfer the vehicle or part.

New law requires a secondary metal processor or licensed automotive dismantler and parts recycler to maintain the signed and dated affidavit, along with certain other information, for a period of two years, and to submit an electronic report to the office of motor vehicles of the vehicle identification number of each auto hulk received from a seller.

Effective August 15, 2008. (Adds R.S. 32:702(16) and 718)

#### **Motor Vehicle Security Interests (Act No. 689)**

New law requires OMV to develop and implement a computer system which will permit the voluntary electronic recording of information concerning the perfection and release of vehicle security interests without submitting or receiving paper title documents.

Effective on January 1, 2009. (Amends R.S. 32:707.2)

#### **Used Motor Vehicle Dealers (Act No. 206)**

New law requires used motor vehicle dealers to carry minimum garage liability insurance coverage for all all-terrain vehicles.

(Amends R.S. 32:791(I))

#### **School Bus Repairs (Act No. 483)**

New law provides that warranty repair work, other than engine and transmission repair work, performed upon school buses may be done by a

manufacturer or distributor authorized repair facility that is not a school bus dealer.

New law provides that a manufacturer of school buses licensed by the La. Motor Vehicle Commission shall not be prohibited from authorizing warranty and other repair or maintenance services to be performed at any location of a properly licensed motor vehicle dealer which holds a franchise from any affiliate or subsidiary of the school bus manufacturer.

Effective August 15, 2008. (Amends R.S. 32:1261)

**Auto Dealer Audits (Act No. 233)**

Existing law provides that audits of automobile dealer records may be conducted by the manufacturer, distributor, distributor branch, or factory branch.

New law permits the dealer to make corrections to the sales data in less than 120 days from the program period, and provides that no penalty other than amounts advanced on a vehicle reported incorrectly shall be due in connection with the audit. As to vehicles sold during the time period subject to the audit, but submitted incorrectly, new law requires that the dealer be charged back for the amount reported incorrectly and credited with the amount due, if anything, on the actual sale date.

Effective August 15, 2008 (Amends R.S. 32:1262)

**TITLE 33: MUNICIPALITIES AND PARISHES**

**Attorney Magistrates and Prosecutors (Act No. 401)**

New law authorizes the board of aldermen of a Lawrason Act municipality having a mayor's court, upon request of the mayor, to appoint one or more attorneys who shall be designated as court magistrate and who shall serve at the pleasure of the mayor and may from time to time be designated by the mayor to serve in his stead as the presiding official over the mayor's court.

New law also authorizes the board, upon request of the mayor, to appoint one or more attorneys who shall be designated as prosecutor and who shall serve at the pleasure of the mayor.

Effective August 15, 2008. (Amends R.S. 33:441)

**Local Government Condemnation of Buildings (Act No. 896)**

New law authorizes parish and municipal governing authorities to adopt ordinances, rules, and regulations to:

1. Provide for the securing of any building or other structure within the parish or municipality which, by reason of its nature or condition, endangers the public welfare or safety.
2. Provide for the condemnation and demolition, removal, or both demolition and removal of any building or other structure within the parish or municipality which, by reason of its nature or condition, endangers the public welfare or safety.
3. Provide a method for securing, or demolishing or removing, or both, buildings or structures, as well as a method of maintaining property in a sanitary condition including grass cutting, weed abatement, or trash and junk removal, at the expense of the property owner.
4. Provide for fines for the failure of any property owner to comply with such ordinances.

New law requires that such ordinances include a provision for notification of the property owner or any other party in interest and an opportunity to be heard.

New law provides that the lien for such fines shall prime all other liens or privileges against the property filed after the notice to the owner is filed with the recorder of mortgages, regardless of the date on which the lien and privilege is perfected, except other tax liens against the property.

New law requires the tax assessor of the parish to add any of such amounts that have not been paid to the next ad valorem tax bill of the

property owner and provides that such amount shall be subject to the same interest and penalties as delinquent ad valorem taxes.

Effective August 15, 2008. (Adds R.S. 33:1236.28)

**Blighted Property in Orleans (Act No. 736)**

New law authorizes the public authority in Orleans Parish to enforce health, safety, and welfare statutes or ordinances or otherwise seek to eliminate blighted property, unsafe structures and equipment, unlawful structures and structures unfit for human occupancy, housing violations, or public nuisances in any court of competent jurisdiction.

New law establishes a separate environmental docket of the Civil District Court for the parish of Orleans, or the successor to such court, into which the public authority or other party may request allotment or transfer of cases brought pursuant to new law.

New law provides that any civil judicial proceeding on the environmental docket of the CDC may be heard by summary proceeding.

New law provides that the court may order remedial action, including but not limited to repair of the premises to appropriate standards, securing premises from entry by others, and demolition of any unsafe structures unfit for human occupancy.

Effective upon signature of governor (July 3, 2008). (Amends R.S. 33:1373; Adds R.S. 13:1140.1)

**Official New Orleans Cocktail (Act No. 928)**

New law establishes Sazerac as the official cocktail of the city of New Orleans and authorizes its use on official documents and with the insignia of the city of New Orleans.

Effective on lapse of time for governor's action (July 15, 2008). (Adds R.S. 33:1420.2)

**Real Estate Commissions for Sale of Public Land (Act No. 257)**

New law provides that the fee or commission that may be paid to a real estate broker for assisting the sale of tax-adjudicated property by a parish or municipality shall not exceed 10% of the final sales price.

Effective upon signature of governor or lapse of time for gubernatorial action. (Amends R.S. 33:2866.1; Adds R.S. 33:4712.12)

**Energy Efficiency Contracting by Political Subdivisions (Act No. 881)**

New law provides that prior to award of any performance-based energy efficiency contract, a political subdivision must select a certified energy efficient independent third-party evaluation consultant to review and evaluate the submitted proposals. New law provides that no person, entity, or energy service company which assists the political subdivision in the development of the request for proposals shall be a respondent to the request for proposal.

New law requires that the certified third-party consultant submit the results at an open meeting to the political subdivision for its review, that the third-party consultant have no direct conflict of interest as to the proposals or to any proposer, and that each proposer pay a sum not to exceed two and one-half percent of the total value of the contract.

New law provides for a contract period for the lesser of 20 years or the life of the equipment and that the contract contain a guarantee of energy savings.

Effective August 15, 2008. (Adds R.S. 33:4547.1(E) and (F))

**N. O. Redevelopment Authority Act No. 791**

New law authorizes the New Orleans Redevelopment Authority to purchase property sold resulting from the enforcement of a judicial mortgage. New law requires that the bid be equal to or greater than the minimum bid advertised. New law provides that the authority

may acquire blighted or abandoned property by a declaration of taking.

Effective August 15, 2008. (Amends R.S. 33:4720.56, 4720.59 and 4720.60.1; adds R.S. 33:4720.56(20), and 4720.59(E)(7))

**Zoning Near Military Facilities (Act No. 777)**

New law requires the municipal or parish governing authority considering any action to be taken on an application for a zoning request to notify the commander of the installation at least 90 days in advance of taking such action, and requires the municipal or parish governing authority to publish notice of its intention to take action on an application for a zoning request in its official journal at least 90 days prior to taking such action.

Effective August 15, 2008. (Amends R.S. 33:4734 and 4780.52)

**Repair of Blighted Property (Act No. 601)**

New law authorizes all parishes and municipalities, as an alternative to demolition, to make repairs necessary to correct the defects in condemned structures.

New law authorizes any parish or municipality to obtain funding from a new LHFA fund for maintenance, repair, removal, or demolition of dangerous structures. New law provides that if the parish or municipality receives such funding for such purposes, then the privilege and lien established pursuant to existing law shall be in favor of LHFA. New law requires the parish or municipality to enforce the privileges and liens established in favor of LHFA and provides that any funds recovered from such enforcement shall be refunded to the fund.

Effective August 15, 2008. (Amends R.S. 33:4761-4766, 4767, and 4768; Adds R.S. 33:4769 and 4770)

**Political Subdivision Investment Policy for Post-Employment Benefits (Act No. 87)**

New law requires a political subdivision that establishes a post-employment benefit trust or trusts to adopt an investment policy including

investment objectives and procedures and constraints.

New law permits such funds to be invested only in certain categories of investments.

New law prohibits the following with respect to such funds:

1. The use of any leverage either directly or through mutual funds or exchange traded funds that use leverage.
2. Selling short any securities either directly or through mutual funds or exchange traded funds that sell securities short.

New law sets asset allocation parameters for such trusts and generally requires reallocation by the end of the following quarter if the allocation at the end of a quarter violates the parameters.

New law provides that fixed income securities should be selected with consideration for the total anticipated return; fixed income investments should be appropriately diversified by maturity, security, sector, and credit quality; and if a fixed income investment security is downgraded, the trust shall take prudent actions to eliminate its exposure to that security by the end of the next calendar quarter. New law authorizes active management of the investment portfolio and the retention of investment managers and advisors who meet specified criteria.

New law provides that failure to comply shall be prosecuted as malfeasance in office.

(Amends R.S. 33:5161; Adds R.S. 33:5161(B)(2)(c) and 5162)

**(1st Ext. Sess. Act No. 18)**

New law applies to any municipality that is governed by a home rule charter and that has a population in excess of 250,000 persons according to the latest federal decennial census.

New law provides that a municipality that is authorized by its home rule charter, by statute, or by ordinance to create local ethics entities, including but not limited to an ethics review

board or office of inspector general, may designate the local ethics entity as a law enforcement agency. New law authorizes the municipality to confer upon the local ethics entity all investigative powers and privileges appurtenant to a law enforcement agency under state law, which shall include access to computer systems, information maintained for the use of law enforcement personnel, and any information contained in the criminal history record and identification file of the La. Bureau of Criminal Identification and Information.

New law authorizes a local ethics entity to make investigations and examinations, within or outside of the state as each deems necessary, in order to carry out the duties of its mandate under law, and to gather evidence in any matter in any legally appropriate manner. New law authorizes each entity to administer oaths, compel the attendance of witnesses, examine witnesses, and issue subpoenas.

New law grants a local ethics entity authority to examine any data and material relevant to any matter under audit, investigation, inspection, or performance review of all entities of municipal government or entities receiving funds through or for the benefit of municipal government.

New law authorizes a local ethics entity to employ its own legal counsel. New law authorizes a local ethics entity to employ, contract with, or accept the assistance of other legal counsel in the conduct of a civil or criminal case.

New law contains various provisions regarding confidentiality and privilege. New law authorizes the entity, in order to maintain confidentiality, to meet and make decisions in executive session.

Effective April 26, 2008. (Adds R.S. 33:9611-9614)

## **TITLE 34: NAVIGATION AND SHIPPING**

### **Gulf Terminal Authority (Act No. 699)**

New law creates the LA International Deep Water Gulf Transfer Terminal Authority as a

political subdivision of the state, possessing full corporate powers to promote, plan, finance, develop, construct, control, license, regulate, supervise, operate, manage, maintain and/or modify offshore or onshore terminal facilities to be constructed within the jurisdiction of said authority after July 1, 2008, providing a port with "terminal and intermodal facilities" for the handling of containerized cargo of deeper draft container vessels.

New law authorizes the authority to employ such engineers, accountants, attorneys, other professionals, employees and agents as may be necessary and advisable, and fix their compensation on a contract "or other appropriate basis."

New law authorizes the authority to purchase machinery and equipment related to the operation of deep draft container vessel and/or intermodal terminal facilities, including but not limited to container cranes. New law excepts these purchases from the provisions of the public bid law.

New law prohibits anyone from constructing or operating terminal facilities constructed after July 1, 2008 "within the jurisdiction of the authority" without first obtaining a license from the authority or other authorization.

Effective on July 1, 2008. (Adds R.S. 34:3491 - 3506)

## **TITLE 35: NOTARIES PUBLIC AND COMMISSIONERS**

### **Notaries Public (Act No. 856)**

New law provides that every qualified notary public is authorized to certify true copies of any authentic act or any instrument under private signature passed before him or acknowledged before him, and to make and certify copies, by any method, of any certificate, research, resolution, survey or other document annexed to the original of any authentic acts passed before him, and may certify such copies as true copies of the original document attached to the original passed before him.

New law provides the qualifications to become a notary public. New law requires an applicant to submit an application to be appointed a notary public to the office of the secretary of state.

New law removes the requirement that the application contain a statement as to the applicant's good moral character, integrity, competency, and sober habits, sworn to and subscribed by two reputable citizens of the parish. New law provides that the applicant shall attest to his good moral character, integrity, and sober habits, but if any of the applicant's answers or responses call into question the applicant's good moral character, integrity, or sober habits, the secretary of state shall submit such application to the district court in the parish for which the appointment is sought for judicial review and approval.

New law requires that the examination provided for in present law be dispensed with if the applicant has been duly admitted to practice law in this state or holds a valid notarial commission in this state.

New law makes various other changes to the qualifications of and procedures for becoming a notary.

Present law requires a notary for immovables located in the parish of Orleans to file the instrument in the office of the custodian of notarial records for the parish of Orleans and record the instrument with the register of conveyances or recorder of mortgages or both and if the instrument is an act of sale or any other act evidencing a transfer of real property situated in the parish of Orleans, the notary is to file a copy of the instrument with the board of assessors for the parish of Orleans within 15 days from the date of sale or transfer.

New law retains present law but further requires a notary to cause the act to be registered with the office of the clerk as the recorder for the parish of Orleans, within 48 hours after the passage of the act.

Present law requires notaries in Orleans Parish to cause every deed of sale, donation, or any

other sort of conveyance of immovable property, passed before them respectively, even when the parties shall agree to dispense therewith, to be registered at the office of the clerk as the recorder for the parish of Orleans, within 48 hours after the passage of the acts, under the penalty of being liable for all damages which the parties may suffer through the neglect of the notary to register the acts.

New law retains present law provision of requiring the act to be registered with the office of the clerk as the recorder for the parish of Orleans within 48 hours after passage of the act but moves the provision to the Title regulating Notaries public and commissioners.

Effective August 15, 2008. (Amends R.S. 35:1, 191, 199, and 201; Adds 35:2(C), 191.3(A) and (B), and 201(C); Repeals R.S. 44:184.2)

#### **Notaries Public (Act No. 904)**

New law specifies that a person licensed to practice law in this state and who has changed his parish of residence is authorized to exercise the functions of a notary public in every parish of this state.

New law prohibits any person, who has not first been duly authorized to exercise notarial powers in this state, or whose authority to exercise notarial powers in this state has been judicially revoked, from performing certain acts.

New law prohibits a notary public from exercising any notarial functions under certain circumstances.

New law adds an exemption from new law for attorneys licensed to practice law in this state.

New law specifies that an ex officio notary, whose duty includes enforcement of criminal statutes, is authorized to execute affidavits required for the enforcement of the DWI statutes.

R.S. 35:191(P)(1) and 407(B) effective upon signature of governor (July 10, 2008). R.S. 32:661-669 effective August 15, 2008. (Amends R.S. 35:191 and 407; Adds R.S. 35:601-604)

**Notarial Acts in Orleans Parish (Act No. 677)**

New law provides that a notary cause an act of sale or any other act evidencing a transfer of real property situated in Orleans Parish to be registered with the office of the clerk as the recorder for the parish of Orleans within 48 hours after the passage of the act.

New law provides that the original of every authentic act, except chattel mortgages and acts related to real property outside of Orleans Parish, passed before a notary in Orleans Parish, and also every act, contract, and instrument, except money judgments and chattel mortgages filed for record in the offices of either the recorder of mortgages or the registrar of conveyances for Orleans Parish, shall first be filed in the notarial archives of Orleans Parish.

Present law provides that notaries are liable to a penalty of \$500 fine, and damages which the parties may suffer through the neglect of the notary to register acts. New law deletes this provision.

Effective upon signature of the governor or lapse of time for gubernatorial action. (Amends R.S. 35:199; repeals R.S. 44:184.2)

**TITLE 36: ORGANIZATION OF EXECUTIVE BRANCH OF STATE GOVERNMENT**

**Black Males Program (Act No. 733)**

New law creates the La. Council on the Social Status of Black Men and Boys within the office of the lieutenant governor, to provide and promote an environment that is conducive to productivity, success, and excellence for all black men and boys in the state.

New law requires the council to make a systematic study of the conditions affecting black men and boys, including but not limited to homicide rates, arrest and incarceration rates, poverty, violence, drug abuse, death rates, disparate annual income levels, school performance in all grade levels, including postsecondary levels, and health issues.

Effective August 15, 2008. (Adds R.S. 36:4(X) and R.S. 49:1211-1213)

**Office of Inspector General (Act No. 831)**

New law designates the office of the inspector general as a law enforcement agency and confers on the office all investigative powers and privileges appurtenant to a law enforcement agency under state law as necessary and in furtherance of the authority, duties, powers, and functions of the office, but not arrest powers.

Effective July 1, 2008. (Amends R.S. 36:4, 408, and 802.3, R.S. 23:2042, R.S. 49:220.4, 220.24 and 220.25, R.S. 51:911.26 and §§5 and 6(B) of Act No. 5 of the 2006 1st E.S.; Adds R.S. 36:309(B)(3), 409(J), and 803.1, and R.S. 49:220.24(M); Repeals R.S. 36:4(B)(14) and 4.1(D)(16) and R.S. 23:2056)

**Oyster Taking Permits (Act No. 922)**

New law creates a new public oyster seed ground vessel permit which would be required in order to take oysters from the public seed grounds.

Effective on lapse of time for governor's action (July 14, 2008). (Adds R.S. 36:610(L) and R.S. 56:433.1)

**First Stop Shop Renamed "Geaux Biz" (Act No. 127)**

New law changes First Stop Shop to the office of GeauxBiz within the Department of State.

(Amends R.S. 36:746 and R.S. 49:229)

**City Park Audits (Act No. 84)**

New law provides that New Orleans City Park, the New Orleans City Park Improvement Association, and its board of commissioners are solely responsible for responding to audit findings concerning the park, the association, or its board of commissioners and solely responsible for taking corrective action and implementing corrective measures necessary to respond to such audit findings.



New law provides that the Dept. of Culture, Recreation, and Tourism shall be solely responsible for responding only to those audit findings concerning the park, the association, or its board of commissioners that relate to functions and responsibilities that the department carries out on behalf of the park, the association, or its board of commissioners and that DCRT shall be solely responsible for taking corrective action and implementing corrective measures necessary to respond only to those audit findings.

Effective July 1, 2008. (Adds R.S. 36:802.22(E)(1)(d))

## **TITLE 37: PROFESSIONS AND OCCUPATIONS**

### **Accountancy Act (Act No. 203)**

New law requires individuals granted privileges performing attest services to abide by the same standards as licensees and allows a person granted a privilege to utilize the designation "CPA."

New law adds that professional reviews can be administered, and participation in a peer review program may be certified, by the Society of La. Certified Public Accountants or another state certified public accountant society.

New law repeals prior law provisions that the board may engage a licensee to conduct a peer review on behalf of and as an agent for the board and report the findings to the board.

New law provides that any proceedings, records, reports, letters of comment, letters of response, or working papers related to a peer review shall be privileged but with extreme exceptions.

New law shields a licensee from liability if the licensee furnishes information, solely for the purpose of a peer review. The records and proceedings are prohibited from disclosure to certain third parties.

(Amends R.S. 37:77 and 86; Adds R.S. 37:73(18))

### **Architect Qualifications (Act No. 133)**

New law requires that the applicant hold a professional degree from a school whose curriculum has been accredited by the National Architectural Accrediting Board and be enrolled in the Intern Development Program administered by the National Council of Architectural Registration Boards.

New law provides that for an applicant to obtain an initial license to practice architecture in the state, satisfactory evidence shall be presented to the board of practical experience of training or experience in the field of architecture, which experience shall only be demonstrated by one of the following:

1. Satisfactory completion of the training requirements delineated by the National Council of Registration Boards in the Intern Development Program.
2. A certificate record certified by the National Council of Registration Boards that the applicant is currently registered to practice architecture in another state.

Effective upon signature of governor or lapse of time for gubernatorial action. (Amends R.S. 37:146; Adds R.S. 37:146.1)

### **Clinical Dental & Dental Hygiene Licensing (Act No. 906)**

Present law provides that an applicant who has successfully completed any national, regional, or independent third-party clinical dental or dental hygiene licensing examination approved by the board may be granted a license by examination by applying for licensure within 1 year following the successful completion of such clinical licensing examination. New law extends the period of time in which an applicant may apply for licensure, after successfully completing the required examination, from 1 year to 3 years.

Effective August 15, 2008. (Amends R.S. 37:761 and 764; adds R.S. 37:795(B)(1)(m) and (B)(2)(u))

**(Act No. 799)**

New law repeals present law regarding the selling of prearranged or prepaid burial or funeral services or merchandise and instead provides for preneed funeral plans. New law defines "preneed funeral contract" as any written agreement between a buyer and a funeral establishment in which a funeral establishment agrees, prior to the death of a named funeral recipient, to furnish funeral goods and services for the funeral recipient upon death and the buyer, pursuant to that agreement, transfers or tenders funds, or assigns an insurance policy or annuity to the funeral establishment for the purpose of paying all or part of the cost of those funeral goods and services at the time they are actually provided.

New law prohibits a firm, partnership, corporation, an association of individuals, or anyone to enter into a preneed funeral contract other than a duly licensed funeral establishment.

New law requires that a preneed funeral contract meet various requirements.

New law prohibits a funeral establishment, or any agent or employee, from borrowing from, converting to another policy or surrendering any preneed insurance policy or annuity, nor using or pledging any funds or insurance policy or annuity which is received in connection with any preneed funeral contract for any personal use, payment of the operating expenses of a funeral establishment, issuance of a loan to any person, as collateral for any loan, or for any purpose other than those expressly authorized by that preneed funeral contract and this Section.

New law prohibits the co-mingling of funeral trust accounts.

New law provides that all funds received from a buyer by a funeral establishment in connection with any preneed funeral contract shall be invested in prescribed manner.

New law requires each funeral establishment to file an annual report of funeral trust accounts with the Louisiana State Board of Embalmers

and Funeral Directors as a prerequisite for licensing as a funeral establishment.

Effective January 1, 2009. (Amends R.S. 37:831( and 861; adds R.S. 37:831(71) - (80) and R.S. 37:862 - 867)

**Contractor Licensing (Act No. 576)**

New law provides that general contractors, residential building contractors, and mold remediation contractors may elect one-, two-, or three-year licensing and renewal, whereupon the expiration of these licenses will be on the anniversary date on which the license was originally issued.

Effective August 15, 2008. (Amends R.S. 37:2156, 2168, and 2188)

**Optometry Expanded (Act No. 439)**

New law expands the definition of "optometry" to include dispensing of frames and lenses, therapeutic purposes for contact lenses, adapting contact lenses for therapeutic purposes, and the dispensing of pharmaceutical agents.

Effective August 15, 2008. (Amends R.S. 37:1041)

**Home and Community-Based Services (Act No. 552)**

New law extends present law regarding direct service workers to apply to anyone employed as part of an authorized departmental self-directed program.

Present law provides that an individual being served shall meet various criteria, including being eligible for care in an intermediate care facility for people with developmental disabilities or eligible for care in a nursing facility, but having chosen to receive assistance in his residence.

New law changes the criteria to being eligible for home and community based long term care services licensed by DHH.

New law allows a person employed as part of an authorized departmental self-directed program to

be authorized to perform the procedures specified in R.S. 37:1032.

Effective August 15, 2008. (Amends R.S. 37:1031, 1033; adds R.S. 37:1033(H))

#### **Telemedicine (Act No. 850)**

New law requires out-of-state physicians to acquire either an unrestricted license to practice medicine in this state or license to practice telemedicine in order to perform medical services deemed the practice of medicine upon persons located in this state.

New law requires the presence of a licensed health care professional in the examination room at the time telemedicine services are being provided.

New law requires La. State Bd. of Medical Examiners (LSBME) to issue a license to practice telemedicine across state lines. The physician practicing telemedicine cannot open an office in this state, meet with patients in this state, or receive calls in this state from patients; the physician shall establish a bona fide physician-patient relationship with the patient by conducting an examination, establishing a diagnosis through conventional detection methods, discussing with the patient the risks and benefits of treatment options, ensuring the availability of appropriate follow-up care, and fulfilling any other requirements deemed appropriate and necessary by LSBME.

New law subjects a physician licensed to practice telemedicine to the provisions of the La. Medical Practice Act, the jurisdiction of LSBME, state law, and, with respect to providing medical services to state residents, to the jurisdiction of La. courts.

Effective upon the promulgation of rules and regulations by LSBME. (Amends R.S. 37:1271; Adds R.S. 37:1262(4) and 1276.1)

#### **Real Estate Broker Licensing (Act No. 254)**

New law requires longer service as a salesperson, more post-license education hours, and greater continuing education requirements.

(Amends R.S. 37:1437)

#### **Home Inspector Licenses (Act No. 130)**

New law clarifies that any home inspector license not timely renewed is considered expired. New law provides that any home inspection performed after a license has expired is a violation of present law. New law allows for delinquent renewals for up to 12 months.

(Amends R.S. 37:1479)

#### **Limited Liability for Emergency Health Care (Act No. 539)**

New law provides that medical personnel who, in good faith and regardless of compensation, render or fail to render emergency care, health care services or first aid during a declared state of emergency when such state of emergency affects the rendering of such medical care shall not be liable for any civil damages or injury as a result of any act or omission related to such rendering of or failure to render services, unless the damages or injury was caused by gross negligence or willful misconduct.

Effective upon signature of the governor or lapse of time for gubernatorial action. (Adds R.S. 37:1731.1)

#### **Limited Liability for Volunteer Physicians at Nonprofit Pregnancy Counseling Centers (Act No. 417)**

New law provides that a physician who gratuitously volunteers to supervise a licensed health care professional performing ultrasound procedures at a nonprofit pregnancy resource center in this state, shall not be liable for any civil damages as a result of any act or omission in the supervising or performing of the ultrasound procedure, or the interpretation of the results of such procedure, unless the damage or injury was caused by willful or wanton misconduct or gross negligence.

New law defines "nonprofit pregnancy resource center" as an organization qualified as a tax-exempt organization under IRC 501(c) that provides pregnancy information and counseling services to an individual at no cost.

Effective upon signature of the governor (June 21, 2008). (Adds R.S. 37:1732.1)

#### **Alternative Health Care (Act No. 524)**

Present law provides that "lifestyle modifications" means 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 various licensed practices, such as medicine. New law prohibits the person from performing an adjustment or manipulation of the articulations of

the joints or spine.

Effective August 15, 2008. (Amends R.S. 37:1742.1)

#### **Electrical and Mechanical Contractors' Licenses (Act No. 725)**

New law adds definitions for electrical contractor and mechanical contractor.

New law excludes the employees of statewide-licensed electrical and mechanical contractors from local, municipal, or parish regulatory exams or certification authority to perform work for the statewide-licensed electrical or mechanical contractor.

New law provides for waiver of examination required for granting a mechanical or electrical contractor's license under various circumstances.

(Amends R.S. 37:2156.1(F); Adds R.S. 37:2150(14) and (15) and 2156.1(M))

#### **Private Security Company Licensing (Act No. 213)**

Present law prohibits the granting of a private security company license to any person who was convicted in any jurisdiction of any crime of violence as defined by present law. New law extends the prohibition to any person who has been convicted in any jurisdiction of any other felony offense within 10 years prior to the date of the application or less than 10 years has elapsed between the date of application and the

successful completion or service of any sentence, deferred adjudication, or period of probation or parole for which a full pardon or similar relief has not been granted.

(Amends R.S. 37:3276 and 3276.1)

#### **Security Operations Managers (Act No. 212)**

New law requires any person performing the functions and duties of a security operations manager to register with the La. State Board of Private Security Examiners.

New law defines "security operations manager" as any individual whose duties include but are not limited to the following: (1) Scheduling and assignment of work shifts. (2) Assignment of duties. (3) Hiring and firing or dismissing of security guards under his administrative control. (4) Any other general duties relating to security officer services.

New law provides that "security operations manager" does not include any individual directly employed by an industrial facility, who retains third-party security officers and whose duties with respect thereto may include one or more duties of a security operations manager.

(Amends R.S. 37:3283; Adds R.S. 37:3272(A)(19))

#### **Peer Review for Appraisers (Act No. 197)**

New law grants the La. Real Estate Appraisers Board the authority to create the Peer Review Committee within the La. Real Estate Appraisers Board.

(Adds R.S. 37:3395.1)

#### **Restoration of Parental Rights (Act No. 436)**

New law authorizes counsel appointed for a child who is in foster care and over the age of 15 or the department to file a motion to restore the parental rights or parental contact with a parent whose rights have been terminated.

New law requires the department to make a diligent effort to locate the parent, notify him of the effects of restoration and financial

obligations, and provide the parent with a copy of the motion showing the time and date of the hearing.

New law authorizes the court to allow contact between the parent and child under specified conditions, restore the parental rights of the parent, or place the child in the custody of the parent with or without continuing supervision of the department.

New law authorizes the court to enter a judgment without a hearing if the department, counsel, CASA volunteer, and the parent stipulate that restoration of parental rights is in the best interest of the child.

New law provides that the court's restoration of parental rights and placement of the child in the custody of the parent without supervision by the department is a permanent placement, but any other disposition becomes a part of the case plan.

Effective August 15, 2008. (Adds Ch.C. Arts. 1051-1053, and 1146(E))

**Wholesale Drug Distributors Act (Act No. 597)**

New law requires that a person must submit evidence of qualification and licensure in order to engage in the wholesale distribution or sale of legend drugs or legend devices.

New law changes the definitions of wholesale drug distribution, wholesale drug distributor, legend drug, and manufacturer. New law adds definitions for applicant, bureau, criminal history record information, FBI, legend device, legend drug pedigree, licensure, owner, person, responsible party, and third-party logistics provider.

New law authorizes the board to regulate the distribution of legend drugs and legend devices, as well as monitor compliance with all federal laws regarding the distribution of legend drugs and legend devices.

New law allows the board to require licensees to provide a legend drug pedigree.

New law requires each applicant for licensure to submit to the board the names of the designated responsible party and any owners who must be at least 21 years of age and of good moral character. New law adds that responsible parties and owners convicted of a felony of federal or state law may constitute grounds for the denial of a license.

New law stipulates that legend drug manufacturers and co-licensed partners shall satisfy certain provisions of prior law and new law if such manufacturers and partners have an approved new drug application from the FDA, have an establishment registration, and distribute only FDA-approved legend drugs, or use a contracted third-party logistics provider to distribute only FDA-approved legend drugs, for which the legend drug manufacturer holds an approved new drug application.

New law provides that legend device manufacturers and co-licensed partners shall satisfy certain provisions of prior law and new law if such manufacturers and partners have a 510(k) approved by the FDA, have an establishment registration, and distribute only FDA approved 510(k) legend devices, or use a contracted third-party logistics provider to distribute only FDA-approved 510(k) legend devices, for which the legend device manufacturer holds an approved 510(k).

New law adds that the license of a wholesale drug distributor can be revoked or suspended for a number of reasons, including if a responsible party or owner is convicted of a felony; disciplinary action taken by another state; refusal to permit entry to any licensed facility to comply with an inspection; violating any rules or regulations adopted by the board; selling, distributing, or offering to sell or distribute any adulterated, counterfeited, or misbranded legend drug or legend device, and altering, mutilating, destroying, obliterating, or removing any part of the label of a legend drug or legend device.

New law stipulates that each day a violation occurs counts as a separate violation. New law authorizes the board to assess all costs incurred in connection with proceedings.

New law prohibits an individual from participating in wholesale drug distribution unless properly licensed as a wholesale drug distributor.

New law allows the sale or distribution of legend drugs or legend devices only to a person who is authorized to procure or possess the drugs or devices.

Effective August 15, 2008. (Amends R.S. 37:3461, 3462, 3463, 3467, 3469, 3470, 3472, 3473, 3474.1, 3478, 3479, and 3480; Adds R.S. 37:3462(6)-(16), 3467(B)(5), 3474, 3474.1(A)(7) and (8) and (C)-(F), 3474.2, 3474.3, 3474.4, and 3477)

**Private Investigator Contractors (Act No. 862)**

New law authorizes the Louisiana State Board of Private Investigator Examiners to issue a "private investigator contractor license."

Effective August 15, 2008. (Adds R.S. 37:3507.2(A)(4))

**TITLE 38: PUBLIC CONTRACTS, WORKS AND IMPROVEMENTS**

**Compliance with Federal Flood Programs (Act No. 189)**

New law provides that before construction of any project for local flood protection, or any project for hurricane or storm damage reduction which involves federal assistance from the Secretary of the United States Army, the local parish or municipality shall agree to participate in and comply with all applicable federal flood plain management and flood insurance programs.

Effective July 1, 2008. (Adds R.S. 38:84(C))

**Compliance with Federal Flood Programs (Act No. 296)**

New law requires a parish or municipality of the state of Louisiana to agree to participate in and comply with all applicable provisions of the federal flood plain and management and flood insurance programs before constructing a local

flood protection hurricane or storm damage reduction project which involves or receives federal assistance.

Effective upon signature of governor (June 17, 2008). (Adds R.S. 38:84(C))

**Hurricane Protection Analysis of Public Works (Act No. 607)**

New law prohibits any state agency or entity from entering into contracts with the U.S. Army Corps of Engineers that would require the state to assume liability for a hurricane protection project, or would require the state to assume the cost of operations and maintenance for the project, unless the contract provides for a third-party review and evaluation in accordance with the best available science and technical capabilities to confirm the project's anticipated level of protection against hurricane flooding, prior to the state or political subdivision assuming liability and operations and maintenance obligations. New law exempts from this requirement routine maintenance projects, minor construction or repair projects, projects where there is an imminent threat to life or property, or when the chair of the CPRA, with the approval of the CPRA, determines that an emergency exists whereby compliance would create an unreasonable hardship.

Effective upon signature of governor (June 30, 2008). (Amends R.S. 38:247; Adds R.S. 38:247(E) and R.S. 49:213.4(E))

**Public Works Act (Act No. 230)**

Existing law requires all public work contracts exceeding the "contract limit", including labor and materials, to be advertised and let by contract to the lowest bidder.

Prior law provided a special "contract limit" of \$1 million until December 31, 2008, for any contract by a public entity for any project to restore or rehabilitate a levee which is not maintained with federal funds, provided that the project is undertaken by the public entity with its own resources and employees.

New law extends the special "contract limit" to projects to perform mitigation on public lands owned by the state or a political subdivision, authorizes the undertaking of such projects with the resources and employees of another public entity through a cooperative endeavor or other agreement, and extends the termination date from December 31, 2008 to December 31, 2010.

Effective upon signature of the governor (June 17, 2008). (Amends R.S. 38:2212)

#### **Public Bid Law (Act No. 726)**

New law provides that a public works project shall not be advertised for bid if, at the end of the contracts document phase, it is determined that the designer's estimate is more than the funds budgeted by the public entity for the project. New law requires the designer's estimate to be read aloud upon opening bids.

New law requires the bid form on public works projects where unit prices are utilized to contain certain specified information. New law requires other documentation to be furnished by the low bidder at a later date, in accordance with the bidding documents.

New law requires Division of Administration, office of facility planning and control, to develop and prescribe the necessary bid form for public works projects for public bid purposes.

Effective August 15, 2008. (Amends R.S. 38:2212)

#### **Public Bid Law (Act No. 727)**

New law provides that the bid form shall only require information that is necessary to determine the lowest responsible bidder.

New law requires the bid form on public works projects where unit prices are utilized to contain certain specified information.

New law requires the DOA, office of facility planning and control, to develop and prescribe the necessary bid form for public works projects for public bid purposes.

Effective August 15, 2008. (Amends R.S. 38:2212)

#### **Electronic Public Bids (Act No. 590)**

New law requires political subdivisions to make necessary provisions for the receipt of bids electronically, and to follow the uniform standards adopted by the office of the governor, division of administration, and the office of information technology as provided for in LAC 4:XV.701.

Effective January 1, 2009. (Amends R.S. 38:2212 and 2212.1)

#### **Public Contracting (Act No. 598)**

New law prohibits a contractor who holds a contract with an agency to develop bid specifications or requests for proposals to then compete for that same contract or participate as a subcontractor on the awarded contract.

Effective July 1, 2008. (Adds R.S. 38:2212.7 and R.S. 39:1496.2 and 1594.3)

#### **Groundwater Management (Act No. 581)**

New law specifies civil penalties for certain violations of groundwater management provisions or rules, regulations, or commissioner orders made pursuant to such provisions.

New law authorizes the commissioner to issue compliance orders when a violation of existing law occurs.

Effective August 15, 2008. (Adds R.S. 38:3097.3(E))

### **TITLE 39: PUBLIC FINANCE**

#### **State Spending Website (1st Ext. Sess. Act No. 20)**

New law requires the commissioner of administration to establish and maintain a website to post reports of state spending. New law requires that the reports include the nature and amount of appropriations for the executive branch of state government contained in the General Appropriation Act and other acts for

each budget unit, annual salaries and total compensation of statewide elected officials and cabinet-level positions in the executive branch of state government, and the total number in the table of organization for each budget unit. New law further requires the commissioner to maintain on the website a monthly report of spending by each such budget unit.

Effective upon signature of the governor (March 10, 2008). (Adds R.S. 39:6(C))

### **Compliance with Legislative Audits (Act No. 771)**

New law provides that no funds appropriated in the general appropriations act, the capital outlay act, or other appropriation act, shall be released or provided to any recipient of an appropriation if, when, and for as long as, the recipient fails or refuses to comply with the laws regarding examination and audit by the legislative auditor.

New law authorizes the legislative auditor to grant a recipient, for good cause shown, an extension of time to comply and the Legislative Audit Advisory Council may grant an additional extension with the recommendation of the legislative auditor.

Effective August 15, 2008. (Adds R.S. 39:72.1)

### **Grants for Grads Program (Act No. 748)**

New law establishes the "Grants for Grads Program" to provide grants of cash awards to certain La. residents who receive an associate, baccalaureate, masters, or other postgraduate degree to assist in satisfaction of the down payment or closing costs on the purchase of a first home in La.

New law provides for eligibility requirements which include La. residency and immediately after college graduation, the intention to live and work in La. for at least five years after college graduation, and the intention to purchase a permanent home in La. and to maintain it as his primary residence for at least one year.

New law requires that eligible graduates register for their participation in the program no later

than the 60th day after their college graduation date or date of completion of a postgraduate degree. A graduate who has registered for the program must apply for his grant during the period of time which starts on the due date of the filing of his fifth La. state individual income tax return since graduation and ends on the 19th day thereafter. The application shall include evidence of payment of La. state individual income taxes for five years and proof of residence in La. for five years.

New law provides that only 100 applicants shall be selected for grants by random lottery administered by the La. Housing Finance Agency.

New law provides as a grant an amount equal to the total cumulative La. state individual income tax paid by the grantee as evidenced by the tax information contained in his application, or \$10,000, whichever is less (\$15,000 if married filing jointly).

New law requires that a grant be provided as a cash payment to the grantee at the time of obtaining a mortgage loan, such amount to be applied only to pay a portion of the closing costs or required down payment on the purchase of a home.

Effective upon signature of governor (July 6, 2008). (Adds R.S. 39:100.71-100.75)

### **Manufactured Home Taxes (Act No. 468)**

New law provides that the money in the Manufactured Home Tax Fairness Fund may only be appropriated for refunding any state tax, penalty, interest or other charges on a purchase made on or after Sept. 1, 2005 and before Jan. 1, 2007, pursuant to the motor vehicle laws or any other state tax applicable to movables which was purported to be due or became due on the purchase of a manufactured home used solely in the parishes provided for above which have been severely impacted by hurricanes Katrina or Rita if a declaration of immovability as provided for in R.S. 9:1149.4(A) is recorded in the conveyance or mortgage records.



Effective July 1, 2008. (Adds R.S. 39:100.71 and R.S. 47:1508(B)(26))

### **Advanced Biofuel Initiative (Act No. 382)**

New law creates the Advanced Biofuel Industry Development Initiative to reduce dependency on foreign oil and increase economic opportunities using readily available feed stocks. New law provides a "field-to-pump" strategy set forth by certain feedstock criteria, use of small advanced biofuel manufacturing facility networks, and provides for market expansion.

New law provides for pilot programs monitored by the Dept. of Agriculture and Forestry.

New law provides for state incentives for awarding demonstration grants to individuals who purchase biofuel variable blending pumps for conducting research by certain specified criteria, and for awarding demonstration grants to individuals who purchase vehicles which operate on biofuels for research purposes. Demonstration grants may apply to the purchase of vehicles under certain conditions.

Prior law prohibited the commissioner of administration from purchasing or leasing vehicles for state agencies that do not use certain alternative fuels. New law retains prior law and adds hybrid vehicles as a possible choice for state purchase or lease and adds advanced biofuel to the list of alternative fuels for use in state vehicles.

New law provides for a discount in the purchase price of certain ethanol blends for state agencies, educational institutions, or instrumentalities of the state that perform essential governmental functions.

Effective August 15, 2008. (Amends R.S. 39:364; Adds R.S. 39:364(A)(4) and R.S. 3:3761-3763)

### **State Procurement of Professional Services (Act No. 917)**

New law adds authority for the office of contractual review to adopt rules and regulations

for administrative protest and appeal procedures prior to the commencement of judicial actions.

Existing law provides that, with regard to judicial actions, the term "court" shall mean the 19th JDC and, in the event of an appeal, the First Circuit Court of Appeal. New law clarifies that the definition of "court" applies to all state procurement of professional, personal, consulting, and social services.

Existing law provides that the 19th JDC, subject to appeal, shall have jurisdiction over controversies involving the state in connection with a petition for review of a decision made pursuant to existing law.

New law clarifies existing law and adds that the 19th JDC, subject to appeal or review by the First Circuit Court of Appeal or by the supreme court, shall have jurisdiction over any claims arising out of a request for proposal or award of a contract, any controversies involving the state, or any other matters in connection with a petition for review of a decision made pursuant to existing law, following the exhaustion of administrative remedies as provided by law or regulation.

Effective upon signature of governor (July 11, 2008). (Amends R.S. 39:1484, 1490, 1522, and 1526)

### **Procurement Code Appeals (Act No. 878)**

New law clarifies that an appeal or review to the First Circuit Court of Appeal or the Louisiana Supreme Court is authorized by law under the Professional, Personal, Consulting, and Social Services Procurement Code.

Effective upon signature of the governor or lapse of time for gubernatorial action. (Amends R.S. 39:1490, 1522, and 1526)

### **Prosthetic and Orthotic Health Care (Act No. 732)**

New law requires prostheses, orthoses, prosthetic services, and orthotic services which are purchased by a state agency or reimbursed

by Medicaid to be provided by an accredited facility.

Effective Jan. 1, 2009. (Adds R.S. 39:1659 and R.S. 40:1300.281)

#### **Costs of Issuance of Bonds (Act No. 790)**

New law provides that bonds, notes, or other issuances of indebtedness of any issuer required by the Constitution to be sold or approved by the State Bond Commission, shall not be sold unless and until the estimated costs of issuance have been presented to the issuer in a written report compiled by bond counsel in a public sale of securities or by bond counsel with the assistance of the underwriter in a private sale of securities.

New law provides that no later than 45 days after the closing and delivery of bonds the issuer or its representative shall submit to the State Bond Commission a final report with respect to such issue containing various prescribed information.

New law provides that if the total actual costs of issuance exceed the total approved costs of issuance, or the actual costs of issuance in any line item exceed the approved costs of issuance by a variance of 10% or more, the issuer shall obtain supplemental approval of the State Bond Commission prior to paying any individual item in excess of the approved costs of issuance.

New law provides that in addition to the other reporting requirements, any fees associated with the bonds and which are incurred after the 45 day period following issuance and delivery of the bonds, including but not limited to legal, consulting, and financial advisory fees, and fees associated with credit enhancement or derivative projects obtained post-closing, shall be estimated and presented to the issuer and the State Bond Commission. A final report of the actual fees paid shall be furnished to the issuer and the State Bond Commission within 45 days of the payment.

Effective August 15, 2008. (Adds R.S. 39:1405.4)

#### **Appeals from 19th JDC (Act No. 789)**

New law provides that any party aggrieved by a final judgment or interlocutory order or ruling of the 19th Judicial District Court may ask or seek review thereof, as the case may be, to the Court of the Appeal for the First Circuit, or the La. Supreme Court, as otherwise permitted in civil cases by law and the constitution.

Effective upon signature of the governor or lapse of time for gubernatorial action. (Adds R.S. 39:1691(E))

#### **Prison-Related Contracts (Act No. 224)**

New law removes the 5-year limit on management contracts relating to prison facilities.

New law removes the requirement for annual appropriation of funds for prison-related contracts, except for contracts for correctional or geriatric services and for capital improvements.

New law limits contracts for correctional or geriatric services to successive periods not to exceed 5 years, and contracts which involve expenditures for capital improvements not to exceed 10 years. These contracts are subject to annual appropriation of funds.

Effective on lapse of time for governor's action (June 16, 2008). (Amends R.S. 39:1800.4)

### **TITLE 40: PUBLIC HEALTH AND SAFETY**

#### **Housing Authority Commissioners (Act No. 874)**

New law provides for the appointment of tenant and landlord commissioners to local housing authorities.

New law provides for the tenant commissioner to be chosen from a list of names submitted to the governing authority by tenants of a local housing authority development or recipient of other assistance from such authority. New law prohibits a tenant from becoming or remaining as a commissioner if delinquent in rental or lease payments to the authority.

New law authorizes the tenant commissioner and the landlord commissioner to recuse himself from participating in a matter which would be in violation of R.S. 42:1112 of the Code of Governmental Ethics.

Effective upon signature of the governor or lapse of time for gubernatorial action. (Adds R.S. 40:531(E) and (F))

**Housing Authority Executive Director (Act No. 101)**

New law requires a local housing authority to enter into an employment contract with the executive director of the housing authority for a term not to exceed 5 years, rather than employ an executive director to serve at the pleasure of the authority.

Effective upon signature of governor or lapse of time for gubernatorial action. (Amends R.S. 40:539(C)(1))

**Government Foreclosure Counseling (Act No. 228)**

New law authorizes the Louisiana Housing Finance Agency (LHFA) to establish a program to provide free mortgage foreclosure counseling and education to homeowners who have defaulted or are in danger of defaulting on their home mortgages. New law authorizes LHFA to enter into agreements with other entities to carry out the program, establish a central toll-free telephone line, award grants for training of counselors, and establish standards for certification of such counselors.

Effective on lapse of time for governor's action (June 16, 2008). (Adds R.S. 40:600.25.1)

**Road Home Program (Act No. 872)**

New law provides that housing assistance rendered by the Road Home Corporation or the Louisiana Land Trust or any other housing assistance program shall be subject to the following:

1. Property appraisals or market analysis made by the Road Home Corporation or the Louisiana Land Trust shall be binding on either

entity. In the case of multiple property appraisals or market analysis, preference will be given to the higher value of either in favor of the property owner.

2. An individual shall not be required to sell property in excess of 5 acres if prior to hurricane Katrina or Rita the property was regularly used for farming operations.

3. An individual shall not be required to sell property in which that individual has an undivided ownership interest with family members.

Effective upon signature of the governor or lapse of time for gubernatorial action. (Adds R.S. 40:600.66(B))

**Methadone Maintenance Programs (Act No. 166)**

New law extends the moratorium on the licensing of additional methadone maintenance programs from July 1, 2008 to July 1, 2010.

New law allows DHH discretion to determine if there is a need for new or additional methadone maintenance programs in a certain geographic location, and if there is, allows DHH to license a new or additional methadone maintenance program.

Effective July 1, 2008. (Amends R.S. 40:1058.3)

**Expedited STD Treatment (Act No. 449)**

New law provides that when any physician, registered advanced practice nurse, or physician assistant diagnoses or does a clinical assessment of a case of chlamydia or gonorrhea in an individual patient, the physician or nurse may prescribe or otherwise provide prescription antibiotic drugs to that patient's sexual partner or partners absent a doctor-patient relationship and without examination of that patient's sexual partner or partners.

New law provides that if expedited partner therapy is chosen as an alternative, the patient will be given written documentation to give to the sexual contact containing specified information.

Effective upon signature of the governor or lapse of time for gubernatorial action. (Adds R.S. 40:1064.1)

**Water and Sewerage Line Construction (Act No. 421)**

Prior law provided that it shall be unlawful for any person, firm, or corporation, both municipal and private, to operate a water supply system or sewerage system unless the competency of the operator is duly certified to by the state health officer under the provisions of prior law.

New law exempts municipal and public works contractors and other related classifications of licensed contractors who construct water, sewer, or drainage line work.

New law further provides that such contractors shall not be required by any public entity to apply for or maintain a Class IV Certified Water System Operator Certificate or Wastewater Collection Operator Certificate as a condition of bidding, obtaining permits, or constructing water, sewer, or drainage line work.

Effective upon signature of the governor (June 21, 2008). (Adds R.S. 40:1149(D))

**Water System Operators (Act No. 112)**

New law requires all surface water systems, without limitation as to treatment type, to have a certified operator present while the facility is in operation. New law exempts groundwater from the requirement of the presence of a certified operator while the facility is in operation.

Effective August 15, 2008. (Amends R.S. 40:1149)

**Water Supply and Sewerage Systems (Act No. 551)**

Present law provides that on or after one year following the effective date of present law, it shall be unlawful for any person, firm, or corporation, both municipal and private, to operate a water supply system or sewerage system, unless the competency of the operator is duly certified to by the state health officer.

New law removes the provision of one year following the effective date and includes maintaining or installing a water system as unlawful if the competency of the maintenance person or installer has not been duly certified by the state.

Effective upon signature of the governor or the lapse of time for gubernatorial action. (Amends R.S. 40:1149; adds R.S. 40:1149(D))

**Telemedicine Liability (Act No. 717)**

Existing law provides for medical malpractice liability coverage for a state health care provider who is performing voluntary professional services in a health care facility or institution for or on behalf of the state. New law adds telemedicine services.

Effective August 15, 2008. (Amends R.S. 40:1299.39)

**Electronic Health Care (Act No. 738)**

Prior law required handwritten consent for any medical or surgical procedure. New law permits written consent to mean the voluntary permission of a patient, through signature, marking, or affirmative action through an electronic indication.

New law provides for electronic health care transactions.

New law allows electronic signature authentication and identification to be used for an individual who participates in agreements, authorizations, contracts, records, or transactions that involve individually identifiable health information, including medical records and recordkeeping, transfer of medical records, medical billing, health care proxies, health care directives, consent to medical treatment, medical research, and organ and tissue donation or procurement.

New law provides for electronic signature authentication and identification to be accomplished through an interactive system of security procedures.

Effective upon signature of governor (July 3, 2008). (Amends R.S. 40:1299.40; Adds R.S. 40:1299.40.1)

#### **Public Funding and Cloning (Act No. 486)**

New law prohibits public funds from being used by any person or entity, including any state-funded institution or facility, for human somatic cell nuclear transfer, commonly known as human cloning, but permits research in the use of nuclear transfer or other cloning techniques to produce molecules, deoxyribonucleic acid, cells other than human embryos, tissues, organs, plants, or animals other than humans.

New law stipulates that the use of state, private, or federal funds for research using embryonic stem cell lines approved for federal funding prior to August 9, 2001, shall not be prohibited by new law.

Effective upon signature of governor (June 25, 2008). (Adds R.S. 40:1299.36)

#### **Medical Malpractice Act Amendments (Act No. 558)**

New law re-defines "claimant." New law permits health care provider to be liable for court costs.

New law provides that the Patient's Compensation Fund Oversight Board shall have the right to intervene in a civil action or proceeding in which a health care provider files a dilatory exception of prematurity and the board reasonably believes that a health care provider is not qualified under the present law, or that a claim is not subject to the present law. Any intervention and participation by the board in such civil action or proceeding shall be strictly limited to the health care provider's qualification status and whether the claim is subject to the present law.

New law further provides that the Patient's Compensation Fund Oversight Board shall have the right to intervene at its discretion in any civil action or proceeding involving malpractice in which: (a) a self-insured health care provider is the subject of a liquidation, insolvency,

receivership or bankruptcy proceeding; or (b) a health care provider's insurer is the subject of a liquidation, insolvency, receivership or bankruptcy proceeding, the insurer has been discharged from the civil action or proceeding, and the malpractice claim is not covered by the Louisiana Insurance Guaranty Association.

New law provides that in any instance in which a complaint for bodily injuries to or death of a patient on account of malpractice has been filed in court and the parties enter into a stipulation prior to trial as to the amount of past medical expenses and related benefits and the amount exceeds \$100,000, the parties shall also stipulate to the admissibility of the documents supporting the stipulated amount and shall introduce these documents into evidence at the trial for which the stipulation was entered into.

New law provides that certain actions must be taken within a 45 day time frame or render invalid a request for review of a malpractice claim.

Effective August 15, 2008, except that certain provisions relative to limits of recovery shall be applicable to all complaints filed in court on or after January 1, 2009. (Amends R.S. 40:1299.41, 1299.42, 1299.44, 1299.47; adds R.S. 40:1299.41, 1299.44)

#### **Student Loan Forgiveness for Rural Doctors (Act No. 605)**

New law establishes a student loan forgiveness program for primary care physicians in a rural health professional shortage area (HPSA) who serve on the active staff of a rural hospital.

Effective August 15, 2008. (Adds R.S. 40:1300.6)

#### **Rural Hospitals (Act No. 389)**

New law broadens the definition of "rural hospital" under the Rural Hospital Preservation Act to include as a "rural hospital" one which met the qualifications of a sole community hospital as of June 30, 2005, and subsequently converted to critical access hospital status.

Effective August 15, 2008. (Amends R.S. 40:1300.143)

**Smoking in Nursing Homes (Act No. 490)**

Prior law banned smoking in public places unless an exception provides otherwise. An exception allowed smoking in designated and well-ventilated smoking rooms in nursing homes which permit smoking.

New law provides that the designated and well-ventilated smoking rooms of nursing homes which permit smoking cannot be the reception area, lobby, waiting room, or any other room or area defined as a public place under the La. Smokefree Air Act.

Effective August 15, 2008. (Amends R.S. 40:1300.256)

**Explosives Licenses (Act No. 898)**

New law creates more stringent standards for the issuance of explosives licenses and requires each manufacturer, dealer-distributor, user, blaster, or handler to possess a valid and subsisting license issued by the deputy secretary.

New law redefines the existing law terms "manufacturer-distributor" as "manufacturer" and "dealer" as "dealer-distributor." New law creates a classification of license for "holders".

New law provides that licenses shall be issued for a period not to exceed three years from the date of issuance, excluding magazines which shall be licensed solely on an annual basis.

New law provides for numerous qualifications for a license.

New law provides that the deputy secretary shall revoke a license if at any time during the license period the license holder fails to satisfy any one of the qualification requirements provided for in new law.

New law provides that the department shall execute a thorough background investigation, including a criminal history check, of every

applicant for the purpose of verifying the qualifications of the applicant.

New law prohibits an individual to whom an explosive license has been issued from handling explosives while under the influence of alcohol or a controlled dangerous substance.

Effective August 15, 2008. (Amends R.S. 40:1472.2, 1472.3, 1472.5, 1472.6, and 1427.7; Adds R.S. 40:1472.2(28))

**Fire Prevention Code Exempts 1 and 2 Family Homes (Act No. 126)**

New law limits the application of the provisions of the National Fire Prevention Code, known as NFPA 1, to buildings, structures, movables, and watercraft. New law defines "structure" as any building or structure of any nature or kind whatsoever except the interior of a single private and one- or two-family dwelling as defined by the La. State Uniform Construction Code.

(Amends R.S. 40:1573(3) and 1578.7(B))

**Elevator Keys (Act No. 749)**

New law requires all buildings which are six or more stories in height and constructed or substantially renovated after Jan. 1, 2009, to have all of the keys for elevators that allow public access keyed so as to allow all elevators to operate in fire emergency situations with a single master elevator key.

New law authorizes master elevator keys to be issued only to elevator owners, owners' agents, elevator contractors, state-certified inspectors, state agency representatives, and the fire department in whose jurisdiction the building is located.

Effective August 15, 2008. (Adds R.S. 40:1651)

**Uniform Construction Code (Act. No. 484)**

Prior law provided that the La. State Uniform Construction Code Council (LSUCCC) may adopt an amendment to the state uniform construction code after a showing that the amendment provided a reasonable degree of public health, safety, and welfare. New law adds

the requirement that the amendment also provide a reasonable degree of affordability.

New law requires the LSUCCC to evaluate and adopt the latest edition of the International Residential Code.

Effective August 15, 2008. (Amends R.S. 40:1730.22, 1730.26, and 1730.28)

**Uniform Construction Code Enforcement (Act No. 830)**

New law prohibits a building code enforcement officer, third-party provider, or third-party provider contracted by the jurisdiction from conducting plan review or inspections on commercial or residential structures if he owns any interest in the legal entity that constructed such commercial or residential structure or receives any compensation from the legal entity other than the fees that are charged for plan review or inspections.

New law prohibits any person from being appointed a building official if he has any interest in any legal entity that performs commercial or residential construction within the jurisdiction in which he would be appointed.

New law provides for the issuance of a certificate of registration to an employee of the state or one of its political subdivisions, who is a La. licensed architect or engineer, without receiving certification by a recognized building code organization or testing agency.

Effective August 15, 2008. (Amends R.S. 40:1730.22, 1730.23, 1730.24, 1730.25, 1730.30, and 1730.35)

**Fire Marshal or Construction Inspector (Act No. 813)**

Existing law provides a commercial or residential contractor or homeowner may use a third party provider to conduct plans reviews and inspections and enforce the state uniform construction code.

New law allows the office of state fire marshal to act as a third-party provider on commercial

structures in parishes with a population of less than 40,000 north of the 110 mph wind line which is determined by the ASCE-7 basic wind map published in the latest edition of the International Building Code.

Effective August 15, 2008. (Amends R.S. 40:1730.23)

**Lender Filing of Certificates of Occupancy (Act No. 375)**

New law provides that upon receipt of a certificate of occupancy issued by a local building official or third-party provider for a new residential home, a lender who provides the residential mortgage loan shall file a copy of the certificate of occupancy in the conveyance records of the parish where the new residential home is located.

New law provides that failure of the lender to file such document in the local conveyance records shall not invalidate the legal effects of any transaction related to that property, including but not limited to the construction, purchase, sale, or transfer of title of the new residential construction.

New law requires the homeowner of a new residential construction to provide the lender a copy of the certificate of occupancy.

Effective August 15, 2008. (Adds R.S. 40:1730.23(E))

**Uniform Construction Code (Act No. 306)**

New law allows local governments to adopt ordinances for the local administration of the state construction code, but local governments may not avoid the enforcement of the construction code or prohibit commercial and residential contractors or homeowners from using certified third-party providers.

Effective upon signature of governor or lapse of time for gubernatorial action. (Adds R.S. 40:1730.40)

### **Accessibility at Quadruplexes (Act No. 218)**

Prior law required that any dwelling unit in a facility which incorporates more than four dwelling units shall be made accessible for disabled individuals in accordance with rules promulgated by the fire marshal. New law changes the number of dwelling units requiring accessibility from more than four to four or more.

Effective August 15, 2008. (Amends R.S. 40:1734)

### **Initial Medicare Surveys (Act No. 330)**

New law provides that scheduling and conducting an initial Medicare survey of a health care provider shall be subject to approval by the Centers for Medicare and Medicaid Services.

Effective on lapse of time for governor's action (June 17, 2008). (Amends R.S. 40:2006.1)

### **New, Replacement, or Reestablished Medical Facilities (Act No. 409)**

New law provides that the minimum standards promulgated for the establishment of new or replacement hospitals, nursing facilities, and intermediate care facilities, or reestablishment of the foregoing, are applicable to those facilities that sustained substantial structure damage located in areas outlined in prior law.

New law provides that it shall not affect or apply to existing operational facilities or to facilities that are under construction and whose construction plans were approved prior to the promulgation of regulations referred to in prior law.

New law provides that the minimum standards promulgated for the establishment of new or replacement intermediate care facilities or reestablishment of intermediate care facilities are applicable to those facilities that sustained substantial structure damage resulting from hurricanes located in areas outlined in prior law.

Effective upon signature of the governor (June 21, 2008). (Amends R.S. 40:2009.4, 2109, and 2180.2)

### **Facility Need Review for Nursing Homes (Act No. 341)**

New law adds nursing homes to the facility need review process.

Effective upon signature of governor (June 21, 2008). (Amends R.S. 40:2116)

### **Re-Building of Nursing Homes (Act No. 795)**

New law provides for the owner of a nursing home destroyed during hurricanes Katrina or Rita to demonstrate that notice of surrender or expiration of the facility license was not received. New law provides that upon such a showing, the owner of such a facility shall be re-issued the pre-storm license for the sole purpose of rebuilding the facility.

New law provides that extensions of time for construction shall be granted by DHH. New law provides that upon completion, the facility shall meet all criteria required to be licensed as a nursing home or as a facility in which the beds have been put to an alternative use.

Effective August 15, 2008. (Amends R.S. 40:2116)

### **Moratorium on Replacement Nursing Facilities Repealed (Act No. 187)**

New law repeals the moratorium on the replacement of existing nursing facilities provided that there is no increase in existing nursing home beds at the replacement facility.

Effective upon signature of the governor (June 13, 2008). (Amends R.S. 40:2116)

### **Home Health Agency Licensing (Act No. 255)**

New law adds that DHH may deny, revoke, or not renew the license of a home health agency that refuses to allow a surveyor from the department to conduct a survey or access records.

(Adds R.S. 40:2116.36(E))



**Facility Need Review in Disaster Areas (Act No. 393)**

Prior law provided that the facility need review approval for licensed nursing homes or intermediate care facilities for people with developmental disabilities (ICF/DD) located in an area or areas which have been affected by an executive order or proclamation of emergency or disaster and which were operating at the time the executive order or proclamation was issued shall remain in effect and shall not be terminated, considered to have expired, or revoked until January 1, 2008. Prior law provided that this exception to the moratorium does not apply if the provider fails to recommence providing services prior to January 1, 2008.

New law extends the time period that the exception shall apply to January 1, 2010. In addition, new law provides that the exception to the moratorium does not apply if the provider fails to recommence providing services prior to January 1, 2010.

Effective upon signature of the governor (June 21, 2008). (Amends R.S. 40:2116)

**Nursing Home Alternate Use Beds (Act No. 412)**

New law adds the requirement that, in order for beds to be converted for alternate health care use, in addition to the service area's annual occupancy exceeding 93% based on the DHH LTC-2 report, the adjoining service area must also exceed this threshold.

New law provides that nursing home beds in alternate health care use as of August 15, 2006, may be taken out of alternate use and re-licensed as a nursing home bed, unless the beds have been otherwise deemed expired, revoked, or surrendered.

Effective upon signature of the governor (June 21, 2008). (Amends R.S. 40:2116)

**Brain Injury Facilities (Act No. 165)**

New law deletes the prohibition in present law against serving related brain injury patients within the same adult brain injury facility.

Effective upon signature of governor or lapse of time for gubernatorial action. (Amends R.S. 40:2120.33)

**Adult Day Health Care Programs (Act No. 174)**

New law provides that an adult day health care program offer services to adults who are functionally impaired, but deletes the requirements that adult day health care programs render services for at least five hours a day.

(Amends R.S. 40:2120.42)

**Moratorium on PCA, Respite, and IL Services (Act No. 328)**

New law places a moratorium until July 1, 2010, on the licensure by DHH of new home- and community-based service providers that provide personal care attendant services, respite care services, and supervised independent living program services, but with certain exceptions.

New law provides an exception to the moratorium to facilitate the conversion of intermediate care facilities for persons with developmental disabilities to the proposed Residential Options Waiver.

Effective July 1, 2008. (Adds R.S. 40:2120.8)

**Dementia Training (Act No. 571)**

New law requires employees of an adult residential care provider who provide care to a resident in an Alzheimer's special care unit or of a nursing home to receive training in dementia issues and practices that include or are informed by evidence-based care practices.

New law provides for training requirements for employees of an adult residential care facility who do not provide care to a resident in an Alzheimer's special care unit.

Effective upon signature of the governor or lapse of time for gubernatorial action. (Adds R.S. 40:2162, and 2200.1 - 2200.5)

**Direct Service Workers Related to Recipient (Act No. 333)**

New law provides that in order for a relative to serve as a direct service worker, he must obtain a waiver issued by the secretary of DHH or his designee stating that he is the best available appropriate direct service worker for the recipient.

Effective upon approval by Centers for Medicare and Medicaid Services of the necessary waiver and state plan amendments. (Amends R.S. 40:2179(B))

**DHH Remedies (Act No. 518)**

New law authorizes DHH to adopt rules to provide remedies for health care facilities which have violations of the licensure standards and requirements, of certification requirements, or of the Medicaid standards of participation.

Effective upon signature of the governor or the lapse of time for gubernatorial action. (Adds R.S. 40:2199.1)

**Silver Alert Network (Act No. 662)**

New law creates a Silver Alert Network for issuing a "Silver Alert" for a missing person with a verified mental impairment who is missing from his residence or from the supervision of his caretaker, whose whereabouts are unknown, and which poses a credible threat to his health and safety.

Effective July 1, 2008. (Adds R.S. 40:2529)

**Silver Alert Program (Act No. 453)**

New law creates the missing senior citizen and missing person with developmental disabilities alert program or "Silver Alert."

New law limits liability of law enforcement personnel, radio and television broadcasters, and cable television operators for acts or omissions in the transmission or display, or failure to transmit or display, information concerning a missing person.

Effective August 15, 2008. (Adds R.S. 40:2530.1 - 2530.5 )

**Investigation of Police Employees (Act No. 249)**

New law provides that the rights and procedures for investigation of law enforcement officers also apply to police employees.

Effective August 15, 2008. (Amends R.S. 40:2531)

**TITLE 41: PUBLIC LANDS**

**Public Leases (Act No. 570)**

New law adds that any contract entered into for the lease of state lands for any purpose requires that access by the public to public waterways through the state lands covered by the lease will be maintained and preserved for the public by the lessee.

New law provides that if the commissioner or secretary determines there exists a public need to maintain the current lessee, the commissioner or secretary may offer the current lessee, if he made a bid, the option to match the highest bid in order to lease the state lands.

New law provides for exemptions from proposed law for oyster leases and oil and gas leases entered into by the DW&F, and to any lease entered into by the State Mineral Board.

Effective August 15, 2008. (Adds R.S. 41:1217.1)

**TITLE 42: PUBLIC OFFICERS AND EMPLOYEES**

**Agenda Changes for Public Bodies (Act No. 131)**

New law requires unanimous approval (instead of two-thirds) of the members present at a meeting of a public body (other than the legislature and its committees and subcommittees) to take up a matter not on the agenda. New law requires any such matter to be identified in the motion to take up the matter not on the agenda with reasonable specificity,

including the purpose for the addition to the agenda, and entered into the minutes of the meeting. New law requires an opportunity for public comment on any such matter prior to any vote on the motion to take up a matter not on the agenda. New law prohibits taking up a matter not on the agenda as a subterfuge to defeat the purposes of present law provisions relative to open meetings.

(Amends R.S. 42:7)

#### **Grease Payments Legalized (Act No. 245)**

New law provides that the prohibition against an elected official receiving or agreeing to receive any thing of economic value for assisting a person in a transaction, or in an appearance in connection with a transaction, with the governmental entity or its officials or agencies unless he files a sworn statement does not apply to ministerial transactions.

New law defines a "ministerial transaction" as a transaction that involves routine, administrative communications intended to obtain service, information, or assistance from a public employee whose duties are established in plain and unmistakable terms by law, rule, or regulation.

(Amends R.S. 42:1111)

#### **Recusal Allowed for Appointed Board Members (Act No. 685)**

New law permits an appointed board or commission member to recuse himself from voting on a matter involving his board or commission. New law prohibits an appointed board or commissioner member who recuses himself under new law from participating in discussion and debate concerning the matter to be voted on.

Effective August 15, 2008. (Amends R.S. 42:1112; adds R.S. 42:1120.4; repeals R.S. 42:1120.2 and 1120.3)

#### **More State Officials Prohibited from Contracting with State (Act No. 696)**

New law expands the list of persons who shall not contract with state government to include the deputy secretary, the undersecretary, and each assistant secretary of numerous state government departments and various other high level state government officials, as well as their respective spouses and legal entities.

New law similarly expands the list of persons who may not enter into any contract related to a declared disaster or emergency that is funded or reimbursed in whole or in part with federal funds that flow through the state or a state agency or official.

Effective upon signature of the governor (July 2, 2008). (Amends R.S. 42:1113; adds R.S. 42:1113(D)(6))

#### **Code of Governmental Ethics – Contracting (1st Ext. Sess. Act No. 2)**

Prior law, relative to prohibited contractual arrangements under the Code of Governmental Ethics, provided that no public servant (excluding any legislator and any appointed member of any board or commission and any member of a governing authority of a parish with a population of 10,000 or less), or member of such a public servant's immediate family, or legal entity in which he has a controlling interest, shall bid on or enter into any contract, subcontract, or other transaction that is under the supervision or jurisdiction of the agency of such public servant. New law retains prior law and also provides that no head of any of the 20 departments of the executive branch of state government who is appointed by the governor or lieutenant governor shall bid on or enter into any contract, subcontract, or other transaction that is under the supervision or jurisdiction of any agency to which funds have been transferred from the agency of such department head, but such prohibition shall apply only to any contract, subcontract, or transaction related to such funds.

New law provides that none of the following persons or the spouse of such person nor any

legal entity of a person shall enter into any contract with state government:

- a legislator;
- the governor and each person holding statewide elected office;
- the secretaries of 12 specified state departments;
- the executive secretary of the Public Service Commission; and
- various other key state officials.

New law defines "legal entity of a person" as any corporation, partnership, or other such entity (except a publicly traded corporation or a passive ownership interest that is the result of participation in a federally approved program of employee ownership) in which one of the persons listed above or the spouse of such person owns an interest of greater than five percent.

New law defines "legal entity of a family member" as any corporation, partnership, or other such entity (except a publicly traded corporation or a passive ownership interest that is the result of participation in a federally approved program of employee ownership) in which an immediate family member of a person listed above, except the spouse of such a person, owns an interest of greater than five percent.

New law defines "state government" as any branch, agency, department, or institution of state government or with the La. Insurance Guaranty Assoc., the La. Health Insurance Guaranty Assoc., or any other state quasi public entity created in law.

New law provides that no immediate family member, except the spouse, of a person listed above, nor any legal entity of a family member shall enter into any contract with state government unless the contract is awarded by competitive bidding after being advertised and awarded in accordance with Part II of Chapter 10 of Title 38 of the LRS or is competitively negotiated through a request for proposal process or any similar competitive selection

process in accordance with Chapter 16 or 17 of Title 39 of the LRS; however, this exception for competitively negotiated contracts shall not include contracts for consulting services.

New law provides that any action taken to comply with a state law, rule, or regulation shall not be considered a contract.

New law provides for a large number of exceptions, including:

- completion of any contract between a person listed above or his spouse or a legal entity of a person and state government, which contract was awarded by competitive bidding;
- an agreement with a state entity or state quasi public entity providing for housing, retirement or insurance benefits, provided that those benefits are available to similarly situated persons;
- an agreement providing for public assistance benefits, including but not limited to, subsidies for agriculture, aquaculture, forestry, soil and water conservation, educational scholarships, grants and subsidies or guaranteed student loans, provided that such benefits are available to similarly situated persons;
- applying for, payment of fees for, or obtaining a license, credential, or permit provided that such license, credential, or permit is available to similarly situated persons; and
- an agreement for the provision of goods or services by state government provided on the same terms and conditions available to similarly situated persons.

New law provides that no person formerly serving in a position listed above nor his spouse nor any legal entity of a person shall, for a period of one year following the termination of the public service of such person enter into a contract that would have been prohibited by new law prior to the termination of the public service of such person.

New law requires that each person listed above file a report with the Board of Ethics, by July first of each year of his term of office or of his

service in his position, identifying the parties to and the value and term of each contract between him or his spouse or legal entity of a person and state government. New law requires that each immediate family member, except a spouse, of a person listed above file a report with the board by July first of each year of the person's term of office or of the person's service in his position identifying the parties to and the value and term of each contract between the immediate family member or any legal entity of a family member and state government.

New law provides that no statewide elected official, legislator, commissioner of administration, or chief of staff or executive counsel to the governor, nor the spouse of any such person, nor any corporation, partnership, or other legal entity, except a publicly traded corporation or a passive ownership interest that is the result of participation in a federally approved program of employee ownership, in which such a person owns an interest of greater than five percent shall enter into any contract that is directed to addressing needs directly emanating from a gubernatorially declared disaster or emergency, and the person knows or reasonably should know that the contract or subcontract is funded or reimbursed in whole or in part with federal funds distributed, paid, or allocated to or by the state or a state department, agency, or official. New law contains numerous exceptions.

Effective upon signature of the governor (March 3, 2008). (Amends R.S. 42:1113 and 1114.3; adds R.S. 42:1113(E))

#### **Code of Governmental Ethics – Wining and Dining (1st Ext. Sess. Act No. 9)**

New law prohibits a person from whom a public servant or a public employee is prohibited by existing law from receiving a thing of economic value from giving to such public servant any food, drink, or refreshment, the total value of which exceeds \$50 for a single event at which food, drink, or refreshment is given. New law specifies that the total value of the food, drink, or refreshment given to a public servant or public employee at any single event shall not

exceed \$50 regardless of the number of persons subject to the provisions of new law giving food, drink, or refreshment to the public servant or public employee at the single event.

New law requires the Board of Ethics, on July 1, 2009, and annually thereafter, to calculate and adjust the food, drink or refreshment limit of \$50 based upon the increase in the index as measured by the Consumer Price Index (CPI-U). Requires the board to promulgate the limit in accordance with the Administrative Procedure Act.

New law requires that at an event to which a group or organization of public servants is invited and at which food, drink, or refreshment is given, the value of the food, drink, or refreshment provided to a public servant is to be determined by dividing the total cost of the food, drink, and refreshment provided at the event by the total number of persons invited to the event.

New law does not apply to a gathering held in conjunction with a meeting related to a national or regional organization or a meeting of a statewide organization of governmental officials or employees.

Effective March 30, 2008. (Adds R.S. 42:1115.1)

#### **Code of Governmental Ethics – Circumvention (1st Ext. Sess. Act No. 15)**

New law prohibits a public servant or other person from transferring any thing of economic value or any asset, interest, or liability to any person or governmental entity for the purpose of circumventing any provision of the Code of Governmental Ethics, unless the transfer is irrevocable. New law provides that a transfer shall not be irrevocable if there exists any legally enforceable agreement or authority which if exercised or enforced would require or authorize any asset, interest, or liability transferred by the public servant or other person to revert back to such public servant or other person. New law provides that the following shall not be transferred as prohibited by new law:

1. (1) The terms of a confidentiality agreement entered into between parties, provided that the agreement is not entered into for purposes of circumventing the Code of Governmental Ethics.

2. (2) The sale of property subject to owner financing.

3. (3) A recorded bond for deed contract.

Effective upon signature of the governor (March 7, 2008). (Adds R.S. 42:1117.1)

### **Governmental Code of Ethics (Act No. 514)**

New law, relative to disaster or emergency contracts, provides that no statewide elected official, legislator, commissioner of administration, or chief of staff or executive counsel to the governor, nor the spouse of any such person, nor any corporation, partnership, or other legal entity, except a publicly traded corporation or a passive ownership interest that is the result of participation in a federally approved program of employee ownership, in which such a person owns an interest of greater than five percent, shall enter into any contract to which all of the following apply:

1. The contract is directed to addressing needs directly emanating from a gubernatorially declared disaster or emergency.

2. The person knows or reasonably should know that the contract or subcontract is funded or reimbursed in whole or in part with federal funds distributed, paid, or allocated to or by the state or a state department, agency, or official.

New law makes numerous minor changes and clarifications to the Governmental Code of Ethics.

Effective upon signature of the governor or lapse of time for gubernatorial action, except that provisions amending and reenacting R.S. 42:1123(39) and 1124.2(A) shall become effective January 1, 2009, and the provisions amending and reenacting R.S. 42:1124.3(A) shall become effective January 1, 2010. (Amends R.S. 42:1113, 1114.3, 1115.1, 1123, 1124.2, and 1124.3; adds R.S. 42:1115.1(F) and 1119(C)(7))

### **Code of Governmental Ethics – Nepotism (1st Ext. Sess. Act No. 6)**

Existing law provides that a willful violation of existing anti-nepotism law subjects the agency head, the member of the governing authority, the public employee having authority to hire and fire the employee, and the immediate supervisor of the employee to disciplinary action and penalties provided by existing law. New law specifies that such a person who violates existing law is subject to the penalties whether or not he is an immediate family member of the employee.

Effective April 26, 2008. (Amends R.S. 42:1119)

### **Recused by Elected Officials (Act No. \_\_\_\_\_)**

Present law provides that if any elected official would be required to vote on a matter involving a conflict of interest, he shall recuse himself from voting. An elected official who recuses himself from voting is not prohibited from participating in discussion and debate concerning the matter, provided that he verbally discloses the nature of the conflict or potential conflict during his participation in the discussion or debate and prior to any vote taken on the matter.

New law requires that he make the conflict or potential conflict a part of the record of his agency prior to participating in discussion or debate and prior to the vote that is the subject of discussion or debate.

Effective upon signature of governor or lapse of time for gubernatorial action. (Amends R.S. 42:1120)

### **Code of Governmental Ethics – Recusal by Elected Officials (1st Ext. Sess. Act No. 8)**

New law provides that an elected official may recuse himself from voting and one who does so is not prohibited from participating in discussion and debate concerning the matter provided he verbally discloses the nature of his conflict or potential conflict during such discussion and debate and prior to any vote taken on the matter.

Prior law did not apply when the elected official was the sole decision maker in the discharge of the particular duty or responsibility of his office or position. New law removes this provision.

Effective upon signature of the governor (March 6, 2008). (Amends R.S. 42:1120)

**Disaster Relief for Public Employees (Act No. 301)**

New law extends the time period of the exception that allows a public employee to receive any thing of economic value, up to specified limits, as a contribution or donation from certain specified not-for-profit organizations for disaster aid or relief to offset economic losses the employee suffered due to Hurricane Katrina or Rita.

Effective upon signature of governor or lapse of time for gubernatorial action. (Amends R.S. 42:1123)

**Code of Governmental Ethics – Receipt of Free Legal Services (1st Ext. Sess. Act No. 7)**

Existing law prohibits a public servant from receiving any thing of economic value, other than compensation and benefits to which he is duly entitled, for the performance of the duties and responsibilities of his office or position with certain exceptions.

New law adds an exception to allow public servants to accept free legal services donated by an attorney pursuant to a program adopted by the La. Bar Assoc. to provide such services. Provides that such a program shall be certified by the association to the Board of Ethics and allows a public servant to accept donations only after the board accepts the certification.

Effective April 26, 2008. (Adds R.S. 42:1123(38))

**Code of Governmental Ethics – Financial Disclosure (1st Ext. Sess. Act No. 1)**

New law (informally termed "Tier 1") requires the following to file financial disclosure statements: (1) statewide elected officials; (2) the secretaries of executive branch departments;

(3) the director of state civil service; (4) the superintendent of education, the commissioner of higher education, and the president of each public postsecondary education system; (5) the governor's policy director; (6) the executive secretary of the Public Service Commission; (7) the commissioner of administration; (8) the governor's legislative director; (9) the governor's chief of staff and deputy chief of staff; and (10) the executive counsel to the governor.

New law (informally termed "Tier 2") requires the following to annually file a financial statement with the Board of Ethics:

1. each member of the state legislature;
2. each person holding a public office who represents a voting district having a population of 5,000 or more persons;
3. each member of the Board of Ethics and the ethics administrator;
4. each member of the State Board of Elementary and Secondary Education;
5. each member of a state board or commission who receives compensation for such public service in the amount of \$16,800 or more per year; and (6) each member of a state board or commission which has the authority to expend, disburse, or invest \$1,000,000 or more in a fiscal year.

New law sets forth the disclosure required of Tier 2 officials.

New law prohibits the transfer of assets, interests, or liabilities required to be disclosed unless the transfer is irrevocable.

New law defines "state board or commission" as each board, commission, and like entity created by law or executive order which is made a part of the executive branch of state government by the provisions of existing law (Title 36 of the Louisiana Revised Statutes of 1950), or which is placed in an executive branch department or in the office of the governor or lieutenant governor by law or executive order, or which exercises any authority or performs any function of the executive branch of state government. New law provides that "state board or commission" does

not include an entity created as a political subdivision of the state or of local government or as the governing body or an agency of a political subdivision.

New law requires that in addition to the information required to be included in the statement pursuant to R.S. 42:1124.2 (Tier 2), each member of the Board of Ethics and the ethics administrator shall include certain additional information.

New law (informally termed "Tier 3") requires the annual filing of a financial statement by each person holding a public office who represents a voting district having a population of fewer than 5,000 persons and each member of a state board or commission which has the authority to expend, disburse, or invest more than \$10,000 but less than \$1,000,000.

New law provides that any person who becomes a candidate for one of certain offices covered by new law provisions requiring financial disclosure shall file a financial disclosure statement as required by new law for the office for which he is a candidate within 10 days of the day a person becomes a candidate.

Effective January 1, 2009, except that provisions of new law concerning R.S. 42:1124.3 (Tier 3) become effective January 1, 2010. (Amends R.S. 42:1124, 1124.1, 1157; Adds R.S. 18:1495.7 and R.S. 42:1124.2, 1124.3, 1124.4, and 1124.5; Repeals R.S. 18:463(B) and R.S. 42:1114.1)

#### **Deceptive Campaigning (Act No. 812)**

New law, as part of the Code of Governmental Ethics, prohibits certain false statements by candidates; push polling that contains any false statement, question, information, or insinuation; and, with intent to influence an election, knowingly authorizing or approving a call or causing a call to be made that will include or be transmitted with deceptive caller identification information.

New law prohibits a candidate in an election, with the intent to mislead the voters, from distributing or causing to be distributed any oral, visual, or written material containing any

statement which he knows makes a false statement about another candidate in the election.

New law prohibits any person from authorizing, commissioning, administering, or conducting, or causing to be conducted any push poll which such person knows contains any false statement or question or which such person knows contains, implies, or conveys any false information or insinuation.

New law also prohibits a person, for the purpose of supporting, opposing, or otherwise influencing the nomination or election of a person to public office, from authorizing or approving any call, or causing any call to be made, which the person knows or reasonably should know will include or will be transmitted with deceptive caller identification information.

Effective upon signature of governor (July 7, 2008). (Adds R.S. 42:1130.1-1130.6)

#### **Declaratory Opinions on Ethics (1st Ext. Sess. Act No. 24)**

New law provides that upon application to the Board of Ethics by a public servant, other person, or agency, the board may issue a declaratory opinion which declares rights, status, and other legal relations established by the Code of Governmental Ethics or other existing law within the board's jurisdiction. The board's power to declare such rights, status, and legal relations shall not be limited to cases where the declaratory opinion would terminate a controversy or remove an uncertainty.

New law provides that declaratory opinions shall be rendered after a public hearing and only after all interested parties, including the board staff, have had an opportunity to present evidence, testimony, and arguments. A declaratory opinion shall be considered a final decision and shall be reviewable by the Court of Appeal, 1st Circuit. New law provides that the board may refuse to render a declaratory opinion if it would not terminate the controversy or uncertainty.



Effective upon signature of governor (March 14, 2008).(Amends R.S. 42:1142; Adds R.S. 42:1141.1)

**Code of Governmental Ethics – Board of Ethics (1st Ext. Sess. Act No. 10)**

New law makes various changes to qualifications for service on the Board of Ethics.

Effective upon signature of governor (March 6, 2008). (Amends R.S. 42:1132; Adds R.S. 42:1132(B)(5))

**Construction Exception to Ethics Code (Act No. 173)**

New law provides an exception to the Code of Governmental Ethics to allow a person to obtain a permit, and enter into any transaction incidental thereto, under the provisions of the state uniform construction code (R.S. 40:1730.21 et seq.).

(Adds R.S. 42:1123(40))

**Conflict of Interest Disclosure (Act No. 159)**

New law includes in the list of persons required to file a financial statement each designee of a member of a board or commission included in present law.

New law changes the deadline for filing financial statements for candidates from within 10 days of becoming a candidate to within 10 days of filing the notice of candidacy.

New law changes certain references in present law from "willfully or knowingly" to "willfully and knowingly".

New law provides that the provisions of certain present law shall not require any person whose public service terminated prior to July 1, 2008, to file a financial statement in connection with such public service. New law provides, however, that any person holding an office or position on or after July 1, 2008, shall be required to file financial statements in connection with the holding of such office or position in accordance with the provisions of present law.

New law provides that the first reports due pursuant to R.S. 42:1124.2 as provided by new law shall be complete for the calendar year 2008 and that the first reports due pursuant to R.S. 42:1124.3 as provided by new law shall be complete for the calendar year 2009.

Effective Jan. 1, 2009, except that provisions of new law amending R.S. 42:1124.3 (Tier III) become effective Jan. 1, 2010. (Amends R.S. 18:1495.7 and R.S. 42:1124, 1124.2, 1124.3, and 1124.4 and §6 of Act No. 1 of the 2008 1st ES of the Legislature; Adds R.S. 42:1124.3(D)(3) and §7 of Act No. 1 of the 2008 1st ES of the Legislature)

**Financial Disclosure by Public Officials (Act No. 472)**

New law changes the level of disclosure required from each member of a state board or commission receiving a salary or other compensation for such public service of \$16,800 or more per year.

New law creates a fourth "tier" of reporting requirements for state board and commission members who are not otherwise included in "Tiers 1, 2, or 3," including each member of the State Board of Elementary and Secondary Education. New law requires that these persons annually file a financial statement by May 15 of each year during which the person holds office, and by May 15 of the year following the termination of the holding of such office. The financial statement shall include certain prescribed information for the preceding calendar year.

New law is effective January 1, 2009, except that new law relative to members of state boards and commissions in Tier 3 is effective January 1, 2010.

(Amends R.S. 42:1124.2, 1124.3, 1124.4; adds R.S. 42:1124.6)

**Contributions to Governor-Elect (1st Ext. Sess. Act No. 4)**

Prior law required that the governor-elect report to the Board of Ethics any contribution received

by him or for him during the period between the promulgation of the returns of the general election declaring him to be the governor-elect and his inauguration.

New law requires instead that the report on contributions cover the period between the date of his election and the 30th day after his inauguration.

New law prohibits a governor-elect (or any person on his behalf) from accepting more than \$10,000 in contributions from any person.

Effective April 26, 2008. (Amends R.S. 42:1125)

### **Board of Ethics Procedure (Act No. 128)**

New law requires the Board of Ethics to send to the accused and the complainant a detailed explanation of the matter, including the specific factual allegations upon which the board based its decision to investigate, and a copy of any complaint received by the board, from which the name of the complainant has been redacted.

New law requires that charges issued by the Board of Ethics contain specified details.

New law requires the Board of Ethics to consider offering a consent opinion to each person who is the subject of an investigation.

(Amends R.S. 42:1141)

### **Board of Ethics (Act No. 595)**

New law provides that if an administrative law judge begins work on a matter prior to the end of his term, he shall not be prohibited from completing his work on the matter following the end of his term.

New law provides that any member of the Ethics Adjudicatory Board who has a personal interest in or who becomes the subject of a hearing pursuant to the procedural provisions of the ethics code shall recuse himself from participation in such hearing.

New law specifies for clarification the particular board (Ethics Adjudicatory Board or Board of Ethics) to which certain references apply.

Prior law provided that a panel of the Ethics Adjudicatory Board could not conduct a public hearing until after the charged person's rights, if any, to rehearing and appellate review of any previous decision of the board have expired or have been exhausted. New law repeals prior law.

New law provides that decisions of the adjudicatory board or a panel thereof may be appealed in the same manner as decisions by the Board of Ethics.

Effective August 15, 2008. (Amends R.S. 42:1141; Adds R.S. 42:1141(C)(7) and (8) and 1142(E))

### **Code of Governmental Ethics – Whistleblowing (1st Ext. Sess. Act No. 5)**

Existing law prohibits an employee who has the authority to hire and fire, a supervisor, an agency head, or an elected official from subjecting a public employee to reprisal because of the employee's efforts to disclose acts of alleged impropriety. New law extends such prohibition to any employee who has the authority to discipline employees and adds a threat of reprisal as a prohibited action.

Existing law requires that a public employee report to the Board of Ethics any suspension, demotion, or dismissal which is a reprisal for disclosing information regarding acts of impropriety. New law adds threats of suspension, demotion, or dismissal to the actions which must be reported to the board.

Effective April 26, 2008. (Amends R.S. 42:1169)

### **Coe of Governmental Ethics – Education (1st Ext. Sess. Act No. 3)**

New law requires that each statewide elected official, legislator, and public service commissioner receive a minimum of one hour of education and training on the ethics code during each year of his term.

New law requires that, commencing with terms beginning Jan. 1, 2010, each other elected official receive a minimum of one hour of education and training on the ethics code during each year of his term.

New law requires that, commencing on Jan. 1, 2012, each other public servant receive one hour of education and training on the ethics code during each year of his public employment or term of office, as the case may be.

New law requires each legislative lobbyist and each executive branch lobbyist, commencing on Jan. 1, 2009, to receive a minimum of one hour of education and training on the provisions of the lobbying laws under which such lobbyist is registered and on the provisions of the ethics code the board determines are relevant to such a lobbyist during each year the lobbyist is registered.

New law requires the board to send a notice of noncompliance to each public servant the board discovers has failed to meet the training requirements which informs the person that the required training must be completed within 30 business days after receipt of the notice.

Effective April 26, 2008. (Amends R.S. 42:1170)

**Code of Governmental Ethics – Education**  
**(1st Ext. Sess. Act No. 11)**

New law specifies that the agency head of each state agency is required to designate at least one person to educate all agency personnel regarding the various ethics laws.

New law requires that persons designated to provide information and instruction relative to ethics and conflicts of interest have at least two hours of education and training annually relative to the Code of Governmental Ethics, and any other law within the jurisdiction of the Board of Ethics relevant to the agency. New law requires each agency head of a state agency to ensure that each public servant in the agency is notified of the name and contact information of each designee and that the name and contact information of such designees be posted and

easily accessible to each public servant in the agency. New law requires the agency head of each executive branch department to select at least one designee who is licensed to practice law in this state.

Existing law provides that the education and training required to be received pursuant to existing and new law may be received either in person or via the Internet through the training and education materials designed by the board.

Effective April 26, 2008. (Amends R.S. 42:1170)

**TITLE 43: PUBLIC PRINTING AND ADVERTISEMENTS**

Nothing of particular interest.

**TITLE 44: PUBLIC RECORDS AND RECORDERS**

**Emergency Postponement of Taxes (Act No. 506)**

New law provides that the collection of ad valorem taxes shall be postponed by the tax collector when an emergency has been declared, the tax debtor's assessed property located in the geographical area designated in the declaration of emergency has been damaged or destroyed by the calamity, and the collection of taxes would be onerous because the tax debtor is unable to pay the taxes without suffering substantial hardship.

New law provides that the tax debtor seeking the postponement of the payment of taxes shall file a sworn application accompanied by a supporting financial statement.

New law provides that the postponed taxes shall be divided into 10 equal installments, and one installment shall be charged each year by the tax collector for 10 subsequent years, or until the entirety of the postponed taxes is paid. The unpaid balance of the postponed taxes shall bear interest from the date on which the original tax bill was due until paid at the rate of 6% per annum, payable annually on the due date of each installment.

Effective Jan. 1, 2009. (Amends R.S. 44:4.1 and R.S. 47:2106)

**Public Records of Governor (Act No. 765)**

Existing law provides that the public records law does not apply to any of the books, records, writings, accounts, letters, letter books, photographs or copies thereof, ordinarily kept in the custody or control of the governor in the usual course of the duties and business of his office.

New law also includes those documents having been used, being in use, or prepared, possessed, or retained for use by or on behalf of the governor in the usual course of the duties and business of his office.

Existing law provides that such exemptions do not apply to agencies transferred or placed within the office of the governor or transferred or placed within any agency within the governor's office. New law makes clear that the governor's exemption to the public records law does not apply to such agencies.

New law retains provisions providing that existing law does not prevent any authorized person from examining and copying any books, records, papers, accounts or other documents pertaining to any money or monies or any financial transactions in the control of or handled by or through the governor.

Effective January 1, 2009. (Amends R.S. 44:5; adds R.S. 44:4(43))

**DOTD Public Records (Act No. 693)**

New law provides that records of the Department of Transportation and Development containing sensitive security information or critical infrastructure information are not required to be disclosed, except to a member of the legislature in the performance of his official duties.

Effective July 1, 2008. (Adds R.S.44:23.1)

**TITLE 45: PUBLIC UTILITIES AND CARRIERS**

**Intrastate Common Carriers (Act No. 724)**

Prior law provided for the regulation of motor vehicles operating as common or contract carriers of persons, household goods, waste, or any other classifications of carriers other than a contract carrier by bus.

New law provides for the regulation of motor vehicles operating intrastate as common or contract carriers of persons, household goods, waste, or any other classifications of carriers other than a contract carrier by bus. New law repeals various prior laws relating to motor carriers, the Interstate Commerce Commission, and the La. Public Service Commission.

Effective upon signature of governor (July 6, 2008). (Amends R.S. 45:161, 162, 163, 164, 167, and 169.1; Adds R.S. 32:1526; Repeals R.S. 45:163(D)(3), 163.1, and 194)

**Consumer Products Carriers (Act No. 323)**

New law provides that the attorney general may investigate the commercial and trade practices of, or acts of, motor carriers transporting household goods for consumers and institute legal proceedings which seek relief or fines.

(Adds R.S. 45:164.1)

**PSC and Railroad Safety (Act No. 753)**

New law authorizes the La. Public Service Commission to perform any act and issue any orders necessary to implement the Federal Railroad State Safety Participation program.

New law prohibits the commission when performing an inspection from requiring a railroad facility owner or operator to alter or cease rail operations. New law requires inspections, investigations, or surveillance to be performed in compliance with the safety rules or regulations of the facility, including security clearance at the front gate if appropriate.

New law prohibits the PSC from hiring, training, and certifying more than 6 employees to implement the provisions of the new law.

Effective August 15, 2008. (Adds R.S. 45:561 and 562)

### **PSC Jurisdiction over Telecommunication Services (Act No. 779)**

Prior law required the Public Service Commission to adopt "cost allocation and affiliate transaction rules" for persons or entities filing a complaint of a violation regarding a local government providing "covered services" - telecommunications services, advanced services (high speed Internet access capability) and cable television services - and "cross subsidizing" such services.

Prior law required the PSC to enforce the cost allocation and affiliate transaction rules for "covered services" under its jurisdiction provided by local governments, and that the legislative auditor enforce the cost allocation and affiliate transaction rules not within the PSC's jurisdiction.

New law provides that the PSC must also enforce the cost allocation and affiliate transaction rules for "all other covered services," but allows the PSC to elect not to perform such enforcement duties by providing written notice to the legislative auditor no later than 90 days after the effective date of new law, in which case the legislative auditor must enforce the rules for the "other covered services" in the manner provided in existing law. However, new law also specifies that the PSC does not have jurisdiction over cable television and advanced services. New law requires the PSC to follow certain procedures when it performs enforcement of "other covered services."

Effective on lapse of time for governor's action (July 7, 2008). (Amends R.S. 45:844.55)

### **Cable and Video Services (Act No. 433)**

New law provides that any person or entity seeking to provide cable service or video service in this state file an application for a state

franchise with the secretary of state and to simultaneously provide a copy of the application to the affected local governmental subdivisions.

New law requires the secretary of state to issue a certificate authorizing the applicant to offer cable or video service within 30 days of receipt of the application.

New law provides the certificate issued by the secretary of state is fully transferable.

New law requires the applicant to maintain insurance in an amount of not less than \$1,000,000 either through a policy of public liability insurance or through self-insurance.

New law provides that a cable service provider is deemed to have a franchise in a specific local governmental subdivision when any predecessor of the provider has had a franchise agreement granted by the subdivision.

New law provides that any entity providing cable or video service on the effective date of new law under a franchise previously granted is not subject to, nor may it avail itself of, the statewide franchise with respect to such subdivision until that franchise expires or is terminated.

New law provides an incumbent service provider the option to terminate an existing franchise previously issued by a local governmental subdivision and instead offer cable service or video service under a certificate of state franchise, provided certain requirements are satisfied.

New law provides for authority for a local governmental subdivision to impose payment of a franchise fee up to 5% of the holder's gross revenues received from providing service within the municipality or unincorporated areas of the parish and from advertising disseminated through cable service or video service and home shopping services.

New law prohibits a local governmental subdivision from levying any tax, license, fee, or other assessment on a cable service provider or

video service provider other than the franchise fee authorized by new law or a cable franchise fee imposed upon a cable service provider or video service provider in an existing franchise prior to the effective date of new law.

New law contains detailed provisions regarding public, educational, and governmental (PEG) access programming streams or channels for noncommercial programming.

New law prohibits any franchising authority or local governmental subdivision from requiring a certificate holder from complying with any customer service standards other than those set forth in federal regulation.

New law provides for a local governmental subdivision to allow the holder of a certificate to install, construct, and maintain a network within public rights of way and to provide the holder of a certificate with open, comparable, nondiscriminatory, and competitively neutral access to the public rights of way.

New law provides that the certificate holder not deny access to service to any group of potential residential subscribers based on the race or income of the residents. Cost, density, distance, and technological or commercial limitations shall be taken into account when determining whether a violation of new law has occurred.

New law provides that a local governmental subdivision having a home rule charter existing or adopted when the La. Constitution was adopted on April 20, 1974, and which is governed by Art. VI, §4 of the La. Constitution shall not be subject to new law, but by local ordinance may elect to be governed by new law.

Effective upon signature of the governor (June 21, 2008). (Adds R.S. 45:1361-1378)

## **TITLE 46: PUBLIC WELFARE AND ASSISTANCE**

### **Medicaid and Health Insurance (Act No. 517)**

New law requires that a health insurer submit payment within 90 days to the DHH regarding a subrogation claim for payment of any Medicaid

health item or service submitted no later than three years from the date of the provision of such item or service.

New law requires the health insurer to agree not to deny a claim submitted by a health care provider on the basis of the date of submission of the claim, the type or format of the claim form, or failure to present property documentation at the point of sale if certain conditions are present.

New law provides that health care providers have a right to recovery for the difference between the health insurer's original obligation for services provided to the insured and the amount the health care provider received from Medicaid, provided that the amount of the original obligation exceeds the amount paid by Medicaid.

New law requires that DHH provide notice to the health care provider after a claim is identified and payment from the health insurer has been received by DHH. New law provides that reimbursement to DHH of monies paid erroneously under Medicaid constitute an admission of an obligation to the health care provider for the difference. New law requires that the insurer is only liable for such payment if the provider files the claim with the insurer within 60 days of receipt of notice from DHH, and the claim meets the requirements of present law.

New law requires the health insurer to pay any obligation on the claim within 60 days of the receipt of the claim.

Effective August 15, 2008. (Amends R.S. 46:446.6; adds R.S. 46:446.6(C), (D), and (E))

### **Center for Autism (Act No. 154)**

New law renames the Center of Excellence for Autistic Services to the Center of Excellence for Autism Spectrum Disorder, transfers the center from the Office of Human Services to the Office of Citizens with Developmental Disabilities (OCDD), and establishes the center's location in Caddo Parish.

(Amends R.S. 46:1301)

**Inmate Pictures (Act No. 70)**

New law provides that a registered victim may contact the Crime Victims Services Bureau to request a recent photograph of the inmate within three months of his earliest projected release date from DPS&C. New law requires DPS&C to take all reasonable steps to provide a photograph to the registered victim at least 10 days prior to the inmate's actual release.

Effective August 15, 2008. (Adds R.S. 46:1844(N)(4))

**Increased Domestic Abuse Remedies (Act No. 411)**

New law specifies that the court, under the Protection from Family Violence Act, may also (1) award or restore possession to the petitioner of all separate and personal property, (2) restrain the defendant from transferring, encumbering, concealing, or disposing of petitioner's personal or separate property, (3) grant to the petitioner the exclusive care, possession, or control of any pets belonging to or under the care of the petitioner or minor children residing in the residence or household of either party, and (4) direct the defendant to refrain from harassing, interfering with, abusing or injuring any pet, without legal justification, known to be owned, possessed, leased, kept, or held by either party or a minor child residing in the residence or household of either party.

New law provides that relief may include ordering a medical evaluation of the defendant or the abused person, or both, after which the court may order counseling or other medical treatment as deemed appropriate.

New law requires the defendant to pay all costs of enforcement and modifications proceedings and appeals.

Effective upon signature of the governor or lapse of time for gubernatorial action. (Amends R.S. 46:2136 and 2136.1 and Ch.C. Art. 1570.1; adds R.S. 46:2135(A)(6) and (7) and Ch.C. Arts. 1569(A)(6) and (7) and 1570(A)(5))

**Umbilical Cord Blood Banking (Act No. 163)**

New law establishes the Umbilical Cord Blood Banking Program (program) within DHH for the purpose of promoting public awareness of the benefits of cord blood banking, encouraging research into the uses of cord blood, and facilitating pre-delivery arrangements for banking of cord blood donations.

(Adds R.S. 46:2881 and 2882)

**Termination of Medical Payments (Act No. 139)**

New law authorizes the Department of Health and Hospitals (DHH) to certify that providers enrolled in the Medicaid Assistance Program (Medicaid) are out of business and prevent them from collecting any overpayments.

(Adds R.S. 46:437.13(D))

**TITLE 47: REVENUE AND TAXATION**

**Income Tax Rates Reduced (Act No. 396)**

New law provides a reduction of individual income tax rates in the two highest brackets to the same amounts as provided for prior to the enactment of the Stelly Plan (Act 51 of 2002), as follows:

Prior law levied a rate of 2% on the first \$12,500 of net income. New law retains this provision.

Prior law levied a rate of 4% on the next \$12,500 of net income. New law increases the net income amount and provides that the 4% rate is levied on the next \$37,500 of net income.

Prior law levied a rate of 6% on the amount of net income in excess of \$25,000. New law increases the net income amount and provides that the 6% rate is levied on the amount of net income in excess of \$50,000.

New law applies to tax years beginning on or after January 1, 2009 and prohibits the secretary of the Department of Revenue from amending the withholding tables for individuals until after July 1, 2009.

Effective upon signature of the governor (June 21, 2008) for all tax years beginning on and after January 1, 2009. (Amends R.S. 47:32)

**Federal Income Taxes (2nd Ext. Sess. Act No. 5)**

New law provides that federal income tax rebates and credits received by a taxpayer for the 2008 tax year under the provisions of Section 6428 of the Internal Revenue Code as enacted in the federal Economic Stimulus Act of 2008 shall not reduce the federal income tax liability.

Effective for taxable years beginning in calendar year 2008. (Adds R.S. 47:293(4)(c))

**Tax Deduction for School Expenses (2nd Ext. Sess. Act No. 8)**

New law authorizes a deduction from tax table income for the sum of amounts paid or incurred during the taxable year for tuition and fees required for a student's enrollment in a nonpublic elementary or secondary school which complies with the criteria set forth in *Brumfield v. Dodd* and Section 501(c)(3) of the Internal Revenue Code or to any public elementary or secondary laboratory schools operated by a public college or university.

New law limits the deduction for schools to 50% of the actual amount of tuition and fees paid by the taxpayer per child or \$5,000 per child, whichever is less.

New law authorizes a deduction for 50% amounts paid or incurred during a tax year by a taxpayer for textbooks and curricula for home-schooled students, limited to \$5,000 per child.

New law authorizes a deduction for certain educational expenses for a quality public education equal to 50% of the actual amount paid during a tax year by a taxpayer per student or \$5,000, whichever is less, for the purchase of school uniforms for general day-to-day use, textbooks, curricula, instructional materials, or the purchase of school supplies, all as required by the school. Applicable to amounts paid on and after January 1, 2009.

Effective upon signature of the governor (March 24, 2008). (Adds R.S. 47:293, 297.10, 297.11, and 297.12)

**Sales Tax on Electricity, Natural Gas, Steam, Water, Fuels, and Gas (2nd Ext. Sess. Act No. 1)**

New law reduces the sales and use tax for sales of electricity and natural gas from 3.3% to 2.3% for all taxable periods beginning on or after July 1, 2008. After June 30, 2009, there will be no state sales and use tax on such items.

New law reduces the sales and use tax for sales of steam and water from 3.8% to 2.8% for all taxable periods beginning on or after July 1, 2008. After June 30, 2009, there will be no state sales and use tax on such items.

New law provides for a state sales and use tax exclusion for all purchases of fuels or gas, including but not limited to butane and propane.

Effective July 1, 2008. (Amends R.S. 47:301; Adds R.S. 47:321(K))

**Sales Taxes (2nd Ext. Sess. Act No. 9)**

New law reduces the sales and use tax for sales of electricity and natural gas from 3.3% to 2.3% for all taxable periods beginning on or after July 1, 2008. After June 30, 2009, there will be no state sales and use tax on such items.

New law reduces the sales and use tax for sales of steam and water from 3.8% to 2.8% for all taxable periods beginning on or after July 1, 2008. After June 30, 2009, there will be no state sales and use tax on such items.

New law provides for a state sales and use tax exclusion for all purchases of butane and propane effective July 1, 2008.

Prior law provided for a "manufacturing machinery and equipment" exclusion from state sales tax for "manufacturers" which was being phased-in, to be completed by July 1, 2010.

Prior law defined as "manufacturer" persons who would be classified within NAISC Code



(the North American Industrial Classification System code) information Sector 511110, but only if they are not required to register with the Louisiana Department of Labor for purposes of unemployment insurance. New law additionally defines such persons as "manufacturers" if they are required to register with the Department of Labor and are assigned such sector numbers.

Effective upon signature of the governor (March 24, 2008). (Amends R.S. 47:301 and R.S. 47:301; adds R.S. 47:321(K))

### **Sales Tax on Certain Manufacturing Equipment (2nd Ext. Sess. Act No. 12)**

New law phases in a state sales and use tax exclusion for the purchase, use, lease, or rental of certain machinery and equipment used by certain manufacturers in manufacturing for agricultural purposes or in the actual manufacturing process of an item of tangible personal property, and specifically includes rubber tired farm tractors, cane harvesters, cane loaders, cotton pickers, combines, haybalers, attachments and sprayers, clippers, cultivators, discs, plows, and spreaders.

New law makes the purchase, use, lease, or rental of manufacturing machinery and equipment beginning 7/1/09 and thereafter tax free.

New law provides that the manufacturer's exemption certificate shall serve as a substitute for the sales tax exemption for certain farm equipment.

Effective July 1, 2008. (Amends R.S. 47:301)

### **Tax Exemption Contracts (Act No. 456)**

Present law authorizes the Board of Commerce and Industry to enter into contracts of exemption from various state taxes with certain defined "employers." Present law authorizes manufacturers located in the state who have annual average purchases or leases of \$15 million to receive a "Direct Payment Number" allowing them to remit both their state and local sales taxes directly to the tax authorities, rather than paying tax to the taxpayer's vendor.

New law authorizes taxpayers who have entered into tax exemption contracts with the Board of Commerce and Industry to qualify for a Direct Payment Number if they meet all requirements except for that of a manufacturer for resale, but only for the purchases which are exempt pursuant to the annual tax exemption contract "cap."

New law reduces the average annual purchase or lease requirement for any taxpayer to receive a Direct Payment Number from \$15 million to \$5 million.

Effective August 15, 2008. (Amends R.S. 47:303.1; adds R.S. 47:303.1 (B)(3))

### **Car Sales Tax Remission (Act No. 707)**

Existing law provides that every vehicle dealer who sells a vehicle at retail shall remit all taxes collected no later than 40 days from the date of sale.

New law authorizes an extension for remittance of taxes on the sale of a motor vehicle of 10 days from receipt of the title of the vehicle accepted in trade by the licensed vehicle dealer if the title of the vehicle is received by the dealer in excess of 30 days from the date of sale.

New law requires any licensed dealer claiming an extension beyond the 40th day from the date of sale of the vehicle to document to the commissioner of motor vehicles the actual date that the dealer received title to the vehicle accepted in trade.

Effective August 15, 2008. (Amends R.S. 47:306)

### **Pharmacy Sales Taxes (Act No. 582)**

New law requires a pharmacy or pharmacist to collect all local sales and use taxes upon the sale of prescription drugs or pharmacist services and to remit the taxes to the levying authority. New law requires the health insurance issuer to reimburse the pharmacy or pharmacist the amount of such tax in cases where health insurance coverage for prescription drugs and pharmacist services exists.

New law requires all contracts that include health insurance coverage for prescription drugs and pharmacist services to clearly define the responsibility of the health insurance issuer or the health insurance issuer's member or insured for the payment of local taxes on such items.

New law requires a health insurance issuer or its agent to advise a pharmacist electronically of the applicable sales and use tax to be reimbursed to the pharmacy upon receipt of an electronic transaction from a pharmacist indicating the sale of a prescription drug or the rendering of pharmacist services.

Effective upon signature of governor (June 30, 2008). (Adds R.S. 47:337.11.1)

#### **Local Sales Tax Authorization (Act No. 762)**

New law authorizes any taxpayer who has reason to believe that a local collector is attempting or will attempt to collect a local sales tax, or any penalty or interest, or any collector who has reason to believe that a taxpayer is attempting or will attempt to resist such collection, under a "common sales tax law," rule, regulation, policy, or interpretation that violates the requirement of uniformity of interpretation in the Uniform Local Sales Tax Code, to file a rule with the board of directors of the Louisiana Association of Tax Administrators to seek uniformity of interpretation of local sales tax law by initiating a mandatory arbitration proceeding.

New law provides that, unless a court finds that the decision of a panel is arbitrary or capricious, the decision establishes a presumption in any action to collect a tax, enforce a subpoena or other order of audit, examination, or investigation of the books and records of a taxpayer or of a third party, that the interpretation of the "common sales tax law," rule, regulation, or policy, or the interpretation of a local sales and use tax law, ordinance, rule, or regulation as expressed in the decision, is the valid, uniform administrative construction and interpretation of such law, ordinance, rule, regulation, policy, or interpretation.

Effective upon signature of the governor or lapse of time for gubernatorial action. (Adds R.S. 47:337.101)

#### **Franchise Taxes (2nd Ext. Sess. Act No. 10)**

New law excludes all "borrowed capital" from "taxable capital" for tax years beginning in 2011 (instead of 2012) and thereafter. New law makes certain technical changes to reflect the accelerated phase-in and repeals the "borrowed capital" provision and all references to it effective January 1, 2011.

New law deletes prior law which authorized certain corporations that incurred extraordinary debt as a result of a gubernatorially declared disaster of 2005 to elect to compute its borrowed capital on the basis of the calendar or fiscal year closing immediately prior to August 28, 2005, under certain conditions, effective January 1, 2011.

Effective "for all taxable periods beginning on or after July 1, 2008," except as noted above. (Amends R.S. 47:602, 603, 605, and 609; repeals R.S. 47:603)

#### **Overpayment Refunds (Act No. 826)**

New law provides that refunds of overpayments shall be paid by the secretary not later than 45 days after the entitlement to the refund has been finally determined either through administrative or court decision.

Effective July 1, 2008, and shall be applicable to all final and non-appealable judgments issued on or after such date. (Amends R.S. 47:1621(H); Adds R.S. 47:1621(D)(3))

#### **Execution of Tax Documents (Act No. 750)**

New law provides that any return, statement, declaration, waiver, agreement, form, or other document required or permitted to be made or written, relative to matters subject to the jurisdiction of the Dept. of Revenue, shall be signed by the individual, person, or persons having the authority to sign such document, in accordance with forms or regulations prescribed by the secretary. New law applies to all

signatures, including signatures in digital or other electronic form.

New law provides that the fact that an individual's name is signed to a document shall create a conclusive presumption that the document was actually signed by the individual.

New law provides that any document filed or executed or entered into with the secretary and signed by a representative of a legal entity, for the assessment, collection, administration, and enforcement of taxes, fees, licenses, penalties, interest, and other charges due the state, shall create a conclusive presumption that such representative is authorized to sign on behalf of such legal entity. This conclusive presumption shall not be invalidated as to the legal entity by any lack of authority, power, or capacity of the signing representative.

New law provides that any legal entity may designate a person, referred to as a "designated tax matters person", who is also authorized to sign any of the documents described in new law on behalf of such legal entity or any other member of the same affiliated group. New law provides that provisions of new law shall also apply to the Uniform Sales Tax Code.

Effective upon signature of governor (July 6, 2008). (Adds R.S. 47:1671)

#### **Orleans Parish Assessor (Act No. 348)**

New law provides that the single assessor in Orleans Parish shall be responsible for all of the obligations of the Board of Assessors of Orleans Parish and shall be vested with the right, power, and authority to do, perform, and exercise for and on behalf of the board of assessors all acts and things required to be done and performed in connection with the authorization, issuance, and repayment of revenue bonds issued by the board of assessors.

Effective upon signature of governor (June 21, 2008). (Amends R.S. 47:1903.2)

#### **Tax Commissions (Act No. 857)**

Present law authorizes the tax commission to audit public service companies and other taxpayers. New law provides for reimbursement to the tax commission of direct costs associated with audits or examinations of up to 10% of the additional tax, penalty, and interest collected. New law prohibits the employment of private counsel by the tax commission on a contingency fee basis or any other basis dependent on the outcome of the matter.

Effective upon signature of the governor or lapse of time for gubernatorial action. (Amends R.S. 47:1989.1 and 1998.1; and R.S. 47:1835)

#### **Interest on Late Ad Valorem Taxes (Act No. 488)**

New law changes the date from which interest accrues for delinquent ad valorem taxes from 30 days after the deadline for payment of such taxes to the first calendar day following the deadline for payment of taxes.

Effective August 15, 2008. (Amends R.S. 47:2101)

#### **Property Tax Collection, Tax Sales, and Adjudicated Property (Act No. 819)**

New law provides for the general revision of the law on property tax payment and collection procedure, tax sales, and adjudicated property.

New law provides a comprehensive definitions section.

New law provides for the effect of affidavits filed as provided by other provisions in the revision, and provides that such affidavits are admissible and evidence a conversion of tax sale title to a full ownership interest.

New law limits the liability of tax collectors and assessors for their actions under new Chapter 5 of Subtitle III.

New law provides the duty of assessors to, among other duties, ensure the tax rolls are complete, that co-owners are listed as tax debtors, and that tax sale purchasers are listed as

owners. The assessor is not required to split assessments for one parcel, but is allowed to make separate assessments for undivided interests. New law authorizes a tax assessor to update a tax roll later than January 1 of the year in which the taxes are collectible.

New law makes numerous minor changes to prior law.

Existing law provides a three-year prescriptive period for all tax privileges and mortgages granted by law to secure the payment of ad valorem taxes, and provides special cancellation procedures for the parish of Orleans. New law retains the substance of existing law by providing that no tax sale shall occur after three years have elapsed from the end of the year the ad valorem taxes were due, and deletes the special provisions for the parish of Orleans.

New law adjusts tax appeal procedure to follow the 1974 constitution, which provides that the state no longer collects ad valorem taxes for each political subdivision, leaving the collection to each political subdivision; and specifies that the La. Tax Commission is the proper authority to hear tax appeals. New law clarifies that a claim for taxes erroneously paid on property may be on any exempt property, not just homestead exempt property.

New law allows the tax collector to cancel a tax sale without resort to a lawsuit when the statutory impositions (taxes and any additional items in the tax bill) have been paid, or when the tax sale was conducted in violation of the automatic stay in a federal bankruptcy proceeding. New law requires the tax collector to record the cancellation with the recorder of conveyances.

New law consolidates the notices of delinquency and the notices of tax sale into a single notice, and provides statutory "safe harbor" forms for the delinquency notice, published notice, and notice sent after the tax sale to any new owners who may have purchased the property after the preparation of the tax rolls for the year that the property was sold for taxes.

New law requires tax sales to be conducted in the manner provided by law for judicial sales, but also authorizes a tax collector to conduct a tax sale by using an online or electronic bidding process consistent with the law governing judicial sales.

New law substitutes a "tax sale certificate" for the "tax deed", and provides a "safe harbor" form tax sale certificate, which eliminates the proces verbal of existing law.

New law allows, but does not require, the tax sale purchaser to give notice of the right to redeem, requires the tax collector to send notice of the right to redeem, allows a political subdivision to give notice of the right to redeem even if the property has become adjudicated property, and provides statutory "safe harbor" notice forms.

New law is designed to evidence as a matter of public record the conversion of tax sale title to ownership, by providing that a tax sale purchaser, upon the expiration of the redemptive period, may send a notice to parties whose interest the purchaser intends to terminate, which notice shall constitute a notice of sale, and which notice may be filed in the mortgage records. The purchaser may publish a notice, and may file an affidavit attesting to the notices sent and actions taken, which affidavit shall serve as a cancellation of all statutory impositions due on the property. Statutory forms are provided for both the notices and the affidavit.

New law allows a writ of possession to be issued only when the possession by the tax purchaser is necessary to comply with the order of a political subdivision, and provides a privilege in favor of the purchaser for the cost of complying.

New law allows any person to request notice of tax delinquency, such person to receive all notices that are sent to a tax debtor, such request to be renewed annually. New law provides that a mortgage holder who has requested notice and paid the fee shall receive notices until such time that the tax collector receives notice of the cancellation of the mortgage inscription.

New law provides that an owner or co-owner may pay the statutory impositions due at the time of the tax sale, and the purchase of tax sale title by the owner or co-owner shall be deemed a redemption.

New law provides for adjudication to the political subdivision, rather than the state, of immovable property if the bid, which must be set for an amount at least equal to the statutory impositions, interest, and costs, is not met, and, allows the political subdivision, with the agreement of the tax collector, to place the adjudicated property back up for tax sale the following year or years. New law deems the purchase of a tax sale title to an adjudicated property to have occurred at the tax sale at which the property was adjudicated to the political subdivision. A subsequent sale with no minimum bid is allowed in parishes with populations in excess of 450,000.

New law provides that adjudicated property adjudicated to the political subdivision at tax sale remains assessed in the name of the tax debtor, that the political subdivision has no liability with respect to the property as a result of the adjudication, and that no encumbrance against the political subdivision affects the adjudicated property.

New law allows an individual to initiate a public sale of particular adjudicated property and allows a political subdivision to initiate the sale of adjudicated property by ordinance.

New law provides different deadlines for duly notified persons to either redeem the property or bring an action for nullity, and allows the notice to be sent prior to the expiration of the applicable redemptive period.

New law provides the default rule for pro rata distribution of the proceeds of the sale of adjudicated property when there are overlapping statutory impositions or governmental liens, absent agreement amongst the holders.

New law allows the political subdivision to obtain full ownership interest in adjudicated property at any time after the adjudication,

eliminates the "public purpose" prerequisite, and utilizes notice and affidavit procedures to obtain full ownership.

New law provides that any person may redeem tax sale title to property, but the redemption must be in the name of the tax debtor.

New law provides for redemption payments to be made only through the tax collector; further requires the payment of not only the amount due plus interest and penalties for the year of the tax sale, but also subsequent statutory impositions, plus 5% penalty, and 1% interest per month to the extent not paid by the tax debtor; and eliminates the provision allowing redemption of less than the entirety of a tax parcel. New law details the additional costs the political subdivision may impose as part of the redemption price.

New law provides that the redemption certificate can only be issued by the tax collector, and provides a "safe harbor" redemption certificate form.

New law provides that adjudicated property may be redeemed as a matter of right so long as it remains on the adjudicated rolls and full ownership has not been obtained by the political subdivision or acquiring person.

New law requires the person redeeming adjudicated property to pay all actual costs incurred by the political subdivision or acquiring person.

New law combines existing law provisions, and reproduces the substance of existing law on quieting tax title, adjusted to conform to the proposed revision, and additionally allowing for the filing of a notice of lis pendens.

New law provides that monition is available specifically to persons acquiring tax sale title or ownership of property under the revision, and modifies the monition proceedings as applicable to tax sales and adjudicated property.

New law provides for actions to annul specific to the revision, specifying that no tax sale shall

be set aside except for a payment nullity, redemption nullity, or a nullity under new law, all of which are relative nullities; provides the time in which a nullity action must be brought; specifies that the tax sale certificate and the act by which an acquiring person obtains full ownership constitute just title for purposes of acquisitive prescription; provides for the trial, judgment, and effect of judgment in a nullity action; and provides the acquiring person's rights to certain fruits severed or acquired prior to a judgment of nullity.

Effective January 1, 2009. (Adds a new Chapter 5 of Subtitle III of Title 47, comprised of new Parts I-VII; to be comprised of R.S. 47:2121-2292; Repeals R.S. 13:4951, R.S. 33:2861-2892.9 and 4720.11- 4720.49, R.S. 47:2101-2114, and former Parts I - III of Chapter 5 of Subtitle III of Title 47, formerly comprised of R.S. 47:2171-2262)

#### **Taxes on Property Sold at Tax Sale (Act No. 721)**

Prior law provided that, from the date of recording a tax deed to property, all taxes thereon shall after that date be assessed to and paid by the purchaser, until the property, or any part thereof, be redeemed.

New law provides that property sold at tax sale shall be placed on the assessment list. From the date property is placed on the assessment list in the name of the tax sale purchaser, all taxes thereon shall after that date be assessed to and paid by the purchaser, until the property, or any part thereof, be redeemed.

Effective upon signature of governor (July 6, 2008). (Amends R.S. 47:2193)

#### **Inheritance Taxes (Act No. 822)**

New law repeals obsolete statutes dealing with the inheritance tax, effective January 1, 2010.

New law provides that inheritance taxes due to the state for deaths occurring before July 1, 2004 for which no inheritance tax return has been filed before January 1, 2010 shall be deemed due on January 1, 2008.

(Repeals R.S. 47:2401-2426)

#### **Health Care Facility Reporting (Act No. 540)**

New law provides that state and non-state hospitals and other health care facilities, excluding rural hospitals of 60 beds or less and their provider based rural health clinics, report to DHH patient specific Louisiana Medicaid universal billing revenue code format data on the amount and type of uncompensated care provided and all requested data on the amount and type of other services and activities financed by uncompensated care payments.

Effective August 15, 2008. (Amends R.S. 46:2761)

#### **New Markets Tax Credits (2nd Ext. Sess. Act No. 4)**

Prior law provided that the maximum amount of qualified low-income community investments that may be issued by a single business, on an aggregate basis with all of its affiliates, and be included in the calculation of qualified equity investments issued after July 1, 2007, whether to one or more issuers of qualified equity investments, shall not exceed \$15 million. New law reduces this amount from \$15 million to \$5 million, effective April 1, 2008.

New law limits the amount of investments that may be issued on and after April 1, 2008, by a single business, on an aggregate basis with all of its affiliates to \$5 million; however, if the investments issued are "consistent" with Dept. of Economic Development "target industries", the limit is \$15 million. "Target industries" are defined as including but not being limited to the housing industry, the medical industry, and the industries referenced in R.S. 51:2453(2)(b)(i)-that is, the six Vision 2020 "cluster industries": biotechnology, biomedical, and medical industries serving rural hospitals; micromanufacturing; software, auto regulation, Internet, and telecommunications technologies; environmental technology; food technologies; and advanced materials.

New law authorizes an additional \$50 million in aggregate tax credits after April 1, 2008.

New law authorizes the Dept. of Revenue to recapture credits if the issuer fails to maintain certain investments through all anniversaries of the credit allowance date. New law provides that tax credits shall be allowed for qualified equity investments which, in turn, have been invested in qualified low-income community investments until Dec. 31, 2013.

New law only applies to investments issued on and after April 1, 2008.

Effective upon signature of governor (March 24, 2008). (Amends R.S. 47:6016; Adds R.S. 47:1508(B)(25))

## **TITLE 48: ROADS, BRIDGES AND FERRIES**

### **DOTD Offer-Back Statute (Act No. 298)**

Existing law authorizes the department to sell excess property acquired by the Department of Transportation and Development to the highest bidder. New law requires the secretary first to offer to sell excess property at a private sale to the vendor's successors in title, but otherwise retains existing law.

Prior law required the Department of Transportation and Development to declare property it formerly expropriated and had not used for 15 years as excess property and offer to sell it to the vendor or vendor's successors in title. New law repeals prior law.

Effective August 15, 2008. (Amends R.S. 48:221)

### **DOTD Authorized to Use Design-Build Contracts (Act No. 111)**

New law authorizes the secretary of DOTD to select projects or combine the design and construction phases of transportation facilities.

New law authorizes the secretary of DOTD to select additional projects or combine a program of projects utilized by the design-build method.

Effective upon signature of governor (June 6, 2008). (Amends R.S. 48:250.2)

### **Public Bridges (Act No. 313)**

New law provides that no state agency, political subdivision of the state, nor any board or commission created pursuant to a local services agreement shall, without prior legislative approval, enter into a contract that provides for the sale, lease, transfer, encumbrance, disposition, or conveyance of title or interest in any bridge, whether in whole or in part, or provides for the transfer of responsibility for the management, control, or operation of a bridge to any other entity, public or private.

Effective August 15, 2008. (Adds R.S. 48:942)

### **Public Bridges (Act No. 691)**

New law prohibits state agencies and political subdivisions from selling, leasing, or conveying any interest in, or transferring any responsibility for the management, control, or operation of, any bridge over five miles in length without the "consent of the legislature," except for:

1. Public works contract for repair, expansion, maintenance, cleaning, or any other work relating to the physical structure of the bridge and its appurtenances.
2. Contracts for the collection of "public tolls" for a state agency or political subdivision or services related to such toll collection.

Effective August 15, 2008. (Adds R.S. 48:1171)

## **TITLE 49: STATE ADMINISTRATION**

### **Coastal Protection and Restoration Authority (Act No. 545)**

New law provides that the CPRA shall have the discretion to approve and implement all requests for programs and projects pertaining to hurricane protection, infrastructure, and coastal conservation and restoration insofar as such requests are for funds to be appropriated from the Coastal Protection and Restoration Trust Fund.

Effective August 15, 2008. (Amends R.S. 49:213.1, 213.2, 213.3, 213.4, 213.5, and 213.6; adds R.S. 49:213.2(12), 213.4(E), 213.7(C)(3), and 213.13)

**State Inspector General (1st Ext. Sess. Act No. 12)**

New law provides for an independent office of the state inspector general in the office of the governor to examine and investigate the management and affairs of covered agencies.

The inspector general shall be appointed by the governor with the Senate's consent and may be removed by the governor subject to approval by a majority vote of each house of the legislature.

The governor shall set the compensation of the inspector general, not to exceed the amount approved for the position by the legislature while in session, and the inspector general's salary may not be reduced by the governor or the legislature during his term of office.

The attorney general or his designee shall be responsible for the legal representation of the office.

The inspector general has the authority and duty to examine and investigate the management and affairs of covered agencies concerning waste, inefficiencies, mismanagement, misconduct, abuse, fraud, and corruption, including misuse of state property, patterns of excessive bills on state contracts, unauthorized use of leave, mismanagement of governmental operations, waste or abuse of things of value belonging to or used by covered agencies, and construction, operation, and maintenance of facilities.

"Covered agencies" includes all departments, offices, agencies, boards, commissions, task forces, authorities, and divisions of the executive branch.

The inspector general is deemed to be an authorized representative and agent of each covered agency for: (a) examining and investigating the records of all contractors, subcontractors, grantees, or subgrantees of covered agencies, and (b) obtaining access to any records of a covered agency in the possession of a third party, including bank account records.

New law provides that, except for the reports released as provided in new law, the records prepared and obtained by the inspector general in connection with his investigations shall be deemed confidential and protected from disclosure under existing law. New law provides that no privilege shall be deemed waived on any record obtained by the inspector general pursuant to new law. New law requires the inspector general to keep confidential any record or information which is confidential under other provisions of law.

Effective April 26, 2008. (Amends R.S. 44:4.1; Adds R.S. 36:4(I) and R.S. 49:220.21-220.25)

**Small Business Hurdles to Rule-Making (Act No. 820)**

New law requires an agency to prepare an economic impact statement prior to the adoption of a rule that may have an adverse impact on small businesses.

New law requires an agency to prepare a regulatory flexibility analysis prior to the adoption of a rule.

New law requires an agency to notify the Dept. of Economic Development of its intent to adopt a proposed rule which according to the economic impact statement and the results of the regulatory flexibility analysis would have an adverse impact on small businesses.

New law requires the Dept. of Economic Development to send notification of the intent of an agency to adopt, amend, or repeal any rule which would affect small businesses to each person who has made a timely request of the department for such notice. Provides that the notification shall be sent at the earliest possible date, and in no case later than 10 days after the date an agency notifies the Dept. of Economic Development of such a proposed rule as required by new law.

Effective August 15, 2008. (Adds R.S. 49:965.2-965.8)



**Ethics Adjudicatory Board Established (1st Ext. Sess. Act No. 23)**

New law provides that if the Board of Ethics determines, following an investigation, that a public hearing should be conducted to determine whether a violation has occurred, the board shall issue charges. New law provides that the public hearing on such charges shall be conducted by the Ethics Adjudicatory Board in accordance with the Administrative Procedure Act and the procedural provisions of the Code of Governmental Ethics.

New law provides that if the Board of Ethics does not issue charges within one year from the date upon which a sworn complaint is received or, if no sworn complaint was received, within one year from the date the board voted to consider the matter, the matter shall be dismissed.

New law provides that at the hearing, an ethics adjudicatory panel shall determine whether a violation of any provision of law within the jurisdiction of the Board of Ethics has occurred, and if so, what penalties or other sanctions should be imposed.

New law provides that if the public hearing fails to disclose clear and convincing evidence to support the charges, the ethics adjudicatory panel shall make an official determination of its findings, and the Board of Ethics shall close its file on the charges. New law provides that the person charged may require the ethics adjudicatory panel to make an official determination of the validity of the charges against him.

New law provides that any complainant who knowingly makes a false non-sworn complaint shall be subject to the general penalties provided for in the Code of Governmental Ethics.

New law adds provisions specifying that adjudications involving alleged violations of law under the jurisdiction of the Board of Ethics shall be resolved as required by law applicable to the division of administrative law and the APA to the extent that such provisions do not conflict with ethics code provisions relative to

enforcement and that such adjudications shall be heard by an administrative law judge who is licensed to practice law in La.

Effective August 15, 2008. (Amends R.S. 42:1141; Adds R.S. 49:992.1 and 994(E))

**Drug Testing in Oil & Gas Industry (Act No. 150)**

Present law excludes any person, firm, or corporation engaged or employed in the exploration, drilling, or production of oil or gas in La. or its territorial waters from testing for the presence of marijuana, opioids, cocaine, amphetamines, and phencyclidine.

Present law requires that the initial cut-off level for marijuana must not be less than 50 nanograms per milliliter and no more than 100 nanograms per milliliter as specified by the employer.

New law allows any person, firm, or corporation engaged in construction, maintenance, or manufacturing at any refining or chemical facility to reduce or modify the initial cut-off level applicable to marijuana testing.

(Amends R.S. 49:1002)

**TITLE 50: SURVEYS AND SURVEYORS**

Nothing of particular interest.

**TITLE 51: TRADE AND COMMERCE**

**Metal Merchants (Act No. 405)**

Prior law required every individual, firm, corporation, entity or partnership, except municipalities, political subdivisions, and public utilities, engaged in the business of purchasing and reselling copper wire, copper, bronze, zinc, aluminum, or brass to either keep a registry and file reports with the Dept. of Public Safety and Corrections relative to such purchases and resales, or electronically maintain such data.

New law retains prior law, but limits the time the information contained in the reports must be maintained to two years. New law exempts any manufacturing, industrial, or other commercial

vendor that generates, as a by-product or recyclable waste, or sells such materials in the ordinary course of its business from the provisions of prior law.

Effective August 15, 2008. (Amends R.S. 51:579; adds R.S. 51:579(A)(3))

#### **Securities Law (Act No. 274)**

New law excludes any managing member or executive officer of any managing member from the definition of "dealer".

Present law provides that "security" shall not mean currency, or any note, draft, bill of exchange, loan participation or banker's acceptance, or any other evidence of indebtedness issued by a bank or limited function financial institution. New law excludes limited function financial institution from the definition.

Present law provides that it shall be unlawful for any person to transact business in this state as an investment adviser unless certain registration procedures are followed. New law requires the registration of investment adviser representatives.

New law provides that it is unlawful for any federal covered adviser to conduct advisory business in this state unless he files with the commissioner such documents as have been filed with the U.S. Securities and Exchange Commission (SEC). New law provides that the registration of an investment adviser representative shall be the same as the registration of a salesman.

New law requires a dealer or investment adviser to promptly notify the commissioner and furnish to him in writing any change in the managing partners of a dealer or investment adviser.

New law provides that the registration of an investment adviser representative or managing member of a dealer or investment adviser may be suspended or revoked by the commissioner.

New law provides that the registration of any dealer, salesman, or investment adviser may be

suspended or revoked by the commissioner if he finds that such registrant has failed to reasonably supervise any salesman or investment adviser representative for whom he has supervisory responsibility.

New law allows for the commissioner to require an investment adviser to file with him a financial statement.

(Amends R.S. 51:702, 703, 704, and 705; Adds R.S. 51:704(A)(9))

#### **Mobile Homes and Manufactured Housing (Act No. 825)**

New law makes numerous minor changes to the Uniform Standards Code for Manufactured Housing.

Effective August 15, 2008. (Amends R.S. 51:911.22, 911.24, 911.26, 911.32, and 911.34; Adds R.S. 51:911.22(13) and (14); Repeals R.S. 51:911.42 and 911.44)

#### **Manufactured Homes (Act No. 217)**

New law makes various minor changes to the minimum standards for installation of manufactured homes.

(Amends R.S. 51:912.21, 912.22, 912.23, 912.24, 912.25, and 912.27; Adds R.S. 51:912.21(10))

#### **New Car Warranty (Act No. 701)**

Prior law provided that a new motor vehicle purchased from a new motor vehicle dealer had an applicable express warranty if that vehicle was made available for repair before the expiration of the warranty or during a period of one year following the date of the original delivery of the motor vehicle to a consumer. A motor vehicle dealer would have been in nonconformity of this express warranty if the vehicle was out of service by reason of repair for a cumulative total of 90 or more calendar days. New law lowers the number of days from 90 days to 45 days.

Effective August 15, 2008. (Amends R.S. 51:1943)

### **Sales Tax Rebates (Act No. 720)**

New law provides that all state and local sales and use taxes shall be eligible for rebate, except sales and use taxes imposed by a political subdivision which are dedicated to the repayment of bonded indebtedness or dedicated to schools.

New law provides a procedure for the submission and payment of requests for rebates of state sales and use tax for Enterprise Zones and for the La. Quality Jobs Program.

New law requires a properly completed rebate request to be submitted to the Dept. of Revenue (DOR). New law requires, within 10 business days of the receipt of a properly completed rebate request, DOR to rebate 80% of the total amount claimed for rebate in the rebate request.

New law requires, within three months of the date of filing the rebate request, DOR to audit the rebate request. New law authorizes DOR to disallow items determined to be ineligible for rebate during the three-month period. New law requires DOR, within 10 business days following the expiration of the three-month period, to rebate the remaining 20% of the amount claimed on the rebate request, less any amounts properly disallowed during the three-month audit period.

New law provides that failure of DOR to timely pay rebates shall entitle the taxpayer to interest, which shall begin to accrue three months after the completed rebate request is received. Interest shall accrue at the judicial interest rate.

New law requires the processing of local sales and use tax rebates within 90 days from the date that a properly completed rebate request is received by the appropriate local taxing authority. New law requires the local taxing authority to review the rebate request and issue a rebate check to the taxpayer for allowed items and notify the taxpayer of disallowed items. New law requires that within 60 days from receipt of the notification of disallowed items, the taxpayer shall resubmit a properly completed rebate request for disallowed items for reconsideration. New law provides that failure

by a local taxing authority to timely process and pay a local sales and use tax rebate shall entitle the taxpayer to interest at the judicial interest rate. Interest shall begin to accrue on the date the rebate request or reconsideration of disallowed items is received by the taxing authority at the judicial interest rate.

Effective July 1, 2008, and shall apply to rebate requests received on and after such date. (Adds R.S. 51:1787(A)(1)(a)(iii), (iv), and (v))

### **TITLE 52: UNITED STATES**

#### **Federal Lien Notices (Act No. 183)**

New law requires that notices of federal liens upon vessels subject to the Vessel Titling Act not held as inventory for sale or lease be filed in the same manner only with the clerk of court of any parish and with the recorder of mortgages in Orleans Parish for inclusion in the master index of information maintained by the secretary of state.

Effective August 15, 2008. (Amends R.S. 52:52)

### **TITLE 53: WAR EMERGENCY**

Nothing of particular interest.

### **TITLE 54: WAREHOUSES**

Nothing of particular interest.

### **TITLE 55: WEIGHTS AND MEASURES**

Nothing of particular interest.

### **TITLE 56: WILDLIFE AND FISHERIES**

#### **Fish (Act No. 23)**

New law authorizes the Wildlife and Fisheries Commission to promulgate rules for the importation, possession, or sale of game fish species.

New law provides that any person interested in engaging in aquaculture must first make application to the Dept. of Wildlife and Fisheries for a domesticated aquatic organism license.

New law requires a domesticated aquatic organism license in order to transport aquaculturally raised fish.

New law provides that the domesticated aquatic organism license authorizes a person to sell domesticated aquatic organisms in any size, quantity, or limit without restrictions within or outside the state.

New law authorizes the department to cancel sales or confiscate and destroy shipments of fish that are determined to be contaminated.

New law authorizes harvest and sale of, domesticated aquatic organisms produced in private enclosures located on private property at any time with any type of seines or tackle.

New law allows game fish, once approved by the commission, to be taken outside the state and aquaculturally raised game fish to be imported and sold or purchased by licensed wholesale/retail seafood dealers. New law authorizes the department to cancel sales or confiscate and destroy diseased fingerlings.

New law authorizes the department to issue permits to raise bass, crappie, and bream within the state for sale for private ponds and lakes.

New law revises numerous definitions, including those for commercial fisherman, domesticated fish, freshwater commercial fish, freshwater game fish, game fish, saltwater commercial fish, saltwater game fish, saltwater recreational fish, domestic fish farming, aquaculture, and domesticated aquatic organism.

Effective July 1, 2008. (Amends R.S. 56:8, 320, 325, 326.1, 327, 332, 411-413; Adds R.S. 56:8(109.1); Repeals R.S. 56:327(A)(1)(a) and (b) and (c))

#### **Crab Shipping Licenses (Act No. 722)**

New law requires the purchase of a retail or wholesale out-of-state shipping license for anyone exporting any type of crab for sale outside the state of La.

Effective Nov. 15, 2008. (Amends R.S. 56:10; Adds R.S. 56:306(B)(6) and 306.1(B)(7))

#### **State Leasing (Act No. 226)**

New law provides that, if the secretary determines there exists a public need to "maintain the current lessee" of state lands, the secretary may offer the current lessee, if he made a bid, the option to match the highest bid in order to lease the state lands. The new law is not applicable to oyster leases, oil and gas leases, alligator leases, or any lease entered into by the State Mineral Board.

Effective August 15, 2008. (Amends R.S. 56:30.3)

#### **Deer Hunting (Act No. 22)**

Existing law provides for a special deer hunting season for resident and nonresident persons under the age of 16; the special season is prior to the beginning of the regular season. New law raises the age limit from 16 to 18 years of age.

Effective August 15, 2008. (Amends R.S. 56:116)

#### **Fishing Guide Reports (Act No. 564)**

New law requires each charter boat fishing guide licensee to complete a landing report and return the report to the Department of Wildlife & Fisheries.

Effective August 15, 2008. (Amends R.S. 56:302.9; adds R.S. 302.9(I))

#### **Oyster Cargo Vessels (Act No. 321)**

New law authorizes the Wildlife and Fisheries Commission to promulgate rules to allow for the operation of oyster cargo vessels. The rules may provide for commercial oyster fishermen transferring oysters on the water to a cargo vessel; for compliance with refrigeration and record requirements; allowing for adequate enforcement; Class Four penalties; and use of the funds received from issuance of the permits for enforcement of oyster laws.

Effective on lapse of time for governor's action (June 17, 2008). (Adds R.S. 56:422(E))

### **Oyster Harvesting (Act No. 92)**

Existing law authorizes the Dept. of Wildlife and Fisheries to designate public seed grounds and to determine when and where the reefs may be fished and the quantity of oysters that may be taken.

New law authorizes harvest of seed oysters only beginning the first Wednesday after Labor Day. Then, beginning on the second Monday in October each year, new law authorizes opening the seed grounds for harvest of oysters for market in addition to harvest of seed oysters. New law requires all harvest to cease April 30 each year.

Effective August 15, 2008. (Amends R.S. 56:433; Reenacts R.S. 56:433(G))

### **No Lying About Origin of Crawfish or Shrimp (Act No. 264)**

New law provides that no owner or manager of a restaurant that sells imported crawfish or shrimp shall misrepresent to the public, either verbally, on a menu, or on signs displayed on the premises, that the crawfish or shrimp is domestic.

(Adds R.S. 56:578.14)

### **Mariculture Permits (Act No. 280)**

New law adds a requirement for obtaining a mariculture project permit that the applicant demonstrates that a marine biologist from LSU-BR, the Dept. of Wildlife and Fisheries, and the Louisiana Universities Marine Consortium (LUMCON) has either reviewed or participated in the development of any project located offshore in state waters.

Effective August 15, 2008. (Adds R.S. 56:579.1(C)(4))

### **Coastal Land Stewardship Authority (Act No. 548)**

New law provides that the authority is established to provide for management and administration of certain immovable properties, servitudes, and easements acquired by the state in connection with the development, design, and implementation of coastal conservation, restoration and protection plans and projects.

Proposed law provides that the board of directors will:

1. accept surface ownership and surface easements to facilitate the implementation of coastal protection and restoration projects.
2. accept donations of coastal wetlands and barrier islands.
3. manage or designate an appropriate state agency to manage such property.
4. determine and provide for public and private uses of such acquired property that are consistent with the conservation and sustainable use of such property, compatible with the state's master coastal protection and restoration plan, and maximize opportunities for public uses within those constraints.

Effective August 15, 2008. (Adds R.S. 56:901)

## **LOUISIANA ADMINISTRATIVE CODE**

### **Lifting of Oyster Lease Moratorium (Act No. 808)**

New law provides for lifting of the oyster lease moratorium pursuant to detailed procedures.

Effective upon signature of governor (July 7, 2008). (Repeals §501(B)(1)(intro. para.) and (3)(b) of Chapter V of Part VII of Title 76 of the LAC)