

**2012 LOUISIANA**

**LEGISLATIVE ACTS**

**SUMMARY**

## 2012 Legislative Acts Summary

### Contents

This book summarizes those new laws passed by the Louisiana Legislature in 2012 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. 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 2012 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*

**Rei Lovetro** – downloaded legislative staff summaries from the Legislature's website, implemented all first and second round edits for entire book, and assembled all of the summaries in proper order for entire book

**Mike Landry** – selected and edited legislative staff summaries for inclusion in book, made second round of edits for entire book, and provided design and oversight

**Julie Chauvin** – selected and edited staff summaries for inclusion in book, and found summaries by other organizations

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

## Table of Contents

	<u>Page</u>
Constitution.....	1
Civil Code .....	2
Code of Civil Procedure.....	3
Code of Criminal Procedure .....	9
Code of Evidence .....	12
Children's Code.....	13
Multiple Codes or Titles .....	15
Uncodified.....	18
Title 1: General Provisions .....	18
Title 2: Aeronautics.....	18
Title 3: Agriculture and Forestry .....	19
Title 4: Amusements and Sports .....	20
Title 5: Auctions and Auctioneers .....	21
Title 6: Banks and Banking.....	21
Title 7: Bills and Notes .....	23
Title 8: Cemeteries.....	23
Title 9: Civil Code Ancillaries .....	25
Title 10: Commercial Laws .....	31
Title 11: Consolidated Public Retirement Systems.....	33
Title 12: Corporations and Associations .....	33
Title 13: Courts and Judicial Procedure .....	40
Title 14: Criminal Law.....	44
Title 15: Criminal Procedure.....	47
Title 16: District Attorneys .....	48
Title 17: Education.....	49
Title 18: Louisiana Election Code .....	55
Title 19: Expropriation.....	57
Title 20: Homesteads and Exemptions.....	58
Title 21: Hotels and Lodging Houses .....	59
Title 22: Insurance .....	59
Title 23: Labor and Workers' Compensation .....	74
Title 24: Legislature and Laws .....	80
Title 25: Libraries, Museums, and Other Scientific and Cultural Facilities .....	80
Title 26: Liquors – Alcoholic Beverages .....	80
Title 27: Louisiana Gaming Control Law .....	83
Title 28: Mental Health.....	84
Title 29: Military, Naval, and Veterans' Affairs .....	85
Title 30: Minerals, Oil, Gas and Environmental Quality .....	85
Title 31: Mineral Code.....	89
Title 32: Motor Vehicles and Traffic Regulation.....	89
Title 33: Municipalities and Parishes.....	96
Title 34: Navigation and Shipping.....	100
Title 35: Notaries Public and Commissioners.....	102
Title 36: Organization of Executive Branch of State Government .....	104

## Table of Contents

(continued)

	<u>Page</u>
Title 37: Professions and Occupations.....	104
Title 38: Public Contracts, Works and Improvements .....	116
Title 39: Public Finance .....	118
Title 40: Public Health and Safety .....	120
Title 41: Public Lands .....	127
Title 42: Public Officers and Employees .....	127
Title 43: Public Printing and Advertisements .....	130
Title 44: Public Records and Recorders.....	131
Title 45: Public Utilities and Carriers .....	132
Title 46: Public Welfare and Assistance .....	133
Title 47: Revenue and Taxation .....	136
Title 48: Roads, Bridges and Ferries.....	141
Title 49: State Administration.....	142
Title 50: Surveys and Surveyors .....	143
Title 51: Trade and Commerce .....	143
Title 52: United States .....	152
Title 53: War Emergency .....	152
Title 54: Warehouses .....	152
Title 55: Weights and Measures.....	152
Title 56: Wildlife and Fisheries .....	152
Appendix A: Summaries by Other Organizations	
Appendix B: Acts of 2012 Regular Session	

## **CONSTITUTION**

### **Right to Bear Arms (Act No. 874)**

Present constitution grants a right to each citizen to keep and bear arms and provides that this right shall not be abridged and provides that this right does not prevent the passage of laws to prohibit the carrying of weapons concealed on the person.

Proposed constitutional amendment provides that the right of each citizen to keep and bear arms is fundamental and shall not be infringed, provides that any restriction of this right shall be subject to a standard of strict scrutiny by a court in determining its constitutionality, and deletes the provision regarding the passage of laws with respect to concealed weapons.

The proposed amendment is to be submitted to the voters at the statewide election to be held on November 6, 2012.

(Amends Const. Art. I, §11)

### **Medicaid Trust Fund Protection (Act No. 873)**

Present constitution authorizes the legislature to establish a procedure to determine a projected deficit and a method for adjusting appropriations to eliminate the deficit.

Proposed constitutional amendment adds the Medicaid Trust Fund for the Elderly to the list of funds that are exempt from adjustment.

The proposed amendment is to be submitted to the voters at the statewide election to be held on November 6, 2012.

(Adds Const. Art. VII, Sec. 10(F)(4)(g))

### **Property Tax Exemptions for Spouses of Disabled Veterans (Act No. 875)**

Present constitution exempts from ad valorem tax, property receiving the homestead exemption which is owned by the spouse of a deceased veteran with a service connected disability having a disability rating of 100% by the U.S. Dept. of Veterans Affairs.

Proposed constitutional amendment requires the spouse claiming the tax exemption to own and occupy the property receiving the tax exemption, and extends the exemption to the spouse if the veteran passed away prior to the enactment of the exemption.

The proposed amendment is to be submitted to the voters at the statewide election to be held on November 6, 2012.

(Amends Article VII, Section 21(K)(1))

### **Property Tax Exemption for Certain Businesses (Act No. 871)**

Proposed constitutional amendment authorizes the granting of an exemption from ad valorem property tax for property owned or leased by, and used by, a "targeted non-manufacturing business" in the operation of its facility pursuant to a contract of exemption.

Proposed constitutional amendment provides that land underlying the facility and other property pertaining to the facility on which ad valorem taxes have previously been paid, inventories, consumables and property eligible for the manufacturing exemption in the present constitution shall not be exempt. Ad valorem taxes shall apply to the assessed valuation of the first \$10 million or 10% of fair market value of the business' property, whichever is greater.

Proposed constitutional amendment defines "targeted non-manufacturing business" as a business which has at least 50% of its total annual sales from sites in the state to out-of-state customers, or to in-state customers but the product or service is resold by the purchaser to an out-of-state customer for ultimate use, or to the federal government, or any combination thereof.

Proposed constitutional amendment authorizes the granting of exemption contracts only in parishes which have agreed to participate in the program.

The proposed amendment is to be submitted to the voters at the statewide election to be held Nov. 6, 2012.

(Adds Const. Art. VII, §21(L))

## **CIVIL CODE**

### **Child Visitation Rights (Act No. 763)**

New law provides that a grandparent not granted custody of a child may be granted reasonable visitation rights if the court finds that it is in the best interest of the child. Prior to making the determination, the court shall hold a contradictory hearing to determine whether the court should appoint an attorney to represent the child.

New law provides that if the parents of a minor child of the marriage have lived apart for a period of six months, in extraordinary circumstances the grandparents or siblings of the child may have reasonable visitation rights to the child during his minority, if the court in its discretion finds that such visitation rights would be in the best interest of the child. Extraordinary circumstances shall include a determination by a court that a parent is abusing a controlled dangerous substance.

Effective upon signature of the governor.

(Amends C.C. Arts. 136 and 137 and R.S. 9:344(D))

### **Rights of Passage and Utilities (Act No. 739)**

Old law provides that the owner of an estate that has no access to a public road may claim a right of passage over neighboring property to the nearest public road and provides that he is bound to indemnify his neighbor for the damage he may occasion. New law provides that the owner of the enclosed estate is also bound to compensate his neighbor for the right of passage acquired.

New law includes utilities in the right of passage for enclosed estates, and provides that new or additional maintenance burdens resulting from a utility servitude shall be the responsibility of the owner of the dominant estate. New law requires utility crossings to be constructed in compliance with federal and state standards in order to mitigate hazards. New law requires utility servitudes to coincide with the servitude of

passage unless a different location is less injurious to the servient estate. New law includes utilities in the definition of "servitude of passage".

Effective August 1, 2012.

(Amends C.C. Arts. 689, 690, 691, 692, 694, and 705; Adds C.C. Art. 696.1)

### **Counterletters and Simulations (Act No. 277)**

Old law provides that testimonial or other evidence may not be admitted to negate or vary an authentic act or an act under private signature, with limited exceptions in the interest of justice. New law retains old law but removes "simulation".

New law provides that testimonial or other evidence may be introduced to prove, or to rebut, the existence or a presumption of a simulation in all cases.

New law provides that if an act is one transferring immovable property, a counterletter is required to prove that an act is an absolute simulation, as between the parties.

New law provides that a counterletter is not required to prove an absolute simulation, even in the case of immovable property, in cases when a simulation is presumed or when necessary to protect the rights of forced heirs.

Old law provides that counterletters can have no effects against third persons in good faith. New law provides that the principles of recordation apply as to third persons if the counterletter involves immovable property.

Old law provides that forced heirs may attack a sale of immovable property by parents to their children as a disguised donation. New law repeals this provision of old law.

(Amends C.C. Arts. 1848 and 2028; Adds C.C. Art. 1849; Repeals C.C. Art. 2444).

### **Rent of Lands; Annuities (Act No. 258)**

New law provides for the revision of Civil Code Articles relative to the rent of lands and annuities.

New law deletes old law provisions relative to the rent of lands.

New law provides that a contract of annuity may provide for a transfer of a thing other than money and that payments may be made to a third person.

New law provides that the payments under an annuity contract may be for the lifetime of a designated natural person or for a period of time.

New law provides that in the absence of a special provision, the Title of Obligations in General and Conventional Obligations or Contracts, or the Title of Sales, or the Title of Donations may be applicable.

Old law provided for a limitation on the rate of interest for an annuity. New law is silent as to a limitation on the rate of interest.

New law provides that the recipient of payments under an annuity contract may be a natural or a juridical person.

Old law provided that a constituted annuity is essentially redeemable, but that the parties may provide that the annuity shall not be redeemed for a period up to 10 years. New law is silent as to the redemption of an annuity.

Old law provides for the redemption of an annuity when a party fails to fulfill his obligations. New law provides for the enforcement of the annuity charge.

New law provides that an annuity, without a designated term, for a natural person terminates upon the death of that person and that an annuity, without a designated term, for a juridical person is without effect.

Old law provided for the effect of the insolvency of the debtor. New law is silent as to the insolvency of the debtor.

New law provides that the rights and obligations of an annuity are assignable and heritable, in the absence of a contrary provision.

Old law provided for the right of the debtor's surety to compel redemption. New law is silent as to the surety's right to compel redemption.

New law provides that an annuity may be in favor of successive recipients.

Old law provides for interest on sums lent and on arrears of an annuity. New law is silent as to interest on sums lent and on arrears of an annuity.

New law provides that an annuity may be in favor of several recipients of payments.

New law provides for the existence of a recipient at the time of the execution of the annuity contract.

New law provides for the establishment of a charge upon an immovable as a security for the payments due under the contract.

New law provides that an annuity charge on an immovable is without effect as to third persons, unless the annuity contract establishing it is recorded in the conveyance records of the parish in which the immovable is located.

New law provides for the application of provisions in Chapter 1 of new law when no special provision has been made in Chapter 2 of new law.

New law provides that an annuity charge may not exceed 30 years or the life of a recipient who is a natural person.

Effective Jan. 1, 2013.

(Amends Title X of Book III of the Civil Code, to consist of C.C. Arts. 2778-2791)

## **CODE OF CIVIL PROCEDURE**

### **Venue for Suits Against Foreign Corporations and LLCs (Act No. 126)**

Old law provides that an action against a foreign corporation or foreign limited liability company licensed to do business in this state shall be brought in the parish where its "primary business office" is located as designated in its application to do business in the state, or, if no such designation is made, then in the parish where its primary place of business in the state is located. New law specifies that the action shall be brought in the parish of the "principal business establishment" of the foreign corporation or limited liability company.

(Amends C.C.P. Art. 42(4))

**Discovery and Admissibility of Expert Witness Testimony and Evidence in Class Actions (Act No. 115)**

New law provides for discovery of expert witness testimony or evidence and provides for the determination of admissibility of expert witness testimony or evidence for class certification purposes.

(Amends C.C.P. Art. 592(A)(3)(a)(ii))

**Transfer of Class and Other Actions (Act No. 713)**

New law provides that when two or more actions requesting the certification of a class are filed in two or more La. courts regarding the same transaction or occurrence at the same location, and such classes, if certified, would encompass one or more of the same plaintiffs suing in the same capacities against one or more of the same defendants in the same capacities, the defendant may have all such actions transferred to the district court where the event occurred.

New law provides that when two or more actions requesting the certification of a class are filed in two or more La. courts regarding multiple related transactions or occurrences in different locations and such classes, if certified, would encompass one or more of the same plaintiffs suing in the same capacities against one or more of the same defendants in the same capacities, the defendant may have all such actions transferred to the district court where the first suit was brought.

New law provides that within 30 days of the certification of a class by a different La. court regarding the same transaction or occurrence and encompassing one or more of the same plaintiffs suing in the same capacities against one or more of the same defendants in the same capacities, any court where a related putative class action is pending may, upon contradictory motion, in the interests of justice and for good cause shown, transfer the putative class action to the district where the related action has been certified.

Old law provides that no suit brought in the parish in which the plaintiff is domiciled, and in a court which is otherwise a court of competent jurisdiction and proper venue, shall be transferred to any other court. New law provides that domicile shall be the location pursuant to the general rules of venue where the plaintiff would be subject to suit had he been a defendant.

Old law defines the domicile of a natural person as the place of his habitual residence. New law defines the domicile of a juridical person as either the state of its formation or the state of its principal place of business, whichever is most pertinent to the particular issue, unless otherwise specifically provided by law.

New law shall have prospective application only and shall not apply to any action pending prior to the effective date of new law.

Effective August 1, 2012.

(Amends C.C.P. Art. 123(A) and C.C. Art. 38; Adds C.C.P. Arts. 593.1 and 593.2)

**Offer of Judgment (Act No. 557)**

Old law allowed a party at any time more than 30 days before the date of trial, without any admission of liability, to serve upon an adverse party an offer of judgment to settle all claims between them. New law changes the time period to 20 days before date of trial.

Effective August 1, 2012.

(Amends C.C.P. Art. 970(A))

**Special Motion to Strike (Act No. 449)**

Old law provided that the special motion to strike was required to be filed within 60 days of service of the petition, or in the court's discretion, at any later time upon terms the court deems proper, and that the motion was required to be noticed for hearing not more than 30 days after service unless the docket conditions of the court required a later hearing.

New law extends the period within which to file a motion to strike from 60 days to 90 days of service of the petition. New law also provides that if the plaintiff voluntarily dismisses the



action prior to the running of the delays for filing an answer, the defendant shall retain the right to file a special motion to strike and shall have the motion heard.

Effective August 1, 2012.

(Amends C.C.P. Art. 971(C))

### **Summary Judgment; Allocation of Fault (Act No. 257)**

Old law provides that a judgment on a motion for summary judgment shall be rendered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to material fact, and that mover is entitled to judgment as a matter of law. New law deletes the requirement that the pleadings, depositions, answers to interrogatories, and admissions be on file.

Old law provides that a summary judgment shall be rendered or affirmed only as to those issues set forth in the motion under consideration by the court at that time.

New law requires that only evidence admitted for purposes of the motion for summary judgment shall be considered by the court in its ruling on the motion.

Old law provides that a party or nonparty whom the court determines to be not negligent or at fault may not be considered in any subsequent allocation of fault, and prohibits evidence from being admitted at trial to establish the fault of that party or nonparty or from submitting the issue to the jury.

New law prohibits a party or nonparty whom the court determines to be not negligent or at fault from being considered in any subsequent allocation of fault.

New law prohibits the issue of allocation of fault relative to the party or nonparty determined to be not at fault from being included on the jury verdict form.

New law requires the court to specify in its judgment that a party or nonparty has been determined to be not at fault and that the party or nonparty is prohibited from being considered in

any subsequent allocation of fault, and provides that new law shall not apply if the court fails to specify the applicability of new law.

(Amends C.C.P. Art. 966(B), (E), and (F))

### **Summary Judgment, Service of Process, Writs of Cert, and More (Act No. 741)**

New law provides that the court should provide reasons on the record for denial of a motion for summary judgment either orally upon rendition or in writing sua sponte or upon request of a party within ten days of rendition.

New law provides for service by commercial courier.

Old law provided for dispositions of court of appeal judgments. New law provides for a five-day suspension of the finality of the denial by the supreme court of writs of certiorari to enable the applicant to apply for a stay.

Old law provided for payment of costs by indigent parties. New law provides for entry of judgment notwithstanding an indigent party's failure to pay costs.

Old law provided for the enforcement of rights of unemancipated minors by tutors appointed by a court of the state. New law also recognizes natural tutors as proper plaintiffs.

Effective August 1, 2012.

(Amends C.C.P. Arts. 683, 966, 1313, 2166, and 5188; Adds C.C.P. Art. 1313(D))

### **Service of Process through Entities (Act No. 521)**

Old law provides that when the sheriff has not made service within 10 days after receipt of the process or when the sheriff has been unable to make service, on motion of a party, the court shall appoint a person over the age of majority, not a party and residing within the state whom the court deems qualified to perform the duties required, to make service of process in the same manner as is required of sheriffs. New law also authorizes the court to appoint a juridical person which may then select an employee or agent of that juridical person to make service of process.

Effective August 1, 2012.

(Adds C.C.P. Art. 1293(C))

**Service of Process on Attorneys' Staff (Act No. 242)**

Old law provided that personal service of pleadings on an attorney or office associate shall constitute valid service of process. New law adds that personal service on a secretary, receptionist, legal staff, administrative staff, or paralegal employed by the attorney at the address of record shall also constitute valid service.

Effective August 1, 2012.

(Amends C.C.P. Art. 1314(B))

**Stay of Discovery (Act No. 664)**

New law provides that, upon motion of the district attorney in a criminal proceeding, a court having jurisdiction over any related pending civil action or proceeding may, in the interests of justice and for good cause shown after a contradictory hearing, stay all or a portion of discovery sought in the civil action or proceeding. New law requires the contradictory hearing to be held by the court in the civil action within thirty days of the filing of the motion for stay.

New law provides that good cause shall include, but is not limited to, a finding by the court that such discovery will adversely affect the ability of the district attorney to conduct a related criminal investigation or the prosecution of a related felony criminal case.

New law provides that a party to the stayed discovery proceeding may move to have the stay subsequently lifted for good cause. New law provides that within 30 days of disposition in the trial court, the district attorney shall file an ex parte motion consenting to terminating the stay.

New law provides that the time during which the civil proceeding is stayed pursuant to new law shall not be used to compute the three-year abandonment period of the civil matter.

New law does not apply to petitions or proceedings for divorce, custody, child support, visitation, and protective orders.

Effective August 1, 2012.

(Adds C.C.P. Art. 1426.1)

**Special Rules in Environmental Cases (Act No. 754)**

New law provides for the development of an environmental management order in civil actions alleging environmental damage. The order shall provide terms for access to the affected property, investigation and environmental testing, sampling and testing protocols, and time frames for testing and sampling.

New law provides that if any party admits liability for environmental damage in an action for remediation of an oilfield site, the party may elect to limit the admission of liability to responsibility for implementing the most feasible plan to evaluate, and if necessary, to remediate all or a portion of the contamination.

New law provides that if an admission is limited to a party's responsibility for implementing the most feasible plan, the admission shall not be construed as an admission of liability for damages nor shall such an admission result in any waiver of any rights or defenses of the admitting party.

New law requires the court to refer the matter to DNR to conduct a public hearing to approve a plan which DNR determines to be the most feasible plan to evaluate or remediate environmental damage.

New law provides that an admission of responsibility, the plan approved by the department, and all written comments provided by the agencies shall be admissible as evidence in any action in accordance with existing law.

New law provides that a party making a limited admission may file it into the court record no later than 90 days after the completion of the environmental testing set forth in the environmental management order, and that any other party who makes a limited admission shall file it in to the court record within 60 days of the filing of the first limited admission, but no later

than 90 days after the completion of the environmental testing set forth in the environmental management order.

New law provides that a party admitting responsibility shall be required to deposit with the department funds to cover the cost of the department's review of the plan, including the cost of holding a public hearing.

Old law provides for the party submitting evidence to be reimbursed the costs associated with submission of the evidence. New law provides that a party admitting responsibility shall reimburse the plaintiff the costs which the court deems recoverable within 30 days of the department's filing of the plan.

New law shall not establish primary jurisdiction with DNR.

New law shall not apply to any case in which the court on or before May 15, 2012, has issued or signed an order setting the case for trial, regardless of whether such trial setting is continued.

Effective August 1, 2012.

(Adds C.C.P. Arts. 1552 and 1563)

#### **Consolidation of Actions (Act No. 194)**

Old 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. Old law further 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.

New law provides that the court may consolidate a case when a trial date has been set if it is in the interest of justice. New law deletes the requirement of written consent of each section or division of the court in order to consolidate actions pending in the same court. New law provides that the contradictory hearing may be waived upon consent of all of the parties.

(Amends C.C.P. Art. 1561(A))

#### **Social Security Number Required on Judgments and Liens (Act No. 20)**

Old law provides for the required information of the judgment debtor to be included in money judgments, including the judgment debtor's date of birth and the last four digits of the judgment debtor's social security number.

New law provides for a recording fee not to exceed \$25 for judgments or liens which do not contain the required social security number for purposes of affidavits of distinction. New law does not apply to an affidavit of distinction recorded in order to distinguish the affiant from a debtor named in a judgment or lien which was recorded prior to July 1, 2012.

Effective July 1, 2012.

(Adds C.C.P. Art. 1922(C))

#### **Attachment of Depositions to Record on Appeal (Act No. 171)**

New law provides that depositions made a part of a record on appeal may be attached in a reduced format or in an electronic format approved by the court.

(Amends C.C.P. Art. 2128; Adds C.C.P. Art. 2128.1)

#### **Electronic Notice of Judgments (Act No. 290)**

New law provides for notices of judgment to be transmitted electronically via e-mail or facsimile.

Old law provided delays for applying for rehearings in appellate courts. New law repeals old law.

Effective January 1, 2013.

(Amends C.C.P. Arts. 2166 and 2167 and Ch.C. Art. 1143; Repeals R.S. 13:4446)

#### **Notices of Seizure (Act No. 395)**

Old law provides procedures for the seizure of property of a judgment debtor to satisfy a money judgment, and requires the sheriff to serve a

written notice of seizure upon the judgment debtor. New law provides that such notice of seizure shall be substantially similar to the form used in general seizure cases.

Effective August 1, 2012.

(Amends C.C.P. Art. 2293(B)(1))

### **Eviction Proceedings (Act No. 19)**

Old law provides that the purchaser who has been evicted from property sold under a writ of fieri facias shall have a right of reimbursement against the judgment debtor and the seizing creditor, and that if judgment is obtained against both, the purchaser shall execute the judgment first against the judgment debtor and then against the seizing creditor, if his judgment remains unsatisfied.

New law provides that the purchaser's right of reimbursement against the seizing creditor is limited to the value received by the seizing creditor from the sheriff's sale of the property.

(Amends C.C.P. Art. 2379)

### **Notices of Seizure and Sale (Act No. 127)**

Old law provides for service of notice of a writ of seizure and sale upon a defendant. New law provides for service of notice also upon occupants of the seized premises.

(Amends C.C.P. Art. 2724(A))

### **Small and Very Old Successions (Act No. 618)**

Old law defined "small succession" as the succession or the ancillary succession of a person who has died at any time, leaving property in Louisiana having a gross value of \$75,000 or less, successions of persons whose valued as of the date of death. New law adds if the date of death occurred at least 25 years prior to the date of filing of a small succession affidavit, leaving property in Louisiana of any value.

Old law provided circumstances under which it is not necessary to open judicially the small succession of a person domiciled in Louisiana who died intestate, or domiciled outside of Louisiana whose testament has been probated by

court order of another state. New law includes persons domiciled outside of Louisiana who died intestate.

Old law provided certain procedures, management, and effects for immovable property, subject to a small succession proceeding, that is damaged by a disaster or catastrophe for which a declaration of emergency or federal declaration of disaster or emergency was issued, such provision to expire on Jan. 1, 2013. New law repeals termination date.

Old law provided procedures for when it is not necessary to open judicially a small succession and provides for the attachments and contents of the affidavit, which includes an attachment consisting of certified copies of the testament and the probate order of another state, if the affidavit is being used in lieu of an ancillary probate proceeding. New law deletes the requirement to include an attachment consisting of certified copies of the testament and the probate order of another state.

New law provides for the procedures and content for filing an affidavit for a small succession for a person who is domiciled outside of Louisiana and who died testate.

Effective upon signature of the governor.

(Amends C.C.P. Arts. 3421, 3431 and 3432; adds C.C.P. Art. 3432.1; repeals C.C.P. Art. 3422.1(G))

### **Orleans Automated Traffic Enforcement Appeals (Act No. 502)**

New law provides that the First or Second City Court of New Orleans shall have jurisdiction of appeals by any person aggrieved by a decision of the Traffic Court of New Orleans concerning a traffic violation enforced by an automated traffic enforcement system. New law provides that such appeals shall be made within 30 days from the date of decision, shall extend to the law and the facts, and shall be tried upon the records made and the evidence offered in traffic court.

New law provides that the traffic court shall have exclusive jurisdiction of appeals by any person aggrieved by an administrative hearing

officer's decision concerning a traffic violation enforced by an automated traffic enforcement system. New law provides that such appeals shall be made within 30 days from the date of decision, and that the traffic court shall have de novo review over such appeals.

New law requires the traffic court and the First and Second City Court to adopt rules for taking, hearing, and deciding appeals related to the traffic violations, and provides that the traffic violations maintain their civil penalty status.

Effective August 1, 2012.

(Adds C.C.P. Arts. 4850.2 and 4857)

### **Venue in Justice of the Peace Courts (Act No. 392)**

New law makes existing rules of venue applicable to suits brought in justice of the peace courts.

Effective August 1, 2012.

(Amends C.C.P. Art. 4916)

### **Service of Process in Justice of the Peace Courts (Act No. 666)**

New law provides that justice of the peace courts may make service of citation or other process by the court by certified mail, with return receipt requested, when the costs for service are posted with the court.

New law provides that if the properly addressed certified mail return receipt reply form is signed by the addressee who is the defendant, service shall be considered personal service. New law provides that if such return receipt reply form is signed by a person other than the defendant, such service shall be considered domiciliary service.

Effective August 1, 2012.

(Adds C.C.P. Art. 4919(D))

## **CODE OF CRIMINAL PROCEDURE**

### **Electronic Applications for Search Warrants (Act No. 169)**

Old law provides for the issuance of search warrants based upon oral or written testimony. New law provides that a search warrant may issue upon probable cause established to the satisfaction of the judge by the electronic testimony of a credible person reciting facts establishing the cause for issuance of the warrant.

New law provides for the contents of the application for the warrant and provides procedures for the issuance of warrants based upon electronic testimony. New law requires the applicant to reduce the request to writing and include a written reproduction in the file within 48 hours of the issuance of the warrant.

New law provides that the electronic testimony shall serve as the equivalent of the applicant having been administered an oath or affirmation, swearing that the facts contained in the electronic testimony are true and correct to the best of his knowledge, subject to the penalties for perjury or false swearing.

New law provides that if the judge finds probable cause and approves the issuance of the warrant, he shall affix his electronic signature to the warrant and return it immediately to the applicant.

New law provides that telephonic communication between the judge and the affiant relatively contemporaneously with the application for the warrant shall satisfy the requirements of existing law regarding electronic applications for all warrants.

Effective August 1, 2012.

(Adds C.Cr.P. Art. 162.2)

### **Examination and Testing of Evidence Seized by Search Warrant (Act No. 44)**

New law provides that the examination or testing of any property or bodily samples seized pursuant to a search warrant shall be at the

direction of the attorney general, the district attorney, or the investigating agency.

New law provides that examination or testing may be conducted at any time before or during the pendency of any criminal proceeding in which the samples may be used as evidence.

Effective August 1, 2012.

(Adds C.Cr.P. Arts. 163(D) and 163.1(D))

#### **Anti-Stalking Protective Orders (Act No. 197)**

New law authorizes the issuance of protective orders against persons convicted of stalking, and provides that if the court determines that a defendant charged with the crime of stalking poses a threat or danger to the victim, the court shall issue a protective order, as a condition of bail, requiring the defendant to refrain from going to the residence or household of the victim, the victim's school, and the victim's place of employment or otherwise contacting the victim in any manner.

New law provides that certain portions of the protective order directing the defendant to refrain from abusing, harassing, or interfering with the person may be effective for an indefinite period of time.

New law further provides that the indefinite term may be modified by the court after a contradictory hearing, on the motion of any party and for good cause shown if a good faith effort has been made to provide notice of such hearing to the victim, his designated agent, or his counsel, and either: (1) the victim, his agent, or his counsel appears at the hearing or provides written waiver of such appearance; or (2) after a good faith effort has been made to notify the victim, the victim cannot be located.

Effective August 1, 2012.

(Amends R.S. 14:40.2, R.S. 46:2136, and C.Cr.P. Art. 327.1; Adds C.Cr.P. Art. 335.2)

#### **No Release Crimes (Act No. 773)**

New law provides that any defendant who has been arrested for any of various crimes shall not be released by the court on his own recognizance or on the signature of any other

person, including vehicular homicide and injuring or killing of a police animal.

Effective August 1, 2012.

(Adds C.Cr.P. Art. 334.4)

#### **Bail (Act No. 748)**

New law provides that in cases where the district attorney dismisses an indictment or information and institutes a subsequent indictment or information for the same offense or for a lesser offense based on the same facts, the court shall reinstate any bail discharged when the district attorney dismissed the initial indictment or information if the surety consents to the reinstatement expressly and in writing.

Effective August 1, 2012

(Adds C.Cr.P. Art. 334.4)

#### **Notice of Judgment of Bond Forfeiture (Act No. 59)**

New law provides that the notice of the signing of judgment of bond forfeiture may also be provided to the commercial surety at the address registered with the Dept. of Insurance.

Effective upon signature of governor (May 11, 2012).

(Amends C.Cr.P. Art. 349.3(A)(1))

#### **Grand Juries (Act No. 119)**

Old law provided that upon the request of the district attorney, the court shall order one additional grand jury to be impaneled. New law authorizes the impaneling of one or more additional grand juries.

Effective upon signature of governor (May 14, 2012).

(Amends C.Cr.P. Art. 415.1)

#### **Arrest Warrants (Act No. 216)**

Old law provided that when an information is filed against a defendant who is not in custody or at large on bail for the offense charged, the court shall issue a warrant for the defendant's arrest.

Old law provides that an arrest warrant may only be issued after an affidavit has been filed describing the nature of the offense and a judicial determination of probable cause has been made.

New law provides that a warrant for arrest based on an information filed against a defendant may only be issued when accompanied by one or more affidavits which establish probable cause.

Effective August 1, 2012.

(Amends C.Cr.P. Art. 496)

#### **Grand Jury Disclosure to Defendant; Discovery (Act No. 842)**

New law provides for certain exceptions to grand jury secrecy, including disclosure to other prosecutorial entities and experts of material favorable to the defendant and any statement of a witness that is inconsistent with the witness's grand jury testimony.

New law adds that the court may allow additional time to respond to pretrial motions and that the court is to fix the time to respond to a pretrial motion requesting discovery or disclosure of certain other information.

New law adds that disclosure to the defendant of the defendant's criminal record must also include the records of a codefendant or witness to be called by the state, and that the court will set the time for this disclosure.

Old law provided that in certain circumstances the court is to order the district attorney to permit the defendant to inspect, examine, and test documents and other items. New law makes old law applicable to an expert working with the defendant.

New law provides that if the defendant requests disclosure by the state of the criminal records of the state's witnesses, then the defense must disclose the name and birth date of its witnesses.

Old law provided that discovery is applicable in the district courts following the filing of an indictment or bill of information. New law adds the parish and city courts, beginning with the filing of an affidavit charging the offense.

Effective August 1, 2012.

(Amends C.Cr.P. Art. 521, 717, 718 and 718 and 729.6; adds C.Cr.P. Art. 434.1 and 725.1)

#### **Obscenity Evidence (Act No. 404)**

New law provides that in any criminal proceeding, any property or material that is alleged to constitute evidence of obscenity that is unlawfully possessed, video voyeurism, or pornography involving juveniles shall remain in the care, custody, and control of the court or the district attorney.

New law provides that the court shall deny any request by the defendant to copy, photograph, duplicate, or otherwise reproduce such evidence, provided that the district attorney makes the property or material reasonably available to the defendant, providing ample opportunity for the inspection, viewing, and examination at the office of the district attorney by the defendant, the defendant's attorney, and any individual the defendant may seek to qualify to furnish expert testimony at trial.

Effective August 1, 2012.

(Adds C.Cr.P. Art. 718.1; Repeals R.S. 46:1845)

#### **Pornographic or Obscene Evidence (Act No. 558)**

New law provides that in any criminal proceeding, any property or material that is alleged to constitute evidence of pornography involving juveniles, video voyeurism, or certain instances of obscenity is to remain in the care, custody, and control of the court or the district attorney. New law provides that the court is to deny any request by the defendant to copy, photograph, duplicate, or otherwise reproduce such evidence, provided that the district attorney makes the property or material reasonably available to the defendant providing ample opportunity for the inspection, viewing, and examination at the office of the district attorney by the defendant, the defendant's attorney, and any individual the defendant may seek to qualify to furnish expert testimony at trial.

Effective upon signature of the governor.

(Adds C.Cr.P. Art. 718.1; repeals R.S. 46:1845)

### **Minimum Mandatory Sentences (Act No. 160)**

Old law provides that sentences for certain offenses shall be served without benefit of parole, probation, or suspension of sentence (minimum mandatory sentences).

New law provides that if a felony or misdemeanor specifies a sentence with a minimum term of confinement or a mandatory minimum fine, or that a sentence shall be served without benefit of parole, probation, or suspension of sentence, the court, upon conviction, in sentencing the offender shall impose the sentence as provided in the penalty provisions for that offense, unless the defendant pled guilty pursuant to a negotiated plea agreement, or entered into a post-conviction agreement, which specifies that the sentence shall be served with benefit of parole, probation, or suspension of sentence or specifies a reduced fine or term of confinement.

New law provides that if such agreements are entered into, then the court, at sentencing, shall not impose a lesser term of imprisonment, lesser fine, or lesser period of sentence served without benefit of parole, probation, or suspension of sentence than that expressly provided for under the terms of the plea or post-conviction agreement.

New law provides that no agreement shall provide for parole eligibility earlier than provided by existing law.

New law does not apply to sentences for convictions of sex offenses or crimes of violence.

Effective upon signature of governor (May 17, 2012).

(Adds C.Cr.P. Art. 890.1)

### **CODE OF EVIDENCE**

#### **Judicial Testimony (Act No. 563)**

New law prohibits the issuance of a subpoena or court order that requires a judge or his

representative to appear or testify in any civil, criminal, or juvenile matter, including pretrial discovery or administrative hearing, without a contradictory hearing to determine if the information is protected from disclosure by the judicial deliberative process privilege.

New law provides the following requirements to be determined in the contradictory hearing:

1. The information sought is essential to the case of the party seeking the information and is not merely peripheral, cumulative, or speculative.
2. The purpose of seeking the information is not to harass the judge, nor for the mere purpose of seeking recusal of the judge.
3. With respect to a subpoena, the subpoena lists the information sought with particularity, is reasonably limited as to subject matter and period of time, and gives timely notice.
4. There is no practical alternative means of obtaining the information.

New law provides that failure to object timely to a party's non-compliance with the provisions of new law constitutes a waiver of the procedural protections but does not constitute a waiver of any privilege.

New law provides that the procedural protections afforded by new law extend to any judge of any court provided for by Article V of the La. Constitution and to any commissioner or special master of such court.

Effective upon signature of the governor.

(Adds C.E. Art. 519)

#### **Hearsay and Administrative Sanctions Forms (Act No. 158)**

Old law provides procedures whereby the court determines whether a person is eligible for the imposition of an administrative sanction for a technical violation of probation.

New law provides that any notification of administrative sanctions form which records the administrative sanctions proceedings shall be considered "hearsay" and, therefore, not admissible as evidence.

Effective August 1, 2012.



(Amends C.E. Art. 803(8)(b)(i))

## **CHILDREN'S CODE**

### **Duty to Report Child Sexual Abuse (Act No. 268)**

New law provides that any person who is 18 years of age or older and who witnesses the sexual abuse of a child and knowingly or willfully fails to report the abuse to law enforcement or DCFS shall be fined not more than \$10,000, imprisoned for not more than five years, or both.

New law requires the reporting of child abuse or neglect to be made to DCFS through the designated state child protection reporting hotline telephone number.

Effective upon signature of governor (May 25, 2012).

(Amends R.S. 14:403(A) and Ch.C. Art. 603 and 610)

### **Coaches (Act No. 380)**

Old law provides a list of people who by virtue of their job are legally required to report to the authorities any suspicion of child abuse.

New law adds school coaches, including but not limited to public technical or vocational school, community college, college, or university coaches, and coaches of intramural or interscholastic athletics, to the list of mandatory reporters.

(Adds Ch.C. Art. 603(15)(j))

### **Children in Need of Care (Act No. 730)**

Old law provided the grounds that must be alleged for the assertion that a child is in need of care, including conduct of the parent that constitutes a crime against the child or any other child of that parent. New law removes the limitation that the crime committed by the parent is against their own child.

New law provides for when the child shall be present at Child in Need of Care (CINC) hearings, adjudication hearings, disposition hearings, case review hearings, and permanency hearings and authorizes the child to testify and specifies how he may testify.

Old law provided that efforts to reunify the parent and child are not required if a court of competent jurisdiction has determined that the parent has committed murder or manslaughter of another child of the parent or has committed a felony that results in serious bodily injury to the child or another child of the parent. New law removes the limitation that the crime committed by the parent is against their own child.

New law provides specificity for the case plan for transitioning to placement of a child 15 years or older and specifies who shall help develop the plan.

New law adds that, at least six months prior to a child's release, the department shall develop, in collaboration with the child, an individualized thorough transitional plan which identifies the programs, services and facilities used to assist the child's successful release. New law requires the department to provide a copy of the plan to the court, the child's counsel, and the district attorney.

New law adds that in cases where the child's parent's parental rights to one or more of the child's siblings have been terminated due to neglect or abuse, and prior attempts to rehabilitate that parent have been unsuccessful, the court must determine that current attempts to reunite the family are not required.

Old law provided for the child's possession of a handgun or semiautomatic handgun under circumstances reasonably tending to exclude any lawful purpose as one of the allegations which may be made supporting a family's being in need of care. New law repeals old law, as firearms offenses are now part of delinquency offenses.

Effective August 1, 2012.

(Amends Ch.C. Art. 606, 623, 661, 672.1, 675, 679, 695, 696, 702, 705, 706, 776, 853, 908, 1015, 1030, 1211; repeals Ch.C. Art. 730(10))

### **Family in Need of Services (Act No. 660)**

New law requires that allegations from which a family may be determined in need of services must include asserting whether the child is currently under the supervision of any state or local entity, including but not limited to, the DCFS or the DPS&C, youth services, or the office of juvenile justice.

New law adds that any person alleging that a family is in need of services shall use all appropriate and available resources before filing a complaint, and shall provide documentation of all steps taken at the time such a complaint is filed.

New law provides that both the complaint and the petition shall set forth with specificity whether the child is currently under the supervision of any state or local entity.

Effective August 1, 2012.

(Amends Ch.C. Art. 730 and 731; adds Ch.C. Art. 749(A)(5))

### **Pre-Trial Detention of Juveniles (Act No. 124)**

Old law provides for the continued custody of a juvenile prior to adjudication. Old law provided that if the child is continued in custody, the adjudication hearing shall commence within 30 days of the appearance to answer the petition.

New law adds that if the child is charged with a crime of violence and the child is in continued custody, the adjudication hearing shall commence within 60 days of the appearance to answer the petition.

Effective upon signature of governor (May 14, 2012).

(Amends Ch.C. Art. 877(A))

### **Intrafamily Adoption (Act No. 603)**

Old law provided that a copy of the petition for intrafamily adoption together with all exhibits was required to be served by registered or certified mail, return receipt requested, postage prepaid, or by commercial courier when the person to be served was located outside of this

state, and properly addressed to the department. New law repeals old law.

Old law provided that if a parent upon whom service was required did not reside within this state, service was required to be made by certified or registered mail to the address indicated in the petition, return receipt required, not less than 30 days prior to commencement of the hearing on the petition. New law provides that service shall be made by certified or registered mail, return receipt requested, postage prepaid, or by commercial courier, to such address within such time.

Old law provides for the form of the notice required to be served on a parent whose parental rights have not been terminated. New law provides that the notice shall inform the parent of the importance of contacting an attorney so that the parent will be informed of his rights.

New law specifies that the parent shall file an answer stating his opposition, and that the parent must do so to have an opportunity to present his opposition at a hearing to the adoption.

Old law provides procedures for service of the petition for adoption on resident and nonresident parents, and curators ad hoc appointed for absent parents. New law provides that any social security numbers contained in the petition or any exhibits being served may be redacted.

Old law authorized DCFS to investigate any proposed intrafamily adoption, and required DCFS to investigate when ordered to do so by the court. New law provides that DCFS shall not investigate a proposed intrafamily adoption except upon order of the court.

Effective August 1, 2012.

(Amends Ch.C. Arts. 1247-1250 and 1252)

### **Emergency Admission to Mental Health Facility (Act No. 489)**

New law authorizes a family psychiatric mental health nurse practitioner or psychologist to execute an emergency certificate for admission to a treatment facility of a minor suffering from mental illness or substance abuse.

Old law authorizes any physician to execute an emergency certificate only after an actual examination of a minor alleged to be mentally ill or suffering from substance abuse who is determined to be in need of immediate medical treatment in a treatment facility because the examining physician determines him to be dangerous to himself or others or to be gravely disabled.

New law adds authorization for a family psychiatric mental health nurse practitioner or psychologist to execute an emergency certificate that a minor is in need of immediate medical treatment in a treatment facility, after examination of the minor and a determination that such minor is a danger to himself or others.

(Amends Ch.C. Arts. 1421, 1422, and 1423; Adds Ch.C.Art. 1404(23) and (24))

## **MULTIPLE CODES OR TITLES**

### **Service of Process and Secretary of State (Act No. 544)**

Old law provided that for service of process on a foreign partnership, the secretary of state must send original papers either by registered mail with return receipt requested or by commercial courier. New law adds certified mail as an option and removes the requirement of requesting a return receipt.

Old law provided that the secretary of state may obtain service of process on a foreign corporation or limited liability company by sending original papers either by registered mail with return receipt requested or by commercial courier. New law adds certified mail as an option and removes the requirement that return receipt be requested.

Old law provided that the secretary of state's service of process on an insurer's attorney-in-fact may be by registered mail with return receipt requested, postage prepaid, or by commercial courier. New law provides that the secretary of state may use registered or by certified mail, and removes the requirement that return receipt be requested.

Old law provided that the secretary of state may obtain service of process on a foreign insurer by prepaid registered mail or by commercial courier. New law removes the requirement for prepaid mailing and authorizes the secretary of state to use either registered or certified mail, or commercial courier, in order to obtain service of process on a foreign insurer.

Old law provided for the secretary of state to obtain service of process on an unauthorized insurer either by prepaid registered or certified mail with return receipt requested or by commercial courier. New law removes the requirement for prepaid mailing, authorizes the secretary of state to use either registered or certified mail, or commercial courier to obtain service of process on an unauthorized insurer, and removes the requirement that return receipt be requested.

Old law provided that the acceptance by an owner of a public carrier vehicle of a certificate issued by a municipality or parish shall be deemed appointment, by such owner, of the secretary of state to be his true and lawful attorney for service of process. Old law provides for any process or pleadings served upon the secretary of state to be by duplicate copies, one copy of which is to be forwarded by the secretary of state to public carrier vehicle owners who are out of state by registered mail or commercial courier. New law adds that a copy of served documents may also be forwarded by certified mail.

Effective August 1, 2012.

(Amends R.S. 9:3424, R.S. 13:3471, R.S. 22:177, 335, and 442, and R.S. 45:200.8)

### **Admissibility of Copies of Business Records; Authenticity of Certain Agreements (Act No. 505)**

Old law provides that whenever certain reproduced business and financial institution records are certified or made in the regular course of business, those records shall be deemed an original or authentic copy of the original record or document for purposes of its admissibility. New law specifies that the reproduced records shall be received in evidence

with the same force and effect as though the original document were produced.

Old law provides that certain security agreements and reproductions of those security agreements need not be executed before a notary, but shall be deemed authentic for purposes of executory process. New law includes as authentic evidence a reproduction of a single writing that evidences both an obligation to pay and a security interest.

Effective August 1, 2012.

(Amends R.S. 13:3733 and 3733.1 and C.C.P. Art. 2636)

### **Alternative Oyster Culture Permits (Act No. 293)**

New law authorizes the Dept. of Wildlife and Fisheries to issue an alternative oyster culture permit (AOC permit) authorizing alternative oyster culture activities within the confines of an existing oyster lease on a state water bottom. The permit may only be issued to a leaseholder and, upon written authorization from the leaseholder, to a person who holds a commercial fishing license and oyster harvester license. The permit is for 10 years or until the end of the water bottom lease, whichever occurs first, and is transferrable only with and to the extent that a lease is transferrable.

New law provides that no coastal use or drilling permit holder shall be liable to any holder of an AOC permit for any damage to equipment or materials or oysters involved in alternative oyster culture activities, if the coastal use or drilling permit, or any modification to the permit, was issued prior to the time the AOC permit was issued and if such damage occurs from the conduct of any activity authorized by the coastal use or drilling permit, except to the extent that the damage arises from violation of any state or federal law.

New law authorizes the department to specify permissible equipment and materials, and requires that all equipment and materials comply with U.S. Coast Guard regulations and all state and federal fishing laws.

New law authorizes the department to require submission of data to the department, to require liability insurance and reasonable removal bond, and to terminate the permit upon repeated violations of the permit.

New law indemnifies the state, political subdivisions of the state, the federal government, or any agency, agent, contractor, or employee of any of these from damage resultant from alternative oyster culture activities and from damage to alternative oyster culture activities arising from integrated coastal protection activities.

New law provides that all AOC permits shall be subordinate to the rights and responsibilities of the state, any political subdivision of the state, the federal government, or any agency or agent thereof.

Effective upon signature of governor (May 25, 2012).

(Amends R.S. 49:214.34(A)(3); Adds R.S. 41:1705(16) and R.S. 56:431.2)

### **DED May Contract with Procurement Processing Company (Act No. 800)**

New law authorizes the secretary of the Dept. of Economic Development (DED) to enter into a contract with a procurement processing company which recruits purchasing companies to La. The contract shall provide for incentive rebate payments in exchange for the generation of new state tax revenue from new taxable sales to a purchasing company which is managed by the procurement processing company.

(Adds R.S. 39:100.126 and R.S. 47:6301)

### **OFI License Renewed Schedules (Act No. 220)**

New law changes various renewal dates to a calendar year renewal for licenses issued by the Office of Financial Institutions under the Sales of Checks and Money Transmission Act, the La. Consumer Credit Law, and the La. Pawnshop Act and makes changes for failure to pay renewal fees.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 6:1033 and 1040; R.S. 9:3561.1, and R.S. 37:1785 and 1786)

#### **Injunctions Against Banks (Act No. 582)**

New law provides that a bank shall only be required to comply with injunctions, preliminary injunctions, and TROs that are served personally on a registered agent of the bank. New law provides that such injunctions and orders shall be effective only against accounts, safe deposit boxes, or other assets in the name of one or both of the spouses or any other entity specifically listed in the injunction or order. New law provides for limited liability of the bank for compliance with an injunction or order.

Effective August 1, 2012.

(Amends R.S. 9:371 and C.C.P. Art. 3604)

#### **Public Carrier Vehicles and Reconstructed Title (Act No. 566)**

New law prohibits issuance of a certificate to operate as a motor carrier of passengers to an applicant which uses or will use any vehicle with a reconstructed title, or an equivalent title issued pursuant to the laws of another state, in the operation of such business.

New law prohibits issuance by a municipality or parish of a certificate to operate as a public carrier vehicle to an applicant which uses or will use any vehicle with a reconstructed or an equivalent title issued pursuant to the laws of another state.

New law prohibits issuance of a registration certificate or license plate to operate as a taxicab to any vehicle issued a reconstructed title or which has ever been issued a title marked as salvage, rebuilt, junk, total loss, or any equivalent certificate of title in this state or any other state.

Effective October 15, 2012.

(Amends R.S. 32:707 and R.S. 45:164, 178, and 200.3; adds R.S. 47:469.1)

#### **Former Legislators and Discovery (Act No. 519)**

New law extends the hearing requirements and other existing law provisions applicable to a subpoena of a state legislator to a former legislator in his former capacity as a lawmaker.

Old law provides certain rules of discovery in: civil proceedings (C.C.P. Art. 1469(5)), criminal proceedings (C.Cr.P. Art. 740), and administrative hearings (R.S. 49:956.1). New law extends the application of these discovery provisions to a former legislator in his former capacity as a lawmaker.

Effective August 1, 2012.

(Amends C.C.P. Art. 1469(5), C.Cr.P. Art. 740, R.S. 13:3667.3(B), and R.S. 49:956.1)

#### **Reporting of Child Sexual Abuse (Act No. 614)**

New law provides that a mandatory reporter who knowingly and willfully fails to report the sexual abuse of a child, or the abuse or neglect of a child which results in serious bodily injury, neurological impairment, or death of a child, shall be fined not more than \$3,000, imprisoned for not more than three years, or both.

New law provides that any person who is 18 years of age or older and who witnesses the sexual abuse of a child and knowingly or willfully fails to report the abuse to law enforcement or DCFS shall be fined not more than \$10,000, imprisoned for not more than five years, or both.

New law removes the provision which requires mandatory reporters to be "performing their occupational duties" in order to be considered a "mandatory reporter".

New law expands the definition of "teaching or child care provider" to include any person who assists in the teaching, training, and supervision of a child, bus drivers, coaches, professors, technical or vocational instructors, technical or vocational school staff members, college or university administrators, college or university staff members, or any person who provides teaching or child care services in a voluntary capacity.

New law adds "organizational or youth activity provider" to the list of mandatory reporters.

Prior law required reports of child abuse or neglect to be made to the local child protection unit of DCFS.

New law requires the reporting of child abuse or neglect to be made to DCFS through the designated state child protection reporting hotline telephone number.

Effective upon signature of governor.

(Amends R.S. 14:403(A) and Ch.C. Arts. 603, 610)

### **Campaign Finance Disclosure (Act No. 609)**

Old law, relative to campaign finance disclosure, provides the Supervisory Committee on Campaign Finance Disclosure (which is the Board of Ethics) with the authority to investigate apparent or alleged violations of the Campaign Finance Disclosure Act (CFDA).

New law provides that an adjudicatory panel of the Ethics Adjudicatory Board conducts an adjudicatory hearing in accordance with the provisions of the ethics code. New law authorizes the EAB or panel thereof to subpoena witnesses, administer oaths, compel production of documents, and to do all as necessary to effect the provisions of the CFDA.

Effective upon signature of governor (June 7, 2012).

(Amends R.S. 18:463, 1505.4, 1511.4, and 1511.5; Adds 18:1511.4.1)

## **UNCODIFIED**

### **Ethics Violation Cure (Act No. 703)**

New law provides an exception to ethics code provisions to allow a licensed physician who is a member or former member of the board of commissioners for St. Tammany Parish Hospital Service District No. 1 who is or was the member elected by the medical staff to contract, subcontract with another provider who contracts, own an interest in an entity that contracts, or

accept employment with St. Tammany Parish Hospital, provided that the contract is related to the licensed physician's practice of medicine or expertise as a licensed physician. New law provides that the licensed physician shall recuse himself from participating in any transaction before the board relating to any contracts entered into by him, by a provider with which he subcontracts, or by any entity in which he owns an interest.

New law requires each contract authorized by new law and entered into while the physician is a member of the board of commissioners and for two years following the termination of his service on the board to be disclosed to the Board of Ethics within 30 days of the execution of the contract.

New law provides that it is remedial, curative, and procedural and is to be applied retroactively as well as prospectively.

Effective upon signature of governor (June 11, 2012).

(Adds §2(B) of Act No. 180 of the 1984 R.S.)

## **TITLE 1: GENERAL PROVISIONS**

### **When to Wear Pink (Act No. 537)**

New law designates October 25<sup>th</sup>, 26<sup>th</sup>, and 27<sup>th</sup> annually as "Care Enough to Wear Pink" days in Louisiana to honor those who have been diagnosed with breast cancer.

Effective August 1, 2012.

(Adds R.S. 1:58.5)

## **TITLE 2: AERONAUTICS**

There were no new laws of interest.

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

#### **Organic Food (Act No. 14)**

New law establishes the La. Organic Certification Cost-Share Rebate Program to support and encourage organic production in the state.

New law prohibits the use of the term "organic food" unless the growth and composition of such food product meets federal requirements.

Effective August 1, 2012.

(Adds R.S. 3:19 and 20)

#### **De-Regulation of Stallions and Jacks (Act No. 8)**

New law repeals provisions that regulate the use of stallions and jacks for public service.

(Repeals R.S. 3:1961-1971)

#### **Board of Animal Health Powers Expanded (Act No. 204)**

New law adds to the powers of the La. Board of Animal Health the ability to issue cease and desist orders upon a violation causing significant damage to animal health.

New law provides the La. Board of Animal Health with plenary powers to deal with contagious and infectious diseases of animals.

(Amends R.S. 3:2093; Adds R.S. 2135; Repeals R.S. 3:2095, 2096, 2099, 2171-2188, 2221(C), 2228, and 2261-2264)

#### **Bang's Disease Is Now Brucellosis (Act No. 9)**

New law changes the name of Bang's disease to Brucellosis disease.

Effective August 1, 2012.

(Amends R.S. 3:2226)

#### **Pesticides (Act No. 147)**

Old law required owner-operators of businesses engaged in the application of pesticides to keep records for two years accurately reflecting the

application of pesticides. New law increases the requirement to three years.

Old law required pesticide dealers to keep records for two years accurately reflecting their possession and disposition of restricted use pesticides. New law increases the records retention requirement to three years.

New law specifies that agricultural consultants shall retain one copy of all pesticide use recommendations for three years.

New law authorizes the Structural Pest Control Commission to issue subpoenas to compel the attendance of witnesses or produce documents or records.

Effective upon signature of the governor.

(Amends R.S. 3:3243, 3245, 3246, 3367 and 3383; adds R.S. 3:3210(C)(6) and 3365(E))

#### **Agricultural Commodities (Act No. 145)**

New law repeals the Agriculture Commodity Marketing Law.

Old law provided shipment and delivery terms for fixed-price contracts and cooperative marketing agreements. New law repeals old law.

Old law provided for the terms of payment for fixed-price contracts and cooperative marketing agreements. New law repeals old law.

Old law, relative to agricultural commodities, required a warehouse license applicant to either demonstrate competency to engage in the business of operating a warehouse or satisfactorily complete any examination that may be required by the La. Agricultural Commodities Commission. New law removes the examination option.

Old law required that each license issued by the commission be posted by the warehouse in its principal place of business in this state. New law requires posting in all warehouse locations.

Effective upon signature of the governor.

(Amends R.S. 3:3408, 3409, 3410, 3411, and 3420; repeals R.S. 3:711-716)

### **Cotton Merchant Licenses (Act No. 12)**

New law requires that each cotton merchant license specify on its face that it is a cotton merchant license and be posted in all places of business. New law provides for a yearly license renewal.

Effective August 1, 2012.

(Amends R.S. 3:3411.1(A))

### **Forest Rights-of-Way (Act No. 808)**

Old law required owners or operators of railroads, electric transmission lines, or oil or gas pipe lines through state forests to keep their rights-of-way cleared of all combustible materials and dispose of the materials between Nov. 15 and April 15. Old law provided that the forestry commission may require owners or operators to plough and clear a furrow if the rights-of-way are not sufficient to constitute a fire line, and released any person required to plough a furrow from responsibility for damages which the owner of the land may claim.

New law deletes the five-month time frame for the clearing of combustible material from rights-of-way. New law allows any railroad company to keep upon the right-of-way cross ties or other materials necessary for operation or maintenance of the railroad. New law deletes the relief of responsibility for damages which a landowner may claim against a person required to plough a furrow.

Old law provided that for every tree that is cut down on public land or rights-of-way or under authority of a state agency, a minimum of two trees will be planted. New law repeals prior law.

Old law prohibited any electric lighting or power company from attaching wires to any tree along any municipal street or any tree along any public highway of the state. New law repeals old law.

Old law provided for rules and regulations for protection against fire applying to locomotives and other like machines, and provided for certain spark arresters, fireboxes, inspection record keeping, railroad employee duties, and ash pans. New law repeals old law.

Effective August 1, 2012.

(Amends R.S. 3:2(D), 4274.1, 4276, 4279(A), 4292, 4325, and 4326; Repeals R.S. 3:4271(B), 4274(6), 4274.2, 4279(B) and (C), 4280, 4284-4289, 4290, 4291, 4293-4295, and 4302)

### **Severance Taxes on Forest Products (Act No. 458)**

Old law provided for the levy and collection of a severance tax on any forest products grown on land reforested under contract between a landowner and the dept. of conservation or forestry commission. Old law provided for the collection of such tax when any forest products are severed until 50 years from the date of any reforestation contract, at which time all ad valorem taxes shall be levied on timber grown thereafter. New law repeals old law.

Old law allowed landowners who have entered into contracts with the dept. of conservation for reforestation of denuded land the ability to avail themselves of the limitation of taxes by formally declaring that they wish to come within the terms of tax limitation. New law repeals old law.

Effective August 1, 2012.

(Repeals R.S. 3:4341 and 4342)

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

### **Charitable Gaming (Act No. 351)**

Old law, relative to charitable gaming, limited to 15 days within a calendar month that a licensee may hold, operate, or conduct any game of chance. New law increases the number of days to 20.

Effective August 1, 2012.

(Amends R.S. 4:714(A))

### **Charitable Gaming Beneficiaries (Act No. 710)**

New law adds that it shall be unlawful for any person associated or affiliated with a charitable gaming licensee to benefit from any part of the



net gaming proceeds of that charitable gaming licensee.

New law does not apply to a contribution or disbursement of net gaming proceeds made to, or for the direct benefit of, a group or activity if:

(1) The contribution or disbursement is used for legitimate charitable gaming purposes, and

(2) Not more than 1/2 of the participants of the group or activity receiving the contribution are members or immediate family members of members of the charitable gaming licensee making the contribution or disbursement.

New law does not limit or impair the payment of compensation to bingo workers for working bingo games.

Effective August 1, 2012.

(Adds R.S. 4:735(D))

## **TITLE 5: AUCTIONS AUCTIONEERS**

**AND**

There were no new laws of interest.

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

### **Annual Appraisals of Bank Property (Act No. 29)**

Old law provides that when a bank acquires assets of a failed or failing bank, the bank shall be allowed 10 years from the date it acquires the immovable property of the failed or failing bank within which to divest itself of such property.

Old law required that a qualified appraisal be obtained annually for each item of property having a value in excess of \$100,000. New law increases the amount to \$250,000.

Effective August 1, 2012.

(Amends R.S. 6:243)

### **Privileged Status of Self-Evaluation Information of Various Financial Institutions (Act No. 35)**

Old law, relative to state banks, provided the results of any self-evaluation, self-assessment, self-testing, or self-correction, and any notes, reports, or work product derived therefrom, whether prepared by internal personnel or outside attorneys, accountants, or consultants, shall be deemed privileged for all purposes and shall not be subject to discovery in any private civil action brought against the bank alleging noncompliance with or violation of applicable state and federal banking laws and regulations. New law adds third-party service providers to the list of outside preparers.

New law provides that such privileged documents shall not be admissible as evidence, unless specifically agreed to by the FDIC insured financial institution, holding company, subsidiary, or affiliate, in any private or administrative civil action brought against the FDIC insured financial institution, holding company, subsidiaries, or affiliates alleging noncompliance.

New law provides the submission by any FDIC financial institution of any information to any federal banking agency or bureau, or any state agency or department, for any purpose in the course of any supervisory, regulatory, or enforcement process of such agency, bureau, or department, shall not be construed as waiving, destroying, or otherwise affecting any privilege the FDIC insured financial institution may claim with respect to such information under federal or state law as any person or entity other than such agency, bureau, or department.

New law is not to be construed as implying or establishing:

1. That any FDIC insured financial institution waives any privilege applicable to certain information that is submitted or transferred.

2. That any FDIC insured financial institution would waive any privilege applicable to any information by submitting the information to any federal banking agency or bureau or the commissioner of the office of financial institution, but for the provisions of new law.

Effective August 1, 2012.

(Amends R.S. 6:284.1(B) and 336)

### **Power of Attorney and Revocation (Act No. 323)**

New law, relative to financial institutions, provides that any federally insured financial institution that is presented with an original or certified true copy of a power of attorney, sufficient to authorize the named agent to transact business in a deposit account, with a certificate of deposit, or with other funds on deposit, or sufficient to authorize access to a safe deposit box, may rely on the authority designated in such power of attorney as being in full force and effect unless and until the federally insured financial institution receives written notice that such power of attorney has been terminated or revoked and the institution has reasonable opportunity to act on it.

New law provides that receipt of written notice shall be effective upon receipt by an officer of the federally insured financial institution.

New law defines "written notice" as a writing addressed to the federally insured financial institution indicating that the principal has revoked the authority of the agent, or indicating that one of the events of termination as specified in law has occurred.

New law provides that a federally insured financial institution shall not be liable for transactions or activity by an agent occurring prior to the receipt of written notice and a reasonable opportunity to act on it.

Effective August 1, 2012.

(Adds R.S. 6:356)

### **State Bank Lending Limits (Act No. 30)**

Old law prohibited a state bank from making a loan on a secured basis to any one borrower, directly or indirectly, in an amount in excess of one-half the sum of its capital stock and surplus.

New law additionally requires that all amounts loaned on an unsecured basis be added to all amounts loaned on a secured basis and the total

thereof not exceed one half of the state bank's capital stock and surplus.

Old law provided that loans and other extensions of credit which are fully secured by a pledge of any deposit of the lending bank are not subject to any of the limits prescribed by old law.

New law specifies that a loan or other extension of credit is "fully secured" only to the extent of the dollar amount of the funds in the deposit account at any time while the loan or other extension of credit is outstanding, and requires as to the funds in the deposit account:

1. A security interest has been and remains perfected as to third parties pursuant to applicable state and federal laws and regulations.
2. The bank maintains adequate internal controls and procedures to prevent improper release of the pledged deposit account funds.
3. The funds in the pledged deposit account are fully collected and subject to no superior or intervening right or order of a party other than the bank.
4. The funds remain on deposit in the deposit account at all times while the loan or extension of credit is outstanding.

New law specifies that transactions involving entering into any credit exposure arising from a derivative transaction, repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction between the lending bank and the borrower are subject to the law.

Effective upon signature of the governor.

(Amends R.S. 6:415)

### **Residential Mortgage Lending (Act No. 199)**

Old law prohibits any person from engaging in any residential mortgage lending activity in this state without first obtaining and maintaining annually a license and registration as a mortgage loan originator or a license as a mortgage lender or broker.

New law provides that a person shall not be considered to be engaged in residential mortgage lending activity in this state unless that person is

regularly engaged in residential mortgage lending activity.

New law defines the term "regularly engaged" to mean either of the following:

(1) Engaged in residential mortgage lending activity, during the previous or current calendar year, as a mortgage loan originator in connection with more than 10 residential mortgage loans or in connection with any residential mortgage loan having a principal amount exceeding \$25,000, or whose employer meets the thresholds set forth in new law.

(2) Engaged in residential mortgage lending activity, during the previous or current calendar year, as a mortgage loan broker, lender, or both, separately or combined, in connection with residential mortgage loans for which the combined original principal balance exceeds \$250,000 or in connection with any residential mortgage loan having a principal amount exceeding \$25,000.

New law shall have no effect if the federal Consumer Financial Protection Bureau determines that the provisions of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (P.L. 110-289) do not allow an exception from coverage for those not so regularly engaged.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Adds R.S. 6:1083(24) and 1086(D))

## **TITLE 7: BILLS AND NOTES**

There were no new laws of interest.

## **TITLE 8: CEMETERIES**

### **Cemetery Operations (Act No. 98)**

Old law prohibits any person, entity, or cemetery authority from entering into a contract for the sale of personal property or services which may be used in a cemetery in connection with the

disposal or commemorating of deceased persons, if the delivery of such property or service is to be made at an uncertain future date (such as death) or more than 120 days after final payment of a contract of sale, with certain exceptions. New law deletes reference to delivery at an uncertain future date such as death.

Old law allows entering into a contract for sale of personal property or services if the cemetery authority or entity deposits 70% of the gross receipts from the sale, less sales taxes, into a merchandise trust fund.

New law requires that 70% of the price charged, less taxes, for each item of personal property contracted for, contracted for at a discount, or contracted for without charge, be deposited into a trust fund. New law requires that the deposit not be less than 70% of the price charged for each item or 125% of the wholesale cost, whichever is greater.

New law requires that 70% of the price charged for each service be deposited into a trust fund. New law requires, for services contracted at a discount or without charge, that the deposit be not less than 70% of the highest price charged for the service during the previous 12 months.

New law provides that if the contract is financed or sold to a financial institution or entity other than the seller, it shall be considered paid in full and the trust requirements must be satisfied within 20 days after the close of the month of receipt of the funds by the cemetery authority or entity, with certain exceptions.

Old law requires the trustee's share of the income earned in each calendar year be allocated to each separate account based on the proportion that the principal balance in each bears to the total principal balances in all accounts. Old law provides that deposits made before June 30 of each year are considered made on the first of the year, but deposits made after June 30 are not included in the distribution of income earned during the calendar year. New law deletes provisions regarding deposits before June 30 and after June 30.

Old law allows the trustee to commingle deposits for management and investment

purposes. New law deletes requirements of the trustee to annually advise the cemetery authority of the income received by the whole fund for the calendar year.

Old law provides that personal property is delivered when, among other ways, the cemetery authority receives delivery and provides storage for the contract beneficiary. New law requires that the cemetery authority or entity maintain and submit an annual merchandise log to the board of all personal property in storage at the date of the report, with a detailed description of all property and the name of the contract beneficiary. New law requires evidence that all stored personal property is insured against casualty, theft, and any loss normally assumed by a compensated depositary or bailee for hire. New law allows the board to examine all stored personal property and documents pertaining thereto at any time.

Old law requires each cemetery authority or entity to file a report with the board and the trustee providing the volume and gross sales of personal property and services for future delivery upon which a deposit with the trustee is required. New law deletes filing requirement with the trustee and includes a requirement that the report also set forth the number of contracts written in the reporting period. New law requires a merchandise inventory log detailing all personal property stored, along with evidence of insurance.

Old law allows the board to examine the business of any cemetery authority or entity engaged in making contracts for the sale of personal property or services at various times. New law allows the board to examine when the board is requested by a verified petition signed by 25 people purchasing personal property or services alleging that the cemetery authority or other entity is not in compliance.

Effective Jan. 1, 2013.

(Amends R.S. 8:501, 502, 502.1, 505.1, and 506)

### **Exposed Skeletons in Cemeteries (Act No. 631)**

New law applies only to municipal cemeteries and to cemeteries that do not hold a certificate of authority.

New law provides that upon the identification of human skeletal remains and burial items exposed to the surface in a cemetery subject to new law, the La. Cemetery Board or the attorney general shall make a reasonable attempt to contact the cemetery and demand that such human skeletal remains and burial items be secured and re-interred.

New law provides that upon a failure or refusal of the cemetery authority to comply with a demand made under new law, and with the express written permission of the cemetery authority, the attorney general or students and instructors of institutions of higher education from the disciplines of anthropology, archaeology, biology, and mortuary science may undertake the systematic collection of human skeletal remains and burial items exposed to the surface and at risk of being looted from cemeteries within the state.

New law provides that if written permission of the relevant cemetery authority cannot be reasonably obtained and the exposed human skeletal remains are at risk of being looted, the attorney general may apply to the district court in which the cemetery is located for an order to safeguard the human skeletal remains.

New law provides that the attorney general may collect the exposed human skeletal remains or may delegate that authority to a qualified party according to new law.

New law sets forth protocols that are the responsibility of the cemetery authority.

New law shields from liability numerous persons, including any institution, or its agents, employees, or students, for any action undertaken or performed by such person pursuant to new law, when such person is acting without malice and in the reasonable belief that the action taken by him is warranted.

New law shields the La. Cemetery Board, the La. Division of Archaeology, and the attorney

general, and their agents or employees, from any liability for damages under any law of the state or any political subdivision for their role in administering portions of new law.

Effective August 1, 2012.

(Adds R.S. 8:663)

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

### **Performance of Marriages by Federal Judges and Magistrates (Act No. 184)**

New law authorizes all federal judges and magistrates sitting in the Middle District, Eastern District, and Western District of La. to perform marriage ceremonies if the court adopts a local rule, resolution, or standing order by a majority vote of the court sitting en banc.

Effective August 1, 2012.

(Amends R.S. 9:203(E))

### **Licenses and Child Support (Act No. 613)**

Old law required the licensing authority to reinstate a license of an obligor which has been suspended for failure to pay child support once the obligor is in compliance with a support order. New law requires the lifting or modification of a suspension when the obligor is in partial compliance.

Effective August 1, 2012.

(Amends R.S. 9:315.47; Adds R.S. 9:315.46(C))

### **Child Custody (Act No. 627)**

Old law provided that "equal physical custody" means that the parents share equal parental authority of the child absent a court order to the contrary. New law provides that "equal physical custody" refers to a custody arrangement under which persons have equal or approximately equal physical custody.

Old law provided that "relocation" means an intent to establish the residence of the child outside of the state, at any location within the state that is at a distance of more than 150 miles from the other parent, at a distance of more than

150 miles from the domicile of the primary custodian, or a change in the principal residence of a child for a period of 60 days or more.

New law revises prior law to provide that it shall apply when there is an intent to establish the principal residence of a child at any location within the state that is at a distance of more than 75 miles from the domicile of the other parent, at a distance of more than 75 miles from the current principal residence of the child, or at a distance of more than 75 miles from the domicile of a person entitled to object to relocation of the child's residence.

Old law provided for the applicability of law regarding the relocation of a child's residence. New law revises prior law to state a distance factor for the application of old law and to change the term "parents of a child" to "persons required to give notice of and persons entitled to object to a proposed relocation".

New law changes "spouse" to "person" for purposes of different types of restraining orders, protective orders, or injunction.

New law provides for persons authorized to propose a relocation of child's principal residence.

Old law provided for a notice of proposed relocation of child. New law changes references from "parent" to "person".

New law provides that information relative to the current mailing address of the person proposing relocation shall be given, that cellular phone numbers shall be given, for a proposed revised schedule of physical custody, and that the person entitled to object shall make any objection in writing within 30 days of the receipt of the notice.

New law provides for an objection to the relocation of a child. New law provides for a limitation on an objection to the relocation of a child by non-parents. New law provides for the failure to object to a notice of a proposed relocation of a child.

Old law provided for the burden of proof in relocation cases. New law deletes the provision that the court shall consider the enhancement on the child's life that relocation might create.

New law provides for physical custody, and that an order not in compliance with law is not enforceable and is null and void.

Old law provided for a priority for a hearing on a temporary or final order on relocation. New law provides that a trial on the objection to the proposed relocation shall be held within 60 days after the filing of the summary proceeding.

Old law provided for the factors that a court shall consider in determining if a relocation is in the best interest of the child. New law provides that the court shall consider all relevant factors, for physical custody, and for harassment by a person seeking or opposing relocation.

Old law provided for the appointment of a mental health expert. New law provides that the court on motion of either party or on its own motion may appoint a mental health expert to render a report.

Old law provided for the application of certain factors at an initial hearing. New law provides that the court shall consider also certain factors an initial hearing.

New law provides a court with the authority to order persons awarded custody or visitation to use technology to facilitate communication with the child when it is in the best interest of the child.

Effective August 1, 2012.

(Amends R.S. 9:355.1-355.6 and 355.8-355.17; adds R.S. 9:355.7, 355.18, 355.19, and 357)

#### **Port Commissions (Act No. 388)**

Old law authorized only deep-draft port commissions to permit and grant riparian owners, their lessees, or other persons occupying with the riparian owner's consent, the use of any property owned, leased, or lawfully occupied by the port. New law authorizes any port commission.

Old law authorized only deep-draft port commissions to lease or sublease property without the necessity of public bidding. New law authorizes any port commission.

Effective August 1, 2012.

(Amends R.S. 9:1102.2)

#### **Condo Association Fidelity Bonds or the Equivalent (Act No. 79)**

Old law requires any unit owners' association collecting assessments for common expenses to obtain and maintain a blanket fidelity bond covering the officers, directors, and persons employed by the unit owners' association, and any managing agent and employees of the managing agent. New law provides the association with the option of obtaining another equivalent form of insurance to satisfy the requirement.

(Amends R.S. 9:1123.113)

#### **Trusts for Mixed Purposes (Act No. 742)**

Old law provided that a trust may be created for mixed private and educational, charitable, or religious purposes. New law simplifies the wording by using only a reference to private and charitable purposes.

New law clarifies that the dispositive provisions of such a trust in favor of private beneficiaries are governed by the provisions of this Code, and those in favor of charitable beneficiaries are governed by Parts I through IV of Chapter 2 of Title II of this Code.

Old law provided that unitrusts and annuity trusts as defined in the U.S. Internal Revenue Code are mixed trusts. New law deletes this provision.

New law authorizes the private beneficiary of a mixed private and charitable trust to gratuitously assign some or all of his private interest to a charitable beneficiary of the trust, even if the trust is a spendthrift trust that otherwise prohibits assignments by the beneficiary, unless the trust instrument contains a special needs provision or expressly provides otherwise. An interest that is assignable only to a charitable principal beneficiary of the trust shall not be deemed to be subject to a voluntary alienation by the beneficiary; thus the interest would not be subject to seizure by the beneficiary's creditor. New law provides for early termination of the

private interest when there is no longer a private beneficiary of that interest.

Effective August 1, 2012.

(Amends R.S. 9:1951; Adds R.S. 9:1953)

#### **Trusts Holding Immovable Property (Act No. 740)**

Old law provides that if the trust property of either an inter vivos trust, a testamentary trust, or a foreign trust includes immovables or other property the title to which must be recorded, a trustee shall file the trust instrument or an extract thereof in each parish in which the property is located. New law authorizes recording a copy of either the trust instrument or an extract which is certified by the clerk of court.

Old law provided that an extract of the trust was required to include certain information. New law deletes the requirement to include a brief description of the immovable property or other property subject to the trust, and provides that if the trust instrument contains a transfer of immovable property or other property to the trust, the extract shall contain a brief legal description of the property.

New law provides that, unless the extract of trust recites any modification or restriction on the trustee's authority, the trustee shall have all of the powers and duties granted to a trustee by the La. Trust Code.

New law provides that the authorization to file an extract of the trust instrument or a clerk certified copy of the trust instrument or extract of trust without a description of the property shall be applied retroactively to any trust extract or clerk-certified copy of either the trust instrument or extract of trust filed for record.

Effective August 1, 2012.

(Amends R.S. 9:2092 and 2262.2)

#### **Designation of Attorney in Will (Act No. 125)**

Old law provided that a testator may designate in his will an attorney to handle the legal matters of his estate, to open and close the estate, and to represent the executor. Old law authorized the

testator to designate one or more successor attorneys in the event the designated attorney predeceases the testator or is unable or unwilling to serve. Old law provided for the removal of the attorney for cause and provided for compensation. New law repeals old law.

Effective August 1, 2012.

(Repeals R.S. 9:2448)

#### **Certificates of Encumbrances (Act No. 178)**

Old law required the recorder to deliver a certificate of encumbrances that includes all uncanceled mortgages and instruments evidencing privileges that appear in the mortgage records and identify the person in the request as the mortgagor or obligor. Old law provided for an exception when the recorder receives satisfactory evidence that the person on the instrument is not the person in whose name the certificate is sought.

New law provides that satisfactory evidence shall include an affidavit provided by the attorney requesting the certificate that distinguishes the person in whose name the certificate is requested from a person listed as a mortgagor or obligor for an instrument on the certificate. New law provides for liability of the affiant if materially false information is contained within the affidavit. New law provides for limited liability of the recorder when the affidavit contains an incorrect statement.

Effective August 1, 2012.

(Amends R.S. 9:2743)

#### **Peremption of Construction Suits (Act No. 762)**

Old law provided that no action arising out of planning, construction, design or building of immovable or movable property may be brought against anyone providing land surveying services, or services furnished for the design, planning, supervision, inspection or observation of construction, or services for construction of immovables or improvement to immovable property, including a residential building contractor, may be brought more than five years

after the date of registry in the mortgage office of acceptance of the work by the owner, or more than five years after the owner has taken possession of the improvement.

Old law provided that a five-year preemptive period extends to every demand arising under the old law, whether brought by direct action or for contribution or indemnity or by third party practice, and whether brought by the owner or by any other person.

New law adds an exception that if, within 90 days of the five-year preemptive period, a claim is brought against any person or entity included in the old law, then that person or entity has 90 days from date of service of the main demand or, in the case of a third-party defendant, 90 days from service of process of the third-party demand, to file a claim for contribution, indemnity or a third-party claim against any other party.

Old law provided that the preemptive period provided by the old law shall not be asserted by way of defense by a person in possession or control, as owner, lessor, tenant, or "otherwise," of such an improvement at the time any deficiency in such an improvement constitutes the proximate cause of the injury, damage, or death sued upon with regard to any cause of action arising out of the alleged delict, quasi delict, or obligation of any such person arising out of his possession or control of the property. New law changes "otherwise" to "other possessory interest" and retains remainder of old law.

Effective August 1, 2012.

(Amends R.S. 9:2772(A)(intro para), (B)(3), and (E); adds R.S. 9:2772(A)(1)(c))

### **Transportation Contracts, Construction Contracts and Indemnity and Insurance (Act No. 780)**

Old law prohibited as null and void any provision, clause, covenant, or agreement contained in, collateral to, or affecting a "motor carrier transportation contract" or a "construction contract" which:

1. Purports to indemnify, defend, or hold harmless, or has the effect of indemnifying, defending, or holding harmless, the indemnitee from or against any liability for loss or damage resulting from the negligence or intentional acts or omissions of the indemnitee, an agent or employee of the indemnitee, or a third party over which the indemnitor has no control.

2. Requires an indemnitor to procure liability insurance covering the acts or omissions or both of the indemnitee, its employees or agents, or the acts or omissions of a third party over whom the indemnitor has no control.

New law provides that old law does not prohibit a motor vehicle operator from securing uninsured motorist coverage.

New law defines "construction contract" as any agreement for the design, construction, alteration, renovation, repair, or maintenance of a building, structure, highway, road, bridge, water line, sewer line, oil line, gas line, appurtenance, or other improvement to real property, or repair or maintenance of a highway, road, or bridge, including any moving, demolition, or excavation. However, no deed, lease, easement, license, or other instrument granting an interest in or the right to possess property will be deemed to be a construction contract (even if the instrument includes the right to design, construct, alter, renovate, repair, or maintain improvements on such real property).

New law provides that nothing in old law and new law shall prohibit any employee from recovering damages, compensation, or benefits under workers' compensation laws or any other claim or cause of action.

New law also provides that its provisions shall supersede and control to the extent of conflict with the provisions of any other Act of the 2012 RS, regardless of the date of enactment.

Effective August 1, 2012.

(Amends R.S. 9:2780.1; repeals Sec. 2 of Act 492 of 2010 RS)



### **Transportation Contracts, Construction Contracts and Indemnification Clauses (Act No. 684)**

Old law defined a "third party" as any party not subject to the contractual obligations between the indemnitee and the indemnitor. New law excludes from such definition any party who has otherwise contracted with the indemnitor or is at the indemnitee's facility at the invitation or direction of the indemnitor.

New law provides that old law shall not invalidate or prohibit the enforcement of any of the following:

1. Any clause in a construction contract containing the indemnitor's promise to indemnify, defend, or hold harmless the indemnitee or an agent or employee of the indemnitee if the contract also requires the indemnitor to obtain insurance to insure the obligation to indemnify, defend, or hold harmless and there is evidence that the indemnitor recovered the cost of the required insurance in the contract price, but the indemnitor's liability under such a clause is limited to the amount of the proceeds that were payable under the insurance policy or policies that the indemnitor was required to obtain.

2. Any clause in a construction contract that requires the indemnitor to procure insurance or name the indemnitee as an additional insured on the indemnitor's policy of insurance, but only to the extent that such additional insurance coverage provides coverage for liability due to an obligation to indemnify, defend, or hold harmless authorized by new law and if such insurance coverage is only provided where the indemnitor is at least partially at fault or otherwise liable for damages ex delicto or quasi ex delicto.

Effective upon signature of the governor.

(Amends R.S. 9:2780.1; repeals Section 2 of Act 492 of 2010 RS)

### **Food Donations (Act No. 423)**

Old law provides that no person shall have a cause of action against a food bank and its designated distributor or against any of various

classes of persons and entities who donate perishable, salvageable, or prepared food, for damages caused by the condition of donated food, unless the damages result from an intentional act, omission, or gross negligence. New law adds schools, churches, and civic organizations to the listing of entities that are granted such limitation of liability for damages from food donated to a food bank.

Old law provides that no person shall have a cause of action against a restaurant, or any of various classes of persons and entities who donate perishable, salvageable food which is prepared and subsequently donated by the restaurant to a facility which operates an on-premises feeding program for the needy, the ill, the handicapped, infants, or individuals or needy families, for damages caused by the condition of donated food, unless the damages result from an intentional act, omission, or gross negligence. New law adds that a school, church, or civic organization is also granted such limitation of liability.

Effective August 1, 2012.

(Amends R.S. 9:2799(A)(1) and 2799.3)

### **Right to Repurchase Certain Expropriated Lands (Act No. 445)**

New law provides that if residential property expropriated by the state or a political subdivision of the state remains in the possession of and is maintained by the original owner or his heir for a period of more than 30 years, the expropriated property shall be transferred back to the original owner or his heir upon payment of the fair market value of the property.

New law provides for procedures by which the original owner or his heir may tender payment of the fair market value of the property and deliver an act of transfer of ownership to the state or political subdivision. New law provides for procedures for opposing the act of transfer of ownership.

New law provides that the state or political subdivision shall not be required to execute the act of transfer of ownership if the court finds that the original owner or his heir failed to

tender fair market value of the property, retain possession of the property, or maintain the property.

New law provides that the state or political subdivision shall be required to execute the act of transfer of ownership and pay court costs and attorney fees if the court finds that the original owner or his heir tendered the fair market value of the property, retained possession of the property, and maintained the property.

New law shall not apply to property expropriated for the construction, operation, or maintenance of levees, levee systems, flood control, drainage, hurricane or storm surge protection, or coastal protection projects, and shall not apply to property expropriated by DOTD.

Effective August 1, 2012

(Adds R.S. 9:3191.1)

#### **Consumer vs. Commercial Leases (Act No. 626)**

Old law defines "consumer lease" as a lease to a natural person primarily for a personal, family, or household purpose, provided that the total compensation under the lease over the base lease term does not exceed \$25,000. Old law provides that where the total compensation exceeds \$25,000, the lease shall be considered a commercial lease. New law creates an exception for a lease provided through an employer sponsored lease program.

Effective upon signature of the governor.

(Amends R.S. 9:3306(9))

#### **Promissory Notes and Negotiable Instruments (Act No. 400)**

Old law provides procedures for foreclosure by executory process instituted by the transferee, assignee, or pledge of a negotiable instrument or any instrument that would be negotiable but for a limitation of personal liability of the maker.

New law clarifies that old law applies to any promissory note, whether negotiable or not, or any negotiable instrument.

Effective August 1, 2012.

(Amends R.S. 9:4422)

#### **Marinas and Storage Facilities (Act No. 752)**

Old law defines "rental agreement" as any written agreement or lease, entered into between the marina operator and a lessee, that establishes or modifies the terms, conditions, rules, or any other provisions concerning the use of the marina. New law changes "marina operator" to "marina owner".

Old law required that notice of default be delivered to the property owner and all marina owners of record. New law deletes the requirement to deliver notice to all marina owners of record.

New law authorizes notice by commercial courier.

New law creates a privilege on a towed and stored vessel, including the motor, for towing and storage fees. A privilege is not created, however, on a documented vessel subject to a preferred ship mortgage or other maritime privilege pursuant to federal law.

New law requires the storage facility to provide the Dept. of Wildlife and Fisheries with vessel identifying information requested within three business days of the vessel being towed and stored.

New law requires the storage facility to notify the owner and lienholders within 10 business days from the date the department sends notice before the privilege can be enforced. If the owner and lienholder can be identified, the storage facility shall send written notification by certified mail. If they cannot be identified, notification shall be published on two separate occasions in the official newspaper of the parish in which the vessel was towed.

New law provides that after holding the vessel for 30 days, the storage facility may sell the vessel 15 days after publishing a notice of the sale once a week for two weeks. New law requires the sale to be at the storage facility or the nearest suitable location. New law requires sale to the highest bidder and requires that the bill of sale clearly identify the licensed storage

facility as the seller and be signed by the buyer and a representative of the marina. If proof of notice, publication, and sale requirements for marinas are not attached to the bill of sale, the bill of sale shall be null and void.

New law provides for the distribution of the proceeds in a prescribed order. New law provides that any surplus shall be transferred to the administrator of the Uniform Unclaimed Property Act of 1997 as unclaimed property.

New law provides that if proceeds are not sufficient to satisfy the vessel owner's outstanding obligations to the licensed storage facility or any lienholder of record, the vessel owner remains liable to the licensed storage facility for the deficiency.

New law provides that the purchaser of a boat sold pursuant to new law takes the vessel free and clear of any rights of persons against whom the privilege was valid and all other lienholders of record.

Old law prohibits a public entity from accepting any bid from or entering into a contract for the procurement of vehicles with a dealer who does not possess a license as required by R.S. 32:2182. New law provides an exception for purchases made directly from a vessel manufacturer or an outboard motor manufacturer.

Effective August 1, 2012.

(Amends R.S. 9:4781, 4783, and 4784, and R.S. 39:2181; Adds R.S. 9:4791-4798)

#### **Private Works Act — Ranking of Privileges (Act No. 425)**

Old law provides that a person acquiring a mortgage, privilege, or other right may rely on the affidavit of certain persons involved in the modification of an immovable that states at a specified time work had not been commenced nor materials placed at the site, provided the affidavit is filed within four days after execution with the document creating the right filed within four business days of the filing of the affidavit.

New law provides that priority be given to a privilege acquired through reliance on an affidavit executed by certain persons involved in

the modification of an immovable if the document creating the right is filed before or within four days of the effective date of the affidavit, regardless of whether work has begun or materials were delivered to the jobsite.

Effective August 1, 2012.

(Amends R.S. 9:4821; Adds R.S. 9:4820(D))

#### **Private Works Act (Act No. 394)**

New law requires a claimant under the Private Works Act to file suit to enforce his claim or privilege within one year after filing his statement of claim or privilege.

New law provides for a change in terminology to allow for consistency throughout prior law.

Parts of this Act are effective on Aug. 1, 2012, and parts are effective Aug. 1, 2013.

(Amends R.S. 9:4823, 4831, 4833, 4835, 4862, 4865, 4872, and 4885)

#### **Discharge of Judgments in Bankruptcy (Act No. 179)**

Old law provides for procedures by which a judgment discharged in bankruptcy shall be extinguished and the judgment cancelled.

New law adds that a trustee or his attorney of record may specify by affidavit which discharged judgments, mortgages, or privileges are to be cancelled when the bankruptcy court order is not specific. New law provides for certain procedures, including the filing of an affidavit and a Request to Cancel.

Effective August 1, 2012.

(Amends R.S. 9:5175(B))

### **TITLE 10: COMMERCIAL LAWS**

#### **UCC Security Interests (Act No. 450)**

Old law provided that "authenticate" means to process a record with the present intent of the authenticating person to identify the person and adopt or accept a record. New law changes the law in part by providing that "authenticate"

means with present intent to adopt or accept a record, to attach to, or logically associate with the record an electronic sound, symbol, or process.

Old law defines "certificate of title" as a certification of title providing for the security interest to be indicated on the title. New law eliminates the need for the state's issuing authority to deliver a paper certificate of title covering goods that are encumbered by a security interest if the state agency that issues title certificates maintains an electronic record that evidences ownership of the goods and in which a security interest in the goods may be noted. New law provides that such a record is a "certificate of title" if it is in fact maintained as an alternative to the issuance of a paper certificate.

Old law provided that, with respect to a registered organization, "jurisdiction of organization" means the jurisdiction under whose law the organization is organized. New law includes entities that are formed rather than organized.

New law adds the definition of a "public organic record", and defines it as the original record to form or organize an organization, and any record filed with or issued by the state or the U.S. amending or restating the initial record, and an organic record of business trust consisting of the original or amended record filed with the state.

Old law defined "registered organization" as an organization formed or organized under the law of a single state or the U.S., and as to which a public record showing the organization to have been organized must be maintained. New law uses the new defined term "public organic record".

New law clarifies the law by expressly providing that certain La. organizations are registered organizations.

Old law provides rules for control of electronic chattel paper. New law clarifies that a person has control of electronic chattel paper if a system for evidencing transfer of interests in the chattel paper reliably establishes the secured party as the person to which the chattel paper was assigned.

Old law provides rules regarding location of the debtor. New law clarifies the location of registered organizations.

Old law provides for perfection of security interests in property subject to certain statutes, regulations, and treaties, and provides for continued perfection of a security interest following a change in governing law. New law provides that a filed financing statement that would have been effective to perfect a security interest in the collateral if the debtor had not changed its location is effective to perfect a security interest in collateral acquired within four months after the relocation.

New law changes old law in part regarding collateral acquired by a new debtor.

Old law provides for interests that take priority over or take free of a security interest or agricultural lien. New law clarifies but does not change existing law.

Old law provided for priority of security interests created by a new debtor. New law changes old law in part by adding a reference to new R.S. 10:9-316(i).

Old law provided for discharge of an account debtor and assignment of accounts. New law excepts certain sales.

Old law provided for ineffectiveness in restrictions on assignments. New law excepts certain sales.

Old law provided for the sufficiency of a debtor's name in a financing statement and related matters. New law provides for sufficiency of a debtor's name in instances in which the collateral is held in a trust that is a registered organization. New law provides that if the debtor is an individual and the state has issued the debtor a driver's license that has not expired, the name is sufficiently indicated if the financing statement provides the name indicated on the driver's license.

Old law provided for effect of certain events on the effectiveness of the financing statement. New law coordinates with the new provisions on sufficiency of debtor's name.

Old law provides for duration and effectiveness of financing statement. New law clarifies law relating to a transmitting utility financing statement.

Old law provided for what constitutes filing and effectiveness of filing. New law changes the reasons why a filing office may refuse to accept a record for filing.

Old law provided for claims regarding an inaccurate or wrongfully filed record. New law provides that a secured party may, in certain instances, file an information statement in the filing office with respect to a record filed there.

Old law provides for a written acknowledgment by the secretary of state's office of information received for indexing from a secured party or others. New law excuses the secretary of state from sending the acknowledgment to a party whose address is not provided in the record.

Effective July 1, 2013.

(Amends R.S. 10:9-102, 9-105, 9-307, 9-311, 9-317, 9-326, 9-406, 9-408, 9-503, 9-507, 9-515, 9-516, 9-518, 9-523; Adds R.S. 10:9-316(h) and (i), 9-518(d) and (e), and 9-801-9-809)

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

There were no new laws of interest.

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

### **Business Identity Theft Prevention Act (Act No. 835)**

New law provides that any electronic mail addresses or short message service numbers submitted to or captured by the secretary of state pursuant to the provisions of Title 12 shall be confidential, and shall not be disclosed by the secretary of state or any employee or official of his office.

New law requires the secretary of state to notify any person who subscribes to the secretary of state's electronic mail or short message notification service and who is an officer of a corporation, member or manager of a limited liability company, or partner in a partnership, or any agent thereof, when a filing has occurred which may have removed that person's name from documents and records of that entity held by the secretary of state.

Effective January 1, 2013.

(Adds R.S. 12:2.1 and 2.2 and R.S. 44:4.1(B)(37))

### **Electric Cooperatives (Act No. 328)**

New law allows for perpetual existence of an electric cooperative.

New law provides that the bylaws may be adopted, amended, or repealed by the board of directors.

New law provides that only the members of the cooperative may amend the bylaws with reference to the dissolution of the cooperative or the sale, lease, or other disposition or encumbrance of all or a substantial part of the property of the cooperative.

New law allows only the members to prescribe the conditions in the bylaws regarding the conditions necessary for voting, including the definition of a quorum for purposes of the voting by mail, when the provisions of the bylaws at issue relate to the dissolution of the cooperative or the sale, lease, merger, or other disposition or encumbrance of all or a substantial part of the property of the cooperative.

New law provides that nothing shall limit the right of the board of directors of an electric cooperative, without the authorization of the members, to authorize the execution and delivery of mortgages, deeds of trust, or the pledging or encumbering of any or all of the property, assets, privileges, licenses, franchises, or permits of the cooperative to secure indebtedness of the cooperative to the federal government, a bank, an insurance company, or other lending institution, notwithstanding any

provision of the articles of incorporation or bylaws to the contrary.

Effective August 1, 2012.

(Amends R.S. 12:403(2) and 407)

### **Change of Jurisdiction of Limited Liability Companies (Act No. 476)**

New law provides that any domestic limited liability company may change its state of organization from this state to any other state, and any foreign limited liability company may change its jurisdiction of organization from any other state to this state, by filing a request for conversion and complying with the new law, provided that such change is not prohibited or inconsistent with the laws of this state (in the case of a domestic limited liability company) or the foreign state (in the case of a foreign limited liability company).

New law provides that such a change of the limited liability company's state of organization may only be made pursuant to authorization thereof by a majority of its members or by such larger vote as the articles of organization or an operating agreement may require.

New law provides that a written request for conversion must contain specified information, including:

1. The manner and basis of converting the interests of the members of the limited liability company into the interests of the members in the converted limited liability company.
2. Any other provision, attachment, or exhibit, not inconsistent with law, that the members elect to set forth in the request for conversion.

New law provides that the request for conversion may be delivered to the secretary of state for filing as of any specified date, and may select a given time on the date to be specified, as long as the date specified is within 30 days after the date of delivery.

New law provides that if the secretary of state finds that the request for conversion is in compliance with the new law, and after all fees have been paid as required by law, the secretary of state shall record in his office the request for

conversion and any attachments or exhibits thereto, after endorsing thereon the date and, if requested, the hour of filing. Thereafter the secretary of state shall either issue a certificate of conversion or advise the limited liability company with reasons why it has denied the request for conversion.

New law provides that upon receipt of the certificate of conversion from the secretary of state, and after compliance as applicable with the laws of the other state:

1. A domestic limited liability company converting its state of organization to another state shall be deemed to be organized solely under the laws of such other state and no longer under the laws of this state. The limited liability company shall be deemed to have appointed the secretary of state in this state as its agent for service of process in any proceeding to enforce any liability or obligation against the limited liability company arising or existing prior to the effective time of the conversion of the state of organization.
2. A foreign limited liability company converting its state of organization from another state to this state shall be deemed to be organized solely under the laws of this state and no longer under the laws of such other state. The certificate of conversion issued by the secretary of state shall be conclusive evidence of the fact that the limited liability company has been duly organized under the laws of this state, except that in any proceeding brought by the state to annul, forfeit or vacate a company's franchise, the certificate of conversion shall be only prima facie evidence of due organization.
3. The limited liability company shall continue to exist without interruption in its organizational form. All rights, title, interests, obligations, and liabilities of the limited liability company shall continue in the limited liability company without impairment, diminution, or termination. Any proceeding pending by or against the limited liability company or its members or managers, in their capacities as such, may be continued by or against the limited liability company without the need for substituting a new party to such proceeding as a result of any conversion of the state of organization.

New law provides that a domestic limited liability company converting its state of organization from this state to another state shall also file with the secretary of state a certified copy of the certificate of organization or other official certificate obtained by it from the other state evidencing the company's organization under the laws of such state. Such certified copy shall be filed with the secretary of state not later than 30 days after issuance of the official certificate evidencing the company's organization under the laws of the other state.

Effective January 1, 2013.

(Adds R.S. 12:1308.3)

#### **Updating of License Upon Conversion or Merger (Act No. 434)**

Old law provides that a domestic business entity, which is licensed by a state board or commission as a limited liability company, business corporation, partnership in commendam, or partnership, that converts shall be recognized by the licensing board or commission without having to file a new application for a license, certificate, or permit. New law adds a surviving entity following a merger under federal corporate reorganization law which effects a mere change in identity, form, or place of organization of one corporation where ownership of the entity does not change.

Old law provides that, prior to updating a license, certificate, or permit of a converted entity, a state board or commission may require members of the converted entity to furnish copies of specified documents. New law adds that a surviving entity following a merger may be required to furnish a copy of the act of merger or certificate of merger.

Old law provides that an updated license, certificate, or permit shall have an effective date retroactive to the effective date of the conversion as stated on the certificate of conversion. New law adds that the updated license, certificate, or permit shall have an effective date retroactive to the effective date of the merger as stated on the certificate of merger.

New law is declared to be remedial in nature and is intended to clarify and confirm the proper

interpretation of the existing statutes and shall be applied retroactively to Aug. 15, 2007.

(Amends R.S. 12:1607(A) and (D))

#### **Name Removal Suits (Act No. 791)**

New law provides that if any officer, member, manager, or partner has his name removed from any document or record of the secretary of state, in violation of state law or in contravention of any document of creation, organization, or management of the business entity, the aggrieved party may file suit against the party who caused the aggrieved party's name to be removed from the document or record.

New law requires the suit to be filed in the district court where the business entity is domiciled and that the secretary of state be made a party to the suit.

New law requires the court to conduct a hearing within ten days after service of process of the suit and that if the court determines that the name of the aggrieved party was improperly or fraudulently removed from the documents and records of the secretary of state, then requires the court to order the secretary to replace the name of the party on all appropriate documents and records.

New law adds that nothing shall be construed to supercede or conflict with the ultra vires defense set forth in R.S. 12:208, related to actions taken by the business entity, or actions taken by the officers or principals of the business entity, which are beyond the legally granted authority of the corporation.

Effective August 1, 2012.

(Adds R.S. 12:1701)

#### **Benefit Corporations Law (Act No. 442)**

New law creates the Benefit Corporations Law, and applies to all benefit corporations.

New law provides that, except as otherwise provided, the Business Corporation Law shall be generally applicable to all benefit corporations.

New law prohibits a provision of the articles or bylaws of a benefit corporation from relaxing,

being inconsistent with, or superseding a provision of new law.

New law defines "benefit corporation" as a business corporation which has elected to become subject to new law and whose status as a benefit corporation has not been terminated.

New law defines "benefit director" as the director designated as the benefit director of a benefit corporation under new law.

New law defines "benefit officer" as the individual designated as the benefit officer of a benefit corporation under new law.

New law defines "benefit enforcement proceeding" as any claim or action for the failure of a benefit corporation to pursue or create general public benefit or a specific public benefit set forth in its articles or the violation of any obligation, duty, or standard of conduct under new law.

New law defines "general public benefit" as a material positive impact on society and the environment, taken as a whole, assessed against a third-party standard, from the business and operations of a benefit corporation.

New law defines "third-party standard" as a recognized standard for defining, reporting, and assessing the performance of corporations in producing general public benefit and specific public benefits which meets certain specified standards.

New law defines "specific public benefit" as any of the following: serving low-income or underserved individuals or communities; promoting economic opportunity for low-income or underserved individuals or communities; preserving the environment, promoting positive impacts on the environment, or reducing negative impacts on the environment; improving human health; promoting the arts, sciences, or advancement of knowledge; increasing the flow of capital to entities with a purpose listed in proposed law; historic preservation; or urban beautification.

New law defines "independent" as having no material relationship with a benefit corporation or a subsidiary of the benefit corporation.

New law defines "material relationship" as the relationship between a person and a benefit corporation or any of its subsidiaries if any of the following apply:

(1) The person is, or has been within the last three years, an employee, other than a benefit officer of the benefit corporation, or an affiliate of the benefit corporation.

(2) An immediate family member of the person is, or has been within the last three years, an employee, officer, or director of the benefit corporation or its affiliate.

(3) There is beneficial or record ownership of 5% or more of the outstanding shares of the benefit corporation by either the person, or an entity of which the person is a director, an officer, or a manager, or in which the person owns beneficially or of record 5% or more of the outstanding equity interests.

New law defines "subsidiary" as, in relation to a person, an entity in which the person owns beneficially or of record 50% or more of the outstanding equity interests.

New law defines "affiliate" as, in relation to a person, a subsidiary of the person or an entity which owns beneficially or of record a majority of the outstanding equity interests of the person.

New law defines "minimum vote" as, in the case of a business corporation, the approval by holders of two-thirds of the shares present and voting of each class or series and any other approval or vote required under the Business Corporation Law or the articles.

New law defines "minimum vote" as, in the case of a domestic entity other than a business corporation, the approval by holders of two-thirds of each class or series of equity interests entitled to vote on any issue and any other approval or vote required under the law governing the internal affairs of the entity or its constituent documents.

For purposes of the definitions in new law, a percentage of ownership in an entity shall be calculated as if all outstanding rights to acquire equity interests in the association have been exercised.



Terms not otherwise defined in new law have the meanings given to them in the Business Corporation Law.

New law provides that a business corporation may elect to be a benefit corporation by stating in its articles that it is a benefit corporation subject to the new law.

New law requires any amendment to the articles of an existing business corporation to add a statement that it is a benefit corporation subject to the new law to be adopted by at least the minimum vote. New law requires the notice of the meeting of shareholders to approve the amendment to state the specific public benefits, if any, to be included in the purposes of the benefit corporation and to explain the anticipated impact on shareholders of becoming a benefit corporation.

New law provides that if an entity that is not a benefit corporation is a party to a merger or consolidation, and the surviving or new entity in the merger or consolidation is to be a benefit corporation, then the plan of merger or consolidation shall be adopted by at least the minimum vote.

New law requires the corporate name of a benefit corporation to end with the following phrase, which may be in parentheses, "A Benefit Corporation".

New law provides that a benefit corporation may terminate its status as such by amending its articles to delete the provision required by new law to be stated in the articles of a benefit corporation. In order to be effective, the amendment must be adopted by at least the minimum vote.

New law provides that if a merger or consolidation of a benefit corporation would have the effect of terminating the status of a business corporation as a benefit corporation, in order to be effective, the plan of merger or consolidation must be adopted by at least the minimum vote.

New law further provides that any sale, lease, exchange, or other disposition of all or substantially all of the assets of a benefit corporation, unless the transaction is in the usual

and regular course of business, shall not be effective unless the transaction is approved by at least the minimum vote.

New law requires a benefit corporation to have a purpose of creating general public benefit.

New law provides that the articles of a benefit corporation may identify one or more specific public benefits that it is the purpose of the benefit corporation to create. The identification of a specific public benefit must not limit the obligation of a benefit corporation to create a general public benefit.

New law provides that the creation of a general public benefit and specific public benefit shall be in the best interests of the benefit corporation.

New law authorizes a benefit corporation to amend its articles to add, amend, or delete the identification of a specific public benefit that it is the purpose of the benefit corporation to create. In order to be effective, the amendment must be adopted by at least the minimum vote.

New law provides that a professional corporation that is a benefit corporation shall not be deemed in violation of provisions prohibiting a professional corporation from having a purpose other than to practice the specified profession by having the purpose to create general public benefit or a specific public benefit.

New law provides that, in discharging the duties of their respective positions and in considering the best interests of the benefit corporation, the board of directors, committees of the board, and individual directors and officers of a benefit corporation shall consider the effects of any action or inaction upon all of the following:

- (1) The shareholders of the benefit corporation.
- (2) The employees and work force of the benefit corporation, its subsidiaries, and its suppliers.
- (3) The interests of customers as beneficiaries of the general public benefit or specific public benefit purposes of the benefit corporation.
- (4) Community and societal factors, including those of each community in which offices or facilities of the benefit corporation, its subsidiaries, or its suppliers are located.

(5) The local and global environment.

(6) The short-term and long-term interests of the benefit corporation, including benefits that may accrue to the benefit corporation from its long-term plans and the possibility that these interests may be best served by the continued independence of the benefit corporation.

(7) The ability of the benefit corporation to accomplish its general public benefit purpose and any specific public benefit purpose.

New law provides that, in discharging the duties of their respective positions and in considering the best interests of the benefit corporation, the board of directors, committees of the board, and individual directors of a benefit corporation (1) may consider other pertinent factors or the interests of any other group that they deem appropriate, and (2) are not required to give priority to the interests of a particular person or group over the interests of any other person or group, unless the benefit corporation has stated otherwise in its articles.

New law provides that the consideration of interests and factors in the manner required by new law shall not constitute a violation of the fiduciary duty of the directors and officers.

New law provides that a director shall not be personally liable for monetary damages for any of the following:

(1) Any act or omission covered by a provision in the articles of incorporation that eliminates or limits the liability of the director, as authorized in R.S. 12:24(C)(4).

(2) Any act or omission as a director if the director adhered to his fiduciary duties.

(3) Failure of the benefit corporation to pursue or create general public benefit or specific public benefit.

New law provides that a director shall not have a duty to a person that is a beneficiary of the general public benefit purpose or a specific public benefit purpose of a benefit corporation arising from the status of the person as a beneficiary.

New law requires the board of directors of a benefit corporation to include a director who

shall be designated the benefit director and who shall have, in addition to the powers, duties, rights, and immunities of the other directors of the benefit corporation, the powers, duties, rights, and immunities provided for in new law.

New law provides that the benefit director shall be elected, and may be removed, pursuant to the Business Corporations Law and shall be an individual who is independent. New law provides that the benefit director of a professional corporation shall not be required to be independent.

New law authorizes the benefit director to serve as the benefit officer at the same time as serving as the benefit director. New law authorizes the articles or bylaws of a benefit corporation to prescribe additional qualifications or duties of the benefit director not inconsistent with new law.

New law requires the benefit director to prepare an annual benefit report to be submitted to shareholders.

New law authorizes the benefit director to retain an independent third party to audit the annual benefit report or conduct any other assessment of the corporation's pursuit of its general public benefit purpose and any specific public benefit purpose.

New law requires the annual benefit report to include a statement of the benefit director, in the opinion of the benefit director, on all of the following:

(1) Whether the benefit corporation acted in accordance with its general public benefit purpose and any specific public benefit purpose in all material respects during the period covered by the report.

(2) Whether the directors and officers complied with the fiduciary duty contained in new law.

(3) If, in the opinion of the benefit director, the benefit corporation or its directors or officers failed to comply with their fiduciary duty, a description of the ways in which the benefit corporation or its directors or officers failed to comply.

New law provides that the act or inaction of an individual in the capacity of a benefit director shall constitute for all purposes an act or inaction of that individual in the capacity of a director of the benefit corporation.

New law provides that, regardless of whether the bylaws of a benefit corporation include a provision eliminating or limiting the personal liability of directors, a benefit director shall not be personally liable for an act or omission in the capacity of a benefit director unless the act or omission constitutes self-dealing, willful misconduct, or a knowing violation of law.

New law requires each officer of a benefit corporation to consider the interests and factors previously described in new law if the officer has discretion to act with respect to a matter and it reasonably appears to the officer that the matter may have a material effect on the creation by the benefit corporation of a general public benefit or a specific public benefit identified in the articles of the benefit corporation. Such consideration of interests and factors shall not constitute a violation of R.S. 12:91.

New law provides that an officer shall not have a duty to a person that is a beneficiary of the general public benefit purpose or a specific public benefit purpose of a benefit corporation arising from the status of the person as a beneficiary.

New law authorizes a benefit corporation to have an officer designated as the benefit officer.

New law requires the benefit officer to have:

(1) The powers and duties relating to the purpose of the corporation to create a general public benefit or specific public benefit provided by the bylaws or, absent controlling provisions in the bylaws, by resolutions or orders of the board of directors.

(2) The duty to prepare the benefit report required by new law.

New law provides that an officer shall not be personally liable for monetary damages for any of the following:

(1) Any act or omission covered by a provision in the articles of incorporation that eliminates or

limits the liability of the director, as authorized in R.S. 12:23(C)(4).

(2) Any act or omission as a director if the director adhered to his fiduciary duties.

(3) Failure of the benefit corporation to pursue or create general public benefit or specific public benefit.

New law provides that the duties of directors and officers under new law and the general public benefit purpose and any specific public benefit purpose of a benefit corporation may be enforced only in accordance with new law in a benefit enforcement proceeding, and no person shall bring an action or assert a claim against a benefit corporation.

New law permits a benefit enforcement proceeding to be commenced or maintained directly only by the benefit corporation or derivatively by shareholder, director, or other persons as specified in the articles or bylaws of the benefit corporation.

New law requires a benefit corporation to prepare an annual benefit report containing specified information, including:

(1) the ways in which the benefit corporation pursued public benefits during the year and the extent to which the public benefits were created.

(2) the process and rationale for selecting or changing the third-party standard used to prepare the benefit report.

(3) an assessment of the performance of the benefit corporation in pursuing the creation of general public benefit against a third-party standard, but the assessment need not be performed, audited, or certified by a third-party standards provider.

(4) the compensation paid by the benefit corporation during the year to each director in the capacity of a director.

(5) the name of each person that owns 5% or more of the outstanding shares of the benefit corporation.

(6) a statement of any connection between the organization that established the third-party standard.

New law requires a benefit corporation to annually send a benefit report to each shareholder.

New law requires a benefit corporation to post all of its benefit reports on the public portion of its Internet website, if any, or else provide a copy of its most recent benefit report, without charge, to any person that requests a copy. The compensation paid to directors and financial or proprietary information included in the benefit reports may be omitted from the benefit reports as posted or provided.

New law requires all certificates representing shares in a benefit corporation to contain, in addition to any other statements required by the Business Corporation Law, the following conspicuous language on the face of the certificate: "This corporation is a benefit corporation subject to the Benefit Corporations Law, R.S. 12:1801 et seq."

(Adds R.S. 12:1801-1832)

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

### **Orleans Parish Court Organization (Act No. 474)**

Old law, as provided for in Act 621 of 2006, consolidates the civil, criminal, and juvenile courts, and the clerks of the respective courts into the 41st JDC; establishes one clerk of court for Orleans Parish; and otherwise establishes consolidated public offices similar to the other 41 existing judicial districts in the state. Old law and amendments made by subsequent Acts provided an effective date of Dec. 31, 2014. New law repeals old law.

Old law, as provided for in Act 621 of 2006, repealed all statutory authority for the Civil and Criminal District Courts for Orleans Parish and their respective clerks effective Dec. 31, 2014. New law repeals the effective date of Dec. 31, 2014 in old law, provides for the Civil and Criminal District Courts for Orleans Parish, and provides that the clerks of the respective courts shall continue to function as they do.

Old law transferred the offices of the custodian of notarial records, register of conveyances, and recorder of mortgages and their respective duties and functions to the clerk of civil district court as parish recorder and abolished such offices effective Jan. 1, 2009. Old law provided for the clerk to assume the duties of the custodian, the register, and the recorder on that date. New law retains old law and removes all references to the register of conveyances, the recorder of mortgages, and custodian of notarial records.

New law provides that the annual salary to be paid monthly to all judges shall be as determined by recommendation of the Judicial Compensation Commission and approved by the legislature.

Old law provided for the consolidation of the offices of the civil and criminal sheriffs of the Parish of Orleans into one office. New law retains old law and removes all references to the civil and criminal sheriff from old law.

Old law required the first judge for the additional judgeship of the juvenile court for the Parish of Orleans, to be elected for a term of eight years commencing on January 1, 1961, and his successor to be elected every eight years thereafter. New law changes the terms of office from eight years to six years and extends the terms of those juvenile court judges currently in office on Aug. 1, 2012 to Dec. 31, 2014.

Effective August 1, 2012.

(Amends R.S. 13:477, 691, 1306, 1307, 1311, 1312, 1381.2, and 1594, and R.S. 44:181; adds R.S. 13:1213.2; repeals R.S. 13:474.1, 621.41-621.46, 714.1, 714.2, 751.1, 751.2-751.5, 841.3, 983, 996.62-996.64, R.S. 44:181.5 and 181.6, and Sections 6, 8, 9, 22, and 31 of Act No. 621 of the 2006 Regular Session of the Legislature)

### **Election of Jefferson Parish Judges (Act No. 457)**

New law divides the 24th Judicial District (Jefferson Parish) into three election sections and provides for the geographic boundaries of the election sections.

New law provides that four judges, Divisions E, J, M, and O, shall be elected from election

section One; nine judges, Divisions A, B, D, F, H, I, K, L, and N, shall be elected from election section Two; and three judges, Divisions C, G, and P, shall be elected from election section Three.

Effective in part upon signature of governor (June 1, 2012); in part on January 1, 2015.

(Amends R.S. 13:477(24) and 621.24)

#### **Faxing Papers in a Civil Action (Act No. 826)**

Old law provides that any paper in a civil action may be filed with the court by facsimile transmission. Old law required the party filing the document to forward, within five days, the following to the clerk: (1) the original signed document; (2) the applicable filing fee, if any; and (3) a transmission fee of \$5. New law changes the time period within which a party shall file an original with the court from five days to seven days.

Effective August 1, 2012.

(Amends R.S. 13:850(B)(intro. para.))

#### **Orleans Automated Traffic Enforcement Appeals (Act No. 312 and Act No. 497)**

Old law provides for the jurisdiction of the Traffic Court of New Orleans, the First City Court of New Orleans, and the Second City Court of New Orleans.

New law provides that the traffic court shall have exclusive jurisdiction of appeals by any person aggrieved by an administrative hearing officer's decision concerning a traffic violation enforced by the city of New Orleans' automated traffic enforcement system. Such appeals to the traffic court shall be made within 30 days from the date of decision, and the traffic court shall have de novo review over such appeals.

New law provides that the First or Second City Court of New Orleans shall have jurisdiction of appeals by any person aggrieved by a decision of the traffic court concerning a traffic violation enforced by the city of New Orleans' automated traffic enforcement system. Such appeals to the first or second city court shall be made within 30 days from the date of decision, shall extend to

the law, and shall be tried upon the records made and the evidence offered in traffic court.

Effective August 1, 2012.

(Amends R.S. 13:2501.1(F); Adds R.S. 13:1337(C), 2151(E), and 2151.4(E))

#### **Notice of Seizure of Immovables (Act No. 504)**

Old law provides for procedures by which immovable property may be seized to satisfy a judgment. Old law required the sheriff to make three notices of the seizure proceedings before seizing the described property. New law provides that no additional notice is required, including notice of rescheduled sale dates.

Effective August 1, 2012.

(Amends R.S. 13:3852)

#### **Judicial Advertisements and Legal Notices (Act No. 825)**

New law requires advertisements and legal notices made in relation to judicial proceedings, the sale of property under judicial process, or in any other legal proceeding in a parish which contains a municipality with a population of 300,000 or more, as determined by the latest federal census, to be published in a newspaper or publication that is domiciled in that parish, is published weekly in the English language, has maintained a total circulation of at least 30,000 for at least five consecutive years prior to being selected, and meets other requirements provided for in old law regarding judicial advertisements and legal notices. New law requires the newspaper or publication to be selected in June of each year, for a term of one year by the sheriff, constable, clerk, or other officer, who is charged with the conduct of such sales requiring advertisement.

New law requires that the total circulation of a newspaper or other publication selected to publish judicial advertisements to be proved not less than annually by an experienced publication auditing firm prior to the selection of the newspaper or other publication. New law requires that the audit reflect the total circulation of the newspaper or other publication, and a

copy of the most recent audit to be submitted as an attachment to any proposal by a qualifying newspaper or other publication to publish judicial advertisements and legal notices.

New law requires that when additional judicial advertisements are required to be inserted in an auxiliary journal in a parish of 300,000 or more, the journal has to have been published for at least 75 years prior to insertion of the advertisement or publication, have been previously selected for no less than five years as the journal for that parish, and not be eligible to be selected under the provisions of new law by the sheriff, constable, clerk or other officer of the parish to publish advertisements in relation to judicial proceedings, in the sale of property under judicial process or in any other legal proceedings of whatever kind.

New law requires that, in the case of unknown property owners, in any parish which contains a municipality with a population of 300,000 or more that a notice be published twice during a period of 15 days in a newspaper or other publication that is domiciled in that parish, is published weekly in the English language, has maintained a total circulation of at least 30,000 for at least five consecutive years prior to publishing the notice, and meets the requirements of old law regarding judicial advertisements and legal notices.

Effective upon signature of governor (June 14, 2012).

(Amends R.S. 13:4202(B)(2) and R.S. 47:1966(A); Adds R.S. 43:201.1)

#### **Judicial Sale Procedure (Act No. 712)**

Old law provided for cancellation of inscriptions on mortgage certificates and liability for inscriptions wrongfully cancelled. New law directs the sheriff to disregard inscriptions of certain cancelled and prescribed mortgages and proceed with judicial sale.

Effective August 1, 2012.

(Amends R.S. 13:4344.1; Adds R.S. 13:4344.1(G))

#### **Defense and Indemnity of State Contractors (Act No. 509)**

Old law provides for the defense and indemnity of covered individuals by the state against any claim, demand, suit, complaint, or petition seeking damages over alleged negligence or other act by the individual while the individual was engaged in the performance of the duties of the individual's office or employment with the state. New law includes individuals engaged in the provision of services on behalf of the state or any of its departments as further defined by law.

Old law defined a "covered individual", in part, as a physician who either contracts with or provides services on behalf of the state or any of its departments, whether compensated or not, in treating and performing evaluations of persons when such persons cause harm to third parties.

New law changes "physician" to "physician or dentist" and includes as a covered individual a physician or dentist who either contracts with or provides services on behalf of the state or any of its agencies, whether compensated or not, (1) in treating and performing evaluations of persons when such persons cause harm to third parties; or (2) that provide professional assistance to the contracting agency when such professional assistance is alleged to have caused harm to third parties.

Effective August 1, 2012.

(Amends R.S. 13:5108.1(A)(1) and (E)(2))

#### **Bond Validation Suits (Act No. 212)**

New law adds to the definition of "governmental unit" to also mean public trusts, corporations, districts, boards, authorities, and agencies created by or governed by the governing authorities of parishes or municipalities.

New law requires the State Bond Commission to establish and maintain on its website an online database of motions for judgment in bond validation suits and to post to such database within two days of receipt the caption of the motion for judgment, including the parties, the docket number, judicial district, and parish in which the motion for judgment is filed.

New law provides that any person, corporation, or association filing a bond validation suit must provide notification of the motion for judgment to the State Bond Commission and the attorney general by mailing a certified copy of the motion for judgment by registered or certified mail. New law further requires the State Bond Commission to post to its online database within two days of receipt the caption of the motion for judgment, including the parties, the docket number, judicial district, and parish in which the motion for judgment is filed.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 13:5121(2), 5124(B), and 5125)

#### **Small Claims Limit (Act No. 209)**

Old law provided that a small claims division shall have civil subject matter jurisdiction over cases where the amount in dispute did not exceed \$3,000, exclusive of interest, court costs, attorney fees, or penalties, provided that not more than 10 parties plaintiff should be joined in the same action and that there is no class certification. New law changes the limit on the amount in dispute from \$3,000 to \$5,000.

Effective August 1, 2012.

(Amends R.S. 13:5202(A))

#### **Safekeeping of Public Records (Act No. 102)**

Old law authorized clerks of court to destroy public records in certain circumstances. New law requires such destruction to be authorized by the state archivist.

Old law provided that certain records may be destroyed by a clerk of court only after they have been scanned to "an optical disc" for storage. New law changes this to requiring the document to be stored in an electronic format.

Old law required all records relating to suits on immovable property, adoption, interdiction, successions, trusts, or emancipation to be retained in their original form regardless of whether they have been copied into another format. New law changes this requirement so

that only such records created prior to 1922 must be retained in their original format.

Old law provided relative to the transmittal of certain records to the Dept. of State for microphotographic copying, and for the creation and retention of master copies of the negatives and of copies of the documents. New law repeals old law.

Old law provided for the transfer of records to the state archives and placed restrictions on making copies of such records. New law repeals old law.

(Amends R.S. 13:917, 1221, 1903, 1904, 1904.1, and 2562.26 and R.S. 44:40; Repeals R.S. 44:40(F) and 427)

#### **Service of Process on the State or a State Agency (Act No. 770)**

Old law provided that in all suits filed against the state or a state agency, citation and service may be obtained by citation and service on the attorney general, or on any employee in his office above the age of sixteen years, or any other proper officer or person, depending upon the identity of the named defendant and in accordance with state law, and certain other persons.

New law adds that service shall be requested upon the attorney general within 90 days of filing suit. The duty of the defendant served through the attorney general to answer the suit or file other responsive pleadings does not commence to run until the additional service required upon the department, board, commission, or agency head has been made.

Effective upon signature of the governor.

(Amends R.S. 13:5107(A))

#### **Offender Rehabilitation Program (Act No. 399)**

New law authorizes the 19th JDC, the 22nd JDC, and the Criminal District Court to assign certain divisions to be designated as reentry divisions of court.

New law authorizes each reentry division to develop a workforce development sentencing

program and requires the division to work in conjunction with the La. Workforce Commission.

New law provides that the court may recommend that a defendant participate in the workforce development sentencing program if a list of criteria is satisfied.

New law provides that to be eligible to participate in the workforce development sentencing program, the defendant must waive the right to a trial and enter a plea of guilty to the charge, with the stipulation that the defendant shall be sentenced to custody of DPS&C to participate in the Offender Rehabilitation and Workforce Development Program, and after successful completion of that program, he may petition the court to be placed on intensive reentry supervision by the court.

New law provides that the defendant has the right to be represented by counsel at all stages of a criminal prosecution and during the determination of eligibility to participate in the workforce development sentencing program, at the time of execution of the sentencing agreement, and any subsequent probation revocation hearing to discharge him, unless the court finds and the record shows that the defendant knowingly and intelligently waived his right to counsel.

New law provides that if the judge determines that the defendant should be enrolled in the workforce development sentencing program, the court shall accept the defendant's guilty plea and sentence the defendant to the custody of DPS&C Offender Rehabilitation and Workforce Development Program under the terms and conditions of the workforce development sentencing program.

New law provides that if the defendant successfully completes the Offender Rehabilitation and Workforce Development Program and successfully completes all other requirements of the workforce development sentencing program, he may petition the court to be placed on intensive reentry supervision by the court.

New law repeals old law that provided for the Offender Rehabilitation and Workforce

Development Program in the criminal district court for the parish of Orleans or the 41st JDC.

Effective August 1, 2012.

(Amends R.S. 13:5401; Adds R.S. 13:5501; Repeals R.S. 13:621.41(J) and 1343(C))

## **TITLE 14: CRIMINAL LAW**

### **Murder of Cab Drivers (Act No. 679)**

New law further defines first degree murder to include the circumstance when the offender has a specific intent to kill or to inflict great bodily harm upon a taxicab driver who is in the course and scope of his employment. New law defines "taxicab" as a motor vehicle for hire, carrying six passengers or less, including the driver thereof, that is subject to call from a garage, office, taxi stand, or otherwise.

Effective August 1, 2012.

(Amends R.S. 14:30)

### **Battery of Federal Agents (Act No. 174)**

Old law provides for the crime of battery of a police officer. New law adds federal law enforcement officers to the definition of "police officer".

Effective August 1, 2012.

(Amends R.S. 14:34.2)

### **Metal Theft (Act No. 164)**

New law provides that theft of copper or other metals is the misappropriation or taking of copper or other metals that belong to another, either without the consent of the owner or by means of fraudulent conduct, practices, or representations, with the intent to permanently deprive the owner of the copper or other metal.

Effective August 1, 2012.

(Adds R.S. 14:67.28)



### ***Les Miserables Meets 1984 (Act No. 677)***

New law provides that whoever commits the crime of unauthorized use of SNAP (food stamp) benefits or access devices shall be fined ***not less than*** \$5,000 nor more than \$1 million, or imprisoned for ***not less than*** six months nor more than 10 years, or both.

New law creates the crime of failure to report unauthorized use of SNAP benefits, which provides that employees of DCFS, owners, employees, and operators of retailers that accept SNAP benefit access device transactions, and adult household members of SNAP recipients, shall report any instances of known fraud or abuse of SNAP benefits to the fraud detection section of DCFS via the Public Assistance Fraud Hot-Line.

Effective January 1, 2013.

(Amends R.S. 14:68.2; adds R.S. 14:68.2.1)

### **Illegal Transmission of Funds (Act No. 540)**

New law creates the crime of illegal transmission of monetary funds, which is defined as transmitting, attempting to transmit, causing to be transmitted, soliciting a transmission, or receiving a transmission, with the intent to defraud, by wire or radio signal, any stolen or fraudulently obtained monetary funds.

Defines "wire" as any wired electronic device that provides access to the Internet or to any other access point and allows monetary transactions to be transmitted or received by email, financial institution-to-financial institution transfer, or money transfer facility.

Defines "radio signal" as any text, email, or any other wireless transmission from cellular phones, portable wireless electronic tablets or computers, or any other wireless device used to transmit or receive monetary transactions.

Effective upon signature of the governor.

(Adds R.S. 14:70.8)

### **Electronic Impersonation (Act No. 375)**

New law provides that it shall be unlawful for any person, with the intent to harm, intimidate,

threaten, or defraud, to intentionally impersonate another actual person, without the consent of that person, in order to engage in any of the following:

- (1) Open an electronic mail account, any other type of account, or a profile on a social networking website or other Internet website.
- (2) Post or send one or more messages on or through a social networking website or other Internet website.

New law further provides that it shall be unlawful for any person, with the intent to harm, intimidate, threaten, or defraud, to send an electronic mail, instant message, text message, or other form of electronic communication that references a name, domain address, phone number, or other item of identifying information belonging to another actual person without the consent of that person and with the intent to cause the recipient of the communication to believe that the other person authorized or transmitted the communication.

New law provides definitions for "access software provider", "cable operator", "interactive computer service", "social networking website", and "telecommunications service".

New law provides an exception for the following entities and employees of those entities when the actions of the employees are within the course and scope of employment: a social networking website, an interactive computer service provider, a telecommunications service provider, a cable operator, Internet service provider, or any law enforcement officer or agency.

Effective August 1, 2012.

(Adds R.S. 14:73.10)

### **Illegal Dog and Cat Sales (Act No. 700)**

New law provides that it shall be unlawful for any person to offer for sale or sell any dog or cat on any highway, right-of-way, flea market, public park, public playground, public swimming pool, any other public recreational area, or adjacent property to such locations, or on any commercial or retail parking lot unless permission is granted by the owner of the parking lot.

New law creates exceptions for animal adoption days sponsored by animal welfare groups, sales occurring entirely on private property, sales at competitive cat or dog shows, and raffles for a dog or cat at certain fundraising events. New law does not apply to a retail pet store or licensed breeder.

Effective August 1, 2012.

(Adds R.S. 14:102.27)

#### **Obscene Text Messages (Act No. 846)**

New law provides that the crime of obscenity includes the transmission of an unsolicited text message that includes sexually explicit content to one or more persons within this state through a wireless telecommunications device.

Effective August 1, 2012.

(Amends R.S. 14:106)

#### **Escape from Home Incarceration (Act No. 137)**

New law expands the crime of simple and aggravated escape to include escape from home incarceration.

Effective August 1, 2012.

(Amends R.S. 14:110)

#### **Firefighter Impersonation (Act No. 165)**

Old law provided for the crime of false personation of a peace officer. New law amends the crime to also apply to the false personation of a firefighter.

Effective August 1, 2012.

(Amends R.S. 14:112.1)

#### **Duty to Report Certain Crimes (Act No. 638)**

New law provides that it is a crime for any person having knowledge of the commission of any homicide, rape, or sexual abuse of a child to fail to report or disclose such information to a law enforcement agency or district attorney, except when the person having such knowledge is bound by any privilege of confidentiality recognized by law.

Effective upon signature of the governor.

(Adds R.S. 14:131.1)

#### **False Liens (Act No. 405)**

New law creates the crime of filing a false lien against a law enforcement or court officer which occurs when a person files in any public records, or in any private record which is generally available to the public, any false lien or encumbrance against the real or personal property of a law enforcement officer or court officer, as retaliation against the officer for the performance of his official duties, knowing or having reason to know that such lien or encumbrance is false or contains any materially false, fictitious, or fraudulent statement or representation.

Effective upon signature of governor (May 31, 2012).

(Adds R.S. 14:133.6)

#### **Interception, Disclosure, and Use of Electronic Communications (Act No. 727)**

Old law provided that any person whose wire or oral communication is intercepted, disclosed, or used in violation of law will have a civil cause of action against any person who intercepts, discloses, or uses, or procures any other person to intercept, disclose, or use such communications, and be entitled to recover from any such person. New law adds electronic communications.

New law amends numerous old laws dealing with the interception, disclosure, and use of oral or wire communications to add electronic communications.

Effective August 1, 2012.

(Amends R.S. 14:402, 15:1302, 1303, 1304, 1308, 1309, 1310, 1311 and 1312)

#### **Reporting of Missing Children (Act No. 454 and Act No. 477)**

New law provides that a child's caretaker must report to an appropriate authority that a child is missing within two hours of the expiration of the period provided for in new law.

New law provides that there is a presumption that a child is missing and that the child's caretaker knew or should have known that the child is missing when the caretaker does not know the location of the child and has not been in contact with nor verified the location or safety of the child for the following periods of time:

1. With regard to a child over the age of 13, for a period of 24 hours.
2. With regard to a child 13 years of age or younger, for a period of 12 hours.

New law provides:

1. "Caretaker" means the child's parent, grandparent, legal guardian, or any person who, at the time of the child's disappearance, has physical custody of the child.
2. "Child" means any person under the age of 17 years.

New law provides that the period of time in which a caretaker is required to report a missing child is suspended for the period of time in which the caretaker is unable to make a report due to circumstances beyond the caretaker's control.

New law provides that it is unlawful for a child's caretaker to fail to report to an appropriate authority the death of a child that occurs while the child is in the physical custody of the caretaker, within one hour of the caretaker's discovery of the child's death or one hour of the caretaker learning of the location of the child's body.

New law provides that the period of time in which a caretaker is required to report the death of a child is suspended for the period of time in which the caretaker is unable to make a report due to circumstances beyond the caretaker's control.

Effective upon signature of the governor.

(Amends R.S. 14:403.3; adds R.S. 14:403.7 and 403.8)

## **TITLE 15: CRIMINAL PROCEDURE**

### **Municipal Court Maximum Bond (Act No. 118)**

Old law provided that the maximum bond which can be set in the Municipal Court of New Orleans for violations of municipal ordinances is \$10,000. New law increases this amount to \$30,000.

Effective August 1, 2012.

(Amends R.S. 15:81(H)(1))

### **DPS&C Risk Review Panel Repealed (Act No. 123)**

Old law provided for the risk review panel within DPS&C, its composition and duties. Old law required the risk review panel to evaluate the risk of danger to society posed by each person convicted of a crime who is confined in a prison facility if released from confinement. New law repeals old law.

Effective August 1, 2012.

(Repeals R.S. 15:308(C) and 574.22)

### **Forensic Examination Certification (Act No. 69)**

Old law provided that all criminalistics laboratories and all coroners, forensic pathologists, and other persons and legal entities practicing in fields of gathering, examination, and analysis of evidence by scientific means are authorized to make proof of examination and analysis of physical evidence by the certificate of the person in charge of the facility in which such examination and analysis is made.

New law changes old law to authorize the person making the examination or analysis to certify that the examination or analysis was conducted.

Effective August 1, 2012.

(Amends R.S. 15:499(A))

**Human Trafficking Assistance Signs (Act No. 154)**

New law provides that certain massage parlors, spas, and hotels, as well as every strip club, sexually-oriented business, highway truck stop, and highway rest stop shall display a posting alerting citizens to the assistance of the National Human Trafficking Resource Center hotline.

New law provides that such posting shall be in English, Louisiana French, and Spanish, as well as any other language mandated by the Dept. of Public Safety and Corrections.

Effective August 1, 2012.

(Adds R.S. 15:541.1)

**Executions (Act No. 172)**

New law removes the requirement that the operator of an electric chair be present at every execution of a death sentence.

New law provides that any person who is requested to attend an execution shall not be required to attend, and the refusal to attend shall not be used in any disciplinary action or negative job performance citation against such person.

New law provides that any record which contains information that identifies any person participating in an execution, who is not listed in records of persons whose identity shall be made public, shall remain confidential, shall not be subject to disclosure, and shall not be admissible as evidence or be discoverable in any proceeding before any court, tribunal, board, agency, or person.

New law provides that any person who participates or performs ancillary functions in an execution who is licensed by a board shall not have his license suspended or revoked and no disciplinary or other adverse action shall be brought against him as a result of his participation in the execution.

Effective August 1, 2012.

(Amends R.S. 15:568 and 570)

**Board of Parole Merged into Board of Pardons (Act No. 714)**

New law merges the duties, functions, powers, and training requirements of the Board of Parole into the Board of Pardons, creates a committee on parole which shall be part of existing law Board of Pardons, and provides for the transfer of all powers, duties, functions, responsibilities, and obligations of prior law Board of Parole to new law committee on parole.

Effective August 1, 2012.

(Amends R.S. 15:572.1 and 574.2; Adds R.S. 42:1124.2(A)(7); Repeals R.S. 15:572.2)

**Separate Imprisonment (Act No. 173)**

New law provides that individuals housed in a facility under the control of the DPS&C at the request of the sheriff shall be housed separate and apart from offenders who have been sentenced to confinement at hard labor.

Effective August 1, 2012.

(Amends R.S. 15:824)

**Juvenile Detention Facilities (Act No. 366)**

Old law required that, on or before January 1, 2013, all juvenile detention facilities are to be licensed pursuant to regulations promulgated by the Department of Children and Family Services.

Old emergency rules provide extensive licensure requirements and penalties for persons who operate a juvenile detention facility without a valid license after January 1, 2013.

New law changes the date on which licensure is required from January 1, 2013 to July 1, 2013.

Effective August 1, 2012.

(Amends R.S. 15:1110(E))

**TITLE 16: DISTRICT ATTORNEYS**

There were no new laws of interest.

## **TITLE 17: EDUCATION**

### **Childhood Obesity Reduction (Act No. 288)**

New law requires the state Dept. of Education (DOE) to establish and administer a targeted coordinated school health program for the purpose of reducing childhood obesity.

New law requires public school governing authorities, in order to qualify for a grant, to submit to DOE an implementation plan with specified components.

(Adds R.S. 17:17.6)

### **Charter Schools; Transfer of Schools to RSD (Act No. 2)**

New law provides for a public school to be transferred to the Recovery School District (RSD) if such transfer is approved by BESE; parents or legal guardians representing at least 51% of the students attending the school sign a petition requesting the transfer; and the school has received a letter grade of "F" or any variation thereof, for three consecutive years.

New law amends the chartering process; provides for a new type of chartering authority; and provides for the chartering of providers of individual courses other than schools.

New law requires that each school board use the common charter application developed by the department and approved by BESE.

New law requires that BESE create a process for authorizing multiple charter schools for chartering groups that have a demonstrated record of success.

New law disallows consideration of academic achievement for admission to college preparatory schools but grandfathers schools chartered prior to July 1, 2012.

New law adds consideration of proficiency in a foreign language for schools with a language immersion mission.

New law requires that the chartering authority review each charter school after three years; if the school is meeting its goals, the initial charter period may be extended to include the fifth year;

if not, the charter expires at the end of the fourth year.

New law provides that the chartering group that qualifies for automatic renewal and has received a letter grade of "A" or "B" or any variation thereof is eligible to open and operate two additional schools that serve the same grade levels and the same enrollment boundaries without formal application.

New law requires that all instructional staff at a charter school have at least a baccalaureate degree.

New law prohibits persons convicted of or having pled nolo contendere to specified crimes from being hired by a charter school as a teacher, substitute teacher, bus driver, substitute bus driver, or janitor, or as a temporary, part-time, or permanent school employee of any kind, unless approved in writing by a district judge and the district attorney or, if employed on an emergency basis, unless approved in writing by the administrator of a chartering authority.

### Local Charter Authorizers

New law requires that BESE establish procedures for certifying other entities, other than BESE itself and local school boards, as "local charter authorizers". State agencies and nonprofit corporations with an educational mission may be certified as local charter authorizers. An entity which has been certified by BESE as a local charter authorizer may accept, evaluate, and approve applications for charter schools from chartering groups.

New law provides for monitoring and standards for local charter authorizers and the schools they charter by BESE.

New law generally provides that a local charter authorizer is subject to the same requirements regarding the process for charter applications and evaluations as old law.

New law provides that local charter authorizers may charter new schools or existing schools which convert to charter schools; any such school is referred to as a Type 1B charter school.

### Course Providers

New law provides for the Course Choice Program. New law requires the State Board of Elementary and Secondary Education (BESE) to create a process for authorizing course providers, including online or virtual providers, postsecondary education institutions, and corporations that offer vocational or technical courses.

New law requires local school systems to establish policies and procedures for counting credits, for administering state tests, and for all services to be provided to students, including those with Individual Education Plans.

Old law provides for the Student Scholarships for Educational Excellence Program for K-six students in Orleans Parish from families with a total income not exceeding 250% of the current federal poverty guidelines. New law makes numerous changes to the program.

(Amends R.S. 17:22, 158, 3973, 3981, 3982, 3983, 3991, 3992, 3995, 3996, 3998, 4001, and 4011-4025; Adds R.S. 17:10.5(F), 3981.1, 3981.2, 3982(A)(3), 3983, and 4002.1-4002.6)

### **Student Testing (Act No. 275)**

New law changes in various ways the nature and timing of tests that students must take.

Old law provided that no curriculum standards or scores shall exceed any national average standards, scores, or percentile rankings. New law deletes old law.

(Amends R.S. 17:24.4)

### **Special Education Reorganization (Act No. 441)**

New law amends generally with respect to the management and operation of special education schools and programs.

(Amends R.S. 17:43, 46, 47, 48, 49, 348 and 1945 and R.S. 36:642 and 648.1; Repeals R.S. 17:4.1)

### **Southeast Baton Rouge School System (Act No. 797)**

New law establishes a separate school system and school board for the Southeast Baton Rouge community in East Baton Rouge Parish.

(Adds R.S. 17:58.2(I), 67, and 67.1-67.4)

### **School Board Term Limits (Act No. 386)**

New law provides for an election in every school district, with limited exceptions, on Nov. 6, 2012, to determine whether the members of the school board in each district shall have term limits.

New law is not applicable to the Recovery School District, the governing authority of any charter school, school districts where voters have already approved term limits for school board members (Lafayette Parish), or school districts in which school board members are subject to term limits by law (Jefferson Parish).

Effective upon signature of governor (May 31, 2012).

(Adds R.S. 17:60.4)

### **Monuments to the Living (Act No. 695)**

New law allows a school board to name an existing athletic facility at a school under its jurisdiction or a street that it maintains in honor of a living person.

Effective August 1, 2012.

(Amends R.S. 17:85)

### **School Computer Sales (Act No. 436)**

New law authorizes any local public school board to sell individual computing devices used by students for classwork to students enrolled in system schools or their parents, tutors, or legal guardians, subject to various requirements.

New law applies only to individual computing devices used for classwork by students and not to other computer equipment or related equipment such as routers, switches, or servers.

Effective upon signature of governor (May 31, 2012).

(Adds R.S. 17:87.6(C))

#### **Athletic Eligibility (Act No. 587)**

New law provides that no student otherwise academically eligible to participate in an extracurricular interscholastic athletic activity shall be determined ineligible if the student transferred to the school due to a move necessitated by military orders issued to the student's parent and if the student resided with and was supported by the parent prior to receipt of the military orders and the orders constituted a change in duty station.

Effective upon signature of governor (June 7, 2012).

(Adds R.S. 17:176(H))

#### **Soccer Eligibility (Act No. 665)**

New law provides that, notwithstanding any policy, rule, or regulation to the contrary adopted by any legal entity that administers or regulates high school extracurricular interscholastic athletic programs in this state, no student otherwise eligible to participate in an extracurricular interscholastic athletic activity shall be prohibited from participating in any soccer camp or other soccer showcase opportunity, including related training, provided that participation complies with applicable law, policies, guidelines, rules, and regulations with regard to college recruitment.

Effective upon signature of governor.

(Adds R.S. 17:176(H))

#### **Parent-Teacher Conferences (Act No. 845)**

New law requires a teacher to schedule at least two parent-teacher conferences during the first semester of each school year, and requires that at least one parent or guardian attend or participate in at least one of the scheduled conferences.

Effective August 1, 2012.

(Adds R.S. 17:406.7)

#### **Early Childhood Care and Education Network (Act No. 3)**

New law requires BESE to create a comprehensive and integrated network through which to manage and oversee publicly-funded programs that provide early childhood educational services.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Adds R.S. 17:407.21 through 407.25)

#### **Bullying in School (Act No. 861)**

New law provides relative to the discipline of students in public elementary and secondary schools regarding bullying, in excruciating detail.

New law provides that a school board is not required to indemnify an employee where there is a specific decree in the judgment that the employee purposefully or with gross disregard of the facts ignored the complaints of the student, or the student's parent or guardian, that the student was being bullied and the bullying lead to the physical harm or death of the student.

New law is not intended to infringe upon the right of a school employee or student to exercise his right of free speech.

Charter schools are subject to new law.

Effective upon signature of governor.

(Amends R.S. 17:415, 416, 416.4, 416.13, and 416.20; adds R.S. 17:3996(B)(30); repeals R.S. 17:416.14)

#### **Alternative Education Programs (Act No. 831)**

New law provides relative to alternative education programs for suspended or expelled students.

New law provides that the superintendent (instead of the school board) shall place the expelled student in an alternative school or an alternative educational placement (instead of an alternative school setting).

New law requires that a Type 5 charter school governing authority receive approval from the

Recovery School District (RSD) superintendent before entering into an agreement with an educational service provider for alternative education services pursuant to new law and provides that any such agreement shall not be subject to new law relative to providing services at actual cost.

Effective upon signature of governor (June 14, 2012).

(Amends R.S. 17:416(A)(2)(c); Repeals R.S. 17:416.2(B) and (F))

#### **Diabetic Students (Act No. 858)**

Beginning with the 2012-2013 school year, new law provides for the care of students with diabetes enrolled in all public and nonpublic elementary and secondary schools, in excruciating detail.

Effective upon signature of governor.

(Adds R.S. 17:436.3)

#### **School Bus Operators (Act No. 704)**

New law provides that old law provisions relative to a school bus operator becoming a regular and permanent operator are not applicable to any school bus operator whose date of first employment with the school system is July 1, 2012, or thereafter. Relative to such an operator, new law provides that after the expiration of the probationary term, the operator may be removed from his position as provided by the personnel policy of the employing school board.

Effective upon signature of governor (June 11, 2012).

(Amends R.S. 17:491 and 492)

#### **Leave for School Employees (Act No. 788)**

New law revises rules relative to extended sick leave for teachers, school bus operators, and other school employees.

New law revises rules relative to sabbatical leave for teachers in state special schools and public schools.

Effective upon signature of governor.

(Amends R.S. 17:24.2, 46, 500.2, 1176, 1202, and 1206.2; repeals Section 2 of Act 470 of 2010 RS)

#### **Employment of Superintendents and Teachers (Act No. 1)**

New law provides relative to the employment contracts of local superintendents; the powers of local school boards and superintendents with respect to personnel decisions; salary schedules and performance-based salary criteria; and tenure, including criteria for the acquiring, losing, and reacquiring thereof and procedures related to tenure hearings, all in great detail.

Effective July 1, 2012.

(Amends R.S. 17:54, 81, 81.4, 229, 414.1, 441, 442, 443, and 444; Adds R.S. 17:418 and 532(C); Repeals R.S. 17:44, 45, 154.2, 235.1(E), 346.1, 419, 419.1, 420, 421, 421.1, 421.2, 421.3, 421.5, 422, 422.1, 422.2, 422.3, 422.4, 422.5, 431, 446, 461-464, and 1207)

#### **Consolidation of School Systems (Act No. 691)**

New law requires an election to be called for the purpose of consolidating two or more school systems in accordance with the Louisiana Constitution, pursuant to an act by the legislature or a resolution adopted by each of the affected school boards. New law provides that consolidation of two or more school systems shall be subject to the approval by a majority of the electors voting, in each school system affected, in the election held for this purpose.

Effective August 1, 2012.

(Adds R.S. 17:1379)

#### **Tuition Break for Military (Act No. 581)**

New law provides that a student who is enrolled in or is applying for enrollment in a La. public college or university, who resides in La. during such enrollment, who has served in the U.S. Armed Forces, and who meets certain other eligibility requirements, is entitled to resident classification for tuition amount purposes without regard to length of time of residency in the state.



Effective upon signature of governor (June 7, 2012).

(Adds R.S. 17:2137(E))

### **Testing for TOPS (Act No. 108)**

Relative to the Taylor Opportunity Program for Students (TOPS), new law provides that the La. Student Financial Assistance Commission shall provide guidelines and procedures permitting it to receive and consider ACT or SAT test scores first obtained by an award applicant on an authorized testing date after the national April ACT testing date in the year of the applicant's high school graduation, but prior to July 1 of the graduation year (or, if LSFAC determines that the applicant was prevented from taking the test prior to July 1 of the graduation year due to circumstances beyond the immediate control of the student and attributable to test administration, prior to Sept. 30<sup>th</sup> of the graduation year).

Effective upon signature of governor or lapse of time for gubernatorial action.

(Adds R.S. 17:3048.1(C)(2)(h)(i)(cc))

### **TOPS and Military Service (Act No. 215)**

New law extends eligibility for TOPS awards for certain students who reenlist in the U.S. Armed Forces and maintain continuous active duty.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 17:3048.1)

### **College Savings (Act No. 658)**

Old law provided for the Student Tuition Assistance and Revenue Trust (START) as a program of education savings accounts by individuals, groups, or organizations and provides for the routine deposit of funds to cover the future educational costs of a designated beneficiary at an "institution of postsecondary education."

Old law defined "institution of postsecondary education" as either a state college, university, or technical college or institute or an independent college or university located in this

state that is accredited by a regional accrediting association and approved by the U.S. Secretary of Education.

New law removes the requirement that the institution be accredited by the regional accrediting association.

Effective upon signature of the governor.

(Amends R.S. 17:3092(5))

### **Bachelors' Degrees (Act No. 622)**

Old law provided that a baccalaureate degree program shall not require more than the number of credits established by the Board of Regents for degree completion without approval from the board.

New law instead provides that a baccalaureate degree program shall not exceed 120 credit hours without approval from the Board of Regents, except for degree programs which require additional credit hours to meet certification or accreditation requirements.

Effective August 1, 2012.

(Amends R.S. 17:3165(D)(2))

### **Common Course Numbering (Act No. 623)**

Old law provided that a statewide common course numbering system be established to facilitate the transfer of students and course credits between and among secondary and postsecondary educational institutions. New law changes schedule of implementation.

Effective upon signature of governor.

(Amends R.S. 17:3164(A)(2)(b), 3167(E), and 3168)

### **Colleges and Research Parks (Act No. 657)**

New law relative to colleges and universities adds authorization for a lease to a business, to be located in an area designated by the college or university, as a business incubator or research park, subject to certain conditions.

Effective August 1, 2012.

(Adds R.S. 17:3361(A)(6))

### **OPSB Offer-Back (Act No. 708)**

New law provides that if a chartering group determines that a facility or property that was purchased from the Orleans Parish School Board is no longer needed for an educational purpose, the group shall first offer to sell the facility or property back to the Orleans Parish School Board prior to seeking to dispose of it to any other person or entity.

Effective August 1, 2012.

(Amends R.S. 17:3982(B))

### **Founding Principles Act (Act No. 393)**

New law requires the governing authority of each public school offering American history and civics as prerequisites to graduation to integrate into such courses instruction on the founding principles of the U.S.A. Such instruction shall include information on the following:

- (1) The Creator-endowed unalienable rights of the people.
- (2) Structure of government, separation of powers with checks and balances.
- (3) Frequent and free elections in a representative government.
- (4) Rule of law.
- (5) Equal justice under the law.
- (6) Private property rights.
- (7) Federalism.
- (8) Due process.
- (9) Individual rights as set forth in the Bill of Rights.
- (10) Individual responsibility.

New law shall be known as the "Founding Principles Act".

Effective August 1, 2012.

(Adds R.S. 17:264 and 3996(B)(30))

### **Internet and Cell Phone Safety Education (Act No. 384)**

Old law required public schools, beginning in third grade, to provide instruction regarding child Internet safety. New law requires public schools to provide age and grade appropriate classroom instruction regarding Internet and cell phone safety.

Old law required the state Dept. of Education to provide to public schools materials for parents regarding Internet safety. New law instead requires public school governing authorities to provide teaching materials regarding Internet and cell phone safety to parents and legal guardians. New law is applicable to all public elementary and secondary schools, including charter schools.

New law provides that no person shall have a cause of action against any school district, school, or school employee based on any statement made or action taken, or by the omission of any statement or action, regarding the instruction required by new law. This immunity from liability shall not apply to any statement or action by a school employee that is maliciously, willfully, and deliberately intended to cause bodily harm to a student or to harass or intimidate a student.

Effective August 1, 2012.

(Amends R.S. 17:280; Adds R.S. 17:3996(B)(30))

### **School Choice Program (Act No. 424)**

Old law establishes the School Choice Pilot Program for Certain Students with Exceptionalities as a two-year pilot program beginning with the 2011-2012 school year in parishes with a population in excess of 190,000 (currently, Caddo, Calcasieu, East Baton Rouge, Jefferson, Lafayette, Orleans, and St. Tammany).

New law:

- (1) Removes the limitation that the program be a two-year pilot program but provides for termination at the end of the 2014-2015 school year.

(2) Removes the eligibility requirement that a student is residing within a pilot program parish.

(3) Removes the eligibility requirement that a student is entering kindergarten or grades one through eight.

(4) Shall be implemented beginning with the 2013-2014 school year.

(Amends R.S. 17:4031)

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

### **Election Law Update (Act No. 138)**

New law provides that an applicant who has a valid La. driver's license or La. Special identification card who is registered to vote, may make application to vote by mail by completing and submitting an electronic application to vote by mail on the secretary of state's website.

New law provides that paper ballots may be used when voting machines fail.

Old law provides that when a majority votes in favor of a recall, the public officer is, ipso facto, recalled and removed from office. New law provides instead that the office shall be vacated upon expiration of the time period for contesting the recall election set forth in new law, or when the final judgment becomes definitive if an action contesting the recall election is commenced timely.

Effective upon signature of governor or lapse of time for gubernatorial action, except that provisions of proposed law relative to propositions submitted to voters become effective Jan. 1, 2013.

(Amends numerous sections of Title 18)

### **Residency for Voting Purposes (Act No. 451)**

Old law provides that a person who has been involuntarily displaced from his place of residence by the effects of a gubernatorially declared state of emergency shall not be considered to have vacated his residence and shall be considered to be an actual bona fide resident of the state and parish in which he is

registered to vote, unless he has either (1) established a new domicile or (2) changed his registration to an address outside the voting district.

New law provides instead that old law applies unless (1) the person changes his registration address or (2) he claims a homestead exemption at a different residence.

(Amends R.S. 18:101(F))

### **Party Affiliation (Act No. 533)**

New law provides for consistency of presentation of political party affiliations on voter identification cards, notices of candidacy, voter registration cards and precinct registers. New law changes references of "none" as a party affiliation to "no party".

Effective January 1, 2013.

(Amends R.S. 18:107, 109, 463 and 551)

### **Poll Opening Time (Act No. 577)**

Old law provided that polls open at 6:00 a.m. New law provides that the polls open at 7:00 a.m. for elections other than regularly scheduled congressional primary elections and elections held at the same time.

Old law required the principal office of the registrar to open at 6:00 a.m. on election day. New law provides that the office shall open at 7:00 a.m. for elections other than regularly scheduled congressional primary elections and elections held at the same time.

Effective January 1, 2013.

(Amends R.S. 18:134(E) and 541)

### **Election Dates (Act No. 139)**

Old law provides that congressional general elections are held on the first Sat. in Dec. in even-numbered years. New law changes the date to the fifth Sat. after the first Tues. after the first Mon. in Nov.

Old law provides that a bond, tax, or other election at which a proposition or question is submitted to the voters may be held on the first Sat. in Oct. New law replaces the first Sat. in

Oct. with the fifth Sat. after the first Tues. after the first Mon. in Nov. as a possible election date.

New law also changes certain election notice procedures.

Effective upon signature of governor or lapse of time for gubernatorial action, except that provisions relative to bond, tax, and other elections at which a proposition or question is submitted to the voters are effective Jan. 1, 2013.

(Amends R.S. 18:402, 1272, 1285, and 1300)

#### **Large City Elections (Act No. 729)**

New law provides that in 2014, the general elections for parochial and municipal officers in a parish containing a municipality with a population of 300,000 or more, and special general elections and proposition or question elections held at the same time, shall be held on the third Sat. in March instead of the fourth Sat. after the first Sat. in Feb.

New law is repealed effective June 1, 2014.

Effective August 1, 2012.

(Adds R.S. 18:418.1 and 418.2)

#### **Military Candidates for Public Office (Act No. 778)**

New law provides that a candidate serving in the armed forces who is stationed or deployed outside of the US will not be required to pay any qualifying fee or any additional fee, and may file his notice of candidacy by facsimile or electronic mail, but is required to file a certification prepared by the secretary of state certifying that at the time of qualifying he is serving in the armed forces of the U.S., he is stationed or deployed outside of the U.S., and that he is eligible to become a candidate pursuant to U.S. Dept. of Defense Directive 1344.10.

Effective upon signature of the governor.

(Amends R.S. 18:461; adds R.S. 18:463(A)(1)(d))

#### **Ethics Education for Candidates (Act No. 707)**

New law requires each person who has qualified for a statewide elective office or the office of state representative or state senator to certify that he has obtained at least one hour of ethics education and training in the same manner as required of public servants.

Effective January 1, 2013.

(Adds R.S. 18:461.1)

#### **Qualification (Act No. 758)**

Old law requires a person who desires to become a candidate in a primary election to qualify by timely filing a notice of candidacy accompanied by either a nominating petition or the qualifying fee and any additional fees. New law additionally requires the candidate, if he is a major or district office candidate, to certify that he has filed each report he has been required to file by the Campaign Finance Disclosure Act, if any were previously due.

Old law provides for the election and composition of the parish executive committee of a recognized political party. New law provides that if a vacancy in membership is left by a representative of a district and no qualified resident of the district will accept membership, the parish executive committee may appoint any qualified resident of the parish to fill the vacancy.

Effective January 1, 2013.

(Amends R.S. 18:444 and 463)

#### **Notice of Property Tax Election (Act No. 283)**

For elections affecting ad valorem taxation, new law requires that the notice of election state that a portion of the monies collected shall be remitted to certain state and statewide retirement systems in the manner required by law and that a copy of the notice and proof of publication be included in the proces verbal record of the election.

Effective Jan. 1, 2013.

(Amends R.S. 18:1285(A)(1) and 1293)

**Return of Absentee Ballots (Act No. 140)**

New law provides that an absentee ballot shall be returned to the registrar by the U.S. Postal Service (USPS), a commercial courier, or hand delivery. New law provides that if a ballot is delivered by other than the voter, USPS, or a commercial courier, the registrar must require that the person making the delivery sign a statement, prepared by the secretary of state, certifying that he has the authorization and consent of the voter to hand deliver the marked ballot. New law prohibits anyone but the immediate family of the voter to hand deliver more than one marked ballot to the registrar.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 18:1308(B))

**Early Voting at Additional Locations (Act No. 93)**

New law provides that in a parish where early voting is conducted at an additional location, the registrar may fix the hours and days during which early voting shall be conducted at the additional location during the early voting period, if such hours and days of voting are approved by the secretary of state no later than seven days after the close of qualifying for the election. New law requires the registrar to ensure that adequate notice is posted at the office of the registrar informing the public of the hours and days during which early voting will be conducted at the additional location, and requires the secretary of state to ensure that such notice is posted on the secretary of state's website. New law does not apply to early voting for gubernatorial or congressional elections.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Adds R.S. 18:1309(L))

**Absentee Voting List (Act No. 213)**

Old law required the registrar of voters, immediately upon receipt of an application to vote absentee by mail or during early voting, to enter the name of the applicant on a list and post the list in a conspicuous place accessible to the

public at the entrance to his office. New law repeals old law.

Effective upon signature of governor (May 22, 2012).

(Repeals R.S. 18:1311(A))

**Payment to Withdraw (Act No. 585)**

New law prohibits a person from knowingly, willfully, or intentionally:

(1) Giving or offering to give, directly or indirectly, any thing of apparent present or prospective value to a candidate for public office for the purpose of securing the candidate's withdrawal from an election.

(2) Soliciting or accepting, directly or indirectly, any thing of apparent present or prospective value to secure the withdrawal from an election of a candidate for public office.

Effective August 1, 2012.

(Adds R.S. 18:1461.5(A)(4))

**Campaign Finance Disclosure (Act No. 411)**

New law requires a candidate for an office other than a district or major office to file campaign finance disclosure reports if the candidate makes expenditures in excess of \$2,500.

(Amends R.S. 18:1484(2)(a))

**TITLE 19: EXPROPRIATION****Private Expropriation (Act No. 702)**

Old law provides for expropriating authority of the state and its subdivisions and corporations and of certain listed entities. New law adds limited liability companies (LLCs) and other legal entities to listed authorities, and adds requirement for private entities of good faith attempt to reach agreement prior to filing of expropriation suit.

Old law required the petition to contain the name of the owner if known and present in this

state. New law deletes the condition that the owner be "present in this state".

New law requires additional information to be supplied to the owner in expropriations by authorities other than the state.

Old law required issuance of notice and a copy of the petition, without copies of exhibits, to the defendant, signed and sealed by the clerk, with notice of a 15-day period to answer. New law requires copies of exhibits in the notice, deletes signature and seal requirement, and changes the notice of a 15-day period for filing an answer to 30 days.

Old law provided 15 days for the filing of an answer and provided for the service of the answer. New law extends the time for the answer to 30 days and adds that exceptions or other responsive pleadings are to be served with service of the answer.

Old law provides that the failure to file an answer timely constitutes waiver of all defenses to the expropriation except claims for compensation for the property to be expropriated and claims for money as damages to other property. New law adds "exceptions or other responsive pleadings" as filings that avoid waiver, and rewords the statute such that it is clarified that the only claims waived are those "other than for compensation", notwithstanding the provisions of R.S. 19:5.

Old law provides procedures for the expropriation trial. New law adds provisions to expedite the trial by requiring hearings to be set within 30 days of the defendant's pleading challenging the expropriation, and that the court should render a decision within five days after the case is submitted. New law allows the court to extend these time periods for good cause shown. If the court rules in favor of the expropriating authority, upon motion of either party the court shall set the trial on compensation within 45 days thereafter, and this time period may be extended for good cause shown.

New law provides that, after compensation has been determined, the plaintiff shall, prior to the trial on the merits and upon motion of the defendant, present evidence as to the highest

amount it offered the defendant for the property and severance damages, if any.

New law provides that if the highest amount offered is less than the compensation the court awarded the defendant for the property and severance damages, if any, then the court may award reasonable attorney fees to the defendant.

Old law provided for estimating the measure of compensation. New law changes "estimating" property value to "determining", specifies damages as a part of the determination of "compensation" and specifies that the valuation shall not include deduction for "general or specific" benefits derived by the owner.

Old law provided that the court "shall" assess costs to the owner when the "true value" of the property had been offered prior to the forced expropriation. New law provides that the court "may" assess costs against the owner when the final award is equal to or less than the highest amount offered prior to the filing of the suit.

Old law provided for instances when facilities had been constructed in good faith with acquiescence of the owner. New law changes "corporation" to "expropriating authority other than the state or its political corporations or subdivisions".

New law does not alter or amend the authority of, or the procedure for, the state or its political corporations or subdivisions to expropriate property.

Old law provides for the award of attorney fees to the owner in unsuccessful suits by the state. New law adds private entity expropriations to the purview of R.S. 19:201.

Effective August 1, 2012.

(Amends R.S. 19:2, 2.1, 2.2, 5, 6, 7, 8, 9, 12, 14, and 201; Adds R.S. 19:16; Repeals R.S. 9:3176-3191)

## **TITLE 20: HOMESTEADS AND EXEMPTIONS**

There were no new laws of interest.

## **TITLE 21: HOTELS AND LODGING HOUSES**

There were no new laws of interest.

## **TITLE 22: INSURANCE**

### **Technical Revisions to Insurance Code (Act No. 271)**

New law makes numerous technical changes to the La. Insurance Code, including correction of citations, updates of terms and language, reorganization of provisions, elimination of obsolete or ineffective provisions, such as transition provisions and past effective dates, and harmonizing of inconsistent provisions.

(Amends numerous provisions of Title 22.)

### **Insurance Commissioner Authority (Act No. 319)**

New law specifies that the commissioner of insurance may refuse to renew, suspend, or revoke the certificate of authority or license of any person or entity, may fine any person or entity for violations of the Code, and may order any insurer, person, or entity to cease and desist any action that violates any provision of the Code.

Effective August 1, 2012.

(Amends R.S. 22:18(A))

### **HMO Minimum Capital and Surplus (Act No. 54)**

Old law requires each HMO to maintain certain minimum capital and surplus based on a graduated scale, ranging from \$800,000 to \$3 million, over a certain time period (1995-1998).

New law clarifies that the minimum capital and surplus required of each HMO is \$3 million.

(Amends R.S. 22:254(C))

### **Self-Insurance Plans (Act No. 680)**

Old law, relative to self-insurance plans, required certain information be included in an application for a certificate of authority to be filed with the commissioner in order for the self-insurer to transact business or to issue or provide health care benefits in this state.

New law requires that the application contain biographical information for each person who controls 10% or more of the self-insurer and for each director and officer of the self-insurer.

New law requires that the application contain a plan of operation indicating the method of operation of the self-insurer and include various specified items of information.

New law requires all self-insurers, before receiving a certificate of authority, to deposit a safekeeping or trust receipt from a bank doing business within the state, or from a savings and loan association chartered to do business in the state, indicating that the self-insurer has deposited cash, or bonds of the US, the state of Louisiana, or any political subdivision of the state of the par value of not less than the greater of either \$100,000 or 30% of the self insurers outstanding Louisiana-related reserve liabilities. New law requires all securities deposited to be held in trust for the benefit and protection of and as security for all policyholders. New law removes requirement that no single deposit exceed the insured deposit limit of the respective financial institution.

New law repeals the authorization for depositing letters of credit in lieu of cash.

Old law provides requirements when a self-insurance plan is effected, maintained, and operated under a trust agreement. New law provides additional requirements that the self-insurer maintain unimpaired net assets of not less than \$1 million in the form of cash, cash equivalents, or bonds or evidences of indebtedness which are direct general obligations or which are secured or guaranteed as to principal and interest by the government of the U.S. or any state of the U.S. New law requires employers in the self-insurance plan to be members of an association or group of five or more businesses that are in the same trade or

industry, including closely related businesses that provide support, services or supplies primarily to that trade or industry.

New law removes the requirement that investments be managed by a bank or other financial institution chartered in this state.

Old law required the excess or stop-loss insurer to bear the risk of coverage for any employer participating in the self-insurance plan that becomes insolvent with outstanding contributions due and required that the plan have a participating employer's fund in an amount at least equal to the point at which the excess or stop loss insurer is to assume 100% of additional liability. New law removes this provision.

New law requires the self-insurer to possess a written commitment, binder, or policy for stop-loss insurance issued by an insurer authorized to do business in this state and that it meets specified conditions.

New law authorizes the commissioner to waive or reduce the requirement for aggregate stop loss coverage.

New law retains requirement for annual audits by licensed independent CPAs of a self-insurer's financial statements, but removes an exemption for a self-insurer having direct premiums in this state of less than \$250,000 in any year and having less than 500 policyholders in this state at the end of any year.

Old law required that the annual audited financial statement in conformity with statutory accounting practices prescribed or permitted by the department of insurance of the state of domicile of the self-insurer. New law provides that the statement be in conformity with generally accepted accounting practices prescribed or permitted by the respective department of insurance.

New law removes requirement that the balance sheet include capital and surplus and requires that net assets be included in the balance sheet and that there be a statement of changes in net assets.

New law removes authorization for a self-insurer, with the commissioner's approval, to

comply with annual audit requirements by filing the requisite reports with certain notes.

New law provides that in lieu of an examination by the commissioner of any foreign self insurer licensed in the state, the commissioner may accept any examination report on the self-insurer as prepared by the insurance department for the self-insurer's state of domicile under specified conditions.

Old law required each self-insurer to file an annual auditor's statement and an annual report signed by the person in charge of the self-insurance plan on or before March 1 of each year that certifies the amount of gross annual premiums or contributions of the participating employers and their employees for the preceding year, the financial condition of the plan, an itemization of plan expenditures, and any other information as may be required by the commissioner. New law deletes these provisions.

New law requires each self-insurer to file, within 90 days of the end of the fiscal year, an actuarial opinion prepared and certified by an actuary who meets requirements.

New law requires that the actuarial opinion include a description of the actuarial soundness of the self-insurer, including any actions recommended to improve the actuarial soundness of the arrangement, the amount of reserves recommended to be maintained by the arrangement, and the level of specific and aggregate stop-loss insurance recommended to be maintained by the arrangement.

New law requires that reserves be computed with proper actuarial regard for known claims, paid and outstanding; a history of incurred but not reported claims; claims handling expenses; unearned premium; an estimate for bad debts; a trend factor; and a margin for error.

New law requires that reserves be maintained in cash, cash equivalents, or bonds or evidences of indebtedness which are direct general obligations or which are secured or guaranteed as to principal and interest by the government of the United States, or any state of the United States.



Effective upon signature of the governor.

(Amends R.S. 22:453, 454, 458, 459, 461, and 463; adds R.S. 22:462(H))

### **Pure Captive Insurers (Act No. 633)**

Old law required pure and association captive insurers to maintain a paid-in capital surplus of at least one million dollars. New law lowers the capital surplus requirement for pure captive insurers to \$500,000. New law makes technical changes to correct citations.

Effective August 1, 2012.

(Amends R.S. 22:550.3, 550.10, 550.12, 550.13, and 550.16)

### **Permitted Investments (Act No. 67)**

Old law provides with respect to those investments which a domestic insurer may make, including investing, acquiring debt obligations of, or otherwise acquiring and holding an interest in certain limited partnerships or limited liability companies.

New law authorizes domestic insurers to invest in, acquire debt obligations of, or otherwise acquire and hold an interest in certain master limited partnerships.

(Amends R.S. 22:584(D)(3))

### **Risk-Based Capital for Domestic Insurers (Act No. 359)**

Old law defined a company-action level event as the filing of a risk-based capital report by an insurer that indicates that the life or health and accident insurer maintains a total adjusted capital which is greater than or equal to its company-action level risk-based capital, but less than 250% of its authorized-control level risk-based capital, and has a negative trend.

New law defines a company-action level event as the filing of a risk-based capital report by an insurer that indicates that the life or health and accident insurer has total adjusted capital that is greater than or equal to its company-action level, but below 300% of its authorized control level, and triggers the trend test determined in accordance with the trend test calculation

included in the property and casualty risk-based capital instructions.

New law further defines a company action-level event as the filing of a risk-based capital report by an insurer that indicates that the property and casualty insurer has total adjusted capital that is greater than or equal to its company-action level, but below 300% of its authorized control level, and triggers the trend test determined in accordance with the trend test calculation included in the property and casualty risk-based capital instructions.

Effective August 1, 2012.

(Amends R.S. 22:611, 613)

### **Reinsurance Credits (Act No. 419)**

Old law provides that credit for reinsurance be allowed a domestic ceding insurer as either an asset or deduction from liability when the assuming insurer satisfies the requirements. New law authorizes the commissioner to allow a credit for reinsurance if the assuming insurer satisfies the requirements of new law.

Old law allows for reinsurance credits to domestic ceding insurers when the reinsurance is ceded to an assuming insurer which is accredited as a reinsurer in this state. New law further provides that credit may be allowed only when the reinsurance is ceded to an insurer who holds a surplus in excess of \$20 million and who the commissioner has not denied accreditation within 90 days after submission of its application.

Old law allows for reinsurance credits to domestic ceding insurers when the reinsurance is ceded to an assuming insurer which maintains a trust fund in a qualified U.S. financial institution for the payment of the valid claims of its U.S. policyholders and ceding insurers. New law further requires the assuming insurer to submit to the commissioner's examination of its books and records.

Old law provides that credit will not be granted unless the form of the trust and amendments to the trust have been approved by the Dept. of Insurance.

New law provides that the commissioner shall only grant credit if the form of the trust receives the approval of either the commissioner of the state of domicile of the trust or the commissioner of another state who accepts principal regulatory oversight of the trust.

New law requires the assuming insurer to file the form of the trust and any trust amendments with the commissioner of every domiciliary state of the ceding insurer beneficiaries of the trust.

New law requires the trust instrument to include provision that contested claims shall be valid and enforceable upon the final order of any U.S. court of competent jurisdiction.

New law provides that the trust shall remain in effect for as long as the assuming insurer has outstanding obligations due under the reinsurance agreements subject to the trust.

New law requires the trustee to make a written report to the commissioner, detailing the trust's balance and investments, no later than the last day of Feb. of each year.

Old law provides that, in the case of a single assuming insurer, the trust shall consist of a trustee account in an amount no less than the assuming insurer's liabilities attributable to business written in the U.S., plus a trustee surplus of at least \$20 million. New law excepts cases in which the assuming insurer has permanently discontinued underwriting new business secured by that trust for at least three years. In such a case, the commissioner with regulatory oversight may authorize a reduction in the amount of the trustee surplus. The assuming insurer would still be required to maintain a trustee surplus in an amount adequate for the protection of the U.S. ceding insurers, policyholders, and claimants.

In any case, the amount of the trustee surplus shall never be less than an amount equal to 30% of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers.

New law imposes several requirements for a group of assuming insurers that include incorporated and individual unincorporated underwriters.

New law prohibits the incorporated members of the group from engaging in any business other than its underwriting as a member of the group; and provides that incorporated members shall be subject to the same level of regulation as the unincorporated members.

New law requires the group to provide an annual certification of each underwriter's solvency to the commissioner within 90 days after the date its financial statements are to be filed with the group's domiciliary regulator.

New law provides that the commissioner shall allow credit for reinsurance when the assuming insurer is certified by the commissioner as a reinsurer in this state and meets a list of requirements.

New law provides that an association including incorporated and individual unincorporated underwriters may be a certified reinsurer, provided the association meets the requirements.

New law requires the commissioner to publish a list of certified reinsurers, along with the ratings he has assigned them. The ratings shall factor in the financial strength ratings assigned by rating agencies.

New law requires certified reinsurers to secure obligations assumed from U.S. ceding insurers at a level that is consistent with the certified reinsurer's rating, as specified in the commissioner's regulations.

New law provides that the commissioner may certify a reinsurer in this state based upon the certification and assigned rating granted to that reinsurer by another jurisdiction that is accredited by the National Association of Insurance Commissioners (NAIC).

New law provides that a certified reinsurer that ceases to assume new business may request to maintain its certification in inactive status in order to continue to qualify for a reduction in security for its in-force business.

New law provides that an assuming insurer who does not meet the requirements of new law shall not be allowed credit unless certain conditions are met.

New law grants the commissioner the authority to suspend or revoke, after notice and opportunity for a hearing, the accreditation or certification of a reinsurer that ceases to meet the requirements. While a reinsurer's accreditation or certification is suspended, or in the event that it is revoked, no reinsurance contract issued or renewed after the effective date shall qualify, except to the extent that the reinsurer's obligations under that contract are secured in accordance with law.

New law requires a ceding insurer to take steps to manage its reinsurance recoverables.

New law requires domestic ceding insurers to notify the commissioner within 30 days after reinsurance recoverables from any single assuming insurer, or group of affiliated insurers, exceeds 50% of the domestic ceding insurer's last reported surplus to policyholders or after it is determined that reinsurance recoverables from any single assuming insurer, or group of affiliated insurers, is likely to exceed this limit.

New law requires a ceding insurer to take steps to diversify its reinsurance program. New law requires a domestic ceding insurer to notify the commissioner within 30 days after ceding more than 20% of its gross written premium to any single assuming insurer or group of affiliated insurers.

(Amends R.S. 22:651 and 652(2) and (3)(a))

#### **Insurance Company Acquisitions (Act No. 294)**

Old law prohibits any person from making an offer of acquisition, agreement to merge, or other attempt to acquire a domestic insurer without first filing a statement with the commissioner. New law adds additional filing requirements for controlling persons of domestic insurers, and clarifies who shall be considered a controlling person.

Old law provides relative to public hearings for persons who have submitted filings, which were subsequently denied. New law makes clarifications.

New law provides for a pre-acquisition notification to be filed with the commissioner

and what shall be contained in the notification. New law establishes a notice requirement for acquisition hearings. New law adds a provision for acquisitions which occur as a result of an inheritance.

New law provides for management of domestic insurers subject to registration.

New law adds a provision for the commissioner to participate in a supervisory college for any domestic insurer that is part of an insurance holding company system with international operations.

New law grants the commissioner the authority to issue cease and desist orders to persons who violate the provisions of new law.

(Adds R.S. 22:691.1-691.27; Repeals R.S. 22:691-694)

#### **Local Taxes on Insurers (Act No. 774)**

Old law permitted any municipal or parochial corporation in the state to impose a tax on any insurer engaged in the business of issuing any form of insurance except for programs or benefits administered through the office of group benefits.

New law provides that premiums paid to an insurer by La. Medicaid programs shall be exempt from the tax imposed in old law.

New law provides that for a municipal or parochial corporation which has not imposed a tax pursuant to old law on or before August 15, 2012, the authorization for the tax shall cease effective August 16, 2012. A municipal or parochial corporation which imposed the tax pursuant to prior law on or before August 15, 2012, shall retain the authority to renew that existing tax up to the limits in old law.

Effective July 1, 2012.

(Amends R.S. 22:833(A)(1); adds R.S. 22:833(E))

#### **Reinstatement of Property Insurance Policies (Act No. 198)**

Old law requires any insurer that issues notice of cancellation of an automobile insurance policy

and later continues or reinstates that policy to issue notice of reinstatement to every policyholder, insurance producer, mortgagee, pledgee, or other known person shown by the policy to have an interest in any loss which may occur thereunder and who received the notice of cancellation.

New law expands application of old law to an insurance policy that provides coverage on any property, and also specifies a lienholder as one of the persons to be notified of reinstatement.

(Amends R.S. 22:887(I))

### **Insurer Disclosure of Claims Data (Act No. 217)**

New law requires every health insurance issuer, including a health maintenance organization, not less than 90 days prior to the renewal of a policy, to release to each group policyholder or agent of a policyholder, claims data upon request.

New law provides that a health and accident insurer that discloses data or information may condition any such disclosure upon the execution of an agreement for immunity from civil liability. New law provides that such insurer shall be immune from civil liability for any acts or omissions of any person's subsequent use of such data or information.

New law does not authorize disclosure of the identity of particular employees nor of their particular health insurance claim, condition, diagnosis, or prognosis if disclosure would violate any federal or state law.

New law does not apply to limited benefit insurance.

New law provides for certain certifications that a plan sponsor shall make to a health and accident insurer to receive protected health information.

Effective Jan. 1, 2013.

(Adds R.S. 22:978(E) and (F))

### **Cancer Medication Coverage (Act No. 410)**

New law declares it to be the public policy of this state that every person within this state with

health insurance coverage that provides coverage for cancer treatment shall have the right, with his physician, to the type of covered medication used to treat his cancer.

New law provides that a health insurance issuer that provides coverage for cancer treatment shall provide for coverage of prescribed orally administered anti-cancer medications on a basis no less favorable than intravenously administered or injected cancer medications. Any change in health insurance coverage that otherwise increases an out-of-pocket expense applied to anti-cancer medications shall also be applied to the majority of comparable medical or pharmaceutical benefits covered by the health insurance issuer. A health insurance issuer that limits the total amount paid by a covered person through all cost-sharing requirements to no more than \$100 per filled prescription for any orally administered anti-cancer medication shall be considered in compliance with new law.

New law specifies that it is applicable to health insurance issuers that provide coverage for cancer treatment, including a health maintenance organization, certain nonfederal government plans, and the Office of Group Benefits.

New law specifies that it is not applicable to limited benefit policies, certain high deductible plans, and qualified health plans offered through a health benefit exchange.

New law shall be applicable to health insurance coverage that provides coverage for cancer treatment issued for delivery, delivered, renewed, or otherwise contracted for in this state on or after Jan. 1, 2013.

Effective August 1, 2012.

(Adds R.S. 22:999.1)

### **Optometrists and Eye Care Coverage (Act No. 843)**

New law provides whenever any medical eye care benefits within the lawful scope of practice of a duly licensed optometrist are provided by or available through a health maintenance organization ("HMO"), preferred provider organization ("PPO"), managed care organization, accountable care organization,

plan or contract of insurance, or any medical hospital service contract, discrimination is prohibited in the amount of medical eye care or vision care benefits available to any person entitled to benefits, or in the amount of reimbursements or payments to the provider of medical eye care or vision care services, provided by an optometrist or physician, in instances where the services performed are within the lawful scope of practice of both professions.

New law provides that a duly licensed optometrist shall be entitled to participate in contracts or plans providing medical eye care or vision care services, as a healthcare provider or otherwise, to the same extent as licensed physicians. New law prohibits discrimination against any provider, whether optometrist or physician, who is located within the geographic area of the HMO, PPO, managed care organization, accountable care organization, or plan or contract of insurance. New law prohibits imposing a co-payment, co-insurance amount, or any other fee on a covered participant or insured that is greater than the amount charged for the same service when provided by an allopathic or osteopathic physician.

New law prohibits an HMO, a PPO, managed care organization, accountable care organization, or plan or contract of insurance from requiring a duly licensed optometrist to participate as a provider in another medical or vision care plan or contract as a condition of participation as a provider in any medical or vision care plan or contract.

Effective August 1, 2012.

(Amends R.S. 22:997)

#### **Prior Authorization Forms for Drug Benefits (Act No. 318)**

New law requires a health insurance issuer that provides prescription drug benefits to use only a single, standardized prior authorization form for obtaining any prior authorization for prescription drug benefits. Such form shall not exceed two pages in length, exclusive of instructions or guiding documentation. Replacements or modifications of a prior authorization form must

be filed with the department within 15 days prior to use or implementation. New law defines various key terms.

Effective upon signature of the governor.

(Adds R.S. 22:1006.1)

#### **Continuation of Coverage for Surviving Spouse (Act No. 830)**

Old law provides for the option of continuation of group health, blanket, and association services for surviving spouses age 50 or older in the event of death of the spouse who is the primary policyholder. New law requires an insured who wishes to continue coverage to elect continuation on a form provided by the insurer and to pay the first month's premium in advance of the end of the month following the month in which the event that made employee or member eligible for coverage.

New law provides that if the dependent is eligible due to divorce, the event shall be deemed to have occurred on the date of the judgment of divorce.

Old law provided that continuation may not include dental, vision care, or any other benefits provided under the group policy in addition to its hospital, surgical, or major medical benefits. New law repeals old law.

Effective January 1, 2013.

(Amends R.S. 22:1046(B), (C), (F), and (G)(3) and (4); Repeals R.S. 22:1046(E))

#### **Autism Spectrum Disorder Coverage (Act No. 208)**

Old law provides that mandated coverage of autism spectrum disorders applies only to individuals less than 17 years of age. New law raises the age to 21.

Old law imposes an annual maximum benefit of \$36,000 and a lifetime maximum benefit of \$144,000. New law eliminates the lifetime maximum benefit.

Old law requires coverage for the diagnosis and treatment of autism spectrum disorders for any health plan issued for delivery, delivered,

renewed, or contracted for on or after Jan. 1, 2009, but provides that such mandated coverage shall not apply to any coverage plan issued to an employer with 50 or fewer employees. New law deletes exclusion.

New law changes the implementation date to Jan. 1, 2014.

(Amends R.S. 22:1050)

#### **Drug Insurance Deregulation (Act No. 316)**

New law allows modifications affecting drug coverage to a group health plan to be made by a health insurance issuer without approval of the commissioner of insurance.

New law permits modifications affecting drug coverage to individuals in the individual market to be made by a health insurance issuer without commissioner approval.

Effective upon signature of the governor.

(Amends R.S. 22:1060.3(A), 1068(D)(2), and 1074(D)(2))

#### **Dental Coverage (Act No. 648)**

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

New law requires that the dentist hold a nonrestricted license issued in the United States. Further requires the licensed dentist making the adverse determination include, in any written communication to an insured or dentist, his name, applicable specialty designation, license number with state of issuance, and his direct phone number.

Effective August 1, 2012.

(Amends R.S. 22:1155)

#### **Payment of Long-Term Care Insurance Claims (Act No. 91)**

New law provides relative to prompt payment of long-term care insurance claims, including:

(1) Requires an insurer within 30 business days after receipt of all requested additional information to pay a claim for benefits under a long-term care insurance policy or certificate if it is a clean claim or send a written notice that the insurer is declining to pay all or part of the claim and the specific reason or reasons for denial.

(2) Makes new law inapplicable when the insurer has a reasonable basis supported by specific information that such claim was fraudulently submitted.

(3) Makes any violation of new law by an insurer, if committed flagrantly and in conscious disregard of new law with such frequency as to constitute a general business practice, a violation of present law which defines unfair trade practices.

(Adds R.S. 22:1188.1)

#### **Long-Term Care Insurance (Act No. 307)**

Old law, relative to long-term care insurance, required the commissioner of insurance to promulgate regulations and minimum standards for marketing practices, producer compensation, producer testing, penalties, and reporting practices. New law adds independent review of benefit determinations to the commissioner's authority to promulgate rules and marketing practices.

Effective August 1, 2012.

(Amends R.S. 22:1189)

#### **Small Insurance Refunds (Act No. 55)**

Old law provides that any refund due to an insured by an insurer because of cancellation, elimination, or reduction of coverage shall be returned with interest at the rate of 1.1% per month. Old law is not applicable to health insurance, life insurance, or annuities.

New law provides that if a refund of \$25 or less, including interest, is due to an insured who continues to maintain a policy of insurance with the insurer or an affiliated insurer, that the insurer may apply the refund to the insured's next premium in the form of a credit. New law requires that the insurer give written notice of the credit amount to the insured upon policy renewal.

(Amends R.S. 22:1268 and 1287)

### **Workers Compensation Payer Records (Act No. 88)**

New law provides that any payor responsible for the payment of the medical expenses incurred by a claimant as a result of a work related injury shall make its records available to the Office Workers' Compensation Administration for review.

New law provides that the data will remain confidential and is not subject to subpoena or discovery in any legal proceeding, except as otherwise provided by law.

(Amends R.S. 23:1293(A)(1); Adds R.S. 23:1291.2)

### **Bail Bond Apprentice Program (Act No. 89)**

New law requires an apprentice in the Bail Bond Apprentice Program to register certain personal information with the commissioner of insurance, to disclose the date he will be entering the program, and to give contact information for his supervising licensed bail bond producer.

New law changes the duration of the program from six months to three.

New law requires that the apprentice's work records maintained by the supervising bail bond producer include specifically the number of hours worked, the specific functions performed, and the date and time of the performance of those functions.

(Amends R.S. 22:1574)

### **Mandatory Annuity Training (Act No. 612)**

New law requires insurance producers seeking to sell annuity products to complete a onetime,

four-hour training course approved by the Dept. of Insurance prior to engaging in the sale of annuity products.

New law allows insurance producers who already hold a life insurance line of authority as of Aug. 15, 2012, to complete the requisite training course no later than Jan. 1, 2013. Any insurance producer who obtains a life insurance line of authority after Aug. 15, 2012, must complete the requisite training before engaging in the sale of annuities.

New law provides a list of topics which must be taught in an annuity training course. Annuity training course providers must register as continuing education providers in this state. Annuity training course providers must comply with the reporting requirements of existing law and issue certificates of completion to insurance producers who complete the course.

New law requires insurers, prior to allowing insurance producers to sell annuity products on behalf of the insurer, to verify that the producers have completed the requisite annuity training course by obtaining a certificate of completion or reports provided by commissioner database systems.

Effective August 1, 2012.

(Adds R.S. 22:1576)

### **Public Adjusters (Act No. 309)**

New law provides that a public adjuster shall not act as an appraiser or umpire pursuant to the appraisal provisions of R.S. 22:1311 or any similar provision of a policy of insurance if that public adjuster is adjusting or has adjusted all or any part of the claim, or both, or property subject to that appraisal provision.

Effective August 1, 2012.

(Adds R.S. 22:1706(H)(10))

### **Portable Electronics Insurance (Act No. 311)**

New law authorizes portable electronics insurance to be offered on a month-to-month or other periodic basis as a group or master commercial insurance policy issued to a vendor of portable electronics for its enrolled customers.

New law authorizes an insurer to terminate or otherwise change the terms and conditions of a policy of portable electronics insurance only upon providing the policyholder and enrolled customers with at least 30 days written notice.

New law provides that if an insurer changes the terms and conditions of a policy, the insurer must provide the vendor policyholder with a revised policy or endorsement and also provide each enrolled customer with evidence indicating that a change in the terms and conditions has occurred and a summary of any material change.

As an exception to the 30-day notice of termination, new law authorizes an insurer to terminate an enrolled customer's enrollment under a portable electronics insurance policy upon 15 days written notice for discovery of fraud or material misrepresentation in obtaining coverage or in the presentation of a claim associated with such fraud or misrepresentation.

New law authorizes the immediate termination of a customer's enrollment under a portable electronics insurance policy:

1. For nonpayment of premium.
2. If the enrolled customer ceases to have an active service with the vendor of portable electronics.
3. If the enrolled customer exceeds the aggregate limit of liability under the terms of the portable electronics insurance policy.

New law provides that if an enrolled customer exhausts the aggregate limit of liability under the terms of the insurance policy, the insurer is required to send a notice of termination to the customer within 30 calendar days after exhaustion of the limit. If the notice of termination is not timely sent, coverage shall continue notwithstanding the exhaustion of the aggregate limit of liability until the insurer sends notice of termination to the enrolled customer.

New law provides that if the policy is terminated by a vendor, the vendor is required to mail or deliver written notice to each enrolled customer advising the enrolled customer of the termination of the policy and the effective date of termination. The written notice must be

mailed or delivered to the enrolled customer at least 30 days prior to termination.

New law requires all notices or correspondence to be in writing and authorizes that notices and correspondence be sent either by mail or by electronic means.

New law creates insurance policies for portable electronics.

New law provides:

1. "Portable electronics" means electronic devices that are portable in nature, their accessories, and services related to the use of the device.

2. "Portable electronics insurance" means insurance providing coverage for the repairs or replacement of portable electronics necessitated by loss, theft, inoperability due to mechanical failure, malfunction, damage, or other similar causes of loss. "Portable electronics insurance" does *not* include:

(i) A service contract or extended warranty providing coverage limited to the repair, replacement, or maintenance of property for the operational or structural failure of such property due to a defect in materials, workmanship, accidental damage from handling, power surges, or normal wear and tear.

(ii) A policy of insurance covering a seller's or a manufacturer's obligations under a warranty.

(iii) A homeowner's, renter's, private passenger automobile, commercial multi-peril, or similar policy.

3. "Portable electronics transaction" means any of the following:

(a) The sale or lease of portable electronics by a vendor to a customer.

(b) The sale of a service related to the use of portable electronics by a vendor to a customer.

4. "Vendor" means a person in the business of engaging in portable electronics transactions directly or indirectly.

New law provides:



1. A vendor is required to hold a limited lines license to sell or offer coverage under a policy of portable electronics insurance.

2. A limited lines license issued shall authorize any employee or authorized representative of the vendor to sell or offer coverage under a policy of portable electronics insurance to a customer at each location at which the vendor engages in portable electronics transactions.

New law requires that in conjunction with and at the time of the sale of every portable electronics insurance policy, the vendor present written materials to a prospective customer which provide specified information.

New law requires establishment of eligibility and underwriting standards for customers electing to enroll in coverage for each portable electronics insurance program.

New law provides that an employee or authorized representative of a vendor may sell or offer portable electronics insurance to customers and shall not be subject to licensure as an insurance producer provided that:

1. The vendor obtains a limited lines license to authorize its employees or authorized representatives to sell or offer portable electronics insurance pursuant to new law.

2. The vendor shall develop a training program for employees and authorized representatives of the vendor.

New law provides that employees or authorized representatives of a vendor of portable electronics shall not be compensated based primarily on the number of customers enrolled, but may receive compensation for activities under the limited lines license which is incidental to their overall compensation.

New law requires that any charge to the enrolled customer for coverage that is not included in the cost associated with the purchase or lease of portable electronics or related services be separately itemized on the enrolled customer's bill. If the portable electronics insurance coverage is included with the purchase or lease of portable electronics or related services, the vendor shall clearly and conspicuously disclose to the enrolled customer that the portable

electronics insurance coverage is included with the portable electronics or related services.

Vendors billing and collecting charges are not required to maintain these funds in a segregated account provided that the vendor is authorized by the insurer to hold the funds in an alternative manner and remits these amounts to the supervising entity within 60 days of receipt. All funds received by a vendor from an enrolled customer for the sale of portable electronics insurance are considered funds held in trust by the vendor in a fiduciary capacity for the benefit of the insurer.

New law requires that any vendor engaging in portable electronics insurance transactions on or before the effective date of new law apply for licensure within 90 days of the application being made available by the commissioner.

New law provides that every license issued pursuant to new law shall expire on December 31 of the renewal year and may be renewed by the filing of a renewal application and payment of the fee required in new law.

Effective August 1, 2012.

(Adds R.S. 22:821(B)(34), 1431, and 1781.1-1781.6)

### **Pharmacy Audits and Appeals (Act No. 856)**

New law provides that when an on-site audit of the records of a pharmacy is conducted by an "entity," the audit shall be conducted in accordance with specified criteria. New law provides that the term "entity" means a managed care company, insurance company, third-party payor, or the representative of the managed care company including pharmacy benefit managers, insurance company, or third-party payor.

New law requires an entity to conduct each audit by the same standards and parameters as other similarly situated pharmacies audited by the entity.

New law requires that a pharmacy be allowed at least 30 days following receipt of the preliminary audit report to initiate an appeal to address any discrepancy found during an onsite audit.

New law requires each entity conducting an audit to make available a copy of the final audit report to the plan sponsor upon request or as otherwise required by contractual agreement.

New law requires that any audit involving a clinical judgment be conducted by or in consultation with a licensed pharmacist.

New law requires the recoupment of any disputed funds, or repayment of funds to the entity by the pharmacy if permitted pursuant to contractual agreement, to occur after final disposition of the audit, including the appeals process. New law requires that recoupment not be based on documentation requirements in addition to or exceeding requirements for creating or maintaining documentation prescribed by the La. Board of Pharmacy; or on a requirement that a pharmacy or pharmacist perform a professional duty in addition to or exceeding professional duties prescribed by the La. Board of Pharmacy.

New law does not apply in cases of U.S. Food and Drug Administration regulation or manufacturer safety programs.

New law requires that a charge or assessment for an audit not be based on amounts recouped if a commission or other payment to an agent or employee of the entity conducting the audit is based, directly or indirectly, on amounts recouped.

New law provides that before recoupment of funds may be made based on an audit finding overpayment or underpayment, a final audit report shall be distributed.

New law requires that the recoupment of claims be based on the actual financial harm to the entity or on the actual overpayment or underpayment. New law requires that a finding of an overpayment that is the result of dispensing in excess of the benefit design, as established by the plan sponsor, be calculated as the difference between what was dispensed in accordance with the prescriber's orders and the dispensing requirements as set forth by the benefit design.

New law requires each entity conducting an audit to establish an appeal process under which

a pharmacy may appeal an unfavorable preliminary audit report to the entity.

New law provides that if, following an appeal, the entity finds that an unfavorable audit report or any portion of an unfavorable audit report is unsubstantiated, the entity shall dismiss the audit report or the unsubstantiated portion of the audit report without any further proceedings.

New law provides that the agency conducting the audit shall not use the accounting practice of extrapolation in calculating recoupment or penalties for audits, unless otherwise agreed to by the pharmacy or mandated by a government agency or in the case of fraud.

The provisions of new law shall not apply to:

1. Any quality assurance review, as defined by the time period prior to the reimbursement by the entity to the pharmacy.
2. Any federally funded activity specifically preempted by law or rule.
3. Any audit conducted pursuant to the participation of a pharmacy in the La. Medicaid Program.

New law provides that its provisions shall apply to contracts entered into, amended, extended, or renewed on or after January 1, 2013.

Effective August 1, 2012.

(Adds R.S. 22:1856.1)

### **Insurance Fraud Prevention Act (Act No. 862)**

New law provides that no action brought pursuant to new law shall be instituted later than 10 years after the date upon which the alleged violation occurred, and no action for violations involving a scheme or course of conduct shall be instituted more than 10 years after the latest component of the scheme or course of conduct occurred.

New law provides when the conduct giving rise to the cause of action involves the provision of services, supplies, merchandise, or benefits of a medical assistance program administered by the DHH, new law shall not apply.

An action by a prevailing defendant to recover costs, expenses, fees, and attorney fees may be brought no later than 60 days after the rendering of a final nonappealable judgment. In the instance of a state criminal action, the action for recovery of the civil monetary penalty shall be brought within one year of the date of the criminal conviction, final plea, or pre-trial diversion agreement.

New law provides that in the case of a civil judgment rendered in federal court, the action for recovery of the civil monetary penalty may be brought once the judgment becomes enforceable and no later than one year after written notification to the attorney general of the enforceable judgment. In the case of a criminal conviction or plea in federal court, the action may be brought once the conviction or plea is final and no later than one year after written notification to the attorney general of the rendering of the conviction or final plea.

Any action brought pursuant to new law must be filed in the 19<sup>th</sup> JDC.

Old law prohibited presenting or causing to be presented any written or oral statement as part of or in support of or denial of a claim for payment or other benefit pursuant to an insurance policy, knowing that such statement contains any false, incomplete, or fraudulent information concerning any fact or thing material to such claim or insurance policy. Old law prohibited assisting, abetting, soliciting, or conspiring with another to prepare or make any written or oral statement that is intended to be presented to an insurance company, insured, the Dept. of Insurance, or other party in interest or third party claimant in connection with or in support of or denial, or any claim for payment of other benefit pursuant to an insurance policy, knowing that such statement contains any false, incomplete, or fraudulent information concerning any fact or thing material to such a claim or insurance policy.

New law retains prior law and permits the attorney general to institute a civil action in the courts of this state to seek recovery from any person or persons who violate old law.

New law provides that an action by a prevailing defendant to recover costs, expenses, fees and attorney fees shall be ancillary to and shall be brought and heard in the same court as the civil action. A prevailing defendant may seek recovery when the action was instituted or prosecuted by the attorney general after it should have been determined by the attorney general to be frivolous, vexatious, or primarily for the purpose of harassment.

New law provides that the burden of proof in an action instituted pursuant to new law shall be a preponderance of the evidence.

New law provides that actual damages incurred as a result of a violation of new law shall be recovered only once by the insurer and shall not be waived by the court. New law provides that actual damages shall equal the difference between the amount the insurer paid or would have paid, and the amount that would have been due had not a violation occurred, plus interest at the maximum rate of legal interest from the date the damage occurred to the date of repayment. Actual damages shall include investigative expenses incurred by the insurer. If the violator is a managed healthcare provider contracted with a health insurer, actual damages shall be determined in accordance with the violator's provider agreement.

New law provides for a civil fine for a violation of prior law in an amount not to exceed \$10,000 per violation. Additionally, a civil monetary penalty shall be imposed on the violator in an amount which equals three times the benefit pursued, including actual damages as a result of the violation.

New law provides that any person who is found to have violated new law shall be liable for all costs, expenses, and fees related to investigations and proceedings associated with the violation, including attorney fees. New law provides for payment of interest on the amount of the civil fine imposed at the maximum rate of legal interest from the date the damage occurred to the date of repayment.

New law provides that if the attorney general has information, evidence, or reason to believe that any person or entity may be in possession,

custody, or control of any documentary material or information relevant to an investigation for a possible violation of new law, he or any of his assistants may issue to the person or entity a civil investigative demand before the commencement of a civil proceeding to require the production of the documentary material for inspection or copying or reproduction, or the answering under oath and in writing of interrogatories.

New law allows the attorney general to apply to the district court having jurisdiction over the person to compel compliance with the civil investigative demand.

New law allows the attorney general to use documentary material derived from information obtained, or copies of that material, as the attorney general determines necessary for the enforcement of the laws of this state, including presentation before a court.

New law allows the attorney general to issue an investigative subpoena for deposition testimony to any person or entity that may have information or knowledge relevant to the matter under investigation, or for the purpose of revealing, identifying, or explaining documentary material or other physical evidence.

New law allows the court to order the forfeiture of property to satisfy recovery of a judgment under specified circumstances.

New law requires that, prior to a forfeiture of property, a contradictory hearing shall be held during which the attorney general shall prove by clear and convincing evidence that the property in question is subject to forfeiture. If the property is transferred to another person within six months prior to the occurrence or after the occurrence of the violation for which recovery is due or within six months prior to or after the institution of a criminal, civil, or departmental investigation or proceeding, it shall be prima facie evidence that the transfer was intended to avoid paying recovery or was an attempt to protect the property from forfeiture.

New law provides that a healthcare provider or other person from whom recovery is due shall have an affirmative duty to fully disclose all

property and liabilities and all transfers of property which meet the criteria of new law.

New law terminates on August 1, 2014.

Effective August 1, 2012.

(Adds R.S.22:1923(3) and 1931-1931.13)

### **Insurance Fraud Reporting (Act No. 201)**

Old law provides that any person, company, or other legal entity which believes that a fraudulent claim is being made, shall report it to the insurance fraud section of the Dept. of Insurance within 60 days on a form prescribed by the section.

New law changes and broadens the relevant terminology from a "fraudulent claim" that is being made to a "fraudulent act" that will be, is being, or has been committed.

New law provides that any person, company, or legal entity that suspects that a fraudulent act, not only a claim, will be, is being, or has been committed shall report such suspicion to the insurance fraud section.

(Amends R.S. 22:1926(A))

### **Fire and Extended Coverage Appraisers (Act No. 96)**

New law requires persons acting as appraisers for fire and extended coverage to register with the commissioner.

New law provides that registrations shall expire one year from the anniversary date, at which time the registrant shall file a request for renewal.

(Adds R.S. 22:821(B)(34) and 1807.1-1807.3)

### **Insurer-Repair Company Contracts (Act No. 78)**

Old law did not allow insurers to establish a contract or agreement with any company to arrange for insurance repairs, where the insurer and repair company agree to a price for repair that will allow the insurer to retain a percentage of the repair costs, or to establish a contract or agreement with any individual or company to manage, subcontract, broker, or arrange

insurance repair for any glass repair or replacement on a motor vehicle. New law repeals old law, which was declared to be unconstitutional.

(Repeals R.S. 22:1965 and 1966)

### **Rehabilitation and Liquidation of Insurance Companies (Act. No. 468)**

New law authorizes the commissioner of insurance to take certain actions to rehabilitate or liquidate an insurance company in compliance with the federal Dodd-Frank Act ("the Act"). With respect to a covered financial company or subsidiary or affiliate of a covered financial company, the commissioner is authorized to petition for an order of rehabilitation or liquidation under any of the following grounds:

(1) Upon determination and notification given by the federal secretary of the treasury, in consultation with the president, that the insurance company is a financial company satisfying the requirements of the Act, and its board of directors, or any body performing similar functions, acquiesces or consents to the appointment of a receiver pursuant to the Act, with this consent to be considered as consent to an order of rehabilitation or liquidation.

(2) Upon an order of the federal district court for the District of Columbia under the federal Act granting the petition of the federal secretary of the treasury concerning the insurance company under the Act.

(3) A petition by the federal secretary of the treasury concerning the insurance company is granted by operation of law under the Act.

New law provides that after notice to the insurance company, the receivership court may grant an order on the petition of the commissioner for rehabilitation or liquidation within 24 hours after the filing of the petition. If the receivership court does not make a determination on the petition within 24 hours the petition is deemed granted.

New law provides that if an order is deemed granted, the commissioner or his designee is deemed to be affirmed as receiver and has all of

the applicable powers provided by law regardless of whether an order has been entered.

New law requires the receivership court, within 10 days, to enter an order of rehabilitation or liquidation.

New law authorizes the court to hold a hearing within 10 days after granting the order of liquidation or rehabilitation, at which hearing the court may sustain or revoke the order of rehabilitation or liquidation or grant any other relief as the nature of the case and the interest of the insurer's policyholders, creditors, or the public may require.

New law provides that any order of rehabilitation or liquidation is not subject to any stay or injunction pending appeal.

New law provides that there shall be no liability on the part of, and no cause of action of any nature shall arise against, the department or its employees, or the commissioner or his designee in his capacity as receiver, rehabilitator, liquidator, or conservator, or otherwise, or a special deputy, or the receiver's assistants or the receiver's contractors for any action taken by them in the performance of their powers and duties pursuant to new law or their duties under the Louisiana Insurance Code.

New law provides that no prior wrongful or negligent actions of any present or former officer, manager, director, trustee, owner, employee, or agent of the insurer may be asserted as a defense to a claim by the receiver under a theory of estoppel, comparative fault, intervening cause, proximate cause, reliance, mitigation of damages, or otherwise.

New law authorizes the affirmative defense of fraud in the inducement to be asserted against the receiver in a claim based on a contract. Evidence of fraud in the inducement shall be admissible only if it is contained in the records of the insurer.

New law provides that a principal under a surety bond or a surety undertaking is entitled to credit against any reimbursement obligation to the receiver for the value of any property pledged to secure the reimbursement obligation, to the extent that the receiver has possession or control

of the property, or the insurer or its agents misappropriated or commingled such property.

New law prohibits an action or inaction by the insurance regulatory authorities from being asserted as a defense to a claim by the receiver.

New law provides that there is no liability on the part of, and no cause of action of any nature shall arise against, the department or its employees, or the commissioner or his designee in his capacity as receiver, liquidator, rehabilitator or conservator, or otherwise, or any special deputy, the receiver's assistants or contractors, or the attorney general's office for any action taken by them in performance of their powers and duties under the Louisiana Insurance Code.

Effective August 1, 2012.

(Amends R.S. 22:2005, 2008, 2009, 2028, and 2036; adds R.S. 22:2005.1 and 2043.1)

#### **Property Insurance (Act No. 632)**

New law provides that the La. Citizens Property Insurance Corporation is not required to furnish any bond in any judicial proceedings arising from activities within the scope and course of its duties.

Old law provided that until August 15, 2011, certain rates shall not apply in St. Mary Parish and parishes listed in old law. New law extends the date from August 15, 2011, to August 15, 2015.

Provisions of new law exempting the corporation from posting bonds in judicial proceedings is effective August 1, 2012. Provisions of new law providing the fixing of rates in certain parishes is effective upon signature of the governor.

(Amends R.S. 13:4581 and R.S. 22:2303(D)(1))

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

### **No Local Minimum Employee Benefits (Act No. 667)**

Old law provides that no parish or municipality can establish its own minimum wage rate. New law adds employee benefits, in the form of a mandatory, minimum number of vacation or sick leave days, whether paid or unpaid, to the items which a parish or municipality may not establish.

Effective August 1, 2012.

(Amends R.S. 23:642)

### **Employee Wage and Employee Information (Act No. 822)**

New law allows an employee, or the employee's representative, to request his wage and employer information from the La. Workforce Commission (LWC).

New law restricts the release of the information for lending purposes, tenant screening, and insurance underwriting only.

New law provides that LWC may transmit the records electronically, directly to the employee, or to a qualified third-party vendor at the request of the employee.

New law requires that the records shall only be provided on a case-by-case basis and shall not be maintained or reported with any other data.

New law provides that any costs incurred by LWC by providing the records to a third party shall be assessed to that third party.

New law provides that the only records that shall be made available are records that would otherwise be available to the employee who signed a written authorization for those records, and shall in no circumstances breach the firewall or secure environment of the LWC computer systems.

New law provides that the data shall be exchanged in secure conditions and destroyed after its legitimate use.

Effective August 1, 2012.

(Adds R.S. 23:905)

**Whistleblower Protection for Reporting Child Sexual Abuse; Treble Damages (Act No. 148)**

New law provides that no employee shall be discharged, demoted, suspended, threatened, harassed, or discriminated against in any manner in the terms and conditions of his employment because of any lawful act engaged in by the employee, or on behalf of the employee, in furtherance of any action to report the sexual abuse of a minor child by any fellow employee to law enforcement, whether such fellow employee is a co-worker, supervisor or subordinate.

New law provides that an employee of a public or private entity may bring action for relief against his or her employer, in a court of competent jurisdiction, for damages associated with any action taken by the employee to report the matter to law enforcement in furtherance of the protection of a minor child.

New law provides that an employee who is discharged, demoted, suspended, threatened, harassed, or discriminated against in any manner because the employee reported the sexual abuse of a child shall be entitled to treble damages plus court costs and reasonable attorney fees.

New law provides that a plaintiff shall not be entitled to recovery if the court finds that the plaintiff instituted or proceeded with a case or lawsuit that was frivolous, vexatious, or harassing.

Effective August 1, 2012.

(Adds R.S. 23:968)

**Workers' Compensation Medical Benefits (Act No. 652)**

Old law provided that all medical benefits due under the workers' compensation system are due within 60 days after the employer or insurer receives written notice.

New law requires that payments to medical providers availing themselves of the use of the electronic billing rules and regulations shall be

due within 30 days after the employer or insurer receives a complete electronic medical bill.

Effective July 1, 2013.

(Amends R.S. 23:1201(E); adds R.S. 23:1203.2(D))

**Workers' Compensation and Prisoners (Act No. 610)**

Old law provides that an injured employee has no right to workers' compensation benefits during a period of incarceration.

New law provides that old law shall not apply to medical expenses incurred when an employee has been assigned to work release or a transitional work program and is injured during his participation in such program.

New law further provides that existing law shall not be construed to limit the obligation of an employer to pay medical expenses that would otherwise be compensable under the Workers' Compensation Act.

Effective August 1, 2012.

(Amends R.S. 23:1201.4)

**Workers Compensation and Medical Issues (Act No. 235)**

Old law provided that if any dispute arises as to the condition of the employee, capacity to work, or the current medical treatment, the director of the office of workers' compensation, upon application of any party, will order an examination of the employee by a medical practitioner appointed by the director. New law eliminates current medical treatment as a basis for dispute.

New law provides that the payor may contract with a utilization review company to assist the payor in determining if the request for nonemergency diagnostic testing or treatment, in an amount which exceeds \$750, is a medical necessity.

New law provides that a medical necessity determination by a utilization review company and the payor's consent to authorize the requested nonemergency diagnostic testing and

treatment shall require only a review of the injured worker's medical records and shall not require an examination of the injured employee.

New law provides that upon the first request for authorization, instead of upon first payment, for a claimant's medical care, a payor shall communicate to the claimant the procedure for requesting an independent medical examination in the event of a dispute. New law extends old law to disputes about the employee's capacity to work and the procedure for appealing the denial of medical treatment to the medical director at the office of workers' compensation.

Old law required any party wishing to request an independent medical examination of the claimant to make its request at or prior to the pretrial conference. New law removes the requirement if the request is by the director of the office of workers' compensation.

Effective August 1, 2012.

(Amends R.S. 23:1123, 1142, 1203(E), 1307, and 1317.1(A))

### **Workers Compensation and Emailing of Summaries (Act No. 76)**

New law provides that transmission by e-mail is an acceptable means of sending a summary of communication between a case manager or vocational rehabilitation counselor and health care provider in workers' compensation claims, if authorized in writing by the employee or his representative.

(Amends R.S. 23:1127(C)(3))

### **Workers' Compensation (Act No. 860)**

New law provides that disputes concerning the facts in workers' compensation cases shall not be given a broad, liberal construction in favor of either employees or employers; rather, the laws pertaining to workers' compensation shall be construed in accordance with the basic principles of statutory construction and not in favor of either employer or employee.

New law provides that the injured employee who disagrees with any information provided on the notice of payment is to notify, in writing, the

payor of the basis for disagreement and provide the amounts believed appropriate.

New law provides that a payor, within five business days of receipt of the notice of disagreement, shall either:

1. Send a revised notice of payment along with a revised payment in accordance therewith to the injured employee or the employee's representative.
2. File a request for preliminary determination and provide a copy to the injured employee or the employee's representative.

New law provides that the preliminary determination shall be performed by a workers' compensation judge specifically assigned to handle preliminary determinations.

New law provides that the injured employee, the employee's representative, the payor and the employer, which includes the direct employer of a statutory employee, shall participate in a preliminary determination hearing by phone. New law provides that the workers' compensation judge may require any of these parties to produce relevant records necessary for the determination of compensation.

New law provides that the payor shall either mail to the injured employee or the employee's representative a revised notice of payment with the recommended amount or notify the injured worker or the employee's representative in writing that the payor does not accept the recommendation.

New law provides that no disputed claim for compensation shall be filed until the provisions of this preliminary determination has been exhausted, unless such a disputed claim is in regard to a payor's failure to provide a notice of payment. New law provides that a payor who provides the compensation amounts due as recommended by the workers' compensation judge shall not be subject to any penalty and attorney fees.

New law provides that the payor who provides the compensation amounts due as recommended, and who disagrees with such preliminary recommendation, shall file a disputed claim for compensation.



Old law provided that, in addition to any other benefits to which an injured employee may be entitled, any employee suffering an injury as a result of an accident arising out of and in the course and scope of his employment shall be entitled to a sum of \$30,000, payable within one year after the date of the injury. New law increases the amount from \$30,000 to \$50,000.

New law provides that disputes over medical treatment pursuant to the medical treatment schedule shall be premature unless a decision of the medical director has been obtained.

Effective August 1, 2012.

(Amends R.S. 23:1201, 1210, 1221, 1224, and the heading of 1314; adds R.S. 23:1020.1 and 1314(D) and (E))

### **Protection of Certain Council Members (Act No. 573)**

New law provides that no member of the Medical Advisory Council or the Workers' Compensation Advisory Council acting within the scope of his official functions and duties shall be held individually liable for a policy recommendation or policy action by the council, unless the member's willful or wanton misconduct caused damage or injury.

New law provides that no member of the Medical Advisory Council or the Workers' Compensation Advisory Council shall be subject to civil or administrative subpoena for testimony or subpoena duces tecum for documents concerning his recommendations or exercise of judgment as a member of the council.

Effective August 1, 2012.

(Adds R.S. 23:1203.1(O) and 1294(C))

### **Late-Developing Injuries (Act No. 783)**

Old law provided that when an injury does not result at the time of or immediately after the accident, the prescriptive period is one year from the time the injury develops. Old law provided that in such cases claim for payment is forever barred unless proceedings have been begun within two years from the date of the accident.

New law extends the time limitation from two years to three years.

New law provides that, in all such cases where the proceedings have begun after two years from the date of the work accident but within three years from the date of the work accident, the employee may be entitled to temporary total disability benefits for a period not to exceed six months and the payment of such temporary total disability benefits shall not operate to toll or interrupt prescription as to any other benefit.

Effective August 1, 2012.

(Amends R.S. 23:1209)

### **Death Benefits (Act No. 793)**

Old law provides for the payment of death benefits under the La. Workers' Compensation Law. Old law provided that if the employee leaves no legal dependents entitled to benefits under any state or federal compensation system, \$75,000 shall be paid in a lump sum to each surviving parent of the deceased employee, constituting the sole and exclusive compensation.

New law provides that the death benefit shall be paid to surviving biological and adopted children of the employee, to be divided equally among them, constituting the sole and exclusive compensation. New law provides that if there are no surviving children, then the \$75,000 shall be paid to each surviving parent.

New law provides a child is presumed wholly and actually dependent upon the deceased employee if the child is under the age of 18, or over the age of 18 if physically or mentally incapacitated from earning, with a valid child support court order, regardless of whether the child support is actually being paid, or until the age of 23 if enrolled as a full-time student in any accredited educational institution.

New law provides that regardless of dependency, no payment shall be made to the concubine of the deceased employee, nor the concubine's children, unless the children are related to the deceased employee by blood or adoption.

Effective August 1, 2012.

(Amends R.S. 23:1231, 1253; adds R.S. 23:1251(3))

#### **Death Benefits (Act No. 99)**

Old law provides that for an injury causing death as a result of a work-related accident, legal dependents of the employee shall be paid a weekly sum. Old law provides that when the employee leaves no dependents, that a lump sum of \$75,000 shall be paid to each surviving parent of the deceased employee. New law provides that if there are no surviving dependents of the deceased employee, but there are surviving children, the non-dependent children shall divide \$75,000 among themselves equally.

Old law provides that a surviving spouse, and children under 18 who live with the parent, children over 18 who are incapacitated from earning, or children up to age 23 if in school, are considered to be dependent on the deceased employee. New law further provides that children with a valid child support order from a court of competent jurisdiction against the deceased parent are also considered to be dependent on the deceased employee.

(Amends R.S. 23:1231; Adds R.S. 1251(3))

#### **EDI Reporting of Job Injuries by Insurers (Act No. 141)**

Old law requires that within 10 days of an injury resulting in death or of lost time in excess of one week, the employer shall send a report to the insurer with specific information.

Old law requires, after receiving the information from the employer, that the insurer, or the administrator of the employer's workers' compensation claims, shall forward the form to the office with additional specified information.

New law requires instead that upon receipt of the first report of injury from the employer, the insurer or the administrator of the employer's workers' compensation claims shall submit the data in EDI format based on International Association of Industrial Accident Boards and Commissions (IAIABC) standards.

New law provides that submissions of data may be in EDI format after Dec. 31, 2012, but shall

be required to be in EDI format after Dec. 31, 2013.

(Amends R.S. 23:1306(B))

#### **Unemployment Benefits Eligibility (Act No. 675)**

Old law defined "unemployment" for purposes of collecting unemployment insurance benefits, listing several familial relationships that would preclude an individual from being deemed unemployed for the purpose of collecting unemployment insurance benefits.

New law provides that if a person who fits the familial criteria has been employed for the first four of the last five quarters, and for whom, for that same period of time, unemployment insurance premiums have been paid, shall be considered to have met the requirements for being unemployed.

New law provides that the administrator shall not demand proof of dissolution of an entire enterprise in order to be deemed unemployed.

Effective August 1, 2012.

(Amends R.S. 23:1472(19)(a))

#### **Unemployment Benefits Procedure (Act No. 344)**

New law authorizes the secretary to require employers to file electronically all registrations and status reports due after Jan. 31, 2014.

New law provides that benefits charged after a requalification of a claimant shall not be charged against the experience-rating account of an employer when the employer timely filed a separation notice alleging disqualification; either a response to a notice of claim filed or a response to a notice to base period employer has been filed; and the separation of the employee from the employer was determined to be under disqualifying conditions.

Old law required each employing authority of the state to file with the administrator a notice of separation from service for each employee who leaves its employ for any cause which may be potentially disqualifying. New law covers all employers.

Old law provided that an individual shall be disqualified for benefits for the 52 weeks immediately following the week in which it was determined that he committed a fraudulent act relating to obtaining or increasing benefits. New law makes the disqualification applicable to the remainder of the benefit year after the commission of the fraudulent act and then continuing for the 52 weeks following the determination of the fraudulent act.

New law provides that if information indicating a claimant has earned any unreported wages for weeks claimed is obtained by the administrator prior to the administrator rendering a determination on the issue, the claimant shall be notified by mail or other delivery method. New law provides that he shall have seven days from the date of mailing to respond, or if notice is not by mail, then he shall have seven days from the delivery date of such notice to respond.

Old law provided that a claim for repayment shall prescribe against the state 5 years from the date the determination is made that repayment is due. New law increases the prescriptive period from five years to 10 years.

Old law provided that an individual receiving benefit payments to which he was not entitled is liable to repay such benefits. New law specifies that if the benefits were not gained through fraud and if the overpayment was not the fault of the claimant and the recovery would be against equity and good conscience, a waiver may be issued.

Old law provided for a three-year prescriptive period for a claim for repayment of benefits which were not gained through fraud. New law increases the prescriptive period to five years.

New law prohibits any employer against whom an assessment has been levied from submitting a bid or proposal for any public contracts until full payment of the amount due under the assessment is made.

Effective August 1, 2012.

(Amends R.S. 23:1513, 1553, 1576, 1601, 1713, 1714, and 1726; adds R.S. 23:1531.1(E))

### **Unemployment Benefits and Staffing Firms (Act No. 381)**

New law provides that a temporary employee who is paid by a staffing firm will be deemed to have resigned employment with the staffing firm if the employee does not call for reassignment after a completed assignment, if calling for reassignment is required.

Effective August 1, 2012.

(Adds R.S. 23:1601(1)(b))

### **Unemployment Compensation Overpayments (Act No. 263)**

New law provides for the suspension or denial of a recreational hunting or fishing license for failure to pay an unemployment compensation overpayment obligation.

(Amends R.S. 56:647(A) and (B); Adds R.S. 23:1749.1-1749.8)

### **Misclassification of Employees (Act No. 786)**

New law provides that, if the administrator determines, after investigation, that an employer failed to properly classify an individual as an employee and failed to pay unemployment contributions, but the failure was not knowing or willful, the employer will be issued a written warning as evidence that the employer has been cited for a first offense of misclassification. No administrative penalty shall be assessed.

New law provides that, if the administrator determines, after investigation, that an employer, or any officer, agent, superintendent, foreman, or employee of the employer, after June 30, 2013, and subsequent to the issuance of a written warning, failed to properly classify an individual as an employee and failed to pay contributions in accordance with the law, then an administrative penalty of up to \$250 per individual shall be assessed. Thereafter, any misclassification shall be subject to a penalty of up to \$500 per individual.

New law provides that upon a final determination that an employer knowingly or willfully failed to properly classify an individual as an employee and failed to pay unemployment,

then the employer will be prohibited from contracting with any state agency or political subdivision of the state for a period of three years from the date upon which the determination becomes final.

New law provides that every employer will post in a prominent and accessible location at each of its business premises a poster provided by the administrator that describes the responsibilities of independent contractors to pay taxes as required by state and federal laws, the rights of employees to workers' compensation and unemployment benefits, protections against retaliation, and the penalties if the employer fails to properly classify an individual as an employee.

New law exempts owner operators from the statutory requirements of unemployment misclassification. New law defines owner operators as a person who provides trucking transportation services under written contract to a common carrier, contract carrier, or exempt haulers, which transportation services include the lease of equipment or a driver to the common carrier, contract carrier, or exempt hauler.

Effective August 1, 2012.

(Amends R.S. 23:1761(9); adds R.S. 23:1472(12)(H)(XXII) and 1711(G))

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

There were no new laws of interest.

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

### **St. Charles Avenue and Historic Preservation (Act No. 697)**

Old law provides that any property or collection of properties under common ownership having any lot line on specified portions of St. Charles Ave. in New Orleans is exempt from specified

law relative to historic preservation districts and historic landmarks.

Old law provided that the exemption applied between Jena St. and Carrollton Ave. New law provides that the exemption applies to such properties having a lot line on the northerly side of St. Charles Ave. between Calhoun St. and Law Rd. and on the southerly side of St. Charles Ave. between Broadway St. and Lowerline St.

New law provides that §§15 and 16 of Act No. 804 of 1975 do not prevent or prohibit the application of Chapter 16 to property that was removed from R.S. 25:745(A)(2) by new law, but Chapter 16 of Title 25 does not apply to property covered by R.S. 25:745(A)(2) as amended by new law.

Effective August 1, 2012.

(Amends R.S. 25:745(A)(2) and 1238.1(B); Adds R.S. 25:1238.2(B)(1)(f), (g), (h), and (i))

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

### **Public Restrooms; Strip Clubs (Act No. 287)**

New law requires a Class A-General retail establishment for low and high alcoholic beverage permits to comply with the requirements of DHH regarding the number and location of public restrooms and to provide proof of compliance from the office of public health.

New law prohibits the issuance of a local or state Class "R" restaurant permit to any establishment that provides the type of entertainment described in existing law, which requires entertainers whose breasts or buttocks are exposed to view to perform upon a certain type of stage and within a certain distance from patrons.

Effective August 1, 2012.

(Amends R.S. 26:71.1 and 271.2; Adds R.S. 26:73(C)(6) and 272(C)(6))

### **Sales Tax Clearance for Alcohol Permits (Act No. 34)**

Old law required that applications for all original and renewal alcoholic beverage applications be accompanied by a signed sales tax clearance from the secretary of the Department of Revenue, and the sales tax collection agency or agencies in the parish in which the application is made.

New law removes requirement of a sales tax clearance from the secretary of the Department of Revenue.

New law requires the commissioner to verify that the applicant for an ATC permit does not owe the state any delinquent sales taxes, penalties, or interest, excluding items under formal appeal.

Effective August 1, 2012.

(Amends R.S. 26:78, 79, 278, and 279)

### **Alcohol Permit and Video Poker (Act No. 764)**

Old law provided for the qualifications an applicant is required to possess in order to receive an alcoholic beverage permit or a dealer of malt/low alcoholic content permit. New law adds a provision that allows the commissioner to consider a person's arrests in determining suitability and a person's good character or reputation.

New law adds that certain relaxations of the requirements shall not apply to any applicant who is also applying for a video draw poker device gaming license.

New law requires that an applicant who is also applying for a video gaming license be a person:

(1) Who has not been convicted in this or in any other state or by the United States or any other country of theft or any crime involving false statements or declarations, or gambling as defined by the laws and ordinances of any municipality, any parish, any state, or the United States.

(2) Who has a spouse that has not been convicted of the above referenced offenses.

New law requires all licensees and persons required to be qualified by ATC to inform the commissioner of any action which they believe would constitute a violation of alcohol beverage laws and further prohibits discrimination against a person by an applicant or licensee because of supplying such information.

New law requires all licensees and any other persons who have been found suitable to maintain suitability throughout the term of the license.

Effective August 1, 2012.

(Amends R.S. 26:80 and 286)

### **Alcohol Permits and Drug Convictions (Act No. 291)**

Old law requires applicants for state and local permits for low and high alcoholic content to meet numerous qualifications and conditions.

New law adds a lifetime prohibition against the applicant having a conviction of distribution or possession with intent to distribute any controlled dangerous substance classified as a Schedule I, as defined in present law, on any premises licensed where the applicant held or holds an interest in the licensed business.

(Amends R.S. 26:80 and 280))

### **Retail Permits for Manufacturers (Act No. 300)**

Old law created an exception for certain persons who were issued a manufacturer's permit as of April 1, 2003, and have been a licensed liquor distiller continuously since January 1, 1997, to become eligible to apply for and receive a Class B Retail Liquor Permit to sell no more than 2,500 cases of the alcoholic beverage manufactured on the premises annually. New law repeals old law exception.

New law grants the commissioner the authority to issue a Class A-General Retail Permit or a Class B Retail Liquor Permit, or both, to any person who holds a valid manufacturer's permit for a portion of a manufacturer's business premises where the manufacturer engages in the making, blending, rectifying, or processing of

any alcoholic beverage, provided the manufacturer complies with certain provisions.

Effective August 1, 2012.

(Amends R.S. 26:85.1)

#### **No Use of "Food Stamps" for Alcohol or Tobacco; No Drugs (Act No. 28)**

Old law prohibited the acceptance of food stamp coupons for the payment of alcoholic beverage products. New law changes the references in prior law from food stamp coupons to Supplemental Nutrition Assistance Program "SNAP" electronic benefit transfer cards.

Old law prohibited certain acts on or about any premises which sells or offers for sale tobacco products. New law further prohibits any person, agent, associate, employee, representative, or servant of any person who sells or offers for sale tobacco products from accepting electronic benefit transfer cards as payment for tobacco products in violation of federal provisions.

New law prohibits illegal sale, offering for sale, possessing, or permitting the consumption on or about a licensed premises of any kind or type of controlled dangerous substance.

Effective August 1, 2012.

(Amends R.S. 26:90 and 286; adds R.S. 26:911(A)(5) and (6))

#### **Suspension and Revocation of Alcohol Permits (Act No. 27)**

Old law authorized the commissioner to suspend or revoke any low or high alcoholic content permit if there is a misstatement or suppression of fact in the application for the permit.

New law further authorizes the suspension or revocation of any permit of an applicant that has intent to misstate or suppress information that may reveal any fact that is material to a suitability determination, or for knowingly supplying information that is false or misleading as to a material fact pertaining to the qualifications of applicants for permits.

Effective August 1, 2012.

(Amends R.S. 26:91 and 287)

#### **Tobacco Retail Permits (Act No. 143)**

New law establishes one permit for tobacco retail dealers by eliminating the tobacco registration certificate.

Old law provides for general requirements, violations, and civil penalties relative to registration certificates or permits. New law deletes various provisions regarding and all references to registration certificates.

(Amends R.S. 26:902-905, 906, 912, 913, 918, and 919; Repeals R.S. 26:907 and 915)

#### **Bouncers (Act No. 463)**

New law defines "security personnel" as any person, other than a server, who monitors the entrance and other areas of an establishment for purposes of identifying underage and intoxicated persons, enforcing establishment rules and regulations and otherwise providing security for the establishment and its customers where alcoholic beverages are the principal commodity sold for consumption on the premises.

New law provides that the commissioner may suspend or revoke a security personnel's permit or impose a fine on the security personnel for noncompliance with law or for any violation, attributable to the security personnel, of the provisions of law or related tobacco product laws, rules, and regulations.

Old law provides that the program administrator shall approve a Louisiana Responsible Vendor Program, designed to educate vendors and their employees and customers about selling, serving, and consuming alcoholic beverages in a responsible manner and selling and serving tobacco products. New law adds security personnel training courses in the responsible vendor program.

New law requires the vendor to successfully complete all required server or security personnel training courses to qualify for and maintain certification as a responsible vendor.

New law provides that the commissioner may suspend or revoke a security personnel's permit or impose a fine on the security personnel for noncompliance with law or for any violation, attributable to the security personnel, of the

provisions of law or related tobacco product laws, rules, and regulations.

New law provides that the alcoholic beverage or tobacco products permit of a vendor certified as a responsible vendor shall not be suspended or revoked on the first illegal sale or service of an alcoholic beverage by any security personnel to an underage or intoxicated person or the first illegal sale or service of a tobacco product by any security personnel to an underage person in any 12-month period.

New law provides that any vendor or server subject to a local ordinance requiring participation by the vendor or its employees in a security personnel training or licensing program shall be exempt from local security personnel training and licensing regulation if the vendor is certified as a responsible vendor.

Effective August 1, 2012.

(Amends R.S. 26:932, 933, 934, 935, 936, and 937)

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

### **Gaming Riverboat Safety (Act No. 447)**

New law provides that applicable waivers approved by the U.S. Coast Guard, and subsequent modifications to the configuration and marine staffing recommended by an approved third-party inspector as approved by the La. Gaming Control Board that are consistent with U.S. Coast Guard criteria for the current configuration and mooring of the vessel, may be used in evaluating the safety standards of licensed riverboats.

Effective August 1, 2012.

(Amends R.S. 27:44.1))

### **Gambling and ATM Cards (Act No. 175)**

Old law provides that wagering on a licensed riverboat, at the land-based casino, or at slots at track facilities may be made with tokens, chips, vouchers, coupons, or electronic cards issued by

the licensed eligible facility or an approved facility manager acting on behalf of the facility. Old law prohibits the use of credit cards issued by any other entity or institution.

New law also prohibits the use of cards which automatically withdraw funds from a credit, savings, or checking account held at a depository institution, which includes any credit union.

Effective upon signature of governor (May 22, 2012).

(Amends R.S. 27:65, 239.1, and 361(F))

### **Owner Liability for Video Poker Taxes (Act No. 709)**

Old law authorizes the operation of video draw poker devices and provides for the remission of franchise payments to the state for the operation of those devices. New law provides that the franchise payment shall be held by the device owner on behalf of the state of La., until such time as the franchise payment is remitted, and any franchise payment held in accordance with new law shall be deemed to be held in trust for the state of La.

New law provides that upon failure of a device owner to remit any portion of the franchise payment to the division, the device owner and its shareholders, officers, and directors if a corporation, its partners if a partnership, and its members, managers, and managing members if a limited liability company, shall be jointly and severally liable to the state of La. for the franchise payment until it is remitted to and received by the division.

Effective August 1, 2012.

(Adds R.S. 27:311(D)(5) and (6))

### **Video Poker (Act No. 161)**

Old law defined a "restaurant, bar, tavern, cocktail lounge, or club" for purposes of the video draw poker law as an establishment primarily engaged in the retail sale of prepared foods or the sale of alcoholic beverages for on premises or immediate consumption that has a Class-A General retail permit or Class-A

Restaurant permit for the sale of alcoholic beverages for on-premises consumption, and meets several other criteria. New law requires that the restaurant, bar, tavern, cocktail lounge, or club have a Class-A General retail permit or Class-A Restaurant permit for the sale of alcoholic beverages for on-premises consumption.

Old law defined a "video draw poker device" as any unit, mechanism, or device authorized that, upon insertion of cash, is available to play or simulate the play of the game of draw poker or other card games approved by the division, utilizing a cathode ray tube or video display screen and microprocessors in which the player may win games or credits that can be redeemed for cash only. New law excludes from this definition line up games, mechanical reel games, or any combination thereof, and slot machines.

New law lists three categories of licenses to operate video draw poker devices:

1. Licenses to operate a maximum of three video draw poker devices at establishments licensed to sell alcoholic beverages for consumption on the premises.
2. Licenses to operate up to 50 video draw poker devices at qualified truck stop facilities.
3. License to operate an unlimited number of video draw poker devices at a licensed pari-mutual wagering facility or an off track wagering facility.

Old law provided that a "qualified truck stop" shall mean a facility covering at least five developed contiguous acres which sells fuel, lubricating oil, and other vehicular merchandise, such as batteries, tires, or vehicle parts for eighteen-wheeler tractor-trailers, and which meet certain criteria including a requirement of an on-site restaurant with seating to be provided for at least 50 patrons and full table service for sit-down meals. New law requires that seating for the 50 patrons be centralized and removes the requirement for full table service for sit-down meals except for qualified truck stop facilities located in Orleans Parish.

New law provides exceptions in the event of force majeure.

New law provides that if a person has met the suitability qualifications for the granting of a permit to sell alcoholic beverages on the premises of a restaurant or bar, they shall be granted a license to operate not more than three video draw poker devices without requiring the division to make an additional suitability determination.

Effective Aug. 1, 2012.

(Amends R.S. 14:90, R.S. 27:20 and R.S. 27:401 and 402; Adds R.S. 27:403 - 457 and 501 - 502; Repeals R.S. 27:301 - 326)

## **TITLE 28: MENTAL HEALTH**

### **Mentally Ill (Act No. 418)**

New law changes the term "mentally ill person" to "person who is mentally ill".

New law provides that DHH and any entity which receives funding through a state contract to provide services to persons who are mentally ill, shall provide, to the maximum extent possible, mental health treatment, services, and supports which are consistent with specified principles.

Effective Aug. 1, 2012.

(Amends R.S. 28:2, 52, 52.1, 52.2, 52.3, 53, 55, 64, and 772; Adds R.S. 28:171.1)

### **Mental and Behavioral Health Services Preservation Act (Act No. 506)**

New law authorizes DHH to evaluate existing proposed expenditure plans for mental and behavioral health services and determine the best use of such funds to achieve positive policy outcomes within the mental and behavioral health community. New law authorizes DHH to develop methods for estimating the need for mental and behavioral health services in certain regions of the state, with special attention to underfunded and inaccessible programs, and allocate state funds or resources according to that need. New law specifies that the state may continue to provide funding for mental and



behavioral health services that are not less than the existing allocations from the state general fund.

New law specifies that nothing in new law may be construed to reduce the existing authority or responsibility of the office of behavioral health within DHH or negatively impact the existing funding of mental and behavioral health services in the state.

Effective August 1, 2012.

(Adds R.S. 28:26.10.1-26.10.5)

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

There were no new laws of interest.

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

### **Fracking Well Operations (Act No. 812)**

New law requires the commissioner of conservation to make any reasonable rules, regulations, and orders necessary to require the operator of a fracking well to report 20 days after the completion of hydraulic operations.

New law requires the report to contain the type and volume of the hydraulic fracturing fluid; a list of additives used, including the specific trade name and the supplier of the additive; and list of ingredients contained in the hydraulic fracturing fluid, the associated CAS registry number, and the maximum concentration of each chemical ingredient in percent by mass that is subject to certain federal regulations governing the Occupational Safety and Health Administration.

Effective August 1, 2012.

(Adds R.S. 30:4(L))

### **Ultra Deep Unitization (Act No. 743)**

New law authorizes the commissioner of conservation to unitize wells for an ultra deep

structure (where true vertical depth is more than 22,000 feet) and to adopt a development plan for such ultra deep structure unit. New law authorizes the commissioner to unitize, force pool, and consolidate all separately owned tracts and other property ownerships within the unit upon certain findings.

New law requires that the initial allocation of unit production be based on the surface acreage separately owned within the unit. New law requires opportunity for public review of an order establishing a unit.

New law requires the order creating the unit to designate a unit operator, requires that the initial well drilled is a unit well, and provides that the commissioner shall determine the proper costs in the event of a dispute.

New law authorizes the commissioner to dissolve or modify a unit based on technical information. The law relative to deep pools is not applicable to ultra deep structures.

New law changes the risk charge so that the risk charge for a unit well, substitute unit, or certain cross-unit well will be 200% and the risk charge for an alternate unit well or certain cross-unit well will be 100%.

New law provides for the payment of royalties to the lessor royalty owners and overriding royalty owners of a nonparticipating owner, and provides procedures and remedies in the case of nonpayment of the royalties.

Old law provides for notice to be sent should a drilling unit be created by order of the commissioner around a well already drilled or drilling and including one or more tracts as to which the owner or owners thereof had not participated in the risk and expense of drilling such well. New law requires that the notice be sent within 60 days of the date of the order creating such unit.

Old law provides for notice to be sent should a drilling unit be revised by order of the commissioner so as to include an additional tract or tracts. New law requires that the notice be sent within 60 days of the date of the order revising such unit.

Effective August 1, 2012.

(Amends R.S. 30:5.1, 10)

### **Pre-Entry Notice of Drilling Operations (Act No. 795)**

New law requires the commissioner of conservation to promulgate rules to require an operator, agent, or assigns, to provide a single "pre-entry" notice to the surface owner of land where drilling operations will be conducted.

New law provides that no pre-entry notice is required to be given to a surface owner who has a contractual relationship with the operator.

New law authorizes the commissioner to waive the pre-entry notice if the notice would result in the loss or termination of a mineral lease or in other emergency circumstances.

New law provides that no pre-entry notice is required for preparatory activities such as inspection, surveying, or staking and that neither the law nor the rules shall be construed as altering or reducing the operator's obligation to conduct his operations with due regard for the rights of the surface owner.

New law provides that no pre-entry notice is required to drill additional wells on an existing pad, so long as neither the pad nor the access road is expanded.

New law provides that after receipt of the pre-entry notice, the surface owner will make no alterations to a completed drilling location with the malicious intent to interfere with the drilling operations for which the owner received the pre-entry notice.

Effective August 1, 2012.

(Adds R.S. 30:28(I))

### **Environmental Plan Procedure (Act No. 779)**

New law allows any party to subpoena, for purposes of deposition or trial, any employee, contractor, or representative of the department or agency involved in the formulation of the feasible plan for the evaluation or remediation of environmental damage, and allows the department or agency to recover costs associated with the subpoena.

New law does not allow for discovery of the department's review, approval, or structuring of the feasible plan or of an agency's review and comments until after submission to the court of the final feasible plan.

New law provides a procedure for a defendant to request that the court conduct a preliminary hearing to determine whether there is good cause for maintaining the defendant as a party in the litigation.

New law suspends the prescriptive period for one year for any claim covered by the old law, and provides for the procedure and requirements for the suspension.

New law provides that if a public hearing is held following a limited admission, then the department will not conduct an additional public hearing for the same environmental damage.

New law provides that from the date a party who admits responsibility, or whom the court finds legally responsible for the damage, submits a plan to the department, until after the department has filed with the court the approved feasible plan for the evaluation or remediation of the environmental damage, no party to the litigation, either directly or indirectly, may have ex parte communication with any employee, contractor, or representative of the department or a commenting agency regarding the formation of the feasible plan.

New law provides a procedure for review of a plan that requires the application of regulatory standards of an agency other than the department or that provides an exception from the department's standards. New law provides that the Dept. of Ag. and Forestry, DEQ, and DNR will review and comment on the plan.

New law allows the department to issue compliance orders to either the operator of record or to a party found responsible or admitting responsibility for implementing the most feasible plan.

New law provides for waiver of the right to enforce the contractual right to indemnification against punitive damages caused by the responsible party's acts or omissions if the responsible party admits responsibility for the

remediation of the environmental damage under applicable regulatory standards. New law provides that the waiver of the right to indemnification against punitive damages will not apply to any other claims or damages.

New law does not apply to any case in which the court on or before May 15, 2012, has issued or signed an order setting the case for trial, regardless of whether such trial setting is continued.

Effective August 1, 2012.

(Amends R.S. 30:29)

### **Controlled Burning of Agricultural Materials (Act No. 637)**

New law provides for controlled burning, after notice to the local fire department and the sheriff's office, of agricultural materials, including crates used by sweet potato farmers to store or transport their sweet potatoes.

Effective August 1, 2012.

(Adds R.S. 30:2054)

### **Withdrawal of Surface Water (Act No. 261)**

Old law authorizes entering into cooperative agreements for the withdrawal of surface water, and requires approval by the secretary of the Dept. of Natural Resources for any such agreement.

New law provides that no new cooperative agreement shall be entered into for which an application was received by the department after Dec. 31, 2014.

New law provides that existing statutes continue in effect until the last termination date for a cooperative endeavor agreement.

New law provides that any cooperative endeavor agreement approved or entered into by the secretary pursuant to existing law which provides for the withdrawal of running surface water for use outside the state shall require the approval of the House Committee on Natural Resources and Environment and the Senate Committee on Natural Resources.

New law provides that in determining whether to approve such agreement, the committees shall consider the reasonableness of the withdrawal, whether the withdrawal is contrary to the conservation and uses of the running surface water, and whether the withdrawal is detrimental to the environment or the public welfare.

Effective August 1, 2012.

(Amends R.S. 30:961)

### **Inspection of Child Facilities for Lead (Act No. 733)**

New law requires the owner of any licensed day care center, preschool, or public or nonpublic elementary school facility that qualifies as a child-occupied facility and was first placed in operation after August 1, 2012, to have an inspector conduct an inspection of the facility and grounds for the presence of lead hazards.

New law provides that no inspection will be required if the facility or its grounds has been inspected or has been the subject of lead abatement or remediation since 1978. New law provides that if a portion of the facility or its grounds has not been inspected or been the subject of lead abatement or remediation since 1978, then those portions of the facility or its grounds shall be subject to the provisions of new law.

New law requires the owner or operator of the facility to maintain documentation that the inspection, or lead abatement or remediation activities, were conducted in accordance with applicable requirements.

New law requires that if a lead hazard is found to be present, the inspector and the owner shall report those findings to the state health officer and the DEQ secretary.

Effective August 1, 2012.

(Amends R.S. 30:2351.28; adds R.S. 30:2351.1(6))

### **Notification of Lead Issues in Child Facilities (Act No. 736)**

New law requires the owner of a child-occupied facility and the inspector to jointly provide

notification in writing to the secretary and the state health officer of reports of lead hazards, lead abatement activities, or any lead testing performed which exceeds applicable standards.

New law requires that parents or legal custodians of children enrolled at child-occupied facilities affected by the new law be notified by electronic means, such as email or posting on a website, or in writing of all lead abatement activities, lead testing which exceeds applicable standards, or lead hazard reduction activities performed at the facility or its grounds.

New law provides that the notification will not be required if the facility or its grounds has been inspected or has been the subject to lead abatement or remediation prior to August 1, 2012.

New law provides that if a portion of the facility or its grounds has not been inspected or been the subject of lead abatement or remediation prior to August 1, 2012, then that portion of the facility or its grounds will be subject to new law.

New law requires the owner or operator of the facility to maintain documentation that the inspection, lead abatement or remediation activities were conducted in accordance with applicable requirements.

Effective August 1, 2012.

(Adds R.S. 30:2351.1(6) and 2351.53)

#### **Natural Gas Release Reporting (Act No. 853)**

Old law provided that owners and operators will immediately notify the DEQ of any reportable releases, other than a federally or state permitted release or application of a pesticide or fertilizer, of a hazardous material or substance exceeding the reportable quantity when that reportable quantity could be reasonably expected to escape the site of the facility, as soon as the owner or operator has knowledge of such release.

New law adds that natural gas from distribution lines will have a reportable release of 1,000 pounds or more.

Effective August 1, 2012.

(Amends R.S. 30:2373(B)(1))

#### **Waste Tire Transporters and Processing Facilities (Act No. 817)**

New law changes "liability insurance" to "commercial liability insurance" and requires, for waste tire transporters, a surety bond in a minimum amount of \$10,000, as determined by the secretary.

New law changes the calculation of the payment to waste tire processing facilities.

Effective August 1, 2012.

(Amends R.S. 30:2418(H)(1) and (I)(2))

#### **Oil Spill Assessment (Act No. 832)**

Old law authorizes the oil spill coordinator to enter vessels or terminal facilities after a reasonable effort to obtain consent. New law includes in that authorization agents, employees, contractors, and subcontractors of the coordinator.

New law authorizes the oil spill coordinator and his agents, employees, contractors, and subcontractors, to enter lands, water, and premises to conduct assessments. Except where the coordinator deems it necessary to immediately enter to prevent loss of ephemeral information, new law requires five-day notice to the property owner prior to entry. New law requires the coordinator to indemnify the property owner for loss or injury related to the entry and requires reimbursement for actual damages.

New law provides that contracts for legally sensitive services provided by scientists, economists, modelers, statisticians, cultural resources experts, and other such practitioners assisting the state in assessment of damages under the state and federal oil pollution acts are professional services contracts.

Effective August 1, 2012.

(Amends R.S. 30:2456(E); Adds R.S. 30:2456(D)(3))

## **TITLE 31: MINERAL CODE**

There were no new laws of interest.

## **TITLE 32: MOTOR VEHICLES AND TRAFFIC REGULATION**

### **Golf Carts Allowed on Road (Act No. 661)**

New law provides that golf carts can be operated between sunrise and sunset on the roadways within the limits of Palmetto Island State Park by any operator who is in possession of a valid driver's license and liability insurance.

Effective August 1, 2012.

(Adds R.S. 32:127.2)

### **Motorcycle Handlebar Height (Act No. 473)**

Old law provided that no person shall operate a motorcycle with handlebars more than 15 inches in height above the portion of the seat occupied by the operator.

New law prohibits handlebars that require the hands of the operator to be above the operator's shoulder height when the operator is sitting astride the seat and the operator's hands are on the handlebar grips.

Effective August 1, 2012.

(Amends R.S. 32:191.3(B))

### **Seat Belts and SUVs (Act No. 244)**

Old law provides that each driver of a passenger car, van, or pickup truck shall have a safety belt properly fastened about his or her body at all times when the vehicle is in forward motion. New law adds sports utility vehicle.

New law provides that each driver of a passenger car, van, sports utility vehicle, or pickup truck shall not transport more persons than there are safety belts in the vehicle.

Old law provides that, unless required to be in a child passenger restraint, each occupant of a passenger car, van, or pickup truck in this state shall have a safety belt properly fastened about

his or her body at all times when the vehicle is in forward motion, if a belt for his seating space has been provided by the manufacturer. New law adds sports utility vehicle.

Effective August 1, 2012.

(Amends R.S. 32:295.1(A) and (B))

### **Lights and Tunnels (Act No. 379)**

Old law requires that lighted lamps be used while driving between sunrise and sunset, when light is insufficient to see people and vehicles at 500 feet, and when windshield wipers are used.

New law adds while driving in a tunnel to the list of times when lighted lamps must be used while driving.

Effective August 1, 2012.

(Amends R.S. 32:301)

### **Concrete Trucks (Act No. 723)**

New law prohibits assessment of a penalty on any truck hauling ready-mixed concrete which exceeds its maximum allowable gross weight, under specified conditions.

New law is effective from August 1, 2012, through July 31, 2014.

(Adds R. S. 32:388(B)(1)(b)(iv))

### **Driver Education (Act No. 475)**

New law requires driver education for applicants who are persons under the age of 18 rather than 17.

Old law required a first time applicant for a driver's license who is age 17 or older who has not completed a driver education course to complete a prelicensing training course which consists of a minimum of six hours of instruction.

New law requires a prelicensing training course for a first time applicant who is age 18 or older (rather than 17 or older) and has not completed a driver education course; further provides that such prelicensing training course shall consist of a minimum of six hours of classroom instruction

and a minimum of eight hours of actual driving instruction.

New law provides that no person shall be allowed to receive more than four hours of actual driving instruction on any single calendar day.

Effective August 1, 2012.

(Amends R.S. 32:402.1)

### **Commercial Drivers' Licenses (Act No. 455)**

New law provides that a commercial learner's permit issued to an individual of this state or another jurisdiction when carried with a valid driver's license issued by the same state or jurisdiction, authorizes the permittee to operate a class of motor vehicle, when accompanied by a holder of a valid commercial driver's license, for purposes of behind-the-wheel training.

When issued to the holder of a commercial driver's license, a commercial learner's permit serves as authorization to take part in behind-the-wheel training in a commercial motor vehicle for which the driver is not licensed to drive.

New law provides that an individual who takes a skills test for a Class "A" commercial driver's license, in a motor vehicle with the power unit and towed unit connected with a pintel hook or other non-fifth wheel connection, shall be issued a license with a restriction prohibiting the operation of a tractor-trailer combination connected by a fifth wheel that requires a Class "A" commercial driver's license.

New law provides that, except as required by 49 CFR Section 383.133, a skills test for a commercial driver's license shall be conducted in English without the use of interpreters.

New law provides that the principal of the third-party examiner or tester who has or is seeking a contract with DPS&C, public safety services, to administer commercial driving examinations and tests shall consent to, pass, and pay the costs of an annual background check.

Old law provides that when any person's driver's license has been seized, suspended, or revoked, and the seizure, suspension, or revocation is

connected to a charge or charges of violation of a criminal law, and the charge or charges do not result in a conviction, plea of guilty, or bond forfeiture, the person charged will have his license immediately reinstated if at the time for reinstatement of driver's license, it can be shown that the criminal charges have been dismissed or that there has been a permanent refusal to charge a crime by the appropriate prosecutor or there has been an acquittal. New law provides that reinstatement under existing law does not apply to the commercial driver's license disqualification of the license.

Effective August 1, 2012.

(Amends R.S. 15:587 and R.S. 32:408; Adds R.S. 32:414(K)(3))

### **Driver's License Testers (Act No. 751)**

Old law provides that third-party testers administering skills tests have a contract or license with DPS&C, containing at minimum certain specified provisions. New law provides that the minimum qualifications shall only apply to third party testers administering skills test for Class "D" or "E" driver's licenses and have a contract or license by DPS&C.

New law provides that third-party testers that administer skills tests for Class "A", "B", or "C" driver's licenses have a contract with DPS&C, containing at minimum, provisions which comply with 49 C.F.R. 383.75. New law provides that the third-party tester must initiate and maintain a surety bond in the amount of \$10,000.

Effective August 1, 2012.

(Amends R.S. 32:408.1)

### **Sportsman's Driver's License (Act No. 543)**

New law provides that beginning July 1, 2013, the office of motor vehicles shall provide a method for an applicant for a driver's license to include a special endorsement code to indicate whether applicant has been issued a lifetime hunting or fishing license a certificate of completion of firearm and hunter education, and a certificate of completion of boating safety education. Inclusion of such special

endorsement codes are solely at the option of the applicant for a driver's license. Possession of a driver's license which includes such special endorsement code satisfies any requirement to possess and exhibit such licenses or certificates.

Effective August 1, 2012.

(Adds R.S. 32:410(A)(6))

#### **Texting While Driving a Commercial Vehicle (Act No. 203)**

New law adds that texting while driving a commercial motor vehicle is a "serious traffic violation" for which a commercial motor vehicle driver can be disqualified.

Effective August 1, 2012.

(Amends R.S. 32:414.2)

#### **Driver's License Tests and Exams (Act No. 746)**

New law clarifies that the department can require a licensed driver suspected of being incompetent or otherwise not qualified to submit to one, any combination of, or all of the tests or examinations listed in existing law.

Effective August 1, 2012.

(Amends R.S. 32:424(A))

#### **Driver's License Revocation Hearings (Act No. 559)**

Old law, relative to hearing procedures following revocation of driver's licenses, required that DPS&C notify in writing and afford an opportunity for a hearing, upon request, to persons whose driver's license or permit is suspended or who are denied driving privileges.

New law provides that a law enforcement officer will not be compelled by such person to appear or testify at such hearings.

Effective August 1, 2012.

(Amends R.S. 32:668)

#### **Scrap Vehicles (Act No. 250)**

Old law requires any owner who sells a motor vehicle for scrap to assign the title to the purchaser, who shall deliver the title to the vehicle commissioner with an application for a permit to dismantle. Old law allows the commissioner to issue a permit to dismantle, without the delivery of a title, when the vehicle is more than 10 years old and has not had its registration renewed for three years immediately prior to the application for a permit to dismantle. New law changes the age from 10 years to 15 years.

Effective August 1, 2012.

(Amends R.S. 32:717(B))

#### **Used Motor Vehicles (Act No. 136)**

New law clarifies the definition of "motor vehicle" by referring to those motor-driven cars, vans, or trucks required to be registered pursuant to the Vehicle Registration License Tax Law, takes out references to "used," and includes recreational vehicles, travel trailers, hearses and marine products. New law clarifies the definition of "used motor vehicle" as meaning any motor vehicle which has been previously titled to an ultimate purchaser.

New law clarifies that the term "used motor vehicle dealer" in the regulation of used motor vehicles does not include anyone licensed by the La. Motor Vehicle Commission who sells used motor vehicles and who rents on a daily basis used motor vehicles.

New law adds the violating of provisions relating to the proper disposition of certificates of title or permits to dismantle in connection with the purchase or sale of any used motor vehicle in the list of violations subject to penalty by the commission.

Old law provides for regulation of a rent with option-to-purchase program and defines "default" as the failure of a rental consumer to bring the account current within five days after the rent to own payment is due. New law adds that "default" also means the failure of the rental consumer to maintain the minimum insurance

required pursuant to the rental purchase agreement.

New law defines "rent-to-own dealer" as any used motor vehicle dealer who rents used motor vehicles under a rental purchase agreement.

New law requires every used motor vehicle dealer who accepts a deposit or down payment from a consumer to provide the consumer with a purchase agreement statement containing specified information.

New law requires every used motor vehicle dealer who accepts a deposit or down payment from a consumer conditioned upon the consumer's ability to obtain financing of the remainder of the purchase price to return the deposit or down payment once it is determined that the consumer does not qualify for financing. New law requires that if no determination regarding financing is made within 20 days, the deposit or down payment must be returned to the consumer.

(Amends R.S. 32:781, 788, 793; Adds R.S. 32:792(B)(16) and 795)

#### **Proof of Insurance on Mobile Electronic Device (Act No. 824)**

Old law requires automobile liability insurance on all motor vehicles used for operation in this state. Old law requires that operators of motor vehicles maintain proof of compliance with minimum liability requirements and be able to show proof of such compliance by presenting the original or a copy of the insurance card, insurance policy, or insurance policy declaration page which covers the motor vehicle.

New law extends old law to include the usage of a displayed image on a mobile electronic device to show proof of compliance with the minimum liability requirements of old law.

New law defines "mobile electronic device" as any small, handheld computing or communications device that has a display screen with touch input or a miniature keyboard.

New law provides that the display of an image of proof of insurance on a mobile electronic device shall not constitute consent for a law enforcement officer or any other person to

access any other part of the mobile electronic device.

New law provides that a court of competent jurisdiction may compel a motor vehicle operator to provide a paper copy of the proof of insurance.

New law provides that the secretary of the Dept. of Public Safety and Corrections may compel a motor vehicle operator to provide a paper copy of the proof of insurance.

Effective August 1, 2012.

(Amends R.S. 32:851, 862, 863, and 874)

#### **Electronic Filing of Insurance Documents (Act No. 749)**

Old law provides that proof of financial responsibility may be furnished by filing with the commissioner the written certificate of any insurance carrier duly authorized to do business in this state certifying that there is in effect a motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. New law requires the proof to be filed electronically.

Old law provides that when an insurance carrier has certified a motor vehicle liability policy the insurance so certified shall not be cancelled or terminated until at least 10 days after a notice of cancellation or termination of the insurance so certified shall be filed in the office of the commissioner. New law requires the notice of cancellation or termination to be filed electronically.

Effective January 1, 2013.

(Amends R.S. 32:863.2(B))

#### **Motor Vehicle Claims (Act No. 221)**

Old law directs motor vehicle operators in this state to report to the commissioner of the Dept. of Public Safety and Corrections a claim for property damages and damages for physical injury in the event that such operator is involved in an accident in this state in which any person is killed or injured or in which property damage of more than \$500 is sustained.



New law removes the \$500 property damage threshold.

(Amends R.S. 32:871(A) and 872(A))

### **Electronic Filing Required (Act No. 368)**

Old law provides that proof of financial responsibility may be furnished by filing with the commissioner of insurance the written certificate of any insurance carrier duly authorized to do business in this state certifying that there is in effect a motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. New law requires the proof to be filed electronically.

Old law provided that when an insurance carrier has certified a motor vehicle liability policy under R.S. 32:898 or a policy under R.S. 32:899, the insurance so certified shall not be cancelled or terminated until at least 10 days after a notice of cancellation or termination of the insurance so certified shall be filed in the office of the commissioner, with certain exceptions. New law requires the notice of cancellation or termination to be filed electronically.

Effective August 1, 2012.

(Amends R.S. 32:898(A) and 901)

### **Transporting Railroad Employees (Act No. 807)**

New law requires for-hire persons and entities who are in the business of transporting railroad employees back and forth from their employment to file proof of financial responsibility with the office of motor vehicles of the Dept. of Public Safety and Corrections.

New law further requires that for-hire persons and entities who are in the business of using vehicles designed to carry 15 or fewer persons to transport railroad employees maintain and be able to show verification of hit and run, uninsured, and underinsured motor vehicle coverage in a total amount of not less than \$500,000 per passenger.

New law does not apply to any railroad company using vehicles owned by the railroad company and operated by railroad employees to

transport railroad employees in the course of their employment.

Effective August 1, 2012.

(Adds R.S. 32:900.1)

### **Motor Vehicle Commission Laws (Act No. 326)**

New law changes the definition of "boat package" and "franchise".

New law defines the following terms: "marine product salesman", "new marine product", "selling agreement", "used marine product", "used marine product dealer", "used marine product facility", "motorcycle or all-terrain vehicle dealer", "motorcycle or all-terrain vehicle salesman", "new motorcycle or all-terrain vehicle", "used motorcycle or all-terrain vehicle", "used motorcycle or all-terrain vehicle dealer", "used motorcycle or all-terrain vehicle facility", "new recreational vehicle", "recreational vehicle dealer", "recreational vehicle salesman", "used recreational vehicle", "used recreational vehicle dealer", "used recreational vehicle facility".

New law replicates certain provisions of prior law in new sections of law and limits the application of such provisions to marine products, motorcycles, all-terrain vehicles, or recreational vehicles.

Effective August 1, 2012.

(Amends R.S. 32:1252, 1261, 1261.1, and 1263; adds R.S. 1262(C), 1264(D), 1267(C), 1268(D), and 1270-1270.30; repeals R.S. 32:1257.1 and 1268.1)

### **Recreational Product Shows (Act No. 855)**

New law authorizes regional recreational products shows where recreational products are displayed and promoted for sale, and provides that no final sale and delivery of a recreational product shall occur at such show except by a licensed Louisiana dealer whose area of responsibility for the brand of recreational products they represent include the location of the show.

New law provides that participation in regional recreational products shows is limited to recreational products dealers, distributors, or manufacturers who are licensed in Louisiana, and authorizes nonresident recreational products dealers, distributors, or manufacturers who hold a current equivalent license in another state to participate in a recreational products show in Louisiana, provided specified criteria are satisfied.

New law prohibits recreational vehicle dealers, distributors and manufacturers from participating in any regional recreational product show where its product line of recreational vehicles is represented by a dealer whose area of responsibility includes the location of the show, whether or not that dealer participates in the show.

New law does not apply to a rally held in this state.

New law provides for the authorization of national recreational product shows.

New law requires a national recreational product show to have the participation of at least three or more sponsors, a duration of no longer than 10 days, and a non-selling show with no execution of sales contracts, credit applications, taking of security deposits, or delivery of any recreational product.

New law allows for the presence of product specialists, business cards, brochures, pricing sheets, and other points of sales devices to answer consumer questions at a national recreational product show.

New law requires the organizer of a national recreational product show to obtain a license from the commission.

New law limits national recreational product shows to licensed Louisiana distributors or manufacturers, except in the case of registration with the commission of a non-Louisiana distributor or manufacturer.

Effective July 1, 2012.

(Amends R.S. 32:1253 and 1256; adds R.S. 32:1256.1 and 1256.2; repeals LAC 46 V. 1501-1505)

## **Motor Vehicle Sales to Exporters and Repurchase on Dealership Termination (Act No. 150)**

New law prohibits a manufacturer, distributor, wholesaler, distributor branch, factory branch, or converter of motor vehicles, or officer, agent, or other representative thereof, from charging back, denying vehicle allocation, withholding payments, or taking any other adverse actions against a motor vehicle dealer because of a sale of a new motor vehicle that is exported from the United States, unless it is shown that the dealer knew or reasonably should have known on the date of the sale that the new motor vehicle was to be exported. New law provides that the dealer is rebuttably presumed to have no knowledge of the export if the motor vehicle is sold by the dealer to a resident of the United States who titles and registers the motor vehicle in any state within the United States.

Old law requires upon termination of a dealer licensee, the repurchase of all new motor vehicles, recreational products, and specialty vehicles of the current and last prior model year delivered to the licensee and parts on hand that have not been damaged or substantially altered to the prejudice of the manufacturer while in the possession of the licensee, and certain special tools and automotive service equipment. New law requires that the items to be repurchased have been purchased in the ordinary course of business.

Old law provided that a repurchase of certain products, by a manufacturer or converter when a licensee ceases to engage in business, occur within 30 days for motor and specialty vehicle dealers after receipt of a final inventory of vehicles and parts and 60 days after receipt of final inventory as to recreational products dealers.

New law requires the manufacturer or converter, after a motor vehicle dealer terminates his franchise, to repurchase its products within 30 days after: (1) the dealer submits a final inventory of motor vehicles and parts, special tools, and automotive services on hand; and (2) the dealer tenders the parts, special tools, and automotive service equipment to the manufacturer.

New law requires the manufacturer or converter, after a specialty vehicle dealer terminates his franchise, to repurchase its products within 30 days after the dealer submits a final inventory of vehicles and parts on hand.

New law requires the manufacturer or converter, after a recreational products dealer terminates his franchise, to repurchase its products, except marine products and related items, within 60 days after the dealer submits a final inventory of vehicles and parts on hand.

Effective August 1, 2012.

(Amends R.S. 32:1268; adds R.S. 32:1261(1)(x))

### **Inspection Stations (Act No. 254)**

Old law provided that a permit shall not be issued for official inspection stations unless the applicant business has been in operation for a certain period prior to the issuance. New law deletes old law.

Effective August 1, 2012.

(Amends R.S. 32:1305(B))

### **Notice of Violation Involving Hazardous Materials (Act No. 551)**

Old law required the office of state police to send a "Notice of Violation, Proposed Finding and Proposed Civil Penalty", of Chapter designated as "Hazardous Materials Transportation and Motor Carrier Safety", or of Federal Motor Carrier Safety Regulations, to the responsible party within 30 calendar days of the violation.

Old law provided for dismissal of a violation if the office of state police failed to issue a violation notice timely, but provided an additional 60 days to issue a violation to the responsible party if the office of state police experienced a data system failure caused by either an act of God or an intentional act of sabotage.

New law extends the time of notice of violation from 30 days to within 60 calendar days whenever an incident involves hazardous

materials and includes evacuations, fatalities, or serious injuries.

Effective August 1, 2012.

(Amends R.S. 32:1525)

### **Tow Trucks; Vehicle Storage (Act No. 806)**

New law revises the definition of "owner" and "tow truck" and adds definitions for "nonconsensual storage" and "non-consensual towing".

New law prohibits the issuance of a tow truck license plate to employees unless they have never been convicted of a felony relating to vehicle thefts, and prohibits the issuance of plates to an applicant and employees who are required to register as sex offenders or child predators.

New law requires a storage operator to provide law enforcement authorities with the name and address of the location from which a vehicle was towed, the year, make, model, and VIN, and the license plate number and state of issuance.

New law provides that whenever any vehicle subject to registration in this state has been stored, parked, or left in a garage, or any type of public storage or parking lot, where fees are charged for storage or parking, the owner of the storage or parking facility shall, within three business days of the date the vehicle has been stored or parked, report in writing to the department, or the department's authorized agent, the make, model, vehicle identification number, license plate number, state of issuance, and expiration date, if known, and the date of storage of such vehicle on a form furnished by the department or its authorized agent.

New law provides that prior to the issuance of a permit to sell or dismantle, the facility owner must submit an appraisal prepared by an independent appraiser in the instance the vehicle is not valued by the National Automobile Dealers Association Guide.

New law prohibits a law enforcement officer from initiating or recommending a specific tow company to conduct a tow to a vehicle owner. All tows shall be referred to the law enforcement agency rotation list or authorized contractor, and

in the event a vehicle owner exercises their right to select a tow company, such selection should be duly noted on the tow invoice or the law enforcement incident report.

Effective August 1, 2012.

(Amends R.S. 32:1713, 1717, 1718, 1719, 1720, 1728, and 1736; Adds R.S. 32:1735(D); Repeals R.S. 32:1714(6))

### **Car Carriers (Act No. 828)**

New law adds that car carriers that are capable of carrying less than five motor vehicles shall be licensed as tow trucks upon their submission of an affidavit to DPS&C stating that they do not store motor vehicles.

Effective August 1, 2012.

(Adds R.S. 32:1717(D))

## **TITLE 33: MUNICIPALITIES AND PARISHES**

### **Zoning Law (Act No. 49)**

Old law authorizes municipal and parish planning commissions to adopt master plans to provide for the physical development of their respective municipality or parish. Old law requires, except in Orleans Parish, that certified copies of the plan or part thereof be filed with the division of administration, with the local legislative body, and with the clerk of court of the parish. New law instead requires, except in Orleans Parish, that certified copies of a *summary* of the plan or part thereof be filed with the designated entities.

Old law requires that notice of the time and place of a public hearing in relation to zoning regulations be published once a week in three different weeks in the official journal of the municipality or, if there be none, in a paper of general circulation. Old law required that at least 15 days elapse between the first publication and the date of the hearing.

New law instead requires that the notice be published at least three times in the official

journal of the municipality, rather than in three different weeks, and requires that at least 10 days, rather than 15 days, elapse between the first publication and the date of the hearing.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 33:108(D) and 4724)

### **La. Sports and Entertainment District (Act No. 819)**

Old law creates the La. Sports and Entertainment District as a political subdivision of the state located in the city of New Orleans. Old law provides that the district is created to provide for cooperative economic and community development among the district, the city, the state, and the owners of property in the district, to enhance the development of and improvement to the property within the district, and to expand the entertainment and leisure activities within the district. New law makes changes to district boundaries.

Old law provides for the rights and powers of the district, including the power to implement tax increment financing. New law makes changes in procedures relative to the approval of the dedication of state sales tax increments for economic development projects affecting the district. New law additionally provides that state sales tax increments dedicated for district purposes shall not exceed the aggregate portion of the local sales tax increments dedicated for district purposes.

Old law requires that prior to the dedication of any state sales tax increments to pay revenue bonds for a local economic development project, the secretary of the Dept. of Economic Development (DED) shall submit the proposed project to the Joint Legislative Committee on the Budget for approval and shall include a written evaluation and determination by DED, with input from and certification by the Dept. of Revenue, of the anticipated increase in state sales tax revenues to be collected within the state over such revenues that were collected within the state in the year immediately prior to the year the project is submitted to the

committee that would be a direct result of the project (the tax increment).

New law requires that the commissioner of administration (instead of DED) submit the proposed cooperative endeavor agreement to the Joint Legislative Committee on the Budget for approval. New law requires that the submittal include a written evaluation and determination by the division of administration of the tax increment attributable to district activities. New law further requires the Joint Legislative Committee on the Budget, in determining whether to approve the dedication of state sales tax increments, to take into account whether the city of New Orleans has agreed to dedicate city sales tax for a local economic development project(s) in the district, including the length of time for and the amount of any such dedication.

New law provides that if the commissioner of administration obtains approval of the Joint Legislative Committee on the Budget, no other approval with respect to the cooperative endeavor agreement is needed, except the approval of the State Bond Commission is required only to the extent that the state sales tax increments make up all or any portion of the revenue source pledged to the payment of bonds of the district.

Effective upon signature of governor (June 13, 2012).

(Amends R.S. 33:130)

#### **Lawrason Act Mayoral Back-Up (Act No. 274)**

New law authorizes the board of aldermen to select one of its members to preside at a meeting of the board if both the mayor and mayor pro tempore are unable to attend a meeting of the board. New law provides that the mayor pro tempore or a board member presiding instead of the mayor pro tempore has all rights and powers granted to the mayor with regard to presiding at a meeting of the board.

New law authorizes the mayor pro tempore to perform all duties of the mayor if the mayor is unable to carry out the duties of his office due to physical or mental disability, as determined by a licensed physician. New law provides that the

mayor pro tempore has no additional authority to perform the duties of the mayor except as provided in new law or upon the written consent of the mayor.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 33:405(A)(3) and (4))

#### **Reemployment of Injured Civil Service Employees (Act No. 595)**

New law provides that any regular employee who resigns or retires from a position in the classified service upon sustaining an injury compensable under existing law (worker's compensation), may, with the prior approval of the board, be reemployed in a position of the class in which he was employed immediately preceding his resignation or retirement or in a position in any lower class. New law provides that the employee may be reemployed at any time after his resignation or retirement, but requires that he be qualified for the position to which he is reemployed. New law requires that the employee be reemployed with the seniority accumulated through the date of reinstatement.

Effective upon signature of governor (June 7, 2012).

(Adds R.S. 33:2490(E) and 2550(E))

#### **Governmental Investments (Act No. 282)**

Old law provides that all municipalities, school boards, and any other political subdivisions of the state may invest in bonds, debentures, notes, or other evidence of indebtedness issued by the state of La. or any of its political subdivisions or of another state or any of its political subdivisions provided that several conditions are met.

Old law required that any such debt have a rating of at least: Baa3 by Moody's Investor Service, BBB- by Standard and Poor's, or BBB- by Fitch, Inc. New law retains these standards as applicable to long-term debt and additionally requires the following short-term ratings: M1G1 or VM1G1 by Moody's Investor Service, A-1 or A-1+ by Standard and Poor's, F1 or F1+ by Fitch, Inc.

Old law required that the indebtedness has a final maturity of no more than three years but provided exceptions. New law authorizes investments if the indebtedness has a final maturity, mandatory tender, or a continuing optional tender of no more than three years; and retains the exceptions.

(Amends R.S. 33:2955)

#### **PSC and Franchise Fees (Act No. 766)**

New law authorizes the Public Service Commission on or after January 1, 2013, to require that, whenever a political subdivision imposes a franchise fee upon a public utility which the utility collects or recovers from the utility's consumers, the utility's monthly billing statement shall specifically and clearly include a separate line item for the applicable franchise fee, with the name of the parish imposing the fee, the total amount or rate of the franchise fee, and the total amount of the billing attributable to the fee.

New law requests the commission to study requiring public utilities to include such a line item, including holding public hearings as deemed necessary, and to report its findings to the legislature on or before February 1, 2013.

Effective upon signature of the governor.

(Amends R.S. 33:4401; adds R.S. 33:4361(C) and R.S. 45:853)

#### **New Orleans Redevelopment Authority (Act No. 196)**

New law authorizes the New Orleans Redevelopment Authority to purchase adjudicated properties within its jurisdiction from any political subdivision of the state. No such purchase shall be construed to, or otherwise have the effect of, extending or suspending the period prescribed by law for the redemption of the property by the tax debtor or any other person.

New law provides that the purchases by the Authority may be by a direct negotiated purchase and sale agreement between the Authority and a political subdivision, without any other requirement of a public sale prior to

the transfer of such properties to the Authority. The purchases are not considered the sale of surplus property or of property owned by the political subdivision.

New law provides that effective upon the recordation of the transfer of an adjudicated property to the Authority pursuant to a purchase and sale agreement, the rights of the Authority in and to such property shall be the rights of a purchaser at a tax sale subject only to the rights of redemption of the property set forth in the state constitution.

New law authorizes the state and any political subdivision with liens on the property, pursuant to intergovernmental agreements with the Authority, to cancel the liens contemporaneously with or subject to the transfer of the property to the Authority.

New law authorizes the Authority to tender a bid at a tax sale which is a credit bid, consisting of the obligation of the authority to satisfy the component parts of the bid by payments to the respective political subdivisions and taxing entities in accordance with intergovernmental agreements between the Authority and such political subdivisions and taxing entities. New law provides that a bid by the Authority at a tax sale for the minimum amount takes priority over all other bids for the same quantity of property, except for a higher bid submitted by a conventional mortgage holder holding a mortgage on the subject property.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Adds R.S. 33:4720.58.1)

#### **Mortgagee's Right to Maintain Property (Act No. 692)**

New law provides that if a mortgagee or loan servicer receives a notice from a governing authority, identifying certain maintenance required on the mortgaged property, the mortgagee and loan servicer shall have the right to, directly or through third parties, enter onto the property to perform maintenance.

New law provides that if any abandoned one-to-four family residential property affected by a

mortgage is unoccupied or abandoned, the mortgagee and loan servicer shall each have the legal right to, directly or through third parties, enter onto the property and to perform maintenance to protect and preserve the property until it can be sold at private sale or sheriff's sale.

New law provides that the mortgagee, loan servicer, and any third parties hired by them to perform maintenance on the property shall not be liable to the mortgagor or the owner of the seized property or any other person for any financial or pecuniary loss or damage claimed to have been suffered by the mortgagor or owner of the property or any other person by reason of the maintenance of the property.

New law provides that any costs and expenses incurred by the mortgagee or loan servicer for maintaining the property may be added to any loan balance secured by the mortgage and recoverable from proceeds received from a sale of the property.

New law provides that the governing authority of a parish between 400,000 and 440,000 and the governing authority of any municipality that lies within such a parish may enact ordinances requiring that abandoned residential property be maintained in safe and sanitary condition to maintain the stability of the neighborhood.

New law provides that no work shall be undertaken by the municipal governing authority until the owner of the property has been given notice and a minimum of 45 days to perform the maintenance.

New law provides that a governing authority may undertake the maintenance of the property if the requirements of notice and time delay have been met and the maintenance has not been performed.

New law requires the governing authority to take photographs showing the condition of the property before and after the maintenance is performed. The governing authority shall keep records showing the expenses incurred in maintaining the property, and those records will be retained for a period of five years or until the property is sold, whichever time is less.

New law provides that the governing authority shall use licensed and insured vendors to perform maintenance on property pursuant to new law.

New law provides that after completion of the maintenance, the governing authority shall record an affidavit in the public mortgage records in the parish.

New law provides that the governing authority shall have a privilege against the property for the cost of maintenance and the privilege shall have priority in ranking as to other mortgages and privileges.

New law provides that a property owner and a mortgage holder shall have the right to dispute a privilege created against a mortgaged property under new law if the work creating a privilege was not performed on the property.

Effective October 1, 2012.

(Adds R.S. 9:5396 and R.S. 33:5065 - 5069)

#### **New Orleans City Park Taxing District (Act No. 490)**

New law relative to the New Orleans City Park Taxing District and the use of state sales tax increments for tax increment financing, changes certain procedures for approval of the use of such state sales tax increments and of related agreements.

New law provides for certain changes in procedures relative to approval of the dedication of state sales tax increments for economic development projects affecting the district.

New law requires that the commissioner of administration (instead of DED) submit the project to the Joint Legislative Committee on the Budget for approval, removes requirement that the submittal include a written evaluation and determination by DED, and requires, instead, that the submittal include a written evaluation and determination by the division of administration.

New law requires certification by the Dept. of Revenue of the anticipated increase in state sales tax revenues to be collected within the state over such revenues that were collected within the

state in the year immediately prior to the year in which the project is submitted to the committee that would be a direct result of the project. New law requires the Joint Legislative Committee on the Budget, in determining whether to approve the dedication of state sales tax increments, to take into account whether the city of New Orleans has agreed to dedicate city sales tax for a local economic development project(s) in the district, including the length of time for and the amount of any such dedication.

New law requires approval by the State Bond Commission of any cooperative endeavor agreement or other agreement providing for the expenditure of funds collected by the state as state sales tax increments and dedicated to a project or for the payment of revenue bonds therefor.

New law makes old law regarding cooperative endeavor agreements applicable to agreements of the district to dedicate state sales tax increments; however, excepts such agreements from provisions that provide for DED to submit an application to the committee or file a suit and provides instead that the district (instead of DED) shall submit any application to the State Bond Commission and may file suit to determine the validity of any cooperative endeavor agreement.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 33:9038.59(G))

### **Inspector General Subpoenas and Privileges (Act No. 838)**

New law authorizes the inspector general in the city of New Orleans or parish of Jefferson to issue administrative subpoenas duces tecum requiring the production of records only in furtherance of authority pursuant to law or local ordinance.

Old law provided that any material, records, data, and information compiled by an office of inspector general in an investigation, examination, audit, inspection, or performance review is confidential and not subject to a public records request until the investigation, examination, audit, inspection, or performance

review is complete. New law adds that such records are also privileged and are not subject to a public records request until the review is complete.

Effective upon signature of the governor.

(Amends R.S. 33:9613 and 9614)

## **TITLE 34: NAVIGATION AND SHIPPING**

### **Ports and Design-Build Contracts (Act No. 755)**

New law authorizes any port to utilize the design-build method on certain projects.

New law requires every design-builder to be duly licensed and registered to do business in the state. Each design-builder shall have the following rights and powers:

(1) To sublet responsibility for professional design services to an individual, firm, or corporation duly licensed and registered in the state of La. to provide professional design services.

(2) To sublet responsibility for construction or other services requiring a contractor's or trade subcontractor's license to persons or entities duly registered, licensed, or otherwise qualified to provide those services as required by law.

(3) To contract with any individual port, as part of a design-build contract, to provide professional services or construction services that the design-builder is not itself licensed, registered, or otherwise qualified in accordance with new law.

New law requires the port to distribute a notice of intent and to request letters of interest and statements of qualifications from qualified firms or teams through its official journal and the Internet website of the port two times within a 30-day period.

New law authorizes the port to use private design professionals to develop the description of the project and the required scope of services.



New law requires the description of the project and scope of services shall include a design criteria package for each design-build project and that the documents included shall specify technical requirements and performance-based criteria for the public construction project.

New law provides that any person who participates in any way with the development or preparation of the design criteria package or evaluation of proposals cannot participate in any way or capacity with the preparation or submission of proposals, or the performance of any design-build services.

New law requires the design-build entity to include a registered design professional who shall be the engineer of record, independent from the port's private design professional, and shall be named in the design-build entity's proposal.

New law requires the port to identify all required information in the notice of intent and in the standard response forms provided by the port.

New law provides that any response failing to meet all of the requirements contained in the notice of intent shall not be considered by the port. False or misrepresented information furnished in response to a notice of intent shall be grounds for rejection by the port and disbarment from future participation in any future work undertaken by the port.

New law establishes a primary design-build evaluation committee to evaluate the responses to the notice of intent received by the port, and provides the criteria to be applied.

New law requires the evaluating committee to select a short list of not more than five of the highest rated entities. The short-listed entities shall be invited to submit a detailed technical and cost proposal for the design-build project.

New law requires the specific requirements of the technical proposal to be identified by the port to the short-listed entities by means of a "scope of services package", which shall include discussions of design strategy and preliminary design concepts, construction sequencing, techniques, materials and methods, the schedule for commencement and completion of all phases

of work, and a lump sum cost for all services in fulfillment of the requirements and within the constraints of the "scope of services package".

New law provides that the port shall compensate all the unsuccessful short-listed entities for the expense of preparing the technical proposal in the form of a stipend.

New law establishes a technical review committee for evaluation of design-build proposals, including nationally recognized design-build experts to serve as committee members, to score each technical element of the project. New law prohibits members of the evaluation committee from serving on the technical review committee. Each member's score shall be available for public review and considered public record.

New law provides that the successful proposal shall be selected by using an adjusted score approach, determined by three components.

New law provides that the first component consists of the technical score determined by the technical review committee. Each technical review committee member shall rate his assigned element of the proposal from each of the entities on the short list. The chairman of the technical review committee shall adjust the scores for any applicable weighing factors and shall determine the total technical score for each proposal.

New law requires the chairman of the committee to notify each proposer in writing prior to determination of the adjusted score. New law authorizes a proposer to request in writing no later than 10 business days from the date of notice, a review of its final technical score by the port director or his designee.

New law requires a hearing for any proposer who requests a review of its total technical score to present facts and arguments in support of the request for review, and the hearing shall be within a reasonable time of the request, and the proposer shall receive notice of the time and place of the hearing.

New law requires the director to present the findings from the hearing to the governing authority of the port, who shall determine the

action for review, and that decision shall be final and not subject to appeal or review by any legal process, unless there is evidence of fraud or arbitrary and capricious actions by the port.

New law provides that the second component is the time value, expressed in calendar days multiplied by the value-per-calendar-day expressed in dollars by the port and contained in the "design criteria package".

New law provides that the third component is the price proposal, which will be publicly opened after the published results of the technical scores.

New law requires the successful proposal to be the one with the lowest adjusted score, which shall be determined by a certain formula.

New law provides that any decision made by the governing authority of the port, the evaluation or technical committee, or employees of the port shall be a final decision and not subject to appeal or review by any legal process, unless there is evidence of fraud or arbitrary and capricious actions by the port. Any legal process commenced or filed shall be within 10 days of the action or inaction.

New law shall have no effect on projects for which a port authority has not issued an advertisement of a notice of intent by Dec. 31, 2015.

Effective upon signature of governor (June 12, 2012).

(Amends R.S. 34:3460 and R.S. 38:2318.1(B); Adds R.S. 34:3523)

## **TITLE 35: NOTARIES PUBLIC AND COMMISSIONERS**

### **Correction of Notarial Acts (Act No. 397)**

Old law provided that a clerical error in a notarial act affecting movable or immovable property or any other rights, corporeal or incorporeal, may be corrected by an act of correction executed by the notary or one of the notaries before whom the act was passed, or by

the notary who actually prepared the act containing the error.

New law provides that an act of correction may be executed by a La. notary who has possession of the records of the notary who executed the original act if that person is deceased, incapacitated, or his whereabouts are unknown.

Old law required that the act of correction be executed by the notary before two witnesses and another notary public.

New law requires that the act or correction be executed before two witnesses and a notary public.

Effective August 1, 2012.

(Amends R.S. 35:2.1(A))

### **Qualification, Education, and Bonding of Notaries (Act No. 279)**

Old law provides for the qualifications required to be appointed a notary public, which include being a resident citizen or alien of this state, being 18 years of age or older, being able to read, write, and speak the English language, and not be under interdiction.

New law also requires that the person has received a high school diploma or the equivalent.

New law requires that the person not be convicted of a felony in this state, or if convicted, has been pardoned.

New law authorizes the secretary of state to develop a notary education program.

New law provides that beginning on Feb. 28, 2015, each person who provides notary examination preparatory education and instruction shall be required to be a commissioned notary public with statewide notarial authority.

Old law provides exceptions to certain bonding requirements for notaries in Orleans Parish, and provides that in Orleans Parish, the bond shall be approved by the custodian of notarial records. New law removes the exception from bonding requirements and the requirement of approval by

the custodian of notarial records for notaries in Orleans Parish.

(Amends R.S. 35:191, 191.1, 191.2, 191.4, and 192)

#### **Notary Jurisdiction (Act No. 492)**

Old law provides for the appointment of a notary in and for the parish of his residence and provides for the appointment of a notary in an adjacent parish in which he maintains an office.

Old law provided that a notary appointed in his parish of residence may exercise the functions of a notary in an adjacent parish with a population less than 35,000 and in which he maintains an office without the requirements of additional bonding or further application or examination. Old law required such notary to file an affidavit with the office of the secretary of state, and required the applicant to obtain a dual commission.

New law expands old law to apply to all adjacent parishes with a population of less than 40,000 in which he or his employer maintains an office, and deletes the requirement of the filing of the affidavit stating the location of the office and the requirement relative to obtaining a dual commission by following the procedures established by the secretary of state.

Effective August 1, 2012.

(Amends R.S. 35:191(A)(2))

#### **Provisional Notary Public (Act No. 829)**

Old law provides for the appointment, qualifications, and examination of persons in order to be commissioned as a notary public.

New law provides that any person who resides in a parish with a population of less than 40,000, and who has passed or passes the statewide notary examination, except for any performance assessment component, during examinations administered between Dec. 1, 2009 and Dec. 31, 2012, and during examinations administered after Jan. 1, 2013, and before Aug. 1, 2016 may be provisionally appointed to the office of notary public in and for that parish.

New law provides that a notary commissioned pursuant to new law shall not do any of the following in the course and scope of his employment: (1) draft and prepare a last will and testament or donation mortis causa; (2) draft and prepare a trust; or (3) draft and prepare any instrument that transfers title to immovable property, including but not limited to an act of sale or act of donation.

New law provides that any notary commissioned pursuant to new law shall exercise notarial functions only within the course and scope of his employment and under the direction of a supervisor for the employer, and provides that an "employer" shall only include businesses that are in existence on the effective date of the new law, but shall not include a business whose primary function is to provide notary services.

New law requires the notary to post and maintain a bond, at the expense of the employer with a commercial surety licensed in this state, in the amount of \$20,000, and provides that the employer shall hold the notary harmless for any claim made against his bond when the notary is acting in the course and scope of the employment or under the direction of the employer.

New law provides for the revocation of the notary commission upon termination from employment and provides for provisional active or inactive status depending on whether the notary is re-employed or successfully completes the remainder of the notary examination.

Provides that no notarial act executed by a notary commissioned pursuant to new law shall be deemed invalid or unenforceable as a notarial act solely on the basis that the execution of the act exceeded the limitations of the notary's authority provided for in new law.

New law provides that an employer shall have no liability to any person for any damages caused by the negligent or fraudulent errors or omissions by any notary commissioned pursuant to new law when the notary acts outside the course and scope of his employment.

The provisions of new law shall expire on Aug. 1, 2016, and any commission granted pursuant to new law shall also expire on that date, except

if the notary has, subsequent to issuance of a commission, passed all components of the examination on or before Aug. 1, 2016.

Effective January 1, 2013.

(Adds R.S. 35:191(W))

## **TITLE 36: ORGANIZATION OF EXECUTIVE BRANCH OF STATE GOVERNMENT**

There were no new laws of interest.

## **TITLE 37: PROFESSIONS AND OCCUPATIONS**

### **Disciplinary Proceedings (Act No. 625)**

Old law provided limitations on disciplinary proceedings by professional or occupational boards and commissions. New law adds to list of exceptions the La. Board of Pharmacy, the La. State Board of Nursing, and the La. State Board of Social Work Examiners.

Effective upon signature of the governor.

(Adds R.S. 37:21)

### **Architecture (Act No. 514)**

New law provides for the regulation by the State Board of Architectural Examiners of domestic and foreign firms doing business in the state. New law requires such firms to apply for licensure within 30 days of issuance of a certificate of incorporation by the secretary of state. New law requires the board to issue a license to such firms within 60 days of application if all requirements of regulation are met. New law provides that licensure subjects such firms to disciplinary actions for violations of the regulatory provisions.

Effective upon signature of governor (June 5, 2012).

(Adds R.S. 37:158)

### **Naval Architects and Marine Engineers (Act No. 31)**

Old law established the Louisiana Professional Engineering and Land Surveying Board ("board").

New law provides that a professional naval architect or marine engineer shall be either:

(1) An individual who holds a bachelor of science degree in naval architecture and marine engineering, or an equivalent board approved curriculum, from an accredited engineering curriculum of four years or more approved by the board as being of satisfactory standing who has twenty or more years of progressive engineering experience in work acceptable to the board.

(2) An individual who holds a master of science degree in naval architecture and marine engineering, or an equivalent board approved curriculum, or two bachelor of science degrees in related engineering curricula, from an accredited engineering curriculum approved by the board as being of satisfactory standing, who has fifteen or more years of progressive engineering experience in work acceptable to the board.

(3) An individual who holds a doctor of philosophy degree in naval architecture and marine engineering, or an equivalent board approved curriculum, from an accredited engineering curriculum approved by the board as being of satisfactory standing who has ten or more years of progressive engineering experience in work acceptable to the board.

(4) An individual who has demonstrated long-standing experience in naval architecture who has thirty or more years of progressive engineering experience in work acceptable to the board.

In each case the person must also be of good character and reputation and have satisfied the requirements of R.S. 37:694.

This new law shall become null, void, and of no further effect from and after December 31, 2015.

Effective upon signature of the governor.

(Amends R.S. 37:693(B)(5))

**Geoscience (Act No. 308)**

Old law defined "geoscience" as the science of the earth and its origin and history, the investigation of the earth's environment and its constituent soils, rocks, minerals, fossil fuels, solids, and fluids, and the study of the natural and introduced agents, forces, and processes that cause changes in and on the earth. New law removes fossil fuels.

New law exempts any person employed or acting as a petroleum geologist.

Old law, relative to the Louisiana Professional Geoscience Practice Act, exempted an applicant who applies for licensure prior to January 1, 2012, from taking the examination if he satisfies certain requirements. New law extends such exemption period to January 1, 2014.

New law prohibits the board from acting upon anonymous complaints.

Effective upon signature of the governor.

(Amends R.S. 37:711.2, 711.3, 711.4, 711.15, and 711.23)

**Evaluation of Oil and Gas Resources (Act No. 100)**

Old law regulates the practice of engineering and land surveying through the La. Professional Engineering and Land Surveying Board and provides that those regulating provisions shall not apply to certain activities.

New law provides that the engineering regulatory provisions shall not apply to the practice of evaluation of oil and gas resources when the evaluation is performed by a licensed engineer and the evaluation includes the quantification of the volume of oil and gas reserves and resources, the determination of production forecasts, and the evaluation of the economic impact of production forecasts, as long as such evaluation does not apply to the practice of civil engineering or land surveying, does not involve design, construction or engineering assessments on the surface, and does not present a risk to public health or safety.

New law does not prevent the evaluation from being performed by a person who is a licensed

engineer in good standing within the jurisdiction of his licensure.

New law does not prevent the application of the engineering regulatory provisions to evaluations being performed by an engineer licensed in a state that prohibits La. engineers from engaging in evaluations in that state.

(Adds R.S. 37:702(7))

**Dental Practice and Dental Board (Act No. 491)**

New law requires a dentist to provide copies of dental treatment records in accordance with state law.

New law adds authority for the dental board president or his board assignee to execute a declaratory judgment.

New law authorizes the dental board to defend any employee, agent, or contractor in any lawsuit that arises from the performance of the individual's employment or fulfillment of their contract with the board, provided that the complained of action that is the subject of the lawsuit arises from any action approved by the board and undertaken or performed by such person within the scope of the duties, powers, and functions of the board, and such person is acting without malice and in the reasonable belief that the action was warranted.

New law provides that the defense obligation described cannot occur until the La. attorney general has been notified of the pending action and has determined that the state will not provide a defense to the employee, agent, or contractor.

Old law provides that the issuance of a stay of enforcement of a board decision does not threaten harm to other interested parties, including persons for whom the applicant may render dental or dental hygiene services. New law specifies that the stay of enforcement does not threaten harm to the La. State Board of Dentistry.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 37:757, 760, 780, 786, and 786.1)

### **Dental Board Contractors (Act No. 407)**

New law specifies that there is no liability and no action for damages against:

(1) Any nonprofit corporation, foundation, or organization that enters into any agreement with the dental board related to the operation of any committee or program to identify, investigate, counsel, monitor, or assist any licensed dentist who suffers or may suffer from alcohol or substance abuse or a physical or mental condition which could compromise such dentist's fitness and ability to practice dentistry with reasonable skill and safety to patients, for any investigation, action, report, recommendation, decision, or opinion undertaken, performed, or made in connection with or on behalf of such committee or program, without malice and in the reasonable belief that such investigation, action, report, recommendation, decision, or opinion was warranted.

(2) Any person who serves as a director, trustee, officer, employee, consultant, or attorney for or who otherwise works for or is associated with any such nonprofit corporation, foundation, or organization.

Effective August 1, 2012.

(Amends R.S. 37:770, 791 and 795)

### **Sedation of Dental Patients (Act No. 485)**

New law amends extremely detailed provisions of the Dental Practice Act relative to sedation of dental patients.

(Amends R.S. 37:793 and 795; Adds R.S. 37:751(F))

### **Embalmers and Funeral Directors (Act No. 176)**

New law creates a continuing education program for active embalmer and funeral director licensees, requiring at least four hours per year in courses approved by the La. State Board of Embalmers and Funeral Directors.

New law allows the board to refuse to grant or renew, or suspend or revoke, or impose sanctions on any licensee that knowingly and

falsely certifies training or attempts through subterfuge to bypass the continuing education requirements. New law specifies that ability of the board to refuse to grant or renew, suspend or revoke, or impose sanctions on any licensee that employs an unlicensed person to engage in certain activities applies to those licensees who knowingly employ such person.

(Amends R.S. 37:846; Adds R.S. 37:831(80)-(87), 846(A)(20), and 854)

### **Mental Health Counselors (Act No. 636)**

Old law provided nothing in the Mental Health Counselors Licensing Act shall be construed to authorize any person licensed under it to assess, diagnose, or provide treatment to any individual suffering from a serious mental illness, unless that individual is under the active care of a practitioner who is licensed by the La. State Board of Medical Examiners and is authorized to prescribe medications in the management of psychiatric illness, and only in the context of an ongoing consultation and collaboration with that practitioner.

New law allows a person licensed under the Act to assess, diagnose, or provide treatment to any individual suffering from a serious mental illness when medication may be indicated only when the counselor, in accordance with industry best practices, consults and collaborates with a practitioner who holds a license or permit with the La. State Board of Medical Examiners or an advanced practice registered nurse licensed by the La. State Board of Nursing who is certified as a psychiatric nurse practitioner.

Old law defined "serious mental illness" to include a diagnosis of major depressive disorder. New law provides that "serious mental illness" includes a diagnosis of major depressive disorder-moderate to severe.

Effective upon signature of the governor.

(Amends R.S. 37:1103(7) and (12)(e))

### **Pharmacy (Act No. 357)**

Old law required the La. Board of Pharmacy to mail applications for the renewal of licenses, registrations, and certificates to each licensed,

registered and certified person by a date designated by the board. New law requires the board to make such renewal applications available.

Old law required a pharmacist or a pharmacy technician to notify the board, in writing, of any change of employment or address within a time frame determined by the board by rule. New law also requires pharmacy interns and pharmacy technician candidates to notify the board, in writing, of any change of employment or address.

Old law required applications for pharmacy permit renewals to be mailed on or before a date designated by the board. New law requires that applications for pharmacy permit renewals be made available.

Old law required licenses, certificates, registrations, and other designations deemed necessary to engage in the practice of pharmacy be conspicuously displayed in the place for which such items were granted. New law repeals prior law.

Effective August 1, 2012.

(Amends R.S. 37:1202(A)(5), 1203(A)(5), 1207(B), 1213, 1214, and 1230(C); repeals R.S. 37:1215)

#### **Military Pharmacy Technicians (Act No. 358)**

Old law authorized the La. Bd. of Pharmacy to waive the annual license renewal requirement for a licensed pharmacist if he is serving in active duty in the military service of the United States or any of its allies.

New law also authorizes the board to waive the annual renewal requirements for certified technicians serving in active duty in the military service of the United States or any of its allies.

Effective August 1, 2012.

(Amends R.S. 37:1208)

#### **Pharmacists and Vaccines (Act No. 651)**

New law provides that in any parish, wholly or in part, designated as a primary care health

professional shortage area, a pharmacist may administer certain vaccines.

New law provides that the pharmacist shall obtain the appropriate credential to administer immunization from the La. Board of Pharmacy and comply with various other requirements.

Effective August 1, 2012.

(Adds R.S. 37:1218.1)

#### **Medical Psychologists, Physician Assistants, and Podiatrists (Act No. 431)**

New law provides that a medical psychologist, physician assistant, or podiatrist has a self-reporting waiver if a violation of his practice act is related to the individual's ability to practice his profession with reasonable skill and safety by reason of substance abuse or psychiatric condition, provided that since the occurrence that medical psychologist, physician assistant, or podiatrist has executed a monitoring agreement with an allied practitioner health program designated by the board and he is in full compliance with the terms and conditions of the agreement.

New law provides that the provisions of law governing protected actions and communications shall be equally applicable to any nonprofit corporation, foundation, or organization, and to any person who serves as a director, trustee, officer, employee, consultant, or attorney for or who otherwise works for or is associated with any nonprofit corporation, foundation, or organization, that enters into any agreement with the board related to the operation of any committee or program to identify, investigate, counsel, monitor, or assist a medical psychologist, physician assistant, or podiatrist who suffers or may suffer from alcohol or substance abuse or a physical or mental condition, which could compromise his ability to practice with reasonable skill and safety to patients, for any investigation, action, report, recommendation, decision, or opinion undertaken, performed, or made in connection with or on behalf of such committee or program, without malice and in the reasonable belief that such investigation, action, report,

recommendation, decision, or opinion was warranted.

Effective August 1, 2012.

(Adds R.S. 37:1281.2)

### **Pawnbrokers (Act No. 144)**

New law allows access upon request by the DPS&C, division of probation and parole, to transactional information for the purpose of an investigation of a specific crime relating to a particular pawn transaction.

Effective August 1, 2012.

(Amends R.S. 37:1782, 1797, and 1798)

### **Secondhand Dealers (Act No. 292)**

Old law requires every secondhand dealer to obtain a photograph of a person selling or delivering merchandise or articles to the dealer. New law narrows the requirement to merchandise with a fair market value of \$100 or greater.

Old law provides that, pursuant to a request from a law enforcement agency, a secondhand dealer shall capture photographically used merchandise or articles purchased and make the photographs available to the law enforcement agency within 24 hours after the request. New law narrows the requirement to used merchandise or articles that are uniquely identifiable.

Old law prohibits a secondhand dealer from entering into any cash transactions in payment for the purchase of junk or used or secondhand property. New law prohibits a secondhand dealer from entering into any cash transactions in payment for the purchase of copper. New law requires payment for copper to be made in the form of a check issued to the seller of the metal and mailed to the address recorded on the photo identification of the seller no earlier than five business days after the date of the transaction.

New law prohibits a secondhand dealer from entering into any cash transactions in excess of \$300 for the purchase of metal property other than copper. Payments in excess of \$300 for metals other than copper are to be made in the form of a check made payable to the seller of the

metal and may be tendered to the seller at the time of the transaction.

New law requires all payments made by check to be reported separately in daily reports.

New law prohibits a secondhand dealer from allowing a seller to engage in multiple small transactions for the purpose of circumventing new law.

New law prohibits a secondhand dealer from cashing, offering to cash, or providing the means for exchanging for cash a check issued to a seller on the premises of the secondhand dealer's place of business, including but not limited to the use of an automatic teller machine.

Old law requires a secondhand dealer to record the license plate number of the seller of the used property. New law repeals old law.

Old law contains an exemption for retail tire outlets or automobile dealers dealing in tires. New law repeals old law.

New law removes automobile tires and rims from exemption from secondhand dealer regulation, clarifies the exemption for solid waste collectors, and adds an exemption for the purchase of educational course materials.

(Amends R.S. 37:1861, 1862, 1864.1, 1864.2, and 1864.3; Adds R.S. 1864(A)(1)(d) and 1867(B))

### **Louisiana Scrap Metal Recycles Law (Act No. 827)**

Old law provided for the regulation of secondhand dealers. New law adds an exemption for scrap metal recyclers licensed under new law.

New law requires every operator to either keep a register and file reports, or electronically maintain data and be capable of readily providing reports, in the form prescribed by the Dept. of Public Safety and Corrections, which contain detailed information about purchases of scrap metal.

New law requires every operator to obtain a photograph of a person selling or delivering scrap metal to the facility. New law provides that, in lieu of the photograph of the person



selling or delivering the scrap metal, the operator may obtain either a thumbprint of such person or a photocopy of the person's La. driver's license, driver's license from another state, passport, military identification, or identification issued by a governmental agency or the U.S. Postal Service.

New law requires every operator to obtain a photograph of all scrap metal purchased.

New law prohibits an operator from purchasing precious metals.

New law requires every operator to obtain a signed statement from the seller that the scrap metal has been paid for or is owned by the seller.

New law requires, in transactions involving railroad track materials, an operator to require the party seeking to sell or dispose of the materials to furnish a signed statement from the appropriate railroad company consenting to the sale of the railroad track materials identified in the statement, which shall be retained by the operator.

New law requires the statement to include the name of the railroad company consenting to the sale and the name, employee number, and phone number of the person signing the statement authorizing the sale.

New law requires the operator to attempt to verify the authenticity of the statement authorizing the sale of the railroad track materials.

New law prohibits an operator from purchasing any of numerous listed materials without a signed statement from the appropriate company or governmental entity consenting to the sale of the materials identified in the statement.

New law requires every operator to produce and deliver by electronic transmission to the chief of police of the city or town or to the sheriff of the parish in which he is doing business, every day before the hour of 12:00 noon, a legible and correct copy of the entries in the book during the previous day.

New law requires every operator, in addition to the daily report required by new law, to transmit, every day before the hour of 12:00 noon, the

information contained in the entries in the book required in new law during the previous day to an electronic database accessible by law enforcement.

New law prohibits a scrap metal recycler from entering into any cash transactions for copper. New law requires payment for copper to be made in the form of a check issued to the seller of the metal and mailed to the address recorded on the photo identification of the seller no earlier than five business days after the date of the transaction.

New law prohibits a scrap metal recycler from entering into any cash transactions in excess of \$300 for the purchase of metal property other than copper. Payments in excess of \$300 for metals other than copper are to be made in the form of a check issued to the seller of the metal and may be tendered to the seller at the time of the transaction. The scrap metal recycler, at his discretion, may make payment by either cash or other method for transactions of \$300 or less for all metals other than copper.

New law prohibits a scrap metal recycler from allowing a seller to engage in multiple transactions within a 24 hour period totaling more than \$300 for the purpose of circumventing new law.

New law prohibits a scrap metal recycler from cashing, offering to cash, or providing the means for exchanging for cash a check issued to a seller on the premises of the scrap metal recycler's place of business, including but not limited to the use of an automatic teller machine.

New law contains similar provisions regarding purchases of copper and the metals applicable to secondhand dealers. (*See also* Act No. 292 above.)

New law provides that no governing authority of a political subdivision shall enact an ordinance in conflict with the provisions of new law.

New law does not apply to:

(1) Dealers in coins and currency, dealers in antiques, nor to gun and knife shows or other trade and hobby shows.

(2) Persons solely engaged in the business of buying, selling, trading in, or otherwise acquiring or disposing of motor vehicles and used parts of motor vehicles, excluding tires and rims, nor to wreckers or dismantlers of motor vehicles who are licensed pursuant to new law.

(3) Private residential sales commonly known as "garage sales" or "yard sales" as long as such sales take place at a residential address.

(4) Any bona fide charity possessing a valid exemption under Section 501(c)(3) of the Internal Revenue Code.

(5) The operations of a company that has received a permit, registration, or other authorization from the Dept. of Environmental Quality for the collection, transportation, treatment, storage, processing of materials to be recycled or reused, or disposal of solid waste.

(6) Persons operating as licensed pawnbrokers.

(7) The purchase of firearms for disposal from a law enforcement agency.

(8) The purchase of materials from any manufacturing, industrial, or other commercial vendor that generates the materials as a byproduct or recyclable waste or sells such materials in the ordinary course of its business.

New law expires July 31, 2016.

Effective upon signature of governor (June 14, 2012).

(Amends R.S. 37:1861 and 1864.3; Adds R.S. 37:1961-1977)

### **Arborist Construction Work (Act No. 163)**

New law allows licensed arborists to be exempt from additional examination requirements to be licensed as building contractors in order to bid on arborist work statewide.

Old law requires that in order for an arborist to bid on or perform work that qualifies as "construction" under the state contractors law, the arborist must pass an examination in the landscaping, grading, and beautification classification. Old law requires arborists to be licensed by the Horticulture Commission of La. in order to recommend or execute certain

arborist activities. Such licensure requires, among other things, passage of a written examination.

New law allows a licensed arborist to be exempt from an additional examination. New law limits the "construction" work allowed to the work described in the arborist provisions as the removal of a tree or portion of a tree, recommending or executing measures to prolong the life of a tree, and recommending or executing measures to enhance the aesthetic value of a tree.

(Adds R.S. 37:2156.1(N))

### **Home Improvement Contracts (Act No. 193)**

Old law requires every agreement to perform home improvement contracting services in an amount in excess of \$7,500, but not in excess of \$75,000, to be in writing and to include specified documents and information. New law lowers the minimum transaction threshold amount to \$1,500.

New law requires, if the contract is for goods or services to be paid from the proceeds of a property or casualty insurance policy, the home improvement contractor shall furnish the insured party a statement in boldface type of a minimum size of 10 points, in substantially the following form: "You may cancel this contract at any time within 72 hours after you have been notified that your insurer has denied all or any part of your claim to pay for the goods and services to be provided under this contract. See attached notice of cancellation form for an explanation of this right."

New law further requires the home improvement contractor to furnish each insured party a fully completed form in duplicate, captioned "NOTICE OF CANCELLATION", which shall be attached to the contract but easily detachable, and which shall contain, in boldface type of a minimum size of 10 points, a specified statement.

New law allows a person who has entered into a written contract with a home improvement contractor to provide goods or services to be paid from the proceeds of a property or casualty insurance policy to cancel the contract within 72

hours after the insured party has been notified by the insurer that all or any part of the claim has been denied.

New law provides that cancellation shall be evidenced by the insured party giving written notice of cancellation to the home improvement contractor at the address stated in the contract.

New law provides that the notice of cancellation need not take a particular form and shall be sufficient if it indicates, by any form of written expression, the intention of the insured party not to be bound by the contract.

New law requires the home improvement contractor, within 10 days after a contract has been cancelled, to tender to the owner or possessor of the residential real estate any payments, partial payments, or deposits made by the insured party and any note or other evidence of indebtedness.

New law provides that if the home improvement contractor has performed any emergency services, acknowledged by the insured in writing to be necessary to prevent damage to the premises, the home improvement contractor shall be entitled to the reasonable value of such services.

New law requires an applicant for a home improvement contracting certificate of registration to furnish the State Licensing Board for Contractors proof of workers' compensation insurance and proof of registration with the Dept. of Revenue by providing a certificate of resident/nonresident status. New law adds a requirement to furnish proof of general liability insurance in a minimum amount of \$100,000.

New law prohibits a home improvement contractor from promising to pay or rebate all or any portion of an applicable insurance deductible as an inducement to the sale of goods or services, including but not limited to granting any allowance or offering any discount against the fees to be charged or paying the insured party any form of compensation for any reason, including but not limited to permitting the home improvement contractor to display a sign or any other type of advertisement at the insured party's premises, or paying an insured party for providing a letter of referral or recommendation.

New law provides that, if a home improvement contractor violates new law, the insurer to whom the insured party tendered the claim shall not be obligated to consider the estimate prepared by the home improvement contractor.

New law authorizes the insured party or the applicable insurer to bring an action against the home improvement contractor for damages sustained as a result of the home improvement contractor's violation of new law.

New law provides that any violation of new law shall constitute a prohibited practice under the Unfair Trade Practices and Consumer Protection Law.

(Amends R.S. 37:2175.1, 2175.2, and 2175.3)

### **Chiropraxy (Act No. 565)**

New law authorizes the La. Board of Chiropractic Examiners to require a licensee or an applicant, as condition of licensure, to:

1. Submit a full set of fingerprints, in a form and manner prescribed by the board.
2. Permit the board to request and obtain state and national criminal history record information on the licensee or applicant.

New law provides that the board shall treat and maintain a licensee's or an applicant's fingerprints and any criminal history record information as confidential and shall not transmit or otherwise share such information with any other party.

Effective August 1, 2012.

(Adds R.S. 37:2804(L))

### **Polysomnographic Practice (Act No. 678)**

New law redefines a "polysomnographic technician" or "permit technician" to be an allied health professional who holds a permit issued by the Louisiana State Board of Medical Examiners to practice polysomnography under the direct supervision of the physician or a qualified allied health professional licensed by the Louisiana State Board of Medical Examiners whose scope of practice includes polysomnography.

New law redefines "polysomnographic technologist" or "technologist" to be an allied health professional holding a license to practice polysomnographic technology issued by the La. State Board of Medical Examiners to perform both diagnostic and therapeutic polysomnograms under the direction of a physician.

New law provides additional requirements that a technologist applicant must satisfy after July 1, 2017.

New law requires an applicant demonstrate, in order to obtain a permit as a polysomnographic technician, that he is of good moral character, and that he has passed the certification exam offered by BRPT or completed an education program accredited by CAAHEP.

New law provides that the permit is valid for the lesser of 12 months or the date on which the requirements for a technologist are met.

New law provides that individuals licensed can use the title of polysomnographic technologist, technologist, or the initials PSGT.

New law adds an additional exemption from the Act for an individual who is pursuing a course of study in an accredited CAAHEP polysomnographic technology education program, under specified conditions.

Effective August 1, 2012.

(Amends R.S. 37:2862, 2864, 2865, 2866, and 2870; adds R.S. 37:2865 and 2869)

#### **Licenses and Criminal Records (Act No. 486)**

Old law prohibited a person from being disqualified or ineligible to engage in a licensed trade or profession solely because of a prior criminal record, except if a felony conviction directly relates to the position of employment. Old law excepted numerous entities.

New law deletes the reference to "felony" and adds the Office of Financial Institutions, the La. Physical Therapy Board, and the La. Board of Massage Therapy to those entities excepted.

Effective August 1, 2012.

(Amends R.S. 37:2950)

#### **Private Security Officers (Act No. 439)**

Old law provides for regulation of private security officers and the private security business by the La. State Board of Private Security Examiners.

New law makes changes to the present law definition of (private) "security officer" by deleting the requirement that the person be "principally" employed by a contract security company.

(Amends R.S. 37:3272 and 3298)

#### **Use of "Doctor"; Midwifery (Act No. 772)**

New law provides that no healthcare provider, while providing direct patient care, shall present himself, whether orally or in writing, to a patient using the title of "Doctor" or the abbreviation of "Dr." as a prefix to his name without using a sufficient suffix to denote either the type of professional license held by the healthcare provider or the degree he holds by reason of his diploma of graduation from a school or other entity, professional or otherwise.

New law defines "healthcare provider" as a person, partnership, limited liability company, or corporation licensed or certified in this state to provide healthcare or professional services as a registered or licensed practical nurse, certified registered nurse anesthetist, nurse midwife, licensed midwife, nurse practitioner, clinical nurse specialist, occupational therapist, physical therapist, certified athletic trainer, or physician assistant. New law does not apply to a physician as defined by Medicare pursuant to 42 USC 1395x(r).

New law changes the definition of "licensed midwife" and defines the terms "certified professional midwife" and "low risk patient". New law provides for informed consent of a patient when receiving services from a midwife. New law provides for the permitting or licensing of midwives by the La. State Board of Medical Examiners. New law authorizes the board to accept the examination administered by the North American Registry of Midwives as a qualifying examination for purposes of midwifery licensure. New law provides for the reporting requirements of licensed midwives.

New law provides for the establishment and termination of the physician-patient relationship for the purposes of performing a risk assessment.

Effective August 1, 2012.

(Amends R.S. 37:3241, 3244, 3245, and 3248; adds R.S. 37:1743.1, 3255(D), 3258, and 3259)

### **Real Estate Appraisal (Act No. 429)**

New law provides for licensure of real estate appraisal trainees; provides for reciprocity; requires a surety bond as a condition of licensure as an appraisal management company; provides for appraisal reviews by licensed appraisers; establishes guidelines for fees to be paid to appraisers; and requires an appraisal management company to confirm the competency level of an appraiser prior to assignment.

Old law provides that a real estate appraiser trainee may not be licensed in this category in excess of six years. New law repeals old law.

New law requires the licensed real estate appraiser to include within the body of the appraisal report the amount of the appraiser's fee for appraisal services.

New law defines "administrative review", "compliance review", "quality check", or "QC" as a process that checks an appraisal report for compliance with the Uniform Standards of Professional Appraisal Practice or other stipulated requirements.

New law defines "appraisal review" as the act or process of developing and communicating an opinion about the quality of another appraiser's work that was performed as part of an appraisal assignment. The term shall not include an examination of an appraisal for grammatical, typographical, mathematical, or other similar administrative errors that do not involve the appraiser's professional judgment, including compliance with the elements of the client's statement of work.

New law defines "fee appraiser" as a person who is not an employee of the mortgage loan originator or appraisal management company

engaging the appraiser and is one of the following:

(1) A state-licensed or certified appraiser who receives a fee for performing an appraisal and certifies that the appraisal has been prepared in accordance with the Uniform Standards of Professional Appraisal Practice.

(2) A company not subject to the requirements of §1124 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 that utilizes the services of state-licensed or certified appraisers and receives a fee for performing appraisals in accordance with the Uniform Standards of Professional Appraisal Practice.

New law requires a person who performs an appraisal review for an appraisal management company to be licensed or certified in La.

New law provides that an administrative review may be performed by any individual, including a certified appraiser.

Old law prohibits an entity from directly or indirectly engaging or attempting to engage in business as an appraisal management company, directly or indirectly engaging or attempting to perform appraisal management services, or advertising or holding itself out as engaging in or conducting business as an appraisal management company without first obtaining a license issued by the La. Real Estate Appraisers Board.

New law requires every applicant for a license or the renewal of a license to obtain and maintain a surety bond in the amount of \$20,000.

New law repeals the board's authority to request other information and adds a requirement of proof that the entity has obtained and maintains the surety bond.

New law requires the surety bond to meet certain requirements. New law provides that the aggregate liability of the surety shall not exceed the principal sum of the bond.

New law authorizes a party having a claim against the licensee to bring suit directly on the surety bond, or the board to bring suit on behalf of the party having a claim against the licensee.

New law provides that consumer claims shall be given priority in recovering from the bond.

New law provides that a deposit of cash or security may be accepted in lieu of the surety bond.

New law requires that, if a claim reduces the face amount of the bond, the bond shall be annually restored upon renewal of the licensee's registration.

New law requires an appraisal management company, before or at the time of making an assignment to an appraiser, to verify that the appraiser receiving the assignment satisfies each provision of the competency rule of the Uniform Standards of Professional Appraisal Practice for the appraisal being assigned.

New law requires an appraisal management company to compensate appraisers at a rate that is customary and reasonable for appraisals being performed in the market area of the property being appraised, consistent with the presumptions of compliance under federal law.

New law requires an appraisal management company to separately state to the client certain fee information.

New law prohibits an appraisal management company from prohibiting any appraiser who is part of an appraiser panel from recording the fee that the appraiser was paid by the appraisal management company for the performance of the appraisal within the appraisal report that is submitted by the appraiser to the appraisal management company.

New law prohibits an appraisal management company from including any fees for appraisal management services performed by the company in the amount the company reports as charges for the actual completion of an appraisal by the appraiser.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 37:3397, 3401, 3410, 3415.2, 3415.3, 3415.13, and 3415.21; Adds R.S. 3415.15)

## **Massage Therapists (Act No. 605)**

New law amends the definitions of "massage establishment", "massage therapist", and "massage therapy" and adds definitions for "advertise", "inactive status", "lapsed license", "licensee", "person", "professional massage therapy association", and "writing".

Old law did not apply to any services performed in hospitals licensed by the state. New law adds an exemptions, including:

- (1) Physician offices, physical therapy facilities, chiropractic offices, or athletic training facilities; and
- (2) Persons giving massage and bodywork to their immediate family without compensation.

New law requires the board to:

- (1) Regulate the practice of massage and bodywork in La. by licensing massage therapists who meet the state's minimum standards of education.
- (2) Perform inspections and investigate persons who maybe engaging in practices which violate provisions of new law and impose fines and penalties.
- (3) Maintain a complete record going back for a period of at least five years of all licensed massage therapists and annually prepare a roster of the names and addresses of all such licensees.

New law requires an applicant for a massage therapist license to submit evidence satisfactory to the board of meeting specified requirements.

New law provides that a course of study may utilize a credit hours equivalent as defined by the U.S. Dept. of Education in lieu of clock hours to measure student achievement. New law requires a course of study using credit hours to provide coursework including at least 500 hours of in-class supervised instruction. New law exempts specified classes of persons from the requirement to complete an approved course of study and to pass a national examination.

New law requires each person engaging in the practice of massage therapy at a massage establishment to be the holder of a Licensed Massage Therapist Identification Card (LMTID Card) which shall identify the therapist as being

properly licensed and shall authorize the therapist to provide off-site massage services.

New law requires all locations where one or more persons are regularly engaged in the practice of massage to register with the board as a massage establishment.

New law provides that obtaining a massage establishment license shall be the responsibility of the entity which controls the physical location where the services are provided, which entity may be a sole proprietor, lessee, owner, partnership, corporation, cooperative, association, or other legal entity.

New law requires each licensed massage therapist who works at a massage establishment to display his LMT-ID Card in plain view in an appropriate public manner.

New law requires a licensed massage therapist who is working outside of a massage establishment to have in his possession his LMT-ID Card and to present it for review upon request of a client or board representative.

Old law provided for the renewal and reinstatement of licenses and the continuing education requirements that must be met prior to renewal of a license.

New law provides that each license granted shall have a validity period of one calendar year.

New law provides that a person whose license has expired and who has ceased activities as a massage therapist for less than twenty-four consecutive months may have his license reinstated upon meeting certain conditions.

New law provides that a licensee who chooses to adopt inactive status and cease activities as a massage therapist may submit an affidavit, along with the specified fee, to apply for inactive status. If the licensee does not request to be placed on inactive status, his license shall expire if not timely renewed.

New law authorizes the board to suspend, revoke, or refuse to issue or renew a license after notice and opportunity for hearing on various specified grounds.

New law authorizes the board to bring an action for an injunction, together with reasonable

attorney fees and court costs. New law provides that, if the board is unsuccessful in obtaining injunctive relief, the court may award attorney fees and costs to the prevailing party.

Old law allowed an applicant who possessed the qualifications specified in the law to take the board examination to be granted a provisional license to engage in the practice of massage therapy until the date of the next examination and thereafter until the results of the examination were known. New law repeals old law.

Effective January 1, 2013, except certain provisions become effective upon signature of the governor (June 7, 2012).

(Amends R.S. 37:3552, 3553, 3554, 3555, 3556, 3557, 3558, 3559, 3561, 3563, 3564, 3565, and 3566; Adds R.S. 37:3556.1; Repeals R.S. 37:3560)

### **Occupational Licenses for Military Personnel and Spouses (Act No. 276)**

New law provides that individuals with military training and experience shall be granted a license, certification, or registration to lawfully practice an occupation by the appropriate professional or occupational licensing board if the applicant:

(1) Has completed a military program of training, been awarded a military occupational specialty, and performed in that specialty at a level that is substantially equivalent to or exceeds the requirements for licensure, certification, or registration of the professional or occupational licensing board for which the applicant is seeking licensure, certification, or registration;

(2) Has engaged in the active practice of the occupation for which the person is seeking a license, certification, or permit from the professional or occupational licensing board; and

(3) Has not been disciplined in any jurisdiction that would have constituted grounds for refusal, suspension, or revocation of a license to practice that occupation at the time the act was committed.

New law requires a professional or occupational licensing board to issue a license, certification, or registration to a military-trained applicant to allow the applicant to lawfully practice an occupation if, upon application to a professional or occupational licensing board, the individual holds a current license, certification, or registration from another jurisdiction and that jurisdiction's requirements for licensure, certification, or registration are substantially equivalent to or exceed the requirements for licensure, certification, or registration in this state.

New law provides that spouses of individuals with military training and experience shall be granted a license, certification, or registration to lawfully practice an occupation by the appropriate professional or occupational licensing board if the spouse:

- (1) Holds a current license, certification, or registration from another jurisdiction, and that jurisdiction's requirements for licensure, certification, or registration are substantially equivalent to or exceed the requirements for licensure, certification, or registration in this state;
- (2) Can demonstrate competency in the occupation through methods as determined by the board;
- (3) Has not been disciplined in any jurisdiction that would have constituted grounds for refusal, suspension, or revocation of a license to practice that occupation in this state at the time the act was committed; and
- (4) Is in good standing and has not been disciplined by the agency that had jurisdiction to issue the license, certification, or permit.

New law provides that a professional or occupational licensing board shall issue a temporary practice permit to a military-trained applicant or military spouse licensed, certified, or registered in another jurisdiction while the military-trained applicant or military spouse is satisfying the requirements for licensure under new law, if that jurisdiction has licensure, certification, or registration standards substantially equivalent to the standards for licensure, certification, or registration in this

state. New law provides that the military-trained applicant or military spouse may practice under the temporary permit until a license, certification, or registration is granted or until a notice to deny a license, certification, or registration is issued.

New law provides that individuals possessing a temporary practice permit under the provisions of new law shall receive priority processing of their application for license, certification, or registration.

New law requires each professional and occupational licensing board to adopt rules for the issuance of a temporary practice permit and requires the rules to ensure the public health and safety.

New law defines "professional or occupational licensing board" as any state agency, board, commission, or substantially similar entity, involved in the licensing, certification, or registration of any regulated profession or occupation within the state of La.

New law does not apply to any applicant receiving a dishonorable discharge or a military spouse whose spouse received a dishonorable discharge.

New law does not apply to any license issued and regulated under the authority of the judicial branch of government.

(Adds R.S. 37:3650)

## **TITLE 38: PUBLIC CONTRACTS, WORKS AND IMPROVEMENTS**

### **DOTD and CPRA (Act No. 601)**

New law provides relative to the respective responsibilities of the Dept. of Transportation and Development (DOTD) and the Coastal Protection and Restoration Authority (CPRA).

New law provides that the CPRA shall have superseding authority over all integrated coastal protection in the coastal area.

New law requires application for flood-control projects to be reviewed by DOTD, the La.



Geological Survey, the division of administration, the U.S. Soil and Water Conservation Service, and other appropriate agencies. New law adds the CPRA to the list of agencies required to review the applications.

Old law authorizes a levee board to require DOTD to perform engineering work on the levees in its district. New law authorizes the levee board to require CPRA to do such work for integrated coastal protection in the coastal area.

Old law requires DOTD to certify whether or not a levee district has constructed the levee. New law requires such certification from CPRA if it is an integrated coastal protection project in the coastal area.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 38:2, 3, 90.4, 214, 218, 301, 306, 313, 315, 319, 3074, 3087.134, and 3097.4)

#### **Water Control Structures (Act No. 809)**

New law prohibits any unauthorized person from willfully opening a water control structure which results in the drainage of saltwater into any natural water body or drain.

New law defines "water control structure" as a structure in a water management system that conveys water, controls the direction or rate of flow, maintains a desired water surface elevation, or measures water.

Effective August 1, 2012.

(Adds R.S. 38:216.1)

#### **Information for Public Contract Bidding (Act No. 823)**

Old law provides that required documentation and information, other than the bid form and accompanying documents, shall be submitted by the low bidder within 10 days after the bid opening. New law adds that such documentation and information includes but is not limited to the low bidder's e-verify and felony conviction attestations.

Old law provides that such documentation and information for projects let by the Sewerage and Water Board of New Orleans and all agencies of the City of New Orleans, including but not limited to the Regional Transit Authority and the New Orleans Aviation Board, shall be furnished by the two lowest bidders after three days of the bid opening. New law adds any governing authority of a publicly owned commercial aviation airport.

Effective August 1, 2012.

(Amends R.S. 38:2212(A)(1)(b)(ii)(bb) and (3)(c)(ii))

#### **Orleans Hospital Service District (Act No. 493)**

Old law prohibits a construction manager, or any other third-party consultant employed by a public entity, from managing a construction project as a general contractor or acting in the role of the general contractor to oversee, direct, or coordinate individual trade contractors on behalf of the public entity, or accepting bids or itself bid on the public work or components of the public work with respect to which the manager or consultant is employed or contracted to manage or consult.

New law exempts the Orleans Hospital Service District from the prohibition, as it relates to the initial construction of a hospital, medical facility, or a combination of both.

New law requires all construction contracts to be opened at a public meeting and requires the general contractor to list all subcontractors.

Effective August 1, 2012.

(Amends R.S. 38:2212(A)(3)(g))

#### **"Public Work" Definition Narrowed (Act No. 655)**

Old law provided that "public work" means the operation, erection, construction, alteration, improvement, or repair of any public facility or immovable property owned, used, or leased by a public entity. New law removes "operation" from the definition of public work.

Effective August 1, 2012.

(Amends R.S. 38:2211(A)(12))

#### **"Public Works" Defined (Act No. 142)**

Old law provides, generally, that a private employer shall not bid on or otherwise contract with a public entity unless the private employer verifies in a sworn affidavit attesting that: (1) the private employer is registered and participates in a status verification system to verify that new employees are legal citizens of the U.S. or are legal aliens; and (2) the private employer must continue, during the term of the contract, to utilize a status verification system to verify the legal status of all new employees.

New law provides that law shall only apply to contracts for public works.

New law defines "public works" as the erection, construction, alteration, improvement, or repair of any public facility or immovable property owned, used, or leased by a public entity.

Effective August 1, 2012.

(Amends R.S. 38:2212.10)

#### **Public Works Contract Procedure (Act No. 647)**

Old law, relative to public contracts, provided for the time period for holding bids and the issuance of work orders to commence work.

New law requires that the contractor and public entity execute the contract not later than 45 days from the public entity's acceptance of the lowest responsible bid, if the contractor has provided all necessary documents within ten days of bid opening and no bid challenge has been filed with the public entity.

Effective July 1, 2012.

(Amends R.S. 38:2215)

#### **Design-Build Authority Extended (Act No. 777)**

Prior law provided that certain public entities may utilize the design-build method in the construction or repair of any public building or structure which has been destroyed or damaged by Hurricane Katrina, Hurricane Rita, or both, or

to meet a homeland security or criminal justice need pursuant to a hurricane recovery plan. New law adds the Sewerage and Water Board of New Orleans and the New Orleans School Board as public entities authorized to use the design-build method.

Old law provided that this authorization shall extend until July 10, 2012, after which time only those projects that were contracted for prior to that date may proceed. New law extends the period until July 10, 2013.

Effective upon signature of the governor.

(Amends R.S. 38:2225.2.1(A)(1) and (3))

#### **Attestation by Low Bidder Only (Act No. 598)**

Old law provides that each bidder, if a sole proprietor, shall attest that he has not been convicted of, or has not entered a plea of guilty or nolo contendere to any of the crimes or equivalent federal crimes listed in existing law.

Old law also provides that each bidding entity shall submit an attestation that no individual partner, incorporator, director, manager, officer, organizer, or member, who has a minimum of a 10% ownership in the bidding entity, has been convicted of, or has entered a plea of guilty or nolo contendere to any of the crimes or equivalent federal crimes listed in existing law.

New law limits the attestation submission to the lowest bidder or bidding entity.

Effective August 1, 2012.

(Amends R.S. 38:2227(A))

### **TITLE 39: PUBLIC FINANCE**

#### **Sale of Accounts Receivable by State Agencies (Act No. 500)**

Old law requires the division of administration to prescribe a comprehensive policy and procedure for debt collection to be used by all state agencies.

New law specifies that the term "collection" includes the sale or securitization of long-term delinquent accounts receivable.

New law provides that pools of accounts and obligations shall be approved for sale or securitization by the Cash Management Review Board upon recommendation of the commissioner of administration, the attorney general or its own, and carried out by the commissioner.

New law, for calendar year 2013 and for calendar year 2014, requires the commissioner of administration to recommend pools of long-term accounts and obligations for sale or securitization, subject to approval, to the Board. New law requires the recommendation of not more than 25% of the aggregate face dollar amount existing on the first day of each calendar year.

New law sunsets Dec. 31, 2014, unless reenacted by the legislature.

New law authorizes the commissioner of administration to exclude any debt which he deems uncollectible.

New law specifies that the provisions of new law shall not apply to any debt owed to the state due to treatment rendered at a state-owned hospital.

Effective August 1, 2012.

(Adds R.S. 39:88.3)

#### **Data Processing Procurement (Act No. 185)**

Old law provides that "related services" are limited to service activities affecting the maintenance of data processing equipment or software and the providing of fiscal intermediary services in processing claims of health care providers.

New law adds that "related services" also mean those consulting services ancillary to the procurement of data processing hardware or software that would otherwise be governed by the provisions of professional, personal, consulting, and social services procurement in Chapter 16 of Title 39, provided those consulting services are limited to the lesser of 20% of the procurement amount or \$250,000.

Old law provides that in data processing procurement, no contract entered into is to be on

preprinted contract forms supplied by a vendor. New law adds that such contracts may be entered into on preprinted forms if approved by the director of state purchasing.

(Amends R.S. 39:197(1) and 200(F))

#### **State Agency Vehicles (Act No. 833)**

New law limits the vehicles which may be purchased or leased by the state to those which are capable of and equipped for using bi-fuel, natural gas, or liquefied petroleum gas, referred to collectively as "alternative fuels," with certain exceptions.

Old law provided for the purchase of advanced biofuel directly from a qualified small advanced biofuel manufacturing facility at a price equal to 15% less per gallon than the price of unleaded gasoline for use in any motor vehicle. New law deletes old law.

Effective October 1, 2012.

(Amends R.S. 39:364)

#### **Rebate of Local Sales Tax (Act No. 787)**

New law provides that the right of admission to any event, activity, or enterprise conducted in a publicly owned facility owned and operated by the state, or any of its agencies, boards, or commissions, shall be subject to rebate of sales and use taxes imposed by any participating local governmental subdivision.

New law provides that the rebate shall be payable by the respective taxing body within 90 days after submission of sufficient proof of entitlement to the rebate for the event, activity, or enterprise by the promoter.

New law provides that the owner and operator of the public facility shall certify the number of admissions to each event, activity, or enterprise that are subject to the rebate. The single collector for sales and use taxes in which the facility is located shall provide for such reporting requirements as are necessary to administer the rebate.

New law provides definitions of "public facility", "event, activity, or enterprise",

"participating local governmental subdivision", "rebate", and "right of admission".

Effective July 1, 2012.

(Adds R.S. 39:469)

#### **Small and Veteran Entrepreneurships (Act No. 498)**

New law increases the maximum gross receipts cap for small businesses applying to the La. Initiative for Small Entrepreneurships (Hudson Initiative) and the La. Initiative for Veteran and Service-Connected Disabled Veteran-Owned Small Entrepreneurships (Veteran Initiative).

New law increases the minimum gross receipts cap to \$10,000,000 per year for construction operations and \$5,000,000 per year for non-construction operations, for each of the previous three tax years.

Effective upon signature of governor (June 5, 2012).

(Amends R.S. 39:2006(A)(4) and 2176(A)(4))

#### **Public Works Contracts (Act No. 414)**

New law defines a "contract" as all types of state agreements, regardless of what they may be called, for services, major repairs, or for the making of any public work funded by monies received by the agency or a political subdivision under the Federal Resources and Ecosystems Sustainability, Tourist Opportunities and Revived Economy of the Gulf Coast Act of 2011 (RESTORE), or as a result of any settlement related to the Deepwater Horizon or the Master Plan for Integrated Coastal Protection.

New law provides additional requirements for public works contracts by the Office of Coastal Protection and Restoration or a political subdivision when the project is supported by funding from RESTORE, a settlement from the Deepwater Horizon, or the Comprehensive Master Plan for Coastal Protection.

New law authorizes political subdivisions to adopt all or any part of new law or its accompanying regulations.

New law requires a contractor, within 10 days of award of the contract, to submit to the Workforce Development Commission information relative to the number and types of jobs anticipated to be created, wages, and methods to be used by the contractor to recruit for the project unemployed persons or persons working at low wages to fill job openings expected to result from the contract.

New law requires that within 10 days after receipt of the information from the contractor, the Workforce Development Commission shall provide the contractor with a list of people eligible for employment.

Effective August 1, 2012.

(Adds R.S. 39:2201-2204)

### **TITLE 40: PUBLIC HEALTH AND SAFETY**

#### **No Duty to Warn (Act No. 620)**

New law provides that no rule or regulation shall impose or create any general duty to warn third parties upon any healthcare provider who has complied with the applicable reporting requirements for communicable diseases as set forth in the Sanitary Code.

Effective upon signature of the governor.

(Amends R.S. 40:4)

#### **Filiation and Naming (Act No. 621)**

Old law provided that if any child born in this state was legitimated by the subsequent marriage of its parents, the state registrar, upon receipt certain papers, shall prepare a new certificate of birth in the new name of the child. New law removes old law.

New law provides that a child who has obtained a judgment of filiation may request that a new birth certificate be issued reflecting the new name of the child. New law requires the state registrar to issue the new birth certificate upon receipt of a copy of the judgment.

Effective August 1, 2012.

(Amends R.S. 40:46(A))

### **Louisiana Housing Corporation (Act No. 686)**

New law allows the board of directors of the Louisiana Housing Corporation (LHC) to determine who qualifies as a "person or families of low or moderate income" in a manner consistent with federal housing programs.

New law specifies that the corporation may access funds provided through HUD's Community Development Block Grants.

New law authorizes and directs LHC to finance mixed-income residential rental developments or homeownership using federal housing tax benefits or any other available federal funds or benefits.

Effective August 1, 2012.

(Amends R.S. 40:600.87 and 600.91)

### **Organic Food Law Repealed (Act No. 222)**

Old law prohibited the use of the term "organic food" or its derivative in the labeling of certain food unless the growth and composition met certain requirements. Old law allowed the LDAF to withhold from sale any product mislabeled. New law repeals old law.

Effective August 1, 2012.

(Repeals R.S. 40:608.3)

### **Dangerous Substances (Act No. 347)**

New law provides a mechanism for the secretary of DHH, by rule, to declare a substance a dangerous substance under certain circumstances.

New law defines "dangerous substance" as a substance which is not otherwise listed as a controlled dangerous substance and has been determined to be an imminent hazard to the public health, safety, and welfare by the secretary using specified criteria and standards.

New law requires the secretary to consider specified criteria when determining whether to declare that a substance is a dangerous substance.

New law provides that prior to the adoption of a rule declaring that a substance is a dangerous substance, the secretary shall make certain findings and determinations.

New law provides that if the secretary determines that a substance must be classified as a dangerous substance, the rule shall also include a dangerous substance stop order prohibiting the sale, distribution, manufacture, or dispensing of the dangerous substance. New law provides for the expiration of the stop order.

New law provides that upon the adoption of the rule declaring a substance a dangerous substance and the issuance of the dangerous substance stop order, any law enforcement officer may seize any products containing the dangerous substance that are in plain view.

New law provides for the application and execution of a warrant when an officer has probable cause to believe that any dangerous substance is located within the territorial jurisdiction of the officer.

New law designates any amount of dangerous substance as contraband drugs, which are subject to forfeiture.

New law provides that property seized shall not be subject to sequestration or attachment, but is deemed to be in the custody of the law enforcement agency making the seizure, subject only to the order of the court. The seized property shall be immediately returned to the owner upon expiration of the dangerous substance stop order, unless the legislature has enacted a provision to designate the dangerous substance as a controlled dangerous substance.

New law provides for judicial action for declaratory judgment in the 19th Judicial District Court to determine the validity of a rule declaring a substance to be a dangerous substance.

New law authorizes the secretary to adopt a rule declaring a substance a dangerous substance and issue a dangerous substance stop order if necessary.

New law requires the department to publish a notice of intention to adopt a rule declaring a substance to be a dangerous substance and to

issue a dangerous substance stop order regarding the sale, distribution, manufacture, or dispensing of the dangerous substance, in the official state journal at least twice within a 15 day period prior to the adoption of the rule.

New law requires the secretary to provide to all interested persons a reasonable opportunity to submit data, views, comments, or arguments, orally or in writing. The opportunity for oral presentation or argument shall be granted if requested within five days after the initial publication of the notice.

New law criminalizes the act of any person who sells, distributes, manufactures, or dispenses a dangerous substance following the adoption of the dangerous substance stop order.

New law provides that each day of continued violation shall constitute a separate offense.

New law does not apply to any substance regulated by the Louisiana Pesticide Law.

Effective August 1, 2012.

(Adds R.S. 40:996.1 through 996.7)

### **Prescription Monitoring Information (Act No. 352)**

Old law, relative to the Board of Pharmacy, provided that prescription monitoring information will be protected health information not subject to disclosure with certain limited exceptions.

New law adds that the board may provide prescription monitoring information in response to queries from prescription monitoring programs located in other states, through its participation in a secure interstate data exchange system, but only if the laws of the state receiving the information provide:

(1) that the prescription monitoring information is protected health information, not subject to the Public Records Law, and not subject to disclosure; and

(2) that the prescription monitoring information shall not be subject to civil subpoena, nor shall such information be disclosed, discoverable, or compelled to be produced in any civil proceeding, nor shall such records be deemed

admissible as evidence in any civil proceeding for any reason.

Effective August 1, 2012.

(Amends R.S. 40:1007)

### **Emergency Personnel (Act No. 789)**

New law makes changes to address federally required changes governing emergency medical services.

New law clarifies the duties of emergency personnel with respect to the administration of drugs or procedures by the licensed emergency medical services practitioner. New law provides for qualifying emergency medical services practitioner students to perform specific functions.

New law provides when a life-threatening situation is present and communication with a physician is not possible, the emergency medical services practitioners may render service in accordance with an established protocol, and the new law removes the specific list of medical conditions.

New law provides for additional health care professionals who may provide services and attend to a patient on an ambulance to include a licensed respiratory therapist, a licensed nurse practitioner, a licensed physician assistant, or a licensed occupational therapist.

Effective upon signature of the governor (6/13/12).

(Amends R.S. 36:919.4, R.S. 40:1231, 1231.1, 1232, 1232.1, 1232.2, 1232.3, 1232.4, 1232.5, 1232.6, 1232.7, 1232.9, 1232.11, 1233, 1234, 1235, 1235.1, 1236, 1236.13, 1299.58.2, 1299.58.7, 1299.58.8, 1299.64.2, 1299.64.4, and 1299.64.5; repeals R.S. 40:1236.3)

### **High School Athletes (Act No. 706)**

New law requires each high school that participates in interscholastic athletics to have an automated external defibrillator on its premises, if the funding is available.

Effective August 1, 2012.

(Amends R.S. 40:1236.13(E))

### **Malpractice Defense Short-Cut (Act No. 802)**

Old law provided for the operation of a medical review panel and a state medical review panel.

New law requires the name of only one patient be included in a request for review of a malpractice claim. If the claim involves the care of a pregnant mother and her unborn child, the naming of the mother as the patient shall suffice.

New law provides that a health care provider may raise any peremptory exception in a civil action without first completing the review process with the review panel.

Effective August 1, 2012.

(Amends R.S. 40:1299)

### **Medical Disclosure for Informed Consent (Act No. 600)**

Old law required the secretary of the Dept. of Health and Hospitals (DHH) to determine which risks and hazards related to medical care and surgical procedures must be disclosed by a physician or other health care provider to a patient, or person authorized to consent for a patient, and to establish the general form and substance of such disclosure. New law moves these duties from the DHH secretary to the La. Medical Disclosure Panel created by new law.

New law provides that the panel shall identify and make a thorough examination of all medical treatments and surgical procedures in which physicians and other health care providers may be involved in order to determine which of those treatments and procedures do and do not require disclosure of the risks and hazards to the patient or person authorized to consent for the patient.

New law provides for procedures relative to medical disclosure lists and the required content of such lists.

New law provides that the medical disclosure lists shall be admissible in a health care liability suit or medical malpractice claim involving medical care rendered or a surgical procedure performed.

New law requires DHH to maintain a searchable database of all current medical disclosure lists

and make such database available on the department's website.

New law limits liability of the department, its agents or employees resulting from a health care provider attempting to obtain or obtaining informed consent.

New law provides that all existing medical disclosure lists duly promulgated by either a prior medical disclosure panel or the secretary of DHH shall remain effective and shall be deemed to have been promulgated by the La. Medical Disclosure Panel created by new law until such time as those lists may be updated and repromulgated pursuant to the provisions of new law.

Effective upon signature of governor (June 7, 2012).

(Amends R.S. 36:802 and R.S. 40:1299.39.5-1299.39.7, 1299.58, 1299.131, and 1300.11; Adds R.S. 36:259(MM))

### **Informed Consent (Act No. 759)**

New law places the duty to determine which risks and hazards related to medical care and surgical procedures must be disclosed by a physician or other health care provider to a patient, or a person authorized to consent for a patient, into the newly created La. Medical Disclosure Panel, which is made part of DHH.

New law provides that the panel shall identify and make a thorough examination of all medical treatments and surgical procedures in which physicians and other health care providers may be involved in order to determine which of those treatments and procedures do and do not require disclosure of the risks and hazards to the patient or person authorized to consent for the patient.

New law provides for the procedure and content of the medical disclosure lists.

New law provides that in order to be covered by prior law, the physician or other health care provider who will actually perform the contemplated medical or surgical procedure shall:

1. Disclose the risks and hazards in the form and to the degree required by the panel.

2. Disclose additional risks, if any, particular to a patient because of a complicating medical condition, either told to the physician or other health care provider by the patient or his representative in a medical history of the patient or reasonably discoverable by such physician or other health care provider.

3. Disclose reasonable therapeutic alternatives and risks associated with such alternatives.

4. Relate that he is obtaining a consent to medical treatment pursuant to the lists formulated by the panel.

5. Provide an opportunity to ask any questions about the contemplated medical or surgical procedure, risks, or alternatives and acknowledge in writing that he answered such questions, to the patient or other person authorized to give consent to medical treatment, receipt of which shall be acknowledged in writing.

New law provides an exception to the open meetings laws whereby if any member of the panel is physically present at a meeting, any number of the other members of the panel may attend the meeting by use of telephone conference call, videoconferencing, or other similar telecommunication methods for purposes of establishing a quorum or voting or for any other meeting purpose allowing a panel member to fully participate in any panel meeting. The new law shall apply without regard to the subject matter discussed or considered by the panel at the meeting. A meeting held by telephone conference call, videoconferencing, or other similar telecommunication method must meet certain requirements.

New law provides the DHH, its agents or employees, or any person serving as a member of the panel shall not be liable to any person, firm or entity, public or private, for any act or omission arising out of a health care provider attempting to obtain or obtaining informed consent pursuant to new law.

Effective upon signature of the governor.

(Amends R.S. 36:802 and R.S. 40:1299.39.5-1299.39.7, 1299.58, 1299.131, and 1300.11;

adds R.S. 36:259(MM); and repeals R.S. 40:1299.40)

### **Medical Malpractice (Act No. 538)**

New law retains prior law relative to medical malpractice and adds that it shall govern any cause of action for the unintentional acts or omissions arising from resuscitating a patient who has a declaration concerning life-sustaining procedures executed pursuant to R.S. 40:1299.58.1 et seq., a Louisiana Physician Order for Scope of Treatment executed pursuant to R.S. 40:1299.64.1 et seq., or a do not resuscitate order issued by a physician licensed in this state.

Effective upon signature of the governor.

(Adds R.S. 40:1299.41(L))

### **Medical Procedure Declarations (Act No. 353)**

Old law provided the procedure for making a declaration concerning medical procedures for a qualified patient who has not previously made a declaration.

New law swaps the order of priority and moves a judicially appointed tutor or curator to the first position on the order of priority and moves any person previously designated by patient to second on the order of priority.

New law changes the requirement that all available members of a class make the declaration to the requirement that a majority of the available members of the class make the declaration.

Effective August 1, 2012.

(Amends R.S. 40:1299.58.5)

### **Medical Records (Act No. 756)**

Old law provides procedures for obtaining medical records.

New law requires written notice of a violation of old law to be provided to the provider of medical records. New law assesses a civil penalty of \$500 per violation plus attorney fees and costs at



the court's discretion if the provider fails to comply within 15 days.

Effective August 1, 2012.

(Adds R.S. 40:1299.96(A)(2)(b)(iii))

### **Pain-Capable Unborn Child Protection Act (Act No. 738)**

New law prohibits an abortion of unborn child of 20 or more weeks post fertilization age.

New law provides that no abortion shall be performed or induced or be attempted to be performed or induced unless the physician performing or inducing it has first made a determination of the probable post-fertilization age of the unborn child or relied upon such a determination made by another physician.

Effective August 1, 2012.

(Adds R.S. 40:1299.30.1)

### **Suicide, Mercy Killing, and Euthanasia (Act No. 715)**

New law provides that nothing in existing law relative to medical consent shall be construed to condone, authorize, or approve assistance to suicide, mercy killing, or euthanasia.

Old law provides that nothing in existing law relative to declarations concerning life-sustaining procedures shall be construed to condone, authorize, or approve mercy killing or euthanasia. New law provides that nothing in existing law relative to declarations concerning life-sustaining procedures shall be construed to condone, authorize, or approve assistance to suicide.

Effective August 1, 2012.

(Amends R.S. 40:1299.55 and 1299.58.10(A))

### **Revenue Identification (Act No. 360)**

New law authorizes all parish and municipal entities to identify funds received from any source other than the state and to consult with DHH in an effort to maximize revenues for both the department and the parish and municipal entities.

New law does not require a parish and municipal entity to enter into an agreement with the department.

Effective upon signature of the governor.

(Adds R.S. 40:1300.351)

### **Outdoor Burning (Act No. 371)**

New law authorizes the state fire marshal to issue an order to prohibit or limit the private outdoor burning of materials in any area of this state. New law does not apply to prescribed burning.

Effective upon signature of governor (May 31, 2012).

(Adds R.S. 40:1602)

### **Fire Marshal Codes and Rules (Act No. 562)**

New law defines "ANSI/ASHRAE/IESNA 90.1" as the document developed by the American National Standards Institute, American Society of Heating, Refrigerating, and Air Conditioning Engineers, and the Illuminating Engineering Society of North America entitled Energy Standard for Buildings Except Low-Rise Residential Buildings.

New law provides International Energy Conservation Code means the document developed by the International Code Council, Inc., entitled International Energy Conservation Code (IECC).

New law changes the latest edition of enforcement rules adopted by the fire marshal.

Effective August 1, 2012.

(Amends R.S. 40:1730.42 and 1730.45)

### **Notification of Excavation (Act No. 103)**

New law provides there is a rebuttable presumption that an excavator failed to give the required notice, if the excavator failed to give any notice to the regional notification center:

(1) Within four hours of the beginning of the emergency excavation.

(2) In the case of a gubernatorially declared state of emergency due to a tropical storm or

hurricane event, within 12 hours of the beginning of the emergency excavation within the parishes to which the emergency declaration applies.

(3) In the case of a wildfire, within 24 hours after control of the emergency. New law defines "wildfire" as an uncontrolled combustion of natural vegetation.

(Amends R.S. 40:1749.12 and 1749.20; Adds R.S. 1749.15(C))

### **Automatic Self-Serve Gas Pumps (Act No. 433)**

New law authorizes the use, by the public, of self-service, coin-operated, credit card, or any other pump-activating automatic liquified petroleum gas dispensing device at any retail station. New law requires the dealer to post at each dispenser step-by-step operating instructions readily visible to the operator during transfer operations.

Effective August 1, 2012.

(Adds R.S. 40:1853.1; Repeals R.S. 40:1853)

### **Immunization (Act No. 645)**

New law requires that all general hospitals, during the time period from October first through the following March first, offer certain immunizations, as recommended by the Advisory Committee on Immunization Practices of the CDC, to inpatients aged 65 or older prior to discharge, unless contraindicated for a patient and contingent upon the availability of a specific payment in addition to the normal or prevailing level of payment, that is equal to the product cost and the administration costs for the immunization over and above the reimbursement for in-patient care and contingent on the availability of the vaccine.

Effective August 1, 2012.

(Adds R.S. 40:2023)

### **Inpatient Psychiatric Hospital License Suspension (Act No. 306)**

New law authorizes the secretary of DHH to immediately suspend the license of a

freestanding inpatient psychiatric hospital, if the applicant or licensee is in violation of the law or rules and regulations and the secretary determines the violation poses an imminent or immediate threat to the health, welfare, or safety of a client or patient.

New law provides the immediate suspension shall take place five days after receipt of the written notice by the freestanding inpatient psychiatric hospital. New law provides that DHH shall assist the hospital with discharge planning, which shall address transition, relocation, and transportation issues.

New law provides for the notification, appeal, and injunctive relief process for providers who have a license suspended by the secretary.

New law limits the effect of ownership or management prohibition to any owner that had direct knowledge of the practices which led to the immediate suspension or any on-site administrator of the licensee.

Effective upon signature of the governor.

(Adds R.S. 40:2110(D) and (E))

### **Smoking in Hospitals (Act No. 373)**

Old law prohibits smoking in enclosed areas of all licensed hospitals, except psychiatric hospitals and hospitals of DPS&C and DHH.

New law deletes DHH and limits the exception for psychiatric hospitals to private facilities.

New law requires DHH to establish procedures for treatment of smokers with mental illness in its psychiatric hospitals and forensic facilities which are smoke free.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 40:2115(C))

### **Adult Residential Care (Act No. 676)**

New law provides that DHH shall have a moratorium on the licensure of level 4 adult residential care providers until July 1, 2017. New law provides the moratorium shall not apply to a provider which has received facility need review approval from DHH for a level 4

adult residential care provider on or before April 25, 2012.

Effective August 1, 2012.

(Adds R.S. 40:2166.7.1)

## **TITLE 41: PUBLIC LANDS**

There were no new laws of interest.

## **TITLE 42: PUBLIC OFFICERS AND EMPLOYEES**

### **Open Meetings Procedure (Act No. 461)**

New law prohibits changes to the agenda less than 24 hours prior to the meeting.

New law requires each item on the agenda to be listed separately and described with reasonable specificity.

New law requires the presiding officer or his designee to read aloud the description of an item prior to any action on the item by the body.

Effective August 1, 2012.

(Amends R.S. 42:19(A)(1)(b)(ii))

### **Website Notice of Public Meetings (Act No. 747)**

New law provides that, in addition to posting a copy of the notice of a meeting at the principal office of the public body holding the meeting, or if no such office exists, at the building in which the meeting is to be held, or by publication of the notice in an official journal of the public body, no less than 24 hours before the meeting, a public body which has a website shall provide notice of the meeting on the public body's website for no less than 24 hours immediately preceding the meeting. New law provides that the failure to timely post notice via the Internet or the inability of the public to access the public body's website due to technological failure shall not be a violation of the Open Meetings Law.

New law further encourages each public body subject to the Open Meetings Law that does not have a website to contact the governing authority of the parish in which the public body is located, or the division of administration if the public body is in the executive branch of state government, about the feasibility of providing notices of meetings on the parish's or division's website, and if so authorized, to publish a notice in the official journal of the public body about the availability of notices on that website and to include the Internet address of the website in such notice.

Effective upon signature of governor (June 12, 2012).

(Amends R.S. 42:19(A)(2)(a))

### **Nepotism and Hospital Service Districts (Act No. 699)**

Old law relative to nepotism prohibits a governmental entity from employing an immediate family member of a member of a governing authority or of the chief executive of the governmental entity. Old law provides that any hospital service district with a population of 100,000 persons or less, or hospital public trust authority located in such a district, may enter into an initial recruiting contract with or employ as a health care provider, a licensed physician, a registered nurse, or an allied health professional who is a member of the immediate family of any district board, authority, or parish governing authority member or of the chief executive of the district or authority, if such family member is the only qualified applicant who has applied for the position after it has been advertised.

New law extends exception to hospital service districts in a parish with a population of between 400,000 and 440,000 persons and to hospital public trust authorities located in such districts, and provides that the immediate family member must be a qualified applicant, not the only qualified applicant.

Effective upon signature of governor (June 11, 2012).

(Amends R.S. 42:1119)

### **Ethics Code Exception for Physicians and Hospital Service Districts (Act No. 724)**

New law provides an exception from "revolving door" provisions of Code of Governmental Ethics to allow a licensed physician who is a former member of the governing authority of a hospital service district, or any legal entity in which the physician is an officer, director, trustee, partner, or employee, to be employed by or to contract with the hospital service district, or any entity over which the governing authority of the hospital service district exercises supervision or jurisdiction, to perform professional health care services directly related to his expertise as a physician for the purchase or lease of property related to the physician's health care practice for the sale of the physician's practice.

Effective upon signature of governor.

(Adds R.S. 42:1121(H))

### **Insurance Producer Exception to Ethics Code (Act No. 864)**

New law provides that an insurance producer shall not be precluded by the ethics code from serving as the insurance producer of record; from providing any of the normal insurance services; from providing risk management services, including but not limited to providing advice or recommendations regarding insurance coverages, markets, costs, terms, selection of coverages and all related matters or any combination thereof for a governmental entity, provided that an insurance producer who provides or solicits to provide any of those services shall not serve in any other official decision-making capacity over insurance issues for the governmental entity, including but not limited to elected or appointed positions, advisory committees, as an employee, or as risk manager. Any insurance producer who has served in any official decision-making capacity over insurance issues for a governmental entity who wishes to solicit to provide any of the services for that same governmental entity shall comply with the two-year post-service restrictions in the ethics code.

New law provides that the ethics code does not preclude an insurance producer from being compensated by means of normal commissions or pursuant to a written contract providing for a stipulated fee, or both, for any of the services authorized pursuant to new law provided that the producer shall fully disclose to the governmental entity in writing all fees, commissions, or other compensation payable to the producer of record from the insurer or any source other than the governmental entity that relate to the placement of the services provided.

New law provides that existing law (ethics code) does not preclude an insurance producer from receiving fees, commissions, or other compensation payable to the insurance producer from insurance companies for services rendered to those insurance companies for products or services sold to other governmental entities or persons that do not directly relate to the services provided by the insurance producer to the governmental entity; provided that the insurance producer discloses to the governmental entity the name of any insurer or source from which he receives fees, commissions, or other compensation, if the insurer or source is providing or seeking to provide services or insurance coverage to the governmental entity at the time the insurance producer is providing services to the governmental entity.

Old law specified that nothing in the exception to existing law (ethics code) precluded a governmental entity from contracting with an insurance consultant, separate from the producer of record, to provide risk management services and to assist the governmental entity in making insurance decisions. New law changes the term "insurance consultant" to "insurance producer" and specifies that nothing in the exception precludes a governmental entity from contracting with an insurance consultant, separate from the producer of record, to provide risk management services and to assist the governmental entity in making insurance decisions.

New law provides that nothing in the law shall prevent a governmental entity from contracting with an insurance or risk management consultant who is not an insurance producer.

Effective August 1, 2012.

(Amends R.S. 42:1123(37))

### **Board of Ethics and Ethics Adjudicatory Board (Act No. 608)**

New law makes technical changes to clarify which powers, functions, and duties are performed by the BOE and the EAB.

New law clarifies that the BOE shall enforce any final decision or final order of the EAB in the same manner as it enforces its own. New law specifies that all determinations of a panel shall be by a majority vote, unless the panel consists of three members, in which case all determinations of the panel require a unanimous vote of the members of the panel.

New law provides that if the BOE 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 BOE voted to consider the matter, the matter shall be dismissed. New law provides that the one-year period shall be prescriptive and may be suspended, interrupted, or renounced. New law provides that the prescriptive period shall be suspended by specified conduct of the subject of the investigation or complaint.

New law provides that the subject of the investigation or complaint may consent in writing to the suspension of the prescriptive period. New law provides that determinations concerning the prescriptive period shall be made by the EAB.

Old law provides for actions the BOE or a panel thereof may order relative to enforcement of violations of the laws within the jurisdiction of the BOE and for penalties which may be assessed for such violations. New law specifies that the actions may be taken and penalties assessed after a determination by the EAB that a violation has occurred and makes other technical changes relative thereto.

Old law authorizes the BOE to issue advisory opinions with respect to provisions of law within its jurisdiction. New law provides that if a person who is the subject of an ethics hearing

received an advisory opinion from the BOE and acted or relied on the advisory opinion, the advisory opinion shall be admissible as evidence at the hearing.

Old law relative to determinations by the EAB concerning whether an ethics violation has occurred, provided that it may consider testimony only if it is given under oath and transcribed verbatim by a reporter. New law provides instead that the EAB may consider testimony pursuant to the La. Code of Evidence.

Existing law provides that it shall be a misdemeanor for any member of the BOE, its executive secretary, other employee, or any other person, to make public the testimony taken at a private investigation or private hearing of the BOE or to make any public statement or give out any information concerning a private investigation or private hearing of the BOE without the written request of the public servant or other person investigated. New law provides an exception for the person who is subject to the investigation or complaint.

Effective upon signature of governor (June 7, 2012).

(Amends R.S. 42:1132, 1134, 1135, 1141, and 1151-1157; Adds R.S. 42:1141 and 1141.2-1141.6; Repeals R.S. 42:1141.1 and 1157.2)

### **Board of Ethics and Ethics Adjudicatory Board (Act No. 607)**

Old law provided for appeal when action was taken against a public servant or person "by" the Board of Ethics or a panel thereof. New law provides for such appeal when the action is taken against a public servant or person "by order of" the Board of Ethics or a panel thereof instead of "by" the board or panel.

New law provides that an order of the Board of Ethics or panel thereof may be appealed by filing a written motion with the Board of Ethics within 30 days after the signing and transmission of the notice of the order.

In each situation discussed above where the right to appeal applies in connection with actions and orders of the Board of Ethics, new law expressly makes the right to appeal applicable to actions

and final decisions of the Ethics Adjudicatory Board.

New law provides that a final decision of the Ethics Adjudicatory Board may be appealed by filing a written motion with the Ethics Adjudicatory Board within 30 days after the signing and transmission of the notice of the final decision, or if a rehearing is requested, within 30 days after the transmission of the notice of the decision of the Ethics Adjudicatory Board on the rehearing.

Old law provides for appeals to a civil service commission or higher education management board in specific situations involving disciplinary actions taken against certain employees. New law makes provisions of existing law applicable to actions and final decisions of the Ethics Adjudicatory Board.

New law authorizes the Board of Ethics, upon unanimous vote of its members present and voting, to appeal questions of law in a final decision of the Ethics Adjudicatory Board to the First Circuit Court of Appeal within 30 days after the signing and transmission of the notice of a final decision, or final decision on rehearing of the Ethics Adjudicatory Board. New law provides that if the Board of Ethics does not prevail in the final disposition of its appeal, the Board of Ethics shall be responsible for the payment of reasonable attorney fees and court costs, inclusive of all stages of litigation and appeal, of the other party.

Old law provides that a declaratory opinion of the board shall be considered a final decision and shall be reviewable by the First Circuit Court of Appeal. Old law provides that any refusal by the Board of Ethics or a panel thereof to issue a declaratory opinion is subject to the supervisory jurisdiction of the appellate court. Old law provided that any preliminary, procedural, or intermediate action or ruling of the Board of Ethics or a panel thereof was subject to such supervisory jurisdiction. New law repeals prior law.

Effective upon signature of governor (June 7, 2012).

(Amends R.S. 42:1142)

#### **Financial Disclosure by Public Officials (Act No. 574)**

Old law required the financial disclosure statement to be filed within 10 days of the day the candidate filed his notice of candidacy for the office. New law requires instead that the statement be filed within three business days after the close of the qualifying period during which the candidate filed his notice of candidacy.

Old law provides that if a person fails to timely file a financial disclosure statement, or if a person omits required information, or the ethics board has reason to believe inaccurate information is included on the statement, the board shall send the person a notice of delinquency by certified mail. Old law requires the person to respond either by filing the statement, disclosing or accurately disclosing the information, or filing an answer contesting the allegation. Old law required such response within 14 business days. New law provides instead that the person has seven business days from receipt of the notice to respond.

New law provides an exception to the requirement to file a financial disclosure statement for the preceding calendar year by May 15<sup>th</sup> of the year following the termination of the holding of such office or position, if the holding of the office or position terminates in the month of Jan. and the person files a financial statement by May fifteenth of the year in which the holding of the office or position terminated containing the information required by existing law for the period in which the person held the office or position during that year.

Effective January 1, 2013.

(Amends R.S. 18:1495.7 and R.S. 42:1124, 1124.2, 1124.2.1, 1124.3, and 1124.4)

#### **TITLE 43: PUBLIC PRINTING AND ADVERTISEMENTS**

There were no new laws of interest.

## **TITLE 44: PUBLIC RECORDS AND RECORDERS**

### **Legislative Investigation Records (Act No. 850)**

Old law provided for an exception to the public records law for records in the custody or control of any attorney or counsel whose duties are performed by or under the authority of the legislature relative to any case, cause, charge, or investigation conducted by the legislature.

New law provides instead for an exception for records in the custody or control of the legislature, or either house or any committee or officer thereof relative to any case, cause, charge, or investigation conducted by the legislature or either house or any committee or officer thereof. New law provides that all records, etc. obtained or developed pursuant to any case, cause, charge, or investigation conducted by the legislature or either house or any committee or officer thereof which pertain to or impart the identity of any confidential source of information are privileged, and prohibits any member, officer, or employee of the legislature from disclosing or producing such records except on court order.

New law provides that after final disposition, the records are public and subject to the public records law, except those relative to the identity of confidential sources.

New law provides for an exception to the public records law for any privileged or confidential data or records in the custody of the legislature or either house thereof which are obtained or used for the purpose of considering the election, confirmation, or approval of any nomination or appointment for which election, confirmation, or approval by legislature or either house thereof is required. New law allows the disclosure of any information relevant to the education, employment history, or work experience of an appointee or nominee.

(Amends R.S. 44:2)

### **Confidentiality of Economic Development Information (Act No. 57)**

New law creates an exemption from the Public Records Law for proprietary or trade secret information submitted to the Dept. of Economic Development for economic development purposes.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 44:3.2)

### **Availability of Public Records (Act No. 801)**

Old law provides that the Public Records Law does not apply to certain records of a board or institution of higher learning for programs and institutions under their supervision and management, unless specifically required by state or federal statute or ordered by a court under rules of discovery, and lists several specific exemptions.

New law adds the following exemptions:

- (1) Test questions, scoring keys, and other examination data pertaining to the administration of an academic examination.
- (2) Teaching materials used by faculty that are not provided to students, including unpublished lecture notes, outlines, slides, syllabi, or recordings.

Effective upon signature of governor (June 13, 2012).

(Amends R.S. 44:4(16)(intro. para.); Adds R.S. 44:4(16)(e) and (f))

### **Exemption for Judicial and Court Report Records (Act No. 593)**

New law provides that the Public Records Law does not apply to the physical medium or contents of any electronic storage device including any compact disc, digital video disc, jump drive, audio or video cassette tape, or any other type of electronic storage device, or to any shorthand or longhand notes or writings or stenotype paper tapes in the custody or under the control of a judge, clerk of court, official court reporter, deputy official court reporter, or

certified electronic reporter and which are produced, made, or used by an official court reporter, deputy official court reporter, free lance reporter, or certified electronic reporter in any court of record of the state during any proceedings before that court to report the proceedings or for the purpose of transcribing into typewriting those portions of the proceedings required by law or by the court to be transcribed.

New law provides that it does not apply to the physical medium or contents of any electronic storage device used or referred to in any hearing, administrative proceedings, or disciplinary proceeding, the record of which is public according to law, before the Judiciary Commission of La., the Office of Disciplinary Counsel, the La. Attorney Disciplinary Board, the Board of Examiners of Certified Shorthand Reporters, or any board, hearing officer, or panel of such entities.

Effective August 1, 2012.

(Adds R.S. 44:4(45))

#### **Expungement (Act No. 776)**

New law restricts an expungement of a felony conviction to once in a person's lifetime.

Effective August 1, 2012.

(Adds R.S. 44:9)

#### **Public Records Exemption for Information Regarding Professional Counselors (Act No. 460)**

New law adds an exception to the Public Records Law covering information that concerns the fitness of a person to receive or continue to hold a license or certificate to practice counseling and therapy and that is in the custody or control of the La. Licensed Professional Counselors Board of Examiners. However, new law authorizes release of a final action taken by the board relative to the fitness of a person to receive or to continue to hold such a license or certificate and any legal grounds upon which such an action is based.

Effective August 1, 2012.

(Amends R.S. 44:9; Adds R.S. 44:4(45))

#### **Pre-Adoption Publication of Public Collective Bargaining Agreements (Act No. 168)**

New law provides that no collective bargaining agreement shall be accepted by a public employer or presented for acceptance to a public employer or labor organization until the collective bargaining agreement has been made available to the public via the Internet for at least five days. New law requires the public employer to issue a written public notice in the manner provided for open meetings informing the public of how such agreement may be accessed.

"Public employer" means the state or any political subdivision thereof, or any department, agency, office, institution, or other organizational unit of state or local government that employs one or more individuals in any capacity.

(Adds R.S. 44:67.1 and 67.2)

### **TITLE 45: PUBLIC UTILITIES AND CARRIERS**

#### **Common Carriers (Act No. 804)**

New law redefines "certificate" as the permission issued to common carriers by motor vehicles; repeals definition of "limousine service"; and defines "passenger carrying vehicle" or "passenger service" as a nonscheduled charter passenger service using vehicles which meet manufacturer's specifications for no more than 15 passengers.

Old law defined "permit" as the permission issued to contract carriers by motor vehicle. New law adds a reference to the provisions of old law for wreckers and towing services.

New law adds passenger carrying vehicles operated by both common and contract carriers to the list of those who shall carry public liability and property damage insurance.

Old law prohibited a person from holding at the same time, or operating under, both a common



carrier certificate and a contract carrier permit. New law does not prohibit a carrier from holding a common carrier certificate or contract carrier permit of waste and also holding a certificate for the transportation of salt water utilized in oil well exploration and production.

Old law did not apply to funeral cars or ambulances, including vehicles used exclusively for commercial nonemergency medical transportation. New law specifies that the exempted vehicles used exclusively for commercial nonemergency medical transportation are those operated by Medicaid or Medicare providers.

Old law exempted passenger carrying vehicles, if operated within the limits of the parish of their domicile or if the major portion of their operations are conducted within the corporate limits of one municipality, from regulation by the LPSC. New law repeals old law.

Effective August 1, 2012.

(Amends R.S. 45:162(2), (12), (13), (14), and (20)(b), 163(D)(1)(b), 164(C), (D), (E)(1) and (2)(a) and (b), 165, 169, 172(A)(3), and 179; Repeals R.S. 45:163(E) and 172(A)(4)(c))

#### **Telephone Solicitations (Act No. 82)**

New law authorizes telephone solicitations by paid professionals on behalf of nonprofit organizations composed of public safety personnel.

(Adds R.S. 45:844.12(6)(k))

### **TITLE 46: PUBLIC WELFARE AND ASSISTANCE**

#### **Child Support Obligations (Act No. 444)**

Old law authorized transfers of child support obligations to nonparent custodians and certain state agencies which have legal custody of a child.

New law authorizes the court to amend an order of support to name the current caretaker as the obligee upon motion of the department or district attorney.

New law provides for procedures for the transfer of a child support obligation to a current caretaker. New law requires the current caretaker to provide an affidavit of the child's physical presence in the caretaker's home. New law further provides for notice to the obligor and obligee of support order before filing for an ex parte motion and order to have the caretaker recognized as the new obligee. New law authorizes interim support to the current caretaker pending a rule to show cause why the child support payments should not be redirected to the current caretaker permanently.

Old law required employers to provide a report to DCFS containing identifying information for both the employee and the employer for the purpose of child support establishment and enforcement. New law adds that employers are also required to report the date the employee began working for the employer.

Effective August 1, 2012.

(Amends R.S. 46:236.2 and 236.14; Adds R.S. 46:236.1.12)

#### **Unemployment Benefits and Child Support (Act No. 87)**

Old law authorizes the Dept. of Children and Family Services to intercept, encumber, freeze, or seize unemployment compensation benefits in cases where there is a child support arrearage or child support overpayment made to a custodial parent. New law clarifies that child support overpayments are excluded from recovery from unemployment compensation benefits.

(Amends R.S. 46:236.15(D)(1)(a))

#### **Day Care Centers (Act No. 430)**

Old law requires the Dept. of Children and Family Services to promulgate rules and regulations for Class A and Class B day care centers and provides certain requirements for the content of such rules and regulations. New law adds a requirement that such rules and regulations include procedures which allow a day care center to remedy certain deficiencies immediately upon identification by DCFS in an onsite inspection, provided that any deficiency

which may be remedied in such manner does not constitute a critical violation of licensing standards.

(Amends R.S. 46:1409, 1413, and 1414)

#### **Child Care Facilities and Child-Placing Agencies (Act No. 599)**

New law authorizes, in lieu of revocation, the issuance of a written warning which includes a corrective action plan for violations related to supervision, criminal history record checks, the state central registry disclosure process, staff-to-child ratios, motor vehicle checks, or failing to report critical incidents to the department, if such condition or occurrence does not pose an imminent threat to the health, safety, rights, or welfare of a child.

New law provides that the failure to implement a corrective action plan may result in either the assessment of a civil fine or license revocation or may result in both actions being taken by the department.

New law requires the department to adopt rules and regulations to provide for notice to the child care facility or child-placing agency of any violation, for a departmental reconsideration process for sanctions issued, and for an appeal procedure including judicial review. New law provides that any such appeal is suspensive. New law requires all appeals to be heard by the division of administrative law pursuant to state law.

New law specifies that during the pendency of an appeal a child care facility or child-placing agency may continue to receive funding for services provided to those eligible children as determined by the department.

New law authorizes the department to institute any necessary civil court action to collect fines imposed and not timely appealed. New law prohibits child care facilities or child-placing agencies from claiming imposed fines as reimbursable.

Effective Jan. 1, 2013.

(Amends R.S. 46:1421; Adds R.S. 46:1430)

#### **Reparations (Act No. 396)**

Old law provides that an application for reparations shall be filed in writing with the Crime Victims Reparation Board within one year after the date of the personal injury, death, or catastrophic property loss or within such longer period as the board determines is justified by the circumstances.

New law adds that an application filed by a dependent or legal representative of a deceased victim of a homicide offense, or filed by a claimant as defined in existing law, shall be filed within five years after the date on which the judgment of conviction becomes final or within five years after the date on which the supreme court denies the defendant's first application for appeal. New law provides that when the death of the offender occurs prior to a conviction for the homicide offense, the application shall be filed within five years after the date of the death of the offender.

New law requires the judge, during the sentencing for a crime, to inform the victim of the crime of the potential eligibility for an award of reparations.

Effective August 1, 2012.

(Amends R.S. 46:1804 and 1806(A))

#### **Hospital Service District Investments (Act No. 264)**

New law authorizes a hospital service district to invest its funds as provided by law for investment of funds of LASERS. New law requires such an investment to be made only in compliance with rules and regulations established by the hospital service district commission and in compliance with the provisions of R.S. 11:263 and any other law which provides for investments in which LASERS funds may be invested. New law is applicable to hospital service districts except a hospital owned or operated by the state.

Effective July 1, 2012.

(Adds R.S. 33:2957 and R.S. 46:1073.1)

### **Crime Story Profits (Act No. 799)**

New law prohibits persons convicted of a capital offense and sentenced to death from profiting from any notoriety gained from the commission of those crimes or the sentences imposed for those crimes.

New law provides that any proceeds or profits from any source, received or to be received, directly or indirectly, by a defendant or by any agent, assignee, or representative of the defendant, as a direct or indirect result of the defendant's crime or sentence for such crime, or the notoriety that such crime or sentence has conferred upon him, are subject to a court order requiring that such proceeds or profits be paid over to the state treasurer for deposit in an escrow account.

New law provides that every person, firm, corporation, partnership, association, or other legal entity that contracts with a defendant for any purpose described in new law must file a copy of the contract with the state treasurer, and pay over to the treasurer, commencing with the date of the first payment under the contract, any funds that otherwise, by terms of the contract, would be payable to the defendant or to the defendant's agent, assignee, or representative.

New law provides that any proceeds from a contract with the defendant relating to a depiction or discussion of the defendant's crime in a movie, book, newspaper, magazine, radio or television production, or live entertainment or publication of any kind are not subject to court order requiring payment of such proceeds to the treasurer, unless an integral part of the work is a depiction or discussion of the defendant's crime or an impression of the defendant's thoughts, opinions, or emotions regarding such crime.

New law provides that a victim who meets the eligibility requirements and other provisions of new law is entitled, subject to the limitations contained in new law, to an amount from the defendant's escrow account equal to the unsatisfied portion of the civil judgment or reparations award obtained by the victim.

New law provides that proceeds paid into a defendant's escrow account are to be retained for a period of 10 years after the date of the court

order or deposit by the contracting party, but during that period may be levied upon to satisfy a money judgment or reparations award rendered in favor of a victim or the legal representative of the victim of the defendant's crime. New law provides that, if so ordered by a court, with notice to all interested parties and opportunity for hearing, the escrow account is to be used for specified purposes.

New law provides that at the end of the 10-year period provided for in new law, the remaining escrow account funds are to be paid into the Crime Victims Reparations Fund.

New law provides that if the conviction is reversed, the treasurer is to pay any money remaining in the escrow account to the defendant.

New law specifies the persons eligible to have a judgment or reparations award satisfied from an escrow account.

New law provides that a person who is criminally responsible for the crime upon which a claim is based, or an accomplice or accessory of such person, is not eligible to receive an award under new law.

New law provides that a resident of Louisiana who is the victim of a defendant's crime which occurred outside of Louisiana, and any other person who is injured as a result of a crime occurring outside of Louisiana, is eligible for an award pursuant to new law if certain conditions are met.

New law provides that a victim of the defendant's crime is to register with the treasurer a notice of intent to file a claim against the defendant's escrow account pursuant to a judgment, a pending lawsuit, a prospective lawsuit, or a reparations award by the board, within one year after establishment of the escrow account.

New law provides that no payments to victims can be made until the time limit for filing a notice has expired or it is established that all victims have filed their notices, whichever is sooner.

New law provides that any action taken by a defendant, whether by way of execution of a

power of attorney, creation of corporate entities, or otherwise, to defeat the purposes of new law is null and void.

Effective upon signature of the governor.

(Amends R.S. 15:833(A) and R.S. 46:1816(B)(6); adds R.S. 14:402(D)(10), R.S. 46:1851-1857)

## **TITLE 47: REVENUE AND TAXATION**

### **Tax Free Shopping Extension (Act No. 435)**

Old law provides that the La. Tax Free Shopping Program, a sales tax refund program for foreign visitors to the state, is effective until July 1, 2013. New law retains changes the termination date to July 1, 2017.

Effective July 1, 2012.

### **Withholding Taxes (Act No. 107)**

New law requires every employer who withholds taxes to file the withholding return on a quarterly basis. The due date for the filing of returns shall be the last day of the month following the close of the calendar reporting period.

New law generally consolidates and makes uniform a variety of provisions of old law, some of which are obsolete.

Effective July 1, 2012.

(Amends R.S. 47:114(A)-(H))

### **Partnership Taxation (Act No. 580)**

Old law requires each entity treated as a partnership for state income tax purposes to file composite income tax returns and make composite payments on behalf of its nonresident partners or members who do not file an individual tax return. New law requires that tax credits be taken on the composite return for the applicable tax period in which the credit was earned. New law requires the Dept. of Revenue, in the payment of overpayments, to make payment to the partnership that filed the

composite return which reflected the overpayment.

New law shall be effective for taxable periods beginning on or after Jan. 1, 2013.

Effective June 30, 2012.

(Adds R.S. 47:201.1(F))

### **Sales Tax Resale Certificates (Act No. 438)**

Old law provides that solely for purposes of the imposition of the sales and use tax levied by a political subdivision or school board, "retail sale" or "sale at retail" shall mean a sale to a consumer or to any other person for any purpose other than for resale in the form of tangible personal property.

New law requires, for purposes of determining whether a sale is a sale for resale, that a local collector accept a resale certificate issued by the Dept. of Revenue, provided the taxpayer includes the parish of its principal place of business and local sales tax account number on such certificate. New law further provides that in the case of an intra-parish transaction from dealer to dealer, the collector may require that the local exemption certificate be used in lieu of the state certificate.

Effective August 1, 2012.

(Amends R.S. 47:301(10)(a)(ii))

### **Sales Tax Exemption for Sales to St. Bernard Project (Act No. 266)**

New law provides for a local sales and use tax exemption for the sale of construction materials to the "St. Bernard Project, Inc." when such materials are intended for use in rehabilitating existing residential dwellings or constructing new residential dwellings.

Effective July 1, 2012.

(Adds R.S. 47:305.71 and 337.9(D)(33))

### **Tax Refund Methods (Act No. 818)**

Old law authorizes the secretary of the Dept. of Revenue to pay refunds for overpayments of tax.

New law requires the paper form of the individual income tax return to provide the following options for receipt of a refund: check, debit card, direct deposit, or any other format by which the department may pay a refund. A taxpayer who files a paper tax return may select the payment method for his refund. If a tax return does not reflect the selection of a specific method of payment by the taxpayer, the refund shall be paid in a manner determined by the secretary.

New law authorizes the payment of tax refunds by use of a debit card at the option of the taxpayer.

Provisions of the Act are effective for taxable years 2013, 2014, and 2015.

Effective August 1, 2012.

(Amends R.S. 47:1621(D)(1))

#### **No Zappers or Phantoms (Act No. 839)**

New law makes it unlawful for any person to knowingly create, design, manufacture, sell, purchase, lease, install, update, repair, service, transfer, use, or possess or otherwise make available any automated sales suppression device ("zapper") or phantom-ware.

New law provides for the following definitions:

"Automated sales suppression device" or "zapper" means a software program that falsifies the records of electronic cash registers, including transaction data and transaction reports, and that is either carried on a memory stick or other flash memory data storage device, carried on a removable optical disc, accessed through an Internet link, or accessed or stored via any other means.

"Phantom-ware" means a hidden programming option embedded in the operating system of, or hardwired into, an electronic cash register that can be used to create a virtual second or alternate electronic cash register or to eliminate or manipulate transaction records, which may or may not be preserved in digital format, to represent either the actual or the manipulated record of transactions in the electronic cash register.

Effective August 1, 2012.

(Adds R.S. 47:1641.1)

#### **Property Taxes and Overnight Leisure Passenger Vessels (Act No. 65)**

For purposes of ad valorem taxation, old law defines public service property to include barge lines, towing, and other water transportation companies.

New law excludes "overnight leisure passenger vessels" from the definition of barge line, towing, and other water transportation companies.

(Amends R.S. 47:1851(B))

#### **Assessment Corrections (Act No. 554)**

Old law provided relative to the requirements and procedures for cancelling an assessment with a clerical error, erroneous or double assessments, or that the property is exempt from taxation. New law provides that when the correction of an assessment is related to an assessment for a closed business and the owner cannot be located by the assessor and the business is classified as inactive, the affidavit required shall state that the correction of the assessment relates to a closed, inactive business and that the owner of the business cannot be located. New law exempts these corrections from the requirement that the affidavit of the assessor be accompanied by the rendition of the taxpayer in order for the Tax Commission to authorize and direct a correction to the assessment on the tax roll.

Effective August 1, 2012.

(Amends R.S. 47:1991(A))

#### **Tax Sales (Act No. 836)**

New law deletes the authorization for an assessor to make separate assessments for undivided interests in each tax parcel.

New law requires a tax collector, no later than the first Monday in March, to search the mortgage and conveyance records to identify the property's "tax sale parties". Written notice by certified mail, return receipt requested, must be

sent to each "tax sale party" informing them that the taxes must be paid within twenty days or the tax sale title to the property will be sold according to law.

New law provides that in the absence of actual notice of the sale or the demonstration of a reasonable effort to provide notice, where the name and address of the tax sale party were reasonably ascertainable or where the transfer was recorded after the tax collector completed his pre-sale tax sale party research, the tax collector is to cancel the sale of the property and refund the tax sale purchaser the tax sale purchase price. New law requires that the collector sent the transferee a tax notification, inclusive of tax sale costs accrued.

New law requires that the tax sale be conducted on any weekday within the legal hours for judicial sales. New law provides for online tax sales or electronic bidding over the course of multiple days with bids being placed on any day at any time upon which bidding has not closed.

New law requires the tax collector, within 30 days of filing the tax sale certificate, to provide written notice that tax sale title to the property has been sold at tax sale.

Effective August 1, 2012.

(Amends R.S. 47:2126, 2153, 2154, and 2156)

### **School Tuition Donation Rebates (Act No. 25)**

New law authorizes a rebate for donations to school tuition organizations equal to the actual amount donated by the taxpayer used to fund a scholarship for a qualified student.

New law authorizes a rebate for donations a taxpayer makes to a school tuition organization (STO) which provides scholarships to qualified students to attend a qualified school. The amount of the rebate shall be equal to the actual amount of the taxpayer's donation used by a STO to fund a scholarship, exclusive of administrative costs.

New law requires a donor, at the time a donation is made, to indicate the duration of time the STO may retain and carry forward his donation. New law provides for the method of refunding donated monies at the request of the donor.

The amount of the rebate shall be equal to the actual amount expended by the STO on scholarships, exclusive of administrative costs, and shall be prorated as applicable. No more than 5% of a donation shall be used for administrative or promotional costs. The donation must be made by a taxpayer who files a La. income tax return.

New law prohibits a scholarship from being designated or named after a private entity or from being earmarked to provide a scholarship for a particular student or school.

New law defines an "STO" as a §501(c)(3) tax exempt organization which donates no less than 95% of the monies from donations for scholarships to students for attendance at a qualified nonpublic school of their parent's choice. New law limits the maximum amount of a scholarship for a student in grades K-8 to the lesser of 80% of the state average MFP per pupil funding amount for the previous year or the actual amount of tuition and fees, and for a student in grades 9-12 to 90% of the state average MFP per pupil funding amount for the previous year.

New law establishes requirements for STO's which include:

- (1) Provide scholarships on a first-come, first-served basis, giving priority to students who received a scholarship the previous year.
- (2) Ensure that scholarships granted to qualified students are portable during the school year and can be used at any qualifying school that accepts a qualified student.
- (3) Provide a public report to DOE and Dept. of Revenue (DOR) each fiscal year which contains information regarding donations received, scholarships awarded in the previous fiscal year, and the actual tuition and fee amounts for attendance at qualified schools.
- (4) Annually demonstrate its financial accountability.

New law defines a "qualified school" as a nonpublic elementary or secondary school which is probationally or provisionally approved by the Board of Elementary and Secondary Education

and meets the criteria set forth in *Brumfield, et al. v. Dodd*.

New law requires a qualified school to:

(1) Conduct criminal background checks on its employees and exclude from employment any person not permitted by state law to work in a nonpublic school.

(2) Annually administer the school and district accountability system test that measures learning gains in math and language arts to all participating students in grades that require testing.

(3) Admit qualified students for enrollment based on the letter grade of the public school for which the qualified student was attending or would have attended, giving first priority to qualified students from public schools that received a letter grade "F" or "D" or any variation thereof.

New law provides for a process to be used by qualified schools regarding the admission of students, including preferences for certain students.

New law requires any qualified school that receives more than \$50,000 in scholarship donations from a STO to demonstrate its financial viability.

New law defines a "qualified student" as a child who is a member of a family that resides in La. with a total household income that does not exceed 250% of the federal poverty level.

New law prohibits a qualified student receiving a scholarship from an STO from receiving any other publicly funded scholarship or other financial assistance; however, a student may receive scholarships from multiple STO's.

New law prohibits any parent who receives scholarship payments under the new law from claiming the amount received for purposes of any other credit, deduction, exemption, or rebate.

New law requires DOE to verify that each qualified student has not received scholarships in excess of actual tuition and fees. If a scholarship exceeds the actual tuition and fees,

the STO is required to refund the difference to the state.

New law grants discretionary authority to DOE to conduct either a financial review or audit of an STO. New law requires DOE to bar an STO from participating in the provisions of new law under certain circumstances.

New law requires DOR to pay rebates from the current collections of the taxes imposed by old law.

Effective Jan. 1, 2013, for donations made to an STO which provides scholarships for the 2013-2014 school year and thereafter.

(Adds R.S. 47:6301)

### **CCC Bridge Tolls Election (Act No. 865)**

New law provides that an election shall be held on Nov. 6, 2012, in the parishes of Jefferson, Orleans, and Plaquemines, for the purpose of determining whether tolls shall be renewed and collected on the Crescent City Connection Bridge until 2033.

(Amends R.S. 47:481 and 48:196; Adds R.S. 47:820.5.8 and 7011-7018 and R.S. 48:954 and 954.1)

### **Property Tax Exemption for Targeted Non-Manufacturing Businesses (Act No. 499)**

New law establishes a program to implement the ad valorem tax exemption provided by the proposed constitutional amendment contained in HB 674 for "targeted non-manufacturing businesses". The program shall be implemented and administered by the Department of Economic Development.

New law provides that an exemption contract shall be available only in a parish which has agreed to participate in the program. Participation by a parish is subject to the approval of the parish governing authority, all municipalities and school boards which levy an ad valorem tax, the law enforcement district and the assessor.

New law defines "facility", "headquarters jobs", "shared service center jobs", and "new direct jobs".

New law provides the following eligibility requirements for targeted non-manufacturing businesses:

(1) The business shall undertake a project to establish a new or expanded facility in La. which involves capital expenditures of at least \$25 million and shall create and maintain at least 50 "new direct jobs".

(2) Eligible businesses: corporate headquarters, distribution facilities, data services facilities, research and development operations, and digital media and software development centers.

(3) Ineligible businesses: retail sales, real estate, professional services, natural resource extraction or exploration, financial services, or venture capital funds. However, the foregoing ineligible businesses may be eligible if they provide at least 50 new "headquarters jobs" or "shared service center jobs". Businesses engaged in gaming or gambling are ineligible.

(4) At least 50% of total annual sales by the business from a La. site are to out-of-state buyers, or to in-state buyers but the product or service is resold by the purchaser to out-of-state buyers for ultimate use, or to the federal government, or any combination thereof.

New law authorizes a business undertaking a project in a participating parish to apply for a contract at the invitation of the secretary or the parish governing authority.

New law authorizes the secretary to recommend an eligible business project to the State Board of Commerce and Industry for a contract upon determining that the granting of such an exemption contract would be advantageous in a competitive site selection situation.

New law provides for specific requirements for the contract, which include a term of 10 years, performance obligations, and monitoring by DED.

New law includes provisions for the suspension or cancellation of a contract based on nonperformance.

New law establishes that the state shall be the "sole proper defendant" in any taxpayer challenge to the correctness of an assessment

based upon the constitutionality of an exemption provided for in the new law.

Effective for all calendar years commencing after the constitutional amendment proposed in House Bill No. 674 of this 2012 R.S. is adopted and becomes effective.

(Adds R.S. 47:4351-4355)

### **Corporate Tax Apportionment Program (Act No. 415)**

Old law requires many businesses to use the arithmetical average of three ratios to compute how much of their "apportionable income" or "taxable capital" will be subject to La. corporate income and franchise taxation:

(1) The ratio of the value of property owned in La. to the value of all property owned by the taxpayer.

(2) The ratio of the amount paid by the taxpayer for compensation for personal services rendered in this state to the total amount paid by the taxpayer for such compensation.

(3) The ratio of net sales made in the regular course of business and other gross apportionable income attributable to La. to such total net sales and other gross apportionable income.

Old law authorizes a taxpayer whose net apportionable income is derived primarily from the business of manufacturing or merchandising to compute its taxable income and taxable capital by means of the single ratio in (3) above.

New law establishes the Corporate Tax Apportionment Program for the granting of contracts for an initial term of up to 20 years (renewable for another 20 years at the discretion of the secretary of DED) for a business to utilize the single sales factor in the same manner as provided for in existing law, if the business is certified by the secretary of DED and approved by the Joint Legislative Committee on the Budget (JLCB). New law prohibits the approval of new contracts on or after July 1, 2017, but contracts existing on that date may continue and be renewed.

New law provides that a business is eligible for participation in the program if:



(1) At least 50% of the total annual sales of the business from a La. site or sites, which may include sales by affiliates of the business, is to out-of-state customers or buyers, to in-state customers or buyers but the product or service is resold by the purchaser to an out-of-state customer or buyer for ultimate use, or to the federal government, or any combination thereof; and

(2) The activities of the business at a La. site or sites include corporate headquarters, logistics, warehousing, data center, clean technology, destination health care, research and development, renewable energy, digital media and software development, or other business sector targeted by DED as a focus of the department's economic development efforts.

New law provides that businesses primarily engaged in retail sales, real estate, professional services, natural resource extraction or exploration, financial services, or venture capital funds shall not be eligible for the program, unless it is a business providing at least 25 new headquarter jobs or shared service center jobs. New law prohibits businesses engaged in gaming or gambling from participating in the program.

New law permits businesses to apply for participation in the program at the invitation of the secretary of DED by submitting to the department certified statements and substantiating documents required by DED. If the secretary determines that the business meets eligibility requirements, that participation in the program is needed in a highly competitive site selection situation to encourage a new business to locate in the state or to encourage an existing business to expand in this state, and that securing the project will result in a "significant positive economic benefit to the state", the secretary may certify that the business is eligible for the program and request approval of the contract by the JLCB.

New law defines "significant positive economic benefit" as the generation of net positive tax revenues taking into account direct, indirect, and induced impacts based on standard economic impact methodology utilized by DED and the estimated value of the rebate and any other state

tax and financial incentives used by DED to secure the qualified business.

New law requires annual certification to DED of eligibility and contract performance from the business prior to utilization of the single sales factor for a particular tax year.

Effective July 1, 2012, and applicable to corporate income tax years beginning on and after January 1, 2013, and corporate franchise tax years beginning on and after January 1, 2014.

(Adds R.S. 47:4401)

## **TITLE 48: ROADS, BRIDGES AND FERRIES**

### **Highway Bonds (Act No. 135)**

New law authorizes the issuance of bonds secured by registration and license fees and taxes on trucks and trailers to raise money for the State Highway Improvement Fund. Monies from the fund are used for funding projects for any road which is part of the state highway system but not part of the federal system and is ineligible for federal highway funding assistance.

Effective July 1, 2012.

(Amends R.S. 48:196(A); Adds R.S. 48:196.1)

### **DOTD Amendments to Plans Before Bidding (Act No. 195)**

Old law prohibits the DOTD from issuing any addenda materially modifying plans and specifications within a period of 96 hours prior to the advertised time for the opening of bids. New law reduces the time period to 72 hours.

(Amends R.S. 48:252(C)(1))

### **Preservationism by DOTD (Act No. 443)**

New law provides that when DOTD acquires real property for a project, it shall inspect the property for any building or structures that may have historical or cultural significance of which it has no use. If such a building or structure is

identified, the department shall devise a plan to preserve it if a parish, municipality, or nonprofit organization has expressed an interest in acquiring the building or structure.

New law requires the plan to give priority to transferring the building or structure to a parish, municipality, or nonprofit organization, provided that the parish, municipality, or nonprofit organization shall bear the costs of any such transfer and resulting relocation and that such transfer and relocation does not interfere with the construction of the project.

Effective August 1, 2012.

(Adds R.S. 48:283)

#### **Notice of Grade Crossing Changes (Act No. 406)**

New law requires DOTD to notify any and all affected persons owning land which is within a two-mile radius of the public grade crossing on any highway proposed to be improved, changed, or closed and post a notice at the grade crossing.

Effective August 1, 2012.

(Amends R.S. 48:390(B) and 390.1(A)(2); Adds R.S. 48:390(I) and 390.1(D))

### **TITLE 49: STATE ADMINISTRATION**

#### **Coastal Zone Maps (Act No. 588)**

New law redraws the coastal zone boundary and requires an electronic version of the map to be available for viewing or download on the website for the office of coastal management, Dept. of Natural Resources.

Old law exempts certain activities from the necessity of a coastal use permit. New law provides that those exemptions apply whether or not the activity occurs within the geographical boundary of the coastal zone.

New law requires the secretary of the Dept. of Natural Resources to maintain a map or collection of maps available to the public that accurately depict the areas of the coastal zone

that the secretary has determined to be fastland or above the five foot contour.

Effective on signature of governor (June 7, 2012).

(Amends R.S. 49:214.24 and 214.34)

#### **Poverty Impact Statements (Act No. 854)**

New law requires that before any state agency adopts, amends, or repeals a rule governing the application or maintenance of a policy or program, that the state agency provide a written poverty impact statement. For rules, the statement must be included in the notice of intent to adopt rules published in the Louisiana Register and provided to legislative oversight committees. New law requires that the poverty impact statement consider and state in writing the impact the proposed rule will have on child, individual, or family poverty in relation to individual or community asset development.

(Adds R.S. 49:953(A)(1)(a)(ix) and 973)

#### **Electronic Notices in APA Proceedings (Act No. 289)**

New law authorizes the use of electronic means to notify parties of decisions or orders in adjudication proceedings conducted pursuant to the Administrative Procedure Act.

New law authorizes the use of electronic means as a method of notifying the parties of any decision or order.

Old law provides that judicial review of an adjudication may be instituted by filing a petition in the district court of the parish in which the agency is located within 30 days after mailing of notice of the final decision by the agency or, if a rehearing is requested, within 30 days after the decision thereon. New law changes "mailing of notice of the final decision" to "the transmittal of notice of the final decision".

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 49:958 and 964(B))

### **Fiscal/Economic Impact Reports (Act No. 744)**

New law requires that if the fiscal impact or economic impact of the proposed rule change or fee adoption, increase, or decrease is \$500,000 or more, the agency must transmit the report to each member of the legislature via electronic mail.

Effective upon signature of governor (June 12, 2012).

(Amends R.S. 49:968(B)(24))

### **Notice of Final Reports of Agencies to Legislative Committees (Act No. 725)**

Old law provides that the legislative oversight period for rule making by an agency begins no earlier than 5 days and no later than 30 days following the day the agency submits the report to the appropriate standing committee.

New law adds that the agency must publish notice on its website that a final report required by the APA has been submitted to the appropriate standing committee of the legislature and that it be published within one business day from submission of the report to the standing committee. New law requires agencies that do not maintain a website to submit the public notice to the office of the state register for publication on its website.

Effective January 1, 2013.

(Adds R.S. 49:968(D)(1)(c))

## **TITLE 50: SURVEYS AND SURVEYORS**

There were no new laws of interest.

## **TITLE 51: TRADE AND COMMERCE**

### **Antitrust (Act No. 782)**

Old law provided that every contract, combination in the form of trust or otherwise, or

conspiracy, in restraint of trade or commerce in this state is illegal.

New law provides that for the purposes of the old law, an officer or employee of a legal entity is not capable of conspiring with the legal entity or with another officer or employee of the legal entity when they are acting on behalf of the entity.

Effective August 1, 2012.

(Adds R.S. 51:122(D))

### **Misleading Solicitations (Act No. 272)**

New law prohibits a solicitation by a nongovernmental entity, for the purchase of or payment for a product or service, which is in the form of and reasonably could be interpreted or construed as a bill, invoice, or statement of account due, from containing any material which:

(1) reasonably could be interpreted or construed as implying any La. state government connection, approval, or endorsement, through the use of a seal, insignia, or name of a state agency, department, commission, or program or a citation to a state statute; or

(2) contains any reference to or a citation to a state statute that misrepresents either the identity of the mailer or the protection or status afforded such matter by the La. State government.

New law does not apply to any solicitation which bears on its face, at the beginning, in conspicuous and legible type a specified disclaimer.

(Adds R.S. 51:391)

### **Fireworks Regulation (Act No. 10)**

New law divides the fireworks retailer permit classification into resident and nonresident permits. The permit fee for resident retailers is \$100, and the permit fee for nonresident retailers is \$800.

(Amends R.S. 51:656 and 658; Adds R.S. 51:650(13))

### **Dishonest and Unethical Acts By Securities Professionals (Act No. 36)**

New law adds dishonest or unethical acts as a circumstance that may cause the suspension or revocation of registration of dealers, salesmen, investment advisers, and investment adviser representatives.

Effective upon signature of the governor.

(Adds R.S. 51:704(A)(10))

### **Securities Law and Religion (Act No. 369)**

Old law set forth conditions generally for the registration and selling of securities in this state, including the filing of registration statements containing certain information.

New law adds that every registration statement shall state whether the security is subject to, bound by, or otherwise controlled by a religious law, ethic, custom, or practice and, if so, a declaration that identifies:

1. Such law, ethic, custom, or practice; and
2. Any precept or edict of such law, ethic, custom, or practice that would affect the type or nature of activities of the issuer, whether any earnings may not be distributed to the purchaser, whether any earnings may be distributed to third parties, and whether any religious qualification may apply to the selection of directors, officers or managers of the issuer.

New law further provides that the issuer shall be solely responsible for disclosing and ensuring the accuracy of the information required by the new law.

Effective August 1, 2012.

(Adds R.S. 51:705(C)(1)(p))

### **Securities Law Reference Fixed (Act No. 52)**

Old law establishes an exception to the La. Securities Law for securities listed or approved for listing upon notice of issuance on the New York Stock Exchange or the American Stock Exchange or a security designated or approved for designation as a national market system security by the Financial Industry Regulatory Authority.

New law changes the reference to the Financial Industry Regulatory Authority to the Nasdaq Stock Market, LLC.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 51:708(8))

### **New Manufactured and Modular Home Warranty Act (Act No. 112)**

Old law requires, in any redhibitory action brought against the seller of a manufactured home or mobile home, the standards adopted pursuant to old law to be considered in establishing and determining whether or not a defect exists. New law repeals old law.

New law enacts the New Manufactured and Modular Home Warranty Act and sets forth the purpose and scope of the act.

New law defines "builder" as a person or an entity that designs, manufactures, or constructs homes, including dealers, developers, manufacturers, and installers.

New law defines "building standards" for manufactured housing as the National Manufactured Home Construction and Safety Standards Act of 1974, as amended, and federal regulations promulgated pursuant thereto, along with any construction or installation-related standards adopted by the La. Manufactured Housing Commission (LMHC), together with any additional performance standards, if any, which the builder may undertake to be in compliance. New law defines "building standards" for modular housing as the International Residential Code as adopted by the La. State Uniform Construction Code Council.

New law defines "commission" as the La. Manufactured Housing Commission.

New law defines "home" as a manufactured home or modular home as defined in new law.

New law defines "initial purchaser" as any person for whom a home is built or the first person to whom a home is sold upon completion of construction.

New law defines "major structural defect" as any actual physical damage to the following

designated load-bearing portions of a home caused by failure of the load-bearing portions which affects their load-bearing functions to the extent the home becomes unsafe, unsanitary, or is otherwise unlivable: foundation systems and footings; beams; girders; lintels; columns; walls and partitions; floor systems; and roof framing systems.

New law defines "manufactured home" and "manufactured housing" as a factory-built, residential dwelling unit constructed to standards and codes, as promulgated by the U.S. Dept. of Housing and Urban Development (HUD), under the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended.

New law provides that the terms "manufactured home" and "manufactured housing" may be used interchangeably and apply to structures bearing the permanently affixed seal of HUD or to factory-built, residential dwellings that are mounted on a chassis.

New law defines "modular home" as a factory-built, residential dwelling unit built to the International Residential Code as adopted by the La. State Uniform Construction Code Council.

New law defines "owner" as the initial purchaser of a home and any of his successors in title, heirs, invitees, or assigns to a home during the time the warranties provided under new law are in effect.

New law defines "warranty commencement date" as the date that legal title to a home is conveyed to its initial purchaser or the date the home is first occupied, whichever occurs first.

New law requires every builder, subject to certain exclusions, to warrant to the owner:

(1) One year following the warranty commencement date, the home will be free from any defect due to noncompliance with the building standards or due to other defects in materials or workmanship not regulated by building standards.

(2) Two years following the warranty commencement date, the plumbing, electrical, heating, cooling, and ventilating systems exclusive of any appliance, fixture, and

equipment will be free from any defect due to noncompliance with the building standards or due to other defects in materials or workmanship not regulated by building standards.

(3) Five years following the warranty commencement date, the home will be free from major structural defects due to noncompliance with the building standards or due to other defects in materials or workmanship not regulated by building standards.

New law provides that, unless the parties otherwise agree in writing, the builder's warranty shall exclude:

(1) Fences, landscaping, including but not limited to sodding, seeding, shrubs, existing and new trees, and plantings, as well as off-site improvements, all driveways and walkways, or any other improvement not a part of the home itself.

(2) After the first year, the concrete floor of a basement and the concrete floor of an attached or unattached garage that is built separate from a foundation wall or other structural element of the home.

(3) Damage to real property which is not part of the home covered by the warranty and which is not included in the purchase price of the home.

(4) Any damage to the extent it is caused or made worse by (a) negligence, improper maintenance, neglect, or improper operation by anyone other than the builder or any subcontractor; (b) failure by anyone other than the builder or subcontractor to comply with the warranty requirements of manufacturers of appliances, equipment, or fixtures; (c) failure by the owner to give written notice by registered or certified mail to the LMHC of any defect within the time set forth in new law; (d) any change of the grading of the ground by anyone other than the builder, or any subcontractor; (e) any change, alteration, or addition made to the home by anyone after the initial occupancy by the owner, except any change, alteration, or addition performed by the builder or any subcontractor; or (f) dampness, condensation, or other damage due to the failure of the owner to maintain adequate ventilation or drainage.

(5) Any loss or damage which the owner has not taken timely action to minimize.

(6) Any defect in, or any defect caused by, materials or work supplied by anyone other than the builder or any subcontractor.

(7) Normal wear and tear or normal deterioration.

(8) Loss or damage which does not constitute a defect in the construction of the home by the builder or any subcontractor.

(9) Loss or damage resulting from war, accident, riot and civil commotion, water escape, falling objects, aircraft, vehicles, acts of God, lightning, windstorm, hail, flood, mudslide, earthquake, volcanic eruption, wind-driven water, and changes in the level of the underground water table which are not reasonably foreseeable.

(10) Any damage caused by soil movement which is covered by other insurance.

(11) Insect damage.

(12) Any loss or damage which arises while the home is being used primarily for a nonresidential purpose.

(13) Any condition which does not result in actual physical damage to the home.

(14) Bodily injury or damage to personal property.

(15) Any cost of shelter, transportation, food, moving, storage, or other incidental expense related to relocation during repair.

(16) Any defect not reported in writing by registered or certified mail to the LMHC or insurance company, as appropriate, prior to the expiration of the period for such defect plus 30 days.

(17) Consequential damages.

(18) Any loss or damage to a home caused by soil conditions or soil movement if the home is constructed on land owned by the initial purchaser and the builder obtains a written waiver from the initial purchaser for any loss or damage caused by soil conditions or soil movement.

(19) Mold and mold damage.

New law establishes minimum required warranties and shall not be waived by the owner or reduced by the builder if the home is a single- or multiple-family dwelling to be occupied by an owner as his home.

New law requires the owner, before undertaking any repair himself or instituting any action for breach of warranty, to give the LMHC written notice, by registered or certified mail, within one year after knowledge of the defect, advising the LMHC of all defects.

New law requires the LMHC to have the home inspected and a determination made on all defects listed by the owner. Thereafter, the LMHC shall give the appropriate builder a reasonable opportunity to comply with the provisions of new law.

New law requires the LMHC, once the repairs are made, to have the home reinspected to determine if the repairs have been made in compliance with the building standards.

New law requires the dealer or developer licensee to give the owner written notice of the requirements of new law at the time of the closing between the dealer or developer and the owner, or if there is no such closing, at the time of the execution of the purchase agreement between the dealer or developer and the owner.

New law provides that any action to enforce any warranty provided in new law shall be subject to a peremptive period of thirty days after the expiration of the appropriate warranty time period.

New law authorizes all or part of the builder's obligation under any warranty required by proposed law to be insured by the builder for the benefit of the purchaser through an insurance company authorized to transact business in this state.

New law provides that any warranty imposed under the provisions of new law and any insurance benefit shall automatically transfer without charge to a subsequent owner who acquires title to the home. Any transfer of the home shall not extend the duration of any warranty or insurance coverage.

New law provides that, if a builder violates new law, any affected owner shall have a cause of action against the builder for actual damages, including attorney fees and court costs, arising out of the violation. The damages with respect to a single defect shall not exceed the reasonable cost of repair or replacement necessary to cure the defect, and damages with respect to all defects in the home shall not exceed the original purchase price of the home.

New law authorizes the parties to provide for the arbitration of any claim in dispute.

New law provides the exclusive remedies, warranties, and preemption periods as between the builders and owner relative to the construction of homes, as defined in new law, and no other provisions of law relative to warranties and redhibitory vices and defects shall apply.

New law shall not be construed as affecting or limiting any warranty of title to land or improvements.

Old law required each new manufactured home to be covered by certain warranties that shall protect only the first retail purchaser of the manufactured home, for a period of one year from the date of the purchase, in accordance with the terms of the warranty. New law repeals old law.

Old law provided that manufactured homes sold as used manufactured homes shall not be covered by a warranty unless provided for in writing outlining the terms and conditions of the warranty. New law repeals old law.

Old law provided that the warranty required by new law shall be in addition to and not in derogation of any other warranties, rights, and privileges which the buyer may have under any other law or instrument. The buyer could not waive his rights under old law and any such waiver is prohibited as contrary to public policy and shall be unenforceable and void. New law repeals old law.

(Amends R.S. 51:911.23; Adds R.S. 51:912.1-912.10; Repeals R.S. 51:911.25)

### **Sex-Free Movie Certification (Act No. 560)**

New law requires, in addition to all other program requirements and prior to final certification of production expenditures for a state-certified production, the motion picture production company to submit to the Department of Economic Development, office of entertainment industry development, a statement declaring that it is not required to maintain records for the certified production pursuant to the federal Child Protection and Obscenity Enforcement Act, which requires anyone who produces any material, including film, that contains one or more visual depictions of actual sexually explicit conduct to create and maintain records pertaining to every performer portrayed in that conduct.

Effective August 1, 2012.

(Adds R.S. 51:940.1)

### **Sweepstakes (Act No. 653)**

New law requires the La. Department of Justice, office of attorney general, to regulate sweepstakes promotions. New law regulates the manner in which the winner of any sweepstakes promotion shall be revealed.

New law provides that computers or computer systems that are used as part of a sweepstakes promotion shall only be used to allow a person to enter their name and contact information for the purpose of entering into the sweepstakes promotion and to display certain information.

New law prohibits a person from being required or offered the opportunity to enter into any monetary transaction through a computer, computer system, or any other electronic system, for the purpose of entering into a sweepstakes promotion or winning a sweepstakes promotion.

New law provides that at no time shall the revealing of a sweepstakes promotion winner, the revealing of a sweepstakes prize, or the revealing of a sweepstakes prize value be linked to or associated with the play or simulation of play of an electronic game or similar contest on a computer, computer system, or any other electronic system.

New law does not apply to:

1. Any persons or entities licensed or permitted pursuant to the provisions of Titles 4 (Amusements and Sports) and 27 (Gaming Control Law) as they pertain to gaming or other activities for which they are licensed or permitted.

2. Any sweepstakes, contests, or similar activities authorized or regulated by Title 26 (Liquors-Alcoholic Beverages).

3. Entities holding sweepstakes or contests to which only the entities' employees may enter.

Effective August 1, 2012.

(Adds R.S. 51:1726 and 1727)

### **Enterprise Zone Requirements Relaxed (Act No. 45)**

New law increases the maximum number of units allowed to be considered "multifamily residential housing" and decreases the minimum percentage of commercial or rental facilities allowed to be considered a "transit-oriented development" under the La. Enterprise Zone Act.

Old law defines "transit-oriented development" as a mixed-use development, consisting of at least 50% multifamily residential housing and at least 30% commercial or rental facilities, on a single contiguous site, all or part of which is located within 1/4 mile of a multimodal transit center, with at least \$10,000,000 in capital expenditures for new construction or conversion of existing structure. New law decreases the minimum percentage of commercial or rental facilities allowed from 30% to 15%.

Old law defines "multifamily residential housing" as a minimum of 90 and a maximum of 175 attached dwelling units providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation. New law increases the maximum number of attached dwelling units allowed from 175 to 200.

(Amends R.S. 51:1783(10) and (12))

### **Quality Jobs Program and Hornets (Act No. 219)**

Old law provides for the Quality Jobs Program, which program authorizes the granting of contracts by the Board of Commerce and Industry to businesses for the purposes of providing rebates and tax credits for the achievement of certain performance by the business.

New law authorizes the granting of a renewal or extension of an existing contract for a franchise of the National Basketball Association for up to 10 years.

New law provides that the incentive which may be offered under a contract established pursuant to new law shall be limited to the payroll-based rebate authorized in old law and no other incentive payment of any type shall be available under such contract.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 51:2454(B))

### **Corporate Headquarters Relocation Program (Act No. 503)**

New law creates the Corporate Headquarters Relocation Program, which grants to a "qualified business" a contract to receive a relocation rebate of 25% of "relocation costs" to relocate or expand its "headquarters" in a location within La.

"Relocation costs" is defined as actual, direct, and substantiated costs incurred by the qualified business to relocate a headquarters to the state, including capital expenditures and leasing costs for a facility and equipment, and personnel relocation costs. Personnel relocation costs are limited to costs associated with no more than 60% of headquarters jobs and shall not include any real estate commission in excess of 6%. Relocation costs also include capital expenditures and leasing costs for expansion of a headquarters facility in the state, excluding personnel relocation costs. Relocation costs are limited to the maximum amount provided by the executed contract.



"Qualified business" is defined as a business that the secretary has determined meets eligibility requirements, has been approved by the Joint Legislative Committee on the Budget (JLCB) to participate in the program, and has executed a contract with the department governing its participation in the program.

New law requires an independent third-party economist selected by the legislative fiscal office and DED and approved by the JLCB to verify the "standard economic impact methodology utilized by DED" prior to implementation of the program.

A business is eligible to participate in the program if the following criteria are met:

(1) The business is relocating a headquarters to the state or is expanding a headquarters in the state. "Headquarters" is defined as a principal or regional corporate office located or to be located in La., in which are based the principal or regional executive officers including chief executive officer, chief operating officer, and other senior level officers or appropriate regional equivalents.

(2) The secretary determines that participation in the program will be a significant factor in a highly competitive site selection situation to encourage the business to relocate or expand the headquarters in the state.

(3) The secretary determines that securing the project will result in a significant positive economic benefit to the state. "Significant positive economic benefit" is defined as net positive tax revenues taking into account direct, indirect, and induced impacts, based on standard economic impact methodology utilized by DED and the value of the rebate and other state tax and financial incentives used to secure the qualified business.

(4) Relocation or expansion of the headquarters will create a minimum of 25 headquarters jobs.

New law prohibits a business engaged in gaming or gambling from participating in the program.

New law allows a business to apply for the program at the invitation of the secretary of DED. Once DED determines that the business meets the eligibility requirements of the program

the secretary may request JLCB approval of the contract.

The contract must contain the following information:

(1) The maximum amount of qualifying relocation costs.

(2) The number of headquarters jobs and associated payroll to be created and maintained and any other performance obligations deemed appropriate by the secretary.

(3) The reduction of annual rebate payments if performance obligations are not met.

New law provides that no new contracts may be approved on or after July 1, 2017.

New law requires the qualified business to submit certified cost reports reasonably documenting relocation costs, including supporting documentation as required by the department. New law requires DED to verify the business's actual relocation costs prior to the approval of rebates under the contract.

New law provides that the rebate is payable in equal installments over a five-year period. Annual payments must be reduced and forfeited for failure to meet performance obligations, as provided in the contract. However, no payment of a rebate can be made under a specific contract during the fiscal year in which such contract is approved by the JLCB.

New law allows the department to obtain a certified limited scope audit performed by an independent CPA at the expense of the qualifying business.

New law requires DED to notify the Dept. of Revenue (DOR) of the amount of the annual rebate payment due. Upon approval of the application for the annual rebate, a certification letter is sent to the DOR for payment of the rebate containing the proper entity to which the rebate should be issued and the amount of the rebate to be issued. The rebate is made from current collections of taxes.

New law prohibits a taxpayer who participates in this program from receiving any other incentive administered by the DED for any expenditures

for which the taxpayer has received a rebate pursuant to this program.

Effective July 1, 2012.

(Adds R.S. 51:3111-3115)

### **International Commerce Initiative (Act No. 687)**

New law creates the La. Board of International Commerce (board) and provides for duties of the board.

New law provides the board shall develop a Master Plan of International Commerce to position Louisiana as a leader in international commerce.

New law provides that only projects included in the master plan or the annual report shall be eligible for assistance, financial, technical, or otherwise, from the office or department. However, nothing shall prohibit any party from receiving funding for projects directly through the legislative process, provided such project proposal was first submitted to the board for evaluation and inclusion in the master plan.

New law provides that any person or entity may submit a project proposal to the board for consideration to be included in the master plan. Each project submitted shall include a return on investment analysis.

If the project is not approved by the board, the board shall submit a written evaluation, including the return on investment analysis, of such project.

New law provides that any of the organizations, entities, or persons provided in new law or any private or nongovernmental party may apply for funding for nonapproved projects in accordance with all applicable laws and procedures. The legislature shall be provided the evaluation submitted by the board when determining whether to fund a project or provide legislative incentives of any kind for the project or to the organization, entity, or person proposing such project.

New law provides that the department may identify, plan, and develop projects independently of the board and without

submitting such projects to the board for approval.

New law provides that after approval of certain committees, the legislature may approve or disapprove the master plan by resolution adopted by a majority vote of the members of each house of the legislature.

New law provides that if the legislature approves the master plan, or if the legislature fails to take action on the master plan during the regular legislative session, the board shall implement the plan as submitted.

New law provides that subsequent to the adoption or implementation of the master plan, the board may amend or supplement the plan or add or delete projects, provided that no project shall be added or deleted unless and until the amendment to the master plan is approved as provided in new law. New law provides that if a project is added or deleted while the legislature is not in session, the board shall submit the addition or deletion to the master plan to the Joint Legislative Committee on the Budget for approval.

Effective upon signature of the governor.

(Adds R.S. 36:109(V) and R.S. 51:3111-3118)

### **Competitive Projects Payroll Incentive Program (Act No. 507)**

New law creates the Competitive Projects Payroll Incentive Program which provides a qualified business a contract to receive the following rebates under a five-year contract, renewable for another five years:

(1) A rebate of up to 15% of new payroll determined to be eligible for such rebate by the secretary of the Dept. of Economic Development (DED).

(2) The same state and local sales and use tax rebates authorized for Enterprise Zone-eligible business purchases for capital expenditures for the facility or facilities designated in the contract, or the project facility expense rebate (equal to one and one-half percent of the amount of qualified capital expenditures of the business on the facility or facilities designated in the

contract) if the employer meets the enterprise zone program hiring requirements.

New law defines a "qualified business" eligible for rebate contracts as businesses meeting all of the following criteria:

(1) The business will primarily engage in manufacturing of certain durable goods, manufacturing of pharmaceutical products, conversion of natural gas to diesel, jet fuel or other refined fuels, data storage or data services (provided at least 75% of sales meet the out-of-state sales requirements), or other activities recommended by the secretary and approved by the Joint Legislative Committee on the Budget (JLCB) at the project site.

(2) At least 50% of the businesses' total sales are made to out-of-state customers or buyers, to in-state customers or buyers if the product or service is resold by the purchaser to an out-of-state customer or buyer for ultimate use, to the federal government or any combination thereof. The secretary, at his discretion, may include sales of affiliates of the business in determining the 50% sale requirement.

(3) The business offers or will offer, within 90 days of the effective date of qualifying for the rebate, a basic health benefits plan to the individuals it employs.

New law prohibits businesses engaged in gaming or gambling, businesses primarily engaged in natural resource extraction or exploration, and businesses primarily engaged in retail sales, real estate, professional services, financial services, venture capital funds, shipbuilding, wood products, agriculture, or manufacturing of machinery or equipment primarily intended to serve the energy industry, from participating in the program.

New law requires, at the invitation of the secretary of DED, the qualified business to apply to participate in the program. New law requires DED to determine that the applicant is an eligible "qualified business", that participation in the program is needed in a highly competitive site selection situation to encourage the business to locate or expand in the state, and that securing the project will result in

a "significant positive economic benefit" to the state.

New law defines "significant positive economic benefit" as net positive tax revenues taking into account direct, indirect, and induced impacts, based on a standard economic impact methodology utilized by DED and the value of the rebate and any other state tax and financial incentives that are used by the department to secure the project.

New law requires an independent third-party economist to be selected by the Legislative Fiscal Office and DED and approved by JLCB to verify the standard economic impact methodology utilized by DED prior to implementation of the program.

New law requires JLCB to approve a business' participation in the program. Upon the JLCB's approval, the secretary must execute the contract.

The contract shall have an initial term of up to five years and may be renewed for an additional five years. New law prohibits new contracts from being approved on or after July 1, 2017, but contracts existing on that date may continue and be renewed.

New law authorizes the contract to provide for a rebate to the qualified business based upon new payroll. The contract must include the percentage of new payroll eligible for rebate (up to a maximum of 15%), the maximum amount of new payroll eligible for rebate, the number of new jobs and amount of new payroll required to be created and maintained, any other performance obligations required to be met in order to remain qualified for participation in the program, designation of the facility or facilities eligible for participation in the program, and monitoring of performance and consequences for failure to perform and other contract violations.

New law requires a qualified business to file requests for approval of annual rebates with DED to show its continued eligibility for the rebates.

New law requires the rebate to be made from the current collections of the taxes. New law

prohibits the payment of a rebate under a specific contract during the fiscal year in which such contract is approved by JLCB.

New law prohibits a taxpayer participating in this program from receiving any other incentive administered by DED for any expenditures for which the taxpayer has received a rebate pursuant to the program.

Effective July 1, 2012.

(Adds R.S. 51:3111)

## **TITLE 52: UNITED STATES**

There were no new laws of interest.

## **TITLE 53: WAR EMERGENCY**

There were no new laws of interest.

## **TITLE 54: WAREHOUSES**

There were no new laws of interest.

## **TITLE 55: WEIGHTS AND MEASURES**

There were no new laws of interest.

## **TITLE 56: WILDLIFE AND FISHERIES**

### **Taking of Wildlife (Act No. 550)**

Old law provides for a permit to accredited representatives of any public park, museum, educational or scientific institution, or of the federal government or any state government, recognized scientist or any other responsible person to take, possess, and transport at any time within and from this state wild birds, skins, nests, eggs, or young thereof and wild

quadrupeds. New law adds a representative from the entertainment industry to be allowed to take, possess, or transport wildlife.

Effective August 1, 2012.

(Amends R.S. 56:105(A))

### **Charter Boat Fishing Guides (Act No. 844)**

New law prohibits a person to act as or represent himself to be a saltwater charter boat fishing guide unless that person has, among other things, proof of liability insurance.

Old law provides that a charter fishing operation which does not have a charter boat fishing guide present must have a charter boat license for a charter fishing operation which includes a large motorized vessel that carries proof of liability insurance.

In each case, new law requires the liability insurance to be written by an insurance company with at least an A-rating in the latest printing of the A.M. Best's Key Rating Guide and in a sufficient amount as determined by the commission to protect the public.

Effective August 1, 2012.

(Amends R.S. 56:302.9 and 302.9.1)

### **Guns Usable on Deer (Act No. 68)**

New law ensures that breech loading rifles of a .35 or larger caliber may be used during the primitive firearms season to hunt deer.

Effective August 1, 2012.

(Amends R.S. 56:116(C)(1))

### **Trapping Outlaw Quadrupeds (Act No. 90)**

Old law authorized the Wildlife and Fisheries Commission to promulgate rules and regulations authorizing the trapping of feral hogs any time of year without a special permit. New law authorizes such rules and regulations to apply to trapping all outlaw quadrupeds, which include coyotes, armadillos, and feral hogs.

(Amends R.S. 56:116.1(D)(1))

**Alligator Skins (Act No. 267)**

Old law requires each shipper of alligator parts or skins to attach a tag to each shipment, indicating the nature of the shipment and the consignor and consignee. New law requires the tag to include the name and address of the specific licensed fur dealer making the shipment, and the specific name and address of the receiver or purchaser of the shipment, including the location to which the skins are being shipped.

New law exempts from the Public Records Act records filed by or received by the Dept. of Wildlife and Fisheries relative to shipment of alligators or alligator skins, but aggregations of such information that do not reveal the identity of the source of the information remain subject to the Public Records Act.

Effective August 1, 2012.

(Amends R.S. 56:253(C)(1); Adds R.S. 44:4(45))

**De-Regulation of Yo-Yos (Act No. 133)**

Old law regulated the use of yo-yos or trigger devices and trotlines in various lakes. New law repeals old law.

Effective August 1, 2012.

(Repeals R.S. 56:410.4, 410.5, 410.7(C), 410.8, 410.9, and 410.11)

**Oyster Harvesting Permits (Act No. 85)**

Old law required anyone harvesting oysters from a public seed ground or a natural reef to possess an oyster seed ground vessel permit, and required application for such permit to be submitted prior to Dec. 31, 2009. New law extends that application period to Dec. 31, 2012.

Effective August 1, 2012.

(Amends R.S. 56:433.1(A)(2))

**Hunting with Firearms (Act No. 364)**

Old law provided that no person shall hunt with a firearm unless that person has first been issued a certificate of satisfactory completion of a firearm and hunter education course taught or approved by the DW&F, or possesses a valid hunting license issued by the department. New law instead provides that no person born on or after Sept. 1, 1969, is allowed to hunt without first completing a firearm and hunter education course. New law removes the requirement of possessing a valid hunting license.

Old law provided exceptions for certain persons under the age of 16, for persons who have not completed the required firearm and hunter education course, and for persons who are developmentally disabled and unable to successfully complete a firearm and hunter education course. New law provides that for a person to qualify for one of the exceptions, the person must be accompanied by and in direct supervision of a person born before Sept. 1, 1969, and who has a valid hunting license; or accompanied by and in the direct supervision of a person 18 years of age or older and who has proof of successful completion of a firearm and hunter education course.

Effective August 1, 2012.

(Amends R.S. 56:699.5 and 699.6; repeals R.S. 56:699.1 and 699.2)

**Recreational Reefs (Act No. 84)**

New law authorizes the Wildlife and Fisheries Commission, with recommendations by the La. Oyster Task Force, to establish recreational reefs and promulgate rules for the location of such reefs, materials to be used on such reefs, and regulations for fishing on or over the reef, including harvest seasons, times, and creel limits. New law prohibits the harvest of oysters from the reefs.

(Adds R.S. 56:805)