

SELECTED HIGHLIGHTS OF THE 2009 LOUISIANA LEGISLATIVE SESSION

Written by: [Mike Rubin](#)

ANOTHER LIMITATION ON TEENS

Act 27 amends R.S. 34.855.3 and increases the minimum age of operators of watercraft from 13 to 16.

DEPOSITS IN BANKS, SAVINGS BANKS, CREDIT UNIONS, etc.

Act 499 amends various provisions of R.S. 6 concerning transfer of deposit funds of a decedent to one or more beneficiaries.

BUCKLE UP!

Act 166 amends R.S. 32:295.1 to require all passengers (not just those in the front seat) to buckle up.

CARBON DIOXIDE SEQUESTRATION

Act 517 adds R.S. 30:1101 *et seq.* to create the "Louisiana Geologic Sequestration of Carbon Dioxide Act."

CAREER DIPLOMA Act 246 amends and adds a number of provisions to R.S. 17 to allow for a "career diploma" in lieu of a regular high school diploma.

Also see Act 298 amending portions of R.S. 17 concerning career diplomas.

CHILDREN'S CODE AMENDMENTS

- Act 132
- Act 194
- Act 213
- Act 284
- Act 305
- Act 427

COME AND BLOW YOUR HORN (BUT NOT TOO LOUDLY)

Act 124 adds R.S. 32:378.3 to outlaw putting sound amplification systems on the exterior of a vehicle and to prohibit resetting your car's horn to "make a sound other than the sound made by the manufactured [sic] installed horn."

- *Query 1:* What about Mardi Gras Floats?
- *Query 2:* What about clown cars?
- *Query 3:* What about what may be a typo with "manufactured installed horn"? Was this meant to be "factory-installed"? If not, does that mean you can buy any horn with any sound as long as it was manufactured that way?

COMMUNITY PROPERTY

Act 204 is an extensive La. Law Institute revision to the Civil Code on community property. Highlights include:

- Time to claim for reimbursement (can only be made after termination of community property regime, unless otherwise allowed by a specific statute) and allows reimbursement for post-termination pre-partition use of community property.

- Detailed rules on reimbursement if:
 - Separate property adds buildings to community property
 - Separate property of spouse X used to benefit separate property of spouse Y.
 - Paying off separate debts of spouse X with separate property of spouse Y.
- Costs and expenses of divorce are not necessarily an obligation of the community
- Buildings and other constructions are community property if erected with separate property during the existence of the community, but there is a right of reimbursement.

CSI, WHERE ARE YOU?

Act 408 adds R.S. 32:154 to make it a crime to disturb a body in a vehicle accident without authorization from the coroner or law enforcement agency.

DIDN'T I SEE YOU ON T.V.?

Act 272 adds R.S. 15:502 to allow testimony by "simultaneous broadcast" of "employees of criminalistic laboratories," coroners, forensic pathologists and "any other person practicing in the field of knowledge and expertise in the gathering, examination, and analysis of evidence by scientific means."

DON'T CROWD THE BICYCLIST

Act 147 adds R.S. 32:76.1 and 201 to require motorists to leave a "safe distance" of "not less than three feet" when passing cyclists. \$250 fine for violation.

DON'T CUT AND RUN

Act 107 amends C.C. art. 3497 and adds provisions to R.S. 3:4278 to increase the prescriptive period for actions for damages for timber harvests without the consent of the owner; the time frame now is 5 years to sue.

DON'T KILL THE WITNESS

Act 7 amends C.E. art. 804 to exclude from the hearsay rule a "statement offered against a party that has engaged or acquiesced in wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness."

DON'T PASS ON THE RIGHT!

Act 190 amends R.S. 32:7 to make it a crime to drive in the left lane of a four-lane (or larger) highway except to make a left turn or to pass another car "or when right-hand lanes are congested."

YOU CAN SPEED TOO?

This same act states that "no vehicle traveling in the left-hand lane shall be driven at a speed slower than any vehicle traveling in its right on the same roadway."

DON'T TRASH THAT UCC ITEM

Act 152 mends R.S. 14:72 to make it crime to dispose of encumbered property with malicious or fraudulent intent. If property >\$1,000, the fine is up to \$1,000 and can be imprisoned for up to year "with or without hard labor."

DON'T UPLOAD PORN AT STARBUCKS

Act 193 amends R.S. 14:73.8 to criminalize making unauthorized use of a wireless router to upload or download juvenile porn.

Also see Act 382, amending C.C.P. art. 14.81.1 and adding C.C. art. 2315.3 concerning prohibitions on child porn and being part of a national database on missing children.

DISPUTING AD VALOREM TAXES

Act 511 amends provisions of R.S. 47 concerning the method of disputing ad valorem taxes, the payment of taxes under protest, and the need to timely file a suit seeking recovery of the protested payment.

E-COMMERCE AND BIDDING

Act 41 amends R.S. 48:252 to allow state agencies to transmit notice of addenda to bidders through emails.

E-COMMERCE AND DOTD CONTRACTS

Act 42 amends R.S. 48:250 to allow electronic signatures on documents and contracts with DOTD.

E-HEALTH

Act 489 adds R.S. 40:1299.97.1 et seq., the “Electronic Health Records Loan Program Act.”

E-WARRANTS

Act 401 adds R.S. 9:2603.1 to allow for electronic (non-paper) warrant requests.

RESULT: A judge can sit at his or her computer to receive and rule on warrants.

ELECTION CODE

Act 369 makes extensive revisions to the Election Code.

Also see Act 436 for further extensive revisions.

ELECTRONIC VOTER REGISTRATION

Act 187 amends provisions of R.S. 18 to allow electronic voter registration on the Secretary of State’s website.

FIFTY IS THE NEW SIXTY FIVE

Act 342 amends a number of provisions of the “Louisiana Retirement Development Commission,” renames it the “Encore Louisiana Commission,” and changes its marketing focus to the “fifty year old and above demographic.”

FRY UP A BATCH OF CATFISH

Act 506 adds R.S. 3:4711 *et seq.* to create the Louisiana Catfish Marketing Law. It also regulates disclosure of the country of origin of catfish being sold in the state.

GOVERNOR’S “DELIBERATIVE PROCESS” CONFIDENTIALITY

Act 495 creates this.

HISTORIC RENOVATION TAX CREDITS

Act 444 amends R.S. 47:6019 to allow unlimited transferability of such credits.

HOME SERVICE CONTRACTS

Act 101 adds R.S. 22:1806.1 *et seq.* to regulate “home service provider” contracts. A “home service contract” is defined as “a contract or agreement for a separately stated consideration for a specific duration to perform the service, repair, replacement, or maintenance of property or indemnification for service, repair, replacement, or maintenance, for the operational or structural failure of any residential property due to a defect in materials, workmanship, inherent defect, or normal wear and tear, with or without additional provisions for incidental payment or indemnity under limited circumstances.”

Also see Act 268 which amends provisions of R.S. 14 to create the crime of home improvement fraud.

HOMESTEAD EXEMPTION ADDED AND RAISED

Act 201 amends R.S. 20:1 and R.S. 13:3851.1 to raise the homestead exemption from \$25,000 to \$35,000. More importantly, however, it also seems to exempt all homesteads from seizure for credit card debt not secured by a mortgage. The text of the act is:

§3851.1. Limitation of seizure of homestead

- A. Except as otherwise provided in Subsection C of this Section, a judgment creditor shall not cause the seizure or sale of the homestead of the judgment debtor in the execution of a judgment for consumer credit card charges. For purposes of this Section, a judgment for consumer credit card charges is a judgment for the payment of money consisting solely of amounts due from a consumer for unsecured consumer loans incurred through the use of a lender credit card or seller credit card, as those terms are defined in R.S. 9:3516, and related interest, fees, charges, attorney fees and court costs.
- B. The provisions of this Section shall not preclude the filing of a judgment for credit card charges with the recorder of mortgages nor affect the validity or ranking of a judicial mortgage upon the judgment debtor's homestead arising from such filing. Though the judicial mortgage arising from the filing of a judgment for credit card charges may not be enforced by the seizure and sale of the judgment debtor's homestead, the judgment creditor shall nonetheless have the right to be paid, according to the ranking of his judicial mortgage, from any proceeds resulting from the sale of the homestead through other means or initiated by other creditors.
- C. (1) The provisions of this Section shall not apply to a creditor who holds a conventional mortgage upon the debtor's homestead.

(2) The provisions of this Section shall not apply if the debtor has executed a valid waiver of the homestead exemption which waiver shall be in authentic form.
- D. A judgment debtor may bring an action to annul a sheriff's sale conducted in violation of this Section only if the judgment creditor is the purchaser at the sale and is still in possession of the property. A violation of this Section may not be asserted against a third party who purchases the homestead at the sheriff's sale or who purchases the homestead from the judgment creditor at any time after the sheriff's sale.
- E. (1) An action to annul a sheriff's sale shall prescribe one year from the date of the sheriff's sale deed.

(2) An action for damages arising from a violation of this Section shall prescribe one year from the date of service of notice of seizure of the homestead upon the judgment debtor.

HOW MUCH DO YOU THINK THIS PROPERTY IS WORTH?

Act 502 amends and adds provisions in R.S. 37 to create the “Appraisal Management Company Licensing and Regulatory Act.” It covers those who administer independent appraisers or get a request for an appraisal and refer work to independent appraisers. There are detailed licensing requirements and a list of exemptions from the Act.

HUNTING WITH A LASER

Act 322 amends R.S. 56:116.1 to allow certain sight-impaired individuals to hunt with a laser sighting device.

HURRICANE DEDUCTIBLES

Act 36 amends R.S. 22:1319 *et seq.* to require disclosures of separate hurricane, wind, and named-storm deductibles on homeowner’s and fire insurance policies.

Act 134 adds R.S. 22:1338 to deal with seasons with more than one named storm.

HURRICANE HELP PROVIDERS EXEMPTION

Act 232 adds 29:735.5 to provide immunity from liability for health care providers and personnel who either render help or fail to render help during a hurricane, “unless the damages are caused by gross negligence or willful and wanton misconduct.”

Also see Act 295, adding R.S. 29:735.3.1 to provide civil immunity for gratuitous volunteers “in coordination with the state or its political subdivisions.”

Also see Act 397, adding R.S. 29:781 *et seq.*, the “Uniform Emergency Volunteer Health Practitioners Act”

HURRICANES WON’T PREVENT YOU FROM BUYING A CAR

Act 324 adds R.S. 22:1289.1 to make it illegal for insurers to refuse to insure a new car for an existing policyholder “based solely upon a named tropical storm or hurricane in the Gulf of Mexico.”

INSTALLING MOBILE HOMES

Act 327 adds R.S. 40:1730.71 concerning installation of “modular housing.” Whether or not the installation must be done by a licensed residential building contractor in accordance with the Louisiana Uniform Construction Code depends on whether the value of the home is under \$37,500.

LATIN AMERICANS

Act 141 enacts R.S. 49:1221 *et seq.* to create the “Louisiana Council on the Provision of Governmental Services to Latin Americans.”

LICENSE PLATES

Act 140, La. Delta Sigma Theta Sorority Plate. Alters who gets the royalty fees.

Act 496 changes who gets the “Choose Life” plate monies from the State Treasury to the Louisiana Right to Life Education Committee.

MORTGAGE FRAUD

Act 197 adds R.S. 14:71.3 to make an “untrue statement of material fact with intent to defraud” in connection with residential mortgage loans. This appears to be particularly aimed at loan brokers.

MORTGAGE LENDING

Act 522 amends a number of provisions in R.S. 6 and completely reworks the former “Residential Mortgage Lending Act.” The Act is now entitled the “Louisiana Safe and Fair Enforcement of Mortgage Licensing Act of 2009” (the “SAFE Lending” Act). If you do any work in this area, this is a “must read” statute. Changes include:

- Mandatory registration of “persons engaged in residential mortgage loan transactions.”
- There is an exemption from registration for: “A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney’s representation of the client, *unless the attorney is compensated by a lender, a mortgage broker, or other mortgage loan originator, or by any agent of such lender, mortgage broker, or other mortgage loan originator.*”
 - QUERY: Does this mean that if you represent a company and the president asks you to help her negotiate the terms of her jumbo mortgage on her fancy new home, you have to register under the Act even if you’re an attorney?
 - Apparently not, because there is a further exemption from licensing for: “Any attorney licensed to practice law when such attorney is not actively engaged in the business of making or brokering residential mortgage loans and the residential mortgage lending activity is incidental to providing legal services.”
- Those who handle consumer loans that are secured by a mortgage, even if the loans are under the Consumer Credit Law, must be licensed under this SAFE Act.

MY MOMMY AND DADDY ARE IN THE SERVICE

Act 297 adds R.S. 17:1915 *et seq.* and adopts the “Interstate compact of Educational Opportunity for Military Children.”

NO BAG LIMIT

Act 208 amends R.S. 56:116 to allow unlimited day or night killing of opossums, raccoons, nutria and beaver with a .22, but only if they are found destroying crawfish in a private crawfish pond or the pond itself.

NOVELTY LIGHTERS

Act 89 adds R.S. 40:1601 to ban “novelty lighters,” which are those are intended to appeal to young children and which have a “toylike appearance,” including lighters in the shapes of “toy animals, cartoon characters, cars, boats, airplanes,” *etc.*; however, the act does not apply to pre-1980 lighters or “collectibles.”

ONLINE PROTECTION OF KIDS

Act 58 amends R.S. 48:81 concerning computer solicitation of minors to make it a crime “when a person 17 years” or older contacts someone who either is not 17 (or believed to not be 17), but it applies only if there is (or appears to be) a 2 year or greater gap in ages between the contactor and contactee.

ONLY IN EBR PARISH

Act 13 amends the Governmental Claims Act, R.S. 13:5104, to add EBR as the mandatory venue of any suit “against an officer or employee of the state or state agency for conduct arising out of the discharge of his official duties or within the course and scope of his employment”

PUBLIC BIDS

Act 392 amends R.S. 38:2212.1 to increase the minimum amount from \$20,000 to \$30,000 to trigger public bidding on materials and supply purchases.

QUICK-TAKING IN EBR

Act 45 amends R.S. 33:4720 and other statutes concerning the East Baton Rouge Parish Redevelopment Authority, including the right to quick-taking expropriations and foreclosures.

RIGHT NOT TO TREAT

Act 372 allows health care providers to refuse to give a treatment that “violates his conscience.” This applies, however, only to those who have “a sincerely held religious belief or moral conviction” and requires an employer to make sure that there are other employees around who can and will give the necessary treatment.

REPORTING POLITICAL DONATIONS

Act 238 adds R.S. 42:1124 to require department heads and board appointees who give more than \$1,000 in political contributions to the appointing official to make annual reports.

SCREENING THOSE WHO CARE FOR KIDS

Act 47 amends R.S. 46:51.2 and adds R.S. 49:992 concerning mandatory screening for those who are hired to investigate or care for abused or neglected children.

SMALL SUCCESSIONS

Act 81 amends CCP arts. 3421 *et seq.* to redefine small successions as those of \$75,000 or less. It contains special rules on small successions with a residential lot with “not more than four dwelling units,” one of which had been the deceased’s residence.

SPECIALIZED COURTS

Act 215 adds R.S. 13:5874 and 1344 to allow district courts to set up specialized criminal, civil, drug, dui, mental health, juvenile and violent crime courts.

SPOOFING

Act 105 adds R.S. 51:1741.1 *et seq.* to outlaw caller ID spoofing. Private enforcement actions are allowed and you get 3x actual damages “or \$5,000 per violation.”

SPOUSAL SUPPORT

Act 378 amends R.S. 9:315 concerning determining spousal support income levels and the kinds of evidence permitted.

SUSTAINABLE ENERGY FINANCING DISTRICTS

Act 348 adds R.S. 33:130.790 *et seq.* to allow the creation of sustainable energy financing districts to help finance capital improvements not only for new developments but also for retrofitting old buildings. Local governments now have the power to create such districts.

TAX CREDITS AND EXEMPTIONS AND EXCLUSIONS

Lots of legislative action this year, both adding and state tax laws, including but not limited to:

- Act 454: Digital Interactive Media Producer Tax Credit
- Act 455: Bait and feed for crawfish harvesting
- Act 456: Hotel taxes on rooms for indigents
- Act 458: Food used for home consumption and preparation
- Act 459: Glass container manufacturers
- Act 460: Tax deduction for parents of certain students
- Act 461: Sales and Use Tax Exemption for farm irrigation equipment
- Act 462: Exemption for qualifying radiation therapy treatment centers
- Act 463: New Market Tax Credits
- Act 464: Domed Arena tax exemption
- Act 465: Music and theater tax credits

- Act 466: Tax exclusion for certain manufacturers
- Act 467: Wind and solar energy tax credits
- Act 469: Tax credits for converting vehicles to alternative fuel usage
- Act 473: No sales and use tax on sales of meals to staff and students at educational institutions, including kindergartens
- Act 474: Ports of Louisiana Tax Credits
- Act 475: Sound Recording Investor Tax Credit
- Act 476: Corporate Franchise Tax
- Act 477: Research and development tax credits for employers with more than 50 employees
- Act 478 and Act 530: Motion Picture Investor Tax Credit
- Act 520: “Green job industries” credits.

TAX DELINQUENTS

Act 519 adds an *unnumbered* statute, the “Louisiana Tax Delinquency Amnesty Act of 2009.”

THE DOG ATE MY HOMEWORK AND THE NEIGHBOR!

Act 199 amends R.S. 14. and R.S. 22 to include within the definition of negligent homicide the killing of a person by a dog; the dog’s owner can be charged with the crime. There are exceptions for guide dogs and for dogs who attack someone making an unlawful entry.

TWEET YOUR STUDENTS

Act 214 amends R.S. 17:81 and 17:3996 to require each school district to come up with policies and procedures governing electronic communications between school employees and students.

UCC REVISIONS

Act 207, a Law Institute Bill, makes extensive revisions to a number of provisions of the Louisiana version of the UCC (R.S. 10:1-101 *et seq.*) to both conform with national changes in UCC and to still keep intact unique Louisiana provisions. Highlights:

- Definitions in 1-201 to deal with electronic documents;
- Extensive reworking of almost every article in UCC 7 (formerly called “Warehouse Receipts, Bills and Lading and other Documents of Title” and now just called “Documents of Title”), including ranking rules on Warehouse Receipts and Bills of Lading

VETERANS IN BUSINESS

Act 167 adds R.S. 29:2171 *et seq.*, the “Louisiana Initiative for Veteran and Service-Connected Disabled Veteran-Owned Small Entrepreneurships.” The Act gives these companies an “in” for state contracts.

WHAT’S IN A NAME?

“Conway LeBleu Memorial Bridge” in Gibbstown. Act 74 (*unnumbered statute*).

WHO DID YOU USED TO BE?

Act 263 adds R.S. 15:1601 *et seq.* (among others) to create the “Witness Protection Services Act.”

Also see Act 267, adding R.S. 13:10.4 relating to witness protection.

WHO’S HAPPIER? ROBIN HOOD OR THE SHERIFF OF NOTTINGHAM?

Act 55 adds R.S. 56:116 to allow crossbow hunting of turkeys (in addition to existing bow and arrow hunting).

WHO'S YOUR DADDY AND MOMMY?

Act 3 amends the Civil Code to create a new chapter on "filiation," including filiation by adoption. This adoption article has to be read in conjunction with the Children's Code. Most of the other Civil Code articles are kept intact and are simply renumbered.

YUM YUM

Act 252 adds R.S. 3:296 et seq., the "Healthy Food Retail Act."