

Regular Session, 2005

HOUSE BILL NO. 578

BY REPRESENTATIVE LAFONTA

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CRIMINAL/PROCEDURE: Requires certain notification to a nonresident alien before acceptance of a guilty or nolo contendere plea

1 AN ACT

2 To enact Code of Criminal Procedure Article 556.2, relative to arraignment and pleas; to
3 provide for notification to a nonresident alien before acceptance of guilty or nolo
4 contendere plea; to provide for notice given by the court; to provide for the failure
5 to give notice; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. Code of Criminal Procedure Article 556.2 is hereby enacted to read as
8 follows:

9 Art. 556.2. Notification to a nonresident alien

10 A. "Nonresident alien" means any person who is not a United States citizen
11 and who is a citizen of any country other than the United States, who is physically
12 present in the United States and who has not acquired INS permanent resident status.

13 B. A defense attorney must adequately investigate the immigration status of
14 his client, or the collateral consequences of a guilty or nolo contendere plea and
15 advise a defendant who is a nonresident alien of those consequences.

16 C. Before accepting a plea of guilty or nolo contendere from a nonresident
17 alien defendant, the court will personally ask the defendant whether the defense
18 attorney has fulfilled the obligation set out in Paragraph B above. The court will
19 give the following notice on the record to the defendant:

1 "If you are not a citizen of the United States, you are hereby advised that
2 conviction of the offense for which you have been charged may have the
3 consequences of deportation, exclusion from admission to this country, or denial of
4 naturalization pursuant to the laws of the United States."

5 D. Upon the nonresident alien defendant's request, the court will allow the
6 defendant such additional time, as the court deems reasonable, to consider the
7 appropriateness of the plea in light of the notification as described in this Article.

8 E. Absent a record that the court provided the notification required by this
9 Article, or upon acknowledgment by the defendant that defense counsel failed to
10 fulfill the obligation set out in Paragraph B of this Article, on defendant's motion, the
11 entered plea will be vacated and the defendant will be permitted to withdraw the plea
12 of guilty or nolo contendere.

13 Section 2. This Act shall become effective on August 15, 2005.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument.

LaFonta

HB No. 578

Abstract: Provides required notification to alien before acceptance of a guilty or nolo contendere plea.

Proposed law defines "nonresident alien" as any person who is not a United States citizen and who is a citizen of any country other than the United States, who is physically present in the United States and who has not acquired INS permanent resident status.

Proposed law provides that a defense attorney must adequately investigate the immigration status of his client, or the collateral consequences of a guilty or nolo contendere plea and advise a defendant who is a nonresident alien of those consequences.

Proposed law further provides that before accepting a plea of guilty or nolo contendere from a nonresident alien defendant, the court will personally ask the defendant whether the defense attorney has fulfilled the obligation set out in proposed law.

Proposed law provides that the court will give the following notice on the record to the defendant: "If you are not a citizen of the United States, you are hereby advised that conviction of the offense for which you have been charged may have the consequences of deportation, exclusion from admission to this country, or denial of naturalization pursuant to the laws of the United States."

Proposed law provides that upon the nonresident alien defendant's request, the court will allow the defendant such additional time, as the court deems reasonable, to consider the appropriateness of the plea in light of the notification as described in this Article.

Proposed law provides that absent a record that the court provided the notification required by this article, or upon acknowledgment by the defendant that defense counsel failed to fulfill the obligation set out in proposed law on defendant's motion, the entered plea will be vacated and the defendant will be permitted to withdraw the plea of guilty or nolo contendere.

(Adds C.Cr.P. Art. 556.2)