LOUISIANA STATE LAW INSTITUTE

MEETING OF THE COUNCIL

February 16, 2024

Friday, February 16, 2024

Persons Present:

Adams, Marguerite (Peggy) L.
Belanger, Kathryn (Katie)
Boneno, David
Braun, Jessica G.
Breard, L. Kent
Breaux, Alexander M.
Breuhl, Bailey A.
Caldwell, N. Kordell
Carbia, Matilde J.
Cook, Kathy L.
Crigler, Jr., James C.
Crochet, Anne J.
Cromwell, L. David
Curry, Kevin C.
Davrados, Nikolaos A.
DeGrange, Lucinda
Doggett, Mary L.
Doguet, André
Doody, Kathleen L.
Dyess, Desiree Duhon
Fontana, Annette
Forrester, William R., Jr.
Green, Chelsee
Gregorie, Isaac M. "Mack"
Hall, Senae D.
Hawthorne, George "Trippe"
Haymon, Cordell H.
Hogan, Lila T.
Holdridge, Guy
Holthaus, C. Frank
Jewell, John Wayne
Knudsen, Mallory E.
Laizer, Edwin G.
Lamandre, Morgan
Lee, Amy Allums
Lonegrass, Melissa T.
Lovett, John A.
Maloney, Marilyn C.
Manning, C. Wendell
McCallum, Jay B.
Mengis, Joseph W.
Miller, Gregory A.
Moran, Amy
Morgenstern, Caitlin
Morris, John C. "Jay"
Muscarello, Nicholas
Pavy, Lily P.
Philips, Harry "Skip", Jr.
Pittman, Richard M.
Price, Donald W.
Procell, Christopher A.
Reese, Mike
Richardson, Sally Brown
Roussel, Randy
Saloom, Douglas J.
Smith, Kenya J.H.
Sole, Emmett C.
Sossamon, Meera U.
Stuckey, James A.
Tarnowsky, Alix
Tate, George J.
Thibaut, Martha A.
Thibeaux, Robert P.
Title, Peter S.
Tucker, Zelda W.
Ventulan, Josef
Viator, James Etienne
Waller, Mallory C.
Weems, Charles S., III
White, H. Aubrey.
Woods, Revettea D.
Zeno, Micah C.
Ziober, John David

President L. David Cromwell called the February Council meeting to order at 9:30 a.m. on Friday, February 16, 2024 at the Lod Cook Alumni Center in Baton Rouge. After asking Council members to briefly introduce themselves, the President called on Judge Guy Holdridge, Acting Reporter of the Code of Criminal Procedure Committee, to begin his presentation of materials.

Code of Criminal Procedure Committee

Judge Holdridge began his presentation by presenting two reports in response to legislative resolutions. The first, in response to Senate Concurrent Resolution No. 138 of the 2019 Regular Session, concerned procedures for interviewing crime victims and witnesses, and the Committee had agreed that this resolution resulted from an isolated issue and was not presently an ongoing problem. As a result, no changes were currently

being proposed, and after one Council member proposed a technical change to delete "being" on line 21 of page 1 of the report, it was adopted without objection. The second report was in response to House Concurrent Resolution Nos. 46 and 47 of the 2019 Regular Session and House Concurrent Resolution No. 95 of the 2021 Regular Session and concerned vulnerable road users. Judge Holdridge explained that a Subcommittee had been formed that had drafted a number of proposed revisions, but that these were rejected by the Code of Criminal Procedure Committee and, when a similar bill had been filed in a previous session, also by the legislature. The Subcommittee then reconvened to discuss a few alternatives to the creation of a new crime and ultimately concluded that handsfree legislation would solve the problem, but that this proposal has also not yet been adopted by the legislature. After one technical correction on page 2 of the report, replacing "seriously" with "serious" before bodily injury on line 32, a motion was made and seconded for its adoption and passed without objection.

Next, Judge Holdridge directed the Council's attention to the materials on postconviction relief, first to Article 923 on page 1 of the materials. He explained that this proposal had previously been included in the Law Institute's comprehensive revision but that a different compromise bill had ultimately been enacted by the legislature. As a result, the Committee considered whether there were any additional, noncontroversial proposals that could be submitted to the legislature for consideration, and this was one of two articles upon which it agreed. The purpose of the revisions to Article 923 was to codify the pilot program that had been started by the Fifth Circuit and in which other courts of appeal are currently participating whereby an imprisoned defendant's appellate record is sent electronically and can be printed at Angola, thereby eliminating the need for the defendant to file motions to produce or writs of mandamus to access his or her appellate record. A motion was made and seconded to approve the proposed changes, and after Judge Holdridge accepted a few friendly amendments to change "judgment" to "decree" on line 6 of page 1 as well as "district court" to "lower court" on lines 24 and 25 of the same page, the motion passed without objection. The adopted proposal reads as follows:

Article 923. Duty of clerk as to final decisions in appellate court

A. When a decision of an appellate court becomes final, the clerk of court shall transmit a certified copy of the decree to the court from which the appeal was taken. When the ~~judgment~~ decree is received by the lower court, it shall be filed and executed.

B. After the defendant's conviction and sentence becomes final pursuant to Article 922, the clerk of the court of appeal shall send an electronic copy of the appellate record free of cost to any defendant who is imprisoned and has requested a copy of his record.

C. The failure of the clerk of the court of appeal to comply with any of the requirements of Paragraph B of this Article does not extend the time to file an application for post conviction relief or constitute a cause of action, grounds to vacate the conviction or sentence, or grounds to remand the case for the purpose of resentencing. The provisions of Paragraph B of this Article may be enforced by a writ of mandamus.

D. Prior to the transmission of the electronic copy of the record, the court of appeal shall redact all information not subject to public disclosure pursuant to R.S. 46:1844(W). The court of appeal shall also redact the names, addresses, and identities of the jurors who participated in the case. If the safety of a person or the public requires further redaction, or if a redaction would violate a constitutional right of the defendant, the aggrieved party may file a motion with the court of appeal. The court of appeal may remand the motion to the lower court for the purpose of receiving evidence and ruling on the motion. A ruling on the motion by the court of appeal or lower court may be reviewed only by writ application, unless the ruling results in a declaration that a statute or ordinance is unconstitutional.

Judge Holdridge then explained that on page 2 of the materials, Article 926.2 had been amended to remove the temporal language because it was no longer needed. A motion was quickly made and seconded to approve the proposed changes as presented, and the motion passed with no objection. The adopted proposal reads as follows:

Article 926.2. Factual innocence

A. A petitioner who has been convicted of an offense, either by a plea of guilty or nolo contendere, or who has been found guilty after a trial completed to verdict, may seek post conviction relief on the grounds that ~~he~~ the petitioner is factually innocent of the offense for which ~~he~~ the petitioner was convicted. ~~A petitioner's first claim of factual innocence pursuant to this Article that would otherwise be barred from review on the merits by the time limitation provided in Article 930.8 or the procedural objections provided in Article 930.4 shall not be barred if the claim is contained in an application for post conviction relief filed on or before December 31, 2022, and if the petitioner was convicted after a trial completed to verdict. This exception to Articles 930.4 and 930.8 shall apply only to the claim of factual innocence brought under this Article and shall not apply to any other claims raised by the petitioner.~~ An application for post conviction relief filed pursuant to this Article ~~by a petitioner who pled guilty or nolo contendere to the offense of conviction or filed by any petitioner after December 31, 2022,~~ shall be subject to Articles 930.4 and 930.8.

* * *

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The original version of this Article stated: "A petitioner's first claim of factual innocence pursuant to this Article that would otherwise be barred from review on the merits by the time limitation provided in Article 930.8 or the procedural objections provided in Article 930.4 shall not be barred if the claim is contained in an application for post conviction relief filed on or before December 31, 2022, and if the petitioner was convicted after a trial completed to verdict." The 2024 revision to this Article will not affect any applications that were timely filed on or before December 31, 2022 in accordance with this original wording.

Next, the Acting Reporter directed the Council's attention to the materials on the appointment of interpreters in court proceedings in response to House Concurrent Resolution No. 71 of the 2022 Regular Session. He reminded the Council that it had previously approved proposals to amend the Code of Civil Procedure and Code of Evidence articles on this topic and that similar revisions to the Code of Criminal Procedure and the report would be under consideration today. The Council quickly approved the report before turning to Code of Criminal Procedure Article 25.1 on page 1. One Council member noted that this provision previously included parties and witnesses and questioned whether witnesses should still be included, and the Council agreed to change the first instance of "party" on line 8 to "person who is a party or witness" and the second instance of "party" on the same line to "person." The Council also discussed that "limited English proficient" is defined by the relevant Louisiana Supreme Court Rule but agreed to delete "for non-English speaking persons" from the heading of the article on lines 1 and 2. A motion was then made and seconded to adopt Article 25.1 as amended, and the motion passed without objection. The adopted proposal reads as follows:

Code of Criminal Procedure Article 25.1. Appointment of interpreter ~~for non-English-speaking persons~~

A. ~~If a non-English-speaking person who is a principal party in interest or a witness in a proceeding before the court has requested an interpreter, a judge shall appoint, after consultation with the non-English-speaking person or his attorney, a competent interpreter to interpret or to translate the proceedings to him and to interpret or translate his testimony.~~

The court shall appoint an interpreter in accordance with the Code of Evidence and the Rules of the Louisiana Supreme Court for any person who is a party or witness upon a determination that the person is a limited English proficient or deaf individual.

B. ~~The court shall order reimbursement to the interpreter for his services at a fixed reasonable amount.~~ The cost to provide a qualified court interpreter shall be the responsibility of the court.

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The amendments to this Article make clear that the regulation and use of interpreters in court proceedings and court operations are set forth in Part G, Section 14 of the Rules of the Louisiana Supreme Court and in Code of Evidence Articles 604 and 604.1.

Turning to Article 433, on page 2 of the materials, Judge Holdridge explained that most of the changes to this provision are stylistic, but that the one substantive addition was speak "or hear" on lines 8 and 9. One Council member questioned whether the same "limited English proficient or deaf" language should be used for consistency, and the Acting Reporter agreed. A motion was then made and seconded to adopt this provision as amended, and the motion passed with no objection. The adopted proposal reads as follows:

Code of Criminal Procedure Article 433. Persons present during grand jury sessions

A. (1) Only the following persons may be present at the sessions of the grand jury:

(a) The district attorney and assistant district attorneys or any one or more of them~~;~~.

(b) The attorney general and assistant attorneys general or any one or more of them~~;~~.

(c) The witness under examination~~;~~.

(d) A person sworn to record the proceedings of and the testimony given before the grand jury~~; and~~.

(e) An interpreter sworn to translate the testimony of a witness who is ~~unable to speak the English language~~ a limited English proficient or deaf individual.

(2) An attorney for a target of the grand jury's investigation may be present during the testimony of ~~said~~ the target. The attorney shall be prohibited from objecting, addressing, or arguing before the grand jury; however, the attorney ~~he~~ may consult with his client at ~~anytime~~ any time. The court shall remove ~~such~~ the attorney for a violation of these conditions. If a witness becomes a target because of his testimony, the legal advisor to the grand jury shall inform ~~him~~ the witness of his right to counsel and cease questioning until ~~such~~ the witness has obtained counsel or voluntarily and intelligently waived his right to counsel. Any evidence or testimony obtained under the provisions of this Subparagraph from a witness who later becomes a target shall not be admissible in a proceeding against him.

B. No person, other than a grand juror, shall be present while the grand jury is deliberating and voting.

C. A person who is intentionally present at a meeting of the grand jury, except as authorized by Paragraph A of this ~~article~~ Article, shall be in constructive contempt of court.

Having concluded the "Appointment of Interpreter" materials, Judge Holdridge then directed the Council's attention to the materials on electronic filing and record retention, providing background information concerning Senate Resolution No. 43 of the 2023 Regular Session and explaining that the resulting proposals were proposed by the Code of Civil Procedure, Code of Criminal Procedure, and Security Devices Committees with input from the Reporter of the Successions and Donations Committee as well. He then directed the Council's attention to page 7 of the materials to begin consideration of Code of Criminal Procedure Article 14.1, the substance of which had been moved to Article 14.2 concerning fax filings and now dealt entirely with electronic filings. With respect to Article 14.2, on page 10 line 1, the Council discussed that these rules are formulated by the judges in coordination with the clerk and that each clerk of a parish may have different rules within a court before ultimately agreeing to change "Any court district" to "A court." A motion was then made and seconded to adopt Article 14.2 as amended, and the motion passed without objection. The adopted proposal reads as follows:

Code of Criminal Procedure Article 14.2. Facsimile filings

A. Any document in a traffic or criminal action may be filed with the clerk of court by facsimile transmission pursuant to the policy of the clerk of court. Filing shall be deemed complete at the time the facsimile transmission is received by the clerk of court. No later than on the first business day after receiving a facsimile filing, the clerk of court shall transmit to the filing party via facsimile a confirmation of receipt and include a statement of the fees for the facsimile filing and filing of the original document. The facsimile filing fee and transmission fee are incurred upon receipt of the facsimile filing by the clerk of court and payable as provided in Paragraph B of this Article. The facsimile filing shall have the same force and effect as filing the original document, if the party complies with Paragraph B of this Article.

B. Within seven days, exclusive of legal holidays, after the clerk of court receives the facsimile filing, all of the following shall be delivered to the clerk of court:

(1) The original document identical to the facsimile filing in number of pages and in content of each page including any attachments, exhibits, and orders. A document that is not identical to the facsimile filing or that includes pages not included in the facsimile filing shall not be considered the original document.

(2) The fees for the facsimile filing and filing of the original document stated on the confirmation of receipt, if any.

(3) A transmission fee of five dollars, if the defendant has not been declared indigent by the court.

C. If the filing party fails to comply with any of the requirements of Paragraph B of this Article, the facsimile filing shall have no force or effect.

D. A court may provide by court rule for any additional requirement or provisions for filings by facsimile transmission.

E. In keeping with the clerk's policy, each clerk of court shall make available the necessary equipment and supplies to accommodate facsimile filing in criminal actions. Purchases for equipment and supplies necessary to accommodate facsimile filings may be funded from any expense fund of the office of the clerk of court as the clerks deem appropriate.

Turning back to Article 14.1, specifically on page 8 of the materials, the Acting Reporter noted that the language concerning documents in traffic or criminal actions previously appeared in Code of Civil Procedure Article 253, prompting one Council member to question why the language here differed from that used in the revisions to the articles of the Code of Civil Procedure, namely concerning "in accordance with a system established by" as opposed to "pursuant to the policy of" on lines 10 and 11. Ultimately, Judge Holdridge agreed to restore the deleted language on lines 10 and 11 and delete "pursuant to the policy of the" immediately after. The Acting Reporter also agreed to change "parish" to "court" on line 15, and one Council member then questioned the deletion of "if the clerk of court accepts the electronic filing" on lines 17 and 18. Judge Holdridge explained that the Code of Civil Procedure Committee wanted to retain this language because some courts are not equipped to accept electronic filings but that this language prompted questions in the criminal context as to whether clerks should really be rejecting filings. Ultimately, the Council agreed that this language on lines 17 and 18 should be restored and adopted Article 14.1 as amended. The adopted proposal reads as follows:

Code of Criminal Procedure Article 14.1. ~~Filing of pleadings and documents by facsimile or electronic transmission~~ Electronic filings

~~A. Any document in a traffic or criminal action may be filed with the clerk of court by facsimile transmission if permitted by the policy of the clerk of court. Filing shall be deemed complete at the time the facsimile transmission is received by the clerk of court. No later than on the first business day after receiving a facsimile filing, the clerk of court shall transmit to the filing party via facsimile a confirmation of receipt and include a statement of the fees for the facsimile filing and filing of the original document. The facsimile filing fee and transmission fee are incurred upon receipt of the facsimile filing by the clerk of court and payable as provided in Paragraph B of this Article. The facsimile filing shall have the same force and effect as filing the original document, if the party complies with Paragraph B of this Article.~~

~~B. Within seven days, exclusive of legal holidays, after the clerk of court receives the facsimile filing, all of the following shall be delivered to the clerk of court:~~

~~(1) The original document identical to the facsimile filing in number of pages and in content of each page including any attachments, exhibits, and orders. A document not identical to the facsimile filing or which includes pages not included in the facsimile filing shall not be considered the original document.~~

~~(2) The fees for the facsimile filing and filing of the original document stated on the confirmation of receipt, if any.~~

~~(3) A transmission fee of five dollars, if the defendant had not been declared indigent by the court.~~

~~C. If the filing party fails to comply with any of the requirements of Paragraph B of this Article, the facsimile filing shall have no force or effect.~~

~~D. Any court district may provide by court rule for any additional requirement or provisions for filings by facsimile transmission.~~

~~E. In keeping with the clerk's policy, each clerk of court shall make available the necessary equipment and supplies to accommodate facsimile filing in criminal actions. Purchases for equipment and supplies necessary to accommodate facsimile filings may be funded from any expense fund of the office of the clerk of court as the clerks deem appropriate.~~

~~F. The filings as provided in this Article and all other provisions of this Code~~ Any document in a traffic or criminal action may be transmitted

electronically in accordance with a system established by a clerk of court ~~or by the Louisiana Clerks' Remote Access Authority. When such a system is established, the~~ The clerk of court shall adopt ~~and implement procedures~~ a system for the electronic filing and storage of any pleading, document, or exhibit other than those documents or exhibits introduced and filed at a hearing or trial. Furthermore, in a ~~parish~~ court that accepts electronic filings covered under this ~~Paragraph~~ Article, the official record shall be the electronic record. A pleading or document filed electronically is deemed filed on the date and time stated on the confirmation of electronic filing sent from the system, if the clerk of court accepts the electronic filing. Public access to electronically filed pleadings and documents shall be in accordance with the rules governing access to written filings.

Code of Civil Procedure Committee

Judge Holdridge then turned to the Code of Civil Procedure Committee's proposals on electronic filing and record retention but first asked the President and Reporter of the Security Devices Committee, Mr. L. David Cromwell, to provide background information from that Committee's perspective. Mr. Cromwell noted that the Committees agreed that Code of Civil Procedure Article 258 concerning mortgages and conveyances needed to be relocated, a change that the Committee would be proposing later today. He also noted that the Security Devices Committee thought it very important that the language in the Code of Civil Procedure requiring conveyances to be preserved be retained but moved elsewhere into a standalone provision, noting that although the Committee was under the impression that most clerks of court were in agreement with this requirement, it appears that a few many be opposed because they are applying their existing destruction policies to conveyances now. The Committee was very disturbed by this possibility because filings in the conveyances have perpetual significance as a link in the chain of title and the originals may need to be examined, which is not the case with respect to suit records or even filings in the mortgage records. Finally, the Committee also thought that it would be wise to include a provision that states that electronic filings that are recorded have the same effect as to third parties as written instruments that are recorded.

With that background information, Judge Holdridge asked the Council to consider the proposed changes to Code of Civil Procedure Article 253, on page 1 of the materials. The Reporter noted that the proposed revision provides for the electronic filing of all pleadings and documents and that if a document filed electronically has evidentiary value, the filing party is obliged to retain it. Moreover, if a document or exhibit is filed in connection with a trial or hearing, the document or exhibit shall be retained until a final and definitive judgment has been rendered. Judge Holdridge then directed the Council's attention to page 2, lines 1-2, providing that the clerk of court may convert into an electronic record any pleading, document, or exhibit filed in paper form. One Council member questioned whether it would be permissible to file a photocopy rather than the original document. Judge Holdridge indicated that it would likely be permissible, but propriety would likely depend on the specific jurisdiction. A Council member then questioned the result if one were to lose the original document, and another Council member stated that alterations to and forgeries of original documents are becoming more sophisticated. He then asked whether, in light of allegations of alteration or forgery, the proposed rules lend guidance to the plaintiff's failure to retain the original document. Judge Holdridge explained that this issue would depend on whether the court ultimately requires the original, with the matter likely proceeding as it would under current law. If the document has evidentiary value, it is the party's burden to safeguard the original document – the proposed revisions do not change the fact that it is the obligation of the party to retain, then produce to the court, the original document. Judge Holdridge further stated that these rules will likely require revision upon the institution of uniform electronic filing. Another Council member questioned whether it would be necessary for the article to include an express prohibition against destroying documents. She raised concern that a failure to return the original document to the party would lead to the document's eventual destruction, regardless of whether the law mandates that the clerk maintain the document. Members of the Council suggested that perhaps a requirement that the clerk return or maintain the original be added to the proposed revisions, but another Council member stated that clerks would not likely agree to such a revision due to reduced storage

capacity. Moreover, clerks are already required to preserve certain documents, including evidence. Discussion then turned to original documents attached to pleadings – for example, a promissory note attached to a motion for summary judgment – and whether those original documents risk being destroyed. Judge Holdridge stated that one could introduce the original document then submit a certified copy in lieu of the original for filing in accordance with the Code of Evidence.

One Council member suggested that Paragraph D of Article 253 be further revised to provide that the original of any filed document or exhibit be maintained by the clerk in addition to the filing party, asserting that, coupled with the earlier suggestion that the clerk maintain or return the original document upon filing, this would ensure preservation of the documents. Another Council member, however, expressed that clerks often handle large volumes of documents. She further contended that burdening them with a determination as to whether an original existed within a large number of documents, and subsequently maintaining that document, was perhaps onerous. A member of the Code of Civil Procedure Committee further explained that the law has not kept pace with the changing realities of practice, and clerks are not uniform in their handling of filings, whether those filings are received via mail or electronically. She emphasized that many clerks do not destroy documents and are instead opening individual records that include documents received in paper form. She went on to state that some clerks retain documents for a certain period, only destroying them after thorough review and adherence to statute. The Council acknowledged that submitting original documents with pleadings was becoming less common.

One Council member then asserted that perhaps the suggested revision of proposed Paragraph D was inconsistent with the aims of the revision, essentially mandating that an attorney be physically present when documents are filed in order to ensure receipt of the original. Replying, a Council member suggested that, due to eventual conversion to electronic format, an attorney should only send a copy and safeguard the original document. Though generally agreeing, the Council also acknowledged that perhaps certain conditions necessitate that the party send an original – for example, default on a promissory note. The Council agreed that the burden of determining whether a filing includes an original document and subsequent maintenance of that document should not fall upon the clerks. One Council member then suggested that Paragraph D should provide: "If requested by the filing party, the original of any filed document or exhibit shall be returned to the filing party, who shall maintain it during the pendency of the proceeding and until the judgment becomes final and definitive." He noted that this proposal intentionally leaves out pleading. A Council member then raised that the original language clearly articulated that the filing party is obligated to maintain the original of any filed document or exhibit. Judge Holdridge reiterated that the revision seeks only to make clear that if a party manually files documents, the party is responsible for requesting the return and subsequent maintaining of the document. The Council member then revisited his suggestion and stated instead that Paragraph C should include the following language: "If requested by the filing party, the clerk of court shall return to the filing party the original of any document or exhibit that has been converted into an electronic record." The Council was amenable to this suggestion.

At this time, Judge Guy Holdridge ceded the podium, and the President called on Professor Melissa T. Lonegrass, Reporter of the Obligations Committee, to begin her presentation of materials.

Obligations Committee

Professor Lonegrass began her presentation by stating that the report before the Council was prepared in response to Act No. 440 of the 2023 Regular Session. Providing additional context, she explained that the Act was amended to include an effective date of August 1, 2024, and to provide the Law Institute with time to study the expected impact of the Act on the Civil Code. Moreover, the Law Institute was tasked with making recommendations to address any discrepancies or ambiguities relative to the Act and reviewing similar legislation in other states regarding best practices and their compatibility with the Civil Code.

Professor Lonegrass then stated that the Committee met several times and was able to ascertain directly from Representative Schlegel, who participated in the meetings, the intent of the new statute. She indicated that the report details the concerns of the Committee, including potential conflicts with the Civil Code, and suggests language to reconcile the language of Act No. 440 with the Civil Code. The Reporter clarified that Act No. 440 primarily seeks to dissuade online companies from contracting with minors absent parental consent. She further explained that recent legislation has provided several mechanisms in furtherance of this goal, with some companies, as a result, implementing age verification processes. She noted that these statutes, though considered in the Committee's study, were distinct and exceeded the framework of Act No. 440. Professor Lonegrass recognized that though Act No. 440 was seemingly duplicative of existing law, the new statute does provide for some nuance; therefore, the Committee did not recommend its repeal. Next, Professor Lonegrass began an explanation of the term "interactive computer service." She explained that this term is borrowed from Section 230 of the Communications Decency Act of 1996, and that its use is broad and well-understood, encompassing most companies with a presence on the internet. Professor Lonegrass also indicated that the Committee did not object to the term's use in the statute.

The Council's attention was then directed to Subsection D of proposed R.S. 9:2717.2, on page 13, lines 21-22 of the materials. Professor Lonegrass reminded the Council that the Committee's primary goal was to ensure that the new language did not displace tenets existing within the Civil Code. She explained that Act No. 440 provides that the Section did not supersede or modify the provisions relative to contracts made pursuant to only Civil Code Article 1923. The Reporter pointed out that this may be problematic because the Civil Code contains additional exceptions with respect to the general rule of nullity when contracting with minors: Article 1923 provides for an exception to the rule when the contract was made for the purpose of providing the minor with something necessary for support, education, or business; Article 1924 provides for the enforceability of a contract made when a party reasonably relies on a minor's false representation of majority; and Article 1920 provides that, upon discovering the minor's incapacity, a party may require the minor to confirm or rescind the contract. Accordingly, the Committee suggested that, rather than only Article 1923, this Subsection reference Chapter 2 of Title IV of Book III of the Civil Code. Beginning discussion, one Council member questioned whether the legislature intended to omit those articles. Professor Lonegrass explained that the Committee, noting that it was tasked with identifying discrepancies, discussed this issue with Representative Schlegel, who noted that she merely sought to identify certain contracts with minors as unenforceable. The Council member then suggested that the Subsection explicitly include Article 1924, and another Council member suggested making Subsection D apply more broadly, referencing the entirety of Title IV, or even the entirety of the Civil Code. Professor Lonegrass explained that this may not be appropriate since another provision of Act No. 440, retained by the Committee, deviates from the general framework of Title IV. Though the Council declined to adopt either suggestion, Professor Lonegrass offered to include within the report a statement with respect to the legislature's presumed intent. The Council subsequently adopted that portion of the report.

Professor Lonegrass then directed the Council's attention to page 13, lines 6-9 of the materials. She explained that Paragraph (A)(1) of the statute provides that no interactive computer service shall enter into a contract or other agreement, including the creation of an online account, with a minor without obtaining the consent of the legal representative, and Paragraph (A)(2) states that no interactive computer service may rely on the consent of the legal representative of the minor to enter into a contract or agreement, including the creation of an online account, with a minor unless the interactive computer service knows or reasonably should know that the legal representative is no longer authorized to represent the minor. Professor Lonegrass asserted that, pursuant to Paragraph (A)(2), if a person who no longer has authority over the minor – for example, this circumstance may arise as a result of divorce and custody proceedings – consents to the minor's entering of a contract, and the interactive computer does not know that the person no longer has authority, then the contract is enforceable. This Paragraph would serve not only to protect interactive computer services, but also as a deviation from the Civil Code – under current law, a person who is not the legal representative of the minor

cannot consent on behalf of the minor. Thus, for consistency, the Committee suggested the repeal of Paragraph (A)(2), and the Council adopted this revision.

Next, Professor Lonegrass directed the Council's attention to page 13, lines 19-20 of the materials. She explained that the provision states that it applies only to minors who are domiciled in Louisiana in accordance with Civil Code Article 41. She went on to state that the effect of this statute does not necessarily do violence against our laws on capacity, but it is inconsistent with our conflict of law rules. The Committee determined that this provision should be repealed; rather, existing framework for conflicts of law should apply. The Reporter then directed the Council's attention to page 13, lines 3-5, providing a declaration of public policy. She stated that the addition of lines 3-5 were necessary in light of the repeal of lines 19-20. Professor Lonegrass explained that a conflicts of law analysis in part requires courts to assess which state's policy would be most seriously impaired if that state's law were not applied. Thus, the Committee determined that an affirmative statement of policy would be an appropriate addition to R.S. 9:2717.2. The Council then adopted that portion of the report.

Professor Lonegrass moved to page 13, lines 13-15 of the materials, providing that any contract entered into between a minor and an interactive computer service without the consent of the legal representative shall be a relative nullity. She then pointed out that the statute's definition of consent means having the written authority of a legal representative of a minor to permit the minor to enter into a contract with the interactive computer service. Professor Lonegrass explained that this is a departure from the Civil Code. Current law does not require written consent in all cases; instead, the issue depends on whether the underlying contract itself requires a writing. She explained that the Committee discussed removing the requirement that consent be written but ultimately determined that the use of "written" is irrelevant given that, as a practical matter, interactive computer services always obtain written consent under the Louisiana Uniform Electronic Transactions Act (LUETA). The Committee also determined that this necessitated a provision guiding how a relatively null contract under this Section could be confirmed. Professor Lonegrass then reminded the Council that a relatively null contract can be confirmed by the legal representative or confirmed by the minor upon reaching the age of majority. Here, because the statute requires that consent be in writing, it stands to reason that, under the principles of the equal dignities doctrine, the confirmation of a contract that is relatively null under this Section should also be express and in writing. The Reporter subsequently directed the Council's attention to page 13, lines 6-8 of the materials. She stated to the Council that the statute repeatedly uses the phrase "contract or other agreement." Because the Committee found no distinction between a "contract" and an "agreement," it determined that the statute's use of "or other agreement" was duplicative and should be removed. The Council then adopted the language.

Professor Lonegrass then turned to the remainder of the report. She stated that other areas of the report detail the underlying laws with respect to capacity and consent and identify possible ambiguities and conflicts between the statute and the Civil Code. She then noted that recent legislation was enacted requiring social media companies to affirmatively verify the age of someone who creates an account. The Committee reviewed the legislation and ultimately determined that its purpose exceeded the scope of the Committee's study. The Reporter then explained that, with respect to identifying similar laws in other states, Louisiana is the sole state with a specific statute providing for the unenforceability of a contract between a minor and an internet company – other states rely on their existing statutory frameworks when addressing these issues. After brief discussion, the Council adopted the remainder of the report and then adjourned for lunch, during which time there was a meeting of the Executive Committee.

Common Interest Ownership Regimes Committee

After lunch, the President called on Mr. Randy Roussel, Reporter of the Common Interest Ownership Regimes Committee, to begin his presentation of materials. Mr. Roussel began by reminding the Council that only two provisions in the proposed Planned Community Act need approval prior to the bill being resubmitted to the legislature for consideration during the 2024 Regular Session. Directing the Council to page 69 of the materials, the Reporter reminded the Council that at its January meeting, R.S. 9:1141.47

concerning warranties was recommitted due to questions regarding the nature of the claim, intervention, res judicata, recoverable damages for each lot owner, and prescription. Mr. Roussel explained that in planned communities, the common areas are owned by the association, unlike condominium communities, in which they are co-owned by all of the unit owners. Considering this distinction, the Committee reworked this Section to ensure that each lot owner has the ability to enforce a warranty that runs in favor of the association when the association fails to enforce the claim. This revision protects lot owners from a situation whereby the declarant hires a related contractor who fails to perform and the association, controlled by the declarant, fails to file a claim against the related contractor. The Uniform Act and this revision modeled therefrom allows lot owners, after notice and an opportunity to respond, to file the claim of the association, with monetary recovery limited to that owner's damages.

One Council member questioned the interplay between Subsection F and res judicata, and the Reporter responded that because each lot owner's damages are different, there is no res judicata and also no class action. Because recovery is limited to each owner's specific damages, and all of the claims may be slightly different and only for the actual failure of warranty as to that lot owner, the claim is not derivative. Mr. Roussell next explained that the forty-day time period in Subsection G was chosen arbitrarily but took into consideration the thirty-day period for the association to assert the claim and added an extra ten-day window for the owner, and slow mail service, if the association fails to do so. The Committee favored a tight time frame to keep owners from raising issues without any real intention to then take action. The Council inquired as to whether there is a specific point in time that declarant control ends, to which the Reporter replied that although the specific date depends upon the number of phases of development of the planned community, the Act provides a termination procedure.

After a few changes, the Council approved all of the following:

R.S. 9:1141.47. Warranties

A. Except as provided in Subsection G of this Section, the warranty period provided by law shall apply to this Part.

B. The association may assert a claim to enforce any express or implied warranty involving the common areas and limited common areas either made by the declarant or that the declarant could have asserted against a third party in any manner provided by law.

C. If during the period of declarant control the association fails to enforce a claim which it could have asserted in accordance with Subsection B of this Section a lot owner who wishes to assert the claim shall first provide notice to the association, by the methods provided in R.S. 9:1141.38, of the intention to do so. The association shall have thirty days from the date notice was sent to assert the claim.

D. If the association fails to assert the claim within the thirty day period, the lot owner that provided notice may assert the claim of the association to enforce any express or implied warranty involving the common areas and limited common areas whether made by the declarant or a third party.

E. A lot owner's monetary recovery related to a claim asserted in accordance with this Section shall be limited to the lot owner's damage caused by the breach of warranty involving the common areas and limited common areas. A lot owner may also seek any other relief as provided by law.

F. A compromise made by the lot owner asserting a claim in accordance with this Section or any judgment resulting from the enforcement thereof does not preclude the assertion of a claim by the association or another lot owner.

G. A claim to enforce an express or implied warranty made by the declarant involving the common areas and limited common areas in accordance with this Section shall be asserted within forty days following the expiration of the time period of declarant control or within the time period to assert the claim as otherwise provided by law, whichever is later.

Revision Comments – 2024

(a) The right of the association to assert a claim in accordance with this Section is not barred by the lack of privity between the association and a third party. This Act grants the association standing to maintain an action to enforce an obligation owed to the association. See R.S. 9:1141.48. For example, in the event the declarant entered into a contract with another person who agreed to construct improvements on common areas, the association would be subrogated to the rights of the declarant to enforce a claim for failure to construct the improvement or for damages caused by defective construction. This Section further grants the association the right to assert a claim. These examples are illustrative and not in limitation of the rights created by this Section.

(b) This Section further provides that during the period of declarant control the lot owner may assert a claim of the association in the event the association fails to assert its claim. The assertion of the claim by the association may represent a conflict of interest during the period of declarant control of the association. The rights granted to a lot owner to act on behalf of the association is intended to resolve this conflict.

(c) In the event a lot owner asserts a claim of the association, the lot owner's recovery is limited to loss, injury, or damage suffered by the lot owner from the damage to the common areas and limited common areas. Nothing in this Section impacts the rights of other individual lot owners. This Section does not preclude the ability of a lot owner asserting a claim under this Section to also assert claims under other provisions of law, including claims in redhibition.

The final provision for consideration is the addition of a section of the bill containing a delayed effective date, which would provide existing planned community associations one year to review the policies and procedures in the new Act for consistency. The following was quickly approved:

Section 3. (A) This Act shall become effective on January 1, 2025, except as otherwise provided by this Section, and shall apply to declarations establishing planned communities filed for registry on or after that date.

(B) For planned communities filed for registry on or before December 31, 2024, this Act shall become effective on January 1, 2026.

Having concluded his presentation, Mr. Roussel ceded the podium, and the President called on Professor Sally Brown Richardson, Reporter of the Property Committee, to begin her presentation of materials.

Property Committee

Professor Richardson began by reminding the Council of the directive contained in House Concurrent Resolution No. 102 of the 2018 Regular Session to study provisions of law on property, make recommendations regarding the classification of modular homes as movable or immovable property, and develop the legal procedure for their attachment to land and securing them as loan collateral. Professor Richardson then provided background information to further the Council's understanding of the differences between the existing definitions of manufactured, modular, mobile, and factory-built homes and their classification for sales tax purposes as opposed to other purposes. Finally, she reminded the Council that at its September 2023 meeting, the Council approved

proposals to create a new Factory-Built Home Property Act that specifically includes, without question, all manufactured, mobile, and modular homes and provides for the default classification thereof as movable.

However, the September Council also recommitted the proposals regarding immobilization and deimmobilization for further consideration by the Committee of third-party rights. The Committee originally authorized immobilization and deimmobilization only if there were no third-party rights in the factory-built home at the time of the declaration, prompting the Council to question the invalidity, nullity, and enforceability of an improperly filed declaration. Upon further consultation with lenders, the Louisiana Manufactured Housing Association, and attorneys who practice in this area, the Committee is now proposing to retain current law, which permits immobilization and deimmobilization even if a third party has rights in the home. However, the proposal recommends clarification concerning the ranking of security interests and the need for obtaining the concurrence of the third party prior to filing the declaration. Professor Richardson then pointed to the specific language in R.S. 9:1149.6 relative to the process for immobilization and briefly described the process. One Council member asked what would happen if a declaration were filed without the concurrence of the person with a security interest. The Reporter noted that she has not found any relevant jurisprudence, but since this is existing law, the result would be the same as it is today - presumably, the filing would be declared invalid and the home would remain movable. Another Council member inquired as to whether a sale of the immovable property would include the home if the declaration of immobilization is invalid. The Council was confident that the lender would retain his rank and the title of the home would evidence the existence of the rights of a holder with a perfected interest.

For further consistency in the language and to analogize with other law relative to fixture filings, the Reporter accepted a suggestion to require the description of the immovable upon which the home is located to include the name of a record owner of the immovable. The Council wondered how this could affect heirship property owned by multiple individuals without clear title but concluded that between our system, which indexes by name, and tax assessor records, requiring a single record owner to be listed is justified. The Council worked through a few more questions and examples and concluded that all of the issues raised are issues under current law and that the proposed presumption in R.S. 9:1149.4 will clear up title and prescription matters. Council members then discussed requiring the secretary of the Department of Public Safety and Corrections to include recordation information or the Uniform Commercial Code number in their database of declarations but chose to leave present law as is without input from the department as to the capabilities of the system used. A Council member made a motion to require the owner of the home to sign the declaration; however, this motion died for lack of a second. The final question and clarification concerned the deletion of the language in Subsection A relative to the filing of a declaration of immobilization in a sale. The Reporter noted that the declaration may still be filed with a sale or mortgage, but that this is not the only way for the declaration to be filed. With discussion complete, all of the following language was approved:

R.S. 9:1149.4~~6~~. Immobilization; declaration

A. A ~~manufactured home placed upon a lot or tract of land~~ factory-built home shall be classified as an immovable when there is ~~recorded~~ a declaration filed for registry by the owner of the factory-built home in the ~~appropriate~~ conveyance ~~or mortgage~~ records of the parish where the ~~said lot or tract of land is situated an authentic act a validly executed and acknowledged sale or mortgage or sale with mortgage which contains a~~ immovable to which the factory-built home is attached is located.

B. The declaration shall contain all of the following:

(1) A description of the ~~manufactured~~ factory-built home as described in the certificate of title or manufacturer's certificate of origin and a description of the ~~lot or tract of land~~ immovable upon which the

~~manufactured~~ factory-built home is ~~placed~~ located, including the name of a record owner of the immovable.~~,~~

(2) A declaration that the factory-built home shall remain permanently attached to the immovable.

(3) The concurrence of the holder of any perfected security interest in the factory-built home. ~~and contains a declaration by the owner of the manufactured home and, when applicable, the holder of a mortgage or security interest under Chapter 9 of the Louisiana Commercial Laws on the manufactured home, that it shall remain permanently attached to the lot or tract of land described in the instrument.~~

~~B.~~ C. Upon ~~recordation~~ the filing of the ~~act described above~~ declaration, the ~~manufactured~~ factory-built home shall cease to be subject to the application of Chapter 4 of Title 32 of the Louisiana Revised Statutes of 1950 and the taxes applicable to movables and shall thereafter be subject to all laws concerning immovable property~~;~~. ~~however~~ However, nothing ~~herein~~ in this Section shall be construed to affect the rights of the holder of a ~~validly recorded chattel mortgage or~~ previously perfected security interest ~~under Chapter 9 of the Louisiana Commercial Laws duly noted on the certificate of title~~. A previously perfected security interest in the factory-built home at the time of immobilization has the same priority over existing and subsequent mortgages and other encumbrances on the immovable as would a properly and timely perfected purchase-money security interest in fixtures.

~~C.(1) Notwithstanding any other law to the contrary, no action to collect a tax applicable to movables which is purported to be due or became due on any purchase made on or after September 1, 2005, through December 31, 2006, of any manufactured home used solely as residential housing in the following parishes which have been severely impacted by Hurricanes Katrina and Rita shall be initiated or continued, if the basis of such action is the date upon which the declaration of immovability provided for in Subsection A of this Section is recorded in the conveyance or mortgage records:~~

~~(a) The parishes of St. Helena and Cameron.~~

~~(b) The parish of West Feliciana.~~

~~(c) The parish of St. James.~~

~~(d) The parishes of East Feliciana, Point Coupee, and West Baton Rouge.~~

~~(e) The parishes of Allen, Assumption, and Sabine.~~

~~(f) The parish of Plaquemines.~~

~~(g) The parishes of Beauregard, Evangeline, Iberville, and Jefferson Davis.~~

~~(h) The parishes of Acadia, Ascension, Iberia, Lafourche, Livingston, St. Bernard, St. Charles, St. John the Baptist, St. Landry, St. Martin, St. Mary, Vermilion, Vernon, and Washington.~~

~~(i) The parishes of Tangipahoa and Terrebonne.~~

~~(j) The parishes of Calcasieu, Lafayette, and St. Tammany.~~

~~(k) The parishes of East Baton Rouge, Jefferson, and Orleans.~~

~~(2) With respect to actions to collect a tax applicable to movables which is purported to be due or became due on those manufactured homes specified in Paragraph (1) of this Subsection, if the basis of such action is the date upon which the declaration of immovability was filed, then the date of immobilization shall relate back to the twentieth day of the month following the month of the delivery of the manufactured home.~~

~~(3) The purchaser of a manufactured home who formerly lived at a physical address on or after September 1, 2004, within one of the parishes as provided for in Paragraph (1) of this Subsection, who bought a manufactured home on or after September 1, 2005, through December 31, 2006, for use solely as residential housing, shall also be eligible for the relief provided for in this Subsection if the purchaser submits an Affidavit of Displacement to the Department of Revenue attesting that the purchaser resided in one of the parishes as provided for in Paragraph (1) of this Subsection on or after September 1, 2004.~~

D. ~~(1)~~ Upon ~~recordation~~ the filing of the ~~act of immobilization~~ declaration provided by this Section, the owner of the ~~manufactured~~ factory-built home or his agent shall file with the secretary of the Department of Public Safety and Corrections a certified copy of the ~~act~~ declaration. The secretary of the Department of Public Safety and Corrections shall create an ~~Internet~~ internet accessible searchable database providing a public record of each ~~such~~ filing, indicating the name of the owner of the ~~manufactured~~ factory-built home, the date of recordation ~~recording of the act of immobilization~~ in accordance with Subsection A of this Section, the parish where the ~~act~~ declaration is recorded, the year of manufacture, the name of the manufacturer, the dimensions and the vehicle identification number or numbers of the ~~manufactured~~ factory-built home, and the date of the secretary's filing of a copy of the ~~act~~ declaration of immobilization.

E. ~~(2)~~ The secretary shall return to the owner or his agent an acknowledgment that the ~~act~~ declaration has been received and the public record created. This acknowledgment shall contain information sufficient to allow the location of the public record to be ascertained. For creating this public record, the secretary of the Department of Public Safety and Corrections is authorized to charge and collect the fee provided in R.S. 32:412.1(A)~~(3)(y)~~ (25). The failure of the owner or his agent to file a certified copy of the declaration of immobilization as provided in ~~this~~ Subsection D of this Section shall not impair the validity or enforceability of the ~~act of immobilization~~ declaration as provided by this Section.

Revision Comments – 2024

(a) This provision changes the law in that it does not require the owner to file a declaration of immobilization in the form of an authentic act. In requiring that the owner file a declaration of immobilization for the factory-built home, this provision follows general provisions on immobilization. *See* C.C. Art. 467.

(b) This provision changes the law in that it requires the declaration of immobilization to be filed in the conveyance records, as opposed to the conveyance records or mortgage records.

(c) This provision clarifies the law that if a third party, such as a lender, has a perfected security interest in a factory-built home, the third party does not lose its interest in the factory-built home upon immobilization. The third party must concur in the immobilization, but any interest the third party has in the factory-built home remains after the immobilization. The provision also clarifies the priority a third party with a perfected security interest has in the factory-built home by analogizing to the priority

established in R.S. 10:9-334(d) for properly and timely perfected purchase-money security interests in fixtures.

Next, Professor Richardson explained that R.S. 9:1149.7, on page 18 of the materials, sets forth the procedure to deimmobilize a factory-built home and includes the concept of deimmobilization by detachment or removal as provided in Civil Code Article 468. If there are third-party rights in the immobilized home, the owner may deimmobilize with the concurrence of the holder of any perfected security interest. This mirrors the requirements in existing and proposed law for immobilization. The Reporter accepted a few technical changes, and the following was approved:

R.S. 9:1149.67. Deimmobilization; declaration; detachment or removal

A. ~~The owner may deimmobilize a manufactured home by detachment or removal. However, to affect third persons, an authentic act or sale or mortgage or sale with mortgage containing a~~ The owner of the immovable upon which a factory-built home is immobilized may deimmobilize the factory-built home by filing a declaration of deimmobilization in the conveyance records of the parish where the immovable is located.

B. The declaration shall contain all of the following:

(1) A description of the ~~manufactured~~ factory-built home as described in the previous certificate of title or manufacturer's certificate of origin~~, a~~.

(2) A description of the ~~lot or tract of land~~ immovable upon which the ~~manufactured~~ factory-built home has been ~~placed, a~~ located.

(3) A statement of intent by the owner of the factory-built home that ~~he~~ the owner no longer intends the ~~manufactured~~ factory-built home to be an immovable ~~and a~~.

(4) A description of the ~~document by which the manufactured home was immobilized~~ declaration of immobilization, including the recording information~~, must be filed in the appropriate conveyance or mortgage records of the parish where the said lot or tract of land is situated~~.

(5) The concurrence of the holder of any perfected security interest, recorded mortgages, or other real security encumbering the factory-built home.

~~B.~~ C. ~~Thereafter the~~ The owner may apply to the commissioner for a certificate of title according to the provisions of Chapter 4 of Title 32 of the Louisiana Revised Statutes of 1950. The commissioner shall issue a certificate of title upon the furnishing of all of the following:

~~(a) a~~ (1) A certificate of mortgages~~;~~.

~~(b) a~~ (2) A certified copy of the ~~act~~ declaration of deimmobilization as provided in ~~R.S. 9:1149.6(A);~~ Subsections A and B of this Section.

~~and (c) a~~ (3) A release or cancellation of all mortgages previously ~~secured by~~ encumbering the ~~manufactured~~ factory-built home ~~and/~~or the immovable property upon which the ~~manufactured~~ factory-built home was located.

~~C.~~ D. Upon the issuance of a certificate of title by the commissioner, the ~~manufactured~~ factory-built home shall be deemed a movable~~,~~ and shall be subject to all laws concerning movable property.

E. In the absence of rights of a third person in the factory-built home, the owner of an immovable upon which a factory-built home is located may deimmobilize the factory-built home by detachment or removal.

Revision Comments – 2024

(a) Subsection E of this provision clarifies that deimmobilization by detachment or removal can occur only in the absence of the rights of third persons. It is modeled after the general rules on deimmobilization. *See* C.C. Art. 468. While deimmobilization by detachment or removal is allowed in the absence of any third-party rights in the immobilized factory-built home, for clarity of title, the owner of an immobilized factory-built home who deimmobilizes through detachment or removal would be wise to also file a declaration of deimmobilization.

(b) If a third party has an interest secured by the immobilized factory-built home, such as a mortgage, the owner of the immovable on which the factory-built home is located must file a declaration of deimmobilization that includes the concurrence of the third party in order to deimmobilize the factory-built home.

~~**R.S. 9:1149.7. Reference to prior law**~~

~~The provisions of this Part shall replace the provisions of R.S. 32:710(N) and whenever any reference is made in any law to R.S. 32:710(N), said law or laws shall be deemed to refer to the provisions of this Part.~~

The remainder of the material, pages 21 through 38, contains conforming changes throughout the Revised Statutes to substitute and cross-reference to the all-encompassing term "factory-built home." Without question, the Council approved all of the following:

R.S. 6:969.6. Definitions

As used in this Chapter:

* * *

(14)(a) "Credit service charge" means the sum of the following:

* * *

(b) The term does not include default charges; delinquency charges; charges for checks returned for having nonsufficient funds; documentation fees; ~~manufactured housing~~ factory-built home appraisal and title search fees; other fees and charges permitted ~~under~~ in accordance with this Chapter; and any additional fees and charges that the seller agrees to finance under the transaction that are not considered to be a finance charge ~~under~~ in accordance with 12 ~~C.F.R.~~ CFR 226.4.

* * *

(21)(a) "Loan finance charge" means the sum of the following:

* * *

(b) The term does not include fees paid to a non-affiliated loan broker, default charges, deferral charges, delinquency charges, charges for checks returned for having nonsufficient funds, ~~manufactured housing~~ factory-built home appraisal, title search fees and closing costs, other fees and charges permitted ~~under~~ in accordance with this Chapter, and any

additional fees and charges that the lender agrees to finance under the transaction that are not considered to be a finance charge ~~under~~ in accordance with 12 ~~C.F.R.~~ CFR 226.4.

(22) ~~"Manufactured home" means a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. The term includes any structure meeting all of the requirements of this Subsection except the size requirements and with respect to which the manufacturer voluntarily files a certificate required by the United States Secretary of Housing and Urban Development and complies with the standards established under Title 42 of the United States Code~~. "Factory-built home" shall have the same meaning as defined in R.S. 9:1149.2.

(23)(a) "Motor vehicle" means any new or used transportation device, including automobiles, motorcycles, trucks, and other vehicles that are operated over the public highways and the streets of this state, but does not include traction engines, boat trailers, road rollers, implements of husbandry, and other agricultural vehicles. A ~~manufactured~~ factory-built home is deemed to be a "motor vehicle" for purposes of this Chapter only if it is anticipated at the time of the transaction that the ~~manufactured~~ factory-built home will not be immobilized pursuant to R.S. ~~9:1149.4~~ 9:1149.6.

* * *

R.S. 6:969.18. Documentation and compliance fees; notary fees; transfer of equity and other fees; disclosure

A.

* * *

(6) The extender of credit may charge for any fees and expenses incurred for flood determination and flood zone monitoring services in connection with the financing of a ~~manufactured~~ factory-built home.

* * *

R.S. 6:969.20. Rebates upon prepayment; prepayment charges; return of lien documents upon payment in full of the balance due

* * *

C.(1) There is no requirement that prepaid finance charges be rebated upon prepayment in full of a simple interest transaction, provided that all of the following conditions are satisfied:

* * *

(c) Other than in connection with a credit transaction involving a ~~manufactured~~ factory-built home, prepaid finance charges assessed under the transaction did not exceed five percent of the original amount financed or amount deferred.

* * *

R.S. 6:1083. Definitions

As used in this Chapter:

* * *

(6) "Federally related mortgage loan" means an extension of credit to a consumer secured by a first mortgage on residential immovable property located in this state, including: a ~~mobile~~ factory-built home which will be immobilized pursuant to R.S. ~~9:1149.4~~ 9:1149.6 and designed principally for the occupancy of from one to four families; and which is one of the following:

R.S. 9:374. Possession and use of family residence or community movables or immovables

* * *

B. When the family residence is community property or is owned by the spouses in indivision, or the spouses own community immovables or a community ~~manufactured~~ factory-built home as defined in R.S. 9:1149.2 and occupied as a residence, regardless of whether it has been immobilized, after or in conjunction with the filing of a petition for divorce, either spouse may petition for, and a court may award to one of the spouses, after a contradictory hearing, the use and occupancy of the family residence and use of community immovables or the community ~~manufactured~~ factory-built home pending partition of the property or further order of the court, whichever occurs first. In these cases, the court shall inquire into the relative economic status of the spouses, including both community and separate property, and the needs of the children, if any, and shall award the use and occupancy of the family residence and the use of any community immovables or the community ~~manufactured~~ factory-built home to the spouse in accordance with the best interest of the family. If applicable, the court shall consider the granting of the occupancy of the family residence and the use of community immovables or the community ~~manufactured~~ factory-built home in awarding spousal support.

C. A spouse who, in accordance with the provisions of Subsection A or B of this Section, uses and occupies or is awarded by the court the use and occupancy of the family residence, a community immovable occupied as a residence, or a community ~~manufactured~~ factory-built home as defined in R.S. 9:1149.2 and occupied as a residence, regardless of whether it has been immobilized, shall not be liable to the other spouse for rental for the use and occupancy, except as hereafter provided.

R.S. 9:3259.1. Unpaid rent; ~~mobile homes or manufactured housing~~ factory-built homes; notification by lessor

A. As used in this Section the following terms shall have the following meanings:

(1) ~~"Lessor" shall mean the owner of the unsubdivided immovable property on which three or more lots are available for rent for locating a mobile home or manufactured housing~~. "Factory-built home" shall have the same meaning as defined in R.S. 9:1149.2.

(2) "Lessee" shall mean the person leasing the immovable property on which a ~~mobile home or manufactured housing~~ factory-built home is located.

(3) ~~"Mobile home" and "manufactured housing" means a structure, transportable in one or more sections, which, in the traveling mode, is eight~~

~~body feet or more in width or forty body feet or more in length or, when erected on site, is three hundred twenty or more square feet and which, is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, and air conditioning, and electrical systems contained therein; except that such term shall include any structure which meets all the requirements of this Paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the fire marshal and complies with the standards established by this Part. The terms "mobile home" and "manufactured housing" shall include a manufactured home, a modular home, and a residential mobile home that is no longer declared to be a part of the realty pursuant to R.S. 9:1149.6.~~

"Lessor" shall mean the owner of the unsubdivided immovable property on which three or more lots are available for rent for locating a ~~mobile home or manufactured housing~~ factory-built home.

(4) "Mortgagor" shall mean the person executing the security device as the obligor or the transferee if the ~~mobile home or manufactured housing~~ factory-built home has been transferred and the obligations under the security device assumed by another person with written consent of the holder of the security device.

(5) "Secured party" shall mean the holder of a security interest under ~~Chapter 9 of the Louisiana Commercial Laws~~ Uniform Commercial Code – Secured Transactions (R.S. 10:9-101, et seq.) or a chattel mortgage, the pledgee or assignee of a chattel mortgage or security agreement, or the agent of the holder, assignee, or pledgee of a chattel mortgage or security agreement, or the holder of a promissory note executed for the sale of a ~~mobile home or manufactured housing~~ factory-built home if that note is sold with recourse against the holder of the note, or the vendor of a retail installment contract as defined in R.S. ~~6:951~~ 6:969.6 when such retail installment contract is sold with recourse against the vendor.

(6) "Security device" means a security interest under ~~Chapter 9 of the Louisiana Commercial Laws~~ Uniform Commercial Code – Secured Transactions (R.S. 10:9-101, et seq.), a chattel mortgage, or a promissory note executed for the sale of a ~~mobile home or for manufactured housing~~ factory-built home or a retail installment contract entered into pursuant to Chapter 10-B of Title 6 of the Louisiana Revised Statutes of 1950 for the sale of a ~~mobile home or for manufactured housing~~ factory-built home.

B. When the rental payments for immovable property on which a ~~mobile home or manufactured housing~~ factory-built home is located are sixty days past the due date for the payment, the lessor shall notify the secured parties and the mortgagor, if the mortgagor is not the lessee or occupant of the ~~mobile home or manufactured housing~~ factory-built home, in writing by mail that the rental payments are sixty days past the due date. The notice shall include the following information if known or readily available to the lessor or if available from the office of motor vehicles of the Department of Public Safety and Corrections:

(1) The lessor's name.

(2) The lessee's name.

(3) The mortgagor's name.

(4) The location of the ~~mobile home or manufactured housing~~ factory-built home.

(5) The number of days that the rental payments are overdue, the monthly rental payment, and the total amount past due.

(6) The vehicle identification number of the ~~mobile home or manufactured housing~~ factory-built home.

(7) A description of the ~~mobile home or manufactured housing~~ factory-built home including the make, model, year, dimensions, and any identification numbers or marks.

* * *

E. The lessor shall be entitled to collect a fee of twenty-five dollars from the secured parties in addition to all rental or storage payments due at the time the ~~mobile home or manufactured housing~~ factory-built home is repossessed when ~~such~~ notification is made and the secured party subsequently obtains possession of the ~~mobile home or manufactured housing~~ factory-built home.

F. The office of motor vehicles in the Department of Public Safety and Corrections shall maintain a record of all ~~mobile homes and manufactured housing~~ factory-built homes for which a vehicle certificate of title has been issued pursuant to Chapter 4 of Title 32 of the Louisiana Revised Statutes of 1950 and which is subject to a security device for a period of ten years or for the period stated for the termination of the security device. The record shall include, if available:

(1) The name and address of the mortgagor or vendee of the ~~mobile home or manufactured housing~~ factory-built home.

(2) The names and addresses of the primary secured party and any secondary secured party on any security device.

(3) The vehicle identification number of the ~~mobile home or manufactured housing~~ factory-built home.

(4) A description of the ~~mobile home or manufactured housing~~ factory-built home including the make, model, year, dimensions, and any identification numbers.

R.S. 9:3259.3. Privilege for unpaid lease payments; abandoned ~~manufactured~~ factory-build homes and abandoned movable property; enforcement of privilege by owner of immovable property; definitions

A. As used in this Section, the following terms shall have the following meanings:

(1) "Abandoned ~~manufactured~~ factory-built home" means a ~~manufactured~~ factory-built home that has a current fair market value not exceeding five thousand dollars that is not encumbered by a mortgage, lien, privilege, or security interest, that is placed upon immovable property of another subject to a lease agreement, when the lessee has notified the owner of the immovable property that the lessee no longer intends to remain in the ~~manufactured~~ factory-built home and intends to abandon the remaining movable property, or when a reasonable person would conclude from all appearances that the lessee no longer intends to occupy the ~~manufactured~~ factory-built home or claim ownership to any of the remaining movable property.

(2) "Abandoned movable property" means contents, personal items, or other movable property as defined by Civil Code Article 475 of the lessee left in the abandoned ~~manufactured~~ factory-built home.

(3) "~~Manufactured~~ Factory-built home" ~~means a mobile home or residential mobile home~~ shall have the same meaning as defined ~~by~~ in R.S. 9:1149.2.

B. (1) The owner of immovable property to secure the payment of rent and other obligations arising under the lease shall have a privilege on any abandoned ~~manufactured~~ factory-built home that is not encumbered by a mortgage, lien, privilege, or security interest, and on any abandoned movable property that is placed upon the immovable property pursuant to a lease agreement.

(2) Notwithstanding any other provision to the contrary, the provisions of this Section shall not apply to any ~~manufactured~~ factory-built home or abandoned ~~manufactured~~ factory-built home that is encumbered by a mortgage, lien, privilege, or security interest.

C. In the event of default by the lessee and abandonment of the ~~manufactured~~ factory-built home and after compliance with the provisions of R.S. 9:3259.1, if applicable, the owner of the immovable property may enforce judicially all of his rights under the lease agreement, and to enforce his privilege for the debt due him, as follows:

(1) The owner of the immovable property shall be authorized to remove any lock on the abandoned ~~manufactured~~ factory-built home located on the immovable property ~~in order~~ to compile a brief and general description of the abandoned ~~manufactured~~ factory-built home and abandoned movable property, including the serial number and vehicle identification number of the ~~manufactured~~ factory-built home, if available, upon which a privilege is claimed and shall be entitled to place his own lock upon ~~such manufactured~~ the factory-built home until ~~his~~ the privilege is satisfied.

(2) The lessee shall be notified of the owner's intention to enforce ~~his~~ the privilege.

(3) The notice shall be delivered in person to the lessee or sent by certified mail to the last known address of the lessee.

(4) The notice shall include:

(a) A copy of any written lease agreement between the owner and defaulting lessee, or, if the lease agreement is verbal, a summary of its terms and conditions.

(b) An itemized statement of the owner's claim, showing the sum due at the time of the notice and the date when the sum became due.

(c) The name of the owner of the abandoned ~~manufactured~~ factory-built home, if known, and a brief and general description of the abandoned ~~manufactured~~ home and abandoned movable property, including the serial and vehicle identification numbers of the abandoned ~~manufactured~~ factory-built home, if known, upon which a privilege is claimed. The description shall be reasonably adequate to permit the person notified to identify it, except that any container, including but not limited to a trunk, valise, or box that is locked, fastened, sealed, or tied in a manner which deters immediate access to its contents may be described as such without describing its contents.

(d) Notification that the lessee has been or shall be denied access to the abandoned ~~manufactured~~ factory-built home and abandoned movable property, if ~~such~~ denial is permitted under the terms of the lease agreement,

with the name, street address, and telephone number of the owner or his designated agent whom the lessee may contact to respond to the notice.

(e) A demand for payment within a specified time not less than fifteen days after the date of mailing or delivery of the notice.

(f) A statement that the abandoned ~~manufactured~~ factory-built home, its contents, and any other abandoned movable property on the immovable property are subject to the owner's privilege, and that, unless the claim is paid within the time stated in the notice, the abandoned ~~manufactured~~ home and abandoned movable property are to be advertised for sale or other disposition and to be sold or otherwise disposed of to satisfy the owner's privilege for lease payments due and other charges at a specified time and place.

(5) Actual receipt of the notice made pursuant to this Section shall not be required. Within fourteen days after mailing of the notice, an advertisement of the sale or other disposition of movable property subject to the privilege shall be published on at least one occasion in a newspaper of general circulation where the abandoned ~~manufactured~~ factory-built home is located. The advertisement shall include:

(a) The name of the owner of the abandoned ~~manufactured~~ factory-built home, if known, and a brief and general description of the abandoned ~~manufactured~~ home and abandoned movable property, including the serial and vehicle identification numbers of the abandoned ~~manufactured~~ home, if known, reasonably adequate to permit its identification as provided by Subparagraph (4)(c) of this Subsection.

(b) The address of the immovable property upon which the abandoned ~~manufactured~~ factory-built home is located and the name of the lessee.

(c) The time, place, and manner of the sale or other disposition.

(6) The sale or other disposition of the abandoned ~~manufactured~~ factory-built home and abandoned movable property shall take place not sooner than thirty days following publication as required by this Section.

D.(1) Upon completion of the procedures required by Subsection C of this Section, the owner of the immovable property may file suit for possession or ownership of the abandoned ~~manufactured~~ factory-built home and abandoned movable property pursuant to Code of Civil Procedure Article 4912.

(2) The owner of the immovable property shall attach to the petition evidence of the lease agreement, copies of the notice and advertisement required by Subsection C of this Section, and evidence that the abandoned ~~manufactured~~ factory-built home is valued at less than five thousand dollars. If the serial or vehicle identification numbers are not known, the owner of the immovable property shall provide certification of a physical inspection of the abandoned ~~manufactured~~ factory-built home for the purpose of vehicle identification number verification by a law enforcement officer trained and certified by the Department of Public Safety and Corrections to inspect motor vehicles as provided in Chapter 4 of Title 32 of the Louisiana Revised Statutes of 1950. The certification shall certify that the serial or vehicle identification numbers are not known. The owner of the immovable property shall certify in his petition, or attach an affidavit of the owner of the immovable property attesting, that there is no mortgage, lien, privilege, or security interest encumbering the abandoned ~~manufactured~~ factory-built home based on a search of the parish mortgage records and records of the Department of Public Safety and Corrections, office of motor vehicles.

(3) Upon finding that the owner of the immovable property has satisfied the requirements of this Section, the court shall authorize the sale of the abandoned ~~manufactured~~ factory-built home and abandoned movable property by the petitioner.

E.(1) Upon obtaining approval from the court, the owner of the immovable property may proceed to sell the abandoned ~~manufactured~~ factory-built home and abandoned movable property. Any sale or other disposition of the abandoned ~~manufactured~~ home and abandoned movable property shall conform to the terms of the notification as provided by this Section.

(2) Any sale or other disposition of the abandoned ~~manufactured~~ factory-built home and abandoned movable property shall be held at the address of the immovable property where the abandoned ~~manufactured~~ home is located, as indicated in the notice required by this Section. The owner shall sell the abandoned ~~manufactured~~ home and abandoned movable property to the highest bidder, if any. If there are no bidders, the owner may purchase the movable property for a price at least sufficient to satisfy ~~his~~ the claim for lease payments due and all other charges, or ~~he may~~ donate the abandoned ~~manufactured~~ home and abandoned movable property to charity.

(3) Prior to any sale or other disposition of the abandoned ~~manufactured~~ factory-built home or abandoned movable property to enforce the privilege granted by this Section, the lessee may pay the amount necessary to satisfy the privilege, including all reasonable expenses incurred ~~under~~ in accordance with this Section, and thereby redeem the movable property. Upon receipt of ~~such~~ payment, the owner shall have no liability to any person with respect to ~~such~~ the movable property.

(4) A purchaser in good faith of the abandoned ~~manufactured~~ factory-built home or abandoned movable property sold by an owner to enforce the privilege granted by this Section takes the property free of any claims or rights of persons against whom the privilege was valid, despite noncompliance by the owner with the requirements of this Section, but takes subject to any mortgages, liens, privileges, and security interests that encumber the abandoned ~~manufactured~~ factory-built home at the time of the sale.

(5) In the event of a sale held pursuant to the provisions of this Section, the owner may satisfy ~~his~~ the privilege from the proceeds of the sale, but shall hold the balance, if any, as a credit in the name of the lessee whose property was sold. The lessee may claim the balance of the proceeds within two years of the date of sale, without any interest thereon, and if unclaimed within the two-year period, the credit shall become the property of the owner, without further recourse by the lessee. If the sale or other disposition of the abandoned ~~manufactured~~ factory-built home and abandoned movable property made pursuant to the provisions of this Section does not satisfy the owner's claim for lease payments due and other charges, the owner may proceed by ordinary proceedings to collect the balance owed.

(6) After conclusion of the sale, the act of sale of the abandoned ~~manufactured~~ factory-built home may be filed with the court, and a judgment recognizing the sale shall be rendered by the court and recognized by the Department of Public Safety and Corrections pursuant to Code of Civil Procedure Article 4912.

R.S. 9:5363.1. Abandoned ~~mobile~~ factory-built homes; secured parties

A. Definitions

(1) ~~"Mobile home" means a structure, transportable in one or more sections, which is eight body feet or more in width and is thirty-two body feet or more in length, designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein. The term "mobile home" shall include a modular home, a mobile home, and a residential mobile home that is no longer declared to be part of the realty pursuant to R.S. 9:1149.6.~~

~~(2)~~ "Abandoned" or "abandonment" shall mean that the secured party has been notified by the mortgagor or by the owner of the immovable property on which the ~~mobile~~ factory-built home is located that the mortgagor no longer intends to remain in the ~~mobile~~ home, or when a reasonable person would conclude that the ~~mobile~~ home is no longer being occupied and from all appearances substantially all of the mortgagor's personal belongings have been removed from the ~~mobile~~ home.

(2) "Factory-built home" shall have the same meaning as defined in R.S. 9:1149.2.

(3) "Mortgagor" shall mean the person executing the chattel mortgage or security agreement ~~under Chapter 9 of the Louisiana Commercial Laws~~ in accordance with Uniform Commercial Code -- Secured Transactions (R.S. 10:9-101 et seq.) or, if the ~~mobile~~ factory-built home has been transferred and the chattel mortgage or security interest ~~under Chapter 9 of the Louisiana Commercial Laws~~ in accordance with Uniform Commercial Code -- Secured Transactions is assumed by a new purchaser with written consent of the holder of the chattel mortgage or security agreement, the transferee.

(4) "Secured party" shall mean the holder of the chattel mortgage or security interest ~~under Chapter 9 of Louisiana Commercial Laws~~ in accordance with Uniform Commercial Code -- Secured Transactions, the pledgee or assignee of the chattel mortgage or security interest, or the agent of the holder, assignee, or pledgee of the chattel mortgage or security interest.

B.(1) In addition to those remedies provided in ~~R.S. 9:5363~~ Uniform Commercial Code – Secured Transactions, the holder of a chattel mortgage enforceable against third parties pursuant to Chapter 4 of Title 32 of the Louisiana Revised Statutes of 1950 or pursuant to this Part or the secured party under a perfected security interest subject to ~~Chapter 9 of Louisiana Commercial Laws~~ Uniform Commercial Code -- Secured Transactions, shall have the right to take possession of the ~~mobile~~ factory-built home on default if all of the following criteria are met:

(a) The ~~mobile~~ factory-built home has been abandoned.

(b) The mortgagor has not paid a minimum of two consecutive monthly payments on the date due pursuant to the terms of the chattel mortgage or security agreement.

(c) A petition has been filed in a court of competent jurisdiction seeking an ex parte order authorizing the secured party to proceed pursuant to this Section. The judge shall sign the order only after the secured party has completed the following:

(i) Posted a bond in an amount fixed by the judge, which shall be the amount stated in the suit~~;~~.

(ii) Executed an affidavit stating that the ~~mobile~~ factory-built home has been abandoned~~;~~.

(iii) Presented to the court all documents necessary to prove that the secured party is the holder of the first mortgage on the ~~mobile~~ factory-built home.

(2) If the above criteria are satisfied the holder or holder's agent may take possession of the ~~mobile~~ factory-built home only after a ten day period following the placing of written notice on the front door of the ~~mobile~~ home by the sheriff, or his designee. The written notice shall contain the name of the debtor, the fact that the secured party shall take possession of the ~~mobile~~ factory-built home in accordance with ~~the provisions of R.S. 9:5363.1~~ this Section, the citation and docket number of the case wherein a court authorized the secured party to proceed in accordance with this Section, and the name and telephone number of the secured party or his agent. In addition, the secured party shall also advertise once in the official publication or newspaper in the parish in which the ~~mobile~~ factory-built home is located at the time that the secured party takes possession. The advertisement only need state the names of the debtors, the fact that the secured party shall take possession of the ~~mobile~~ home, and the name and telephone number of the individual to contact for further information. The sheriff shall be paid a fee of twenty-five dollars for the placing of the written notice as provided by this Paragraph.

(3) When the mortgagor has notified the secured party in writing that he no longer intends to occupy the ~~mobile~~ factory-built home and has requested that the secured party retake possession thereof, the judge may issue an order waiving the provisions of this Section and may issue an order directing the Department of Public Safety and Corrections to issue a new certificate of title to the secured party or any other person that purchases the abandoned ~~mobile~~ home at a private sale. When ~~such~~ an order is granted by the judge, the entire indebtedness shall be cancelled.

C. A secured party who has taken possession of a ~~mobile~~ factory-built home pursuant to Subsection B of this Section shall immediately give notice to the debtor at ~~such~~ the address ~~as~~ specified in the chattel mortgage and at the debtor's last known address, if different, by registered or certified mail, return receipt requested.

D. The debtor shall have twenty-one calendar days from the date of the secured party's taking possession to reclaim any personal property contained in the ~~mobile~~ factory-built home or to redeem the ~~mobile~~ home by the paying to the secured party in cash the entire amount of delinquent payments, all interest and late charges due pursuant to the chattel mortgage, all costs of transporting and housing the ~~mobile~~ home, and all advertisement costs. Nothing ~~herein~~ in this Section shall prevent the secured party from reinstating the promissory note and chattel mortgage or security agreement for a lesser amount at the sole option of the secured party.

E. After the expiration of the twenty-one calendar days from the date of taking possession provided for in Subsection D of this Section:

(1) The secured party may sell the ~~mobile~~ factory-built home at public or private sale and apply the proceeds to the indebtedness. If there are mortgages or other security interests superior to that held by the secured party, the proceeds of the sale shall be paid first to those superior security interests; then the remaining balance, if any, shall be applied to the secured creditor's debt. Any funds received which are in excess of the indebtedness and superior security interests, including principal, interest, costs of repossession, and costs of sale, as each is provided for in the chattel mortgage or note, shall be delivered to the debtor, or if he cannot be found, shall be deposited with the clerk of court of the parish in which the ~~mobile~~

home was located prior to the secured party obtaining possession of the ~~mobile~~ home.

(2) The secured party shall obtain two appraisals of the ~~mobile~~ factory-built home from two qualified appraisers, and the average of both appraisals shall be the established value of the ~~mobile~~ home.

(3) If the amount of the entire indebtedness due pursuant to the chattel mortgage or security agreement which shall be deemed accelerated at the time of the sale plus the costs of transporting and storing the ~~mobile~~ factory-built home and advertisement costs exceeds the established value of the ~~mobile~~ home, the secured party shall have the right to bid at any public sale, without paying cash, up to the amount of the total indebtedness including the costs of transporting and storing the ~~mobile~~ home and advertisement costs or sell the ~~mobile~~ home to itself for the amount of ~~said~~ the indebtedness.

(4) A secured party that sells the ~~mobile~~ factory-built home subject to a chattel mortgage entered into prior to the time Chapter 9 of the Louisiana Commercial Laws becomes effective at either public or private sale shall not have the right to seek a deficiency judgment from any debtor or other person, including any guarantor, liable on the promissory note or chattel mortgage. Provided, that nothing ~~herein~~ in this Section shall be construed to affect any agreement between the mortgagee and the selling dealer.

F. A debtor or a third party seeking to recover for damages occasioned by a reclaiming of a ~~mobile~~ factory-built home in violation of this Section shall be entitled to recover from the seizing secured party all costs and expenses incurred in the prosecution of ~~such~~ the action, including reasonable ~~attorney's~~ attorney fees as determined by the court. If ~~such~~ an action for damages is dismissed by the court, the court may grant reasonable ~~attorney's~~ attorney fees to the creditor.

G. After the secured party has fulfilled the requirements of this Section and has taken possession of the ~~mobile~~ factory-built home, the court that issued the ex parte order provided for in Subparagraph (B)(1)(c) of this Section shall order the Department of Public Safety and Corrections to issue a new certificate of title to the party that purchases the abandoned ~~mobile~~ factory-built home at the sale provided for by this Section.

R.S. 10:9-102. Definitions and index of definitions

(a) Chapter 9 definitions. In this Chapter:

* * *

(53) "Manufactured home" means a ~~manufactured~~ factory-built home as defined in R.S. 9:1149.1 et seq.

* * *

R.S. 22:1485. Homeowner's insurance; premium discounts

A. As used in this Section, the following terms shall have the following meanings:

(1) ~~"Mobile home", "manufactured home", and "manufactured housing" means a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length or, when erected on site, is three hundred twenty or more square feet and which is built on a permanent chassis and designed to be~~

~~used as a dwelling with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating and air conditioning, and electrical systems contained therein.~~ "Factory-built home" shall have the same meaning as in R.S. 9:1149.2.

(2) "Permanently structured home" means a structure with a permanent foundation that is not considered ~~manufactured or mobile~~ factory built.

(3) "Security system" means a monitored security device that is wired to a local law enforcement or fire department.

B. Every insurer authorized to issue a policy of homeowner's insurance in this state who offers a policy premium discount based on the installation or existence of a security system in a permanently structured home shall provide the same or a similar premium discount for policies of homeowner's insurance covering ~~mobile homes, manufactured homes, or manufactured housing~~ factory-built homes.

* * *

R.S. 32:1. Definitions

When used in this Chapter, the following ~~words and phrases~~ terms shall have the following meanings ~~ascribed to them in this Section,~~ unless the context clearly indicates ~~a different meaning~~ otherwise:

* * *

(44) ~~"Mobile home" means: (a) a trailer or semitrailer which is designed, constructed and equipped as a dwelling place, living abode, or sleeping place, either permanently or temporarily, and is equipped for use as a conveyance on highways; or, (b) a trailer or semitrailer whose chassis and exterior shell is designed and constructed for use as a mobile home, as defined in (a), but which is used instead permanently or temporarily for the advertising, sales, display, or promotion of merchandise or services, or for any other commercial purpose except the transportation of property for hire or the transportation of property for distribution by a private carrier~~ "Factory-built home" shall have the same meaning as defined in R.S. 9:1149.2.

* * *

R.S. 32:412.1. Handling charges

A. Except as provided ~~for~~ in Subsection E of this Section, the office of motor vehicles shall collect, in addition to any fee authorized by law, a handling charge of eight dollars for vehicle titling and registration:

* * *

(25) Records created by R.S. ~~9:1149.4(D)~~ 9:1149.6.

R.S. 32:702. Definitions

As used in this Chapter:

* * *

(16) "Vehicle" shall include those devices sometimes referred to as ~~mobile~~ factory-built homes as defined in R.S. 9:1149.2~~(3)~~, whether or not they may be required to be registered or licensed ~~under~~ in accordance with other laws, and except as otherwise expressly provided ~~herein~~ in this

Chapter, the provisions of this Chapter shall apply to the sale and mortgaging thereof. Neither the inclusion or exclusion of any property in or from the definition of vehicle for purposes of this Chapter, nor any other provision in this Chapter, is intended to affect in any way the status, as determined ~~under~~ in accordance with other laws, of ~~such~~ the property for purposes of ad valorem property taxation, or for any other taxes presently levied, or for the purposes of insurance classification.

* * *

R.S. 32:707. Application for certificates of title; exception; salvage title; antique vehicles; reconstructed title

A. Any purchaser of a vehicle, other than a ~~mobile~~ factory-built home, as defined by R.S. 9:1149.2~~(3)~~, shall file an application for a new certificate of title within five days after the delivery of a previously issued certificate of title for ~~such~~ the vehicle, or within five days of the delivery of the vehicle, if a certificate of title has not been previously issued. However, dealers need not apply for certificates of title for any vehicle acquired for stock purposes, if upon reselling ~~such~~ the vehicle, the dealer complies with the requirements of R.S. 32:705. A purchaser of a ~~mobile~~ factory-built home, as defined by R.S. 9:1149.2~~(3)~~, shall apply for a new certificate of title on or before the twentieth day of the month following the month of delivery of the home.

* * *

R.S. 33:3081. Mosquito abatement service charge; Avoyelles Parish; assessment and collection

A.

* * *

(2) For purposes of this Section, each residential or commercial unit and each housing unit within a multiple dwelling structure shall be considered a separate structure, and a ~~mobile~~ factory-built home, as defined in R.S. 9:1149.2~~(3)~~, shall be considered a structure. ~~Such~~ The mosquito abatement service charge or rates of service charges shall be equal for all structures, except that residential units shall be charged not less than thirty-five percent of the service charge for commercial units.

* * *

R.S. 33:4562.1. Service charge authorized; assessment and collection; St. Mary Parish

A. The governing authority of any recreation district in the parish of St. Mary is hereby authorized to establish, by majority vote of the members of the authority, a service charge or rates of service charges for each residential or commercial structure for a term not to exceed ten years to be assessed on persons owning each ~~such~~ structure, whether occupied or unoccupied, located wholly or partly within the boundaries of the recreation district, subject to the provisions of Subsection B of this Section. For purposes of this Section, each residential or commercial unit in a structure shall be considered a separate structure, and a ~~mobile~~ factory-built home, as defined in R.S. 9:1149.2~~(3)~~, shall be considered a structure. ~~Such~~ The service charges or rates of service charges shall be equal for all structures and shall be framed ~~so as~~ to cover, and shall be used for, the costs of constructing, acquiring, maintaining, operating ~~and/or~~ or improving recreation services and facilities for the recreation district, including property and equipment necessary for such purposes.

* * *

R.S. 33:9053.1. Creation of parishwide ambulance service district; Bossier Parish

* * *

C. The parish governing authority may establish, with approval of a majority of the electors of the single parishwide ambulance service district voting on the proposition at an election held for such purpose, user fees to be assessed persons owning each residential or commercial structure, whether occupied or unoccupied, located wholly or partly within the boundaries of the single parishwide ambulance service district, subject to the provisions of Subsection D of this Section. For the purposes of this Section, each residential or commercial unit in a structure and each housing unit within a multiple dwelling structure shall be considered a separate structure, and a ~~mobile~~ factory-built home, as defined in R.S. 9:1149.2~~(3)~~, shall be considered a structure. ~~Such~~ The user fees shall be established by the parish governing authority and shall be used for the cost of any and all emergency medical transportation and all emergency services incidental thereto.

* * *

R.S. 40:1502.1. Service charges authorized; assessment and collection

* * *

(2)(a) For purposes of this Section as it relates to any fire protection district situated wholly within the geographical boundaries of either Rapides, Lincoln, Claiborne, Union, Morehouse, East Carroll, or West Carroll Parish, each residential or commercial, unit in a structure shall be considered a separate structure, and a ~~mobile~~ factory-built home, as defined in R.S. 9:1149.2~~(3)~~, shall be considered a structure. ~~Such~~ The service charges or rates of service charges shall be equal for all structures of a given class and shall be framed ~~so as~~ to cover and shall be used for the costs of any or all fire protection services; however, in Lincoln, Claiborne, Union, Morehouse, East Carroll, and West Carroll parishes, ~~such~~ the service charges or rates of service charges for each class of structure shall be framed ~~so as~~ to cover and shall be used for the costs of any or all fire protection and emergency services.

(b) For purposes of this Section as it relates to any fire protection district situated wholly within the geographical boundaries of either St. Mary, East Baton Rouge, Livingston, or Caddo Parish, Fire Protection District No. 2 of St. Helena Parish, Ward One Fire Protection District No. 1 of Calcasieu Parish, and Fire Protection District No. 1 of Tangipahoa Parish, each residential, commercial, occupancy, or tenant unit in a structure shall be considered a separate structure, and a ~~mobile~~ factory-built home, as defined in R.S. 9:1149.2~~(3)~~, shall be considered a structure. ~~Such~~ The service charges or rates of service charges shall be equal for all structures of a given class and shall be framed ~~so as~~ to cover and shall be used for the costs of any or all fire protection services; however, in Ward One Fire Protection District No. 1 of Calcasieu Parish, and in Fire Protection District No. 1 of Tangipahoa Parish, ~~such~~ the service charges or rates of service charges for each class of structure shall be framed ~~so as~~ to cover and shall be used for the costs of any or all fire protection and emergency services.

* * *

R.S. 40:1502.2. Service charge authorized for Fire Protection District Number Three of Beauregard Parish; assessment and collection

A. The governing authority of Fire Protection District Number Three of Beauregard Parish is hereby authorized to establish, by majority vote of the members of the authority, a service charge of fifty dollars for each residential or commercial structure for a term not to exceed ten years to be assessed persons owning each such structure, whether occupied or unoccupied, located wholly or partly within the boundaries of the fire protection district, subject to the provisions of Subsection B of this Section. For purposes of this Section, each residential or commercial unit in a structure shall be considered a separate structure, and a ~~mobile~~ factory-built home, as defined in R.S. 9:1149.2~~(3)~~, shall be considered a structure. ~~Such~~ The service charges shall be used for the costs of any or all fire protection services.

* * *

R.S. 40:1502.3. Service charge authorized for Richland Parish; assessment and collection

A. The governing authority of any fire protection district situated wholly within the geographical boundaries of Richland Parish is hereby authorized to establish, by majority vote of the members of the authority, a service charge or rates of service charges to be assessed persons owning each residential or commercial structure, whether occupied or unoccupied, located wholly or partly within the boundaries of the fire protection district, subject to the provisions of Subsection B of this Section. For purposes of this Section, each residential or commercial unit and each housing unit within a multiple dwelling structure shall be considered a separate structure, and a ~~mobile~~ factory-built home, as defined in R.S. 9:1149.2~~(3)~~, shall be considered a structure. ~~Such~~ The service charges or rates of service charges shall be equal for all structures, except that ~~mobile~~ factory-built homes shall be charged no less than fifty percent and no more than eighty percent of the service charge, and shall be framed ~~so as~~ to cover and shall be used for the costs of any or all fire protection services. The fire protection district shall provide a receipt to each property owner paying the service charge. All insurers and all insurance agents shall have proof of a current service charge receipt before considering any reduced rates because of fire district protection.

* * *

R.S. 40:1502.4. Service charge authorized for Madison Parish, Caldwell Parish, and Franklin Parish

A.(1) The governing authority of any fire protection district situated wholly within the geographical boundaries of Madison Parish, the governing authority of any fire protection district situated wholly within Caldwell Parish, and the governing authority of any fire protection district situated wholly within Franklin Parish are hereby authorized to establish, by majority vote of the members of the authority, a service charge or rates of service charges to be assessed persons owning each residential or commercial structure, whether occupied or unoccupied, located wholly or partly within the boundaries of the fire protection district, subject to the provisions of Subsection B of this Section. For purposes of this Section, each residential or commercial unit and each housing unit within a multiple dwelling structure shall be considered a separate structure, and a ~~mobile~~ factory-built home, as defined in R.S. 9:1149.2~~(3)~~, shall be considered a structure. ~~Such~~ The service charges or rates of service charges shall be equal for all structures, except that ~~mobile~~ factory-built homes shall be charged eighty percent of the service charge, and shall be framed ~~so as~~ to cover and shall be used

for the costs of any or all fire protection services. The fire protection district shall provide a receipt to each property owner paying the service charge.

* * *

R.S. 40:1502.5. Service charge authorized for West Carroll Parish; assessment and collection

A. The governing authority of any fire protection district situated wholly within the geographical boundaries of West Carroll Parish is hereby authorized to establish, by majority vote of the members of the authority, a service charge or rates of service charges to be assessed persons owning each residential or commercial structure, whether occupied or unoccupied, located wholly or partly within the boundaries of the fire protection district, subject to the provisions of Subsection B of this Section. For purposes of this Section, each residential or commercial unit and each housing unit within a multiple dwelling structure shall be considered a separate structure, and a ~~mobile~~ factory-built home, as defined in R.S. 9:1149.2~~(3)~~, shall be considered a structure. ~~Such~~ The service charges or rates of service charges shall be equal for all structures, except that ~~mobile~~ factory-built homes shall be charged no less than fifty percent and no more than eighty percent of the service charge, and shall be framed ~~so as~~ to cover and shall be used for the costs of any or all fire protection services. The fire protection district shall provide a receipt to each property owner paying the service charge. All insurers and all insurance agents shall have proof of a current service charge receipt before considering any reduced rates because of fire district protection.

* * *

R.S. 40:1502.6. Service charge authorized for Morehouse Parish; assessment and collection

A. The governing authority of any fire protection district situated wholly within the geographical boundaries of Morehouse Parish is hereby authorized to establish, by majority vote of the members of the authority, a service charge or rates of service charges to be assessed persons owning each residential or commercial structure, whether occupied or unoccupied, located wholly or partly within the boundaries of the fire protection district, subject to the provisions of Subsection B of this Section. For purposes of this Section, each residential or commercial unit and each housing unit within a multiple dwelling structure shall be considered a separate structure, and a ~~mobile~~ factory-built home, as defined in R.S. 9:1149.2~~(3)~~, shall be considered a structure. ~~Such~~ The service charges or rates of service charges shall be framed by the governing authority of such a district ~~so as~~ to cover and shall be used for the costs of any or all fire protection services. The fire protection district shall provide a receipt to each property owner paying the service charge. All insurers and all insurance agents shall have proof of a current service charge receipt before considering any reduced rates because of fire district protection.

* * *

R.S. 40:1502.7. Service charge authorized for East Carroll Parish; assessment and collection

A. The governing authority of any fire protection district situated wholly within the geographical boundaries of East Carroll Parish is hereby authorized to establish, by majority vote of the members of the authority, a service charge or rates of service charges to be assessed persons owning each residential or commercial structure, whether occupied or unoccupied, located wholly or partly within the boundaries of the fire protection district, subject to the provisions of Subsection B of this Section. For purposes of

this Section, each residential or commercial unit and each housing unit within a multiple dwelling structure shall be considered a separate structure, and a ~~mobile~~ factory-built home, as defined in R.S. 9:1149.2~~(3)~~, shall be considered a structure. ~~Such~~ The service charges or rates of service charges shall be equal for all structures, except that ~~mobile~~ factory-built homes shall be charged no less than fifty percent and no more than eighty percent of the service charge, and shall be framed so as to cover and shall be used for the costs of any or all fire protection services. The fire protection district shall provide a receipt to each property owner paying the service charge. All insurers and all insurance agents shall have proof of a current service charge receipt before considering any reduced rates because of fire district protection.

* * *

R.S. 40:1502.8. Service charge authorized for Grant Parish; assessment and collection

A. The governing authority of any fire protection district situated wholly within the geographical boundaries of Grant Parish is hereby authorized to establish, by majority vote of the members of the authority, a service charge or rates of service charges to be assessed persons owning each residential or commercial structure, whether occupied or unoccupied, located wholly or partly within the boundaries of the fire protection district, subject to the provisions of Subsection B of this Section. For purposes of this Section, each residential or commercial unit within a structure and each housing unit within a multiple dwelling structure shall be considered a separate structure, and a ~~mobile~~ factory-built home, as defined in R.S. 9:1149.2~~(3)~~, shall be considered a structure. ~~Such~~ The service charges or rates of service charges shall be equal for all structures, except that ~~mobile~~ factory-built homes shall be charged no less than fifty percent and no more than eighty percent of ~~said~~ the service charge, and shall be framed ~~so as~~ to cover and shall be used for the costs of any or all fire protection services. The fire protection district shall provide a receipt to each property owner paying the service charge. All insurers and all insurance agents shall have proof of a current service charge receipt from owners so assessed before considering any reduced rates because of fire district protection.

* * *

R.S. 40:1502.9. Service charge authorized for Red River Parish; assessment and collection

A. The governing authority of any fire protection district situated wholly within the geographical boundaries of Red River Parish is hereby authorized to establish, by majority vote of the members of the authority, a service charge or rates of service charges to be assessed persons owning each residential structure, whether occupied or unoccupied, located wholly or partly within the boundaries of the fire protection district, subject to the provisions of Subsection B of this Section. For purposes of this Section, each residential unit and a ~~mobile~~ factory-built home, as defined in R.S. 9:1149.2~~(3)~~, shall be considered a structure and each multiple dwelling structure, regardless of the number of separate housing units contained within the structure, shall be considered as one structure and not as separate structures. ~~Such~~ The service charges or rates of service charges shall be equal for all structures, except that ~~mobile~~ factory-built homes shall be charged no less than fifty percent and no more than eighty percent of the service charge, and shall be framed ~~so as~~ to cover and shall be used for the costs of any or all fire protection services. The fire protection district shall provide a receipt to each property owner paying the service charge. All insurers and all insurance agents shall have proof of a current service

charge receipt before considering any reduced rates because of fire district protection.

* * *

R.S. 40:1502.10. Service charge authorized for Fire Protection District No. 1, Fire Protection District No. 3, and Fire Protection District No. 7 of Caddo Parish; assessment and collection

A. The governing authority of Fire Protection District No. 1, the governing authority of Fire Protection District No. 3, and the governing authority of Fire Protection District No. 7 of Caddo Parish are hereby authorized to establish, by majority vote of the members of the authority, a service charge or rates of service charges to be assessed persons owning each residential or commercial structure, whether occupied or unoccupied, located wholly or partly within the boundaries of the fire protection district, subject to the provisions of Subsection B of this Section. For purposes of this Section, each residential or commercial unit in a structure and each housing unit within a multiple dwelling structure shall be considered a separate structure, and a ~~mobile~~ factory-built home, as defined in R.S. 9:1149.2~~(3)~~, shall be considered a structure. ~~Such~~ The service charges or rates of service charges shall be established by the governing authority of ~~such~~ the district and shall be framed ~~so as~~ to cover and shall be used for the costs of any or all fire protection, emergency medical transportation, and all emergency services incidental thereto.

* * *

R.S. 40:1502.11. Springhill Fire Protection District No. 11; fire service charge

A. Notwithstanding any provision of law to the contrary, the governing authority of Springhill Fire Protection District No. 11 is hereby authorized to establish, by majority vote of the members of the authority, a fire service charge not to exceed four dollars. The person owning or occupying each residential or commercial structure located wholly or partly within the boundaries of the fire protection district who has made a deposit for the water service for the structure shall be assessed the service charge, subject to the provisions of Subsection B of this Section. ~~Such~~ The service charge shall be used for the costs of fire protection services. For purposes of this Section, each residential or commercial unit within a structure and each housing unit within a multiple dwelling structure shall be considered a separate structure, and a ~~mobile~~ factory-built home, as defined in R.S. 9:1149.2~~(3)~~ shall be considered a separate structure.

* * *

R.S. 40:1502.12. Tangipahoa Parish Rural Fire Protection District No. 2; assessment and collection

A.

* * *

(2) For purposes of this Section, each residential or commercial unit in a structure shall be considered a separate structure, and a ~~mobile~~ factory-built home, as defined in R.S. 9:1149.2~~(3)~~, shall be considered a structure. ~~Such~~ The fire protection tax shall be equal for all structures of a given class and shall be framed ~~so as~~ to cover and shall be used for the costs of any or all fire protection services or emergency services.

* * *

R.S. 40:1502.13. Fire protection districts within East Feliciana Parish; assessment and collection

A.

* * *

(2) For purposes of this Section, each residential or commercial unit and each housing unit within a multiple dwelling structure shall be considered a separate structure, and a ~~mobile~~ factory-built home, as defined in R.S. 9:1149.2~~(3)~~, shall be considered a structure. ~~Such~~ The fire protection tax shall be equal for all structures, except that mobile homes shall be taxed as a rate no less than fifty percent and no more ~~then~~ than eighty percent of the general tax rate, and shall be framed ~~so as~~ to cover and shall be used for the costs of any or all fire protection services and emergency services provided by the district, including the acquisition, maintenance, and operation of equipment and facilities therefor.

* * *

R.S. 40:1502.15. Service charge authorized for fire protection districts in the parish of Caddo; assessment and collection

A. The governing authority of any fire protection district located within the parish of Caddo is hereby authorized to establish, by majority vote of the members of the authority, a service charge or rates of service charges to be assessed persons owning each residential or commercial structure, whether occupied or unoccupied, located wholly or partly within the boundaries of the district, subject to the provisions of Subsection B of this Section. For purposes of this Section, each residential or commercial unit in a structure and each housing unit within a multiple dwelling structure shall be considered a separate structure, and a ~~mobile~~ factory-built home, as defined in R.S. 9:1149.2, shall be considered a structure. ~~Such~~ The service charges or rates of service charges shall be established by the governing authority of ~~such~~ the district and shall be framed ~~so as~~ to cover and shall be used for the costs either incurred or for contracting of any or all fire protection, emergency medical transportation, and all emergency services incidental thereto.

* * *

R.S. 40:1502.16. Service charge authorized for DeSoto Parish; assessment and collection

A. In addition to the authority granted pursuant to R.S. 40:1502, the governing authority of DeSoto Parish Fire Protection District No. 2 and DeSoto Parish Fire Protection District No. 3 may establish a service charge or rates of service charges to be assessed persons owning each residential or commercial structure, whether occupied or unoccupied, located wholly or partly within the boundaries of the respective fire protection district, subject to the provisions of Subsection B of this Section. For purposes of this Section, each residential or commercial unit in a structure and each housing unit within a multiple dwelling structure shall be considered a separate structure, and a ~~mobile~~ factory-built home, as defined in R.S. 9:1149.2, shall be considered a structure. ~~Such~~ The service charges or rates of service charges shall be framed ~~so as~~ to cover and shall be used for the costs of any or all fire protection and emergency medical transportation and emergency services incidental thereto.

* * *

Professor Richardson then concluded her presentation, and the President called on Ms. Lila Tritico Hogan, member of the Marriage-Persons Committee, to begin her presentation of materials.

Marriage-Persons Committee

Ms. Hogan began her presentation by reminding the Council that at its January meeting, one provision in the materials on mental health evaluations was recommitted to clarify the necessary qualifications for evaluators appointed to conduct child custody evaluations. The Committee's goal was to require professionals to conduct at least five training evaluations under the supervision of a qualified evaluator prior to being appointed by the court as a child custody evaluator under the statute.

One Council member asked about the hard deadline of August 1, 2024, and Ms. Hogan explained that this is the default effective date for all new legislation and resulted from the necessity of picking some point in time. She further noted that if a professional has only conducted four evaluations as of August 1, 2024, the professional would have to conduct at least five more co-evaluations prior to being appointed again as a child custody evaluator. Mrs. Hogan further rationalized that the qualifications do not have to be recently obtained so that if a professional conducted at least five court-appointed evaluations fifteen years ago, they remain qualified in accordance this proposal. Another Council member asked how appointing judges will know when professionals have earned the qualifications, to which Ms. Hogan responded that it will work in the same manner as other areas in the law, and a party who is unsure may raise that question in the litigation. The last inquiry concerned the use of the phrase "training co-evaluations" and whether a court could use the training evaluation report as evidence. Ms. Hogan remarked that this concept was taken from the mediation statutes in Title 9 but agreed to the deletion of the word "training" as unnecessary. The following Subsections were approved:

> **R.S. 9:331.3. Custody or visitation proceeding; court-ordered child custody evaluation**
>
> A. The court may order a child custody evaluation in a custody or visitation proceeding for good cause shown. The child custody evaluation shall be made by a licensed mental health professional, as defined in R.S. 9:331, using the Association of Family and Conciliation Courts' Guidelines for Parenting Plan Evaluations in Family Law Cases.
>
> B. To serve as a court-ordered child custody evaluator in accordance with this Section, a licensed mental health professional shall have completed at least five co-evaluations under the direct supervision of another court-ordered child custody evaluator. Licensed mental health professionals who completed at least five court-ordered child custody evaluations prior to August 1, 2024, are not required to complete the co-evaluations in order to serve as a court-ordered child custody evaluator.

Ms. Hogan then concluded her presentation, and the President called on Judge Guy Holdridge, Reporter of the Code of Civil Procedure Committee, to resume this morning's presentation on electronic filing and record retention.

Code of Civil Procedure Committee

Judge Holdridge resumed his presentation by briefly reviewing what the Council had discussed thus far. One Council member then pointed to the use of "at a hearing or trial" on page 2, line 16 of the materials. He asserted that this would preclude the retention of documents submitted in executory process, and Judge Holdridge was amenable to its deletion. Another Council member asked whether the use of "during the pendency of the proceeding" was deliberately left on line 6 but absent from similar language on lines 16-18. Judge Holdridge clarified that lines 5-10 refer to maintenance of the original document by the filing party, and lines 15-18 refer to retention by the clerk.

Judge Holdridge then directed the Council's attention to page 3 of the materials, indicating that this language retains previous law. Judge Holdridge then stated that new Paragraph G includes a reference to Paragraphs A and B, providing that if the filing party does not comply with certain requirements, the electronic filing shall have no force or effect. Moving to Paragraph J, the Reporter stated that this language was included to mandate that clerks accept pleadings and documents electronically signed, provided that all fees are paid. One Council member subsequently requested that, for consistency, the phrase "The district courts" on page 3, line 2 be replaced with "A court." The Council then revisited its discussion with respect to circumstances requiring that the original document be filed with pleadings. One Council member questioned whether this requirement extended to hearings on exceptions, and Judge Holdridge stated that the original may be submitted during the hearing of the exception and that if the original were attached to the exception and not offered during the hearing, it would not be considered evidence. Judge Holdridge further reminded the Council that if a party elects to include with the filing original documents, the filing party should request that the original documents be returned – particularly, if the filing is not one in summary judgment proceedings. After further brief discussion, the Council adopted the following proposed language:

Article 253. Pleadings, documents, and exhibits to be filed with clerk

A. All pleadings or documents to be filed in an action or proceeding instituted or pending in a court, and all exhibits introduced in evidence, shall be delivered or transmitted to the clerk of the court for ~~such~~ that purpose. The clerk of court shall endorse thereon the fact and date of filing and shall retain possession thereof for inclusion in the record, or in the files of ~~his~~ the clerk's office, as required by law. The endorsement of the fact and date of filing shall be made upon receipt of the pleadings or documents by the clerk of court and shall be made without regard to whether there are orders in connection therewith to be signed by the court.

B. The filings as provided in Paragraph A of this Article and all other provisions of this Chapter may be transmitted electronically in accordance with a system established by a the clerk of court ~~or by Louisiana Clerks' Remote Access Authority. When such a system is established, the~~ The clerk of court shall adopt ~~and implement procedures~~ a system for the electronic filing and storage of any pleading, document, or exhibit~~, and the official record shall be the electronic record~~ filed with a pleading. A pleading or document filed electronically is deemed filed on the date and time stated on the confirmation of electronic filing sent from the system, if the clerk of court accepts the electronic filing. Public access to electronically filed pleadings and documents shall be in accordance with the rules governing access to paper filings. ~~The clerk of court may convert into an electronic record any pleading, document, or exhibit as set forth in R.S. 44:116. The originals of conveyances shall be preserved by the clerk of court.~~

C. The clerk of court may convert into an electronic record any pleading, document, or exhibit that is filed in paper form. If requested by the filing party, the clerk of court shall return to the filing party the original of any document or exhibit that has been converted into an electronic record.

D. The official record shall be the electronic record. The original of any filed document or exhibit shall be maintained by the filing party during the pendency of the proceeding and until the judgment becomes final and definitive, unless otherwise provided by law or order of the court. Upon request and reasonable notice, the original document shall be produced to the court. Upon reasonable notice, the original document shall be made available to the opposing party for inspection.

E. Unless otherwise directed by the court, the original of all documents and exhibits introduced or proffered into evidence, submitted with a petition for executory process, or filed in a summary judgment

proceeding shall be retained by the clerk of court until the order or judgment becomes final and definitive.

~~C.~~ F. A judge or justice presiding over a court in this state may sign a court order, notice, official court document, and other writings required to be executed in connection with court proceedings by use of an electronic signature as defined by R.S. 9:2602.

~~D. Any pleading or document in a traffic or criminal action may be filed with the court by facsimile transmission in compliance with the provision of the Code of Criminal Procedure Article 14.1.~~

~~E. The clerk shall not refuse to accept for filing any pleading or other document signed by electronic signature, as defined by R.S. 9:2602, and executed in connection with court proceedings, or which complies with the procedures for electronic filing implemented pursuant to this Article, if any applicable fees for filing and transmission are paid, solely on the ground that it was signed by electronic signature.~~

~~F.~~ G. If the filing party fails to comply with any ~~requirement~~ of the requirements of Paragraph A or B of this Article, the electronic filing shall have no force or effect. ~~The district courts~~ A court may provide by court rule for other matters related to filings by electronic transmission.

~~G.~~ H. The clerk of court may procure equipment, services, and supplies necessary to accommodate electronic filings out of the clerk's salary fund.

~~H.~~ I. All electronic filings shall include an electronic signature. For the purpose of this Article, "electronic signature" means an electronic symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

J. Provided that any applicable fees for filing and transmission are paid, the clerk of court shall not refuse to accept for filing any pleading or other document that is signed by electronic signature and executed in connection with court proceedings, or that complies with the procedures for electronic filing implemented pursuant to this Article, solely on the ground that the pleading or document was signed by electronic signature.

Judge Holdridge then began his presentation of the Comments to Article 253. After the Council discussed changes aligning the Comment with the previously adopted revisions, Judge Holdridge noted that the Code of Civil Procedure Committee determined it was necessary to include in Comment (a) a description of a final and definitive judgment. One Council member then stated that the description was helpful and provided clarity, and the Council eventually voted in favor of the description's inclusion. After further discussion, the Council adopted the proposed Comments as follows:

Comments – 2024

(a) The amendment to Paragraph B of this Article does not change the rule that the clerk of court has the authority to convert any pleading, document, or exhibit into an electronic record. Nevertheless, unless the court directs otherwise, any original document that has legal efficacy, such as a will, codicil, trust, promissory note, authentic act, affidavit, or exhibit that may necessitate a physical examination by the trier of fact to determine an issue, must be retained by the parties until a final and definitive judgment is rendered. The judgment of a trial court becomes final and definitive when no post-trial motions or appeals are taken from the judgment. The judgment of a court of appeal becomes final and definitive if neither an application to the court of appeal for rehearing nor an application to the supreme court for

a writ of certiorari is timely filed. See Article 2166(A). If a writ of certiorari is granted by the supreme court, the judgment of the supreme court becomes final and definitive when the delay for application for rehearing has expired or the application is denied. See Article 2167(B) and (C).

(b) The amendment to Paragraph C of this Article clarifies that the clerk of court may convert into an electronic record any pleading, document, or exhibit that is filed in paper form. Even though the original document is converted into an electronic record, the original document may still be needed for examination at a hearing or trial.

(c) The amendment to Paragraph E of this Article is new and requires that the original of all documents and exhibits introduced or proffered into evidence, submitted with a petition for executory process, or filed in a summary judgment proceeding be retained by the clerk of court until the order or judgment becomes final and definitive, unless the court otherwise directs. This does not change the law pertaining to the destruction of documents after filing. See, e.g., R.S. 13:917, 1221, 1904, and 2562.26 relative to the destruction of useless records.

Next, Judge Holdridge directed the Council's attention to page 5 of the materials relative to wills and testaments. He first stated that the clerks of court were amenable to maintaining the original of testaments. He pointed to the proposed revisions of Article 2853 and stated that the changes are technical. Beginning discussion, one Council member noted that the Article uses "petition," then questioned whether "motion" is more appropriate. Judge Holdridge agreed with the notion, however, declined to make the change since the Law Institute's Successions and Donations Committee is working toward revising these discrepancies throughout the Code. After further discussion, the Council adopted the proposed language as follows:

Article 2853. ~~Purported testament must be filed, though possessor doubts validity~~ Filing of purported testament

A. If a person has possession of a document purporting to be the testament of a deceased person, even though ~~he~~ the person believes that the document is not the valid testament of the deceased~~,~~ or has doubts concerning the validity ~~thereof, he~~ of the testament, the person shall present ~~it~~ the document to the court with ~~his~~ a petition praying that the document be filed in the record of the succession proceeding.

B. A person ~~so~~ presenting a purported testament to the court shall not be deemed to vouch for its authenticity or validity, nor be precluded from asserting its invalidity.

Judge Holdridge then directed the Council's attention to proposed Article 2911, which was included in a handout distributed to the Council and offered as an alternative to Article 2894 in the materials. He indicated that Paragraph A of Article 2911 provides that the clerk of court shall retain in perpetuity the original of a probated testament. The Reporter then suggested that the language include "or a testament ordered to be filed and executed." He explained that this was necessary and includes the notarial testament that only requires filing and execution. Judge Holdridge suggested further revision providing that, "Until the order probating the testament or ordering the testament to be filed and executed becomes final and definitive, the clerk of court shall also retain the originals of all other testaments filed in accordance with Article 2853." One member of the Code of Civil Procedure Committee provided further context, detailing the various practices of clerks with respect to filing and recordation of wills and testaments. She stated that the proposed alternative aligns with the practices of some clerks; therefore, many were amenable to the proposals, though some did raise concerns relative to maintaining records in perpetuity. Another Council member questioned the underlying policy requiring retention of the original probated testament in perpetuity. Judge Holdridge indicated that "in perpetuity" was included at the request of several stakeholders. He further indicated that this language may require revision upon the implementation of

uniform electronic filing, then mentioned that the proposed revisions seek to maintain certain practices until such a time.

The Council then discussed whether a more limited time frame was appropriate. Members suggested that the value of the document terminates when a final and definitive judgment is rendered, or when the probate expires. Others noted that this may have implications relative to title, with issues often arising decades after the conclusion of succession proceedings – therefore, retention and maintenance in perpetuity would be appropriate. Members of the Council then discussed the logistics of recordation in the mortgage and conveyance records, and the effects of recordation on proceedings. Ultimately, the Council decided to defer discussion of a possible more appropriate retention period. Another Council member then expressed that it may be inappropriate for the law to mandate that clerks record testaments in the conveyance records since some testaments may not convey real estate – rather than dictating where the clerk should record the testament, the provision that the Council adopts should only provide that the document be retained. The Council was then reminded that adoption of the alternative, Article 2911, would preclude consideration of the original proposal, Article 2894. Eventually, the Council adopted the proposed language as amended in Paragraph A of Article 2911:

SECTION 4. RETENTION OF TESTAMENTS

Article 2911. Retention of testaments

The clerk of court shall retain in perpetuity the original of a testament that is probated or ordered to be filed and executed. Until the order probating the testament or ordering the testament to be filed and executed becomes final and definitive, the clerk of court shall also retain the originals of all other testaments filed in accordance with Article 2853.

Judge Holdridge then directed the Council's attention to Paragraph B of Article 2911. He stated that the proposal provides that if a testament is filed in the conveyance records, the clerk must ensure that the testament is indexed only in the name of the testator, and that its recordation shall not have any effect on the rights of certain parties nor shall its recordation make the provisions of the testament effective against third persons. Mr. Cromwell then stated that this language was proposed in response to the originally proposed Article 2894, mandating recordation into the conveyance records. A member of the Code of Civil Procedure Committee expressed support for this language, stating that it promoted uniformity and provided guidance to the clerks. Members of the Council then discussed the distinction between a party's filing in the suit record and the clerk's recordation of a document in the mortgage and conveyance records. One Council member then suggested that Paragraph B be moved to the Revised Statutes, and another suggested that the word "probated" be replaced with "if a testament is filed." After further discussion, the Council voted to create a new statute in Title 9 and adopted the proposed language as follows:

R.S. 9:2762. Recordation of testaments; indexing; effectiveness

If a testament is recorded in the conveyance records, the clerk of court shall index the testament only in the name of the testator. The recordation of the testament shall not itself have any effect on the rights of the heirs, legatees, and creditors of the succession and shall not make the provisions of the testament effective against third persons.

At this time, Judge Holdridge concluded his presentation, and the President called on Mr. Richard Pittman, Reporter of the Children's Code Committee, to begin his presentation of materials.

Children's Code Committee

Mr. Pittman began his presentation with the "Right to Counsel" packet and informed the Council that Act 271 of the 2023 Regular Session terminates the parental

rights of perpetrators when a child is conceived through sexual assault and gives the court discretion over the appointment of counsel for the child. The Committee proposed changes to restore a child's constitutional right to the appointment of counsel in all circumstances and to correct cross-references. The Reporter explained that after working with representatives from the Sexual Trauma Awareness and Response organization, he would be removing the proposed changes to Children's Code Articles 672.1, 682, 684, 700, and 1004.1 from consideration during today's meeting. Without discussion, the Council approved the technical changes to all of the following:

Article 776. Permanency planning reports

A. If at any point in family in need of services proceedings, a child enters the custody of the state, the provisions of Chapters 13, 15, and 16 of Title VI and Article ~~1004.1~~ 1004.2 shall be applicable.

* * *

Article 1004. Petition for termination of parental rights; authorization to file

B. Counsel appointed for the child pursuant to Article 607 may petition for the termination of parental rights of the parent of the child if the petition alleges a ground authorized by Article ~~1015(5), (6), or (7)~~ 1015(4), (5), or (6) and, although eighteen months have elapsed since the date of the child's adjudication as a child in need of care, no petition has been filed by the district attorney or the department.

* * *

D. The department may petition for the termination of parental rights of the parent of the child when any of the following apply:

(1) The child has been subjected to abuse or neglect after the child is returned to the parent's care and custody while under department supervision, and termination is authorized by Article ~~1015(4)(j)~~ 1015(3)(j).

(2) The 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 the parent have been unsuccessful, and termination is authorized by Article ~~1015(4)(k)~~ 1015(3)(k).

(3) The child has been abandoned and termination is authorized by Article ~~1015(5)~~ 1015(4).

(4) The child has been placed in the custody of the state and termination is authorized by Article ~~1015(6)~~ 1015(5).

(5) The child is in foster care because the parent is incarcerated and termination is authorized by Article ~~1015(7)~~ 1015(6).

(6) The child is in foster care and, despite diligent efforts by the department to identify the child's father, ~~his~~ the identity is unknown, and termination is authorized by Article ~~1015(10)~~ 1015(8).

* * *

F. By special appointment for a particular case, the court or the district attorney may designate private counsel authorized to petition for the termination of parental rights of the parent of the child on the ground of abandonment authorized by Article ~~1015(5)~~ 1015(4).

* * *

Article 1007. Court records of proceedings

* * *

B. The address and parish of the petitioner and each person on whose behalf the petition for termination of parental rights is filed under the provisions of Article ~~1015(3) or (9)~~ 1015.1 may remain confidential with the court.

* * *

Article 1015.2. Termination of parental rights; certain grounds; costs and fees

* * *

B. All court costs, attorney fees, costs of enforcement and modification proceedings, costs of appeals, evaluation fees, and expert witness fees incurred in filing, maintaining, or defending any proceeding ~~under~~ pursuant to Article 1015.1 shall be paid by the perpetrator of the sex offense, including all costs of medical and psychological care for the sexually abused ~~adult~~ parent, or for the child conceived as a result of the sex offense.

The Reporter then directed the Council to Article 1016 on page 7 of the materials and explained that this proposal restores a child's right to counsel in termination of parental rights proceedings. Mr. Pittman revised Subparagraph (A)(2) of the proposal to retain the prohibition of forced interaction between the child and the respondent. One Council member suggested substituting the phrase "expediated suspensive appeal" with "emergency supervisory writ" to ensure immediate appellate review. Thereafter, all of the following was approved:

Article 1016. Right to counsel

A.(1) The child and ~~the~~ each identified parent shall ~~each~~ have the right to be represented by separate counsel in a termination proceeding brought in accordance with this Title. The child shall be a party to the proceedings. Neither the child nor anyone purporting to act on behalf of the child ~~may~~ shall be permitted to waive the child's right to counsel.

(2) ~~For actions brought under Article 1015.1, the court shall have discretion to decide under the circumstances for each case whether to appoint counsel for the child.~~ In no event shall the petitioner ~~of such action~~ of an action pursuant to Article 1015.1 or the ~~minor~~ child be required to interact with the respondent as a condition to pursue termination under this Article. Any counsel acting on behalf of the child shall not require a petitioner to make the child available for any visitation or conversation with the respondent or the respondent's family and shall not require any nonoffending petitioner to take classes or provide updates on the child. A petitioner shall have the right to seek an ~~expedited suspensive appeal~~ emergency supervisory writ for any violation of this Article.

B. The court shall appoint the entity designated for the jurisdiction by the Louisiana Supreme Court to provide qualified, independent counsel for the child in ~~such a~~ the proceeding. Counsel for the child shall have the authority to represent the child throughout the termination proceeding and any appellate review.

* * *

The Reporter reminded the Council that the remaining changes in the proposal are all technical, and the following provisions were adopted:

Article 1019. Contents of the petition

* * *

C. The petition shall allege facts which constitute the grounds necessary for the termination of parental rights as set forth in Article 1015 or 1015.1.

* * *

Article 1035. Burden of proof

* * *

B. The parent asserting a mental or physical disability as an affirmative defense to abandonment ~~under~~ pursuant to Article ~~1015(5)~~ 1015(4) bears the burden of proof by a preponderance of the evidence.

Article 1036. Proof of parental misconduct

* * *

C. ~~Under Article 1015(6),~~ In accordance with Article 1015(5), lack of parental compliance with a case plan may be evidenced by one or more of the following:

* * *

D. ~~Under Article 1015(6),~~ In accordance with Article 1015(5), lack of any reasonable expectation of significant improvement in the parent's conduct in the near future may be evidenced by one or more of the following:

* * *

E. ~~Under Article 1015(7),~~ In accordance with Article 1015(6), a sentence of at least five years of imprisonment raises a presumption of the parent's inability to care for the child for an extended period of time, although the incarceration of a parent shall not in and of itself be sufficient to deprive a parent of ~~his~~ parental rights.

* * *

Article 1036.2. Incarcerated parent; duties; assessment

* * *

E. The notification form given to the incarcerated parent shall be substantially as follows:

* * *

Please refer to Louisiana Children's Code, Title X, Articles 1001 to 1043, especially Articles ~~1015(7)~~ 1015(6) and 1036(E), for the details of Louisiana law regarding the termination of parental rights. A copy of the law is attached to this notice.

* * *

Article 1037.1. Continuing contact with biological relatives

A. Subsequent to a termination of parental rights judgment when custody is granted to the department, the court may order continuing

contact between the child and the parent, sibling, or other biological relative. The court may grant ~~such~~ an order only after it makes ~~finding~~ findings of fact that continuing contact is in the best interest of the child. The court may receive expert testimony on the issue of continuing contact.

* * *

The next topic is contained in the materials labeled "Notification to Child's Attorney and the Louisiana Department of Health." Mr. Pittman explained that issues arise when the court places a child in the custody of the department through a commitment to a mental institution without notifying the department and affording them an opportunity to be heard. A Council member questioned the impact that the proposed changes to Article 683 will have on instanter orders, but the Reporter noted that this provision concerns disposition only. Although current law requires representation for the child, it also allows disposition without a hearing. The Council further discussed the fact that a separate hearing is required prior to committing a child to an institution, and the child may have a Child in Need of Care attorney and a mental health advocacy attorney or private counsel present. Although present law is not clear, Mr. Pittman requested that focus remain on the fact that the department needs notice. Ms. Kathy Cook, a member of the Children's Code Committee, then explained that the change to Paragraph F of Article 683 was necessary because commitments for intellectual disabilities are covered by Title 28, not the Children's Code. The following language was approved:

Article 683. Disposition; generally

* * *

E. A child shall not be committed to a public or private mental institution or institution for persons with mental illness unless the court finds, based on psychological or psychiatric evaluation, that the child has a mental disorder, other than an intellectual disability, which has a substantial adverse effect on ~~his~~ the child's ability to function and requires care and treatment in an institution. When the child is in the custody of the state of Louisiana, this finding shall not be made without a contradictory hearing and notice to the Louisiana Department of Health, bureau of legal services and the representation of the child by an attorney appointed from the Mental Health Advocacy Service, unless ~~such attorneys are unavailable as determined by the director or~~ the child retains private counsel, who shall represent only the interest of the child. The Mental Health Advocacy Service's attorney ~~so~~ appointed shall continue to represent the child in any proceeding relating to admission, change of status, or discharge from the mental hospital or psychiatric unit. Upon modification of the disposition to a placement other than a mental hospital or psychiatric unit, the Mental Health Advocacy Service's attorney shall be relieved of representation of the child.

F. A child shall not be committed to a public or private institution for persons with intellectual disabilities unless the court finds, based on psychological or psychiatric evaluation pursuant to R.S. 28:451.1 et seq., that the child has an intellectual disability and ~~such~~ the condition has a substantial adverse effect on ~~his~~ the child's ability to function and requires care and treatment in an institution.

The Reporter then noted that the same changes were being proposed with respect to Article 781 for Families in Need of Services and Article 895 for delinquency. Without further discussion, the following provisions were adopted:

Article 781. Disposition; generally

* * *

D. A child shall not be committed to a public or private mental institution or institution for persons with mental illness unless the court finds,

based on psychological or psychiatric evaluation, that the child has a mental disorder, other than an intellectual disability, which has a substantial adverse effect on ~~his~~ the child's ability to function and requires care and treatment in an institution. When the child is in the custody of the state of Louisiana, this finding shall not be made without a contradictory hearing and notice to the Louisiana Department of Health, bureau of legal services and the representation of the child by an attorney appointed from the Mental Health Advocacy Service, unless ~~such attorneys are unavailable as determined by the director or~~ the child retains private counsel, who shall represent only the interest of the child. The Mental Health Advocacy Service's attorney ~~so~~ appointed shall continue to represent the child in any proceeding relating to admission, change of status, or discharge from the mental hospital or psychiatric unit. Upon modification of the disposition to a placement other than a mental hospital or psychiatric unit, the Mental Health Advocacy Service's attorney shall be relieved of representation of the child.

E. A child shall not be committed to a public or private institution for persons with intellectual disabilities unless the court finds, based on psychological or psychiatric evaluation pursuant to R.S. 28:451.1 et seq., that the child has an intellectual disability and ~~such~~ the condition has a substantial adverse effect on ~~his~~ the child's ability to function and requires care and treatment in an institution.

* * *

Article 895. Commitment to mental institution

A. In cases in which a child has been adjudicated a delinquent, the court may commit ~~him~~ the child to a public or private mental institution or institution for persons with mental illness if the court finds, based on psychological or psychiatric evaluation, that the child has a mental disorder, other than an intellectual disability, which has a substantial adverse effect on ~~his~~ the child's ability to function and requires care and treatment in an institution.

B. This finding shall not be made without a contradictory hearing and notice to the Louisiana Department of Health, bureau of legal services and unless the child is accorded ~~his right to special~~ counsel in accordance with Article 809~~(C)~~.

Ms. Cook then stated that the addition of Paragraph B to Article 1428 is necessitated by the increase in the number of children admitted to institutions by emergency certificates. If a child is under the age of sixteen, they are considered voluntarily admitted by their custodian, and the law requires notification to Mental Health Advocacy Services in that circumstance. Presently, due to insurance coverage complications, children are now being admitted involuntarily and the agency never receives notice. One Council member questioned the use of the word "minor" to refer to the child, and Ms. Cook explained that Title 28 and hospitals refer to children more commonly as minors. The following was approved:

Article 1428. Notice of admission

A. The director of the treatment facility shall notify the ~~minor patient's~~ minor's nearest relative, if known, or designated responsible party, if any, in writing of the minor's admission by emergency certificate as soon as reasonably possible.

B. Within seventy-two hours after an admission of any minor by emergency certificate to a treatment facility, copies of the physician's and coroner's emergency certificates shall be delivered by the facility, either by

personal delivery, email, or facsimile, to the MHAS office located nearest to the treatment facility.

The final proposal amends Article 1436 to require notice of the hearing on the petition for commitment to be delivered at least ten days prior to the hearing. One Council member asked about a penalty for the failure to provide such notice, and Ms. Cook informed the Council that the amended language is taken from existing Title 28 and presumes that the court will decide any penalties. With a few minor changes, the following was approved:

Article 1436. Hearing; notice

A. Upon the filing of the petition, the court shall assign a time, not later than eighteen calendar days thereafter, ~~shall assign~~ and a place for a hearing upon the petition~~,~~ and shall cause reasonable notice thereof to be ~~given~~ delivered at least ten days prior to the hearing to the minor, ~~his~~ the minor's attorney, ~~and~~ the petitioner, and the Louisiana Department of Health, bureau of legal services.

B. The notice shall inform the minor ~~respondent that he has a~~ of the right to be present at the hearing~~,~~; ~~that he has a~~ the right to counsel~~, that he,~~ and, if indigent or otherwise qualified, ~~has~~ the right to have counsel appointed ~~to represent him by~~ from the MHAS~~,~~; and ~~that he has~~ the right to call and ~~cross-examine~~ cross-examine witnesses testifying at any hearing on ~~such application~~ the petition.

The Reporter then asked the Council to review the document marked "Miscellaneous Technical Corrections" and described a typographical error in the use of the word "wise" in Paragraph C of Article 421. Without, discussion the following was approved:

Article 421. Probation officers

A. The ~~judge of the~~ court shall have the authority to commission probation officers, one of whom may be designated as chief probation officer or director of probation.

B. Probation officers shall have the power and authority to make arrests~~,~~; to serve notices, orders, subpoenas, and writs~~,~~; and to execute all orders and perform any other duties incident to their office. Nothing ~~herein contained~~ in this Paragraph shall be construed to relieve the sheriff from the duties as set forth in R.S. 13:5539.

C. Employment of ~~such personnel~~ probation officers by any court for its exclusive service shall in no ~~wise~~ way be affected by or limit the court in availing itself of the services of ~~such~~ the officers or other employees as may be provided by the state.

At this time, Mr. Pittman withdrew consideration of the "Findings of Fact" materials and concluded his presentation, and the President began his discussion of the Security Devices Committee's work on electronic findings and record retention.

Security Devices Committee

Mr. Cromwell began with R.S. 44:116, on page 11 of the "Draft Report and Revisions" materials and page 1 of a handout that was distributed to the Council. He explained that the revisions to this provision are intended to carve out filings in the conveyance records from the provisions that allow certain records to be copied and subsequently destroyed, since interpretations among the clerks of court vary as to whether these filings are currently subject to destruction. A motion was made and seconded to adopt this provision, at which time the Council discussed the use of "filed" as opposed to "recorded" and one Council member made a motion that was seconded to

add "mortgage or" before "conveyance records" throughout the materials. The Council discussed that the clerks of court would be opposed to this change, since many clerks are already out of space and the rationale in favor of preserving the originals of conveyances – that the validity of the signature may need to be examined – is not as strong with respect to filings in the mortgage records because these are being signed electronically more and more often. The Council also discussed that all of these filings are being imaged by the clerks prior to their destruction before a vote was taken on the motion to add "mortgage or" throughout, which failed with only a few votes in favor. The Council then voted on the motion to adopt the changes to R.S. 44:116 as presented in the handout, and the motion passed with no objections. The adopted proposal reads as follows:

R.S. 44:116. Photostatic, photographic, microfilm, or other photographic or electronic copies of records; indexes of conveyance and mortgage records; disposition; evidentiary status; preservation

* * *

D. Notwithstanding the provisions of Subsection B of this Section or any other provision of law to the contrary, for any record filed on or after January 1, 2005, with the exception of instruments filed in the conveyance records and records of a graphic nature including but not limited to plats, maps, and photographs as related to the work of a Professional Land Surveyor engaged in the "Practice of Land Surveying", as defined in R.S. 37:682, a clerk of court may reproduce the record as provided in this Section and may thereafter return the original record to the person presenting it.

E.(1) Notwithstanding the provisions of Subsection B of this Section or any other provision of law to the contrary, with the exception of instruments filed in the conveyance records, a clerk of court shall not be required to maintain an original record filed on or prior to December 31, 2004, provided that:

* * *

(2) A With the exception of instruments filed in the conveyance records, a clerk of court may destroy any record provided for in this Subsection or return it to the person who presented it for recordation after the clerk receives certification from the state archivist that the records are not subject to R.S. 44:406 or ~~R.S. 44:427~~ 411 and after the clerk has preserved the record as provided for in this Section. No cause of action for any claim shall exist against a clerk of court for any damage or loss resulting from the return or destruction of an original record in accordance with this Paragraph after receipt of the certification and proper preservation of the record.

* * *

Next, the Council turned to R.S. 44:117, on page 13 of the "Electronic Filing and Record Retention" materials, which requires clerks of court to preserve all filings in the conveyance records, however denominated, in perpetuity. A motion was quickly made and seconded to adopt this provision as presented, which passed with no objections. The adopted proposal reads as follows:

R.S. 44:117. Preservation of filings in the conveyance records

A. The clerk of court shall preserve in perpetuity the original of each instrument filed in the conveyance records. This Section shall prevail over any other law to the contrary.

B. For purposes of this Part, the conveyance records include all records, however denominated, that are required by law to be indexed in the index of conveyances maintained by the clerk of court.

Next, Mr. Cromwell asked the Council to turn to page 14 of the materials, explaining that there were two provisions that needed to be redesignated – existing R.S. 44:117 as R.S. 44:118, and existing Code of Civil Procedure Article 258 as R.S. 44:119. A motion was made and seconded to adopt the proposed redesignations as presented, and the motion passed with no objection. Finally, the Reporter directed the Council's attention to R.S. 9:2761 on page 15 of the materials, explaining that there is no statute in the provisions on registry that states that a recorded electronic record has the same effect as a recorded written instrument, and the Security Devices Committee thought that this might be a helpful addition. The Council discussed that a similar provision exists with respect to LUETA and also suggested replacing "the written instrument" with "an original written instrument" on line 4 of page 15, a change which the Reporter accepted. A motion was then made and seconded to adopt R.S. 9:2761 as amended, and the motion passed without objection. The adopted proposal reads as follows:

R.S. 9:2761. Effectiveness of electronic record

An electronic record filed in accordance with R.S. 44:119 shall have effect as to third persons in the same manner as if an original written instrument had been filed.

Finally, a motion was made and seconded to adopt the draft report in response to Senate Resolution No. 43 of the 2023 Regular Session relative to electronic filing and record retention. The motion passed with no objection, and there being no additional business, Mr. Cromwell concluded his presentation and the February 2024 Council meeting was adjourned.

Jessica G. Braun

Josef P. Ventulan

Mallory C. Waller