

**LOUISIANA STATE LAW INSTITUTE**

**THE FORTIETH BIENNIAL REPORT  
OF THE LOUISIANA STATE LAW INSTITUTE**

Prepared for the  
Louisiana Legislature on

**March 14, 2018**

Baton Rouge, Louisiana

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## **To the Legislature of Louisiana:**

In accordance with Paragraph 6 of Act 166 of the 1938 Regular Session of the Louisiana Legislature, the Louisiana State Law Institute (“Law Institute”) submits its fortieth biennial report to the Louisiana Legislature.

### **I. PURPOSES**

The Law Institute was chartered, created, and organized as an official law revision commission, law reform agency, and legal research agency of the State of Louisiana by Acts 1938, No. 166. The general purposes for which it was founded are "to promote and encourage the clarification and simplification of the law of Louisiana and its better adaptation to present social needs; to secure the better administration of justice and to carry on scholarly legal research and scientific legal work." Its legislative charter (Acts 1938, No. 166) and R.S. 24:204(A) prescribe its duties as follows:

#### **R.S. 24:204. General purpose; duties**

A. The general purposes for which the Louisiana State Law Institute is formed are to promote and encourage the clarification and simplification of the law of Louisiana and its better adaptation to present social needs, to secure the better administration of justice, and to carry on scholarly legal research and scientific legal work. To that end it shall be the duty of the Louisiana State Law Institute:

(1) To consider needed improvements in both substantive and adjective law and to make recommendations concerning the same to the legislature.

(2) To examine and study the civil law of Louisiana and the Louisiana jurisprudence and statutes of the state with a view of discovering defects and inequities and of recommending needed reforms.

(3) To cooperate with the American Law Institute, the Uniform Law Commission, bar associations, and other learned societies and bodies by receiving, considering, and making reports on proposed changes in the law recommended by any such body.

(4) To receive and consider suggestions from judges, justices, public officials, lawyers, and the public generally as to defects and anachronisms in the law.

(5) To recommend from time to time such changes in the law as it deems necessary to modify or eliminate antiquated and inequitable rules of law, and to bring the law of the state, both civil and criminal, into harmony with modern conditions.

(6) To render biennial reports to the legislature, and if it deems advisable to accompany its reports with proposed bills to carry out any of its recommendations.

(7) To make available translations of civil law materials and commentaries and to provide by studies and other doctrinal writings, materials for the better understanding of the civil law of Louisiana and the philosophy upon which it is based.

(8) To recommend the repeal of obsolete articles in the Civil Code and Code of Civil Procedure and to suggest needed amendments, additions, and repeals.

(9) To organize and conduct an annual meeting within the state for scholarly discussions of current problems in Louisiana law, bringing together representatives of the legislature, practicing attorneys, members of the bench and bar, and representatives of the law teaching profession.

(10) To make recommendations to the legislature on a biennial basis for the repeal, removal or revision of provisions of law that have been declared unconstitutional by final and definitive court judgment.

\* \* \*

## **II. BY-LAWS OF THE LOUISIANA STATE LAW INSTITUTE**

### **I. Purposes, Duties, and Organization of the Institute**

- A. The purposes and duties of the Institute are those enumerated in R.S. 24:204A.
- B. In order to fulfill efficiently these purposes and perform these duties, the Law Institute is organized into:
  - 1. The General Membership;
  - 2. The Council;
  - 3. The Executive Committee of the Council;
  - 4. Standing Committees;
  - 5. Continuous Revision Advisory Committees; and
  - 6. Special Committees.

### **II. General Membership of the Institute**

- A. There are four classes of members of the Institute: elected, ex-officio, junior and honorary members.
  - 1. The elected members are attorneys, not exceeding 150, who are licensed in the State of Louisiana and have practiced for five years prior to election, elected by the Council for 4 year terms, commencing January 1, 1999.
  - 2. The ex-officio members are:
    - a. All justices of the Supreme Court, all judges of the Courts of Appeal and District Courts of Louisiana, during their terms of office;
    - b. All Article III judges of federal courts located in Louisiana who are Louisiana domiciliaries, during their terms of office;
    - c. All members of the law faculties of Paul M. Hebert Law Center, Loyola University, Tulane University, and Southern University, during their tenures as faculty members;
    - d. All members of the legislature who are attorneys licensed to practice law in Louisiana, during their terms of office;

- e. The Administrative and Non-Administrative officers of the Institute during their terms of office;
  - f. Members of the Council during their terms of membership; and
  - g. The Chairpersons, Reporters and Members of all Standing Committees, Continuous Revision Advisory Committees, and Special Committees during their tenures on these Committees.
- 3. The junior members are three honor graduates from each of the four law schools listed above who are licensed to practice in Louisiana and who are designated by the dean or chancellor of their respective law schools. They shall be elected by the Council for a term of one year.
  - 4. The honorary members are those persons who are elected by the Council as honorary members because they have distinguished themselves as eminent legal scholars or attorneys and have made significant contributions to the advancement of the law.
- B. The Council, upon recommendation of its Membership and Nominating Committee, shall fill vacancies in the elected membership of the Institute by election for the unexpired term of the elected member.
  - C. The elected, ex-officio, junior and honorary members of the Institute shall have such privileges and perform such duties as may be assigned to them by the Council of the Institute.

### **III. Annual Meeting of the Institute**

- A. The President shall determine the time and place of the annual meeting of the Institute.
- B. Thirty days written notice of the time and place of the annual meeting shall be given to all members of the Institute.

### **IV. Council of the Institute**

- A. Function and Duties
  - 1. The Council is the governing body of the Institute and is charged with the responsibility of fulfilling the purposes and duties of the Institute.
- B. Membership
  - 1. The membership of the Council consists of those persons enumerated in La. R.S. 24:202A and B.

2. The Council shall invite to its meetings as Observers for a one year term two members of the Young Lawyers Section of the Louisiana State Bar Association, designated annually by the Chairperson of the Young Lawyers Section. Observers are not members of the Council. The Observers shall have the privilege of the floor, but shall not have the right to vote.
3. The terms of office of members of the Council are:
  - a. For members of the judiciary who are ex-officio members, four years commencing from the effective date of their respective appointments as members of the Council;
  - b. For other ex-officio members, during their respective terms of office; and
  - c. For elected members, four years. Elected members shall be eligible for re-election.
4. All members of the Council and all Administrative and Non-Administrative Officers of the Institute shall have the privileges of the floor and the right to vote at all Council meetings.
5. All ex-officio members listed in La. R.S. 24:202A shall have the right to designate a proxy for Council meetings. The proxy shall have all the rights and privileges of the ex-officio member, including the right to vote.
6. The Council, upon recommendation of its Membership and Nominating Committee, shall fill vacancies in the elected membership of the Council by election for the unexpired term of the elected member.
7. The Council, upon recommendation of its Membership and Nominating Committee, shall fill vacancies in the ex-officio membership of the Council caused by the failure of persons or agencies to select, designate, submit, or recommend members of the Council.

C. Meetings

1. Regular and Special meetings of the Council shall be called by the President. A special meeting of the Council must be called by the President upon written request of any ten Council members addressed to the President or to any Vice-President.
2. Ten days written notice of the time and place of all regular and special meetings of the Council and the agenda for the meeting shall be given to all Council members.

3. The Council shall conduct Council business, hear and act upon reports from the Executive Committee, Standing Committees, Continuous Revision Advisory Committees, and Special Committees, make recommendations to the Louisiana Legislature concerning proposed changes in the law, and otherwise make recommendations on all matters submitted to it by the Legislature.
4. The Council shall also conduct elections and otherwise conduct such business that shall be presented to it.
5. The Council may not conduct an election, consider a committee report, make a recommendation to the Legislature, or consider any other item of business, unless it is listed in the written agenda of that Council meeting mailed to members as provided in these By-Laws. Except for elections, the Council may waive this requirement by a two-thirds vote of members present and voting.
6. No business shall be conducted, reports heard, recommendations made, elections conducted, or any other matter acted upon at a Regular or Special meeting of the Council without a quorum of the voting members being present. Fifteen members shall constitute a quorum.
7. The Orders of the Day at each Regular and Special meeting of the Council shall be the items of Council business listed in the written agenda for that Council meeting in the sequence in which they are listed.
8. The current edition of “Robert’s Rules of Order, Newly Revised”, shall regulate the conduct of Council meetings. The President shall appoint a Parliamentarian, whose rulings on points of order shall be binding, except that a vote of at least two-thirds of the members present and voting shall be sufficient to override his ruling, except as otherwise provided in these By-Laws.
9. The annual meeting of the Council for the election of the elected members and Administrative and Non-Administrative Officers of the Institute, the election of the elected members of the Council, and the election of the elected members of the Executive Committee shall be held between November 1 and December 31 of each year at a time, on a date, and at a place selected by the Executive Committee.

D. Compensation

1. Members of the Council, the director, staff personnel, reporters, and other persons rendering services to the Institute may be reimbursed by the Institute for their expenses incurred in attending meetings of the Council or committees of the Institute. Reimbursements for expenses shall be in accordance with applicable statutes, appropriations, budgetary limitations, and policies pertaining to the legislative branch of government.
2. The Council shall fix and pay reasonable compensation to the Director and staff of the Institute and honoraria to Reporters and other persons who perform services for the Institute, upon recommendation of the Executive Committee of the Council.

V. **Executive Committee of the Council**

A. Function and Duties

1. There shall be an Executive Committee of the Council, which shall have the power to transact all business of the Institute, except those matters which must be acted upon by the Council, pursuant to these By-Laws or the statute creating the Institute.
2. The Executive Committee may create Standing Committees, Continuous Revision Advisory Committees, and Special Committees, subject to the approval of the Council. Notice of the proposed creation of such a committee must be included in the written agenda of a Council meeting mailed to members.

B. Membership

1. The members of the Executive Committee are the following officers of the Institute and members of the Council:
  - a. The Chairperson;
  - b. The Chairpersons Emeriti;
  - c. The President;
  - d. The Vice-Presidents;
  - e. The Secretary;
  - f. The Treasurer;

- g. The Director;
- h. The Chairpersons of the Standing Committees; and
- i. Three Members of the Council elected annually by the Council. These members shall serve a one year term.

C. Meetings

- 1. All members of the Executive Committee are voting members of the Committee.
- 2. No business shall be conducted without a quorum of the members being present. Five members shall constitute a quorum.

**VI. Officers of the Institute**

- A. The administrative officers of the Institute are a Chairperson, a President, four (4) Vice-Presidents, a Secretary, an Assistant Secretary, a Treasurer, an Assistant Treasurer, the Director of the Institute, and an Assistant Director of the Institute.
- B. The non-administrative officers of the Institute are the Chairpersons Emeriti, the Senior Officers, and the Liaison Officers, and the two elected members of the Young Lawyers Section of the Louisiana State Bar Association.
- C. The administrative officers shall be elected by the Council for a one year term commencing on January 1 of each year and shall serve until their successors are elected.
- D. The Chairperson shall participate in the planning and in the supervisory and administrative work of the Institute, and is an ex-officio member of all Committees.
- E. The President is the chief executive officer of the Institute, shall preside at all Council and Institute meetings, shall perform all of the usual and customary duties of that office and all duties assigned to him by these By-Laws or by the Council, and he is an ex-officio member of all Committees. The President may authorize another Council member to act as President Pro Temp in case of his absence or incapacity.
- F. Within thirty days after the annual meeting of the Institute, the President shall appoint the Chairpersons and members of the Standing Committees. The appointments are subject to the approval of the Council. They shall be appointed for a one year term and shall serve until their successors are appointed. The Chairpersons and members of the Standing Committees shall be selected from the membership of the Council.

- G. The President shall appoint, for such terms as he may determine, the Reporters and Chairpersons of all Continuous Revision Advisory Committees and Special Committees, subject to the approval of the Executive Committee, after prior notice to the Council of a vacancy in this position. Notice of appointment of Reporters and Chairpersons of these Committees shall be given to the Council. Reporters and Chairpersons of these Committees serve at the pleasure of the Executive Committee.
- H. The President shall appoint, for such terms as he may determine, the members of all Continuous Revision Advisory Committees and Special Committees, subject to the approval of the Executive Committee and the Reporters and Chairpersons of the respective Committees. Written notice of appointment of committee members shall be given to the Council. Members of these Committees serve at the pleasure of the President.
- I. The Vice-Presidents, in order of seniority, ranking from the dates of their election, shall act in the absence or incapacity of the President if a President Pro Temp has not been authorized by the President.
- J. The Secretary is the custodian of all records of the Institute except the financial records maintained by the Treasurer.
- K. The Assistant Secretary shall act in the absence or incapacity of the Secretary.
- L. The Treasurer is the custodian of all funds and shall maintain all financial records of the Institute. All Institute checks shall be signed by the Treasurer or the Assistant Treasurer and shall be countersigned by the President, Vice-President, the Secretary, Assistant Secretary, or Director. Checks for budgeted expenditures may be drawn only upon the request of the Director. Checks for nonbudgeted expenditures may be drawn only upon presentation of a copy of a resolution of the Executive Committee, certified by the Secretary, authorizing the expenditure.
- M. The Assistant Treasurer shall act in the absence or incapacity of the Treasurer.
- N. The Council may elect as Chairpersons Emeriti those persons who have served as Chairpersons of the Institute.
- O. The Council may elect as Senior Officers attorneys who have served not less than sixteen years in the Louisiana Legislature and not less than four years as members of the Council, members who have served not less than twelve years as members of the Council, members of the Council who are elected to the judiciary after having served not less than eight years as members of the Council, and members of the judiciary who have served not less than eight years as ex-officio members of the Council. The Coordinator of Program and Research, Civil Law Section, and the

Secretary, Civil Law Section, are Senior Officers during their terms of office as officers of the Civil Law Section.

- P. The Liaison Officers are the Chairperson of the Law Reform Committee of the Louisiana State Bar Association during his term of office and one additional member of the Louisiana State Bar Association nominated by its President, who shall serve a one year term.
- Q. Chairpersons Emeriti and Senior Officers, as non-administrative officers, shall have the status, rights, and privileges of officers, shall have tenure for life, and shall perform such duties as may be assigned to them by the Council.
- R. The Council may elect as Non-Administrative Officers of the Institute two members of the Young Lawyers Section of the Louisiana State Bar Association from a panel of four submitted by the Young Lawyers Section, each of whom shall have been licensed to practice in Louisiana at least for five years. These members shall serve a term of two years.

## **VII. Director of the Institute**

- A. The Director is charged with the active management of the Institute and shall work under the direction of the President and the Executive Committee, except where Council approval is required.
- B. The Assistant Director shall serve as the Director of the Institute in the event of the Director's unavailability, resignation, illness, incapacity, or death, and shall exercise all responsibilities of the Director in such event.

## **VIII. Standing Committees**

- A. There are several Standing Committees of the Council at the time of the adoption of these By-Laws. Additional Standing Committees may be created by the Executive Committee, subject to the approval of the Council.
- B. The Program and Work Committee shall review the work undertaken by the Institute, propose work to be undertaken by the Institute, and make other recommendations to the Institute concerning its work as circumstances require.
- C. The Membership and Nominating Committee shall nominate and recommend for election by the Council those persons proposed as elected members of the Institute, elected members of the Council, the Administrative Officers and Non-Administrative Officers of the Institute, and other elective officers.
- D. The Coordinating, Semantics, Style and Publications Committee shall review, for coordination of the proposed legislation with other statutory provisions and for

semantics and style, all Council recommendations prior to their submission to the Legislature.

**IX. Continuous Revision Advisory Committees**

- A. Continuous Revision Advisory Committees are charged with the continuous revision of the Louisiana codes and statutes.
- B. Additional Continuous Revision Committees may be created by the Executive Committee, subject to the approval of the Council.
- C. Members of Continuous Revision Advisory Committees need not be members of the Institute or Council members at the time of their appointment.

**X. Special Committees**

- A. Special Committees may be created by the Executive Committee, subject to the approval of the Council, to study and recommend the enactment, amendment, or repeal of particular legislation or statutes, to respond to Legislative requests for special studies and recommendations, and for other purposes.
- B. Members of Special Committees need not be members of the Institute or Council members at the time of their appointment.

**XI. Civil Law Section**

A. Function and Duties

- 1. The function of the Civil Law Section is to accomplish the general purposes of the Institute in the field of the civil law in Louisiana. For that purpose, it is charged with the following duties:
  - a. To examine and study the civil law and jurisprudence of Louisiana relating to the civil law and to make recommendations to the Council concerning the needed reforms, including the amendment, revision, enactment or repeal of Civil Code articles and statutes.
  - b. To publish scholarly commentaries on the civil law of Louisiana for the purpose of establishing authoritative civil law doctrine for Louisiana.

B. Membership

- 1. The membership of the Civil Law Section shall consist of those persons appointed by the President, subject to the approval of the Executive Committee.

C. Officers

1. The officers of the Civil Law Section are the Coordinator of Program and Research, Civil Law Section, and the Secretary, Civil Law Section. The President shall appoint those officers subject to the approval of the Executive Committee.

**XII. Amendment of By-Laws**

- A. Amendments to these By-Laws may be made at any regular or special meeting of the Council by a vote of two-thirds of the members present and voting, upon thirty days written notice given to all Council members, setting forth the subject matter and text of the proposed amendments.

**III. OFFICERS**

The officers of the Institute are elected annually by the Council. The present officers are:

Susan G. Talley	President
John David Ziober	Chair
James C. Crigler, Jr.	Chair Emeritus
J. David Garrett	Chair Emeritus
James A. Gray, II	Chair Emeritus
Charles S. Weems, III	Chair Emeritus
Cordell H. Haymon	Chair Emeritus
Marilyn C. Maloney	Chair Emeritus
Thomas M. Bergstedt	Chair Emeritus
Emmett C. Sole	Chair Emeritus
Max Nathan, Jr.	Chair Emeritus
Robert L. Curry, III	Chair Emeritus
Rick J. Norman	Vice President
L. David Cromwell	Vice President
Thomas M. Hayes, III	Vice President
Leo C. Hamilton	Vice President
William E. Crawford	Director
Guy Holdridge	Assistant Director
Thomas C. Galligan, Jr.	Secretary
Robert W. "Bob" Kostelka	Assistant Secretary
Joseph W. Mengis	Treasurer
Glenn Morris	Assistant Treasurer

#### IV. COUNCIL

As provided by R.S. 24:202: “The governing body of the Louisiana State Law Institute shall be a council composed of ex officio members and elected members.” The elected members serve for four years; their terms are staggered so that seven are elected every year. They serve without pay as a service to the State. The present members of the Council are:

E. PETE ADAMS  
Baton Rouge, LA

ANDREA B. CARROLL  
Baton Rouge, LA

MARGUERITE (PEGGY) L. ADAMS  
New Orleans, LA

PRESTON J. CASTILLE, JR.  
Baton Rouge, LA

GLENN B. ANSARDI  
Gretna, LA

MARILYN CASTLE  
Lafayette, LA

THOMAS M. BERGSTEDT  
Sulphur, LA

DAN CLAITOR  
Baton Rouge, LA

DAVID F. BIENVENU  
New Orleans, LA

WILLIAM E. CRAWFORD  
Baton Rouge, LA

MATTHEW F. BLOCK  
Thibodaux, LA

JAMES C. CRIGLER, JR.  
Monroe, LA

BERNARD E. BOUDREAUX, JR.  
Baton Rouge, LA

L. DAVID CROMWELL  
Shreveport, LA

L. KENT BREARD  
Monroe, LA

KEVIN C. CURRY  
Baton Rouge, LA

DORRELL J. BRISTER  
Alexandria, LA

ROBERT L. CURRY, III  
Monroe, LA

KRISTEN L. BURGE  
New Orleans, LA

JAMES J. DAVIDSON, III  
Lafayette, LA

JEANNE LOUISE CARRIERE  
New Orleans, LA

ROBERT G. DAWKINS  
Ruston, LA

JOHN E. DI GIULIO  
Baton Rouge, LA

JIMMY N. DIMOS  
Monroe, LA

ANDRE' DOUGET  
Lafayette, LA

BILLY J. DOMINGUE  
Lafayette, LA

LAWRENCE E. DONOHOE  
Lafayette, LA

DANA M. DOUGLAS  
New Orleans, LA

DAVID M. ELLISON, JR.  
Baton Rouge, LA

FRANK FOIL  
Baton Rouge, LA

ELIZABETH E. FOOTE  
Shreveport, LA

WILLIAM R. FORRESTER, JR.  
New Orleans, LA

THOMAS C. GALLIGAN, JR.  
Baton Rouge, LA

RAYMOND E. GAROFALO, JR.  
Chalmette, LA

J. DAVID GARRETT  
Shreveport, LA

GRACE B. GASAWAY  
Hammond, LA

JAMES A. GRAY, II  
New Orleans, LA

ISSAC M. "MACK" GREGORIE  
Baton Rouge, LA

PIPER D. GRIFFIN  
New Orleans, LA

BARRY H. GRODSKY  
New Orleans, LA

DAVID W. GRUNING  
Abita Springs, LA

LEO C. HAMILTON  
Baton Rouge, LA

JOSEPH L. HARGROVE, JR.  
Shreveport, LA

THOMAS M. HAYES, III  
Monroe, LA

CORDELL H. HAYMON  
Baton Rouge, LA

CHRISTOPHER B. HEBERT  
Baton Rouge, LA

MIRIAM WOGAN HENRY  
New Orleans, LA

MARY C. HESTER  
Baton Rouge, LA

LILA T. HOGAN  
Hammond, LA

THOMAS B. LEMANN  
New Orleans, LA

GUY HOLDRIDGE  
Gonzales, LA

F.A. LITTLE, JR.  
Alexandria, LA

JEFFERSON D. HUGHES, III  
New Orleans, LA

MELISSA T. LONEGRASS  
Baton Rouge, LA

KATRINA R. JACKSON  
Bastrop, LA

JOHN A. LOVETT  
New Orleans, LA

JOHN WAYNE JEWELL  
New Roads, LA

W. JAY LUNEAU  
Alexandria, LA

PAMELA TAYLOR JOHNSON  
Baton Rouge, LA

SHERMAN Q. MACK  
Albany, LA

ARLENE D. KNIGHTEN  
Baton Rouge, LA

MARILYN C. MALONEY  
Houston, TX

ROBERT W. "BOB" KOSTELKA  
Monroe, LA

EDWIN R. MCINTYRE, JR.  
Winnsboro, LA

RON J. LANDRY  
River Ridge, LA

MICHAEL W. MCKAY  
Baton Rouge, LA

WALTER I. LANIER, JR.  
Thibodaux, LA

JOHN G. MCLURE  
Alexandria, LA

LUKE A. LAVERGNE  
Baton Rouge, LA

KAY C. MEDLIN  
Shreveport, LA

QUINTILLIS KENYATTA  
LAWRENCE  
Baton Rouge, LA

JOSEPH W. MENGIS  
Baton Rouge, LA

RICHARD K. LEEFE  
Metairie, LA

DAVID D. MEYER  
New Orleans, LA

GREGORY A. MILLER  
Norco, LA

HERSCHEL E. RICHARD, JR.  
Shreveport, LA

GLENN G. MORRIS  
Baton Rouge, LA

SALLY BROWN RICHARDSON  
New Orleans, LA

CAMILLE A. MORVANT, II  
Thibodaux, LA

CHRISTOPHER H. RIVIERE  
Thibodaux, LA

ELIZABETH MURRILL  
Baton Rouge, LA

CYNTHIA A. SAMUEL  
New Orleans, LA

JOHN H. MUSSER, IV  
Covington, LA

RONALD J. SCALISE, JR.  
New Orleans, LA

MAX NATHAN, JR.  
New Orleans, LA

CARL VAN SHARP  
Monroe, LA

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**V. GENERAL MEMBERSHIP**

The By-Laws of the Law Institute provide for a general membership consisting of ex officio and elected members. The ex officio membership consists of judges of the Supreme Court, the Courts of Appeal and District Courts, and all judges of Federal Courts sitting in Louisiana. Included also are all members of the law faculties of Loyola University, Paul M. Hebert Law Center, Southern University, and Tulane University. The elected membership consists of not over one-hundred and seventy-five active members of the Bar, who have practiced for at least ten years, and not over fifty junior members of the Bar who have practiced law not less than three and not more than ten years. In addition, each of the listed schools is authorized to designate annually three outstanding honor graduates who are elected as junior members of the Law Institute. The terms of the general members are indefinite.

**VI. MAJOR ACCOMPLISHMENTS OF THE LAW INSTITUTE**

**Compiled Edition of the Louisiana Civil Codes (1940).**

**Louisiana Statutes Related to the Civil Code (1942).**

**The Louisiana Criminal Code (Acts 1942, No. 43).**

**The Louisiana Revised Statutes of 1950.**

**The Translation of French Commentators (1959-1972).**

**The Louisiana Code of Civil Procedure (Acts 1960, No. 15).**

**The Louisiana Trust Code (Acts 1964, No. 338).**

**The Louisiana Code of Criminal Procedure (Acts 1966, No. 310).**

**The Louisiana Mineral Code (Acts 1974, No. 50).**

**The Louisiana Civil Code (Continuing).**

**The Louisiana Code of Evidence (Acts 1988, No. 515).**

**The Uniform Commercial Code (Continuing).**

**VII. LEGISLATIVE ACTION ON LAW INSTITUTE RECOMMENDATIONS FROM 2013 TO 2018**

**Note: Information relative to years prior to 2013 is available at the offices of the Law Institute**

**A. Law Institute Recommendations for the 2013 Regular Session**

<b><u>Bill No.</u></b>	<b><u>Subject</u></b>	<b><u>Final Result</u></b>
HB 192	Code of Civil Procedure	Adopted as Act 78
HB 321	Expedited Jury Trials	Deferred
HB 408	Corporations	Deferred
HB 578	Adoptions	Adopted as Act 86
HB 588	Prescription	Adopted as Act 88
SB 40	Criminal Procedure	Adopted as Act 343
SB 162	Surrogacy	Vetoed

**B. Law Institute Recommendations for the 2014 Regular Session**

<b><u>Bill No.</u></b>	<b><u>Subject</u></b>	<b><u>Final Result</u></b>
HB 285	Title 33	Adopted as Act 158
HB 319	Corporations	Adopted as Act 328
HB 391	Title 33	Heard by House Committee on House and Governmental Affairs
HB 445	Children's Code	Adopted as Act 169
HB 607	Code of Civil Procedure	Adopted as Act 655
HB 611	Uniform Commercial Code	Adopted as Act 520
HB 615	Utility Servitudes	Heard by House Civil Law and Procedure Committee
HB 619	Uniform Interstate Depositions and Discovery	Adopted as Act 793

HB 1114	Successions	Referred to Senate Judiciary A Committee
HB 1133	Power of Attorney for the Elderly	Adopted as Act 356
SB 55	Code of Criminal Procedure	Adopted as Act 280
SB 85	Child Support	Adopted as Act 134
SB 89	Security Devices	Adopted as Act 281

**C. Law Institute Recommendations for the 2015 Regular Session**

<b><u>Bill No.</u></b>	<b><u>Subject</u></b>	<b><u>Final Result</u></b>
HB 196*	Utility Servitudes	Senate amendments failed House floor
*Note: Institute recommendation removed after substantial amendment		
HB 204	Disabled Adult Children	Adopted as Act 379
HB 273	Respite	Adopted as Act 64
HB 385	Children’s Code: Mandatory Reporters	Adopted as Act 217
HB 439	Trust Code	Adopted as Act 219
HB 696	Summary Judgment	Adopted as Act 422
SB 79	Mineral Law – Legacy Disputes	Adopted as Act 448
SB 134	Parental Authority	Adopted as Act 260

**D. Law Institute Recommendations for the 2016 Regular Session**

<b><u>Bill No.</u></b>	<b><u>Subject</u></b>	<b><u>Final Result</u></b>
HB 259	Child Support: Visitation	Adopted as Act 216
HB 269	Successions	Adopted as Act 86
HB 285	Code of Civil Procedure	Adopted as Act 132

HB 286	Trust Code	Adopted as Act 544
HB 313	Expropriation	Adopted as Act 108
HB 388	Filiation	Adopted as Act 309
HB 391	Adoption	Heard by House Civil Law and Procedure Committee
HB 449	Birth Certificates	Adopted as Act 434
HB 714	Corporations	Adopted as Act 442
SB 94	Adult Guardianship	Adopted as Act 333
SB 123	Bail Bonds	Adopted as Act 613
SB 404	Mineral Law – Unsolicited Offers	Adopted as Act 179

#### **E. Law Institute Recommendations for the 2017 Regular Session**

<b><u>Bill No.</u></b>	<b><u>Subject</u></b>	<b><u>Final Result</u></b>
HB 115	Community Property	Adopted as Act 197
HB 121	Successions	Adopted as Act 198
HB 136	No-Fault Divorce	Failed House final passage
HB 310	Corporations	Adopted as Act 57
HB 439	Code of Civil Procedure	Adopted as Act 419
HB 506	Children’s Code Expungement	Adopted as Act 362
SB 42	Human Trafficking Commission	Adopted as Act 181
SB 54	Human Trafficking Exploitation of Children	Adopted as Act 376
SB 81	Children’s Code Curatorship	Adopted as Act 239

SB 120

Landlord-Tenant

Heard by Senate  
Committee on Judiciary A

**F. Law Institute Recommendations for the 2018 Regular Session**

<b><u>Bill No.</u></b>	<b><u>Subject</u></b>	<b><u>Final Result</u></b>
HB 100	Domestic Abuse Costs and Attorney Fees	
HB 125	Divorce and Spousal Support	
HB 147	Filiation	
HB 174	Code of Civil Procedure	
HB 182	Indian Child Welfare Act	
HB 187	Children's Code Use of Restraints	
HB 395	Continuing Tutorship	
HB 482	Children's Code Release from Custody	
HB 519	Unpaid Wages	
HB 643	Children's Code Adoption	
SB 98	Same-Sex Marriage	
SB 190	Zoning	
SB 396	Surrogacy	

**G. Reports Submitted to the Louisiana Legislature in 2016 and 2017**

- (1) Testamentary Disposition of Survival Action, in response to HCR No. 131 of the 2012 Regular Session
- (2) Uniform Adult Guardianship, in response to SCR No. 36 of the 2012 Regular Session

- (3) Mineral Rights – Unsolicited Offers, in response to SR No. 118 of the 2013 Regular Session
- (4) Bail Laws and Procedures, in response to SR No. 111 of the 2013 Regular Session
- (5) Water Code Annual Report, in response to SR No. 171 of the 2014 Regular Session
- (6) Restitution in Delinquency Cases, in response to HCR No. 117 of the 2015 Regular Session
- (7) Feasibility of Use of Levee Roads, in response to SR No. 180 of the 2015 Regular Session
- (8) Attorney Fees in Civil Contempt, in response to SR No. 199 of the 2015 Regular Session
- (9) 2016 Same-Sex Marriage Report
- (10) 2016 Unconstitutional Statutes Biennial Report, pursuant to Acts 2014, No. 598
- (11) Childhood Addiction to Pornography, in response to HCR No. 12 of the 2011 Regular Session
- (12) Electronic Signatures, in response to SCR No. 6 of the 2013 Regular Session
- (13) Water Code Annual Report, in response to SR No. 171 of the 2014 Regular Session
- (14) Children in Need of Care, in response to HCR No. 125 of the 2015 Regular Session and HCR No. 34 of the 2016 Regular Session
- (15) Assault and Battery of School Teachers, in response to HR No. 148 of the 2015 Regular Session
- (16) Gestational Carrier Contracts, pursuant to Acts 2016, No. 494
- (17) Raise the Juvenile Offender Age, pursuant to Acts 2016, No. 501
- (18) Civil Procedure Rules of Discovery, in response to HCR No. 114 of the 2016 Regular Session
- (19) Arbitration and Mediation in Wills and Trusts, in response to SCR No. 62 of the 2016 Regular Session
- (20) Testamentary Referrals to Written Statements, in response to SCR No. 63 of the 2016 Regular Session

- (21) Child Support for Disabled Adult Children, in response to SCR No. 100 of the 2016 Regular Session
- (22) Shared Physical Custody, in response to SR No. 142 of the 2016 Regular Session

## **VIII. CIVIL CODE REVISION AND OTHER CURRENT PROJECTS**

Since 1975, the primary work of the Law Institute has been the revision of the Louisiana Civil Code. The Coordinating Committee, discussed in detail later in this report, has charted the Titles of the Civil Code and has decided which Titles will be revised. Separate revision committees, each under the leadership of a Reporter, have Titles of the Civil Code under their jurisdiction.

The 2016 and 2017 Council years were consumed with a variety of projects, with a large proportion of Council time being devoted to the consideration of proposals relative to the Children’s Code, Civil Procedure, Common Interest Ownership Regimes, Corporations, Criminal Procedure, Disabled Adult Children, Electronic Signatures, Human Trafficking, Landlord-Tenant, Lease of Movables, Lesion Beyond Moiety, Marriage-Persons, Postconviction Relief, Private Use of Levee Roads, Security Devices, Successions, Surrogacy, Tax Sales, the Trust Code, Tutorship, and Unpaid Wages.

A brief description of the status of our significant projects is set out below.

### **A. CIVIL CODE REVISION**

#### **1. Preliminary Title**

Chapters 1 and 2 of the Preliminary Title were revised by Professor A.N. Yiannopoulos and the Preliminary Title Committee. Chapter 1 provides for the sources of law and the general principles of law. Chapter 2 provides for the interpretation of laws. These chapters were enacted by Acts 1987, No. 124.

Chapter 3 of the Preliminary Title was revised by Professor Symeon Symeonides and the Conflict of Laws Committee. This Chapter provides briefly for the Conflict of Laws, and Book IV of the Civil Code provides most of the revised legislation on Conflict of Laws. Chapter 3 of the Preliminary Title and Book IV of the Civil Code were enacted by Acts 1991, No. 923.

#### **2. Book I, Title I, Natural and Juridical Persons**

Professor A.N. Yiannopoulos and his Committee completed their work on the revision of Title I of Book I of the Civil Code. This Title provides general principles relative to the two different kinds of persons: human beings, and entities to which the law attributes personality. This revision was enacted by Acts 1987, No. 125.

**3. Book I, Title II, Of Domicile and the Manner of Changing the Same**

Professor A.N. Yiannopoulos, the Domicile Committee, and the Council finished the revision of the Civil Code articles relative to the domicile of natural persons. This revision was enacted by Acts 2008, No. 801.

**4. Book I, Title III, Absent Persons; Title VI, Of Master and Servant; Title X, Of Corporations**

Professor A.N. Yiannopoulos and the Absent Persons Committee completed the revision of Title III of Book I of the Civil Code. This Title provides general principles relative to absent persons, the curatorship of their property, and when an absent person can be declared dead. This revision was enacted by Acts 1990, No. 989.

During the revision process, Professor A.N. Yiannopoulos and his Committee also decided to recommend the repeal of unnecessary Civil Code articles in Titles VI and X of Book I of the Civil Code, relative to Master and Servant and Corporations. The Louisiana Legislature accepted the recommended repeals in Acts 1990, No. 705 and Acts 1987, No. 126.

**5. Book I, Title IV, Husband and Wife; Title V, Divorce; Title VII, Parent and Child**

Professor Katherine S. Spaht and the Marriage-Persons Committee brought before the Council the revision of Louisiana law relative to marriage and divorce, and the proposals on marriage, divorce, spousal support, child custody and support, and other actions incidental to divorce were considered and approved by the Council and ultimately enacted by Acts 1990, Nos. 361, 362, and 1008, and 1009. The Louisiana Legislature accepted the Law Institute's proposed revisions concerning the laws on child custody, visitation, and support in Acts 1993, No. 261 and the provisions on nullity of marriage in Acts 1993, No. 108. Acts 1995, No. 1008 enacted provisions governing the partition of former community property.

The legislature enacted the Law Institute's recommendations with respect to spousal support in Acts 1997, No. 1078. In Acts 2005, No. 192, the legislature accepted the Law Institute's recommended revisions to Chapters 1, 2, and 3 of Title VII of Book I of the Civil Code relative to proof of maternity and paternity. Amendments relative to the filiation of parents and children were enacted in Acts 2006, No. 344. The Law Institute's recommended revisions relative to adult adoption and filiation were enacted by Acts 2008, No. 351 and Acts 2009, No. 3. Revisions regarding parental authority, parental usufruct, and provisional custody by mandate were enacted by Acts 2015, No. 260. Today, the Marriage-Persons Committee operates under the direction of Professor Katherine S. Spaht as Chair and Professor Andrea B. Carroll as Reporter.

House Concurrent Resolution No. 179 of the 2014 Regular Session requested the Law Institute to study the prescriptive periods established for disavowal of paternity actions and

revocations of authentic acts of acknowledgment and to make specific recommendations for revisions to Louisiana laws. The Law Institute assigned this project to the Marriage-Persons Committee, which gathered background information relative to key issues and sought advice from family law judges and other groups. The Committee proposed, and the Council adopted, recommendations that were ultimately submitted to the legislature in House Bill No. 388 of the 2016 Regular Session, which was enacted as Acts 2016, No. 309.

In June of 2015, the United States Supreme Court's decision in *Obergefell v. Hodges* found state law bans on same-sex marriage unconstitutional on both Due Process and Equal Protection grounds. Following *Obergefell*, the United States District Court for the Eastern District held that Louisiana Constitution Article XII, § 15, Civil Code Article 89, and Civil Code Article 3520(B) were in violation of the Fourteenth Amendment of the United States Constitution. *Robicheaux v. Caldwell*, 2015 WL 4090353 (E.D. 2015). The Louisiana Supreme Court followed suit in July of 2015, finding that “*Obergefell* compels the conclusion that the State of Louisiana may not bar same-sex couples from the civil effects of marriage on the same terms accorded to opposite-sex couples.” *Costanza v. Caldwell*, 167 So. 3d 619, 621 (La. 2015). The decisions of *Obergefell*, *Robicheaux*, and *Costanza* render many Louisiana statutes relating to marriage unconstitutional and create many uncertainties in Louisiana law.

The Law Institute's Marriage-Persons Committee catalogued and examined in detail the areas of Louisiana law that need amendment following the legalization of same-sex marriage. The Law Institute submitted a report to the legislature in March of 2016 that recommended fundamental changes to bring Louisiana law into line with *Obergefell*. Additionally, Senate Resolution No. 143 of the 2016 Regular Session urged and requested the Law Institute to study and make annual comprehensive and ongoing recommendations to the legislature regarding state law post-*Obergefell*. The Committee drafted, and the Council approved, proposed legislation in response to this request, which was appended to a report to the legislature before ultimately being submitted as Senate Bill No. 98 of the 2018 Regular Session.

Senate Resolution No. 142 of the 2016 Regular Session urged and requested the Law Institute to study and make recommendations regarding the feasibility of revisions to present laws to require physical custody of children to be shared equally. After lengthy study and analysis, the Marriage-Persons Committee concluded that no changes to Louisiana's child custody provisions should be made, particularly in light of the fact that family law judges, scholars, and practitioners agreed that mandating equal sharing of custody undermines the much needed flexibility that should be afforded to judges in these matters. The Law Institute submitted the Committee's recommendations in a report to the legislature in January of 2017.

Pursuant to the Committee's continuous revision authority, the Law Institute proposed House Bill No. 115 of the 2017 Regular Session relative to community property. The Committee identified a gap in the law regarding community property when the parties have reconciled, namely that although the law provided for the effect of reconciliation where the parties filed a petition for

divorce, lived separate and apart for thirty days, and obtained a judgment of separation of property, as well as where the parties did not file a petition for divorce, lived separate and apart for six months, and obtained a judgment of separation of property, it failed to provide for the effect of reconciliation where the parties lived separate and apart for thirty days, filed a petition for divorce, and then obtained a judgment of separation of property. The proposed legislation was intended to correct this issue, and the legislature adopted the Law Institute's recommendations by enacting Acts 2017, No. 197.

Also pursuant to the Committee's continuous revision authority, the Law Institute proposed House Bill No. 136 of the 2017 Regular Session relative to no-fault divorce and spousal support. Specifically, the bill sought to address problems in the spousal support and divorce contexts with respect to gamesmanship between the parties, issues of timing, and court discretion, as well as to reinforce that the true intent of interim spousal support is to preserve the status quo while a petition for divorce is pending. However, the proposed legislation would have also reduced the waiting period for a no-fault divorce to six months in all cases, as opposed to one year when there are children of the marriage. As a result, and after much debate, the bill failed House final passage.

House Concurrent Resolution No. 2 of the 2017 Regular Session requested that the Law Institute study and make recommendations regarding the laws of continuing tutorship and emancipation to establish procedures for those under a continuing tutorship and to address the needed protections for those individuals placed under a continuing tutorship prior to recent legislative changes. In response to this resolution, the Law Institute assigned the project to its Marriage-Persons Committee, which recommended the elimination of a provision stating that a person under continuing tutorship retains the powers of a minor operating under "emancipation conferring the power of administration" because this concept was previously eliminated from Louisiana law. The Law Institute submitted the Committee's recommendations as House Bill No. 395 of the 2018 Regular Session, the purpose of which is to clarify that continuing tutorship provides for restrictions on legal capacity akin to those applicable to minors, subject to the provisions of Civil Code Article 361, which gives the court discretion to modify the decree of tutorship to provide the minor with the capacity to engage in some juridical acts. The Committee will also continue to review other areas of concern with respect to continuing tutorship with a view toward recommending additional legislative changes during the 2019 Regular Session.

House Concurrent Resolution No. 10 of the 2017 Regular Session urged and requested the Law Institute to study and make recommendations regarding Louisiana laws governing paternity and birth certificates to establish procedures to protect those husbands and ex-husbands who are not the biological fathers of children. Pursuant to this request, the Law Institute assigned the resolution to the Marriage-Persons Committee, which recommended the addition of a provision that would allow the mother, her husband or former husband who is presumed to be the father of the child, and the biological father of the child to execute a three-party acknowledgement of paternity. The Committee's proposals also direct the state registrar to record the proper information on the child's birth certificate and, in the substantive law of filiation, provide that the husband or

former husband is not presumed to be the father of the child and that the biological father of the child is presumed to be the father of the child. The Law Institute submitted the Committee's recommendations to the legislature as House Bill No. 147 of the 2018 Regular Session.

House Concurrent Resolution No. 79 of the 2017 Regular Session urged and requested the Institute to study state laws governing domestic abuse, domestic violence, and stalking and to address the need for any revisions and recommendations to this area of law. This resolution was assigned to two of the Law Institute's continuous revision Committees – the Criminal Code and Code of Criminal Procedure Committee and the Marriage-Persons Committee. With respect to the family law issues contained in the resolution, the Marriage-Persons Committee performed extensive research on topics including varying definitions of “domestic violence” and “domestic abuse;” unintended consequences in the contexts of divorce, custody, and visitation; procedural anomalies in the law in the domestic violence arena; and inconsistent rules regarding costs and fees. In light of this research, the Committee recommended, and the Council approved, the submission of two proposals to the legislature for the 2018 Regular Session.

The first of these proposals, House Bill No. 125 of the 2018 Regular Session, purports to address concerns regarding the intersection of domestic violence with grounds for divorce and spousal support. The proposed legislation would clarify the relevance of need, ability to pay, and pre-filing fault to the presumption of entitlement to final periodic support in the domestic violence and fault-based divorce contexts. The bill also proposes to modify the duration of interim spousal support awards to tie them solely to the judgment of divorce rather than to the date on which a demand for final periodic support is made, but for judgments of divorce rendered on grounds of domestic violence, this proposal would not change the law; rather, victims of domestic violence would continue to be provided interim spousal support for a period of one hundred eighty days.

The second of these proposals, House Bill No. 100 of the 2018 Regular Session, represents an effort to create consistency in the assessment of costs and attorney fees against a perpetrator of abuse in domestic abuse cases under the Domestic Abuse Assistance Act, the Post-Separation Family Violence Relief Act, and in an action for divorce and actions incidental thereto.

Over the next few years, the Committee plans to continue its study of domestic violence pursuant to House Concurrent Resolution No. 79 of the 2017 Regular Session as well as to continue its revision of existing provisions pertaining to parenting coordinators. The Committee also hopes to begin reviewing other areas of concern including grandparent visitation, the designation of domiciliary parents, issues with respect to filiation post-*Obergefell*, and the use and occupancy of the family home.

## **6. Book I, Title VIII, Of Minors, Of Their Tutorship and Emancipation**

Professor Katherine S. Spaht and the Marriage-Persons Committee have begun the revision of Chapter 1, of Title VIII, of Book I of the Civil Code relative to Tutorship. The Committee continues to present recommendations to the Council to address the two main goals of the revision:

to reunite custody and tutorship and to move the substantive provisions from the Code of Civil Procedure to the Civil Code. The Law Institute plans to file a comprehensive bill during the 2019 Regular Session that will also address issues such as making grandparents with custody natural tutors of right, extending tutorship to a single person who adopts a minor, and placing more restrictions on the alienation, encumbrance, or lease of a minor's property.

Once this revision is completed, Professor Monica Wallace and the Tutorship Procedure Committee will finish the revision of the provisions of law relative to Tutorship Procedure. The Committee plans to present a companion bill in 2019.

Professor Dane Ciolino and the Emancipation Committee finished the task of revising Chapter 2 of Title VIII of Book I of the Civil Code relative to the emancipation of minors. This revision was enacted by Acts 2008, No. 786.

#### **7. Book I, Title IX, Persons Unable to Care for Their Persons or Property**

Under the leadership of Mr. Joel Mendler and Professor Dane Ciolino, the Curatorship Committee finished the revision of Title IX of Book I of the Civil Code and related provisions in the Code of Civil Procedure and the Revised Statutes. This revision, which was enacted by Acts 2000, 1st Ex. Sess., No. 25, provides detailed provisions relative to the interdiction of a natural person and the curatorship of an interdict.

#### **8. Book II, Things and Different Modifications of Ownership**

Book II of the Civil Code was revised by Professor A.N. Yiannopoulos and his Committee, and minor amendments have been made as their necessity became apparent.

In 1990, Professor A.N. Yiannopoulos and the Ownership in Indivision Committee recommended the addition of Title VII of Book II of the Civil Code relative to Ownership in Indivision. This Title was enacted by Acts 1990, No. 990, and the revision was supplemented by Acts 1991, No. 689.

From 2005 through 2008, Mr. L. David Cromwell and his Component Parts Committee reviewed Civil Code Article 466 and its conflicting jurisprudence. The Law Institute presented House Bill No. 594 to the Louisiana Legislature during its 2006 Regular Session. After debate, the legislature enacted Acts 2006, No. 765. After reconsidering the issues and principles of this subject, the Law Institute submitted House Bill No. 388 during the 2008 Regular Session. The legislature enacted the Law Institute's recommendation with Acts 2008, No. 362.

#### **9. Book III, Title I, Of Successions; Title II, Donations**

Book III of the Civil Code is being revised by the Successions and Donations Committee under the leadership of Max Nathan, Jr., a practicing attorney from New Orleans and Adjunct Professor of Law at the Tulane Law School. The Committee prepared the companion legislation

to implement the change in forced heirship law, which was enacted by Acts 1990, No. 147, and prepared new articles on this subject after the existing provisions were found unconstitutional in *Succession of Lauga*, which were enacted as Act 77 of the 1996 First Extraordinary Session. The Committee's work on undue influence was enacted by Acts 1991, No. 363, and a comprehensive revision of the entire law of successions was enacted by Acts 1997, No. 1421.

The Successions and Donations Committee also completed a projet on the independent administration of estates designed to simplify and expedite probate proceedings, which was enacted by Acts 2001, No. 974, as well as revisions of the laws of donations inter vivos and usufruct, which were enacted by Acts 2008, No. 204 and Acts 2010, No. 881, respectively.

During the 2014 Regular Session, the Successions and Donations Committee introduced House Bill No. 1114, the intent of which was to clarify the law by providing that the ascendant of a grandchild who is a forced heir should be treated as a single forced heir, and his share should be divided by his descendants who qualify as forced heirs by representation. On the other hand, if the predeceased parent would have attained the age of twenty four at that time, then only those children of the predeceased parent who qualify as forced heirs by virtue of their permanent incapability would divide the root of the predeceased parent. The bill also sought to repeal Paragraph E of Civil Code Article 1493 to remove any concerns as to the constitutionality of the Article wherein “permanently incapable of taking care of their persons or administering their estates at the time of the death of the decedent” includes descendants who may be rendered incapable of caring for their persons or administering their estates in the future. However, the bill was defeated in Senate Committee.

House Bill No. 269 of the 2016 Regular Session reintroduced two of the noncontroversial provisions from the 2014 proposed legislation. This bill concerned the separate donations of usufruct and naked ownership and the concurrence of interdicts or unemancipated minors in a succession. The Law Institute’s recommendations were ultimately enacted by Acts 2016, No. 86.

House Concurrent Resolution No. 131 of the 2012 Regular Session requested the Law Institute to study the testamentary disposition of the right to bring a survival action pursuant to Civil Code Article 2315.1 and to report its findings and recommendations in the form of specific proposed legislation. The Law Institute assigned this project to the Successions and Donations Committee, which created a Subcommittee that provided research to the Committee and ultimately found that no changes to existing law were necessary. The Law Institute submitted the Committee’s recommendations in its report to the legislature in December of 2016.

Senate Concurrent Resolution No. 62 of the 2016 Regular Session urged and requested the Law Institute to study and make recommendations regarding whether revisions to present law were necessary in light of other states’ laws that expressly permit an enforceable mediation or arbitration provision to be included in a testament or trust. In fulfillment of this request, the Law Institute assigned the project to its Alternative Dispute Resolution Committee to work in conjunction with

the Successions and Donations and Trust Code Committees. All three Committees ultimately concluded that no revisions to the Louisiana Arbitration Act with respect to the inclusion of mandatory mediation or arbitration provisions in will and trusts should be made at this time, and a report to that effect was submitted to the legislature in January of 2017.

Senate Concurrent Resolution No. 63 of the 2016 Regular Session urged and requested the Law Institute to study and make recommendations regarding the feasibility of revisions to the laws of wills and testaments, specifically with respect to other states' laws that expressly authorize a testator to refer in his testament to a written statement or list in order to dispose of certain items of corporeal movable property. The Committee considered the fact that the Uniform Probate Code permits incorporation by reference and the problems that result, as well as that existing requirements with respect to olographic wills already allow for easy additions to testaments. As a result, the Committee recommended against introducing this common law into Louisiana law, and the Law Institute submitted a report to the legislature to that effect in January of 2017.

The Committee also did considerable work on the law that requires a sworn descriptive list of assets and liabilities or an inventory to be filed before a successor may be placed in possession of property. The Committee believed that this requirement was inappropriate, and although it is extraordinarily important that heirs and legatees, and in many instances creditors, know the value of property of an estate, there is no necessity for such information to be made available to the general public. Indeed, in recent years the desire for confidentiality and privacy where important family assets are concerned has begun to clash with the requirement to disclose these values publicly. A trend has developed by which successors or succession representatives ask that a succession record be sealed in order to keep such information confidential, especially, for example, where a family business is concerned. Under the circumstances, since there is no real necessity to have a descriptive list for the public at large, but an extremely important need to have it for the heirs or legatees for income tax or estate tax purposes, or for creditors, the Successions and Donations Committee proposed a revision to Code of Civil Procedure Article 3396.18. This proposal was submitted to the legislature as House Bill No. 121 of the 2017 Regular Session, which was ultimately enacted as Acts 2017, No. 198.

#### **10. Book III, Title III, Obligations in General; Title IV, Conventional Obligations or Contracts**

Professor Saul Litvinoff's monumental work on the revision of Obligations is now a part of Louisiana law. This revision was enacted by Acts 1984, No. 331, has received acclaim worldwide in all civil code jurisdictions, and, most importantly, has proved appropriate for the citizens of Louisiana.

#### **11. Book III, Title V, Obligations Arising Without Agreement**

Professor A.N. Yiannopoulos and the Quasi-Contracts Committee completed their work on the revision of Chapters 1 and 2 of Title V, of Book III, Obligations Arising Without

Agreement. This revision provides general principles relative to *negotiorum gestio* and unjust enrichment and was enacted by Acts 1995, No. 1041.

#### **12. Book III, Title VI, Matrimonial Regimes**

The revision of the law of Matrimonial Regimes was enacted by Acts 1979, Nos. 709 and 710. Professor A.N. Yiannopoulos and his Committee were called upon to prepare a refinement for accounting in community property matters. The revision was enacted by Acts 1990, No. 991.

#### **13. Book III, Title VII, Sale**

Immediately after completing the monumental subject of Obligations, Professor Saul Litvinoff undertook the work on Sales. His advisory committee began meeting in May of 1986 and submitted its completed work to the Council, which approved the entire project and submitted it for consideration by the 1992 Louisiana Legislature. The bill was deferred for further study because of the sheer volume of the revision, but it was eventually enacted by Acts 1993, No. 841 and became effective in 1995.

#### **14. Book III, Title VIII, Exchange**

With the assistance of a Committee of members who served him during the revisions of the law of Sales, Professor Saul Litvinoff completed the work relative to the revision of the law of Exchange. During the 2010 Regular Session, the Law Institute recommended House Bill No. 142, and this recommendation was enacted by Acts 2010, No. 186.

#### **15. Book III, Title IX, Lease, Chapters 1-4**

Professor Symeon Symeonides and the Leases Committee completed the revision of Chapters 1-4 of Title IX of Book III. This revision provides general provisions relative to the lease of a thing and was enacted by Acts 2004, No. 821.

#### **16. Book III, Title X, Of Rents and Annuities**

Professor A.N. Yiannopoulos and his Committee finished the revision of Title X of Book III of the Civil Code, Of Rents and Annuities. The revision provided for the elimination of the archaic articles relative to the rent of lands and for modern articles relative to an annuity contract. The Law Institute presented House Bill No. 466 to the Louisiana Legislature during the 2012 Regular Session, and the legislature enacted the recommendations with Acts 2012, No. 258.

#### **17. Book III, Title XI, Partnership**

Under the leadership of Max Nathan, Jr., the Partnership revision was enacted by Acts 1980, No. 150.

**18. Book III, Title XII, Loan**

Professor A.N. Yiannopoulos and the Loan Committee completed the revision of Loan. This revision provides general provisions relative to a gratuitous loan and was enacted by Acts 2004, No. 743.

**19. Book III, Title XIII, Deposit and Sequestration**

Under the leadership of Professor A.N. Yiannopoulos, the revision of the law of Deposit and Sequestration was completed and approved by the Council. The revision of Title XIII of Book III of the Civil Code was enacted by Acts 2003, No. 491.

**20. Book III, Title XIV, Of Aleatory Contracts**

Professor A.N. Yiannopoulos was named Reporter of the Aleatory Contracts Committee, which was formed in 2014 to undertake the revisions of Title XIV of Book III of the Civil Code. The Committee, now under the direction of Professor Ronald J. Scalise, Jr. as Reporter, has thoroughly discussed its proposed revision of Articles 2282 through 2284 of the Civil Code and plans to present its work to the Council in time to propose legislation for the 2019 Regular Session.

**21. Book III, Title XV, Representation and Mandate**

Professor A.N. Yiannopoulos and the Mandate Committee finished the revision of Title XV of Book III, Representation and Mandate, which provides general principles relative to representation and the contract of mandate. The Law Institute presented House Bill No. 716 to the Louisiana Legislature during its 1997 Regular Session, and the bill was enacted as Acts 1997, No. 261.

**22. Book III, Title XVI, Suretyship**

Under the leadership of Professor Thomas A. Harrell and his Committee, the work on Suretyship was completed and enacted by the Louisiana Legislature by Acts 1987, No. 409.

**23. Book III, Title XVII, Of Transaction or Compromise**

Under the leadership of Professor Saul Litvinoff, the revision of the law of transaction or compromise was completed after several years of policy recommendations to and approval by the Council. In 2007, the Law Institute presented its recommendations to the Louisiana Legislature in House Bill No. 73, and the legislature enacted the recommendations in Acts 2007, No. 138.

**24. Book III, Title XVIII, Of Respite**

Professor A.N. Yiannopoulos and his Committee recommended the repeal of Title XVIII of Book III of the Civil Code, Of Respite, because the articles of this Title had not been used for about 100 years. The Law Institute submitted its recommendation to the Louisiana Legislature in

House Bill No. 273 of the 2014 Regular Session, and the legislature implemented the repeal of the articles in the Civil Code on Respite with Acts 2014, No. 64.

**25. Book III, Title XX, Security; Title XX-A, Pledge; Title XXI, Of Privileges; Title XXII, Mortgages; Title XXII-A, Of Registry**

Professor Thomas A. Harrell and his Committee completed their work on the revision of mortgages, which was enacted by Acts 1991, No. 652. The revision of legal and judicial mortgages was also completed and enacted by Acts 1992, No. 1132. Professor Harrell and his Committee also completed their work on Registry, which was enacted by Acts 2005, No. 169.

Today, the Security Devices Committee continues this work under the direction of Mr. L. David Cromwell as Reporter.

**26. Book III, Title XXIII, Occupancy and Possession; Title XXIV, Prescription**

Professor A.N. Yiannopoulos and his Committees revised Title XXIII of the Civil Code, which was enacted by Acts 1982, No. 187, as well as Title XXIV of the Civil Code, which was enacted by Acts 1982, No. 187 and Acts 1983, No. 173.

**27. Book III, Title XXV, Of the Signification of the Sundry Terms of Law Employed in This Code**

Professor A.N. Yiannopoulos and his Definitions Committee finished their project of repealing unnecessary definitions in Civil Code Article 3506. This project was enacted by Acts 1999, No. 503.

Since that time, several new and arguably unnecessary definitions have been added to Civil Code Article 3506. As a result, the Signification of Terms Committee was created in 2014 and placed first under the direction of Professor A.N. Yiannopoulos and now under the direction of Professor Ronald J. Scalise, Jr. The revision of Civil Code Article 3506 is ongoing.

**28. Book IV, Conflict of Laws**

Book IV of the Civil Code, Conflict of Laws, was carefully crafted by Professor Symeon Symeonides and the Conflict of Laws Committee. This revision was enacted by Acts 1991, No. 923.

**B. THE COORDINATING, SEMANTICS, STYLE AND PUBLICATIONS COMMITTEE**

The Coordinating, Semantics, Style and Publications Committee, under the direction of Mr. L. David Cromwell as Reporter and Chairman, reviews all legislation recommended by the Law Institute as well as proposed revisions of the Civil Code to ensure that each separate revision project is consistent with the remainder of the Civil Code.

### **C. CONTINUOUS REVISION OF THE CODE OF CIVIL PROCEDURE**

Under the leadership of Mr. William R. Forrester, Jr., as Reporter, constant attention is given to keep the provisions of the Louisiana Code of Civil Procedure and related statutes current with changing times and the needs of the law.

Senate Concurrent Resolution No. 199 of the 2015 Regular Session requested the Law Institute to study whether the granting of attorney fees should be allowed in civil contempt of court proceedings. In response to this resolution, the Law Institute assigned the project to the Code of Civil Procedure Committee. After studying the issue, the Committee recommended the permissive award of attorney fees to the prevailing party in civil contempt of court proceedings, and the Council agreed. The Law Institute submitted its report to the Louisiana Legislature in March of 2016 and included its recommendation with respect to this issue in House Bill No. 285 of the 2016 Regular Session.

In addition to the granting of attorney fees in civil contempt of court proceedings, House Bill No. 285 of the 2016 Regular Session also proposed to extend the time delays for responding to discovery requests, to clarify the enforcement of foreign and domestic judgments, to provide for the commencement of the suspensive appeal delay from the service of the notice of seizure in an executory process, and to clarify the required contents of the notice of seizure of property. The bill was ultimately enacted by the legislature as Acts 2016, No. 132.

House Concurrent Resolution No. 114 of the 2016 Regular Session urged and requested the Law Institute to study the laws regarding the rules of discovery in Louisiana and to make recommendations relative to the establishment of consistent and specific procedures and rules for discovery, including the discovery of expert reports, surveillance of parties, and witness statements. In fulfillment of this request, the Law Institute assigned the project to the Code of Civil Procedure Committee, which conducted background research and compiled information with respect to all three of these issues. With respect to the discoverability of non-party witness statements, the Committee recognized the immeasurable value of providing both parties with access to a statement taken contemporaneously at the time of an incident, but the Council ultimately concluded that such statements should remain subject to the work product protection and that no changes to existing law should be made at this time. With respect to the discoverability of surveillance material taken by one party of the other, the Committee ultimately concluded that an amendment to the Code of Civil Procedure to prevent the improper withholding of surveillance material by the party responding to a request for production is not necessary. The Committee determined that trial courts are afforded much discretion with respect to issues of discovery and often handle these sorts of matters on a case-by-case basis. Finally, with respect to the discoverability of reports of experts who are not expected to testify at trial, the Committee determined that existing law in Code of Civil Procedure Article 1425(B) already addresses this issue and, as a result, no additional changes were required at this time. A report to this effect was submitted to the legislature in April of 2017.

Nevertheless, pursuant to its continuous revision authority, the Code of Civil Procedure Committee proposed House Bill No. 439 of the 2017 Regular Session. As proposed by the Committee, this bill, which was ultimately enacted as Acts 2017, No. 419, redesignated existing provisions of law; clarified terminology concerning preliminary default and final default judgment procedures and attorneys appointed to represent absentee defendants; clarified that the filing of a motion to stay, as opposed to an exception of *lis pendens*, is appropriate when a suit is also pending in another jurisdiction; added a requirement that a certified copy of a protective order or injunction be submitted when the plaintiff's demand for divorce is made pursuant to Civil Code Article 103(5); and provided that mandamus and quo warranto proceedings are also applicable to limited liability companies.

The Code of Civil Procedure Committee is also proposing continuous revisions during the 2018 Regular Session. Specifically, House Bill No. 174 would permit final default judgments granting or confirming preliminary defaults to be signed by the district judge in chambers; allow the certification of a class action unless a judgment on the merits of all common issues has been rendered against the party supporting the class; resolve an inconsistency between two articles concerning the filing of exhibits to pleadings in connections with motions for summary judgment and the authentication that is required; clarify that there are exceptions to the general rule that it is not necessary to allege the capacity or authority of a party to sue and be sued; replace existing terminology and make other clarifications concerning final default judgments and the rendering of them as discovery sanctions; and provide that service by the sheriff of the notice of the signing of a final default judgment is only required when the defendant did not otherwise make an appearance by filing a pleading.

#### **D. CONTINUOUS REVISION OF THE CRIMINAL CODE AND CODE OF CRIMINAL PROCEDURE**

In response to changes in society and from the Louisiana Legislature and the courts, the Criminal Code and Code of Criminal Procedure Committee exercises continuing oversight of these Codes. Judge Frank Foil and Judge Robert Morrison, III served as Co-Chairmen of the Committee, which was under the guidance of Professor Cheney C. Joseph, Jr. until his resignation in the fall of 2015. The Committee is now led by Judge Guy Holdridge, who is serving as Acting Reporter.

Senate Concurrent Resolution No. 97 of the 2013 Regular Session urged and requested the Law Institute to study and make recommendations relative to the issue of whether the Code of Criminal Procedure should contain responsive verdicts for the crime of aggravated incest. The Criminal Code and Code of Criminal Procedure Committee submitted an interim report to the legislature in December of 2013 to provide information relative to the progress of this study. Thereafter, the legislature enacted Acts 2014, Nos. 177 and 602 to repeal the crimes of incest and aggravated incest and to instead incorporate the elements and penalties of those crimes into the provisions on crimes against nature and aggravated crimes against nature. As a result, the Committee submitted a report to the legislature in February of 2018 that included a proposed

amendment to provide responsive verdicts for the former crime of aggravated incest, now the crime of aggravated crime against nature under R.S. 14:89.1(A)(2), in Code of Criminal Procedure Article 814.

House Resolution No. 148 of the 2015 Regular Session authorized and directed the Law Institute to study the issue of adding assault on a school teacher and battery of a school teacher to the offenses enumerated as crimes of violence in R.S. 14:2(B). The Criminal Code and Code of Criminal Procedure Committee conducted background research and discussed the important policy considerations applicable to this issue, including protecting teachers and other school employees who have been victims of violent acts by a student from being subjected to that student's continued presence on campus, as well as ensuring that teachers and other school employees feel safe and secure in their place of employment. Ultimately, however, the Committee determined that in order to maintain the proper balance of the important public interests that underlie Louisiana's complex criminal justice system, and in light of the mechanisms already in place to protect teachers and other school employees from violent students on school premises, no legislative changes with respect to adding assault and battery of a school teacher to the list of crimes of violence should be made at this time. The Law Institute submitted a report to this effect in January of 2017.

Senate Concurrent Resolution No. 16 of the 2015 Regular Session directed the Law Institute to establish a working group to study laws relative to marijuana and make recommendations to protect public safety, hold offenders accountable, and control costs to the criminal justice system. Pursuant to this request, the Law Institute assigned the project to its Criminal Code and Code of Criminal Procedure Committee, which compiled background information concerning the purpose of the resolution as well as the intent behind the bill on which it was based. The Committee also engaged in an extensive review of legislative instruments that were filed during the 2015, 2016, and 2017 Regular Sessions, all of which reduced the penalties imposed for marijuana offenses. After determining that these recent amendments to the provisions governing marijuana offenses were the result of compromises made by all stakeholders involved and reflected a delicate balance of interests that should not be upset, the Committee concluded that no additional revisions to existing law should be made at this time. The Law Institute submitted a report to this effect in February of 2018.

Act 501 of the 2016 Regular Session, known as the Raise the Age Louisiana Act of 2016, directed the Law Institute to study and recommend amendments and additions to the Children's Code, Code of Criminal Procedure, and Revised Statutes as may be appropriate to effectuate the purpose of the Act, which was to include seventeen-year-olds in the juvenile justice system. In fulfillment of this request, the Law Institute assigned the project to two of its continuous revision Committees: the Children's Code Committee and the Criminal Code and Code of Criminal Procedure Committee. The Criminal Code and Code of Criminal Procedure Committee recommended various amendments to the provisions of the Code of Criminal Procedure as well as the Revised Statutes but hesitated to recommend amendments that would change the definitions of substantive crimes and their penalties to those having been committed by eighteen-year-olds

rather than seventeen-year-olds without further review by the legislature of the underlying policy considerations. The Committee also concluded that in addition to the provisions concerning the age of juvenile offenders, the legislature may also wish to amend provisions relating to the age of juvenile victims for purposes of consistency. A report to this effect was submitted to the legislature in January of 2017.

House Concurrent Resolution No. 90 of the 2012 Regular Session directed the Law Institute to study the feasibility of assessing filing fees for applications of postconviction relief. Senate Concurrent Resolution No. 100 of the 2015 Regular Session requested the Law Institute to study the impact on reducing the delays in carrying out a capital punishment sentence. The Law Institute assigned both of these projects to the Criminal Code and Code of Criminal Procedure Committee, which submitted interim reports to the legislature to provide information relative to the progress of this study. The Committee then formed a Postconviction Relief Subcommittee that is currently in the process of drafting legislation to comprehensively revise the Code of Criminal Procedure articles on both capital and noncapital postconviction. The Committee plans to propose this comprehensive revision, which would satisfy both resolutions, during the 2019 Regular Session.

House Concurrent Resolution No. 79 of the 2017 Regular Session urged and requested the Law Institute to study state laws governing domestic abuse, domestic violence, and stalking and to address the need for any revisions and recommendations to this area of law. This resolution was assigned to two of the Law Institute's continuous revision Committees – the Criminal Code and Code of Criminal Procedure Committee and the Marriage-Persons Committee. With respect to the criminal law issues contained in the resolution, the Criminal Code and Code of Criminal Procedure Committee agreed to form a Domestic Violence Subcommittee comprised of members with expertise in this specialized area of law. The Subcommittee will conduct background research on existing law, including the domestic abuse battery statute, R.S. 14:35.3, and the criminal stalking statute, R.S. 14:40.2, and plans to meet several times over the course of the next year in conjunction with the appropriate agencies and associations to consider this research and to make recommendations concerning both revisions and additions to existing law. The Committee will report back to the legislature once it has received approval of its recommendations from the Law Institute's Council.

House Resolution No. 200 of the 2017 Regular Session directed the Law Institute to review the 2017 legislation relative to the criminal justice system, to study and review its incorporation into Louisiana law, and to identify and recommend necessary changes to correct any inconsistencies with other provisions of Louisiana law that may exist. Pursuant to this request, the Criminal Code and Code of Criminal Procedure Committee has begun the process of identifying the problems or inconsistencies that have arisen since the enactment of this legislation, such as issues concerning probation and parole, costs and fees, and substantial hardship, as well as inconsistencies in the statutes on drug offenses and responsive verdicts with respect to weights. Members of the Committee also submitted several summaries and reports on the 2017 criminal

justice legislation to assist the Committee in its work and agreed to communicate with their various constituencies for the purpose of developing a comprehensive list of problems and inconsistencies for the Committee's consideration. The Committee will report back to the legislature once it has compiled this information and received approval of its recommendations from the Law Institute's Council.

#### **E. MINERAL CODE**

The initial work of the Law Institute in preparing the Mineral Code, which was enacted by Acts 1974, No. 50, has been completed, and little change has been required over the years since its enactment. Nevertheless, the Law Institute has been assigned three issues relative to mineral rights in recent years, the first concerning legacy disputes, the second concerning unsolicited offers, and the third concerning the classification of mineral royalties in bankruptcy proceedings. A detailed summary of the Law Institute's work on all of these projects can be found in Section J below.

#### **F. THE CHILDREN'S CODE**

The Louisiana Children's Code was enacted into law by Acts 1991, No. 235, which provided that the Law Institute shall direct and supervise the continuous revision, clarification, and coordination of the Children's Code. The Law Institute formed a continuous revision Children's Code Committee, of which Kären Hallstrom now serves as Reporter.

House Concurrent Resolution No. 85 of the 2011 Regular Session requested the Law Institute to study the procedures regarding the obtaining of information by an adopted person relative to their biological parents. The project was assigned to the Children's Code Committee, which issued a partial response to the resolution during the 2013 Regular Session. The Committee's proposals were ultimately enacted as Acts 2013, No. 86. In further response to the resolution, the Committee reintroduced the confidential intermediary proposal, which was first brought to the Louisiana Legislature in 2004 as House Bill No. 372, as House Bill No. 391 of the 2016 Regular Session. However, this bill failed to pass out of Committee.

Act 501 of the 2016 Regular Session, known as the Raise the Age Louisiana Act of 2016, directed the Law Institute to study and recommend amendments and additions to the Children's Code, Code of Criminal Procedure, and Revised Statutes as may be appropriate to effectuate the purpose of the Act, which was to include seventeen-year-olds in the juvenile justice system. In fulfillment of this request, the Law Institute assigned the project to two of its continuous revision Committees: the Children's Code Committee and the Criminal Code and Code of Criminal Procedure Committee. After careful review of the materials, the Children's Code Committee determined that several Children's Code articles needed to be amended and that a definition of "juvenile" needed to be added for delinquency purposes and due to the relationship with language in the Interstate Compact for Juveniles. The Committee also noted several other Children's Code

articles relating to victims who are seventeen years of age in case the legislature wished to amend those provisions as well. A report to this effect was submitted to the legislature in January of 2017.

House Concurrent Resolution No. 125 of the 2015 Regular Session and House Concurrent Resolution No. 34 of the 2016 Regular Session requested the Law Institute to study and make recommendations regarding Louisiana's laws and policies relative to continuing contact by parents and other relatives with children who are subjects of child in need of care proceedings. The Law Institute assigned this project to the Children's Code Committee, which formed a special Subcommittee that conducted research and identified issues and deficiencies under the current policies of the Department of Children and Family Services and in existing law. An interim report was filed with the legislature in February of 2016, and the Committee ultimately concluded that although changes to existing policy and increased training could resolve the issue, revisions to current law were not necessary. The Law Institute submitted the Committee's recommendations in a report to the legislature in January of 2017.

In November of 2011, the Council adopted the Committee's report proposing legislation dealing with expungement of juvenile records. However, SB 154 of the 2012 Regular Session, which contained those proposals, did not attract sufficient support to pass out of Committee. The Children's Code Committee continued to research these issues and ultimately submitted its revised proposal to the legislature as House Bill No. 506 of the 2017 Regular Session, which was ultimately enacted as Acts 2017, No. 362. The legislation underscores longstanding law and public policy that FINS and delinquency records are not criminal records and that protecting the confidentiality of these records is essential to rehabilitate youth and lead them to become productive members of society, because without protection from disclosure, juvenile records become barriers to employment, higher education, housing, and military service. The legislation also preserves the ability of law enforcement to access juvenile records in the course and scope of their duties and requires only the sealing, as opposed to the destruction, of juvenile records. The Committee's recommendations also included much needed uniform procedures for the expungement of juvenile delinquency records including notifications; grounds for expungement based on severity of the offense; motion, service, and opportunity for objection; orders for sealing court and agency records; determination of fees and costs; and forms.

During the 2017 Regular Session, the Committee also proposed Senate Bill No. 81, which was submitted by the Law Institute as a "clean up" bill to clarify existing law on curatorship in juvenile court proceedings. Under the current statewide system of legal representation in child protection cases, public defenders are responsible for representing indigent parents, including absentee parents for whom curators are appointed. The duties of curators include making diligent efforts to locate absentee parents. The bill proposed a statutory definition for "diligent effort to locate" to provide guidance to curators and courts with respect to searches that are more likely to locate an absentee parent. The bill also clarified that curator expenses in cases initiated by the state are not paid by "petitioners" as are those incurred in private cases, such as adoptions. The

legislature ultimately adopted the Committee's proposals through its enactment of Acts 2017, No. 239.

House Concurrent Resolution No. 79 of the 2016 Regular Session directed the Law Institute to study the laws regarding adoptions and adoption incentives and recommend changes relative to establishing consistent and specific procedures for all types of adoption and limiting abuses in the adoption process. Regarding the consistency of procedures for all types of adoptions, the Committee has been reviewing all the articles and plans to present its recommendations to the Council in the fall of 2018. Regarding the abuse of incentives in adoptions, the Committee researched other state's laws, reviewed surrogacy restrictions, and noted the unique relationship between the birth mother and the prospective adoptive parent. The Committee then proposed, and the Council approved, recommendations to limit allowable expenses, provide for earlier court review, clarify criminal penalties, and require payments to be made through the Department of Children and Family Services, a licensed adoption agency, or an adoption attorney. These recommendations were submitted to the legislature as House Bill No. 643 of the 2018 Regular Session.

Throughout the remainder of the 2016 and 2017 Council years, the Committee also studied various continuous revision issues, including the federal Indian Child Welfare Act, the use of restraints on children during juvenile court proceedings, and the placement of youth in the custody of the Department of Children and Family Services.

The first of these issues, the incorporation of the federal Indian Child Welfare Act (ICWA), 25 U.S.C. 1901 through 1963 and 25 C.F.R. 23, into the Children's Code, was presented to the Committee by the Court Appointed Special Advocates. The purpose of ICWA is to express a preference for keeping Indian children with their families, deferring to tribal judgment on matters concerning the custody of tribal children and placing Indian children who must be removed from their homes within their own families or with their own or other Indian tribes. The Committee proposed, and the Council adopted, recommendations to alert courts and practitioners to the proceedings in which ICWA may supersede state law and to guide courts in making the required inquiry in child custody proceedings as to whether there is reason to know that the child is an Indian child and in proceeding to final adjudication. These recommendations were submitted to the legislature as House Bill No. 182 of the 2018 Regular Session.

The second of these issues, the use of restraints on children during juvenile court proceedings, was considered by the Committee in light of the American Bar Association's position that all states "should adopt a presumption against the use of restraints on juveniles in court and to permit a court to allow such use only after providing the juvenile with an in person opportunity to be heard and finding that the restraints are the least restrictive means necessary to prevent flight or harm to the juvenile or others." After conducting an informal survey of the jurisdictions throughout Louisiana and finding that a few shackle every child present at juvenile court proceedings, the Committee recommended, and the Council adopted, a proposal that would create a rule, an

exception, and a procedure for using restraints on children during juvenile court proceedings. This recommendation was submitted to the legislature as House Bill No. 187 of the 2018 Regular Session.

The third of these issues, the placement of youth in the custody of the Department of Children and Family Services, was presented to the Committee by the Office of Juvenile Justice, which requested that research be performed concerning whether the agency has the ability to move a child initially placed in secure custody to a non-secure placement based upon a determination by the agency that this is most appropriate, as opposed to a determination by the court, often after lengthy delays, pursuant to a motion to modify the placement. After researching this issue, the Committee agreed that existing law requires the Department of Children and Family Services to comply with the articles on modification of dispositions for any change of the original disposition when the youth has been placed in the custody of the Office of Juvenile Justice but says nothing about moving a child from secure to non-secure placement. As a result, the Committee recommended, and the Council adopted, a proposal to clarify that decisions about the placement of a child, as opposed to the custody of a child, do not have to be approved by the court; rather, the court should only be involved if the child is to be released from custody. This recommendation was submitted to the legislature as House Bill No. 482 of the 2018 Regular Session.

## **G. TRUST CODE**

After years of work by the Law Institute's Trust Code Committee and the Council, the Louisiana Trust Code was enacted by Acts 1964, No. 338. Today, Professor Ronald J. Scalise, Jr. serves as Reporter for the Trust Code Committee.

House Concurrent Resolution No. 168 of 2013 directed the Law Institute to study and review the Louisiana Trust Code and to make a determination as to whether it should be amended to provide for asset protection trusts, silent trusts, directed trusts, and any other types of trusts that have been adopted in other states that could be helpful to Louisiana citizens. The Law Institute assigned this project to the Trust Code Committee, which submitted a report to the Louisiana Legislature in December of 2014. In that report, the Committee recommended against amending Louisiana law to accommodate either asset protection trusts or silent trusts, but concluded that several features of directed trusts could benefit Louisiana residents. As a result, the Committee made a series of recommendations not only to accommodate some of the beneficial features of directed trusts through the concept of independent trustees, but also to expand the concept of class trusts, broaden the settlor's ability to delegate the right to modify, facilitate the trustee's ability to terminate certain uneconomic trusts, and clarify the trustee's ability to delegate certain duties, among others. Together with pet trusts, these proposed revisions to the Trust Code were included in House Bill No. 439 of the 2015 Regular Session and ultimately enacted in Acts 2015, No. 219.

At the end of its December 2014 report to the legislature, the Trust Code Committee expressed its intent to continue its ongoing work to propose revisions for the improvement of

Louisiana trust law. To that end, the Committee received approval of its proposed revisions from the Law Institute's Council and submitted House Bill No. 286 of the 2016 Regular Session, which was ultimately enacted as Acts 2016, No. 544.

Senate Concurrent Resolution No. 62 of the 2016 Regular Session urged and requested the Law Institute to study and make recommendations regarding whether revisions to present law were necessary in light of other states' laws that expressly permit an enforceable mediation or arbitration provision to be included in a testament or trust. In fulfillment of this request, the Law Institute assigned the project to its Alternative Dispute Resolution Committee to work in conjunction with the Successions and Donations and Trust Code Committees. All three Committees ultimately concluded that no revisions to the Louisiana Arbitration Act with respect to the inclusion of mandatory mediation or arbitration provisions in will and trusts should be made at this time, and a report to that effect was submitted to the legislature in January of 2017.

Since that time, the Committee has been considering a number of continuous revision issues, including the recordation of trust instruments and extracts of trust; the allocation of receipts and expenses to income and principal; the termination of a trust upon the consent of all settlors, trustees, and beneficiaries; and the delayed vesting of the principal beneficiary when the trust becomes irrevocable upon the death of the settlor.

#### **H. THE LOUISIANA CODE OF EVIDENCE**

The Evidence Committee and a special Subcommittee thereof proposed an article on the "Identity of Informant" testimonial privilege, which was approved by the Council. A bill was introduced during the 1995 Regular Session and was enacted by the Louisiana Legislature as Acts 1995, No. 1040 to complete Chapter 5 on Privileges.

The Evidence Code Reporters codified the law of evidentiary presumptions and its effect on the burden of proof. This elusive area proved to be very difficult to draft due to the jurisprudential confusion and uncertainty surrounding the subject. However, the Council ultimately approved the articles on presumptions, which were enacted by Acts 1997, No. 577. The Presumptions bill marked the completion of the Code of Evidence Project.

#### **I. MAINTENANCE AND ORGANIZATION OF THE LAWS OF LOUISIANA**

The Law Institute maintains the Revised Statutes and other laws of Louisiana pursuant to the continuous revision authority of R.S. 24:251 et seq. After each legislative session, the staff, under the direction of the Revisor of Statutes, reviews each Act and adopted Resolution, sorts them by Title and Code, corrects errors, identifies conflicting provisions, and designates and redesignates sections of the Revised Statutes and articles of the Codes as necessary for an orderly disposition of the laws. All of this work is conducted in preparation for the printing of the Revised Statutes and Codes. Between legislative sessions, the Law Institute works closely with the Capitol

staff and the publishers to keep the printed statutes as up-to-date as possible and to ensure the accuracy of interim publications of the laws of Louisiana.

## **J. SPECIAL PROJECTS**

### **1. Adult Guardianship Committee**

Senate Concurrent Resolution No. 36 of the 2012 Regular Session requested the Law Institute to study and make recommendations regarding the inclusion of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act into Louisiana law. In response to this resolution, the Law Institute created the Adult Guardianship Committee and placed it under the direction of Professor J. Randall Trahan. The Committee submitted a report to the legislature in March of 2016 that included proposed recommendations for incorporating the UAGPPJA into Louisiana law, which the Law Institute submitted as Senate Bill No. 94 of the 2016 Regular Session. These proposals were ultimately enacted as Acts 2016, No. 333.

### **2. Alternative Dispute Resolution Committee**

Senate Resolution No. 157 of 2012 requested that the Law Institute study the Louisiana Binding Arbitration Act to determine what recommendations may improve arbitration contracts in Louisiana so that arbitration proceedings take less time and are not prohibitively expensive, including whether "loser-pay" provisions may assist in decreasing time and expense of the arbitration process, whether reasonable limits maybe imposed on what constitutes "pertinent evidence" under R.S. 9:4210 for an arbitrator to consider, and whether other recommended changes to Louisiana's arbitration laws may help to make arbitration a more efficient and cost-effective process for participants in Louisiana.

In response to this resolution, the Law Institute created the Alternative Dispute Resolution Committee and placed it under the direction of Emmett C. Sole as Chair and Professor Edward Sherman as Reporter. The Law Institute submitted an interim report to the legislature in February of 2013 to provide information relative to the progress of this study. Since that time, the Committee has presented its work to the Law Institute's Council, but the project is still ongoing.

Senate Concurrent Resolution No. 62 of the 2016 Regular Session urged and requested the Law Institute to study and make recommendations regarding whether revisions to present law were necessary in light of other states' laws that expressly permit an enforceable mediation or arbitration provision to be included in a testament or trust. In fulfillment of this request, the Law Institute assigned the project to its Alternative Dispute Resolution Committee to work in conjunction with the Successions and Donations and Trust Code Committees. All three Committees ultimately concluded that no revisions to the Louisiana Arbitration Act with respect to the inclusion of mandatory mediation or arbitration provisions in will and trusts should be made at this time, and a report to that effect was submitted to the legislature in January of 2017.

### **3. Bail Bond Procedure Revision Committee**

Senate Resolution No. 111 of the 2013 Regular Session requested that the Law Institute perform a comprehensive study of Louisiana bail laws and procedures and make recommendations as necessary for the modernization of bail practices. In response to this resolution, the Law Institute created the Bail Bond Procedure Revision Committee and placed it under the direction of Judge Guy Holdridge as Reporter. The Committee began by making extensive substantive revisions to the Code of Criminal Procedure Articles on forfeiture as well as related provisions in the Revised Statutes. During the course of its work, the Committee also considered several different reorganization proposals for the articles in Title VIII of the Code of Criminal Procedure on bail. As these articles were reorganized, the Committee also made substantive amendments in order to modernize Louisiana bail laws and procedures. Based on Council approval of the Committee's work, the Law Institute filed its report to the legislature in March of 2016 and also submitted its proposed revisions as Senate Bill No. 123 of the 2016 Regular Session. These proposals were ultimately enacted as Acts 2016, No. 613.

### **4. Birth Certificates Committee**

House Concurrent Resolution No. 189 of the 2010 Regular Session requested the Law Institute to study all laws relative to birth certificates and filiation and to make recommendations to resolve any conflict between the laws relative to birth certificates and the laws relative to filiation. In response to this resolution, the Law Institute created the Birth Certificates Committee and named Professor J. Randall Trahan as its Reporter. Based on the Committee's work, the Law Institute submitted House Bill No. 449 of the 2016 Regular Session, which was ultimately enacted as Acts 2016, No. 434.

The legislation provided for the determination of the surname of the child depending upon the marital status of the mother at the time of the birth of the child and for the name of the father and his other personal information to be listed on the birth certificate in accordance with the substantive laws on filiation in the Civil Code. It also provided for the amendment of an original birth certificate when: (1) no mother was originally identified on the birth certificate and a judgment of maternal filiation pursuant to Civil Code Article 184 is issued; (2) a different mother was originally identified and a judgment of maternal filiation pursuant to Civil Code Article 184 is issued; (3) there has been a change in paternal filiation due to the disavowal of paternity in accordance with Civil Code Articles 185, 186, or 195; (4) there has been a change in paternal filiation due to a contestation and establishment of paternity in accordance with Civil Code Article 185 or 186; (5) there has been a change in paternal filiation due to marriage and formal acknowledgment of paternity in accordance with Civil Code Article 195; (6) there has been a change in paternal filiation due to a formal acknowledgement of paternity in accordance with Civil Code Article 196; or (7) there has been a change in paternal filiation due to a judgment of paternity in accordance with Civil Code Article 197 or 198. Finally, the legislation deleted the outdated

references to a notarial act of legitimation, legitimation by authentic act, and notarial acts of adoption.

## **5. Child Support Committee**

Pursuant to House Concurrent Resolution No. 42 of the 2004 Regular Session, a Committee was organized under the leadership of Judge Lisa Woodruff-White to study issues relating to child support in multiple families and to recommend improvements of the law. In response to this resolution and others, the Child Support Committee has continued its work for over a decade.

House Concurrent Resolution No. 156 of the 2012 Regular Session requested the Law Institute to study certain procedures for implementing visitation orders in conjunction with support orders and to report its findings and recommendations in the form of specific proposed legislation to the legislature. In response to this resolution, the Law Institute assigned the project to the Child Support Committee, which submitted a report to the legislature in November of 2015. In that report, the Committee recommended two solutions: first, that the legislature encourage family court judges to alert parties to a child support action of the existence of R.S. 9:315.25, which provides that in any proceeding for child support a court can hear and determine any issue relating to the custody or visitation with the child; and second, that the citation or notice currently issued by the clerk of court in child support proceedings be modified to include specific language substantially similar to that provided in the proposed legislation submitted with the report. In accordance with these recommendations, the Law Institute also submitted House Bill No. 259 of the 2016 Regular Session, which was ultimately enacted by Acts 2016, No. 216.

## **6. Childhood Addiction to Pornography Task Force**

House Concurrent Resolution No. 2012 of the 2011 Regular Session urged and requested the Law Institute to appoint and convene a task force to evaluate Louisiana's existing laws, programs, and services that address childhood addiction to pornography and to report its findings and recommendations for additional steps necessary to further address this issue. Pursuant to this request, the Law Institute assembled the Childhood Addiction to Pornography Task Force, and after much research, the Task Force believed that at this time, the best way to combat childhood exposure to sexually explicit material is through education and training. The Law Institute submitted a report to the legislature to this effect in April of 2017.

## **7. Common Interest Ownership Regimes Committee**

Senate Concurrent Resolution No. 104 of the 2014 Regular Session requested the Law Institute to study and make recommendations regarding Louisiana's three common interest community statutes—the Condominium Act, the Timesharing Act, and the Homeowners Association Act. In response to this resolution, the Law Institute created the Common Interest Ownership Regimes Committee and named Professor Christopher K. Odinet as its Reporter. The Committee decided to first take up the Homeowners Association Act, since it is the most recently

enacted and also the most lacking in substance. The Law Institute submitted an interim report to the legislature in November of 2015 to provide an update with respect to the status of this project. Although the Committee has made significant progress in formulating revisions to this statute, its work is still ongoing.

Senate Concurrent Resolution No. 13 of the 2016 Regular Session, which requested the Law Institute to study the feasibility of revising state law regarding standing for private associations to seek injunctive relief for a zoning violation, as well as to study present penalties for zoning violations, was also assigned to the Common Interest Ownership Regimes Committee. The Committee recommended, and the Council approved, a proposal that authorizes any adversely affected owner, lessee, usufructuary, or holder of a right of habitation with respect to nearby immovable property to institute an action to prevent unlawful building, structure, or land use, provided that the adversely affected person give written notice to the municipality or parish describing the violation and stating his intention to bring an action. Based on the Committee's recommendations, the Law Institute submitted Senate Bill No. 190 of the 2018 Regular Session.

## **8. Constitutional Laws Committee**

Acts 2014, No. 598 enacted R.S. 24:204(A)(10), which provides that it shall be the duty of the Law Institute to make recommendations to the legislature on a biennial basis for the repeal, removal, or revision of provisions of law that have been declared unconstitutional by final and definitive court judgment. In fulfillment of this requirement, the Law Institute created the Unconstitutional Statutes Committee, now named the Constitutional Laws Committee, and placed it under the direction of Charles S. Weems, III as Reporter. The Committee submitted its initial unconstitutional statutes biennial report to the legislature in March of 2016. Since that time, the Committee has continued to monitor those provisions of Louisiana law that have been declared unconstitutional by final and definitive judgment and has received final approval of its second biennial report from the Law Institute's Council.

House Concurrent Resolution No. 129 of the 2016 Regular Session urged and requested the Law Institute to study the issue of preferences in favor of Louisiana contractors for contracts related to integrated coastal protection projects, specifically with respect to whether preference shall be given to Louisiana resident contractors over nonresident contractors, whether competitive bidding impacts that determination, the advantages and disadvantages of granting such a preference, and what effect a strict preference law will have on resident contractors working outside the state of Louisiana. In response to this request, the Law Institute assigned the project to its Constitutional Laws Committee, which has conducted background research on the potential issues raised by legislation giving preference to Louisiana contractors when the state seeks public contracts for coastal restoration work. The Committee submitted an interim report to the legislature in January of 2017 detailing that its final report will be divided into two parts, with Part I analyzing the potential constitutional issues raised by state preference laws and Part II discussing the effects such legislation would have on Louisiana contractors seeking coastal restoration work in other

states in light of a full survey of other states' reciprocal preference laws. The Committee will report back to the legislature once it receives approval of its conclusions from the Law Institute's Council.

## **9. Corporations Committee**

House Concurrent Resolution No. 146 of the 2008 Regular Session requested the Law Institute to study and make recommendations on the revision, reorganization, and consolidation of the Louisiana laws on corporations and to include consideration of the adoption of the Model Business Corporation Act. Pursuant to this resolution, the Law Institute formed the Corporations Committee and placed it under the direction of Professor Glenn Morris.

After years of work by the Corporations Committee, the Law Institute introduced House Bill No. 408 of the 2013 Regular Session, relative to the Model Business Corporations Act. However, the bill died near the end of the Session. Over the course of the next year, the Corporations Committee continued to review the Model Business Corporation Act and reintroduced proposed legislation to enact the Louisiana Business Corporation Act, this time as House Bill No. 319 of the 2014 Regular Session. The legislature ultimately adopted the Law Institute's recommendations in Acts 2014, No. 328.

Since the enactment of the Louisiana Business Corporation Act, the Corporations Committee has continued meeting to make both technical corrections and substantive improvements to the legislation, including eliminating the requirement of providing for acceptance of the protection against officer and director liability in the articles of incorporation, allowing for prospective limitations or eliminations of the duty to offer business opportunities to the corporation, providing for remote participation in shareholders' meetings, clarifying the rules with respect to modification of voting and quorum requirements for shareholders, creating a transitional rule for corporations whose articles of incorporation contain "opt in" exculpation provisions under former law, amending shareholder oppression remedies to protect holding companies and similar institutions observing federal or other state regulations from running afoul of the LBCA, and extending the time periods for the reinstatement of a terminated corporation and the reservation of its name, among others. Based on the Committee's work, the Law Institute submitted House Bill No. 714 of the 2016 Regular Session, which was ultimately enacted as Acts 2016, No. 442, and House Bill No. 310 of the 2017 Regular Session, which was ultimately enacted as Acts 2017, No. 57.

House Resolution No. 136 of the 2015 Regular Session requested the Law Institute to study and make recommendations with respect to the implementation of laws relative to minority shareholders in closely held corporations. House Concurrent Resolution No. 141 of the 2015 Session requested the Law Institute to study and make recommendations regarding revision of the laws of limited liability companies, nonprofit corporations, and other business entities in the state of Louisiana. The Law Institute assigned both of these projects to the Corporations Committee, and the Committee's work with respect to each of these issues is ongoing. The Committee has held

several meetings regarding the revision of Louisiana’s laws of limited liability companies, and it has reviewed the first few chapters of the Uniform Limited Liability Company Act to aid in its revision of existing law.

#### **10. Disabled Adult Children Committee**

House Concurrent Resolution No. 32 of the 2013 Regular Session requested that the Law Institute review the child support guidelines, the law as applied to children with developmental disabilities, and the laws regarding custody and visitation for developmentally disabled adult children, and consider extending child support beyond age twenty two and providing for custody and visitation between those children and their parents in the event of a divorce, and report its findings and recommendations in the form of specific proposed legislation to the legislature. In response to this resolution, the Law Institute created the Disabled Adult Children Committee and named Professor Andrea Carroll as its Reporter. Based on the Committee’s work, revisions consistent with the resolution were enacted by the legislature in Acts 2015, No. 379.

Senate Concurrent Resolution No. 100 of the 2016 Regular Session requested the Law Institute to study the award of child support for adult children with disabilities, specifically with respect to accounting for the financial burden placed on elderly parents by a continuing child support award for adult children with disabilities. The resolution was assigned to the Disabled Adult Children Committee, which reviewed existing law and concluded that no legislative changes with respect to this issue were necessary at this time. Specifically, the Committee found that a number of current statutory provisions protect elderly parents in the child support context by providing for consideration of these parents’ particular circumstances as well as solutions to the problem of indefinite support. In January of 2017, the Committee submitted its recommendations in a report to the legislature but noted it would continue to monitor how the statutes governing adult children with disabilities are applied and report back if revisions are warranted in the future.

#### **11. Electronic Signatures Study Group**

Senate Concurrent Resolution No. 6 of the 2013 Regular Session requested that the Law Institute study and make recommendations on the feasibility of requiring clerks of court to accept electronic signatures on documents for filing with the court. In response to this resolutions, the Law Institute created the Electronic Signatures Study Group and placed it under the direction of facilitator Michael S. Evanson of the Louisiana Supreme Court. Background technical and legal research was compiled, and the Study Group recommended, and the Council approved, the addition of a provision that would require clerks of court to accept electronic signatures. The proposed revisions were included in House Bill No. 439 of the 2017 Regular Session, which was ultimately enacted as Acts 2017, No. 419.

House Concurrent Resolution No. 218 of the 2015 Regular Session requested that the Law Institute study and make recommendations regarding the adoption of an electronic notary law. This resolution was also assigned to the Electronic Signatures Study Group, which has met multiple

times to review similar laws adopted by other states and to consider the issue in light of the unique province of the notary within Louisiana's civil law tradition. The project is still ongoing, and the Study Group plans to report back to the legislature once the Law Institute's Council has approved its recommendations.

## **12. HCR 162 – Expropriation Committee**

House Concurrent Resolution No. 162 of the 2014 Regular Session authorized the Law Institute to make recommendations for the disclosure of information to landowners whose property is subject to expropriation. In response to this resolution, the Law Institute created the HCR 162 – Expropriation Committee and placed it under the direction of Reporter Kay Medlin. The Committee submitted a report to the legislature in November of 2015 detailing its recommended proposal to provide for disclosures of information to property owners by expropriating authorities, other than the state or its political corporations or subdivisions, prior to the making of an offer to acquire an interest in property. Based on the Committee's work, the Law Institute submitted the proposed legislation accompanying this report as House Bill No. 313 of the 2016 Regular Session, which was ultimately enacted as Acts 2016, No. 108.

## **13. Human Trafficking Committee**

Senate Concurrent Resolution No. 9 of the 2016 Second Extraordinary Session requested the Law Institute to study and make recommendations regarding the feasibility of revisions or additions to current laws regarding human trafficking, specifically those with the goal of combatting and eliminating human trafficking and rehabilitating the victims thereof. In response to this resolution, the Law Institute created the Human Trafficking Committee and placed it under the direction of Professor Lucy McGough. The Committee conducted an extensive review of best practices, federal law, and the laws of other states and ultimately recommended the creation of a Louisiana Human Trafficking Prevention Commission and advisory board within the office of the governor for the purpose of coordinating with all relevant state agencies and determining best practices while avoiding any duplication of services. This proposal was submitted to the legislature as Senate Bill No. 42 of the 2017 Regular Session and was ultimately enacted as Acts 2017, No. 181.

During the 2017 Regular Session, the Law Institute also proposed Senate Bill No. 54, which was heavily amended but was ultimately enacted as Acts 2017, No. 376, to further address the issue of the exploitation of children. Specifically, this legislation requires the Department of Children and Family Services to maintain and make available a listing of safe houses that are licensed residential homes and specialize in providing services to sexually exploited children. It also requires law enforcement to notify the Crime Victims Services Bureau when a child is eligible for special services and, as a mandatory reporter, to report that the child is a need of protective services. The Department is also responsible for investigating reports of abuse or neglect where the abuser is believed to be a parent or caretaker, a person who maintains an interpersonal dating

or engagement relationship with the parent or caretaker, or a person living in the same residence with the parent or caretaker as a spouse whether married or not. The Department must fully cooperate with law enforcement, prosecutors, and court staff in the investigation and prosecution of child sexual exploitation, including ensuring that all state, federal, and community-based resources for sexually exploited children are known and available to the child. Most importantly, all reports and records of exploitation are to be kept confidential unless the disclosure of such information is essential for the purposes of investigation or prosecution, required by court order, or necessary to ensure services. Acts 2017, No. 376 also directed the Law Institute to prepare Comments to the provisions included in the Act, which the Law Institute published in August of 2017.

#### **14. Landlord-Tenant Committee**

Senate Concurrent Resolution No. 131 of the 2014 Regular Session requested the Law Institute to study and make recommendations regarding laws applicable to the rights of landlords and residential tenants. In response to this resolution, the Law Institute created the Landlord-Tenant Committee and named Professor Melissa T. Lonegrass as its Reporter. The Committee decided to first take up the issues of security deposits, eviction, and domestic violence protections. Based on the Committee's work, the Law Institute submitted an interim report to the legislature in December of 2015 to provide an update with respect to the status of this project. The Committee later obtained approval of its proposals from the Law Institute's Council, and the recommendations were submitted to the legislature in Senate Bill No. 120 of the 2017 Regular Session. However, the bill was met with opposition during the legislative process and was ultimately withdrawn from the files of the Senate.

#### **15. Lease of Movable Act Committee**

House Concurrent Resolution No. 184 of the 2015 Regular Session requested the Law Institute to study and make recommendations regarding the Louisiana Lease of Movable Act and related laws, including but not limited to changes in the law governing such transactions and the need to update the law to reflect present-day commercial and consumer practices. In response to this resolution, the Law Institute created the Lease of Movable Act Committee and named Robert P. Thibeaux as its Reporter. The Committee held its first meeting in November of 2015 and has met regularly since to consider threshold issues such as the confusion created by the interplay of the Louisiana Lease of Movable Act, the Uniform Commercial Code, and the law of conditional sales. The Committee has begun drafting its revisions to the Louisiana Lease of Movable Act, but the work is still ongoing.

#### **16. Lesion Beyond Moiety Committee**

House Concurrent Resolution No. 63 of the 2014 Regular Session authorized and directed the Law Institute to study and make recommendations regarding the law of lesion beyond moiety. In response to this resolution, the Law Institute created the Lesion Beyond Moiety Committee and

named Professor J. Randall Trahan as its Reporter. The Committee first conducted research into the law of lesion in Louisiana and in other civil law and mixed jurisdictions and has since met several times to determine deficiencies in current law and devise possible remedies for those deficiencies.

The Committee concluded that additional research was required, particularly with respect to the law of lesion in other civil law and mixed jurisdictions and the law of unconscionability in the rest of the United States. The Committee hoped that this research will point to possible solutions to the problems currently plaguing Louisiana’s law of lesion. Based on the Committee’s work, the Law Institute submitted an interim report to the legislature in December of 2015 to provide an update with respect to the progress of this study.

Although the Committee has made progress in formulating revisions to the law of lesion beyond moiety, the work is still ongoing. The Committee has made a number of policy decisions on the law of lesion, including retaining the current scope of lesion, basing the fair market value of the immovable on the limited knowledge available at the time of the sale, and codifying the heightened jurisprudential standard of proof. The Reporter now tasked with drafting proposed revisions to the Civil Code to encapsulate these decisions and will submit these proposals for review by the Committee and the Council.

#### **17. Mineral Law Committee**

Senate Resolution No. 159 of the 2017 Regular Session urged and requested the Law Institute to study and make recommendations regarding the classification of mineral royalties under Louisiana law for the purposes of bankruptcy proceedings. In response to this resolution, the Law Institute created the Mineral Law Committee, which is composed of mineral law practitioners and professors and is placed under the direction of Mr. Patrick S. Ottinger, a practicing attorney and an Adjunct Professor of Mineral Law at the LSU Law Center.

Background information on the classification of mineral royalties and the effects of classification for the purposes of bankruptcy proceedings is being compiled, and in January of 2018, the Law Institute submitted an interim report to provide information with respect to the progress of this study. The Committee also formed a Subcommittee to research the history and reasoning for the classification of mineral royalties as “rent” in R.S. 31:123 and will continue meeting to consider these and other issues before presenting their work to the Law Institute’s Council.

#### **18. Mineral Law – Legacy Disputes Committee**

Senate Resolution No. 84 of the 2013 Regular Session requested that the Law Institute study the feasibility and constitutionality of utilizing alternative dispute resolutions as a means of resolving “legacy” disputes and report its recommendations to the Senate. In response to this resolution, the Law Institute created the Mineral Law – Legacy Disputes Committee and placed it

under the direction of Professor Keith Hall as Reporter. Based on the Committee’s work, the Law Institute proposed legislation in the form of Senate Bill No. 134 of the 2015 Regular Session, which the legislature ultimately enacted as Acts 2015, No. 448.

#### **19. Mineral Law – Unsolicited Offers Committee**

Senate Resolution No. 118 of the 2013 Regular Session requested that the Law Institute study and make recommendations for regulation on unsolicited offers for the transfer, sale, and lease of mineral rights. In response to this resolution, the Law Institute created the Mineral Law – Unsolicited Offers Committee and placed it under the direction of Professor Melissa T. Lonegrass as Reporter. The Law Institute submitted an interim report to the legislature in December of 2013 to provide an update with respect to the status of this project.

The Committee ultimately concluded that the Sale of Mineral Rights by Mail Solicitation Act should be enacted to provide for definitions, proper form, and required disclosures for sales of mineral rights by mail solicitation, as well as to provide for rescission of such sales and its mechanics and effects as well as prohibited terms. The Committee received approval of its final proposal from the Law Institute’s Council and submitted its proposed revisions in Senate Bill No. 404 of the 2016 Regular Session, which was ultimately enacted as Acts 2016, No. 179.

#### **20. Possessory Actions Committee**

Senate Concurrent Resolution No. 42 of the 2016 Regular Session urged and requested the Law Institute to study and make recommendations regarding the applicability of “possessory action” relative to claims of possession by an individual of another person’s land even though the landowner has occupied the land undisturbed for many years. In response to this request, the Law Institute created the Possessory Actions Committee, which operates under the direction of L. David Cromwell as Reporter and is comprised of both professors and practitioners with expertise in this area of the law. The Reporter prepared, and the Committee considered, a preliminary memorandum that included a number of issues for the Committee’s consideration, including whether it is clear under existing law that a disturbance in law that preceded the plaintiff’s entry into possession cannot constitute the basis of a possessory action; whether the plaintiff should be permitted to require the defendant to prove title good against the world in a subsequent petitory action when the plaintiff is a bad faith usurper who has no claim of title and has been in possession for as little as one year; and what burden of proof applies when title is at issue in a declaratory judgment action. The Committee submitted an interim report to the legislature in January of 2017 and will report back once it has obtained approval of its recommendations from the Law Institute’s Council.

#### **21. Prescription Committee**

House Concurrent Resolution No. 28 of the 2011 Regular Session requested the Law Institute to study agreements to voluntarily extend liberative prescriptive periods. In response to

this resolution, the Law Institute created the Prescription Committee and placed it under the leadership of Professor Ronald J. Scalise, Jr. The Committee submitted proposed legislation in response, which was enacted during the 2013 Regular Session.

Senate Concurrent Resolution No. 105 of the 2015 Regular Session requested the Law Institute to study and make recommendations regarding whether the Constitution of Louisiana should be amended to provide that mineral interests of the state, school boards, or levee districts should be subject to loss by prescription or other means. The Law Institute assigned this project to the Prescription Committee, and the Committee's work with respect to this issue is still ongoing. However, the Committee has expressed its general approval of the idea that no revision to the Louisiana Constitution concerning the inalienability or imprescriptibility of state mineral interests should be made.

Over the past few years, the Committee has also been drafting continuous revisions concerning the prescriptive periods applicable to revocatory actions; actions for contractor liability and against architects, engineers, and surveyors; actions for redhibition and fitness for use; and actions against a successor claiming ownership of assets. The Committee will submit its recommended revisions to the legislature once they have been approved by the Law Institute's Council.

## **22. Private Use of Levee Roads Committee**

Senate Resolution No. 180 of the 2015 Regular Session requested the Law Institute to study and make recommendations regarding the feasibility of the use of levee roads by owners of enclosed estates to reach public roads. In response to this resolution, the Law Institute created the Private Use of Levee Roads Committee and named Professor John A. Lovett as its Reporter. At its first meeting in October of 2015, the Committee voted to draft a report to the legislature that lays out all of the issues and solutions provided by present law. This report was submitted to the legislature in October of 2016 and did not make any recommendations for specific legislation; rather, the report was drafted with the goal of educating and guiding judges and practitioners with respect to these issues.

## **23. Risk Fee Act Committee**

Senate Resolution No. 31 of the 2016 Second Extraordinary Session urged and requested the Law Institute to study the implications of Act 743 of the 2012 Regular Session on the Louisiana Risk Fee Act. In fulfillment of this request, the Law Institute created the Risk Fee Act Committee, which is comprised of oil and gas practitioners and professors and operates under the direction of Patrick S. Ottinger as Reporter. In January of 2017, the Committee submitted an interim report to the legislature detailing several of the issues that it was considering, including addressing the responsibility of a nonparticipating owner to demonstrate to an operator the sufficiency of such owner's title to its leases; determining whether the Risk Fee Act should include some sort of express requirement as to whether the re-fracking or reworking of an existing well should be re-

proposed; and providing some sort of remedy in favor of a landowner or unleased mineral owner whose nonparticipating lessee releases the mineral lease after a well has been proposed, commenced, or completed, thereby subjecting the innocent landowner to the risk charge. The Committee will report back to the legislature once it has obtained approval of its recommendations from the Law Institute's Council.

#### **24. Security Devices Committee**

In order to continue the work of Professor Thomas A. Harrell and his Committee on the revision of the laws on mortgages and registry, the Law Institute created the Security Devices Committee and placed it under the direction of L. David Cromwell as Reporter. During the 2014 Regular Session, the Law Institute submitted Senate Bill No. 89, a comprehensive revision of the Civil Code articles and Revised Statutes relative to security, pledge, and registry. This comprehensive revision was enacted by the legislature as Acts 2014, No. 281.

Senate Concurrent Resolution No. 102 of the 2015 Regular Session requested the Law Institute to study and make recommendations regarding whether an assignment or transfer of a mortgage loan on residential real property should be required to be recorded in the appropriate mortgage or conveyance records in order to be effective as to third parties. Based on the subject matter of this resolution, the Law Institute assigned this project to the Security Devices Committee, which ultimately concluded that no legislative changes should be made since altering the well-established rules of the public records doctrine to impose an absolute requirement of recordation of assignments of residential mortgages is both unwarranted and inadvisable. A report to this effect was submitted to the legislature in January of 2018.

Senate Resolution No. 158 of the 2012 Regular Session urged and requested the Law Institute to study and review the placement and structure of Louisiana's lien law, including the documents that are required to be recorded, the types of liens currently provided for in Louisiana law, the placement of such revisions, and the manner in which Louisiana law currently requires that liens be recorded, perfected, and prioritized. In fulfillment of this request, the Law Institute assigned the project to its Security Devices Committee, which submitted a report to the legislature in February of 2013 outlining the significant progress that has been made in the modernization and revision of Louisiana's laws on security devices. Nevertheless, the Committee concluded that a number of revisions to the Private Works Act were needed in order to make technical corrections, eliminate unintended consequences, clarify the substance of amendments made since the Act's enactment in 1981, and modify substantive provisions to better achieve their purpose. Over the past several years, the Committee has been drafting a comprehensive revision to the Private Works Act, which it plans to present to the legislature during the 2019 Regular Session.

#### **25. Surrogacy Committee**

Section 8 of Act No. 494 of the 2016 Regular Session directed the Law Institute to prepare Comments to the provisions of that Act regarding gestational carrier contracts. The Law Institute

assigned this project to its Surrogacy Committee, which met several times to draft Comments as well as modest revisions to the recently enacted gestational carrier contracts legislation. In December of 2016, the Law Institute's Council approved the Committee's work, and the Law Institute thereafter published Comments to the gestational carrier contracts legislation pursuant to the legislative direction of Acts 2016, No. 494. The Law Institute also submitted its proposed modest revisions to this Act as Senate Bill No. 396 of the 2018 Regular Session.

## **26. Tax Sales Committee**

Senate Resolution No. 109 of the 2012 Regular Session requested that the Law Institute study and make recommendations regarding the laws relative to sheriff's tax sales in Orleans Parish. Senate Resolution No. 40 of the 2013 Regular Session requested that the Law Institute study and make recommendations regarding the feasibility of authorizing tax lien sales as a replacement or alternative to tax sale certificates. In response to these resolutions, the Law Institute created the Tax Sales Committee and named Stephen G. Sklamba as its Reporter. The Law Institute submitted an interim report to the legislature in January of 2014 to provide information relative to the progress of these studies.

Since that time, the Tax Sales Committee has continued its work on the project and has made multiple presentations to the Law Institute Council. The Committee is finalizing its proposed amendments to Article VII, Section 25 of the Louisiana Constitution as well as related provisions of Title 47 of the Revised Statutes. The Committee plans to present these materials to the Council again in the fall of 2018 with hopes of proposing legislation for the 2019 Regular Session.

## **27. Title 33 Revision Committee**

House Concurrent Resolution No. 218 of the 2009 Regular Session requested that the Law Institute study and make recommendations regarding Title 33 of the Louisiana Revised Statutes relative to municipalities and parishes. In response to this resolution, the Law Institute created the Title 33 Revision Committee, and Retired Judge Walter Lanier was appointed to serve as the Committee's Reporter.

Acts 2011, No. 248 was enacted on the Committee's recommendation to provide for the repeal of statutes that are no longer effective and for the transfer of certain statutes to other Titles of the Revised Statutes. The Committee also proposed legislation in 2012 to repeal certain obsolete and ineffective statutes concerning the power of local governments to punish vagrancy and laying out public roads by a jury of freeholders, which was ultimately enacted by the legislature in Acts 2012, No. 86.

Presently, the Committee continues its work under the direction of Jimmy Dimos as Chair and Tina Righteous as Reporter. The Committee plans to submit additional proposed legislation during the 2019 Regular Session.

## **28. Uniform Commercial Code Committee**

The adoption of revised Article 9 of the Uniform Commercial Code on Secured Transactions before the national deadline of July 1, 2001 was important for the state of Louisiana so the nation could operate under one uniform set of laws. Under the leadership of James A. Stuckey as Reporter, the Law Institute's Uniform Commercial Code Committee devoted considerable time to studying how to integrate this uniform statute into Louisiana's existing civil law concepts. Ultimately, the Law Institute's proposal was enacted during the 2001 Regular Session by Acts 2001, No. 128 and included Comments to aid the legal, financial, and commercial communities in understanding the changes being made to Louisiana law and the differences in the Act from the national model.

Since this enactment, the UCC Committee undertook the task of implementing the most recent revisions of the UCC into the law of Louisiana. The Law Institute submitted House Bill No. 611 of the 2014 Regular Session relative to the electronic transfer of funds, which was ultimately enacted as Acts 2014, No. 520.

## **29. Unpaid Wages Committee**

House Concurrent Resolution No. 76 of the 2012 Regular Session requested the Law Institute to study procedures for the filing of liens for unpaid wages and to make specific recommendations for legislation. In response to this resolution, the Law Institute originally assigned this project to the Security Devices Committee. In December of 2013, that Committee submitted an interim report to the legislature to provide information with respect to the Committee's progress.

Upon consideration and discussion of alternate administrative remedies and amendments to the existing Labor Code in lieu of a general wage lien, the Security Devices Committee determined that it was not the appropriate committee to handle this issue. As a result, the Law Institute created the Unpaid Wages Committee and placed it under the direction of Professor Luz Molina as Reporter. After several years of research and drafting, the Unpaid Wages Committee received final approval of their recommendations from the Law Institute's Council through the adoption of proposals that require that a basic terms of employment form be provided to each employee at the time of hire and that employee records be maintained by the employer for a certain period of time after employment ends. The proposals also provide that both current and former employees who are not paid wages that are due may make a written demand for payment, at which time the employer has seven days within which to respond and pay undisputed wages that are owed. Additionally, the proposals prohibit retaliation against an employee and permit an award of damages, attorney fees, and penalties to the prevailing party. Based on the Committee's recommendations, the Law Institute submitted House Bill No. 519 of the 2018 Regular Session.

### **30. Use of “d/Deaf”**

House Concurrent Resolution No. 36 of the 2017 Regular Session urged and requested the Law Institute to study the prospective use of the term “d/Deaf” in law. Pursuant to this request, Law Institute staff conducted research and compiled background information concerning the term “d/Deaf” as a means of referring to two distinct groups of individuals within the deaf community: those who self-identify as “deaf” and those who self-identify as “Deaf.” The Law Institute’s Council considered the need for developing an inclusive way of referring to both of these groups of individuals throughout Louisiana law as well as the differences between them – namely, that “deaf” individuals generally have lost their hearing, regard their hearing loss solely in medical terms, and identify with individuals who have hearing ability, whereas “Deaf” individuals generally were born deaf, identify as culturally deaf, and have life experiences that are shaped primarily by deaf culture. Ultimately, the Law Institute concluded that the better approach would be to enact a provision stating that the terms “deaf” and “Deaf” are intended to refer to all members of the deaf community. A report to this effect was submitted to the legislature in February of 2018.

### **31. Utility Servitudes Committee**

In response to Acts 2012, No. 739, the Law Institute created the Utility Servitudes Committee and placed it under the direction of Professor A.N. Yiannopoulos. The Committee recommended proposed legislation during the 2014 Regular Session as House Bill No. 615, but the bill was deferred. The Committee again recommended proposed legislation during the 2015 Regular Session as House Bill No. 196, but during the legislative process, the bill was amended to remove the recommendation of the Law Institute, and the bill did not pass. The Law Institute is considering reconvening the Committee to debate resubmission of the proposed legislation.

### **32. Water Law and Water Code Committees**

Senate Concurrent Resolution No. 53 of the 2012 Regular Session requested that the Law Institute study and make recommendations regarding legal issues surrounding groundwater and surface water law and any needs for revisions to current law. The Law Institute assigned this project to the Water Law Committee, which was placed under the direction of Professor Dian Tooley-Knoblett. Based on the Committee’s extensive research, the Law Institute submitted a lengthy report to the legislature in March of 2014 recommending that a Law Institute Water Code Committee be created with a view toward the development of a comprehensive Water Code that integrates all of Louisiana’s water resources.

Senate Resolution No. 171 of the 2014 Regular Session requested that the Law Institute create a Water Code Committee in order to develop proposed legislation establishing a comprehensive Water Code that integrates all of Louisiana’s water resources. In fulfillment of this request, the Law Institute created such a Committee and placed it under the supervision of Reporter Mark S. Davis. The resolution also requires the Committee to provide annual reports to the legislature indicating its status in developing a comprehensive Water Code for Louisiana, and the

Law Institute has submitted such reports in 2016, 2017, and 2018 to provide information relative to the progress of this project.

Specifically, the Water Code Committee has continued its research with respect to the comparative analysis of the water law schemes of several states as well as the free-market water law scheme of Chile. As this analysis continues to progress, the Committee has begun narrowing its examination to focus on the schemes employed by Minnesota, Virginia, Mississippi, and Arkansas. Additionally, the Committee has developed a “Water Law Atlas” in which it has compiled terminology and rule archetypes used across the country. The Committee plans to begin drafting a proposed Water Code by the end of 2018 and will continue providing the legislature with updates concerning its work.

## **IX. ANNUAL MEETINGS**

One of the purposes of the Law Institute under its legislative charter is to conduct an annual meeting for the scholarly discussion of current problems in our law. In fulfillment of this obligation, the Law Institute held annual meetings in March of 2016, 2017, and 2018 as working meetings of the Council.

## **X. GENERAL COMMENTS**

The governing authority of the Law Institute is its Council. No recommendation is submitted to the Louisiana Legislature without Council approval. From its creation in 1938 to its meeting in March of 2018, the Council has held hundreds of meetings, which have been attended by tens of thousands of people who have donated countless hours of work. The members of the Council and the various Committees receive no compensation for the important services they render. Expenses incurred in attending Council meetings are presently reimbursed on a limited basis to cover hotel accommodations, meals, and actual transportation expenses, all of which form a considerable portion of the Law Institute budget.

The central research staff of the Law Institute currently consists of the Coordinator of Research, Ms. Mallory C. Waller, and two full-time staff attorneys, Ms. Jessica G. Braun and Mr. Nick Kunkel. The experience and expertise of our staff have proved indispensable to the Law Institute's work.

The Law Institute expresses its appreciation to the members of the Louisiana Legislature for their continued support, which has enabled the Law Institute to undertake its mission of research, revision, and reform in a thorough and scientific fashion.