

LOUISIANA STATE LAW INSTITUTE

THE FORTY-THIRD BIENNIAL REPORT OF THE LOUISIANA STATE LAW INSTITUTE

Prepared for the
Louisiana Legislature on

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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 forty-third 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.

- D. Any member of the Institute who is serving an active period of suspension from the practice of law for one year or less shall not, without further action by the Council, be a member of the Institute until reinstated.
- E. Any member of the Institute who is disbarred or is serving an active period of suspension from the practice of law for more than one year shall, without further action by the Council, no longer be a member 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. Senior Officers
 - 1. 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.
 - 2. A Senior Officer who has not attended a Council meeting for any period of three (3) consecutive years commencing January 1, 2020, shall, without further action by the Council, be reclassified as having emeritus honorary status. An emeritus honorary status person shall remain a member of the Council but shall have no voting privileges and shall not be counted for quorum purposes unless the member's voting privileges are later reinstated by a majority vote of the Executive Committee.
- 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 (except as provided in O. above), 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:

L. David Cromwell	President
Thomas M. Hayes, III	Chair
Rick J. Norman	Chair Emeritus
Susan G. Talley	Chair Emeritus
John David Ziober	Chair Emeritus
	Assistant Treasurer
James C. Crigler, Jr.	Chair Emeritus
J. David Garrett	Chair Emeritus
Charles S. Weems, III	Chair Emeritus
	Assistant Director
Cordell H. Haymon	Chair Emeritus
Marilyn C. Maloney	Chair Emeritus
Thomas M. Bergstedt	Chair Emeritus
Emmett C. Sole	Chair Emeritus
Leo C. Hamilton	Vice President
Kay C. Medlin	Vice President
Marguerite “Peggy” L. Adams	Vice President
James A. Stuckey	Vice President
Guy Holdridge	Director
Alena Allen	Secretary
Robert W. “Bob” Kostelka	Assistant Secretary
Joseph W. Mengis	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 several are elected every year. They serve without pay as a service to the state. The present members of the Council are:

MARGUERITE (PEGGY) L. ADAMS
New Orleans

ROBBY CARTER
Amite

ALENA M. ALLEN
Baton Rouge

SUSAN M. CHEHARDY
Gretna

PAMELA J. BAKER
Baton Rouge

JAMES C. CRIGLER, JR.
Monroe

KATHRYN (KATIE) E. BELANGER
Metairie

ANNE J. CROCHET
Baton Rouge

THOMAS M. BERGSTEDT
Sulphur

L. DAVID CROMWELL
Shreveport

DAVID F. BIENVENU
New Orleans

KEVIN C. CURRY
Baton Rouge

SHELTON D. BLUNT
Baton Rouge

ZACHARY T. DANIELS
Baton Rouge

CLINTON M. BOWERS
Shreveport

BLAKE R. DAVID
Lafayette

L. KENT BREARD
Monroe

JAMES J. DAVIDSON, III
Lafayette

DORRELL J. BRISTER
Alexandria

ANDRE’ DOGUET
Lafayette

ANDREA B. CARROLL
Baton Rouge

BILLY J. DOMINGUE
Lafayette

DESIREE DUHON DYESS
Natchitoches

LILA T. HOGAN
Hammond

WILLIAM R. FORRESTER, JR.
New Orleans

GUY HOLDRIDGE
Baton Rouge

ANGELIQUE D. FREEL
Baton Rouge

C. FRANK HOLTHAUS
Baton Rouge

J. DAVID GARRETT
Shreveport

BENJAMIN W. JANKE
New Orleans

ISAAC M. "MACK" GREGORIE
Baton Rouge

JOHN WAYNE JEWELL
New Roads

PIPER D. GRIFFIN
New Orleans

PAMELA TAYLOR JOHNSON
Baton Rouge

LEO C. HAMILTON
Baton Rouge

ARLENE D. KNIGHTEN
Baton Rouge

BRUCE M. HAMPTON
Farmerville

PATRICIA E. KOCH
Alexandria

BILLY J. HARRINGTON
Natchitoches

ROBERT W. "BOB" KOSTELKA
Monroe

GEORGE "TRIPPE" HAWTHORNE
Baton Rouge

ROBERT A. KUTCHER
Metairie

THOMAS M. HAYES, III
Monroe

HARRY LANDRY, III
Baton Rouge

CORDELL H. HAYMON
Baton Rouge

LUKE A. LAVERGNE
Baton Rouge

CHRISTOPHER B. HEBERT
Baton Rouge

AMY ALLUMS LEE
Lafayette

ANDREW R. LEE
New Orleans

NICHOLAS MUSCARELLO, JR.
Hammond

F.A. LITTLE, JR.
Alexandria

RICK J. NORMAN
Lake Charles

MELISSA T. LONEGRASS
Baton Rouge

DONALD W. NORTH
Zachary

JOHN A. LOVETT
Baton Rouge

PATRICK S. OTTINGER
Lafayette

MARILYN C. MALONEY
Houston, TX

DARREL JAMES PAPHILLION
Baton Rouge

C. WENDELL MANNING
Monroe

MEGAN S. PETERSON
New Orleans

JAY B. MCCALLUM
Farmerville

HARRY J. "SKIP" PHILIPS, JR.
Baton Rouge

KAY C. MEDLIN
Shreveport

H. MINOR PIPES, III
New Orleans

MICHAEL MELERINE
Shreveport

DONALD W. PRICE
Baton Rouge

JOSEPH W. MENGIS
Baton Rouge

MARKUS G. PUDER
New Orleans

GREGORY A. MILLER
Norco

REGINA RAMSEY
Baton Rouge

JOHN C. "JAY" MORRIS
West Monroe

MIKE REESE
Leesville

ELIZABETH B. MURRILL
Baton Rouge

HERSCHEL E. RICHARD, JR.
Shreveport

SALLY BROWN RICHARDSON
New Orleans

CHRISTOPHER H. RIVIERE
Thibodaux

DOUGLAS J. SALOOM
Lafayette

RONALD J. SCALISE, JR.
New Orleans

STACY E. SEICSHNAYDRE
New Orleans

EULIS SIMIEN, JR.
Baton Rouge

KENYA J.H. SMITH
Baton Rouge

EMMETT C. SOLE
Lake Charles

SHAYNA L. SONNIER
Lake Charles

MEERA U. SOSSAMON
New Orleans

FREDERIC G. SOURGENS
New Orleans

JAMES A. STUCKEY
New Orleans

MONICA T. SURPRENANT
New Orleans

SUSAN G. TALLEY
New Orleans

PATRICK A. TALLEY, JR.
New Orleans

GEORGE J. TATE
Abbeville

MARTHA A. THIBAUT
New Orleans

ROBERT P. THIBEAUX
New Orleans

PETER S. TITLE
New Orleans

ZELDA W. TUCKER
Shreveport

SARAH S. VANCE
New Orleans

SHAWN D. VANCE
Baton Rouge

J. MICHAEL VERON
Lake Charles

JAMES E. VIATOR
New Orleans

MICHAEL B. VICTORIAN
Baton Rouge

DEBBIE VILLIO
Kenner

CHARLES S. WEEMS, III
Alexandria

MICAH C. ZENO
New Orleans

H. AUBREY WHITE, III
Lake Charles

JOHN DAVID ZIOBER
Baton Rouge

LISA WOODRUFF-WHITE
Baton Rouge

EMERITUS HONORARY MEMBERS

GLENN B. ANSARDI
Gretna

WALTER I. LANIER, JR.
Thibodaux

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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, the LSU Paul M. Hebert Law Center, Southern University, and Tulane University, as well as all members of the Legislature who are licensed to practice in Louisiana. 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 elected membership consists of no more than one hundred fifty active members of the bar who have practiced for at least five years.

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 2019 TO 2024

Note: Information relative to years prior to 2019 is available at the offices of the Law Institute

A. Law Institute Recommendations for the 2019 Regular Session

<u>Bill No.</u>	<u>Subject</u>	<u>Final Result</u>
HB 203	Private Works Act	Adopted as Act 325
HB 248	Parenting Coordinators	Not heard on Senate floor
HB 252	Aleatory Contracts	Adopted as Act 106
HB 514	Remote Online Notarization	Not heard on House floor

B. Law Institute Recommendations for the 2020 Regular Session

<u>Bill No.</u>	<u>Subject</u>	<u>Final Result</u>
HB 123	Trust Code Allocation to Income and Principal	Adopted as Act 17
HB 124	Trust Code Continuous Revision	Adopted as Act 18
HB 125	Successions Continuous Revision	Adopted as Act 19
HB 126	Property Bond for Deed	Adopted as Act 20
HB 156	Recusal	Not heard by House Committee
HB 176	Civil Procedure Continuous Revision	Not heard by House Committee
HB 223	Postconviction Relief	Not heard by House Committee
HB 227	Mineral Law Production Payments	Adopted as Act 76
HB 274	Remote Online Notarization	Adopted as Act 254
HB 329	Criminal Procedure Pre- Parole Reports	Heard on House floor
HB 544	Children's Code Domestic Abuse Assistance	Not heard by House Committee
HB 568	In Forma Pauperis	Not heard by House Committee
HB 727	Domestic Abuse Definition	Not heard by House Committee
SB 153	Continuing Tutorship	Adopted as Act 218
SB 227	Children's Code Continuous Revision	Not heard by Senate Committee

SB 377	Prescription Continuous Revision	Not heard by Senate Committee
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C. Law Institute Recommendations for the 2021 Regular Session

<u>Bill No.</u>	<u>Subject</u>	<u>Final Result</u>
HB 39	Recusal	Adopted as Act 143
HB 81	Prescription	Adopted as Act 414
HB 108	In Forma Pauperis	Adopted as Act 416
HB 140	Civil Procedure Technology	Adopted as Act 68
HB 152	Civil Procedure Continuous Revision	Adopted as Act 259
HB 159	Domestic Abuse	Conference Committee Report not adopted
HB 164	Preliminary Default	Adopted as Act 174
HB 523	Bad Faith Insurance	Not heard by House Committee
SB 9	Children’s Code Continuous Revision	Adopted as Act 158
SB 59	Risk Fee Act	Not heard by Senate Committee
SB 109	Postconviction Relief	Not heard by Senate Committee

D. Law Institute Recommendations for the 2022 Regular Session

<u>Bill No.</u>	<u>Subject</u>	<u>Final Result</u>
HB 172	Trust Code Revocable Trusts	Adopted as Act 37
HB 184	Civil Procedure Recusal	Adopted as Act 38
HB 213	Successions Automatic Revocation	Heard on House floor

HB 225	Successions Repeals	Adopted as Act 40
HB 247	Criminal Procedure Recusal	Adopted as Act 42
HB 272	Marriage-Persons Mental Health Evaluations	Adopted as Act 614
HB 360	Children’s Code Continuous Revision	Adopted as Act 272
HB 403	Marriage-Persons Use and Occupancy	Adopted as Act 620
HB 560	Children’s Code Domestic Abuse Assistance	Heard by House Committee
SB 109	Planned Community Act	Not heard by Senate Committee

E. Law Institute Recommendations for the 2023 Regular Session

<u>Bill No.</u>	<u>Subject</u>	<u>Final Result</u>
HB 176	Lease of Movable	Adopted as Act 401
HB 196	Civil Procedure Summary Judgment	Adopted as Act 317
HB 220	Possessory Actions	Adopted as Act 421
HB 230	Civil Procedure Continuous Revision	Adopted as Act 5
HB 239	UCC Amendments	Withdrawn from House files
HB 455	Mineral Law	Adopted as Act 88
SB 140	Online Judicial Sales	Adopted as Act 390; LSLI recommendation removed

F. Law Institute Recommendations for the 2024 Regular Session

<u>Bill No.</u>	<u>Subject</u>	<u>Final Result</u>
HB 159	Postconviction Relief	
HB 227	Civil Procedure Continuous Revision	
HB 236	Mental Health Evaluations	
HB 722	Bergeron Standard	
HB 803	Interruption of Prescription	
SB 16	Civil Procedure Expert Testimony	
SB 23	Planned Community Act	
SB 29	Allocation of Community Property	
SB 32	Small Successions	
SB 39	Children's Code Continuous Revision	
SB 61	Limited Continuing Tutorship	
SB 63	Factory-Built Homes	
SB 75	Electronic Filing and Record Retention	
SB 80	Pooled Trusts	
SB 103	Appointment of Interpreters	
SB 110	UCC Amendments	
SB 188	Collaborative Family Law Act	

G. Reports Submitted to the Legislature in 2022 and 2023

- (1) Report on Divorce by Authentic Act in response to HR No. 49 of the 2020 Regular Session
- (2) Report on Doxing in response to HR No. 108 of the 2021 Regular Session
- (3) 2022 Water Code Annual Report in response to SR No. 171 of the 2014 Regular Session
- (4) 2022 Same-Sex Marriage Annual Report in response to SR No. 143 of the 2016 Regular Session
- (5) 2022 Unconstitutional Statutes Biennial Report pursuant to Acts 2014, No. 598
- (6) Report on Possessory Actions in response to SCR No. 42 of the 2016 Regular Session
- (7) Report on Exemption of Inherited Retirement Accounts from Seizure in response to HCR No. 52 of the 2018 Regular Session
- (8) Report on Mental Health Evaluations in response to SR No. 46 of the 2018 Regular Session
- (9) Report on Abortion or Sterilization of Interdicts in response to HR No. 109 of the 2021 Regular Session
- (10) Report on Drainage Canals in response to HCR No. 114 of the 2022 Regular Session
- (11) Report on Summary Judgment in response to SCR No. 18 of the 2022 Regular Session
- (12) Report on Online Judicial Sales in response to SR No. 152 of the 2022 Regular Session
- (13) Report on the Language of the Constitution in response to HCR No. 7 of the 2020 First Extraordinary Session
- (14) 2023 Water Code Annual Report in response to SR No. 171 of the 2014 Regular Session
- (15) 2023 Same-Sex Marriage Annual Report in response to SR No. 143 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. Separate Committees, each under the leadership of a Reporter, have Titles of the Civil Code under their jurisdiction.

The 2022 and 2023 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, Constitutional Laws, Corporations, Criminal Procedure, Marriage-Persons, Possessory Actions, Property, Security Devices, Successions and Donations, the Trust Code, and the Uniform Commercial Code.

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 the 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 completed 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 absent persons can be declared dead. This revision was enacted by Acts 1990, No. 989.

During the revision process, Professor A.N. Yiannopoulos and the 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 Legislature enacted 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 proposed a complete 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 ultimately enacted by Acts 1990, Nos. 361, 362, 1008 and 1009. Proposed revisions concerning the laws on child custody, visitation, and support were enacted in Acts 1993, No. 261, and the provisions on nullity of marriage were revised by 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 and proposed revisions relative to proof of maternity and paternity in Acts 2005, No. 192. Amendments relative to the filiation of parents and children were enacted in Acts 2006, No. 344. From 2008 to 2015, the Marriage-Persons Committee worked on revisions of adult adoption, filiation, parental authority, parental usufruct, provisional custody by mandate, and birth certificates. Revisions relative to adult adoption and filiation were enacted by Acts 2008, No. 351, Acts 2009, No. 3, and Acts 2016, No. 309. The revisions regarding parental authority, parental usufruct, and provisional custody by mandate were enacted by Acts 2015, No. 260.

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). In response to the decisions of *Obergefell*, *Robicheaux*, and *Costanza*, which rendered several Louisiana statutes relating to

marriage unconstitutional, the Marriage-Persons Committee, under the direction of Professor Andrea B. Carroll as Reporter, catalogued and examined in detail the areas of Louisiana law that need amendment. The Law Institute submitted a report to the Legislature in March of 2016 that recommended necessary changes.

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 Law Institute's Council approved proposed legislation in response to this request, which was first appended to a report to the Legislature in 2017 before ultimately being submitted as Senate Bill No. 98 of the 2018 Regular Session. That bill, however, failed to pass, and the Law Institute has continued to file annual reports in response to this resolution since that time.

Continuing from 2016 to 2020, the Marriage-Persons Committee worked on the study of and revisions to shared physical custody, community property, no-fault divorce, spousal support, continuing tutorship, paternity and birth certificates, interference with custody, and parenting coordinators. In response to Senate Resolution No. 142 of the 2016 Regular Session, a report was submitted concluding that no changes to Louisiana's child custody provisions should be made. In 2017, a proposal to remedy a gap in the law regarding community property when the parties have reconciled became Acts 2017, No. 197, but recommendations in House Bill No. 136 of the 2017 Regular Session addressing no-fault divorce and spousal support failed to pass. In response to House Concurrent Resolution No. 2 of the 2017 Regular Session and other concerns regarding continuing tutorship, the Law Institute recommended, and the Legislature enacted, Acts 2018, No. 164 and Acts 2020, No. 218. Also resulting from a 2017 House Concurrent Resolution, the Committee studied laws governing paternity and birth certificates to establish procedures to protect husbands and ex-husbands who are not the biological fathers of children. Recommendations concerning the execution of a three-party acknowledgment of paternity were submitted to the Legislature and ultimately enacted as Acts 2018, No. 21. Acts 2018, No. 265 addressed temporal issues relative to spousal support brought to the Committee's attention by practitioners. Pursuant to the Marriage-Persons Committee's continuous revision authority, House Bill No. 248 of the 2019 Regular Session was introduced to amend the law relative to parenting coordinators, but the proposed legislation ultimately failed to pass. House Resolution No. 250 of the 2019 Regular Session requested the Law Institute to study the issue of interference with the custody of a child, and the Law Institute submitted a report to the Legislature concluding that no changes are necessary at this time. The Marriage-Persons Committee was also assigned House Resolution No. 49 of the 2020 Regular Session to study and make recommendations relative to divorce by authentic act, and the Committee submitted a report to the Legislature concluding that divorce by authentic act is not currently desirable in Louisiana.

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 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 Law Institute proposed, and the Legislature ultimately enacted, Acts 2018, Nos. 264 and 265, which created consistency in the assessment of costs and attorney fees against a perpetrator of abuse and addressed concerns regarding the intersection of domestic violence with grounds for divorce and spousal support. The Law Institute drafted an additional proposal in response to House Concurrent Resolution No. 79, House Bill No. 727 of the 2020 Regular Session, to provide a single definition of “domestic abuse” throughout the civil law. The bill was deferred due to the onset of the COVID-19 pandemic and was reintroduced as House Bill No. 159 of the 2021 Regular Session but ultimately failed to pass when the Conference Committee Report was not adopted. The Law Institute’s Council then recommitted these proposals to its Criminal Code and Code of Criminal Procedure Committee for review of implications with respect to incarcerated individuals. Other legislative instruments, however, have incorporated the Committee’s recommended definition – for example, the Legislature included this definition in the Campus Accountability and Safety Act, R.S. 17:3399.11 et seq.

Senate Resolution No. 46 of the 2018 Regular Session, as well as House Resolution No. 228 and Senate Resolution No. 186 of the 2022 Regular Session, requested the Law Institute to review state laws, rules, regulations, policies, and procedures relative to mental health evaluations used in child custody and visitation proceedings. This area of the law has not been modified or updated to provide any additional clarity or guidance on conducting mental health evaluations and, according to reported decisions, mental health evaluations have doubled over the last decade. Although many courts have created local rules to guide this procedure, these rules are complicated and inconsistent among jurisdictions. The Marriage-Persons Committee crafted recommendations to address qualifications and ex parte communications, and this proposed legislation was enacted as Acts 2022, No. 614. The Law Institute has also proposed House Bill No. 236 of the 2024 Regular Session containing recommendations concerning costs, deference given to reports, situations involving domestic abuse, and appropriate use of evaluators for mental health as opposed to child custody evaluations.

Following the 2021 Regular Session of the Legislature, the Marriage-Persons Committee was assigned both House Concurrent Resolution No. 92, relative to provisions of law on partition of community property, and House Resolution No. 109, requesting the study of existing law relative to the consent of a curator to an abortion or sterilization of an interdict. In accordance with House Concurrent Resolution No. 92, the Committee worked with Louisiana Appleseed, the Coalition Against Domestic Violence, the Tulane Domestic Violence Clinic, the New Orleans Family Justice Center, and the United Way of Southeast Louisiana to develop recommendations

to prevent extended litigation as a continuation of domestic abuse when one party may have a financial advantage over the other party. The Committee discussed the many problems with partial partition due to reimbursement claims and the gamesmanship that often occurs by lawyers to drain assets. In Acts 2022, No. 620, the Law Institute addressed concerns expressed by stakeholders regarding the authority of judges to allocate community property pending final partition by expressly stating that judges are not limited to a particular portion or percentage of the community. Further proposals concerning the allocation of community property are included in Senate Bill No. 29 of the 2024 Regular Session.

Concerning House Resolution No. 109, the Committee consulted with Disability Rights Louisiana and Louisiana Right to Life in their study of the law relative to consent of a curator to an abortion or sterilization of an interdict. The Committee was surprised to learn that Louisiana law did not have more safeguards in place and conducted research and drafted proposals to enact procedural due process protections. The Committee remained concerned, however, with the qualifications of attorneys appointed in this area, the payment of expert witness fees, participation by remote technology, staying the judgment during appeal, and expedited appeal delays. Although the Marriage-Persons Committee's draft was inchoate and the Law Institute process not complete, the language of the draft was used as the basis of House Bill No. 146 of the 2022 Regular Session. The bill was met with heavy resistance at the Committee level, primarily from parents of interdicts, who noted that the impact of the bill would be to greatly increase costs for them, in part because of additional procedures recommended in order to increase due process for the interdicted individual. The bill was ultimately defeated on the House floor, and the Marriage-Persons Committee later reflected upon the objections to House Bill No. 146, current developments in federal and state law relating to abortion (effectively prohibiting it in a way that had not been the law at the time of the Committee's draft), and Louisiana's Supported Decisionmaking Agreement Act, which was passed in 2020 and aims to give interdicts greater involvement in decisions affecting their health and well-being. As a result, and with the recognition that Louisiana interdiction law is not perfect, the Committee submitted a report in 2023 recommending no changes at this time.

Pursuant to its continuous revision authority, the Committee introduced legislation in 2022 concerning the use and occupancy of the family home, the intent of which was to eliminate issues for practitioners and litigants by permitting the request of rental value at any time after the petition for divorce is filed but providing that the award of rent only applies from the moment that the issue is raised. These proposals were enacted by the Legislature as Acts 2022, No. 620.

Following the 2022 Regular Session, the Marriage-Persons Committee was assigned both House Concurrent Resolution No. 94 requesting the study of the Uniform Collaborative Law Act and House Resolution No. 242 requesting the study of the judicial standard set forth in *Bergeron v. Bergeron*, 492 So. 2d 1193, 1200 (La. 1986). During meetings relative to House Concurrent Resolution No. 94, the Committee received input from attorneys and other licensed professionals currently practicing or participating in the collaborative law process concerning its benefits and

the need to establish a formal framework in Louisiana. The Committee also learned from the Uniform Law Commission that twenty-three states have adopted this tool, which has been shown to reduce conflict and to be a less expensive alternative to litigation. Fifteen of these states have also limited the application of this process to family law matters and reiterated that its use is strictly voluntary and cannot be mandated over the objection of a party. Senate Bill No. 188 of the 2024 Regular Session, which was introduced on recommendation of the Law Institute, would codify the Uniform Collaborative Law Act in Louisiana but would limit its application to family law matters.

With respect to House Resolution No. 242, the Committee conducted and reviewed fifty-state research and noted that there are numerous jurisprudential decisions each year that highlight the inconsistencies in the application of the *Bergeron* standard. Members of the Committee expressed the importance of adding clarity to the law for the benefit of self-represented litigants and educating lawyers and judges regarding the second segment of the standard that is often overlooked and misunderstood. As a result, the Law Institute proposed House Bill No. 722 of the 2024 Regular Session to codify the standard set forth by the Louisiana Supreme Court for modification of custody orders pursuant to considered decrees in *Bergeron* as well as the existing and lesser standard for modifying consent decrees. The proposed legislation would also address the treatment of judgments that arise from hybrid proceedings, in which the court hears evidence of parental fitness but the parties ultimately agree to an award of custody.

Senate Resolution No. 31 of the 2023 Regular Session requested the Law Institute to study whether a limited continuing tutorship should be established and specifically noted the unique nature of continuing tutorship and the tutor's authority and ability to make all decisions on behalf of another individual. The Marriage-Persons Committee considered recent movements throughout society and in the law to permit persons with disabilities to take more responsibility for themselves. After consultation with practitioners and experts in this field, the Law Institute recommended Senate Bill No. 61 of the 2024 Regular Session, which would create a limited continuing tutorship as a less expensive and quicker alternative to seeking a limited interdiction and would also expand continuing tutorship criteria to include adaptive functioning considerations in addition to intellectual functioning. Depending upon the order of the court, it would be possible, under this expansion, for a person under continuing tutorship to marry, enter into contracts and obligations, make medical decisions, and participate in the electoral process.

Over the next few years, the Marriage-Persons Committee plans to continue studying issues pertaining to the marriage of minors, the retroactivity of divorce, and the delayed issuance of birth certificates.

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

The Marriage-Persons Committee, under the direction of its Chair Professor Katherine S. Spaht, has received Council approval of revisions to Chapter 1 of Title VIII of Book I of the Civil Code relative to tutorship. The two main goals of this revision are to reunite custody and tutorship and to move the substantive provisions of tutorship from the Code of Civil Procedure to the Civil

Code. The proposal also addresses 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.

In conjunction with this substantive revision of the law on tutorship, Professor J. Randall Trahan and the Tutorship Procedure Committee are working to complete a revision of the provisions of law relative to tutorship procedure. Once the Law Institute's Council has approved this proposal, the Marriage-Persons Committee and the Tutorship Procedure Committee will recommend companion bills to comprehensively revise the law of tutorship.

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 Act No. 25 of the 2000 First Extraordinary Session, provided 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 originally revised by Professor A.N. Yiannopoulos' Committee, with minor amendments being made as their necessity became apparent. In 1990, the Ownership in Indivision Committee recommended the addition of Title VII of Book II of the Civil Code. 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 the Component Parts Committee reviewed Civil Code Article 466 and its conflicting jurisprudence. The Law Institute presented House Bill No. 594 of the 2006 Regular Session, which was ultimately enacted as Acts 2006, No. 765. After reconsidering the issues and principles of this subject, the Law Institute submitted further recommendations that were ultimately enacted as Acts 2008, No. 362.

During the 2018 Regular Session, House Concurrent Resolution No. 102 requested the Law Institute to make recommendations regarding the classification of modular homes as movable or immovable property and to develop the legal procedure for their attachment to land and securing them as loan collateral. In fulfillment of this request, the Law Institute reconstituted its Property Committee, placing it under the direction of Professor Sally Brown Richardson as Reporter, and the Committee finalized recommendations to add a definition of modular homes to the Manufactured Home Property Act and to rework the immobilization and deimmobilization

processes. These recommendations were submitted to the Legislature as Senate Bill No. 63 of the 2024 Regular Session.

Pursuant to its continuous revision authority, the Property Committee proposed the repeal of the unconstitutional extension of the homestead exemption to bond for deed property, which was enacted as Acts 2020, No. 20. Following the 2022 Regular Session, the Committee also considered House Concurrent Resolution No. 114, which urged and requested the Law Institute to study the feasibility of codifying certain prevailing appellate and Supreme Court cases interpreting R.S. 38:113 relative to levee and drainage districts having control over and preserving the efficiency of public drainage channels or outfall canals. The Committee carefully reviewed *Terrebonne v. Matherne* along with the other listed jurisprudence and concluded that revising the law to address the numerous specific individual actions that levee and drainage districts can (or cannot) take is not feasible. As a result, the Law Institute submitted a report to the Legislature in 2023 recommending that no changes be made at this time, particularly in light of the fact that the requirements for the application of the existing statute are clear from its text and have been consistently applied in all of the reported cases. The Committee will continue to monitor the manner in which courts interpret and apply these provisions in the future.

The Property Committee plans to continue its review of the articles of the Civil Code on enclosed estates and utility servitudes as well as the good faith purchaser doctrine, the classification of “other constructions,” and accession.

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

The Law Institute’s Successions and Donations Committee operated under the leadership of Max Nathan, Jr. for many years, and during that time the Committee prepared a revision to the law of forced heirship, enacted as Act 77 of the 1996 First Extraordinary Session; completed work on undue influence, enacted as Acts 1991, No. 363; and comprehensively revised the entire law of successions, enacted as Acts 1997, No. 1421. The Committee then completed a projet on the independent administration of estates, enacted as Acts 2001, No. 974, as well as revisions of the law of donations inter vivos and usufruct, enacted as Acts 2008, No. 204 and Acts 2010, No. 881, respectively. The Committee also submitted several reports to the Legislature on topics including the use of translators in the preparation of wills, the right of a testator to designate an attorney for the executor, heirship property and the unopened succession, the testamentary disposition of the right to bring a survival action, the feasibility of creating a central database for testaments, and mandatory mediation or arbitration provisions in wills and trusts. Additionally, as requested by Senate Concurrent Resolution No. 63 of the 2016 Regular Session, the Committee recommended against introducing the common law notion of expressly authorizing a testator to refer in his testament to a written statement or list to dispose of certain items of corporeal movable property. The Committee also did considerable work on the law requiring the filing of a sworn descriptive list of assets and liabilities or an inventory before a successor may be placed in possession of property. The Committee proposed a revision to Code of Civil Procedure Article 3396.18 to

remove the requirement that this information be made available to the general public, which was ultimately enacted as Acts 2017, No. 198.

The Successions and Donations Committee now operates under the direction of Professor Ronald J. Scalise, Jr. as Reporter and has completed its work on House Concurrent Resolution No. 52 of the 2018 Regular Session, which requested the Law Institute to study whether inherited retirement accounts and other tax-deferred arrangements should generally be exempt from seizure, and if so, to what extent. In advance of the 2022 Regular Session, the Committee submitted recommendations, along with a report, that would have legislatively overruled the decision in *In re Everett*, 520 Bank. 498 (E.D. La. 2014), and expanded the applicability of the law to exempt all inherited individual retirement accounts or individual retirement annuities, but these recommendations have not yet been enacted.

Pursuant to its continuous revision authority, the Committee proposed several changes to the law of successions on issues such as the calculation of the legitime of grandchildren, the calculation of the active mass of a succession, the execution of out-of-state wills, independent administration, and successions without administration, all of which were enacted as Acts 2020, No. 19.

Pursuant to Acts 2021, No. 167, the Successions and Donations Committee was tasked with drafting Comments relative to the Louisiana Uniform Transfer of Death Security Registration Act. These Comments were approved by the Law Institute's Council and have been published. The Committee also began studying the Uniform Partition of Heirs' Property Act as directed by House Resolution No. 201 of the 2021 Regular Session, which further directs the Law Institute to work with the Louisiana Realtors Association, the Louisiana Appleseed Center, the Louisiana Land Title Association, the Louisiana Association of Independent Land Title Agents, the Uniform Law Commission, and the Bankers Association, and a special advisor was also appointed to provide property law expertise. Although eighteen states have adopted the Uniform Partition of Heirs' Property Act, the Committee was wary that a wholesale adoption could have unintended consequences in Louisiana. Therefore, the Committee attempted to draft a Louisiana Uniform Partition of Heirs' Property Act that encompasses existing R.S. 9:1113 and contains the required core concepts in order to be considered a state that has adopted the UHPA. After receiving feedback from the Law Institute's Council, the Committee will continue working to more narrowly tailor the application of its proposals.

Senate Resolution No. 194 of the 2021 Regular Session requests the study of all Code of Civil Procedure provisions regarding succession proceedings for purposes of updating and clarifying the law. Although Committee members have noted that they have rarely encountered these issues in practice, the Committee has conducted initial research and plans to propose minor changes to clarify and modernize the law in this area for introduction during the 2025 Regular Session.

Under its continuous revision authority, the Successions and Donations Committee considered the automatic revocation of beneficiaries upon divorce in the insurance and retirement contexts to align this concept with the Trust Code and testament law. Proposed legislation was introduced as House Bill No. 213 of the 2022 Regular Session, and although that bill failed to pass, Senate Bill No. 49 of the 2024 Regular Session contains many of the same recommendations. The Committee also reviewed Civil Code Articles 897 and 898 regarding ascendants and the right of reversion and, despite the fact that these provisions have been in the Civil Code since 1825, recommended their repeal. This bill was submitted to the Legislature and ultimately enacted as Acts 2022, No. 40.

The Committee has continued exploring issues relative to small successions, will formalities, notice requirements, collation, unworthy successors, and no contest clauses. Upon receipt of House Concurrent Resolution No. 121 of the 2023 Regular Session, the Committee began focusing on alternatives for low-income families and low-value properties relative to succession proceedings and hopes to have recommendations for introduction during the 2025 Regular Session. The Law Institute has also recommended Senate Bill No. 32 of the 2024 Regular Session, which clarifies provisions concerning small successions within the parameters of the existing framework to eliminate unnecessary complications and to include not only movable property and intestate successions, but also immovable property and testate successions under certain circumstances.

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

Professor Saul Litvinoff's work on the revision of Obligations 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.

The Law Institute's Obligations Committee was recently reconstituted under the direction of Professor Melissa T. Lonegrass as Reporter, and its first project was the study of provisions relative to contracts between online service providers and minors pursuant to Act 440 of the 2023 Regular Session. Specifically, this Act requested the Law Institute to study the impact this legislation is expected to have on the relevant Civil Code articles concerning contracts and consent as they relate to minors, make recommendations to address any discrepancies or ambiguities associated with the matters contained in the Act, and review similar legislation enacted in other states regarding best practices and compatibility with Louisiana's Civil Code. The Committee met several times to consider relevant information from stakeholders and the bill's author and submitted a report to the Legislature containing several recommendations for revisions. The Law Institute's recommendations were incorporated by the author into House Bill No. 123 of the 2024 Regular Session.

The Obligations Committee has been granted continuous revision authority and will remain a standing Committee of the Law Institute to receive projects and propose revisions to Louisiana's provisions on obligations as needed in the future.

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

Professor A.N. Yiannopoulos and the Quasi-Contracts Committee completed work on the revision of Chapters 1 and 2 of Title V of Book III concerning 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 the Committee later prepared a refinement for accounting in community property that was enacted by Acts 1990, No. 991.

13. Book III, Title VII, Sale

Professor Saul Litvinoff and the Sales Committee began meeting in 1986 and submitted its complete revision to the Legislature in 1992. The bill was deferred 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 the members who worked on the revision of the law of Sales, Professor Saul Litvinoff revised the law of Exchange which was enacted as Acts 2010, No. 186.

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

Professor Symeon Symeonides and the Leases Committee revised Chapters 1 through 4 of Title IX of Book III to provide general provisions on lease that became Acts 2004, No. 821.

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

Professor A.N. Yiannopoulos and the Rents and Annuities Committee finished the revision of Title X of Book III of the Civil Code to eliminate the archaic articles relative to the rent of land and to modernize the annuity contract articles. The recommendations were enacted as 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 revised general provisions relative to a gratuitous loan in 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 enacted by Acts 2003, No. 491.

20. Book III, Title XIV, Of Aleatory Contracts

The Aleatory Contracts Committee, originally placed under the direction of Professor A.N. Yiannopoulos in 2014, now operates under Professor Ronald J. Scalise, Jr. as Reporter. The Committee's recommendation to repeal Articles 2982 through 2984 and restate those principles in the provisions on the unlawful cause of obligations was enacted as Acts 2019, No. 106.

21. Book III, Title XV, Representation and Mandate

Professor A.N. Yiannopoulos and the Mandate Committee's revision to provide general principles relative to representation and the contract of mandate was enacted as Acts 1997, No. 261.

22. Book III, Title XVI, Suretyship

Under the leadership of Professor Thomas A. Harrell, the work on Suretyship was enacted by the Legislature in Acts 1987, No. 409.

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

Professor Saul Litvinoff revised the law of transaction or compromise after several years of policy recommendations by the Council. The Legislature enacted them as Acts 2007, No. 138.

24. Book III, Title XVIII, Of Respite

Professor A.N. Yiannopoulos and the Committee recommended the repeal of Title XVIII of Book III of the Civil Code because the articles had not been used in nearly a century and Acts 2014, No. 64, accomplished the goal.

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 the Committee revised mortgages in Acts 1991, No. 652 and Acts 1992, No. 1132. The work on registry 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 a Committee revised Title XXIII in Acts 1982, No. 187. Title XXIV was revised in 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 the Definitions Committee completed a project of repealing unnecessary definitions in Civil Code Article 3506 in Acts 1999, No. 503. Since that time, several new and arguably unnecessary definitions have been added, and 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. as Reporter. The Committee has nearly completed its work and will present its recommendations to the Legislature soon.

28. Book IV, Conflict of Laws

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

B. 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. and, as of 2022, Judge Guy Holdridge as Reporter, constant attention is given to keep the provisions of the Code of Civil Procedure and related statutes current with changing times and the needs of the law.

House Concurrent Resolution No. 88 of the 2018 Regular Session urged and requested the Law Institute to study the effects of enacting a law that would allow courts to raise prescription *sua sponte* in lawsuits. The Code of Civil Procedure Committee, in conjunction with the Law Institute's Prescription Committee, considered the concern expressed in the resolution surrounding the possibility that default judgments on prescribed debts could result in unenforceable obligations being treated as effective if unrepresented consumers fail to raise a defense of prescription. Ultimately, these Committees drafted narrowly tailored amendments to certain provisions of the Civil Code and Code of Civil Procedure, which were submitted to the Legislature in House Bill No. 176 of the 2020 Regular Session. The bill also made continuous revisions to the Code of Civil Procedure on topics such as class action certification, the pleading of damages, restrictions on

subpoenas, consolidation, jury instructions, the form and amendment of final judgments, jurisdiction of trial and justice of the peace courts, and witness fees. Although this proposed legislation was deferred for a year due to the onset of the COVID-19 pandemic, it was ultimately enacted by the Legislature as Acts 2021, No. 259.

House Resolution No. 283 and Senate Resolution No. 254 of the 2019 Regular Session urged and requested the Law Institute to study Louisiana's in forma pauperis and related laws as applied by courts to clarify and limit misinterpretation of existing law and to ensure consistent application in all courts. Pursuant to these requests, the Committee formed an In Forma Pauperis Subcommittee, the membership of which includes academicians, judges, and representatives of the Louisiana State Bar Association, the Louisiana Supreme Court, and the Clerks of Court Association, among others. The Subcommittee recommended two preliminary amendments, which were submitted to the Legislature as House Bill No. 568 of the 2020 Regular Session, to address the immediate concerns raised in the resolution. Although these proposed revisions were deferred for a year due to the onset of the COVID-19 pandemic, they were ultimately enacted by the Legislature as Acts 2021, No. 416. The Subcommittee plans to continue its review of Louisiana's laws on in forma pauperis and to recommend additional amendments as necessary in the future.

Additionally, pursuant to its continuous revision authority and in response to a request from the Louisiana Supreme Court, the Code of Civil Procedure Committee formed a Recusal Subcommittee to study existing provisions with a view toward recommending amendments that would eliminate the confusion surrounding the applicability of the "appearance of impropriety" standard in Canon 3C of the Code of Judicial Conduct. The Subcommittee met several times to craft revisions to the Code of Civil Procedure articles on recusal, including clarifying the grounds for recusal and updating the procedures that apply when a judge is recused, and these proposed amendments were submitted to the Legislature as House Bill No. 156 of the 2020 Regular Session. Again, these revisions were deferred for a year due to the onset of the COVID-19 pandemic, but the Legislature ultimately enacted them as Acts 2021, No. 143. A few additional revisions on issues concerning recusal were submitted to the Legislature and enacted as Acts 2022, No. 38.

The Law Institute's Code of Civil Procedure Committee was also assigned House Resolution No. 50 of the 2020 Regular Session, which requested the Law Institute to study the rules of preliminary defaults and make recommendations to enhance judicial efficiency and clarity. After considering the history of preliminary defaults in Louisiana and the fact that they are presently serving little practical purpose, the Committee recommended the elimination of the concept of preliminary defaults from Louisiana law. These proposals, along with a final report, were submitted to the Legislature during the 2021 Regular Session and were ultimately enacted as Acts 2021, No. 174.

Pursuant to its continuous revision authority, the Code of Civil Procedure Committee proposed amendments that would modernize certain provisions of the Code by allowing for electronic signing, conducting judicial proceedings via audio-visual means, and providing for

email service in certain contexts. These revisions were also submitted to the Legislature during the 2021 Regular Session and were enacted as Acts 2021, No. 68.

In 2022, House Concurrent Resolution No. 71 urged and requested the Law Institute to study the Louisiana Supreme Court's Office of Language Access Stakeholder Committee's proposed changes and provide recommendations, if any, to the laws on the use of interpreters in court proceedings to enhance judicial efficiency and clarity within the rules of evidence and procedure. Pursuant to this request, the Code of Civil Procedure Committee collaborated with representatives of the Office of Language Access and the Law Institute's Code of Criminal Procedure Committee to propose several changes to the Code of Evidence and the Codes of Civil and Criminal Procedure. These proposals were submitted to the Legislature as Senate Bill No. 103 of the 2024 Regular Session along with an accompanying report.

The Committee was also assigned Senate Concurrent Resolution No. 18 of the 2022 Regular Session, which urged and requested the Law Institute to study and make recommendations for the revision of Code of Civil Procedure Article 966(B)(3) to authorize the filing of additional documents in the form of rebuttable evidence with a reply memorandum in response to a motion for summary judgment. Pursuant to this request, the Committee formed a Summary Judgment Subcommittee, the membership of which included academicians, judges, and practicing attorneys. The Subcommittee met several times and ultimately determined that the removal of the statutory proscription relative to additional documents with reply memoranda was inappropriate. The Law Institute submitted a report to this effect in January of 2023, but the Code of Civil Procedure Committee utilized the Subcommittee's study to propose several suggestions to enhance summary judgment procedure. These suggestions were submitted to the Legislature during the 2023 Regular Session and were ultimately enacted as Acts 2023, No. 317.

Additionally, pursuant to its continuous revision authority, the Code of Civil Procedure Committee proposed revisions during the 2023 Regular Session to provide for actions pending in Louisiana courts, abandonment in trial and appellate courts, objections raised by declinatory and peremptory exceptions, unopposed motions, supplemental pleadings, privilege logs within the scope of discovery, notice in default judgment, signing of final judgments, temporary restraining orders, and affidavits of poverty. These revisions were enacted by the Legislature as Acts 2023, No. 5.

House Concurrent Resolution No. 22 of the 2023 Regular Session authorized and directed the Law Institute to study procedures in civil actions that require the mailing of notice with respect to the commencement of certain deadlines for answers or responses or for appearance before the court for certain motions and other hearings. The Committee worked with stakeholders to consider practical solutions but ultimately identified several issues preventing the promulgation of revision, including the lack of uniformity with respect to usage of electronic mailing and inconsistency with respect to the various forms of physical mail. A report detailing the Committee's findings was submitted to the Legislature in February of 2024.

Senate Resolution No. 43 of the 2023 Regular Session urged and requested that the Law Institute propose legislation to enact, amend, and repeal laws in order to implement and revise procedures for the electronic filing of legal documents; the electronic filing of documents in the conveyance and mortgage records; the retention, maintenance, preservation, and disposition of original paper documents once converted to electronic record; public access to all public records, including ease of functionality and viewing; and maintaining the integrity of public records, including original documents. In fulfillment of this request, the Committee reviewed the report of the legislative task force studying electronic filing, recording, and retention before meeting with representatives of the Clerks of Court Association to discuss the project's goals. The Code of Civil Procedure Committee also found it necessary to refer certain aspects of this study to the Law Institute's Code of Criminal Procedure and Security Devices Committees. Preliminary amendments to address the resolution's concerns regarding electronic filing of documents and retention were proposed by all three Committees and submitted to the Legislature as Senate Bill No. 75 of the 2024 Regular Session. With respect to outstanding issues, the Law Institute plans to continue working with stakeholders to revise applicable provisions of Title 44 and to recommend additional amendments in the future.

Moreover, pursuant to its continuous revision authority, the Code of Civil Procedure Committee studied existing provisions of law and proposed several amendments to provide for interruption of prescription, electronic signature of pleadings, procedure for challenging experts, depositions by telephone, peremptory exceptions filed in an appellate court, injunctions prohibiting sales, descriptive lists of property in lieu of inventory, and notice to heirs and residuary legatees. The Committee's proposed changes were submitted to the Legislature as House Bill Nos. 227 and 803 of the 2024 Regular Session. Additional revisions aiming to reconcile the language of federal and state law with respect to the Code of Evidence have been submitted to the Legislature as Senate Bill No.16 of the 2024 Regular Session.

In the coming years, the Committee will continue to study provisions relating to partial final judgments, injunctions, and the calculation of time delays, among others, and will propose legislation as necessary.

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

In response to changes in society and from the 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.

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 formed a Postconviction Relief Subcommittee that drafted legislation to comprehensively revise the articles on both capital and noncapital postconviction. This revision, which satisfied both resolutions, was submitted to the Legislature as House Bill No. 223 of the 2020 Regular Session and, after being deferred for a year, as Senate Bill No. 109 of the 2021 Regular Session. Although these bills ultimately failed to pass, a compromise concerning the enactment of actual innocence as a ground for postconviction relief was reached by the stakeholders during the 2021 Regular Session, and the Law Institute has continued to monitor issues concerning postconviction relief, including the Louisiana Supreme Court's decision in *State v. Lee*, since that time. As a result, the Committee submitted a few clean-up proposals that were introduced by the Legislature as House Bill No. 159 of the 2024 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 conducted 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 act in consultation with the Marriage-Persons Committee and the appropriate agencies and associations to consider this research and to make recommendations concerning both revisions and additions to existing law.

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 Committee identified 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. The Committee also considered several issues that were referred to them for review, including the applicability of the revisions to habitual offender penalties, reducing penalties for possession of legend drugs, the applicability of R.S. 14:67 to cheating and swindling, and potential eligibility for drug division probation programs. Considering the delicate balance of interests that was achieved during the legislative process with respect to policy decisions and the importance of preserving the compromises that took place among the various stakeholders, the Committee generally recommended that no changes be made to these provisions at this time. A final report to this effect was submitted to the Legislature in November of 2020.

House Concurrent Resolution No. 100 of the 2018 Regular Session urged and requested the Law Institute to study and review Louisiana laws regarding bail, specifically the presumed release of a person on unsecured personal surety or bail without surety. The Committee reviewed and considered a report prepared by the Criminal Justice Committee of the Louisiana State Bar Association, as well as the work done by the Law Institute's Bail Bond Procedure Revision Committee to comprehensively revise the provisions on bail. Ultimately, the Committee agreed to form a Subcommittee on bail to consider these issues and report back to the Legislature with any appropriate recommendations. Additionally, House Concurrent Resolution No. 4 of the 2018 Third Extraordinary Session urged and requested the Law Institute to make recommendations relative to the expungement of arrest and conviction records. The Committee discussed and conducted research with respect to several specific concerns that gave rise to the resolution, including multiple expungements resulting from a single arrest with multiple charges, the "vicious circle" created by cost-prohibitive expungements and the ability to obtain jobs, and the need to streamline and unify fees imposed throughout the state. The Committee also reviewed recent legislation on the topic of expungement, including Acts 2019, No. 1 and Acts 2020, Nos. 70, 71, 73, 79, and 132, and considered the formation of the Clean Slate Task Force pursuant to legislative resolutions in 2019 and 2020. The Committee issued its final report to the Legislature concerning expungement fees in January of 2021.

During the 2019 Regular Session, several more resolutions were sent to the Law Institute and referred to the Criminal Code and Code of Criminal Procedure Committee. House Concurrent Resolution Nos. 46 and 47 urged and requested the Law Institute to study the Model Vulnerable Road User Law and its applicability in Louisiana and to recommend proposed legislation providing penalties for causing injury or death to pedestrians and bicyclists while operating a motor vehicle. In fulfillment of these requests, the Committee formed a Vulnerable Road Users Subcommittee, which considered existing criminal penalties and civil remedies, as well as legislation that was proposed during the 2016 Regular Session but failed to pass. The Subcommittee crafted recommendations that were presented to and ultimately rejected by the Committee, and in the meantime, House Concurrent Resolution No. 95 of the 2021 Regular Session was passed asking the Law Institute to consider whether the creation of the crime of infliction of serious injury or death on a road user is necessary. The Subcommittee has continued its work over the past few years and explored alternative solutions to addressing this problem, such as the possibility of enacting a handsfree law, ultimately adopting a final report that will be submitted to the Legislature in 2024.

Also during the 2019 Regular Session, Senate Concurrent Resolution No. 138 urged and requested the Law Institute to study and make recommendations relative to victims and witnesses of a crime. The Committee was assigned this project, which resulted from legislation that was proposed during the 2019 Regular Session but ultimately failed to pass, and agreed to form a study group comprised of the various stakeholders involved in legislative negotiations. After receiving additional information concerning the fact that the issues raised in the resolution are no longer an

issue in practice, the Law Institute will submit a final report to the Legislature in 2024 concluding that no changes are necessary at this time.

Pursuant to its continuous revision authority, the Committee drafted, and the Law Institute proposed, House Bill No. 329 of the 2020 Regular Session concerning the availability of pre-parole investigation reports. This proposal, which was presented to the Committee by representatives of the Louisiana Center for Children's Rights, would have provided the offender with the right to receive a copy of the pre-parole report, provided that certain precautions with respect to confidentiality of victim information were taken. The bill, however, ultimately failed to pass. The Committee also drafted proposed revisions to the articles of the Code of Criminal Procedure on recusal, and these revisions were submitted to the Legislature during the 2022 Regular Session and ultimately enacted as Acts 2022, No. 42.

In 2022, House Concurrent Resolution No. 71 urged and requested the Law Institute to study the Louisiana Supreme Court's Office of Language Access Stakeholder Committee's proposed changes and provide recommendations, if any, to the laws on the use of interpreters in court proceedings to enhance judicial efficiency and clarity within the rules of evidence and procedure. Pursuant to this request, the Code of Civil Procedure Committee referred its proposals to amend the Code of Evidence to the Code of Criminal Procedure Committee for review and approval. These proposals were submitted to the Legislature as Senate Bill No. 103 of the 2024 Regular Session along with an accompanying report.

Senate Resolution No. 43 of the 2023 Regular Session urged and requested that the Law Institute propose legislation to enact, amend, and repeal laws in order to implement and revise procedures for the electronic filing of legal documents; the electronic filing of documents in the conveyance and mortgage records; the retention, maintenance, preservation, and disposition of original paper documents once converted to electronic record; public access to all public records, including ease of functionality and viewing; and maintaining the integrity of public records, including original documents. In fulfillment of this request, portions of this project were referred to the Code of Criminal Procedure Committee by the Law Institute's Code of Civil Procedure Committee, particularly with respect to the retention of documents and evidence in criminal cases. Preliminary amendments to address the resolution's concerns regarding electronic filing of documents and retention were proposed by these Committees and submitted to the Legislature as Senate Bill No. 75 of the 2024 Regular Session. With respect to outstanding issues, the Law Institute plans to continue working with stakeholders to revise applicable provisions of Title 44 and to recommend additional amendments in the future.

Additionally, Senate Resolution No. 150 of the 2023 Regular Session requests the Law Institute to make recommendations on provisions of justification and use of force or violence in defense as applied to survivors of domestic violence. The Committee considered background information and the proposed legislation upon which the resolution was based – Senate Bill No. 215 of the 2023 Regular Session – along with the Louisiana Supreme Court's decision in *State v.*

Curley and research concerning the manner in which other states address these issues. The Committee has begun considering the first of two avenues of providing relief to criminalized survivors – reduced sentencing when certain criteria are satisfied – but expressed concerns over the extent to which these revisions should be applied retroactively, as the most egregious of these cases based on outdated notions of intimate partner violence occurred decades ago. Additional narrowing language may be necessary with respect to issues such as burdens of proof, definitions of fraud, and others, such that work concerning this topic remains ongoing.

E. MINERAL CODE

The initial work of the Law Institute in preparing the Mineral Code was enacted by Acts 1974, No. 50, and little change has been required over the years since. Nevertheless, the Law Institute has been assigned several issues relative to mineral rights in recent years, including legacy disputes, the unsolicited offers, and the classification of mineral royalties in bankruptcy proceedings, and the nature of production payments as “rent.” Summaries of these projects can be found in Section J below.

F. CHILDREN’S CODE

The Children's Code was enacted by Acts 1991, No. 235, which directed the Law Institute to supervise the continuous revision, clarification, and coordination thereof. The Law Institute formed a continuous revision Children’s Code Committee, of which Mr. Richard Pittman now serves as Reporter.

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 abuse of incentives in adoptions, the 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 were enacted by Acts 2018, No. 562. The Committee was also assigned House Resolution No. 204 of 2018 Regular Session to study nonidentifying data maintained by the Department of Children and Family Services relative to fees, charges, and living expenses reported in Adoption Disclosure Affidavits, and this project remains ongoing. The Committee also issued a report in response to House Resolution No. 306 of the 2019 Regular Session, which urged the Law Institute to study changing the period of time for finalizing an adoption from one year to six months and to review and summarize other states' laws on this issue.

Pursuant to its continuous revision authority, the Committee studied various 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 enacted as Acts 2018, No. 296. The use of restraints on children during juvenile court proceedings proposals were submitted as House Bill No. 187 of the 2018 Regular Session, and, after several amendments during the process, were enacted as Acts 2018, No. 453. The third of these issues, the placement of youth in the custody of the Department of Children and Family Services, became Acts 2018, No. 321. The Committee also drafted proposals to conform the Domestic Abuse Assistance Act in the Children's Code with the Domestic Abuse Assistance Act in Title 46 of the Revised Statutes and to address various other housekeeping issues. These bills were submitted to the Legislature as House Bill No. 544 and Senate Bill No. 227 of the 2020 Regular Session, respectively, but consideration of them was deferred due to the onset of the COVID-19 pandemic. The continuous revision legislation was enacted during the 2021 Regular Session as Acts 2021, No. 158, and the bill to provide consistency in the Domestic Abuse Assistance Act was introduced as House Bill No. 560 of the 2022 Regular Session but failed to pass.

The Children’s Code Committee proposed additional legislation during the 2022 Regular Session to address various issues identified during a judicial bench book study and by members of the Committee and other interested parties, including service and notice, the cost of transcription, reasonable efforts conducted by the Department of Children and Family Services, early appointment of counsel, and safety protocols. These proposals were enacted by the Legislature as Acts 2022, No. 272. Additionally, the Committee has proposed a continuous revision bill during the 2024 Regular Session as Senate Bill No. 39 to address matters relative to advising children of their rights; provisions concerning guardianship, care and treatment, and written findings of fact; providing notice to children’s attorneys; clarifying the right to counsel; and making various technical corrections.

The Committee will continue its efforts to amend provisions throughout the Children’s Code relative to commitment and admission, especially in the mental health context; advice of rights; confidentiality; notice of placement; effect of judgments; appealable judgments; and foster care.

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.

The Trust Code Committee has considered a number of continuous revision issues over the years, 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. The Committee’s revisions to the provisions of the Trust Code on the allocation of receipts and expenses to income and principal were submitted

to the Legislature as House Bill No. 123 of the 2020 Regular Session, and other continuous revisions concerning who may be trustee and the relief of a trustee from liability by a beneficiary were included in House Bill No. 124 of the 2020 Regular Session. These bills were enacted as Acts 2020, Nos. 17 and 18, respectively. The Committee also drafted a proposal that would provide that the duties of the trustee are owed exclusively to the settlor while a trust is revocable unless the trust instrument provides otherwise, and this proposed revision was enacted by the Legislature as Acts 2022, No. 37.

The Trust Code Committee was also assigned two resolutions in recent Sessions – the first, House Resolution No. 49 of the 2020 Regular Session, urged and requested the Law Institute to study and make recommendations concerning the laws on trusts with an indefinite term or perpetual trusts. An interim report in response to this resolution was submitted to the Legislature in 2021, and the Trust Code Committee has been working to draft revisions that would extend the maximum term of trusts. The Committee will submit its final report on this topic once it receives approval of its recommendations from the Law Institute’s Council. The second recent resolution assigned to the Committee was Senate Concurrent Resolution No. 10 of the 2020 Second Extraordinary Session, which urged and requested the Law Institute to study certain trust protections for minors or disabled adults, such as pooled trusts or blocked accounts, as well as other matters pertaining to out of state corporate trustees or pooled trustees operating under nonprofit status. The Committee received information from stakeholders concerning pooled trusts in other states and drafted legislation that would permit these pooled trusts to be utilized in Louisiana and would also provide protections for minors and persons with disabilities who qualify for special needs trusts or other benefits under federal law. These proposals were submitted to the Legislature and have been introduced as Senate Bill No. 80 of the 2024 Regular Session.

The Committee also plans to continue its work crafting revisions concerning confusion or merger of trusts, class trusts, conflicts of law concerning trusts, and other issues over the coming years.

H. CODE OF EVIDENCE

The Evidence Committee and a special Subcommittee thereof proposed an article on the "Identity of Informant" testimonial privilege which was introduced during the 1995 Regular Session and was enacted by 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 of the law was difficult to draft due to jurisprudential confusion and uncertainty surrounding the subject but the articles were ultimately enacted by Acts 1997, No. 577. Thus, the Code of Evidence Project was complete.

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. 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, 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. An interim report in February of 2013 provided information relative to the progress of this study. Since that time, the Committee has been reorganized under the leadership of Anthony DiLeo as Reporter for arbitration and Professor Bobby Harges as Reporter for mediation, and the work in drafting a new Binding Arbitration Law is ongoing. Currently, the Committee is working through the specific language of its proposed revisions to the Louisiana Binding Arbitration Law, using the Revised Uniform Arbitration Act as a template. The Committee's initial drafting is complete, and the text of all but a few remaining provisions has been adopted. The Committee hopes to complete its work on arbitration in time to seek Council approval of proposed legislation this fall for submission during the 2025 Regular Session. The Committee also plans to draft Comments and to consider the adoption of some form of the Delaware Rapid Arbitration Act, a set of opt-in-only rules that have helped Delaware arbitral parties save considerable time and money through an expedited arbitration process. Once these projects have been completed, the Committee will then turn its attention to Louisiana's mediation statutes.

2. 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. The Law Institute created the Common Interest Ownership Regimes Committee, of which Mr. Randy Roussel is now serving as Reporter. The Committee decided to begin by addressing the Homeowners Association Act, since it is the most recently enacted and also the most lacking in substance. Proposed legislation to replace this Act with the “Planned Community Act” was introduced as Senate Bill No. 109 of the 2022 Regular Session but was never heard. Since that time, the Committee collaborated with various stakeholders to alleviate concerns and has reintroduced an amended version of the bill as Senate Bill No. 23 of the 2024 Regular Session. The Committee has also completed its review of the Condominium Act and will begin seeking approval of these proposals from the Law Institute’s Council in the fall.

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 Law Institute submitted Senate Bill No. 190 of the 2018 Regular Session, which would have authorized 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. The bill, however, was never heard.

3. 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 previous reports on unconstitutional statutes to the Legislature in March of 2016, 2018, 2020, and 2022. Since that time, the Committee has continued to consider those provisions of Louisiana law that have been declared unconstitutional by final and definitive judgment and has submitted its fifth biennial report to the Legislature.

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. The Law Institute assigned this 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 determined that its final report to the Legislature, which will be submitted upon approval of its work from the Law Institute's Council, 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.

In addition, the Constitutional Laws Committee was also assigned House Concurrent Resolution No. 7 of the 2021 First Extraordinary Session, which authorized and directed the Law Institute to identify language in the Constitution that is outdated or transitional in nature and can be removed without affecting the substance of the provisions as well as to identify language that is unnecessary or obsolete, or that from a comparative or organizational perspective belongs elsewhere in the Constitution or in the Revised Statutes. Several potential nonsubstantive, technical changes were identified throughout the Constitution and included in conjunction with the Law Institute's report in response to the resolution, which was submitted to the Legislature in 2023.

4. 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 failed to pass. Over the course of the next year, the Committee continued to review the Model Business Corporation Act and introduced the Louisiana Business Corporation Act, this time as House Bill No. 319 of the 2014 Regular Session which became Acts 2014, No. 328.

Since the enactment of the Louisiana Business Corporation Act, the 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 this work, the Law Institute submitted House Bill No. 714 of the 2016 Regular Session, enacted as Acts 2016, No. 442, and House Bill No. 310 of the 2017 Regular Session, 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 Committee's work with respect to each of these issues is ongoing. The Committee determined that its first priority should be the revision of the laws of limited liability companies, and, now operating under the direction of Professor Lloyd "Trey" Drury, III as Reporter, the Committee has made significant progress in drafting proposed revisions, using the provisions of the Uniform Limited Liability Company Act (ULLCA) as a guide while also considering existing Louisiana LLC law, the ABA Prototype Act, the Louisiana Business Corporations Act, and relevant provisions of Delaware law.

Additionally, Senate Resolution No. 37 of the 2019 Regular Session urged and requested the Law Institute, in conjunction with the Louisiana Tax Institute, to study the feasibility of authorizing series limited liability companies in Louisiana. An interim report was issued to the Legislature explaining that it intends to address the issue of series LLCs in the context of its comprehensive revision of Louisiana LLC law. A final report will be submitted to the Legislature once this revision has been approved by the Law Institute's Council.

5. Employment Law Committee

Senate Resolution No. 100 of the 2021 Regular Session urged and requested the Law Institute to study and make recommendations relative to collateral consequences that can hinder persons with criminal records from obtaining employment or occupational licenses. Pursuant to this request, the Law Institute created an Employment Law Committee and placed it under the direction of Professor William R. Corbett as Reporter and Ms. Allison Jones and Ms. Vicki Crochet as Co-Chairs. The Committee's leadership met to consider preliminary research with respect to the employment-related collateral consequences mentioned in the resolution and also monitored legislation that was proposed during the 2022 Regular Session concerning this topic. Since that time, the Committee met and spoke with stakeholders to identify concerns and to receive information on current and future issues with respect to the collateral consequences of criminal

history. After conducting this study, the Committee crafted several revisions to the law, but upon presenting its recommendations to the Law Institute’s Council, received feedback that perhaps additional research should be performed and an accompanying report should be drafted. The Committee plans to submit revised proposals for consideration after further study, and a final report will be submitted to the Legislature once the Committee finalizes its recommendations and receives approval of its proposals from the Law Institute’s Council.

6. Lease of Movables 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 Movables 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. Therefore, the Law Institute created the Lease of Movables Act Committee and named Robert P. Thibeaux as its Reporter. Focusing first on threshold issues such as the confusion created by the interplay of the Louisiana Lease of Movables Act, the Uniform Commercial Code, and the law of conditional sales, the Committee determined that agnosticism is the best course of action as to the concept of title to leased property in the Lease of Movables Act. The Committee has twice presented to the Law Institute’s Council as to these underlying conceptual issues and has begun drafting its revisions to the Louisiana Lease of Movables Act.

Over the past few years, the Reporter has completed his first draft of the Lease of Movables Act revision, which the Committee is currently reviewing provision-by-provision at its meetings. As the Committee has progressed through the draft proposal, the Committee determined that Civil Code revisions would need to accompany the draft legislation, such as the enactment of a modified version of former Article 520 and a clarification concerning Article 525. These proposals were submitted to the Legislature during the 2023 Regular Session and were ultimately enacted as Acts 2023, No. 401. The Committee has continued its Civil Code drafting efforts, focusing on providing the fundamental principles on which its statutory revisions will build before determining which provisions of the current Lease of Movables Act are unnecessary or inconsistent in light of these Civil Code revisions. The Committee will then begin drafting revisions in accordance with the general substantive principles contained in UCC Article 2A and hopes to complete this work over the course of the coming year, for potential presentation of its proposals to the Law Institute’s Council in the fall of 2025 and for submission to the Legislature during the 2026 Regular Session.

7. 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, the Law Institute created the Lesion Beyond Moiety Committee and named Professor J. Randall Trahan Reporter. 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 and submitted an interim report in December of 2015 to provide an update with respect to the progress of this study.

Although 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 work is ongoing.

8. 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 operates under the direction of Mr. Patrick S. Ottinger as Reporter. The Committee formed a Subcommittee to research the history and reasoning for the classification of mineral royalties as “rent” in R.S. 31:123, and the Subcommittee ultimately recommended an amendment to address this issue. At the same time, however, Senate Bill No. 179 of the 2019 Regular Session proposed a revision that was almost identical. As a result, the Law Institute determined that no additional action is recommended, and a final report to this effect was submitted to the Legislature in November of 2020.

House Resolution No. 238 of the 2018 Regular Session urged and requested the Law Institute to study the classification of production payments under Louisiana law. The Committee considered several alternative solutions before ultimately determining that adding restrictive language to R.S. 31:212.21 would accomplish the goal of clarification without need for the addition of a new defined term. The Committee’s proposals were ultimately enacted as Acts 2020, No. 76, and a final report was submitted to the Legislature in November of 2020.

Since this time, the Committee has received several inquiries about various issues, including the possibility of legislatively overruling the jurisprudential “subsequent purchaser” rule, and has largely concluded that no action is warranted in response to most of these inquiries. With respect to R.S. 31:114 and the argument advanced but rejected in *Mathews v. Goodrich Oil Co.*, 471 So. 2d 938 (La. App. 2 Cir. 1985), *writ denied*, 475 So. 2d 1105 (Mem. 1985), however, the Committee agreed that a legislative solution was appropriate. Along with these revisions, the Committee also identified a number of minor issues throughout the Mineral Code that could be addressed via nonsubstantive revisions, and these proposals were submitted to the Legislature and ultimately enacted as Acts 2023, No. 88. The Committee has tentatively flagged an issue concerning the Risk Fee Act as one to monitor but currently has no other active projects at this time.

9. Notaries Committee

House Concurrent Resolution No. 31 of the 2018 Regular Session directed the Law Institute to prepare proposed legislation providing for the enactment of an electronic/remote notary law in Louisiana. Additionally, House Concurrent Resolution No. 86 of the 2018 Regular Session requested the Law Institute to study and make recommendations for the implementation of notaries public with limited authority. In response, the Law Institute reconstituted its previously existing Electronic Signatures Study Group and created a new Notaries Committee placed under the direction of Professor Melissa T. Lonegrass as Reporter.

The Committee's initial focus was on the drafting of an electronic notary law pursuant to House Concurrent Resolution No. 31, and these proposals were encapsulated in House Bill No. 514 of the 2019 Regular Session. The bill, however, was never heard on the House floor, and the Law Institute resubmitted its recommendations during the 2020 Regular Session. After several minor, nonsubstantive amendments were made, the proposed legislation was ultimately enacted as Acts 2020, No. 254.

After receiving approval of its remote notary revisions, the Committee also assisted the Secretary of State's office in drafting regulations to accompany Acts 2020, No. 254. This work involved meeting with technology providers and other stakeholders to craft specific regulatory rules for the technology utilized in the process of remote online notarization. The Secretary of State completed this work in August of 2021, and the rules have since been officially promulgated. Upon completing its work, the Committee returned its attention to the second resolution concerning notaries with limited authorities. One potential avenue for exploration identified by the Committee was a "deputy notary" system, whereby a civil law notary would be able to "deputize" a number of limited-authority notaries. Work on this project is still ongoing, but in light of recent developments in federal law concerning the SECURE Notarization Act, the Committee is presently monitoring the legal landscape before it reconvenes to take action.

10. 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. The Reporter prepared, and the Committee considered, a preliminary memorandum that included a number of issues, 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 completed its proposed revisions to the Code of Civil Procedure articles on petitory and possessory actions and to related provisions of the Civil Code and submitted a report to the Legislature in 2023, as well as proposed legislation that was ultimately enacted as Acts 2023, No. 421.

11. 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's proposed legislation 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 Prescription Committee concluded that no revision to the Louisiana Constitution concerning the inalienability or imprescriptibility of state mineral interests should be made, and a final report to that effect was submitted to the Legislature in November of 2020.

House Concurrent Resolution No. 88 of the 2018 Regular Session urged and requested the Law Institute to study the effects of enacting a law that would allow courts to raise prescription *sua sponte* in lawsuits. The Prescription Committee, in conjunction with the Law Institute's Code of Civil Procedure Committee, considered the concern expressed in the resolution surrounding the possibility that default judgments on prescribed debts could result in unenforceable obligations being treated as effective if unrepresented consumers fail to raise a defense of prescription. Ultimately, these Committees drafted narrowly tailored amendments to certain provisions of the Civil Code and Code of Civil Procedure, which were submitted to the Legislature in House Bill No. 176 of the 2020 Regular Session. The bill also made continuous revisions to the Code of Civil Procedure, and although this proposed legislation was deferred for a year due to the onset of the COVID-19 pandemic, it was ultimately enacted by the Legislature as Acts 2021, No. 259. A final report on allowing courts to raise the issue of prescription *sua sponte* was also submitted to the Legislature in November of 2020.

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. Two of these proposed revisions, along with a clarification concerning the interruption of prescription when a suit is discontinued or abandoned, were submitted to the Legislature as Senate Bill No. 377 of the 2020 Regular Session.

The bill was deferred for one year due to the onset of the COVID-19 pandemic before being enacted by the Legislature as Acts 2021, No. 414.

12. 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 detailing several 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 express requirement as to whether the re-fracking or reworking of an existing well should be re-proposed; and providing a 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 received approval of its recommendations from the Law Institute's Council and submitted them to the Legislature as Senate Bill No. 59 of the 2021 Regular Session. Due to opposition, the bill was not heard, and the Committee submitted its final report to the Legislature in May of 2021. During the 2021 Regular Session, however, a legislative task force called the Risk Charge Commission was created pursuant to Senate Concurrent Resolution No. 44, and that Commission proposed legislation during the 2022 Regular Session that was ultimately enacted as Acts 2022, No. 5.

13. Security Devices Committee

In order to continue the work of Professor Thomas A. Harrell and the 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. During the 2014 Regular Session, the Law Institute submitted a comprehensive revision of the laws relative to security, pledge, and registry which was enacted as Acts 2014, No. 281.

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. The Committee submitted a report in February of 2013 outlining the progress made in the modernization and revision of the law on security devices. Nevertheless, the Committee also concluded that revisions to the Private Works Act were needed 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. A comprehensive revision to the Private Works Act was submitted as House Bill No. 203 of the 2019 Regular Session and enacted with very few amendments as Acts 2019, No. 325.

Senate Resolution No. 152 of the 2022 Regular Session urged and requested the Law Institute to study and recommend legislation to implement procedures for conducting online judicial sales and to appoint as special advisors representatives of the Louisiana Bankers Association, Louisiana Sheriffs' Association, and Louisiana City Marshals and City Constables Association. The Committee worked with stakeholders from these various groups and online auction companies to draft revisions to the Code of Civil Procedure and related provisions of the Revised Statutes to permit Louisiana sheriffs, marshals, and constables to conduct online auctions. The Committee drafted safeguards concerning the consent and presence of the seizing creditor, the publication of notice and other information concerning the auction and bids made during the auction, the ability of the debtor to bid at the online auction, and the use of online auction companies and the fees and requirements associated with doing so. These recommendations were submitted to the Legislature during the 2023 Regular Session, and although the Law Institute's recommendation was ultimately removed due to changes made before the bill was filed, the proposed legislation was enacted as Acts 2023, No. 390. The Act also directed the Law Institute to review and add Comments to the proposals included in the legislation, and these Comments were published in the fall of 2023.

Senate Resolution No. 43 of the 2023 Regular Session urged and requested that the Law Institute propose legislation to enact, amend, and repeal laws in order to implement and revise procedures for the electronic filing of legal documents; the electronic filing of documents in the conveyance and mortgage records; the retention, maintenance, preservation, and disposition of original paper documents once converted to electronic record; public access to all public records, including ease of functionality and viewing; and maintaining the integrity of public records, including original documents. In fulfillment of this request, portions of this project were referred to the Security Devices Committee by the Law Institute's Code of Civil Procedure Committee, particularly concerning the preservation of conveyance and mortgage records. Preliminary amendments to address the resolution's concerns regarding electronic filing of documents and retention were proposed by these Committees and submitted to the Legislature as Senate Bill No. 75 of the 2024 Regular Session. With respect to outstanding issues, the Law Institute plans to continue working with stakeholders to revise applicable provisions of Title 44 and to recommend additional amendments in the future.

14. 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 this study.

Since that time, the Committee finalized its proposed amendments to Article VII, Section 25 of the Louisiana Constitution and continued its work revising related provisions of Title 47 of the Revised Statutes. The Committee also revisited issues such as whether to include statutory impositions like municipal liens in the tax auction process and whether to address issues related to blighted and abandoned property in the statutes dealing with adjudicated properties. During the finalization of the Committee's remaining draft revisions, the landmark United States Supreme Court decision in *Tyler v. Hennepin County*, 598 U.S. 631 (2023), forced the Committee to alter course and adopt an entirely new substantive framework. The Committee has since agreed in part on such a framework but remained divided on certain fundamental issues. In light of the importance of the revision and the recent jurisprudential developments generally, the Committee agreed to submit its recommendations in the form of a report to the Legislature, which included an overview and analysis of both the Committee's recommendations and the issues on which no consensus was reached. This report was approved by the Law Institute's Council and has been submitted to the Legislature. In addition, several bills to revise Louisiana's tax sales procedures were filed during the 2024 Regular Session, and the Law Institute is monitoring the progress of this proposed legislation.

15. 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 Reporter.

Acts 2011, No. 248 was based on the Committee's recommendation to repeal statutes that were no longer effective and to transfer certain laws to other Titles of the Revised Statutes. Further proposals to repeal more obsolete and ineffective statutes concerning the power of local governments to punish vagrancy and laying out public roads by a jury of freeholders were enacted in Acts 2012, No. 86. Presently, the Committee continues its work under the direction of Tina Righteous as Reporter after the retirement of Jimmy Dimos as Chair. The Committee anticipates further changes to its leadership over the coming months and will continue its work with the goal of submitting proposed legislation in the future.

16. Torts and Insurance Committee

House Resolution No. 220 of the 2019 Regular Session requested the Law Institute to study and make recommendations regarding the provisions of the Louisiana Insurance Code concerning the payment of claims, penalties, and attorney fees. Additionally, Senate Resolution No. 220 of

the 2019 Regular Session requested the Law Institute to study and make recommendations regarding certain aspects of the Louisiana Governmental Claims Act. In response to these resolutions, the Law Institute created a Torts and Insurance Committee and placed it under the guidance of Mr. Harry J. “Skip” Philips, Jr. and Mr. Donald Price as Co-Chairs and Professors Thomas Galligan and William Corbett as Co-Reporters.

After gathering background information on the topics outlined in each resolution, the Committee focused on House Resolution No. 220 and reconciling the two primary bad faith insurance statutes, R.S. 22:1892 and 1973. The Committee drafted amendments to make uniform the penalties and availability of attorney fees and costs, which were approved by the Council and submitted to the Legislature as House Bill No. 523 of the 2021 Regular Session. Although the bill received opposition and was ultimately withdrawn from the files of the House, the Committee remains willing to assist in the legislative process should a legislator wish to carry this proposal in the future.

With respect to Senate Resolution No. 220, the Committee’s Chairs and Reporters compiled information and feedback with respect to issues involving the Louisiana Governmental Claims Act. The Committee also requested commentary from both the Attorney General and the Office of Risk Management, and with such commentary in mind, the Committee’s work in response to Senate Resolution No. 220 continues.

The Torts and Insurance Committee was also assigned House Resolution No. 108 of the 2021 Regular Session relative to the intentional dissemination of personally identifiable information, or “doxing.” The Committee identified several significant issues implicated by legislative restrictions on doxing, including issues pertaining to the First Amendment and the exercise of personal jurisdiction, and conducted extensive research on these topics. The Committee ultimately advised against crafting a legislative solution to doxing and submitted a report to this effect to the Legislature in February of 2022.

Since that time, the Committee has taken up consideration of issues related to the waiver of uninsured motorist coverage under current Louisiana law. The Committee has met to discuss this issue several times and has produced an initial draft revision of R.S. 22:1295. The Committee is also working toward drafting a statutory waiver form in the hopes of reducing litigation regarding the effectivity of waiver and hopes to seek approval of its proposals on this issue from the Law Institute’s Council in the fall of 2024 for submission to the Legislature during the 2025 Regular Session.

17. 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. The Law Institute submitted a report 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 to develop proposed legislation establishing a comprehensive Water Code. The Law Institute thereafter created this Committee and placed it under the supervision of Reporter Mark S. Davis. The resolution also requires annual reports indicating the status of developing a comprehensive Water Code, and the Law Institute has submitted such reports each year.

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. After spending 2019 focused primarily on fact-finding, with the Reporter and Committee members meeting with various interested parties, experts, and officials in these states, the Committee shifted its focus to more concrete substantive legal analysis. This substantive legal analysis has focused largely on the various water law systems employed by Louisiana’s neighboring states and proposed as model legislation. In 2022, the Committee produced a comprehensive comparative analysis of the ASCE Regulated Riparian Model Water Code and the present water law of Louisiana, Mississippi, and Arkansas, which was appended to the Law Institute’s 2023 annual report to the Legislature. This analysis subsequently formed the basis of drafting efforts over the past year, which recently culminated in the completion of the first draft of a proposed Water Code. In upcoming months, the Committee will begin the process of approving the text of its proposed Code and hopes to present on its progress to the Law Institute Council in the fall of 2024, with plans to propose legislation in coming years. The Committee also continues to seek input from stakeholders and interested parties across the state and region.

18. Special Projects from Prior Years

- a. Adjudicated Properties Committee
- b. Adult Guardianship Committee
- c. Bail Bond Procedure Revision Committee
- d. Birth Certificates Committee
- e. By-Laws
- f. Child Custody Committee
- g. Child Support Committee
- h. Childhood Addiction to Pornography Task Force
- i. Counterletters Committee

- j. Criminal Background Checks for Persons Providing Health-Related Services to Adults
- k. DEQ Administrative Law Procedures Committee
- l. Disabled Adult Children Committee
- m. Disposition of Pornographic Evidence Committee
- n. Electronic Signatures Study Group
- o. Expedited Jury Trials Committee
- p. Expropriations Committee
- q. Family Law Committee
- r. Guardianship Committee
- s. HCR 162 – Expropriation Committee
- t. Human Trafficking Committee
- u. Landlord-Tenant Committee
- v. Limitation of State Liability Committee
- w. Louisiana Uniform Electronic Transactions Act (LUETA)
- x. Mineral Law – Legacy Disputes Committee
- y. Mineral Law – Unsolicited Offers Committee
- z. Non-Navigable Waterbottoms
- aa. Oil and Gas Well Privilege Statute
- bb. Persons with Disabilities
- cc. Postponement of Taxes Committee
- dd. Private Use of Levee Roads Committee
- ee. Products Liability
- ff. Rights of Public Access to Non-Navigable Waters
- gg. “Son of Sam” Committee
- hh. Summary Judgment Subcommittee
- ii. Surrogacy Committee
- jj. Tax Study Committee
- kk. Uniform Commercial Code Committee
- ll. Uniform Computer Information Transactions Act (UCITA) Study Committee
- mm. Uniform Prudent Management of Institutional Funds Act (UPMIFA) Committee
- nn. Unpaid Wages Committee
- oo. Use of “d/Deaf”
- pp. Utility Servitudes Committee

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 2023 and 2024 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 2024, 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 three full-time staff attorneys, Ms. Jessica G. Braun, Mr. Nick Kunkel, and Mr. Josef P. Ventulan. 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.