

**LOUISIANA STATE LAW INSTITUTE
CONSTITUTIONAL LAWS COMMITTEE**

**2026 UNCONSTITUTIONAL STATUTES
BIENNIAL REPORT TO THE LEGISLATURE**

PURSUANT TO R.S. 24:204(A)(10)

Prepared for the
Louisiana Legislature on

March 9, 2026

Baton Rouge, Louisiana

**LOUISIANA STATE LAW INSTITUTE
CONSTITUTIONAL LAWS COMMITTEE**

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March 9, 2026

To: Senator Cameron Henry
President of the Senate
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Speaker of the House of Representatives
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**BIENNIAL REPORT TO THE LEGISLATURE IN ACCORDANCE WITH
R.S. 24:204(A)(10) RELATIVE TO UNCONSTITUTIONAL STATUTES**

Pursuant to Acts 2014, No. 598, which enacted R.S. 24:204(A)(10), it shall be the duty of the Louisiana State Law Institute “[t]o 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 light of this biennial reporting requirement, the Louisiana State Law Institute formed the Unconstitutional Statutes Committee, now called the Constitutional Laws Committee, which was placed under the direction of Mr. Charles S. Weems III as Reporter and is comprised of the following members:

Charles S. Weems III, Alexandria (Reporter)
L. David Cromwell, Shreveport
Cordell H. Haymon, Baton Rouge
Ashley J. Heilprin, New Orleans
Professor Sally Brown Richardson, New Orleans
James A. Stuckey, New Orleans
Mallory C. Waller, Louisiana State Law Institute (Staff Attorney)

The Law Institute submitted previous reports to the Legislature in March of 2016, 2018, 2020, 2022, and 2024. The Constitutional Laws Committee has continued to consider provisions of Louisiana law that have been declared or recognized as unconstitutional but have nevertheless remained “on the books,” either in the same form or in an amended form that may still be considered unconstitutional.

The Law Institute’s sixth Biennial Report to the Legislature is divided into two categories: laws that were not included in previous reports, including provisions declared unconstitutional since the submission of these reports, and laws that were included in previous reports but have not yet been addressed by the legislature. Within each of these categories, the provisions are then organized by body of law: first, those provisions appearing in the Constitution; then, the articles of any Code; and finally, the Revised Statutes. The Committee also considered provisions of Louisiana law that have been declared or recognized as preempted by federal law, which appear after those that have been declared or recognized as unconstitutional. In accord with our charge, the report does not include laws whose constitutionality or status as preempted is currently being reviewed in the judicial process but is not yet the subject of a final and definitive judgment.

In cases where a specific Paragraph or Section of law was declared unconstitutional, only that Paragraph or Section is provided, rather than the entire article or statute. In cases where a prior version of an article or statute was declared unconstitutional, and the provision was later amended, the differences between the prior and current versions of the article or statute are provided, as well as an indication as to whether the issue of unconstitutionality was resolved by the amendment. Although the majority of these provisions were declared unconstitutional directly by the Louisiana Supreme Court or the Supreme Court of the United States, there are some instances in which a lower court made the declaration of unconstitutionality. The Committee has included those instances (noting where writs were denied or an appeal was never sought) in this report.

In light of the court-declared or court-recognized unconstitutional or preempted nature of all of these provisions of Louisiana law, the Committee has presented its recommendations to the Legislature in varying forms. In some cases, the Committee felt confident in its ability to make a definitive recommendation to repeal, remove, or revise these provisions as provided in R.S. 24:204(A)(10). In other cases, the Committee concluded that a more in-depth, substantive study of the implications of such a recommendation would be required and does not make a current recommendation pending that further study. Additionally, there were some provisions with respect to which the Committee decided it would be best to provide the Legislature with two or more alternative recommendations.

Finally, for completeness and reference, the Committee has provided an appendix with its report setting forth laws declared or recognized as unconstitutional that were included in the Law Institute's previous Biennial Reports and that subsequently have been addressed by the Legislature.

The provisions of Louisiana law set forth on the following pages have been declared or recognized by court judgment either as unconstitutional or preempted but have nevertheless remained "on the books" in their unconstitutional form or in a form that is not free from question. Also included below are the Law Institute's recommendations to the Legislature with respect to each of these provisions.

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1
2 * * *

3
4 **R.S. 4:149. Wagering; rules and regulations**

5
6 A. The commission may prescribe rules and regulations under which shall be conducted
7 all horse races upon the results of which there is wagering. The commission shall, as may be
8 necessary, prescribe additional special rules and regulations applicable separately to thoroughbreds
9 and quarter horses. The commission shall make rules governing, permitting, and regulating the
10 wagering on horse races under the form of mutuel wagering by patrons, known as pari-mutuel
11 wagering, whether on live or historical horse races. Only those persons receiving a license from
12 the commission may conduct this type of wagering, and shall restrict this form of wagering to any
13 space within the race meeting grounds or an offtrack wagering facility, as determined solely by
14 the commission. Except as provided in this Section or in R.S. 27:612, all other forms of wagering
15 on the result of horse races are illegal, and all wagering on horse races outside the enclosure where
16 horse races have been licensed by the commission is illegal.

17
18 * * *

19
20 **R.S. 4:166.7. Exotic wagering; allocation of proceeds during and for a race meeting;**
21 **concurrence required**

22
23 A. Notwithstanding any provision of this Chapter to the contrary, during and for any race
24 meeting, the commission, with the concurrence of the association conducting the race meeting and
25 the Horsemen's Benevolent and Protective Association, may provide that the takeout deducted
26 from pick-three, pick-four, pick-five, and pick-six, and pick (n) wagers is an amount of not less
27 than twelve percent and not more than twenty-five percent. Absent such an agreement, the takeout
28 shall remain at twenty-five percent.

29
30 B. For the purposes of this Part, "pick (n)" means a form of pari-mutuel wagering where
31 "(n)" is a varying number of races exceeding three races. Bettors select the first horse in each of
32 (n) consecutive races designated as the pick (n) by the permit holder. The sale of pick (n) tickets
33 other than from pari-mutuel machines shall be deemed illegal and is prohibited.

34
35 * * *

36
37 **R.S. 4:211. Definitions**

38
39 Unless the context indicates otherwise, the following terms shall have the meaning ascribed
40 to them below:

41
42 * * *

43
44 (6) "Net commission" means the commission retained by a licensee on pari-mutuel wagers
45 on historical horse races, less breakage, settlements, and taxes applicable to such wagers.

1 * * *

2
3 **R.S. 4:213. Offtrack wagering facilities; establishment; sports book lounge**

4
5 A. In addition to the rights granted in R.S. 4:149.2, any association licensed by the
6 commission may ~~accept and transmit wagers as provided in this Chapter~~ conduct pari-mutuel
7 wagering and engage in all necessary activities to establish appropriate offtrack wagering facilities
8 to accomplish this purpose. Such activities shall include but not be limited to:

9
10 (1) Live simulcast of races from the host track.

11
12 (2) Historical horse racing on the premises of offtrack wagering facilities via dedicated
13 machines or personal mobile devices.

14
15 (3) Construction or leasing of offtrack wagering facilities.

16
17 ~~(3)~~ (4) Sale of goods and beverages.

18
19 ~~(4)~~ (5) Advertising and promotion.

20
21 ~~(5)~~ (6) All other related activities.

22 * * *

23
24
25 **R.S. 4:214. Offtrack wagering facilities; licensing; criteria; management; appeal of license**
26 **suspension or revocation; limitation on facilities with historical horse racing**

27
28 A. Except for offtrack wagering conducted in a sports book lounge, license approval shall
29 be subject to the criteria established by R.S. 4:159.

30
31 B. Licensure for all offtrack wagering facilities shall be subject to the following conditions:

32 * * *

33
34
35 (4)(a) Not more than two offtrack wagering facilities may be licensed in any parish, except
36 for Orleans and Jefferson.

37
38 (b) For the purposes of this Paragraph, a pari-mutuel facility as that term is defined in R.S.
39 4:211 shall not be included in the count of licensed offtrack wagering facilities for the parish in
40 which it is located.

41 * * *

42
43
44 L.(1) No primary licensee may operate more than five offtrack wagering facilities in which
45 historical horse racing is permitted.

1 mutuel pool or pools. Commissions shall be deducted and retained by the licensee of the offtrack
2 wagering facility where the wager is made.

3
4 (2) The licensee shall disburse twenty percent of the net commission to supplement
5 horsemen's purses in accordance with the provisions of R.S. 4:217(E).

6
7 (3) R.S. 4:149.3, 149.5, 161, 161.1, 161.2, 162, 163.1, 165, 166, 166.1 through 166.7, 167,
8 177, 183, 218, and 220 shall not apply to historical racing or the licensee with respect to historical
9 racing.

10
11 **R.S. 4:217. Purse supplements; designation and distribution**

12
13 * * *

14
15 E. Notwithstanding, and in lieu of, any other provision of law, the monies designated for
16 purses under the provisions of R.S. 4:216(E) from wagers placed at offtrack wagering facilities on
17 historical horse races shall be distributed in the same manner as set forth in R.S. 27:438(B) as in
18 effect at the time of any such distribution, and if R.S. 27:438(B)(2)(a) becomes effective, any such
19 quarter horse purse supplements shall not be included in the calculation of the applicable maximum
20 of one million dollars per state fiscal year and the settlement amount as set forth therein.

21
22 * * *

23
24 **R.S. 4:228. Offtrack wagering facility locations; prohibited distances; prohibited structures**

25
26 A. No license shall be granted to any offtrack wagering facility located, at the time
27 application is made for a license to operate offtrack wagering facilities, within one mile from any
28 property on the National Register of Historic Places, any public playground, any residential
29 property, or a building used primarily as a church, synagogue, public library, or school. The
30 measurement of the distance shall be a straight line from the nearest point of the proposed offtrack
31 wagering facility to the nearest point of the property on the National Register of Historic Places,
32 the public playground, residential property, or a building used primarily as a church, synagogue,
33 public library, or school.

34
35 B. After an application is filed with the commission, the subsequent construction, erection,
36 development, or movement of a property identified in Subsection A of this Section which causes
37 the location of an offtrack wagering facility to be within the prohibited distance shall not be cause
38 for denial of an initial or renewal application or revocation of a license.

39
40 C. The prohibition in Subsection A of this Section shall not apply to the location of an
41 offtrack wagering facility which applied for a license or was issued a license on or before July 1,
42 2021, or which applied for or was issued a valid building permit on or before July 1, 2021, and
43 subsequently issued a license. Such location shall be eligible for an offtrack wagering facility
44 license without reference to the prohibition in Subsection A of this Section unless after having
45 obtained a license, an offtrack wagering facility has not been licensed at that location for thirty-six
46 consecutive months and application for licensing is not made within that thirty-six-month period.

1
2 D.(1) For locations on which an offtrack wagering facility has not been completely
3 constructed, if application for licensing was made on or before July 1, 2021, the prohibited distance
4 shall be one mile from any property on the National Register of Historic Places, any public
5 playground, residential property, or a building used primarily as a church, synagogue, public
6 library, or school.

7
8 (2) The measurement of the distances shall be a straight line from the nearest point of the
9 offtrack wagering facility to the nearest point of the property on the National Register of Historic
10 Places, the public playground, residential property, or a building used primarily as a church,
11 synagogue, public library, or school.

12
13 E. If a parish or municipality does not have a zoning ordinance which designates certain
14 property within its jurisdiction as residential property, the governing authority of the parish or
15 municipality shall have the authority to designate to certain areas of its jurisdiction as residential
16 districts for the purpose of this Section.

17
18 F.(1) If application for licensing is made after July 1, 2021, the prohibition in Subsection
19 A of this Section shall apply.

20
21 * * *

22
23 G. "Residential property" shall mean any property which is wholly or partly used for or
24 intended to be used for living or sleeping by human occupants and which includes one or more
25 rooms, including a bathroom and complete kitchen facilities. Residential property shall include a
26 mobile home or manufactured housing, if it has been in its present location for at least sixty days.
27 Residential property shall not include any hotel or motel.

28
29 * * *

30
31 The above amendments were held unconstitutional in *Fremin v. Boyd Racing, LLC*, 403 So. 3d
32 546 (La. 2025): “In 2021, the legislature passed Act 437, which amended the statutes that regulate
33 betting on horse racing, to incorporate historical horse racing as a form of pari-mutuel wagering. .
34 . . [T]he Constitution grants the legislature the power to define gambling in Section 6(B), then,
35 in Section 6(C) requires local elections for new forms of gambling not specifically authorized
36 before October 15, 1996. . . . Historical horse racing was not expressly authorized before the
37 passage of Act 437. . . . Without dispute, it did not exist when the 1996 amendment to Article XII
38 became effective in October 1996. . . . Before the 1996 amendment, Louisiana law authorized
39 betting only on *live* horse races. . . . Historical horse racing does not involve betting on live horse
40 races. It is a gaming system developed and patented to use slot machine-like gaming terminals for
41 game play. Prior horse races are only used to create the betting algorithm. . . . The offtrack
42 wagering law never authorized this form of gaming, which was not even invented when
43 offtrack wagering was enacted. Based on our *de novo* review of the evidence, Act 437 authorizes
44 a new form of gaming not authorized in Louisiana before October 15, 1996. Thus, the Louisiana
45 Constitution requires prior voter approval of historical horse racing in a local election. . . . On the
46 specific constitutional challenge presented and on the record before us, we interpret Article XII to

1 require approval by local option vote in an affected parish before historical horse racing is licensed
2 or permitted to be conducted in that parish. Act 437 is unconstitutional.”

3

4 **Recommendation:** If the Legislature wishes to retain the provisions authorizing historical horse
5 racing as a form of pari-mutuel wagering, it is recommended that the above amendments be
6 reenacted contingent upon prior local voter approval in each parish where historical horse racing
7 will be licensed or conducted.

1 **R.S. 13:4163. Motion for legislative continuance or extension of time; legislators or**
2 **employees engaged in legislative or constitutional convention activities**

3
4 A.(1)(a) A member of the legislature or legislative employee shall be entitled to preemptory
5 grounds for a continuance of any court or administrative proceeding or the extension of any legal
6 delay or deadline, excluding civil prescriptive or preemptive periods, criminal statutes of
7 limitations, and criminal cases where the death penalty is sought, if the presence, participation, or
8 involvement of a member of the legislature or legislative employee, who is a party or an attorney
9 for a party, is required in any criminal or civil case or administrative proceeding, including any
10 pretrial or post-trial proceeding, during any legislative session or constitutional convention.

11
12 (b) For purposes of this Section, "legislative employee" means the clerk of the House of
13 Representatives, the secretary of the Senate, and an employee of the House of Representatives, the
14 Senate, or the Legislative Bureau, when such person is employed full-time during the legislative
15 session or during any other time in which the continuance or extension is being sought.

16
17 (c) Preemptory grounds are available any time between twenty-one days before the
18 convening of any session of the legislature or constitutional convention and thirty days after the
19 adjournment sine die of any session of the legislature or constitutional convention.

20
21 (2)(a) The motion for continuance shall be filed no later than five days prior to the
22 proceeding to be continued, or no later than five days prior to the expiration of the deadline to be
23 extended, at no cost and shall be accompanied by an affidavit, executed by the presiding officer or
24 the clerk or secretary of the respective house, that the legislative employee will be or is in actual
25 attendance of a session of the legislature or constitutional convention and that it is the legislative
26 employee's intention to participate actively in the preparation or presentation of the case.

27
28 (b) A member of the legislature shall not be required to submit an affidavit as required by
29 Subparagraph (a) of this Paragraph.

30
31 (3)(a) The motion for continuance may be filed by electronic means such as facsimile
32 transmission or electronic mail, or by other electronic means in accordance with Code of Civil
33 Procedure Article 253 if the member of the legislature or legislative employee seeking the
34 continuance provides all enrolled counsel or parties with a copy of the motion prior to or
35 simultaneously with the transmission of the motion to the clerk of court.

36
37 (b) Every motion for a legislative continuance or extension shall be served by transmitting
38 a copy by electronic means to counsel of record, or if there is no counsel of record, to the adverse
39 party, at the number or address expressly designated in a pleading or other writing for receipt of
40 electronic service. Service by electronic means is complete upon transmission but is not effective
41 and shall not be certified if the serving party learns the transmission did not reach the party to be
42 served.

43
44 B.(1) There shall be a presumption that a motion for continuance filed within the period
45 specified in Paragraph (A)(2) of this Section by the member of the legislature or legislative
46 employee is proper and shall be granted within seventy-two hours of the filing of the motion. The

1 motion shall be granted for a period of not less than forty-five days from the date of adjournment
2 sine die of any session of the legislature or constitutional convention.

3
4 (2) The presumption may be overcome by clear and convincing evidence under either of
5 the following circumstances:

6
7 (a) The motion is being presented for an improper purpose, such as to harass, cause
8 unnecessary delay, or needlessly increase the cost of litigation. A showing that the continuance
9 shall cause a delay or increase the cost of litigation shall not be sufficient grounds to overcome the
10 presumption of granting the continuance.

11
12 (b) The objecting party has a substantial existing right or interest that will be defeated or
13 abridged and will suffer substantial and immediate irreparable harm if the requested continuance
14 is granted. Notwithstanding the provisions of this Paragraph, the court shall also consider any
15 potential substantial and immediate irreparable harm to the party requesting the continuance which
16 may result from requiring the party requesting the continuance to obtain new counsel with
17 insufficient time to prepare.

18
19 C. The court may grant the motion ex parte or grant a hearing on a motion in opposition to
20 the continuance or extension. If the court grants a hearing, it shall be conducted by telephone, or
21 other electronic means, within forty-eight hours of the filing of the motion in opposition or
22 extension.

23
24 D. A court denying a properly filed motion for a legislative continuance shall issue
25 contemporaneous written reasons for the denial that shall include an analysis of Subparagraph
26 (B)(2)(a) or (b) of this Section as applied to the specific facts of the case.

27
28 E.(1) A member of the legislature or legislative employee who has filed a motion for
29 legislative continuance that has been denied or which has not been granted within seventy-two
30 hours may apply directly to the supreme court for supervisory writs at no cost to review the action
31 or inaction of the court where the motion was filed, or may file an appeal at no cost with the court
32 of appeal with jurisdiction as provided in Paragraph (2) of this Subsection.

33
34 (2) If a motion filed pursuant to this Section is denied or not acted upon within the requisite
35 deadline, then such denial shall be an appealable order filed at no cost. The order of appeal shall
36 be signed within twenty-four hours of being filed, and the provisions of Code of Civil Procedure
37 Article 2088 shall attach.

38
39 (3) Upon appeal, the reviewing court shall consider de novo any denial or failure to act on
40 a motion for legislative continuance or extension of proceeding.

41
42 (4) If the supreme court affirms the lower court's denial of a motion for a legislative
43 continuance or extension based on the objecting party's overcoming the presumption pursuant to
44 Paragraph (B)(2) of this Section, the supreme court may exercise its jurisdiction of disciplinary
45 proceedings against the member of the legislature or legislative employee whose motion was
46 denied or refer the matter to the office of disciplinary counsel.

1
2 F. Notwithstanding the provisions of this Section, if any part of the proceedings occurs on
3 a day that a member of the legislature has been ordered by a majority vote of the elected members
4 of each house of the legislature to attend a session day during which that house is in session, then
5 the provisions of Article III, Section 10 of the Constitution of Louisiana shall be given effect and
6 no legal proceedings may be conducted in the member's absence on such day. If any part of the
7 proceeding occurs in violation of this Subsection, it shall be deemed an absolute nullity.

8
9 G.(1) For good cause shown, the court may consider a motion for legislative continuance
10 or extension at any time prior to the hearing or proceeding.

11
12 (2) If seeking a continuance of a court proceeding or extension of any type of deadline
13 occurring outside the time frame of a legislative session or constitutional convention, a member of
14 the legislature or legislative employee who is a party or an attorney for a party to an action may
15 obtain a legislative continuance upon a showing of good cause. A showing, accompanied by an
16 affidavit, that the member or employee is required to attend an interim committee hearing or other
17 official legislative function and that the presence of the member or employee in court is necessary
18 and essential to a fair and proper trial or other proceeding in the suit may be considered good cause.

19
20 H. If the attorney for a party seeking a continuance under this Section is a member of the
21 legislature, the attorney shall also serve a copy of the motion for a legislative continuance or
22 extension with the judicial administrator for the Louisiana Supreme Court. The copy of the motion
23 shall be sent to the Louisiana Supreme Court contemporaneously when the attorney files the
24 motion for legislative continuance or extension with the court.

25
26 I. The provisions of this Section shall not apply to proceedings wherein a temporary
27 restraining order, protective order, preliminary injunction, permanent injunction, court-approved
28 consent agreement resulting from an action brought, or order issued pursuant to any of the
29 following:

30
31 (1) R.S. 46:2131 et seq., R.S. 46:2151 et seq., R.S. 46:2171 et seq., R.S. 46:2181 et seq.,
32 R.S. 9:361 et seq., R.S. 9:372, Children's Code Article 1564 et seq., Code of Civil Procedure
33 Articles 3604 and 3607.1, or peace bonds pursuant to Code of Criminal Procedure Article 30(B).

34
35 (2) Code of Criminal Procedure, including Article 871.1, regarding the disposition and
36 sentence of a criminal matter.

37
38 (3) R.S. 46:1846 to prohibit communications between offenders and victims following a
39 charge or after sentencing for any crime of violence.

40
41 (4) R.S. 15:574.4.2(A)(5) as condition of a parole release that requires that the parolee stay
42 away from any specific person.

43
44 J. The provisions of this Section shall not apply to child custody proceedings or
45 proceedings pursuant to the Domestic Violence Prevention Firearm Transfer Act, Code of
46 Criminal Procedure Article 1001 et seq.

1
2 K. The provisions of this Section shall not apply to proceedings for writs of habeas corpus
3 for the determination and enforcement of rights to the custody of a minor or for the release of a
4 person in custody in which the family court has original jurisdiction.
5

6 Prior version held unconstitutional in *Fisher v. Harter*, 395 So. 3d 806 (La. 2024): “Thus framed,
7 the predominant issue before this court is whether La. R.S. 13:4163 is unconstitutional, facially or
8 as applied to the facts of this case. . . . In the instant case, the plaintiff essentially argues that the
9 power granted by La. R.S. 13:4163 to legislators and other legislative personnel to obtain
10 continuances or extensions of fixed court dates on a peremptory basis is a usurpation of the judicial
11 powers of the court and is therefore an unconstitutional violation of the separation of powers
12 doctrine. . . . The language of La. R.S. 13:4163 alleged to be most objectionable is found in
13 Paragraph (E)(2) (added by 2008 La. Acts No. 865), stating: “Within seventy-two hours of the
14 filing of a motion for a legislative continuance or extension, **the court** or agency **shall grant** the
15 continuance or extension **ex parte** . . .” (Emphasis added.) “The word ‘shall’ is mandatory” (La.
16 R.S. 1:3) and results in a requirement that a court, presented with such a motion, grant the motion
17 without a hearing, even though opposition has been filed, which is contrary to La. C.C.P. art. 1605,
18 requiring that “[e]very contested motion for a continuance shall be tried summarily and
19 contradictorily with the opposite party.” . . . After considering the law and arguments, we conclude
20 that the provisions of La. R.S. 13:4163 bypass constitutional and statutory powers vested in the
21 judiciary and, in enacting this statute, the Legislature particularly usurps the discretion residing in
22 the judiciary to grant or deny motions for continuance and extensions of fixed court dates, when
23 legislators or legislative employees are concerned in the matter. . . . Therefore, we conclude
24 that La. R.S. 13:4163 does not *aid in* the exercise of the power of the courts, but rather *subverts* the
25 courts’ constitutional and statutory powers, as the Legislature has usurped the courts’ power to
26 decide when fixed court dates may be continued or extended; thereby violating the separation of
27 powers doctrine set forth in La. Const. Art. 2, § 2. . . . For the reasons stated, we reverse the district
28 court's denial of the plaintiff's motion for declaratory judgment, we declare La. R.S.
29 13:4163 unconstitutional on its face, and we remand the matter to the district court”
30

31 At the time this case was decided, R.S. 13:4163 read as follows (emphasis added by the
32 Louisiana Supreme Court):
33

34 **R.S. 13:4163. Ex parte motion for legislative continuance or extension of time;**
35 **legislators or employees engaged in legislative or constitutional convention**
36 **activities**
37

38 A. (1) A member of the legislature and a legislative employee **shall have**
39 **peremptory grounds for continuance** or extension of a criminal case, civil case, or
40 administrative proceeding as provided below. The continuance or extension shall
41 be sought by written motion specifically alleging these grounds.
42

43 (2) For purposes of this Section, “legislative employee” means the clerk of
44 the House of Representative, the secretary of the Senate, and an employee of the
45 House of Representatives, the Senate, or the Legislative Bureau, when such person

1 is employed full-time during the legislative session or during any other time in
2 which the continuance or extension is being sought.

3
4 B. The peremptory grounds for continuance or extension is available to and
5 for the benefit of a member or legislative employee and may only be asserted or
6 waived by a member or employee.

7
8 C. (1) Such peremptory grounds are available for the continuance of any
9 type of proceeding and the extension of any type of deadline pertaining to a criminal
10 case, civil case, or administrative proceeding, if the presence, participation, or
11 involvement of a member or employee is required in any capacity, including any
12 pretrial or post-trial legal proceeding, during:

13
14 (a) Any time between thirty days prior to the original call to order and thirty
15 days following the adjournment sine die of any session of the legislature.

16
17 (b) Any time between thirty days prior to convening and thirty days
18 following adjournment sine die of any constitutional convention.

19
20 (c) Any time other than those provided in Subparagraph (a) or (b) of this
21 Paragraph when such person is engaged in activities, including travel, in connection
22 with or ordered by:

23
24 (i) the legislature;

25
26 (ii) any legislative committee or subcommittee appointed by the president
27 of the Senate or the speaker of the House of Representatives;

28
29 (iii) any committee or commission appointed by the governor or other
30 person authorized to make such appointments; or

31
32 (iv) any constitutional convention or commission.

33
34 (2) Such peremptory grounds are available to any member or employee
35 enrolled as counsel of record when his participation is required. The availability of
36 other counsel to assume the duties or responsibilities of counsel invoking the
37 continuance or extension does not negate the peremptory nature of his motion.

38
39 D. (1) A motion for legislative continuance or extension filed by a
40 legislative employee shall be accompanied by an affidavit, verifying such
41 employment or service, executed by the presiding officer or the clerk or secretary
42 of the respective house.

43
44 (2) A motion for legislative continuance or extension shall be filed at no
45 cost to a member, employee, or a client of a member or employee.

1 E. (1)(a) If the grounds for a legislative continuance or extension are
2 founded upon the convening of a regular legislative session or a constitutional
3 convention, the motion for legislative continuance or extension shall be timely if
4 filed no later than five calendar days prior to the hearing or proceeding to be
5 continued.

6
7 (b) If the grounds for a legislative continuance or extension are founded
8 upon any provision of Subparagraph (C)(1)(c) of this Section or upon the issuance
9 of a call for an extraordinary session of the legislature, the motion for legislative
10 continuance or extension shall be timely if filed no later than five calendar days
11 prior to the hearing or proceeding to be continued or no later than two days
12 following the issuance of the notice of the meeting or of the call for the
13 extraordinary legislative session, which ever occurs last.

14
15 (c) The provisions of this Paragraph shall not be applied so as to impede
16 the preemptory nature of this Section.

17
18 (2) Within seventy-two hours of the filing of a motion for a legislative
19 continuance or extension, the court or agency shall grant the continuance or
20 extension ex parte as follows:

21
22 (a) If the grounds for the motion are pursuant to Subparagraph (C)(1)(a) or
23 (b) of this Section, the continuance or extension shall be granted for a period of not
24 less than sixty days from the date of adjournment sine die of the session of the
25 legislature or of the constitutional convention.

26
27 (b) If the grounds for the motion are pursuant to Subparagraph (C)(1)(c) of
28 this Section, the continuance or extension shall be granted for the day or days the
29 member or employee is engaged in such activities.

30
31 F. (1) The provisions of this Section shall not apply to cases in the Supreme
32 Court of Louisiana, criminal cases where the death penalty is sought, and
33 administrative rulemaking authorized by R.S. 49:961.

34
35 (2) The provisions of this Section shall not apply to cases and proceedings
36 wherein a member or employee is called as a witness, in which instances the
37 provisions of R.S. 13:3667.1 and 3667.3 shall apply.

38
39 G. *Any action taken against a person, including any sanction imposed on*
40 *an attorney*, who has filed a motion for legislative continuance or extension
41 and *which results from the failure of such person or attorney to appear or comply*
42 *with an order of the court* or agency or any deadline *shall be considered an*
43 *absolute nullity* and shall be set aside by the court or agency upon the filing of a
44 motion by the aggrieved person or attorney.

1 H. (1) Any person or attorney who has filed a motion for legislative
2 continuance or extension which has been denied or which has not been granted
3 within seventy-two hours of filing may apply directly to the Supreme Court of
4 Louisiana for supervisory writs to review the action or inaction of the court or
5 agency where the motion was filed.
6

7 (2) If a motion filed pursuant to Subsection G of this Section is denied, such
8 denial shall be an appealable order.
9

10 I. (1) For sufficient cause shown, the court shall consider a motion for
11 legislative continuance or extension at any time prior to the hearing or proceeding.
12

13 (2) The motion for a legislative continuance may be filed by electronic
14 means such as facsimile transmission or electronic mail, or any other means
15 authorized by law, provided that the mover shall provide all opposing counsel or
16 parties with a copy of the motion, simultaneously with the transmission of the
17 motion to the court.
18

19 During the 2024 Third Extraordinary and 2025 Regular Sessions, however, the Legislature
20 amended R.S. 13:4163 in Acts 20243ES, No. 19 and Acts 2025, No. 101. The provision was
21 redrafted to remove the mandatory language at issue and to instead create a presumption that a
22 motion for legislative continuance is proper, which can be overcome if there is clear and
23 convincing evidence that the motion is being presented for an improper purpose or that a
24 continuance would cause substantial and immediate irreparable harm. The amendments made the
25 applicable ex parte language permissive, expressly provide that the court may grant a hearing in
26 opposition, and provide for prospective and retroactive effect to all actions filed or pending on or
27 after October 25, 2024, which was the date of the Louisiana Supreme Court's decision in *Fisher*.
28 Further, during the legislative process, the author of these bills testified that the intent of the
29 legislation was to remove the constitutional deficiencies and concerns expressed by the Supreme
30 Court.
31

32 **Note to the Legislature:** It is uncertain whether the constitutional infirmity recognized by the
33 Louisiana Supreme Court in *Fisher v. Harter* has been remedied. Bases for concern include that
34 R.S. 13:4163(B)(1) continues to provide that a motion for continuance "shall be granted."

1 **R.S. 14:109. Approaching a peace officer lawfully engaged in law enforcement duties**
2

3 A. No person shall knowingly or intentionally approach within twenty-five feet of a peace
4 officer who is lawfully engaged in the execution of his official duties after the peace officer has
5 ordered the person to stop approaching or to retreat.
6

7 B. For the purposes of this Section, "peace officer" shall include all individuals as defined
8 in R.S. 14:112.4(B) and R.S. 40:2402.
9

10 C. It shall be an affirmative defense to this crime if the defendant can establish that the
11 lawful order or command was neither received nor understood by the defendant nor capable of
12 being received or understood under the conditions and circumstances that existed at the time of
13 the issuance of the order.
14

15 D. Whoever violates the provisions of this Section shall be fined not more than five hundred
16 dollars, imprisoned for not more than sixty days, or both.
17

18 Held unconstitutional by *Deep South Today v. Murrill*, 779 F.Supp.3d 782 (M.D. La. 2025): “A
19 statute is unconstitutionally vague when it ‘fails to provide a person of ordinary intelligence fair
20 notice of what is prohibited, or is so standardless that it authorizes or encourages seriously
21 discriminatory enforcement.’ . . . Here, while the Act clearly states that an officer can enforce a
22 25-foot buffer zone, it lacks any standard by which an officer may issue an order to stand back or
23 retreat. This affects both prongs of the void for vagueness analysis, as it does not give the public
24 notice of when an order may be issued and does nothing to prevent arbitrary or discriminatory
25 enforcement. . . . Turning to the second prong, the Supreme Court has recognized ‘that the more
26 important aspect of vagueness doctrine ‘is not actual notice, but the other principal element of the
27 doctrine—the requirement that a legislature establish minimal guidelines to govern law
28 enforcement.’ . . . Here, the Act not only lacks definite or determinate standards, it
29 lacks *any* standards by which an officer, prosecutor, or trier of fact may evaluate a situation and
30 determine if an order to retreat is appropriate. . . . With no standards, every person would be subject
31 to the arbitrary and discriminatory enforcement of the Act. The Court finds that, when construing
32 the *Complaint* in the light most favorable to Plaintiffs, they have sufficiently pled a void for
33 vagueness challenge of the Act. . . . The Act falls short on both prongs of the vagueness doctrine;
34 thus, Plaintiffs are likely to prevail in proving that the Act is unconstitutionally vague. . . . The
35 Court finds that there is a lack of any real harm to Defendants by being unable to enforce an
36 unconstitutional law and there are significant First Amendment issues successfully raised by
37 Plaintiffs. . . . The Court finds that House Bill 173, Act 259, Louisiana Revised Statutes § 14:109,
38 is UNCONSTITUTIONALLY VOID FOR VAGUENESS IN VIOLATION OF THE
39 FOURTEENTH AMENDMENT. As a result, Defendants and their agents shall be prohibited from
40 enforcing Louisiana Revised Statutes § 14:109.”
41

42 **Recommendation:** It is recommended that the Legislature amend R.S. 14:109 to incorporate
43 definite or determinate standards by which officers may issue orders to stand back or retreat.

1 **R.S. 32:412. Amount of fees; credit or refund; duration of license; veteran designation;**
2 **special needs or accommodation designations; disbursement of funds; renewal by mail or**
3 **electronic commerce of Class "D" or "E" drivers' licenses; disposition of certain fees;**
4 **exception**

5
6 * * *

7
8 I.(1) The Louisiana driver's license, regardless of its class, issued to any person who is
9 required to register as a sex offender pursuant to R.S. 15:542 and R.S. 15:542.1 shall contain a
10 restriction code which declares that the license holder is a sex offender. The secretary of the
11 Department of Public Safety and Corrections shall comply with the provisions of this Subsection
12 and the driver's license shall include the words "sex offender" which shall be orange in color.

13
14 (2) Any person to whom this Subsection applies shall carry upon his person the last driver's
15 license issued to him.

16
17 (3) The department shall issue a license required pursuant to this Subsection for a period
18 of one year. When the department issues a license pursuant to this Subsection the license shall be
19 valid for a period of one year from the date of issuance.

20
21 (4) Any person to whom this Subsection applies shall personally appear at a motor vehicle
22 field office to renew his driver's license every year, in addition to the yearly reregistration pursuant
23 to R.S. 15:542 et seq. Reregistration shall include the submission of current information to the
24 department and the verification of registration information, including the street address and
25 telephone number of the registrant; name, street address and telephone number of the registrant's
26 employer, and any other registration information that may need to be verified. Upon successful
27 completion of reregistration, the bureau shall electronically transmit this fact to the office of motor
28 vehicles which may then proceed to renew the driver's license. In order to reimburse the office of
29 motor vehicles for the cost of a yearly issuance, the regular renewal fee shall be collected at each
30 renewal pursuant to this Subsection.

31
32 (5) The provisions of this Subsection shall apply to all registered sex offenders regardless
33 of the date of conviction.

34
35 * * *

36
37 Held unconstitutional by *Nelson v. Landry*, 714 F. Supp. 3d 790 (M.D. La. 2024): “Louisiana
38 Revised Statutes § 32:412(I) is not moot in light of the Louisiana Supreme Court's ruling in *State*
39 *v. Hill*. The issue before the court in *State v. Hill* was the constitutionality of La. R.S. 40:1321(J)’s
40 branded identification requirement, not the constitutionality of La. R.S. § 32:412(I)’s branded
41 license requirement. Though the two requirements are similar, without ruling on La. R.S. §
42 32:412(I)’s branded license requirement, *State v. Hill* did not deem La. R.S. §
43 32:412(I) unconstitutional. . . . Subsequent events have not made it absolutely clear that Defendant
44 will not resume enforcement of La. R.S. § 32:412(I) after this litigation is complete. Namely, the
45 OMV's cessation of enforcing La. R.S. § 32:412(I) was never formally announced and did not
46 begin until January 2021, which was two and a half months after *State v. Hill* was decided . . .

1 [A]ccordingly, the Court does not find the voluntary cessation of enforcing La. R.S. § 32:412(I) to
2 moot Plaintiffs’ La. R.S. § 32:412(I) claim. . . . Though *State v. Hill* does not deem La. R.S. §
3 32:412(I) unconstitutional, for the reasons set forth in *State v. Hill*, La. R.S. § 32:412(I)’s branded
4 license requirement, like La. R.S. § 40:1321(J)’s branded identification requirement, is
5 unconstitutional. Like La. R.S. § 40:1321(J), La. R.S. § 32:412(I) has qualities of both compelled
6 and government speech. . . . Just as a compelled speech analysis was warranted for La. R.S. §
7 40:1321(J)’s content-based branded identification requirement, the same is warranted for La. R.S.
8 § 32:412(I)’s content-based branded license requirement. . . . Regardless of any compelling interest
9 the state may have, La. R.S. § 32:412(I) cannot survive strict scrutiny under the Louisiana Supreme
10 Court’s rationale in *State v. Hill*. Like La. R.S. § 40:1321(J)’s branded identification requirement,
11 in drafting La. R.S. § 32:412(I), the Louisiana Legislature did not use the least restrictive means
12 of carrying out its ‘compelling interest in protecting the public and enabling law enforcement to
13 identify a person as a sex offender’ . . . Therefore, La. R.S. § 32:412(I)’s content-based branded
14 license requirement is unconstitutional under the First Amendment. . . . Louisiana Revised Statutes
15 § 32:412(I) is declared unconstitutional, and Defendants are enjoined from enforcing this statute.”
16

17 **Recommendation:** It is recommended that the Legislature amend R.S. 32:412(I) to remove the
18 requirement that the driver’s license “include the words ‘sex offender’ which shall be orange in
19 color” and instead provide for some sort of “symbol, code, or a letter designation” as discussed by
20 the Supreme Court in *State v. Hill*, 341 So. 3d 539 (La. 2020).
21

1 **Recommendation:** The Law Institute’s initial recommendation was for the Legislature to do one
2 of the following: (1) Direct the Law Institute to direct the printers to note the *Obergefell* decision
3 at Article XII, Section 15 of the Constitution of Louisiana; or (2) Submit to the voters a proposal
4 to amend Article XII, Section 15 of the Constitution of Louisiana to replace “one man and one
5 woman” with “two natural persons” as follows:
6

7 Section 15. Marriage in the state of Louisiana shall consist only of the union
8 of ~~one man and one woman~~ **two natural persons**. No official or court of the state
9 of Louisiana shall construe this constitution or any state law to require that marriage
10 or the legal incidents thereof be conferred upon any member of a union other than
11 the union of ~~one man and one woman~~ **two natural persons**. A legal status
12 identical or substantially similar to that of marriage for unmarried individuals shall
13 not be valid or recognized. No official or court of the state of Louisiana shall
14 recognize any marriage contracted in any other jurisdiction which is not the union
15 of ~~one man and one woman~~ **two natural persons**.
16

17 Subsequent to the Law Institute’s initial recommendation, a validity note concerning the
18 *Obergefell* decision was added to Article XII, Section 15 of the Constitution of Louisiana.
19

1 Civil Code

2
3 **Civil Code Article 89. Impediment of same sex**
4 *(Previously included in the 2016, 2018, 2020, 2022, and 2024 Biennial Reports)*

5
6 Persons of the same sex may not contract marriage with each other. A purported marriage
7 between persons of the same sex contracted in another state shall be governed by the provisions of
8 Title II of Book IV of the Civil Code.

9
10 Held unconstitutional by *Robicheaux v. Caldwell*, 2015 WL 4090353 at *1 (E.D. La. 2015) (citing
11 *Obergefell v. Hodges*, 135 S. Ct. 2584 (U.S. 2015): “IT IS FURTHER ORDERED that Article
12 XII, Section 15 of the Louisiana Constitution, Article 89 of the Louisiana Civil Code, and laws
13 enacted pursuant thereto, violate the Fourteenth Amendment to the United States Constitution and
14 may not be enforced against the Plaintiffs or any other same-sex couple.”

15
16 In *Obergefell v. Hodges*, the Supreme Court of the United States held that “[t]he right to marry is
17 a fundamental right inherent in the liberty of the person, and under the Due Process and Equal
18 Protection Clauses of the Fourteenth Amendment couples of the same-sex may not be deprived of
19 that right and that liberty. The Court now holds that same-sex couples may exercise the
20 fundamental right to marry. No longer may this liberty be denied to them.” 135 S.Ct. 2584, 2604-
21 05. Because of its holding that “same-sex couples may exercise the fundamental right to marry in
22 all States,” the Supreme Court of the United States also held that “there is no lawful basis for a
23 State to refuse to recognize a lawful same-sex marriage performed in another State on the ground
24 of its same-sex character.” *Id.* at 2607-08.

25
26 Further, the United States Supreme Court’s decision in *Obergefell* was recognized by the
27 Louisiana Supreme Court in *Costanza v. Caldwell*, 167 So. 3d 619 (La. 2015), which was an appeal
28 from a district court judgment “declaring La. Const. Art. XII, § 15, La. Civ.Code art. 86, La.
29 Civ.Code art. 89, La. Civ.Code art. 3520(B), and Revenue Information Bulletin No. 13–024
30 (9/13/13) to be unconstitutional.” *Id.* at 620. The Louisiana Supreme Court also recognized the
31 Eastern District of Louisiana’s holding in *Robicheaux* that “La. Const. Art. XII, § 15, La. Civ.
32 Code art. 89, and La. Civ. Code art. 3520(B) were in violation of the Fourteenth Amendment to
33 the United States Constitution.” *Id.* In that case, the Louisiana Supreme Court dismissed the appeal
34 from the *Robicheaux* decision as moot, concluding that “[t]he United States Supreme Court’s
35 interpretation of the federal constitution is final and binding on this court” and that “*Obergefell*
36 compels the conclusion that the State of Louisiana may not bar same-sex couples from the civil
37 effects of marriage on the same terms accorded to opposite-sex couples.” *Id.* at 621.

38
39 **Recommendation:** The Law Institute’s initial recommendation was for the Legislature to do one
40 of the following: (1) Direct the Law Institute to direct the printers to note the *Obergefell* decision
41 at Civil Code Article 89; or (2) Repeal Civil Code Article 89 in its entirety. Subsequent to the Law
42 Institute’s initial recommendation, a validity note concerning the *Obergefell* decision was added
43 to Civil Code Article 89.

44
45 Although the scope of the Constitutional Laws Committee’s biennial report to the legislature is
46 limited by R.S. 24:204(A)(10) to those “provisions of law that have been declared unconstitutional

1 by final and definitive court judgment,” a comprehensive report on the issue of same-sex marriage
2 in light of *Obergefell* was submitted to the legislature in March of 2016. Additionally, the Law
3 Institute’s Marriage-Persons Committee proposed, and the Law Institute’s Council adopted, a
4 package of recommended amendments with respect to same-sex marriage in Louisiana. Those
5 recommendations were submitted to the Legislature as Senate Bill No. 98 of the 2018 Regular
6 Session, which ultimately failed to pass. Annual reports on same-sex marriage containing updated
7 recommendations have been submitted to the Legislature each year since.

1 **Civil Code Article 3520. Marriage**
2 *(Previously included in the 2016, 2018, 2020, 2022, and 2024 Biennial Reports)*

3
4 * * *

5
6 B. A purported marriage between persons of the same sex violates a strong public policy
7 of the state of Louisiana and such a marriage contracted in another state shall not be recognized in
8 this state for any purpose, including the assertion of any right or claim as a result of the purported
9 marriage.

10
11 Held unconstitutional by *Robicheaux v. Caldwell*, 2015 WL 4090353 at *1 (E.D. La. 2015) (citing
12 *Obergefell v. Hodges*, 135 S. Ct. 2584 (U.S. 2015): “IT IS FURTHER ORDERED that Article
13 XII, Section 15 of the Louisiana Constitution, Article 3520(B) of the Louisiana Civil Code, and
14 laws enacted pursuant thereto, violate the Fourteenth Amendment to the United States Constitution
15 and may not be enforced against the Plaintiffs or any other same-sex couple.”

16
17 In *Obergefell v. Hodges*, the Supreme Court of the United States held that “[t]he right to marry is
18 a fundamental right inherent in the liberty of the person, and under the Due Process and Equal
19 Protection Clauses of the Fourteenth Amendment couples of the same-sex may not be deprived of
20 that right and that liberty. The Court now holds that same-sex couples may exercise the
21 fundamental right to marry. No longer may this liberty be denied to them.” 135 S.Ct. 2584, 2604-
22 05. Because of its holding that “same-sex couples may exercise the fundamental right to marry in
23 all States,” the Supreme Court of the United States also held that “there is no lawful basis for a
24 State to refuse to recognize a lawful same-sex marriage performed in another State on the ground
25 of its same-sex character.” *Id.* at 2607-08.

26
27 Further, the United States Supreme Court’s decision in *Obergefell* was recognized by the
28 Louisiana Supreme Court in *Costanza v. Caldwell*, 167 So. 3d 619 (La. 2015), which was an appeal
29 from a district court judgment “declaring La. Const. Art. XII, § 15, La. Civ.Code art. 86, La.
30 Civ.Code art. 89, La. Civ.Code art. 3520(B), and Revenue Information Bulletin No. 13–024
31 (9/13/13) to be unconstitutional.” *Id.* at 620. The Louisiana Supreme Court also recognized the
32 Eastern District of Louisiana’s holding in *Robicheaux* that “La. Const. Art. XII, § 15, La. Civ.
33 Code art. 89, and La. Civ. Code art. 3520(B) were in violation of the Fourteenth Amendment to
34 the United States Constitution.” *Id.* In that case, the Louisiana Supreme Court dismissed the appeal
35 from the *Robicheaux* decision as moot, concluding that “[t]he United States Supreme Court’s
36 interpretation of the federal constitution is final and binding on this court” and that “*Obergefell*
37 compels the conclusion that the State of Louisiana may not bar same-sex couples from the civil
38 effects of marriage on the same terms accorded to opposite-sex couples.” *Id.* at 621.

39
40 **Recommendation:** The Law Institute’s initial recommendation was for the Legislature to do one
41 of the following: (1) Direct the Law Institute to direct the printers to note the *Obergefell* decision
42 at Civil Code Article 3520(B); or (2) Repeal Civil Code Article 3520(B) in its entirety. Subsequent
43 to the Law Institute’s initial recommendation, a validity note concerning the *Obergefell* decision
44 was added to Civil Code Article 3520.

1 Although the scope of the Constitutional Laws Committee’s biennial report to the legislature is
2 limited by R.S. 24:204(A)(10) to those “provisions of law that have been declared unconstitutional
3 by final and definitive court judgment,” a comprehensive report on the issue of same sex marriage
4 in light of *Obergefell* was submitted to the Legislature in March of 2016. Additionally, the Law
5 Institute’s Marriage-Persons Committee proposed, and the Law Institute’s Council adopted, a
6 package of recommended amendments with respect to same-sex marriage in Louisiana. Those
7 recommendations were submitted to the Legislature as Senate Bill No. 98 of the 2018 Regular
8 Session, which ultimately failed to pass. Annual reports on same-sex marriage containing updated
9 recommendations have been submitted to the Legislature each year since.

10

1 Code of Criminal Procedure

2
3 **Code of Criminal Procedure Article 800. Objection to ruling on challenge for cause**
4 **(Previously included in the 2016, 2018, 2020, 2022, and 2024 Biennial Reports)**
5

6 A. A defendant may not assign as error a ruling refusing to sustain a challenge for cause
7 made by him, unless an objection thereto is made at the time of the ruling. The nature of the
8 objection and grounds therefor shall be stated at the time of objection.
9

10 B. The erroneous allowance to the state of a challenge for cause does not afford the
11 defendant a ground for complaint, unless the effect of such ruling is the exercise by the state of
12 more peremptory challenges than it is entitled to by law.
13

14 Validity called into doubt by *State v. Anderson*, 996 So. 2d 973, 997 (La. 2008): “*Witherspoon* [*v.*
15 *Illinois*, 391 U.S. 510 (1968)] further dictates that a capital defendant's rights under the Sixth and
16 Fourteenth Amendments to an impartial jury prohibits the exclusion of prospective jurors ‘simply
17 because they voiced general objections to the death penalty or expressed conscientious or religious
18 scruples against its infliction.’ Moreover, notwithstanding LSA–C.Cr.P. art. 800(B), which states
19 that a defendant cannot complain of an erroneous grant of a challenge to the State ‘unless the effect
20 of such a ruling is the exercise by the State of more peremptory challenges than it is entitled to by
21 law,’ the United States Supreme Court has consistently held that it is reversible error, not subject
22 to harmless-error analysis, when a trial court erroneously excludes a potential juror who is
23 *Witherspoon*-eligible, despite the fact that the state could have used a peremptory challenge to
24 strike the potential juror.”
25

26 **Recommendation:** After review by the Law Institute’s Criminal Code and Code of Criminal
27 Procedure Committee, it is recommended that the Legislature direct the Law Institute to direct the
28 printers to add a validity note following Code of Criminal Procedure Article 800 to read as follows:
29

30 “The validity of Article 800(B), which precludes even a capital defendant
31 from complaining of an erroneous grant of a challenge for cause to the state unless
32 the effect of such grant is that the state exercised more peremptory challenges than
33 it was entitled to by law, is called into doubt by *State v. Anderson*, 996 So. 2d 973
34 (La. 2008), *Witherspoon v. Illinois*, 391 U.S. 510 (1968), and *Wainwright v. Witt*,
35 469 U.S. 412 (1985), all of which hold that in certain capital cases, the exclusion
36 of a potential juror because they voiced general objections to or conscientious or
37 religious scruples against the death penalty is reversible error and is not subject to
38 harmless error analysis.”

1 **Code of Criminal Procedure Article 843. Recording of proceedings**
2 **(Previously included in the 2020, 2022, and 2024 Biennial Reports)**

3
4 In felony cases, in cases involving violation of an ordinance enacted pursuant to R.S.
5 14:143(B), and on motion of the court, the state, or the defendant in other misdemeanor cases tried
6 in a district, parish, or city court, the clerk or court stenographer shall record all of the proceedings,
7 including the examination of prospective jurors, the testimony of witnesses, statements, rulings,
8 orders, and charges by the court, and objections, questions, statements, and arguments of counsel.

9
10 Prior version held unconstitutional by *State v. LeBlanc*, 367 So. 2d 335 (La. 1979): “In the present
11 case the issue is whether the words “on motion of the court, the state, or the defendant” are
12 unconstitutionally restrictive because Art. 1, s 19 of the 1974 Louisiana Constitution gives broader
13 rights. . . . Our review of the verbatim transcripts and the clear words of Art. 1, s 19 indicate that
14 no one in a misdemeanor case should have to make a motion before recording of the proceeding
15 is made. Art. 1, s 19 grants the right of judicial review based on a complete record whenever a
16 person is subject to imprisonment or forfeiture of rights or property. Therefore, the words “on
17 motion of the court, the state, or the defendant” in C.Cr.P. 843 are an unconstitutional restriction
18 on this constitutional right. . . . For the reasons assigned, petitioner's conviction is reversed and
19 this case is remanded to the City Court for a new trial.”

20
21 At the time this case was decided, Code of Criminal Procedure Article 843 read as follows:

22
23 **Article 843. Recording of proceedings**

24
25 In felony cases, and on motion of the court, the state, or the defendant in
26 misdemeanor cases tried in a district, parish, or city court, the clerk or court
27 stenographer shall record all of the proceedings, including the examination of
28 prospective jurors, the testimony of witnesses, statements, rulings, orders, and
29 charges by the court, and objections, questions, statements, and arguments of
30 counsel.

31
32 The provision was amended during the 2001 Regular Session by Acts 2001, No. 944, §3 to include
33 cases involving violations of certain ordinances and reference “other” misdemeanor cases, but the
34 constitutionally offensive portion of the article remains unchanged.

35
36 **Recommendation:** It is recommended that the Legislature amend Code of Criminal Procedure
37 Article 843 to remove the offending language as follows:

38
39 In felony cases, in cases involving violation of an ordinance enacted
40 pursuant to R.S. 14:143(B), and ~~on motion of the court, the state, or the~~
41 **defendant** in other misdemeanor cases tried in a district, parish, or city court, the
42 clerk or court stenographer shall record all of the proceedings, including the
43 examination of prospective jurors, the testimony of witnesses, statements, rulings,
44 orders, and charges by the court, and objections, questions, statements, and
45 arguments of counsel.

Children's Code

Children's Code Article 305. Divestiture of juvenile court jurisdiction; original criminal court jurisdiction over children
(Previously included in the 2022 and 2024 Biennial Reports)

* * *

B.(1) When a child is fifteen years of age or older at the time of the commission of any of the offenses listed in Subparagraph (2) of this Paragraph, he is subject to the exclusive jurisdiction of the juvenile court until whichever of the following occurs first:

(a) An indictment charging one of the offenses listed in Subparagraph (2) of this Paragraph is returned.

(b) The juvenile court holds a continued custody hearing and finds probable cause that the child has committed any of the offenses listed in Subparagraph (2) of this Paragraph and a bill of information charging any of the offenses listed in Subparagraph (2) of this Paragraph is filed. During this hearing, when the child is charged with forcible or second degree rape or second degree kidnapping, the court shall inform him that if convicted he shall register as a sex offender for life, pursuant to Chapter 3-B of Title 15 of the Louisiana Revised Statutes of 1950.

(2)(a) Attempted first degree murder.

(b) Attempted second degree murder.

(c) Manslaughter.

(d) Armed robbery.

(e) Aggravated burglary.

(f) Forcible or second degree rape.

(g) Simple or third degree rape.

(h) Second degree kidnapping.

(i) Repealed by Acts 2001, No. 301, §2.

(j) Aggravated battery committed with a firearm.

(k) A second or subsequent aggravated battery.

(l) A second or subsequent aggravated burglary.

1 (m) A second or subsequent offense of burglary of an inhabited dwelling.
2

3 (n) A second or subsequent felony-grade violation of Part X or X-B of Chapter 4 of Title
4 40 of the Louisiana Revised Statutes of 1950 involving the manufacture, distribution, or possession
5 with intent to distribute controlled dangerous substances.
6

7 (3) The district attorney shall have the discretion to file a petition alleging any of the
8 offenses listed in Subparagraph (2) of this Paragraph in the juvenile court or, alternatively, to
9 obtain an indictment or file a bill of information. If the child is being held in detention, the district
10 attorney shall make his election and file the indictment, bill of information, or petition in the
11 appropriate court within thirty calendar days after the child's arrest, unless the child waives this
12 right.
13

14 (4) If an indictment is returned or a bill of information is filed, the child is subject to the
15 exclusive jurisdiction of the appropriate court exercising criminal jurisdiction for all subsequent
16 procedures, including the review of bail applications, and the district court may order that the child
17 be transferred to the appropriate adult facility for detention prior to his trial as an adult.
18

19 * * *
20

21 **Article V, Section 19. Special Juvenile Procedures**
22

23 Section 19. The determination of guilt or innocence, the detention, and the custody of a
24 person who is alleged to have committed a crime prior to his seventeenth birthday shall be pursuant
25 to special juvenile procedures which shall be provided by law. However, the legislature may (1)
26 by a two-thirds vote of the elected members of each house provide that special juvenile procedures
27 shall not apply to juveniles arrested for having committed first or second degree murder,
28 manslaughter, aggravated rape, armed robbery, aggravated burglary, aggravated kidnapping,
29 attempted first degree murder, attempted second degree murder, forcible rape, simple rape, second
30 degree kidnapping, a second or subsequent aggravated battery, a second or subsequent aggravated
31 burglary, a second or subsequent offense of burglary of an inhabited dwelling, or a second or
32 subsequent felony-grade violation of Part X or X-B of Chapter 4 of Title 40 of the Louisiana
33 Revised Statutes of 1950, involving the manufacture, distribution, or possession with intent to
34 distribute controlled dangerous substances, and (2) by two-thirds vote of the elected members of
35 each house lower the maximum ages of persons to whom juvenile procedures shall apply, and (3)
36 by two-thirds vote of the elected members of each house establish a procedure by which the court
37 of original jurisdiction may waive special juvenile procedures in order that adult procedures shall
38 apply in individual cases. The legislature, by a majority of the elected members of each house,
39 shall make special provisions for detention and custody of juveniles who are subject to the
40 jurisdiction of the district court pending determination of guilt or innocence.
41

42 Held unconstitutional by *State in Interest of D.T.*, 340 So. 3d 745 (La. 2020): “Having
43 found that La. Const. V, § 19 delineates the legislature's authority to create exceptions to the
44 juvenile court's jurisdiction, we turn to the statute under review in this case, La. Ch.C. art. 305,
45 which provides for a waiver of juvenile jurisdiction in certain circumstances. . . . Louisiana
46 Children's Code Article 305 provides two means by which the juvenile court may be divested of
47 jurisdiction. . . . Importantly, the combined list of enumerated crimes in Subsection A(1) and B(2)

1 of La. Ch.C. art. 305 track the enumerated crimes in La. Const. art. V, § 19 word for word, with
2 the lone exception of the offense at issue in this case, ‘aggravated battery committed with a
3 firearm.’ Furthermore, although both the statutory and the constitutional provisions allow for adult
4 criminal jurisdiction when the juvenile is charged with a second or subsequent aggravated battery,
5 here the juvenile is being charged with his first aggravated battery, a crime which this Court has
6 previously noted is not enumerated in La. Const. art. V, § 19. . . . [T]he legislative and
7 jurisprudential histories of La. Const. art. V, § 19 and La. Ch.C. art. 305 demonstrate that a
8 constitutional amendment is required to expand the list of offenses which may be excepted from
9 juvenile court jurisdiction. . . . Although the State correctly notes that there have at times been
10 minor discrepancies between the offenses listed in La. Const. art. V, § 19 and La. Ch.C. art. 305,
11 these discrepancies have been harmonized through subsequent amendment of these two
12 provisions, with the lone remaining exception of La. Ch.C. art. 305(B)(2)(j), which was added to
13 the Children's Code via 1995 La. Acts, Nos. 367 and 979. Thus, we agree with D.T. that the
14 legislative history generally supports the juvenile court's interpretation of the enumerated crimes
15 in La. Const. art. V, § 19 as constituting an exhaustive list of offenses which may be excepted from
16 the juvenile court's jurisdiction. Accordingly, we find that the legislature overstepped its authority
17 in enacting La. Ch.C. art. 305(B)(2)(j), as ‘aggravated battery committed with a firearm’ is not
18 among the charges which are listed as permissible exceptions to the juvenile court's jurisdiction as
19 prescribed in La. Const. art. V, § 19. We find that La. Ch.C. art. 305(B)(2)(j) is unconstitutional
20 on its face”

21
22 **Note to the Legislature**

23
24 Since the issuance of the Law Institute’s 2022 Biennial Report, the Legislature amended
25 Children’s Code Article 305(B)(3) to read as follows:

26
27 (3)(a) The district attorney shall have the discretion to file a petition alleging
28 any of the offenses listed in Subparagraph (2) of this Paragraph in the juvenile court
29 or, alternatively, to obtain an indictment or file a bill of information. If the child is
30 being held in detention, the district attorney shall ~~make his election and~~ file the
31 indictment, bill of information, or petition in the appropriate court within ~~thirty~~
32 sixty calendar days after the child's arrest, unless the child waives this right.

33
34 (b) Failure to institute prosecution as provided in this Subparagraph shall
35 result in release of the child if, after a contradictory hearing with the district
36 attorney, just cause for the failure is not shown. If just cause is shown, the court
37 shall reconsider bail for the child. Failure to institute prosecution as provided in this
38 Subparagraph shall result in the release of the bail obligation if, after a contradictory
39 hearing with the district attorney, just cause for the delay is not shown.

40
41 These amendments do not, however, appear to address the constitutional infirmity recognized by
42 the Louisiana Supreme Court in *State in Interest of D.T.*

43
44 Additionally, during the 2024 Third Extraordinary Session, the Legislature proposed to
45 amend Article V, Section 19 of the Constitution of Louisiana to remove the specific list of offenses
46 provided in the Constitution and to instead provide that “the legislature may . . . provide that special

1 juvenile procedures shall not apply to juveniles arrested for certain felony offenses provided by
2 law.” The proposed amendment was submitted to the voters in March of 2025 and failed with only
3 34% in favor. As a result, the Law Institute’s original recommendation remains unchanged.
4

5 **Recommendation:** It is recommended that the Legislature do one of the following: (1) Repeal
6 Children’s Code Article 305(B)(2)(j) in its entirety or (2) Submit to the voters a proposal to add
7 “aggravated battery committed with a firearm” to the list of offenses in Article V, Section 19 of
8 the Constitution of Louisiana.
9

1 Revised Statutes

2
3 **R.S. 13:3715.1. Medical or hospital records of a patient; subpoena duces tecum and court**
4 **order to a health care provider; reimbursement for records produced**
5 ***(Previously included in the 2016, 2018, 2020, 2022, and 2024 Biennial Reports)***
6

7 A. As used in this Section, the following terms shall have the respective meanings ascribed
8 thereto:
9

10 (1) Patient "records" shall not be deemed to include x-rays, electrocardiograms, and like
11 graphic matter unless specifically referred to in the subpoena, summons, or court order.
12

13 (2) "Health care provider" shall mean a person, partnership, corporation, facility, or
14 institution defined in R.S. 40:1231.1(A).
15

16 B. The exclusive method by which medical, hospital, or other records relating to a person's
17 medical treatment, history, or condition may be obtained or disclosed by a health care provider,
18 shall be pursuant to and in accordance with the provisions of R.S. 40:1165.1 or Code of Evidence
19 Article 510, or a lawful subpoena or court order obtained in the following manner:
20

21 (1) A health care provider shall disclose records of a patient who is a party to litigation
22 pursuant to a subpoena issued in that litigation, whether for purposes of deposition or for trial and
23 whether issued in a civil, criminal, workers' compensation, or other proceeding, but only if: the
24 health care provider has received an affidavit of the party or the party's attorney at whose request
25 the subpoena has been issued that attests to the fact that such subpoena is for the records of a party
26 to the litigation and that notice of the subpoena has been mailed by registered or certified mail to
27 the patient whose records are sought, or, if represented, to his counsel of record, at least seven days
28 prior to the issuance of the subpoena; and the subpoena is served on the health care provider at
29 least seven days prior to the date on which the records are to be disclosed, and the health care
30 provider has not received a copy of a petition or motion indicating that the patient has taken legal
31 action to restrain the release of the records. If the requesting party is the patient or, if represented,
32 the attorney for the patient, the affidavit shall state that the patient authorizes the release of the
33 records pursuant to the subpoena. No such subpoena shall be issued by any clerk unless the
34 required affidavit is included with the request.
35

36 (2) Any attorney requesting medical records of a patient, who is not a party to the litigation
37 in which the records are being sought may obtain the records by written authorization of the patient
38 whose records are being sought or if no such authorization is given, by court order, as provided in
39 Paragraph (5) of this Subsection.
40

41 (3) Any attorney requesting medical records of a patient who is deceased may obtain the
42 records by subpoena, as provided in Paragraph (1) of this Subsection, by written authorization of
43 the person authorized under Civil Code Article 2315.1 or the executor or administrator of the
44 deceased's estate, or by court order, as provided in Paragraph (5) of this Subsection.
45

1 (4) Any subpoena for medical records issued by the office of workers' compensation
2 administration in the Louisiana Workforce Commission, or by a hearing officer or agent employed
3 by such office, shall for all purposes be considered a subpoena within the meaning of this Section.
4

5 (5) A court shall issue an order for the production and disclosure of a patient's records,
6 regardless of whether the patient is a party to the litigation, only: after a contradictory hearing with
7 the patient, or, if represented, with his counsel of record, or, if deceased, with those persons
8 identified in Paragraph (3) of this Subsection, and after a finding by the court that the release of
9 the requested information is proper; or with consent of the patient.
10

11 (6) Records of the identity, diagnosis, prognosis, or treatment of any patient which are
12 maintained in connection with the performance of any program or activity relating to substance or
13 alcohol abuse, education, training, treatment, rehabilitation, or research, which is conducted,
14 regulated, or directly or indirectly assisted by any department or agency of the United States shall
15 be confidential and disclosed only for the purposes and under the circumstances expressly
16 authorized in 42 CFR Part 2. Under this Section, said programs shall include but not be limited to
17 any alcohol or substance abuse clinic or facility operated by the Louisiana Department of Health.
18 No subpoena or court order shall compel disclosure of any record or patient-identifying
19 information of an individual who has applied for or been given diagnosis or treatment for alcohol
20 or drug abuse in a federally assisted program, unless said court order or subpoena meets the criteria
21 set forth in 42 CFR 2.61, 2.64, or 2.65. No health care provider, employee, or agent thereof shall
22 be held civilly or criminally liable for refusing to disclose protected alcohol and substance abuse
23 records or patient-identifying information unless first presented with a valid consent signed by the
24 individual, which complies with 42 CFR 2.31 or a court order and subpoena which complies with
25 42 CFR Part 2.
26

27 C. No health care provider, employee, or agent thereof shall be held civilly or criminally
28 liable for disclosure of the records of a patient pursuant to the procedure set forth in this Section,
29 R.S. 40:1165.1, or Code of Evidence Article 510, provided that the health care provider has not
30 received a copy of the petition or motion indicating that legal action has been taken to restrain the
31 release of the records.
32

33 D. Unless the subpoena or court order otherwise specifies, it shall be sufficient compliance
34 therewith if the health care provider delivers by registered or certified mail, at least forty-eight
35 hours prior to the date upon which production is due, or delivers by hand on the date upon which
36 production is due a true and correct copy of all records described in such subpoena. However, no
37 subpoena or court order shall require the production of original, nonreproducible materials and
38 records unless accompanied by a court order or stipulation of the parties and the health care
39 provider which specifies the person who will be responsible for the care of the items to be
40 produced, the date and manner of the return to the provider of the items to be produced, and that
41 the items to be produced are not to be destroyed or subject to destructive testing. Any subpoena
42 duces tecum not timely served shall be quashed by the trial court without the necessity of an
43 appearance by the hospital, health care facility, or medical physician.
44

45 E. The records shall be accompanied by the certificate of the health care provider or other
46 qualified witness, stating in substance each of the following:
47

1 (1) That the copy is a true copy of all records described in the subpoena.
2

3 (2) That the records were prepared by the health care provider in the ordinary course of the
4 business of the health care provider at or near the time of the act, condition, or event.
5

6 F. If the health care provider has none of the records described, or only part thereof, the
7 health care provider shall so state in the certificate, and deliver the certificate and such records as
8 are available.
9

10 G. The health care provider shall be reimbursed by the person causing the issuance of the
11 subpoena, summons, or court order in accordance with the provisions of R.S. 40:1165.1.
12

13 H. Notwithstanding any other provision of law to the contrary, no health care provider, as
14 defined in R.S. 40:1165.1, shall be required to grant access to or copying of photographs, or both,
15 of any minor or part of a minor's body who is alleged to be the victim of child sexual abuse unless
16 a court of competent jurisdiction, after a contradictory hearing at which the health care provider
17 may but need not be present, orders the health care provider to grant access to or copying of said
18 photographs to the moving party's counsel of record or experts qualified in the medical diagnosis
19 of child sexual abuse, or to both. The court's order granting the access to or copying of said
20 photographs shall be limited to the movant's counsel of record or the experts qualified in the
21 medical diagnosis of child sexual abuse, or both; shall be limited solely to use of said photographs
22 for the purposes of trial preparation; shall prohibit further copying, reproduction, or dissemination
23 of said photographs; and shall prohibit counsel of record or the experts qualified in the medical
24 diagnosis of child sexual abuse from allowing any other person access to said photographs without
25 court order and for good cause shown.
26

27 I. A coroner, deputy coroner, or other assistant, while acting in his official capacity relating
28 to a physical or mental investigation and examination or an investigation into the cause and manner
29 of a death, is exempt from complying with the provisions of this Section.
30

31 J. The Louisiana State Board of Medical Examiners, Louisiana State Board of Dentistry,
32 Louisiana State Board of Psychologists, Louisiana State Board of Nursing, Louisiana Board of
33 Pharmacy, Louisiana State Board of Social Work Examiners, Louisiana State Board of Physical
34 Therapy Examiners, and the Louisiana State Board of Chiropractic Examiners, while acting in an
35 official capacity relating to an investigation of an individual over whom such board has regulatory
36 authority shall be exempt from complying with the notice provisions of this Section when the
37 subpoena clearly states that no notice or affidavit is required. Notwithstanding any privilege of
38 confidentiality recognized by law, no health care provider or health care institution with which
39 such health care provider is affiliated shall, acting under any such privilege, fail or refuse to
40 respond to a lawfully issued subpoena of such board for any medical information, testimony,
41 records, data, reports or other documents, tangible items, or information relative to any patient
42 treated by such individual under investigation; however, the identity of any patient identified in or
43 by such records or information shall be maintained in confidence by such board and shall be
44 deemed a privilege of confidentiality existing in favor of any such patient. For the purpose of
45 maintaining such confidentiality of patient identity, such board shall cause any such medical
46 records or the transcript of any such testimony to be altered so as to prevent the disclosure of the
47 identity of the patient to whom such records or testimony relates.

1
2 K. Any attorney who causes the issuance of a subpoena or court order for medical, hospital,
3 or other records relating to a person's medical treatment, history, or condition and who
4 intentionally fails to provide notice to the patient or to the patient's counsel of record in accordance
5 with the requirements of this Section shall be subject to sanction by the court.
6

7 L. No provision of this Section shall preclude a patient from personally receiving a copy
8 or synopsis of his medical records as provided by law.
9

10 In *State v. Skinner*, 10 So. 3d 1212, 1218 (La. 2009), the court found: “Because we find a warrant
11 was required for an investigative search of the defendant's prescription and medical records, the
12 trial court erred in finding the remedy was for the State to comply with requirements of La.Code
13 Crim Proc. art. 66 and La Rev. Stat. 13:3715.1, which the State had admittedly failed to comply
14 with in obtaining the defendant's prescription and medical records, in order for these records to be
15 admissible at trial. The trial court's ruling essentially permits the State to re-subpoena the
16 prescription and medical records, allowing the State to introduce them at trial if the State has
17 followed all the procedural requirements of La.Rev.Stat. 13:3715.1 and/or La.Code Crim. Proc.
18 art. 66 in procuring these records a second time. However, because we find the Fourth Amendment
19 and La. Const, art. I, § 5 require a search warrant before a search of prescription and medical
20 records for **criminal investigative purposes** is permitted, the State cannot cure its warrantless
21 search and seizure of the records by a second subpoena of these records. . . . The procedural
22 requirements of La.Rev.Stat. 13:3715.1 simply and clearly do not suffice to comply with the
23 constitutional requirements of probable cause supported by a sworn affidavit for the issuance of a
24 search warrant. Thus, it is irrelevant whether or not the State complied with the requirements of
25 La.Rev.Stat. 13:3715.1, and any subsequent compliance with its procedural requirements is
26 insufficient to permit the introduction of evidence that was illegally searched and seized. This
27 evidence must be suppressed.”
28

29 Also, a validity note following R.S. 13:3715.1 provides: “Procedural requirements of this section
30 were found unconstitutional in *State v. Skinner, Sup.2009, 10 So.3d 1212, 2008-2522 (La. 5/5/09)*.
31 *See Notes of Decisions, post.*”
32

33 Note to the Legislature

34

35 Since the issuance of the Law Institute’s last Biennial Report, Paragraph (B)(1) of this
36 Section was amended by Acts 2024, No. 185 to read as follows:
37

38 B. The exclusive method by which medical, hospital, or other records
39 relating to a person's medical treatment, history, or condition may be obtained or
40 disclosed by a health care provider, shall be pursuant to and in accordance with the
41 provisions of R.S. 40:1165.1 or Code of Evidence Article 510, or a lawful subpoena
42 or court order obtained in the following manner:
43

44 (1) A health care provider shall disclose records of a patient who is a party
45 to litigation pursuant to a subpoena issued in that litigation, whether for purposes
46 of deposition or for trial and whether issued in a civil, criminal, workers'
47 compensation, or other proceeding, but only if: the health care provider has

1 received an affidavit of the party or the party's attorney at whose request the
2 subpoena has been issued that attests to the fact that such subpoena is for the records
3 of a party to the litigation and that notice of the subpoena has been mailed by
4 registered or certified mail or delivered by commercial courier as defined in Code
5 of Civil Procedure Article 1313(D) to the patient whose records are sought, or, if
6 represented, to his counsel of record, at least seven days prior to the issuance of the
7 subpoena; and the subpoena is served on the health care provider at least seven days
8 prior to the date on which the records are to be disclosed, and the health care
9 provider has not received a copy of a petition or motion indicating that the patient
10 has taken legal action to restrain the release of the records. If the requesting party
11 is the patient or, if represented, the attorney for the patient, the affidavit shall state
12 that the patient authorizes the release of the records pursuant to the subpoena. No
13 such subpoena shall be issued by any clerk unless the required affidavit is included
14 with the request.

15
16 This amendment does not appear to address the constitutional infirmity recognized by the
17 Louisiana Supreme Court in *State v. Skinner*, and as a result, the Law Institute's original
18 recommendation remains unchanged.

19
20 **Recommendation:** After review by the Law Institute's Criminal Code and Code of Criminal
21 Procedure Committee, it is recommended that the Legislature direct the Law Institute to direct the
22 printers to revise the validity note following R.S. 13:3715.1 to read: "Procedural requirements of
23 this section were found unconstitutional **'for criminal investigative purposes'** in *State v. Skinner*
24 ..."

1 **R.S. 13:4210. Penalty for judge’s violation of R.S. 13:4207 through R.S. 13:4209**
2 **(Previously included in the 2016, 2018, 2020, 2022, and 2024 Biennial Reports)**

3
4 All judges mentioned in R.S. 13:4207 through 13:4209 who shall violate those provisions
5 or requirements, relative to the time within which they shall render decisions as aforesaid, shall
6 forfeit one quarter's salary for each violation. The clerk of court shall notify the auditor of any
7 failure on the part of the judge to render a decision within the time prescribed herein. The auditor,
8 upon receiving such notification from the clerk of the court, shall withhold from such judge the
9 payment of one quarter's salary, which amounts shall be paid by the auditor into the general school
10 fund.

11
12 Held unconstitutional by *Prejean v. Barousse*, 107 So. 3d 569, 573-74 (La. 2013): “This analysis
13 convincingly demonstrates La. R.S. 13:4210 runs afoul of the constitutional mandate in La. Const.
14 Art. V § 25(C), granting exclusive original jurisdiction over judicial discipline to this court.
15 Additionally, we find La. R.S. 13:4210 conflicts with La. Const. Art. V, § 21, which provides
16 ‘[t]he term of office, retirement benefits, and **compensation** of a judge shall not be **decreased**
17 during the term for which he is elected.’ . . . In the instant case, the effect of a partial forfeiture of
18 a judge’s salary would result in a decrease of compensation of the judge during the term for which
19 he was elected, in violation of La. Const. Art. V, § 21. Under these circumstances, we determine
20 La. R.S. 13:4210 is unconstitutional on its face, as no set of circumstances exists under which the
21 statute would be valid.”

22
23 **Recommendation:** It is recommended that the Legislature repeal R.S. 13:4210 in its entirety.

1 **R.S. 14:42. First degree rape**
2 *(Previously included in the 2016, 2018, 2020, 2022, and 2024 Biennial Reports)*

3
4 A. First degree rape is a rape committed upon a person sixty-five years of age or older or
5 where the anal, oral, or vaginal sexual intercourse is deemed to be without lawful consent of the
6 victim because it is committed under any one or more of the following circumstances:

7
8 * * *

9
10 **(4) When the victim is under the age of thirteen years. Lack of knowledge of the**
11 **victim's age shall not be a defense.**

12
13 * * *

14
15 D. (1) Whoever commits the crime of first degree rape shall be punished by life
16 imprisonment at hard labor without benefit of parole, probation, or suspension of sentence.

17
18 **(2) However, if the victim was under the age of thirteen years, as provided by**
19 **Paragraph (A)(4) of this Section:**

20
21 **(a) And if the district attorney seeks a capital verdict, the offender shall be punished**
22 **by death or life imprisonment at hard labor without benefit of parole, probation, or**
23 **suspension of sentence, in accordance with the determination of the jury. The provisions of**
24 **Code of Criminal Procedure Article 782 relative to cases in which punishment may be capital**
25 **shall apply.**

26
27 **(b) And if the district attorney does not seek a capital verdict, the offender shall be punished**
28 **by life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence.**
29 **The provisions of Code of Criminal Procedure Article 782 relative to cases in which punishment**
30 **is necessarily confinement at hard labor shall apply.**

31
32 * * *

33
34 Held unconstitutional by *Kennedy v. Louisiana*, 554 U.S. 407, 412 (2008): “This case presents the
35 question whether the Constitution bars respondent from imposing the death penalty for the rape of
36 a child where the crime did not result, and was not intended to result, in death of the victim. We
37 hold the Eighth Amendment prohibits the death penalty for this offense. The Louisiana statute is
38 unconstitutional.”

39
40 **Recommendation:** After review by the Law Institute’s Criminal Code and Code of Criminal
41 Procedure Committee, it is recommended that the Legislature repeal R.S. 14:42(D)(2) in its
42 entirety.

1 **R.S. 14:89. Crime against nature**
2 *(Previously included in the 2016, 2018, 2020, 2022, and 2024 Biennial Reports)*

3
4 A. Crime against nature is either of the following:

5
6 (1) The unnatural carnal copulation by a human being with another of the same sex or
7 opposite sex, except that anal sexual intercourse between two human beings shall not be deemed
8 as a crime against nature when done under any of the circumstances described in R.S. 14:41, 42,
9 42.1, or 43. Emission is not necessary; and, when committed by a human being with another, the
10 use of the genital organ of one of the offenders of whatever sex is sufficient to constitute the crime.

11
12 (2) The marriage to, or sexual intercourse with, any ascendant or descendant, brother or
13 sister, uncle or niece, aunt or nephew, with knowledge of their relationship. The relationship must
14 be by consanguinity, but it is immaterial whether the parties to the act are related to one another
15 by the whole or half blood. The provisions of this Paragraph shall not apply where one person, not
16 a resident of this state at the time of the celebration of his marriage, contracted a marriage lawful
17 at the place of celebration and thereafter removed to this state.

18
19 B.(1) Whoever commits the offense of crime against nature as defined by Paragraph (A)(1)
20 of this Section shall be fined not more than two thousand dollars, imprisoned, with or without hard
21 labor, for not more than five years, or both.

22
23 (2) Whoever commits the offense of crime against nature as defined by Paragraph (A)(1)
24 of this Section with a person under the age of eighteen years shall be fined not more than fifty
25 thousand dollars, imprisoned at hard labor for not less than fifteen years nor more than fifty years,
26 or both.

27
28 (3) Whoever commits the offense of crime against nature as defined by Paragraph (A)(1)
29 of this Section with a person under the age of fourteen years shall be fined not more than seventy-
30 five thousand dollars, imprisoned at hard labor for not less than twenty-five years nor more than
31 fifty years, or both.

32
33 (4) Whoever commits the offense of crime against nature as defined by Paragraph (A)(2)
34 of this Section, where the crime is between an ascendant and descendant, or between brother and
35 sister, shall be imprisoned at hard labor for not more than fifteen years.

36
37 (5) Whoever commits the offense of crime against nature as defined by Paragraph (A)(2)
38 of this Section, where the crime is between uncle and niece, or aunt and nephew, shall be fined not
39 more than one thousand dollars, or imprisoned, with or without hard labor, for not more than five
40 years, or both.

41
42 C.(1) It shall be an affirmative defense to prosecution for a violation of Paragraph (A)(1)
43 of this Section that, during the time of the alleged commission of the offense, the defendant was a
44 victim of trafficking of children for sexual purposes as provided in R.S. 14:46.3(E). Any child
45 determined to be a victim pursuant to the provisions of this Paragraph shall be eligible for
46 specialized services for sexually exploited children.

1 (2) It shall be an affirmative defense to prosecution for a violation of Paragraph (A)(1) of
2 this Section that, during the time of the alleged commission of the offense, the defendant is
3 determined to be a victim of human trafficking pursuant to the provisions of R.S. 14:46.2(F). Any
4 person determined to be a victim pursuant to the provisions of this Paragraph shall be notified of
5 any treatment or specialized services for sexually exploited persons to the extent that such services
6 are available.
7

8 D. The provisions of Act No. 177 of the 2014 Regular Session and the provisions of the
9 Act that originated as Senate Bill No. 333 of the 2014 Regular Session incorporate the elements
10 of the crimes of incest (R.S. 14:78) and aggravated incest (R.S. 14:78.1), as they existed prior to
11 their repeal by these Acts, into the provisions of the crimes of crime against nature (R.S. 14:89)
12 and aggravated crime against nature (R.S. 14:89.1), respectively. For purposes of the provisions
13 amended by Act No. 177 of the 2014 Regular Session and the Act that originated as Senate Bill
14 No. 333 of the 2014 Regular Session, a conviction for a violation of R.S. 14:89(A)(2) shall be the
15 same as a conviction for the crime of incest (R.S. 14:78) and a conviction for a violation of R.S.
16 14:89.1(A)(2) shall be the same as a conviction for the crime of aggravated incest (R.S.
17 14:78.1). Neither Act shall be construed to alleviate any person convicted or adjudicated
18 delinquent of incest (R.S. 14:78) or aggravated incest (R.S. 14:78.1) from any requirement,
19 obligation, or consequence imposed by law resulting from that conviction or adjudication
20 including but not limited to any requirements regarding sex offender registration and notification,
21 parental rights, probation, parole, sentencing, or any other requirement, obligation, or consequence
22 imposed by law resulting from that conviction or adjudication.
23

24 E. Nothing in Act No. 485 of the 2018 Regular Session of the Legislature shall be construed
25 to alleviate any person convicted or adjudicated delinquent of crime against nature (R.S. 14:89)
26 from any requirement, obligation, or consequence imposed by law resulting from that conviction
27 or adjudication including but not limited to any requirements regarding sex offender registration
28 and notification, parental rights, probation, parole, sentencing, or any other requirement,
29 obligation, or consequence imposed by law resulting from that conviction or adjudication.
30

31 Prior version held unconstitutional by *Louisiana Electorate of Gays and Lesbians, Inc. v. Connick*,
32 902 So. 2d 1090, 1094, 1096 (La. App. 5 Cir. 2005): “The court found La. R.S. 14:89(A)(1)
33 unconstitutional in part in light of *Lawrence v. Texas* [539 U.S. 558 (2003)]. . . . The Court declares
34 the following language in Louisiana Revised Statutes 14:89(A)(1) to be unconstitutional and
35 therefore null and void: ‘with another of the same sex or opposite sex or’, ‘, except that anal sexual
36 intercourse between two human beings shall not be deemed as a crime against nature when done
37 under any of the circumstances described in R.S. 14:41, 14:42, 14:42.1 or 14:43’ and ‘; and when
38 committed by a human being with another, the use of the genital organ of one of the offenders of
39 whatever sex is sufficient to constitute the crime.’ The Court upholds and affirms the constitutional
40 portions of Louisiana Revised Statutes 14:89(A)(1), which read: Crime against nature is: The
41 unnatural carnal copulation by a human being with an animal. Emission is not necessary. . . . We
42 find no error in the trial court’s ruling on this point.” Although *Louisiana Electorate v. Connick* is
43 an appellate court decision, the Louisiana Supreme Court denied writs in this case, 916 So. 2d
44 1062 (La. 2005).

1 At the time this case was decided, R.S. 14:89(A)(1) read as follows:

2
3 **R.S. 14:89. Crime against nature**

4
5 A. Crime against nature is:

6
7 (1) The unnatural carnal copulation by a human being with another of the
8 same sex or opposite sex or with an animal, except that anal sexual intercourse
9 between two human beings shall not be deemed as a crime against nature when
10 done under any of the circumstances described in R.S. 14:41, 14:42, 14:42.1, or
11 14:43. Emission is not necessary; and when committed by a human being with
12 another, the use of the genital organ of one of the offenders of whatever sex is
13 sufficient to constitute the crime.

14
15 * * *

16
17 Although the statute has undergone several amendments since the Fifth Circuit’s decision in
18 *Louisiana Electorate v. Connick*, the substance of the offending provision has remained the same.

19
20 The Law Institute’s initial recommendation with respect to this provision was for the Legislature
21 amend R.S. 14:89(A)(1) to remove the offending language so that the provision would read as
22 follows: “The carnal copulation by a human being with an animal. Emission is not necessary.”
23 After the issuance of the Law Institute’s previous Unconstitutional Statutes Biennial Reports to
24 the Legislature, during the 2018 Regular Session, R.S. 14:89(A)(1) was amended as reflected
25 below, and a new crime involving sexual abuse of an animal was enacted as R.S. 14:89.3.

26
27 **R.S. 14:89. Crime against nature**

28
29 A. Crime against nature is either of the following:

30
31 (1) The unnatural carnal copulation by a human being with another of the
32 same sex or opposite sex ~~or with an animal~~, except that anal sexual intercourse
33 between two human beings shall not be deemed as a crime against nature when
34 done under any of the circumstances described in R.S. 14:41, 42, 42.1, or 43.
35 Emission is not necessary; and, when committed by a human being with another,
36 the use of the genital organ of one of the offenders of whatever sex is sufficient to
37 constitute the crime.

38
39 * * *

40
41 E. Nothing in Act No. 485 of the 2018 Regular Session of the Legislature
42 shall be construed to alleviate any person convicted or adjudicated delinquent of
43 crime against nature (R.S. 14:89) from any requirement, obligation, or consequence
44 imposed by law resulting from that conviction or adjudication including but not
45 limited to any requirements regarding sex offender registration and notification,

1 parental rights, probation, parole, sentencing, or any other requirement, obligation,
2 or consequence imposed by law resulting from that conviction or adjudication.
3

4 The Law Institute reviewed this development and makes the following updated recommendation.
5

6 **Recommendation:** After review by the Law Institute’s Criminal Code and Code of Criminal
7 Procedure Committee, it is recommended that the Legislature repeal R.S. 14:89(A)(1), (B)(1), (2),
8 and (3), and (C) in their entirety.

1 **R.S. 14:91.5. Unlawful use of a social networking website**
2 *(Previously included in the 2018, 2020, 2022, and 2024 Biennial Reports)*

3
4 A. The following shall constitute unlawful use of a social networking website:

5
6 (1) The intentional use of a social networking website by a person who is required to
7 register as a sex offender and who was convicted of R.S. 14:81 (indecent behavior with juveniles),
8 R.S. 14:81.1 (child sexual abuse materials), R.S. 14:81.3 (computer-aided solicitation of a minor),
9 or R.S. 14:283 (video voyeurism) or was convicted of a sex offense as defined in R.S. 15:541 in
10 which the victim of the sex offense was a minor.

11
12 (2) The provisions of this Section shall also apply to any person convicted for an offense
13 under the laws of another state, or military, territorial, foreign, tribal, or federal law which is
14 equivalent to the offenses provided for in Paragraph (1) of this Subsection, unless the tribal court
15 or foreign conviction was not obtained with sufficient safeguards for fundamental fairness and due
16 process for the accused as provided by the federal guidelines adopted pursuant to the Adam Walsh
17 Child Protection and Safety Act of 2006.

18
19 B. For purposes of this Section:

20
21 (1) "Minor" means a person under the age of eighteen years.

22
23 (2)(a) "Social networking website" means an Internet website, the primary purpose of
24 which is facilitating social interaction with other users of the website and has all of the following
25 capabilities:

26
27 (i) Allows users to create web pages or profiles about themselves that are available to the
28 general public or to any other users.

29
30 (ii) Offers a mechanism for communication among users.

31
32 (b) "Social networking website" shall not include any of the following:

33
34 (i) An Internet website that provides only one of the following services: photo-sharing,
35 electronic mail, or instant messaging.

36
37 (ii) An Internet website the primary purpose of which is the facilitation of commercial
38 transactions involving goods or services between its members or visitors.

39
40 (iii) An Internet website the primary purpose of which is the dissemination of news.

41
42 (iv) An Internet website of a governmental entity.

43
44 (3) "Use" shall mean to create a profile on a social networking website or to contact or
45 attempt to contact other users of the social networking website.

1 C.(1) Whoever commits the crime of unlawful use of a social networking website shall,
2 upon a first conviction, be fined not more than ten thousand dollars and shall be imprisoned with
3 hard labor for not more than ten years without benefit of parole, probation, or suspension of
4 sentence.

5
6 (2) Whoever commits the crime of unlawful use of a social networking website, upon a
7 second or subsequent conviction, shall be fined not more than twenty thousand dollars and shall
8 be imprisoned with hard labor for not less than five years nor more than twenty years without
9 benefit of parole, probation, or suspension of sentence.

10
11 Prior version held unconstitutional by *Doe v. Jindal*, 853 F. Supp. 2d 596, 601, 607 (M.D. La.
12 2012): “The issues presently before the Court are: (1) whether the Plaintiffs have standing to
13 challenge the Act; (2) whether the Act is overbroad and, therefore, violates Plaintiffs' First
14 Amendment rights; (3) whether the Act is void and unenforceable because it is unconstitutionally
15 vague; and (4) if the Court finds that the Act violates Plaintiffs' First Amendment rights, whether
16 the Act's constitutional deficiency is cured by the promulgation of a regulation intended to limit
17 construction and applicability of the legislation. . . . Although the Act is intended to promote the
18 legitimate and compelling state interest of protecting minors from internet predators, the near total
19 ban on internet access imposed by the Act unreasonably restricts many ordinary activities that have
20 become important to everyday life in today's world. The sweeping restrictions on the use of the
21 internet for purposes completely unrelated to the activities sought to be banned by the Act impose
22 severe and unwarranted restraints on constitutionally protected speech. More focused restrictions
23 that are narrowly tailored to address the specific conduct sought to be proscribed should be
24 pursued. For all of the foregoing reasons, the Court concludes that the Act is unconstitutionally
25 overbroad and void for vagueness.”

26
27 At the time this case was decided, R.S. 14:91.5 provided for the “unlawful use or access of social
28 media,” which included “the using or accessing of social networking websites, chat rooms, and
29 peer-to-peer networks by a person who is required to register as a sex offender” and was drafted
30 to specifically include offenders who were *previously* convicted of the crimes set forth under
31 Paragraph (A)(1), including sex offenses in which the victim was a minor. The provision went on
32 to provide that “[t]he use or access of social medial shall not be considered unlawful for purposes
33 of this Section if the offender has permission to use or access social networking websites, chat
34 rooms, or peer-to-peer networks from his probation or parole officer or the court of original
35 jurisdiction.” The provision also provided definitions for the terms “chat room,” “peer-to-peer
36 network,” and “social networking website,” which was defined as an internet website that has “*any*
37 of the following capabilities (emphasis added),” including offering “a mechanism for
38 communication among users, such as a forum, chat room, electronic mail, or instant messaging.”

39
40 Immediately after this case was decided, during the 2012 Regular Session, the Legislature
41 amended R.S. 14:91.5 to remove both the reference to previous convictions and the exception
42 concerning permission from probation or parole officers or from the court. The amended provision
43 now provides for the “unlawful use of a social networking website,” which requires “the
44 intentional use of a social networking website.” The amended provision also exempts certain
45 websites from the definition of “social networking website” for its purposes and defines “use” as

1 “to create a profile on a social networking website or to contact or attempt to contact other users
2 of the social networking website.”

3
4 Nevertheless, in *State v. Mabens*, 2017 WL 11714140 (La. App. 4 Cir. 2017), the Fourth Circuit
5 granted a supervisory writ application and ultimately declared R.S. 14:91.5 unconstitutional. The
6 Fourth Circuit explained that it had previously stayed this writ application in light of the United
7 States Supreme Court’s grant of certiorari in *Packingham v. North Carolina*, 582 U.S. 98 (2017),
8 wherein the Supreme Court ultimately held that a North Carolina statute similar to R.S. 14:91.5
9 was unconstitutional. After summarizing the Supreme Court’s analysis in the *Packingham* case,
10 including that the North Carolina statute was “a prohibition unprecedented in the scope of First
11 Amendment speech it burdens” and that “to foreclose access to social media altogether is to
12 prevent the user from engaging in the legitimate exercise of First Amendment rights,” the Fourth
13 Circuit provided as follows: “We see no material difference between the North Carolina statute at
14 issue in *Packingham* and the statute at issue in this writ application, La. R.S. 14:95.1 [*sic*].
15 Accordingly, and pursuant to the clear language and rationale of the *Packingham* decision, we find
16 La. R.S. 14:95.1 [*sic*] to be unconstitutional.”

17
18 As cited by the Fourth Circuit in *Mabens*, the United States Supreme Court in *Packingham*
19 provided that its opinion “should not be interpreted as barring a State from enacting more specific
20 laws than the one at issue” and also that “[t]hrough the issue is not before the Court, it can be
21 assumed that the First Amendment permits a State to enact specific, narrowly tailored laws that
22 prohibit a sex offender from engaging in conduct that often presages a sexual crime, like contacting
23 a minor or using a website to gather information about a minor.”

24 25 Note to the Legislature

26
27 Since the issuance of the Law Institute’s 2022 Biennial Report, in which the repeal of R.S.
28 14:91.5 was recommended, the Second Circuit decided *State v. McMahon*, 349 So. 3d 654 (La.
29 App. 2 Cir. 2022), in which the court found:

30
31 ““The Supreme Court stated in *Packingham v. North Carolina, supra*, “[T]his
32 opinion should not be interpreted as barring a State from enacting more specific laws than
33 the one at issue. Specific criminal acts are not protected speech even if speech is the means
34 for their commission.” We find the current Louisiana statute to be more narrowly tailored
35 than the unconstitutional North Carolina statute. A comparison of the Louisiana and North
36 Carolina statutes reveals that Louisiana's statute is directed toward a narrower group of
37 registered sex offenders. North Carolina's statute applied to *all* registered sex offenders . .
38 . La. R.S. 14:91.5 applies only to those registered sex offenders who are convicted of R.S.
39 14:81 (indecent behavior with juveniles), R.S. 14:81.1 (pornography involving
40 juveniles), R.S. 14:81.3 (computer-aided solicitation of a minor), R.S. 14:283 (video
41 voyeurism), or a sex offense as defined in R.S. 15:541 in which the victim of the sex
42 offense was a minor. This list of required convictions has the effect of narrowing the statute
43 so that the prohibition on social networking sites does not apply to every registered sex
44 offender as the North Carolina statute did. By tailoring the statute, the Louisiana legislature
45 has targeted those offenders who “often pose a high risk of engaging in ... crimes against
46 victims who are minors even after being released from incarceration” which is “of

1 paramount governmental interest.” The Louisiana and North Carolina statutes have
2 additional distinctions. Louisiana has two additional exclusions to the definition of social
3 networking website: “An Internet website the primary purpose of which is the
4 dissemination of news”; and “An Internet website of a governmental entity.” The North
5 Carolina statute prevented *access* to social networking websites. The Louisiana statute is
6 distinguishable from the North Carolina statute because it does not prevent access to social
7 networking websites, it only prevents *use* of the websites. “Use” is defined in the Louisiana
8 statute as “to create a profile on a social networking website or to contact or attempt to
9 contact other users of the social networking website.” These distinctions between the two
10 statutes speak directly to the concerns of the Supreme Court that offenders would not have
11 access to sources for current events, checking employment ads, and “exploring the vast
12 realms of human thought and knowledge.” *Packingham v. North Carolina, supra*. The
13 Louisiana statute specifically allows accounts to be created on news and government
14 websites. It also allows access to any website; it simply prevents a personal account from
15 being created, which prevents contact with minors. For example, registered sex offenders
16 can still access public social media pages to view announcements, news, and job postings.
17 For these reasons, we find that La. R.S. 14:91.5 does not violate the First Amendment
18 rights of those registered sex offenders who are prevented from using social networking
19 sites.
20

21 The Louisiana Supreme Court denied writs in this case (354 So. 3d 4 (Mem)), although
22 Chief Justice Weimer would grant “to resolve the perceived split in our circuit courts of appeal
23 regarding the constitutionality of La. R.S. 14:91.5,” and the United States Supreme Court denied
24 certiorari (143 S.Ct. 2505 (Mem)).
25

26 Additionally, since the issuance of the Law Institute’s 2024 Biennial Report, the United
27 States Fifth Circuit considered the *State v. McMahon* case in *McMahon v. Campbell*, 2025 WL
28 586819 (U.S. 5th Cir. 2025):
29

30 “On direct appeal, McMahon argued that section 14:91.5 violates the First
31 Amendment by restricting his ability to seek gainful employment or maintain
32 networking relationships. He relied on *Packingham v. North Carolina*, 582 U.S. 98
33 (2017), where the Supreme Court held unconstitutional a North Carolina statute
34 that prohibited all registered sex offenders from accessing any social networking
35 website with minor-aged users. The Louisiana appellate court rejected this
36 argument, listing three reasons why the Louisiana statute was narrower than North
37 Carolina's. . . . *Packingham* itself recognized that more narrowly crafted statutes
38 should survive scrutiny. So the Louisiana appellate court decision isn't contrary
39 to *Packingham*. It offered three cogent and material differences between section
40 14:91.5 and the North Carolina statute held unconstitutional in *Packingham*. . . . As
41 explained above, fair-minded jurists could easily uphold section 14:91.5 under
42 *Packingham*. We affirm.”
43

44 **Recommendation:** It is recommended that the Legislature direct the Law Institute to direct the
45 printers to revise the validity note following R.S. 14:91.5 to read as follows:
46

1 “For validity of this section, see Doe v. Jindal, 853 F.Supp.2d 596 (M.D.La.
2 2012); State of Louisiana v. Brittany Mabens, 2016-0975, 2017 WL 11714140 (La. App.
3 4 Cir. 7/5/17). **But see State v. McMahon, 349 So. 3d 654 (La. App. 2 Cir. 2022), writ**
4 **denied, 354 So. 3d 4 (Mem) (La. 2023), finding the current Louisiana statute to be**
5 **more narrowly tailored than the unconstitutional North Carolina statute and holding**
6 **that R.S. 14:91.5 does not violate the First Amendment. See also McMahon v.**
7 **Campbell, 2025 WL 586819 (U.S. 5th Cir. 2025) (reaching the same conclusion).**

1 **R.S. 14:106. Obscenity**
2 *(Previously included in the 2018, 2020, 2022, and 2024 Biennial Reports)*

3
4 A. The crime of obscenity is the intentional:

5
6 * * *

7
8 (2)(a) Participation or engagement in, or management, operation, production, presentation,
9 performance, promotion, exhibition, advertisement, sponsorship, electronic communication, or
10 display of, hard core sexual conduct when the trier of fact determines that the average person
11 applying contemporary community standards would find that the conduct, taken as a whole,
12 appeals to the prurient interest; and the hard core sexual conduct, as specifically defined herein, is
13 presented in a patently offensive way; and the conduct taken as a whole lacks serious literary,
14 artistic, political, or scientific value.

15
16 (b) Hard core sexual conduct is the public portrayal, for its own sake, and for ensuing
17 commercial gain of:

18
19 * * *

20
21 (iii) Sadoomasochistic abuse, meaning actual, simulated or animated, flagellation, or torture
22 by or upon a person who is nude or clad in undergarments or in a costume that reveals the pubic
23 hair, anus, vulva, genitals, or female breast nipples, or in the condition of being fettered, bound, or
24 otherwise physically restrained, on the part of one so clothed; or

25
26 * * *

27
28 (3)(a) Sale, allocation, consignment, distribution, dissemination, advertisement,
29 exhibition, electronic communication, or display of obscene material, or the preparation,
30 manufacture, publication, electronic communication, or printing of obscene material for sale,
31 allocation, consignment, distribution, advertisement, exhibition, electronic communication, or
32 display.

33
34 (b) Obscene material is any tangible work or thing which the trier of fact determines that
35 the average person applying contemporary community standards would find, taken as a whole,
36 appeals to the prurient interest, and which depicts or describes in a patently offensive way, hard
37 core sexual conduct specifically defined in Paragraph (2) of this Subsection, and the work or thing
38 taken as a whole lacks serious literary, artistic, political, or scientific value.

39
40 * * *

41
42 **(6) Advertisement, exhibition, electronic communication, or display of sexually**
43 **violent material. "Violent material" is any tangible work or thing which the trier of facts**
44 **determines depicts actual or simulated patently offensive acts of violence, including but not**

1 **limited to, acts depicting sadistic conduct, whippings, beatings, torture, and mutilation of the**
2 **human body, as described in Item (2)(b)(iii) of this Subsection.**

3
4 * * *

5
6 Held unconstitutional in *State v. Russland Enterprises*, 555 So. 2d 1365 (La. 1990): The state
7 argues that *Miller* never intended to require the use of the term “contemporary community
8 standards” in all obscenity statutes. While we agree the exact words “contemporary community
9 standards” need not be used in the statute, we find the constitution requires at a minimum that
10 obscene material be judged by a community standard. . . . In any event, we note that the legislature
11 has in fact incorporated the term contemporary community standards, either explicitly or by
12 reference, into every section of La.R.S. 14:106(A) except paragraphs 1 and 6. . . . The state's final
13 argument is that La.R.S. 14:106(A)(6)'s reference to La.R.S. 14:106(A)(2)(b)(iii) somehow
14 incorporates the contemporary community standards language found in La.R.S. 14:106(A)(2). . . .
15 Although La.R.S. 14:106(A)(6) does make reference to sub-subparagraph (b)(iii) of La.R.S.
16 14:106(A)(2), its language clearly shows that the legislature intended only to incorporate the
17 definition of sadomasochistic abuse contained in sub-subparagraph (b)(iii) and not the entirety
18 of La.R.S. 14:106(A)(2). . . . We therefore hold that La.R.S. 14:106(A)(6)'s failure to mention
19 contemporary community standards is fatal to its validity under *Miller, supra*. . . . The facial
20 unconstitutionality La.R.S. 14:106(A)(6) does not necessarily render the entire obscenity statute
21 unconstitutional. This court may strike only the offending portion and leave the remainder intact.
22 In the present case, we find this test is satisfied. La.R.S. 14:106(A)(6) adds little, if anything, to
23 the statute and its severance does no violence to the legislative intent in passing the statute. Clearly,
24 any conduct regulated by La.R.S. 14:106(A)(6) is also regulated by La.R.S. 14:106(A)(3). Perhaps
25 prior to *Johnson, supra*, the statute purported to regulate a broader scope of conduct. However, as
26 a result of the post-*Johnson* amendments, there is little doubt that La.R.S. 14:106(A)(6) is simply
27 surplusage to the rest of the statute. We therefore hold La.R.S. 14:106(A)(6) is severable.”

28
29 **Recommendation:** It is recommended that the Legislature do one of the following: (1) Repeal
30 R.S. 14:106(A)(6) in its entirety; or (2) Amend R.S. 14:106(A)(6) to incorporate the requisite
31 “contemporary community standards” language as follows:

32
33 (6) Advertisement, exhibition, electronic communication, or display of
34 sexually violent material. "Violent material" is any tangible work or thing which
35 the trier of facts determines **that the average person applying contemporary**
36 **community standards would find, taken as a whole, appeals to the prurient**
37 **interest, and which** depicts actual or simulated patently offensive acts of violence,
38 including but not limited to, acts depicting sadistic conduct, whippings, beatings,
39 torture, and mutilation of the human body, as described in Item (2)(b)(iii) of this
40 Subsection.
41

1 **R.S. 14:106.1. Promotion or wholesale promotion of obscene devices**
2 **(Previously included in the 2024 Biennial Report)**

3
4 A. For the purposes of this Section, the following definitions shall apply unless the context
5 clearly requires otherwise:

6
7 (1) "Obscene device" means a device, including an artificial penis or artificial vagina,
8 which is designed or marketed as useful primarily for the stimulation of human genital organs.

9
10 (2) "Promote" means to manufacture, issue, sell, give, provide, lend, mail, deliver, transfer,
11 transmit, distribute, circulate, disseminate, present, or exhibit, including the offer or agreement to
12 do any of these things, for the purpose of sale or resale.

13
14 B. No person shall knowingly and intentionally promote an obscene device.

15
16 C.(1) On a first conviction, whoever commits the crime of promoting an obscene device
17 shall be fined not less than one thousand dollars nor more than two thousand five hundred dollars
18 or imprisoned with or without hard labor for not less than six months nor more than three years,
19 or both.

20
21 (2) On a second conviction, the offender shall be imprisoned with or without hard labor
22 for not less than six months nor more than three years, and in addition may be fined not less than
23 two thousand five hundred dollars nor more than five thousand dollars.

24
25 Held unconstitutional in *State v. Brennan*, 772 So. 2d 64 (La. 2000): "La. R.S. § 14:106.1 is part of
26 the larger statutory scheme set forth in La. R.S. § 14:106, which defines the crime of obscenity,
27 describes its applicability, and provides for penalties therefrom. . . . The State maintains that the
28 court of appeal's finding of unconstitutionality was in error because there is no constitutional right
29 impinged by La. R.S. § 14:106.1. The legislative act promotes a legitimate government interest,
30 the protection of minors and unconsenting adults and the universal ban of obscene devices is a
31 rational measure to effect this interest. On the other hand, the defendant argues that La. R.S. §
32 14:106.1 impermissibly burdens her right to privacy and those of her customers, the users of sexual
33 devices. . . . Thus, we must determine whether banning the sale of obscene devices implicates a
34 constitutionally protected right. . . . In the instant case, both parties and the court of appeal have
35 mistakenly assumed that the primary purpose behind La. R.S. § 14:106.1 is to protect minors and
36 unconsenting adults from viewing obscene devices; however, the minutes from the 1985 Senate
37 Committee considering the bill reveal that the backers of the statute were more concerned
38 with waging a general war on obscenity. . . . Against this backdrop, it is clear that the legislative
39 basis for the enactment of R.S. § 14:106.1 was the suppression of **all** obscene devices. . . . This
40 unqualified ban is designed, in theory, to promote morals and public order. . . . Thus, La. R.S. §
41 14:106.1, which bans the promotion of obscene devices in order to promote morals and public
42 order, indeed furthers a legitimate government interest. However, we must still determine whether
43 this statutory prohibition bears a rational relationship to this interest. . . . La. R.S. § 14:106.1 differs
44 dramatically from La. R.S. § 14:106 in three key ways. First, the comprehensive ban contained in
45 § 106 adopts the *Miller* standards in determining whether material is obscene. La. R.S. §
46 14:106.1 has no evaluation mechanism of contemporary community standards or prurient

1 interest. . . . Without an evaluation mechanism of the material, La. R.S. § 14:106.1 cannot
2 withstand the charge of constitutional infirmity. Second, an adversary hearing must be conducted
3 to determine whether material is obscene under La. R.S. § 14:106, but there is no adversarial
4 process under La. R.S. § 14:106.1 to determine if a device is indeed obscene. . . . Third, there is an
5 exception contained in La. R.S. § 14:106 for certain entities, most notably medical personnel. La.
6 R.S. § 14:106.1 is a blanket ban of all devices designed or marketed as useful primarily for the
7 stimulation of human genital organs regardless of the entity promoting them. . . . The State's
8 unqualified ban on sexual devices ignores the fact that, in some cases, the use . . . is therapeutically
9 appropriate. . . . Given these therapeutic uses, we cannot say that the State's actions in banning all
10 devices that are designed or marketed primarily for the stimulation of the human genitals without
11 any review of their prurience or medical use is rationally related to the "war on obscenity." La.
12 R.S. § 14:106.1 contains none of the procedural safeguards of La. R.S. § 14:106, which allowed it
13 to withstand constitutional attack. The procedural elements evaluating community standards and
14 prurience as well as an adversarial hearing are not merely conveniences for the defendant, but
15 necessities in order to safeguard one's substantive due process. La. R.S. § 14:106.1 is an
16 unreasonable measure taken by the legislature in order to promote morals. We find that La. R.S. §
17 14:106.1, which bans the promotion of obscene devices, bears no rational relationship to a
18 legitimate state interest and is, therefore, violative of the Due Process Clause of the Fourteenth
19 Amendment to the United States Constitution."

20
21 **Recommendation:** It is recommended that the Legislature do one of the following: (1) Repeal
22 R.S. 14:106.1 in its entirety; or (2) Amend the provision to incorporate the procedural safeguards
23 discussed in *State v. Brennan* and included in R.S. 14:106 – an evaluation mechanism of
24 contemporary community standards or prurient interest, an adversarial process to determine
25 whether a device qualifies as obscene, and exceptions for certain entities such as medical
26 personnel.

1 **R.S. 14:359. Definitions**
2 *(Previously included in the 2018, 2020, 2022, and 2024 Biennial Reports)*

3
4 As used in R.S. 14:358 through 373:

5
6 * * *

7
8 (4) A "Communist Front Organization" is any organization other than a communist action
9 organization which is directed, controlled or dominated by a communist action organization or is
10 primarily operated for the purpose of giving aid and support to a communist action organization,
11 a Communist foreign government, or the world Communist movement referred to in R.S. 14:358.

12
13 * * *

14
15 (8) A "Subversive Organization" is any organization which advocates the overthrow or
16 destruction of the United States, the state of Louisiana, or any political subdivision thereof by
17 revolution, force, violence or other unlawful means, and performs or carries out as a function of
18 the organization, known, agreed to, or knowingly performed by any of the officers of the
19 organization, any affirmative act, including abetting, materially assisting, advising or teaching
20 such overthrow or destruction, with the intent to incite action rather than engage in the mere
21 exposition of theory.

22
23 * * *

24
25 **R.S. 14:368. Acts prohibited**

26
27 It shall be a felony for any person knowingly and wilfully to:

28
29 **1. Fail to register as required in R.S. 14:363, when required to so register by the terms**
30 **of R.S. 14:358 through 373.**

31
32 2. Fail as an officer of a communist action organization, a communist front organization,
33 a communist infiltrated organization or a subversive organization to perform and carry out the
34 obligations set forth and provided in R.S. 14:362.

35
36 **3. File any false registration statement under the provisions of R.S. 14:362 and**
37 **14:363.**

38
39 4. Violate the provisions of R.S. 14:367 in regard to the labeling and dissemination of
40 propaganda material.

41
42 Prior versions held unconstitutional in *Dombrowski v. Pfister*, 380 U.S. 479, 493-98 (1965): "The
43 statutory definition of 'a subversive organization' in s 359(5) incorporated in the offense created s
44 364(4), is substantially identical to that of the Washington statute which we considered in *Baggett*
45 *v. Bullitt*. There the definition was used in a state statute requiring state employees to take an oath
46 as a condition of employment. We held that the definition, as well as the oath based thereon, denied

1 due process because it was unduly vague, uncertain and broad. . . . Since s 364(4) is so intimately
2 bound up with a definition invalid under the reasoning of Baggett v. Bullitt, we hold that it is
3 invalid for the same reasons. We also find the registration requirement of s 364(7) invalid. That
4 section creates an offense of failure to register as a member of a Communist-front organization ,
5 and, under s 359(3), ‘the fact that an organization has been officially cited or identified by the
6 Attorney General of the United States, the Subversive Activities Control Board of the United States
7 or any Committee or Subcommittee of the United States Congress as a * * * communist front
8 organization * * * shall be considered presumptive evidence of the factual status of any such
9 organization.’ . . . It follows that s 364(7), resting on the invalid presumption, is unconstitutional
10 on its face. . . . The record suffices, however, to permit this Court to hold that, without the benefit
11 of limiting construction, the statutory provisions on which the indictments are founded are void on
12 their face; until an acceptable limiting construction is obtained, the provisions cannot be applied
13 to the activities of SCEF, whatever they may be. . . . The judgment of the District Court is reversed
14 and the cause is remanded for further proceedings consistent with this opinion. These shall include
15 prompt framing of a decree restraining prosecution of the pending indictments against the
16 individual appellants, ordering immediate return of all papers and documents seized, and
17 prohibiting further acts enforcing the sections of the Subversive Activities and Communist Control
18 Law here found void on their face.”

19
20 At the time this case was decided, R.S. 14:359(3) and (5) read as follows:

21
22 (3) “Communist Front Organization” shall, for the purpose of this act
23 include any communist action organization, communist front organization,
24 communist infiltrated organization or communist controlled organization and the
25 fact that an organization has been officially cited or identified by the Attorney
26 General of the United States, the Subversive Activities Control Board of the United
27 States or any Committee or Subcommittee of the United States Congress as a
28 communist organization, a communist action organization, a communist front
29 organization, a communist infiltrated organization or has been in any other way
30 officially cited or identified by any of these aforementioned authorities as a
31 communist controlled organization, shall be considered presumptive evidence of
32 the factual status of any such organization.

33
34 (5) “Subversive organization” means any organization with engages in or
35 advocates, abets, advises, or teaches, or a purpose of which is to engage in or
36 advocate, abet, advise, or teach activities intended to overthrow, destroy, or to assist
37 in the overthrow or destruction of the constitutional form of the government of the
38 state of Louisiana, or of any political subdivision thereof by revolution, force,
39 violence or other unlawful means, or any other organization which seeks by
40 unconstitutional or illegal means to overthrow or destroy the government of the
41 state of Louisiana or any political subdivision thereof and to establish in place
42 thereof any form of government not responsible to the people of the state of
43 Louisiana under the Constitution of the state of Louisiana.

1 The provisions of R.S. 14:359 were amended by Acts 1965, No. 45, and the definitions of
2 “communist front organization” and “subversive organization” are now provided in R.S. 14:359(4)
3 and (8), respectively.
4

5 Additionally, at the time this case was decided, R.S. 14:364(4) and (7) read as follows:
6

7 It shall be a felony for any person knowingly and willfully to:
8

9 * * *

10
11 (4) Assist in the formation or participate in the management or to contribute
12 to the support of any subversive organization or foreign subversive organization
13 knowing said organization to be a subversive organization or a foreign subversive
14 organization.
15

16 * * *

17
18 (7) Fail to register as required in R.S. 14:360 or to make any registration
19 which contains any material false statement or omission.
20

21 The provisions of R.S. 14:364 were amended by Acts 1965, No. 45, and the substance of former
22 R.S. 14:364(7) seems to now be contained in R.S. 14:368(1) and (3). However, the substance of
23 former R.S. 14:364(4) does not seem to be included in current law.
24

25 **Recommendation:** After review by the Law Institute’s Criminal Code and Code of Criminal
26 Procedure Committee, it is recommended that the Legislature repeal the Subversive Activities and
27 Communist Control Law, R.S. 14:358 through 373, and the Communist Propaganda Control Law,
28 R.S. 14:390 through 390.8, in their entirety.

1 **R.S. 15:902.1. Transfer of adjudicated juvenile delinquents**
2 **(Previously included in the 2016, 2018, 2020, 2022, and 2024 Biennial Reports)**

3
4 Notwithstanding Title VIII of the Louisiana Children's Code or any other provision of law,
5 the secretary of the department may promulgate rules and regulations to authorize the transfer of
6 adjudicated juvenile delinquents to adult correctional facilities when the delinquents have attained
7 the age of seventeen years, the age of full criminal responsibility.

8
9 Held unconstitutional by *In re C.B.*, 708 So. 2d 391, 395, 399-400 (La. 1998): “We hold that LSA-
10 RS 15:902.1 is unconstitutional as applied by Regulation B-02-008 as it denies the juveniles their
11 constitutional right to due process, and fundamental fairness inherent therein, guaranteed them by
12 Article I, § 2 of the Louisiana constitution because they receive a *de facto* criminal sentence to
13 hard labor without being afforded the right to trial by jury as is mandated by Article I, § 17 of our
14 state constitution. . . . LSA-RS 15:902.1 as applied in conjunction with Regulation B-02-008,
15 transfers juveniles to adult facilities where they are to be treated no differently than the adult felons
16 with whom they are confined. . . . We therefore hold that the statute through its corresponding
17 regulation has sufficiently tilted the scales away from a ‘civil’ proceeding, with its focus on
18 rehabilitation, to one purely criminal. Due process and fundamental fairness therefore require that
19 the juvenile who is going to be incarcerated at hard labor in an adult penal facility must have been
20 convicted of a crime by a criminal jury, not simply adjudicated a delinquent by a juvenile court
21 judge. To deprive the juvenile of such an important procedural safeguard upsets the quid pro quo
22 under which the juvenile system must operate.”

23
24 The Supreme Court’s decision in *In re C.B.* held R.S. 15:902.1 unconstitutional *as applied by*
25 *Regulation B-02-008*. A footnote in the opinion explains that “[t]he Department of Public Safety
26 and Corrections published notice of its intent to formally adopt this rule, 23 *Louisiana*
27 *Register* 22:335 (August, 1997); however, before it could do so, a second emergency rule was
28 enacted on November 6, 1997. This second emergency rule is not properly before this Court for
29 review as it was not in effect at the time of the challenged transfers.”

30
31 **Recommendation:** It was recommended that the Legislature direct the Law Institute to direct the
32 printer to note the *In re C.B.* decision at R.S. 15:902.1 to assure consistent reporting. The validity
33 note following R.S. 15:902.1 reads as follows:

34
35 “The Louisiana Supreme Court declared R.S. 15:902.1, relating to the
36 transfer of adjudicated juvenile delinquents to adult correctional facilities, as
37 enacted by Acts 1997, No. 1063, § 1, unconstitutional as applied by Regulation B-
38 02-008 in *In re C.B.*, 708 So.2d 391 (La.), insofar as transferred juveniles were
39 subject to hard labor in adult correctional facilities without being adjudicated as
40 criminals. See Notes of Decisions”

1 **R.S. 17:286.1 through 17:286.7. The Balanced Treatment for Creation-Science and**
2 **Evolution-Science Act**
3 ***(Previously included in the 2016, 2018, 2020, 2022, and 2024 Biennial Reports)***
4

5 This Subpart shall be known as the “Balanced Treatment for Creation-Science and
6 Evolution-Science Act.”
7

8 Held unconstitutional by *Edwards v. Aguillard*, 482 U.S. 578, 596-97 (1987): “The Louisiana
9 Creationism Act advances a religious doctrine by requiring either the banishment of the theory of
10 evolution from public school classrooms or the presentation of a religious viewpoint that rejects
11 evolution in its entirety. The Act violates the Establishment Clause of the First Amendment
12 because it seeks to employ the symbolic and financial support of government to achieve a religious
13 purpose.”
14

15 **Recommendation:** It is recommended that the Legislature repeal R.S. 17:286.1 through 286.7 in
16 their entirety.

1 **R.S. 18:1505.2. Contributions; expenditures; certain prohibitions and limitations**
2 **(Previously included in the 2018, 2020, 2022, and 2024 Biennial Reports)**

3
4 * * *

5
6 K.(1) During any four year calendar period commencing January 1, 1991 and every fourth
7 year thereafter, no person shall contribute more than one hundred thousand dollars to any political
8 committee or any subsidiary committee of such political committee, other than the principal or any
9 subsidiary committee of a candidate. Such limitation on a contribution shall not apply to any
10 contribution from a national political committee to an affiliated regional or state political
11 committee.

12
13 (2) During the time period provided for in Paragraph (1) of this Subsection, no political
14 committee or subsidiary of such political committee, other than the principal or any subsidiary
15 committee of a candidate, shall accept more than one hundred thousand dollars from any person.

16
17 (3) The provisions of this Subsection shall not apply to contributions made by a recognized
18 political party or any committee thereof.

19
20 * * *

21
22 Held unconstitutional by *Fund for Louisiana’s Future v. Louisiana Bd. of Ethics*, 17 F. Supp. 3d
23 562 (E.D. La. 2014): “Assuming that FFLF is an independent expenditure-only committee,
24 regardless of which level of scrutiny applies, La.R.S. 18:1505.2(K)'s contribution limit as applied
25 to it violates the First Amendment. Defendants' contrary arguments wholly fail. “By definition,”
26 independent expenditures are “political speech presented to the electorate that is not coordinated
27 with a candidate” and, therefore, the State lacks any interest (anti-corruption or otherwise) in
28 restricting contributions for independent expenditures. *See Citizens United*, 558 U.S. at 357, 360,
29 130 S.Ct. 876. Donors have an absolute, unfettered First Amendment interest in contributing
30 money to be used for independent purposes in politics, and the State simply has no
31 legitimate interest in restricting such contributions. *See SpeechNow.org*, 599 F.3d at 694–95. In
32 short, independent expenditure committees are sacrosanct under the First Amendment. . . . FFLF
33 has carried its burden to prove entitlement to a permanent injunction, as well as entitlement to a
34 declaration that La.R.S. 18:1505.2(K) is unconstitutional as applied to it, so long as it engages only
35 in independent expenditures. The Court hereby declares that, as applied to FFLF, an independent
36 expenditure-only committee, the contribution limit contained in La. R.S. 18:1505.2(K) is
37 unconstitutional.”

38
39 **Note to the Legislature**

40
41 During the 2024 and 2025 Regular Sessions, Subsection K was amended by the Legislature
42 in Acts 2024, No. 664 and Acts 2025, No. 398 to read as follows:

43
44 K.(1) ~~During any four year calendar period commencing January 1, 1991~~
45 ~~and every fourth year thereafter, no~~ No person shall contribute more than one
46 hundred thousand dollars per calendar year to any leadership committee or any

1 political committee or any subsidiary committee of such political committee, ~~other~~
2 ~~than the principal or any subsidiary committee of a candidate.~~ Such limitation on a
3 contribution shall not apply to any contribution from a national political party
4 committee to an affiliated regional or state political committee designated to
5 received such contributions on behalf of the state central committee of a political
6 party by joint fundraising agreement or otherwise. However, during any four-year
7 calendar period commencing January 1, 2023, and every fourth year thereafter,
8

9 ~~(2) During the time period provided for in Paragraph (1) of this Subsection,~~
10 ~~no leadership committee or political committee or subsidiary of such political~~
11 ~~committee, other than the principal or any subsidiary committee of a candidate,~~
12 ~~shall accept more than one hundred~~ two hundred fifty thousand dollars from any
13 person.
14

15 (2) No person shall contribute more than two hundred fifty thousand dollars
16 per calendar year to a recognized political party or any committee thereof
17 designated to receive such contributions on behalf of the state central committee of
18 the political party by joint fundraising agreement or otherwise. However, during
19 any four-year calendar period commencing January 1, 2023, and every fourth year
20 thereafter, no recognized political party or any committee thereof designated to
21 receive such contributions on behalf of the state central committee of the political
22 party by joint fundraising agreement or otherwise shall accept more than four
23 hundred thousand dollars from any person.
24

25 (3) The provisions of this Subsection shall not apply to contributions made
26 by a recognized political party or any committee thereof designated to make such
27 contributions on behalf of the state central committee of the political party by joint
28 fundraising agreement or otherwise.
29

30 These amendments do not, however, appear to address the constitutional infirmity recognized by
31 the court in *Fund for Louisiana's Future*.
32

33 **Recommendation:** It is recommended that the Legislature direct the Law Institute to direct the
34 printers to note the *Fund for Louisiana's Future* decision, which declared a prior version of
35 Subsection K unconstitutional as applied to independent expenditure-only committees pursuant to
36 the United States Supreme Court's decisions in *Citizens United v. Federal Election Commission*,
37 558 U.S. 310 (2010), and its progeny, at R.S. 18:1505.2 to assure consistent reporting.

1 **R.S. 24:513. Powers and duties of legislative auditor; audit reports as public records;**
2 **assistance and opinions of attorney general; frequency of audits; subpoena power**
3 **(Previously included in the 2016, 2018, 2020, 2022, and 2024 Biennial Reports)**
4

5 * * *
6

7 (J)(4)(a) Notwithstanding any provision of this Section to the contrary, any entity which
8 establishes scholastic rules which are the basis for the State Board of Elementary and Secondary
9 Education's policy required by R.S. 17:176 to be adhered to by all high schools under the board's
10 jurisdiction shall not be required to be audited by the legislative auditor but shall file an audit with
11 the legislative auditor and the Legislative Audit Advisory Council which has been prepared by an
12 auditing firm which has been approved by the legislative auditor. Such entity shall submit such
13 audit to the legislative auditor and the Legislative Audit Advisory Council.
14

15 (b) The Legislative Audit Advisory Council may order an audit by the legislative auditor
16 upon a finding of cause by the council.
17

18 * * *
19

20 Held unconstitutional by *Louisiana High School Athletics Association v. State*, 107 So. 3d 583,
21 608-09 (La. 2013): “Appellants fail to show, and we fail to see, how this statute is rationally related
22 to a legitimate state end. Thus, we find La. R.S. 24:513(J)(4)(a) is unconstitutional under the Equal
23 Protection Clause. Since we have found La. R.S. 24:513(J)(4)(a) unconstitutional, we must also
24 find La. R.S. 24:513(J)(4)(b) unconstitutional, as it cannot stand alone. La. R.S. 24:513(J)(4)(b)
25 provides, “[t]he Legislative Audit Advisory Council may order an audit by the legislative auditor
26 upon a finding of cause by the council.” This is in reference to the requirement in La. R.S.
27 24:513(J)(4)(a) that the entity file an audit with the LLA and the Legislative Audit Advisory
28 Council. Thus, La. R.S. 24:513(J)(4)(b) applies only if La. R.S. 24:513(J)(4)(a) applies. We find
29 La. R.S. 24:513(J)(4)(b) cannot be severed from La. R.S. 24:513(J)(4)(a) and must also be struck
30 down as unconstitutional.”
31

32 **Recommendation:** It is recommended that the Legislature repeal R.S. 24:513(J)(4)(a) and (b) in
33 their entirety.

1 **R.S. 32:57. Penalties; alternatives to citation**
2 *(Previously included in the 2016, 2018, 2020, 2022, and 2024 Biennial Reports)*

3
4 * * *

5
6 G.(1) Notwithstanding any provision of law to the contrary, any person who is found
7 guilty, pleads guilty, or pleads nolo contendere to any motor vehicle offense when the citation was
8 issued for a violation on the Huey P. Long Bridge or the Lake Pontchartrain Causeway Bridge or
9 approaches to and from such bridges by police employed by the Greater New Orleans Expressway
10 Commission shall pay an additional cost of five dollars.

11
12 (2) All proceeds generated by this additional cost shall be deposited into the state treasury.

13
14 * * *

15
16 Prior version held unconstitutional by *State v. Lanclos*, 980 So. 2d 643, 654 (La. 2008): “The issue
17 presented in this case is whether the \$5.00 fee assessed pursuant to La. R.S. 32:57(G) is a tax
18 collected by the courts, and thus a violation of the separation of powers doctrine found in La.
19 Const. art. II. . . . [T]he question that we must answer in this case is whether the fee imposed by La.
20 R.S. 32:57(G) is sufficiently related to the administration of justice to pass constitutional muster.
21 Once collected, the \$5.00 assessment imposed by La. R.S. 32:57(G) is deposited in the state's
22 general treasury. . . . We agree with the defendant that La. R.S. 32:57(G) is a charge that has as its
23 primary purpose the raising of revenue, and is, therefore, a “tax.” As provided in the statute, the
24 \$5.00 cost is collected for the purpose of supplementing police salaries and acquisition and
25 maintenance of police equipment. Funding police salaries and the maintenance of police
26 equipment are the responsibility of the local tax collection authorities, not the judiciary. Although
27 a police department may be considered to be a ‘link in the chain’ of the criminal justice system,
28 and there is some logical connection between a police department and the criminal justice system,
29 we find that police salaries and uniform equipment maintenance is too far attenuated from the
30 ‘administration of justice,’ to be considered a legitimate court cost. To hold otherwise would start
31 us down a slippery slope, and we must draw the line at some point. Every expense incurred by the
32 police department in its role in enforcing the laws of this state cannot be funded through “court
33 costs.” To do so would overly burden and unduly infringe on the court's administration of the
34 judicial court system. Accordingly, we affirm the trial court’s finding that the \$5.00 assessment
35 provided in La. R.S. 32:57(G) is a ‘tax’ funded through the judiciary in violation of the doctrine
36 of separation of powers. For the above reasons, we affirm the judgment of the First Parish Court
37 finding that R.S. 32:57(G) is unconstitutional.”

38
39 At the time this case was decided, R.S. 32:57(G)(2) read as follows:

40
41 **§57. Penalties; alternatives to citation**

42
43 * * *

44
45 G. * * *

1 (2) All proceeds generated by this additional cost shall be deposited into the
2 state treasury. After compliance with the requirements of Article VII, Section 9(B)
3 of the Constitution of Louisiana relative to the Bond Security and Redemption
4 Fund, and prior to monies being placed in the state general fund, an amount equal
5 to that deposited as required in this Subsection shall be credited to a special fund
6 hereby created in the state treasury to be known as the Greater New Orleans
7 Expressway Commission Additional Cost Fund. The monies in this fund shall be
8 appropriated by the legislature to the Greater New Orleans Expressway
9 Commission and shall be used by the commission to supplement the salaries of
10 P.O.S.T. certified officers and for the acquisition or upkeep of police equipment.
11 All unexpended and unencumbered monies in this fund at the end of the fiscal year
12 shall remain in such fund. The monies in this fund shall be invested by the state
13 treasurer in the same manner as monies in the state general fund and interest earned
14 on the investment of monies shall be credited to this fund, again, following
15 compliance with the requirements of Article VII, Section 9(B) of the Constitution,
16 relative to the Bond Security and Redemption Fund. The monies appropriated by
17 the legislature pursuant to this Paragraph shall not displace, replace, or supplant
18 appropriations otherwise made from the general fund for the Greater New Orleans
19 Expressway Commission.
20

21 * * *

22
23 After the Louisiana Supreme Court’s decision, the Legislature amended R.S. 37:57(G)(2) in Acts
24 2012, No. 834 to eliminate the Greater New Orleans Expressway Commission Additional Cost
25 Fund, which remedied the unconstitutional attenuation between the collection of the five-dollar
26 assessment and the purpose of funding police salaries and maintaining police equipment. However,
27 this amendment did not address the issue of whether this five-dollar assessment is a tax collected
28 by the courts in violation of the Louisiana Constitution’s separation of powers doctrine. In fact,
29 Paragraph (1) of R.S. 37:57(G) has remained the same throughout the revision, along with the first
30 (and now only) sentence of Paragraph (2), which provides that the proceeds generated by this five-
31 dollar assessment shall be deposited into the state treasury. As a result, it is likely that R.S.
32 32:57(G) as presently written remains unconstitutional under the *Lanclous* court’s decision.
33

34 **Recommendation:** It is recommended that the Legislature repeal R.S. 32:57(G) in its entirety.
35

1 **R.S. 33:1997. Penalty for violations**
2 *(Previously included in the 2018, 2020, 2022, and 2024 Biennial Reports)*

3
4 A. No official or executive officer of any fire department or municipal, parish or fire
5 protection district officer or fire board member affected by this Sub-part shall permit any violation
6 of the provisions of this Sub-part.

7
8 B. Whoever violates this Section shall be fined not less than one hundred dollars for each
9 offense, or imprisoned not less than ten days, nor more than sixty days, or both. Each day the
10 violation is permitted to occur constitutes a separate offense.

11
12 Held unconstitutional by *City of Natchitoches v. State*, 221 So. 2d 534 (La. App. 3 Cir. 1969), *writ*
13 *denied* by 223 So. 2d 870 (La. 1969): “A statute defining a crime and providing a penalty for its
14 violation will be held to be unconstitutional in that it denies due process of law, if the offense is
15 defined in language which is so ambiguous, vague or indefinite that the line between criminal and
16 non-criminal conduct is obscure. Such a statute will be held to be unconstitutional where the
17 language employed is of such vague and indefinite import that it might embrace many acts which
18 could not possibly have any criminal character, and leaves the discrimination between these and
19 others to arbitrary judicial discretion. A criminal statute, in order to be valid and enforceable, must
20 define the offense so specifically and exactly that a person having ordinary understanding and
21 intelligence will be able to determine from the language used whether his conduct is or is not
22 denounced as an offense against the law. . . . Our conclusion is that LSA-R.S. 33:1997 is so vague
23 and indefinite that it does not plainly and adequately set out a crime and it is not susceptible to a
24 reasonable interpretation. This section of the Revised Statutes thus is unconstitutional, null or void,
25 in that it violates the requirements of due process of law, as provided in Article 1, Section 2, of the
26 Louisiana Constitution, and the Fifth and Fourteenth Amendments of the United States
27 Constitution.”

28
29 R.S. 33:1997 is located in Subpart B of Part II of Chapter 4 of Title 33 dealing with minimum
30 wages and maximum hours applicable to the fire department.

31
32 **Recommendation:** It is recommended that the Legislature repeal R.S. 33:1997 in its entirety.

1 **R.S. 37:831. Definitions**
2 *(Previously included in the 2018, 2020, 2022, and 2024 Biennial Reports)*

3
4 For purposes of this Chapter and implementation thereof, the following terms have the
5 meaning as defined herein, unless the context clearly indicates otherwise:
6

7 * * *

8
9 (42) "Funeral directing" means the operation of a funeral home, or, by way of illustration
10 and not limitation, any service whatsoever connected with the management of funerals, or the
11 supervision of hearses or funeral cars, **the purchase of caskets or other funeral merchandise,**
12 **and retail sale and display thereof,** the cleaning or dressing of dead human bodies for burial, and
13 the performance or supervision of any service or act connected with the management of funerals
14 from time of death until the body or bodies are delivered to the cemetery, crematory, or other agent
15 for the purpose of disposition.
16

17 * * *

18
19 Prior version held unconstitutional in *St. Joseph Abbey v. Castille*, 835 F. Supp. 2d 149 (E.D. La.
20 2011), *affirmed by* 712 F. 3d 215 (5th Cir. 2013): “Plaintiffs have demonstrated that there is no
21 rational relationship between requiring persons selling caskets to become funeral directors and to
22 sell caskets only from funeral establishments thus violating Plaintiffs' constitution [*sic*] rights to
23 Due Process. The provisions of the Act as they relate to the retail sale of caskets by persons other
24 than funeral directors do not protect consumers; the prohibition against Plaintiffs' selling caskets
25 does not protect the public health and welfare. The provisions simply protect a well-organized
26 industry that seeks to maintain a strict hold on this business. Likewise these laws violate of the
27 Equal Protection Clause, since the Act in essence treats two distinct and different occupations as
28 the same. The licensing scheme is not rationally related to public health and safety concerns. No
29 other state in the Union continues this practice; it is detrimental to the welfare of the consumers
30 and does not protect the health and safety of the public. Accordingly, . . . La. Rev. Stat. §
31 37:831(37) is unconstitutional on its fact to the extent that it includes the selling of caskets within
32 the definition of ‘funeral directing.’”
33

34 Holding of unconstitutionality affirmed by *St. Joseph Abbey v. Castille*, 712 F. 3d 215 (5th Cir.
35 2013), *writ denied by* 134 S. Ct. 423 (2013): “No provision mandates licensure requirements for
36 casket retailers or insists that a casket retailer employ someone trained in the business of funeral
37 direction. Rather, the licensure requirements and other restrictions imposed on prospective casket
38 retailers create funeral industry control over intrastate casket sales. The scheme is built on the
39 statute's interlocking definitions of “funeral establishment” and “funeral directing” . . . In other
40 words, because a funeral establishment includes any “office or place for the practice of funeral
41 directing,” and “funeral directing” includes “the purchase of caskets or other funeral merchandise
42 and the retail and display thereof,” a casket retailer must comply with all the statutory requirements
43 for funeral directors and funeral establishments. . . . Moreover, like the district court and consistent
44 with its findings, we find that the challenged law is not rationally related to policing deceptive
45 sales tactics. . . . Relatedly, we find that no rational relationship exists between public health and
46 safety and restricting intrastate casket sales to funeral directors. Rather, this purported rationale

1 for the challenged law elides the realities of Louisiana's regulation of caskets and burials. That
2 Louisiana does not even require a casket for burial, does not impose requirements for their
3 construction or design, does not require a casket to be sealed before burial, and does not require
4 funeral directors to have any special expertise in caskets leads us to conclude that no rational
5 relationship exists between public health and safety and limiting intrastate sales of caskets to
6 funeral establishments. . . . The funeral directors have offered no rational basis for their challenged
7 rule and, try as we are required to do, we can suppose none. We AFFIRM the judgment of the
8 district court.”

9
10 At the time this case was decided, the definition of “funeral directing” was contained in R.S.
11 37:831(37). The Law Institute later redesignated this definition as R.S. 37:831(42), but the
12 substance of the provision has remained unchanged.

13
14 **Recommendation:** It is recommended that the Legislature amend R.S. 37:831(42) to remove the
15 offending language as follows:

16
17 (42) "Funeral directing" means the operation of a funeral home, or, by way
18 of illustration and not limitation, any service whatsoever connected with the
19 management of funerals, or the supervision of hearses or funeral cars, ~~the purchase~~
20 ~~of caskets or other funeral merchandise, and retail sale and display thereof,~~
21 the cleaning or dressing of dead human bodies for burial, and the performance or
22 supervision of any service or act connected with the management of funerals from
23 time of death until the body or bodies are delivered to the cemetery, crematory, or
24 other agent for the purpose of disposition.

1 **R.S. 39:1951 through 1993. Louisiana Minority and Women’s Business Enterprise Act**
2 **(Previously included in the 2016, 2018, 2020, 2022, and 2024 Biennial Reports)**
3

4 A. The purpose and intent of this Chapter is to provide the maximum practical opportunity
5 for increased participation by the broadest number of minority-owned businesses in public works
6 and the increased participation by minority-owned businesses and women's business enterprises
7 in the process by which goods and services are procured by state agencies and educational
8 institutions from the private sector. This purpose will be accomplished by encouraging the full use
9 of the broadest number of existing minority-owned businesses and women's business enterprises
10 and the entry of new and diversified minority-owned businesses and women's business enterprises
11 into the marketplace. This Chapter shall be applied and interpreted to promote this purpose.
12

13 B. This Chapter shall be known and may be cited as the “Louisiana Minority and Women's
14 Business Enterprise Act”.

15
16 Held unconstitutional by *Louisiana Associated General Contractors, Inc. v. State*, 669 So. 2d
17 1185, 1200-01 (La. 1996): “The Act on its face sets up a system whereby state agencies are
18 mandated to meet ‘annual goals for participation by certified minority business enterprises.’” The
19 goals are to be met under the Act mainly through the use of set-asides and also through preferences
20 in the awarding of public works and procurement contracts. Generally speaking, with regard to the
21 set-asides, when a contract is designated as a minority set-aside project, only certified minority
22 business enterprises may bid. As explained earlier, only members of certain races can obtain a
23 minority business enterprise designation. Therefore, the set-aside provisions under the Act
24 discriminate against members of those races which cannot obtain a minority business enterprise
25 designation because they cannot bid on the set-aside project. The Act deprives certain citizens of
26 the opportunity to compete for contracts which have been set aside solely on the basis of race,
27 thereby creating an absolutely prohibited racial classification. . . . In sum, the Act provides to
28 members of certain designated races and excludes from members of non-designated races the
29 opportunity to bid on certain contracts and the opportunity to match the lowest bid made by a non-
30 minority bidder and thereby obtain the contract on certain 22 other projects. The set-asides and
31 preferences under the Act clearly discriminate against a person on the basis of race, and the Act,
32 to that extent, is unconstitutional under La. Const. Art. I, Sec. 3.”
33

34 Additionally, the Louisiana Supreme Court concluded that “the legislature would not have passed
35 the Act without the presence of the minority business enterprise set-aside and preference features.
36 The unconstitutional portions of the law having to do with these racially based set-asides and
37 preferences are so interrelated with the remaining portions of the Act . . . that they cannot be
38 separated without destroying the intent of the legislature in enacting the law. We find the remaining
39 portions of the Act are not severable from the unconstitutional portions; therefore, the entire Act
40 is unconstitutional.” *Id.* at 1202.
41

42 **Recommendation:** It is recommended that the Legislature repeal R.S. 39:1951 through 1993 in
43 their entirety.

1 **R.S. 39:1962. Construction of public works; two hundred thousand dollars or more**
2 **(Previously included in the 2016, 2018, 2020, 2022, and 2024 Biennial Reports)**
3

4 A. When a contract for the construction of public works in an amount of two hundred
5 thousand dollars or more is to be awarded by the facility planning and control section of the
6 division of administration on the basis of competitive bidding under Chapter 10 of Title 38 or
7 Chapter 17 of Title 39 of the Louisiana Revised Statutes of 1950, the award shall be made to a
8 minority-owned business certified under the provisions of this Chapter when the price bid by such
9 business is within five percent of the otherwise lowest responsive and responsible bidder whose
10 bid meets the requirements and criteria set forth in the invitation for bids. However, the provisions
11 of this Subsection shall apply only when the certified minority-owned business is the prime
12 contractor.
13

14 B. If there is no certified minority-owned business whose bid is within the range established
15 under Subsection A of this Section, the award shall go to the lowest responsive and responsible
16 bidder whose bid meets the requirements and criteria set forth in the invitation for bids without
17 regard to minority status.
18

19 C. In the event that the minority-owned business is awarded the contract by bidding within
20 five percent of the lowest responsive and responsible bidder as provided in Subsections A and B
21 of this Section, the minority-owned business shall adjust its bid to correspond to the bid of the
22 otherwise lowest responsive or responsible bidder that would have been awarded the contract, but
23 in no case shall the adjustment be by more than five percent.
24

25 D. The contracts awarded to minority-owned businesses pursuant to this Section shall not
26 exceed ten percent of the total dollar amount of the contracts awarded by the facility planning and
27 control section of the division of administration, and shall not exceed ten percent of the total dollar
28 amount of the contracts awarded by the Department of Transportation and Development.
29

30 Held unconstitutional by *Louisiana Associated General Contractors, Inc. v. State*, 669 So. 2d
31 1185, 1201 (La. 1996): “Likewise, certain provisions under the Act, most specifically La. R.S.
32 39:1962, create a system of preferences which generally operate such that although members of
33 all races can bid on the project, a certified minority business will receive the contract if his bid is
34 within five percent of the lowest responsive and responsible bidder provided he agrees to adjust
35 his bid to the amount of the original lowest bid. Preferences such as this also discriminate against
36 non-minority business enterprises. . . . Therefore, with respect to preferences, the Act on its faces
37 treats business enterprises differently solely because of the race of its owners and officers. . . . The
38 . . . preferences under the Act clearly discriminate against a person on the basis of race, and the
39 Act, to that extent, is unconstitutional under La. Const. Art. I, Sec. 3.”
40

41 **Recommendation:** It is recommended that the Legislature repeal R.S. 39:1962 in its entirety.

1 **R.S. 40:1321. State identification cards; special identification cards; issuance; veteran**
2 **designation; special needs or accommodation designations; fees; expiration and renewal;**
3 **exceptions; promulgation of rules; promotion of use; persons less than twenty-one years of**
4 **age; the Protect and Save our Children Program; Selective Service Registration**
5 **(Previously included in the 2022 and 2024 Biennial Reports)**

6
7 * * *

8
9 J.(1) Any person required to register as a sex offender with the Louisiana Bureau of
10 Criminal Identification and Information, as required by R.S. 15:542 et seq., shall obtain a special
11 identification card issued by the Department of Public Safety and Corrections which shall contain
12 a restriction code declaring that the holder is a sex offender. This special identification card shall
13 include the words "sex offender" in all capital letters which are orange in color and shall be valid
14 for a period of one year from the date of issuance. This special identification card shall be carried
15 on the person at all times by the individual required to register as a sex offender.

16
17 (2) Each person required to carry a special identification card pursuant to this Subsection
18 shall personally appear, annually, at a field office of the office of motor vehicles to renew his or
19 her special identification card but only after he or she has registered as an offender pursuant to
20 R.S. 15:542 et seq. Reregistration shall include the submission of current information to the
21 department and the verification of this information, which shall include the street address and
22 telephone number of the registrant; the name, street address and telephone number of the
23 registrant's employer, and any registration information that may need to be verified by the bureau.
24 No special identification card shall be issued or renewed until the office of motor vehicles receives
25 confirmation from the bureau, electronically or by other means, that the reregistration of the sex
26 offender has been completed.

27
28 (3) The provisions of this Subsection shall apply to all sex offenders required to register
29 pursuant to R.S. 15:542 et seq., regardless of the date of conviction.

30
31 (4) Whoever violates this Subsection shall be fined not less than one hundred dollars and
32 not more than five hundred dollars, or imprisoned for not more than six months, or both.

33
34 * * *

35
36 **R.S. 15:542.1.4. Failure to register and notify as a sex offender or child predator; penalties**

37
38 * * *

39
40 C.(1) Any person who either fails to meet the requirements of R.S. 32:412(I) or R.S.
41 40:1321(J), who is in possession of any document required by R.S. 32:412(I) or R.S. 40:1321(J)
42 that has been altered with the intent to defraud, or who is in possession of a counterfeit of any
43 document required by R.S. 32:412(I) or R.S. 40:1321(J), shall, on a first conviction, be fined not
44 more than one thousand dollars and imprisoned at hard labor for not less than two years nor more
45 than ten years without benefit of parole, probation, or suspension of sentence.

1 (2) Upon a second or subsequent conviction for a violation of the provisions of this
2 Subsection, the offender shall be fined three thousand dollars and imprisoned at hard labor for not
3 less than five years nor more than twenty years without benefit of parole, probation, or suspension
4 of sentence.

5
6 Held unconstitutional in *State v. Hill*, 341 So. 3d 539 (La. 2020): “The branded
7 identification card is compelled speech, and it is a content-based regulation of speech that
8 consequently must pass strict scrutiny. While the state certainly has a compelling interest in
9 protecting the public and enabling law enforcement to identify a person as a sex offender,
10 Louisiana has not adopted the least restrictive means of doing so. A symbol, code, or a letter
11 designation would inform law enforcement that they are dealing with a sex offender and thereby
12 reduce the unnecessary disclosure to others during everyday tasks. The sex offender registry and
13 notification is available to those who have a need to seek out that information, while also not
14 unnecessarily requiring disclosing that information to others via a branded identification. As
15 Louisiana has not used the least restrictive means of advancing its otherwise compelling interest,
16 the branded identification requirement is unconstitutional. . . . In conclusion, the district court did
17 not err when it declared La. R.S. 40:1321(J) and La. R.S. 15:542.1.4(C) unconstitutional. The
18 statute that defendant was charged under, La. R.S. 15:542.1.4(C), cannot be severed from La. R.S.
19 40:1321(J), because in order to prosecute defendant under La. R.S. 15:542.1.4(C), the state must
20 first prove as an element of the crime that he is required by La. R.S. 40:1321(J) or La. R.S.
21 32:412(I) to carry an identification card branded with the word, “sex offender.” Furthermore, the
22 branded identification card is compelled speech. As a content-based regulation of speech, it must
23 pass strict scrutiny. While the state certainly has a compelling interest in protecting the public and
24 enabling law enforcement to identify a person as a sex offender, Louisiana has not adopted the
25 least restrictive means of doing so. As Louisiana has not used the least restrictive means of
26 advancing its otherwise compelling interest, the branded identification card requirement is
27 unconstitutional. Nor does the inclusion of fraud as an element of La. R.S. 15:542.1.4(C) salvage
28 the statute, as the statute's requirement that defendant carry the branded identification card cannot
29 be severed from the remainder of the statute. . . . The district court's declaration that the statutes
30 are unconstitutional and the district court's ruling granting defendant's motion to quash are
31 affirmed.”

32
33 **Recommendation:** It is recommended that the Legislature amend R.S. 40:1321(J) to remove the
34 requirement that the special identification card “include the words ‘sex offender’ in all capital
35 letters which are orange in color” and instead provide for some sort of “symbol, code, or a letter
36 designation” as discussed by the Supreme Court in *State v. Hill*.

1 **R.S. 42:39. Judges; ineligibility to become candidate for other elective office; conditions and**
2 **exceptions**
3 *(Previously included in the 2016, 2018, 2020, 2022, and 2024 Biennial Reports)*
4

5 A. After July 31, 1968, no person serving in or elected or appointed to the office of judge
6 of any court, justices of the peace excepted, shall be eligible to hold or become a candidate for any
7 national, state or local elective office of any kind whatsoever, including any national, state or local
8 office in any political party organization, other than a candidate for the office of judge for the same
9 or any other court.

10
11 B. The provisions of Subsection (A) of this section shall not be construed as prohibiting
12 any person from resigning from his office as judge of any court for the purpose of becoming a
13 candidate for nomination or election to any national, state or local elective office for which he is
14 qualified and eligible; provided, however, that the resignation of any such person shall be and is
15 made not less than twenty-four hours prior to the date on which he qualifies as a candidate for
16 nomination or election to the office to which he seeks nomination or election.

17
18 C. If any judge elected or appointed, justice of the peace excepted, qualifies for any other
19 elective position, other than those allowed by the provisions of this section, without complying
20 with the provisions of Subsection (B) set forth above, his qualification as a candidate for the other
21 office shall ipso facto be null and void.

22
23 Exception for justices of the peace held unenforceable by *In re Freeman*, 995 So. 2d 1197, 1206-
24 07 (La. 2008): “The exception for justices of the peace provided in La. R.S. 42:39 conflicts with
25 the mandate in Canon 7(I) that all judges, including justices of the peace, shall resign their judicial
26 offices when they become candidates for non-judicial offices. Therefore, we must determine
27 whether justices of the peace who wish to become candidates for non-judicial offices are governed
28 exclusively by the provisions of Canon 7(I) or whether the statutory exception of La. R.S. 42:39
29 has any impact in this situation. . . . The provisions of La. R.S. 42:39 were enacted prior to this
30 court’s adoption of the Code and prior to the legislature’s recognition in La. R.S. 42:1167 that
31 judges, as defined by the Code, shall be governed exclusively by the Code. While La. R.S. 42:39
32 was perhaps useful at one time, its exception for justices of the peace is now directly in conflict
33 with La. R.S. 42:1167 and Canon 7(I) of the Code. . . . Because the Code, including its prohibition
34 of judges becoming candidates for non-judicial offices prior to resigning their judicial offices, is
35 the exclusive means by which judges’ conduct is governed, the exception provided in La. R.S.
36 42:1167 [*sic, correct citation is La. R.S. 42:39*] cannot be relied upon or enforced. Canon 7(I),
37 adopted pursuant to this court’s constitutional authority, is controlling and cannot be made to yield
38 to a legislative enactment that conflicts with this authority.”

39
40 **Recommendation:** It is recommended that the Legislature amend R.S. 42:39 to remove the
41 exception for justices of the peace as follows:

42
43 A. ~~After July 31, 1968, n~~No person serving in or elected or appointed to
44 the office of judge of any court, ~~justices of the peace excepted~~, shall be eligible to
45 hold or become a candidate for any national, state or local elective office of any
46 kind whatsoever, including any national, state or local office in any political party

1 organization, other than a candidate for the office of judge for the same or any other
2 court.

3
4 B. The provisions of Subsection (A) of this section shall not be construed
5 as prohibiting any person from resigning from his office as judge of any court for
6 the purpose of becoming a candidate for nomination or election to any national,
7 state or local elective office for which he is qualified and eligible; provided,
8 however, that the resignation of any such person shall be and is made not less than
9 twenty-four hours prior to the date on which he qualifies as a candidate for
10 nomination or election to the office to which he seeks nomination or election.

11
12 C. If any judge elected or appointed, ~~justice of the peace excepted,~~
13 qualifies for any other elective position, other than those allowed by the provisions
14 of this section, without complying with the provisions of Subsection (B) set forth
15 above, his qualification as a candidate for the other office shall ipso facto be null
16 and void.

1 **R.S. 42:1141.4. Notice and procedure**
2 *(Previously included in the 2016, 2018, 2020, 2022, and 2024 Biennial Reports)*

3
4 * * *

5
6 L. (1) It shall be a misdemeanor, punishable by a fine of not more than two thousand dollars
7 or imprisonment for not more than one year, or both, for any member of the Board of Ethics, its
8 executive secretary, other employee, or **any other person**, other than the person who is subject to
9 the investigation or complaint, to make public the testimony taken at a private investigation or
10 private hearing of the Board of Ethics or to make any public statement or give out any information
11 concerning a private investigation or private hearing of the Board of Ethics without the written
12 request of the public servant or other person investigated.

13
14 * * *

15
16 Held unconstitutional by *King v. Caldwell ex rel. Louisiana*, 21 F. Supp. 3d 651, 656-57 (E.D.
17 La. 2014): “Insofar as the statute makes it a crime for ‘any other person,’ besides the subject of an
18 ethics investigation, ‘to make any public statement or give out any information concerning a
19 private investigation or private hearing of the Board of Ethics’ absent the subject of the
20 investigation’s written request, the statute is impermissibly overbroad. . . . The Court hereby
21 declares La. R.S. 42:1141.4(L)(1) invalid insofar as it prohibits ‘any other person’ from ‘mak[ing]
22 any public statement or giv[ing] out any information concerning a private investigation or private
23 hearing of the Board of Ethics.’”

24
25 **Recommendation:** It is recommended that the Legislature amend R.S. 42:1141.4(L)(1) to remove
26 the “any other person” language as follows:

27
28 (L)(1) It shall be a misdemeanor, punishable by a fine of not more than two
29 thousand dollars or imprisonment for not more than one year, or both, for any
30 member of the Board of Ethics, its executive secretary, **or** other employee, ~~or any~~
31 ~~other person~~, other than ~~the a~~ person who is ~~the~~ subject ~~to of~~ the investigation or
32 complaint, to make public the testimony taken at a private investigation or private
33 hearing of the Board of Ethics or to make any public statement or give out any
34 information concerning a private investigation or private hearing of the Board of
35 Ethics without the written request of the public servant or other person investigated.

36
37 The Legislature may wish to consider whether any other categories of individuals can or should
38 be prohibited from making a public statement or giving out information concerning a private
39 investigation or private hearing of the Board of Ethics.

1 **R.S. 42:1451. Action overruled; attorneys’ fees**
2 *(Previously included in the 2016, 2018, 2020, 2022, and 2024 Biennial Reports)*

3
4 In any appeal under Article X, Section 8 of the constitution by an employee in the classified
5 state civil service to overturn any action by the department or agency employing him in which the
6 decision to take the action is overruled and such decision is found to be unreasonable, the Civil
7 Service Commission shall order the department or agency to pay reasonable attorneys’ fees
8 incurred by the employee in the appealing action.
9

10 Held unconstitutional by *Appeal of Brisset*, 436 So. 2d 654, 658-59 (La. App. 1 Cir. 1983): “A
11 fortiori, we now hold that the power vested in the commission under Art. X, Sec. 10(A) of the
12 constitution is exclusive in nature with respect to all aspects to the classified service listed therein.
13 This includes appeals from disciplinary action to the commission. As such, L.S.A.-R.S. 42:1451
14 infringes on the exclusive power granted to the commission by the Louisiana Constitution, Art. X,
15 Sec. 10(A). Therefore, we hold this statute unconstitutional.” Although *Appeal of Brisset* is an
16 appellate court decision, the Louisiana Supreme Court denied writs in this case, 441 So. 2d 749
17 (La. 1983).
18

19 Also recognized as unconstitutional by *Ray v. Department of Labor*, 998 So. 2d 206, 211 (La. App.
20 1 Cir. 2008): “Thus, it is clear that a ‘reasonable’ attorney fee, as that fee is customarily determined
21 by the courts, is not necessarily insured to attorneys representing state civil service employees
22 challenging a disciplinary action, but rather the fee is limited to a maximum as set by civil service
23 rule.”
24

25 **Recommendation:** It is recommended that the Legislature repeal R.S. 42:1451 in its entirety.

1 **R.S. 45:1163. Power to regulate rates and service; exceptions**
2 ***(Previously included in the 2022 and 2024 Biennial Reports)***
3

4 A.(1) The commission shall exercise all necessary power and authority over any street
5 railway, gas, electric light, heat, power, waterworks, or other local public utility for the purpose of
6 fixing and regulating the rates charged or to be charged by and service furnished by such public
7 utilities.
8

9 (2) However, no aspect of direct sales of natural gas by natural gas producers, natural gas
10 pipeline companies, natural gas distribution companies, or any other person engaging in the direct
11 sale of natural gas to industrial users for fuel or for utilization in any manufacturing process, or to
12 any person for use in vehicles capable of using compressed natural gas which when combusted
13 results in comparably lower emissions of oxides of nitrogen, volatile organic compounds, carbon
14 monoxide, or particulates or any combination thereof, shall be subject to such regulation by the
15 commission.
16

17 (3) In addition, a schedule of rates of an electric cooperative shall not require approval of
18 the commission if the schedule previously was approved by the board of directors of the electric
19 cooperative and by the federal government or any agency thereof, nor shall the authority of the
20 commission extend to the service rendered by electric cooperatives except to the extent provided
21 in R.S. 45:123 and in orders of the commission promulgated to effectuate the purposes of R.S.
22 45:123.
23

24 B. The commission shall exercise all necessary power and authority over any electric
25 cooperative, that, by a vote of its membership, has elected to be regulated by the commission, as
26 provided in R.S. 12:426, for the purpose of fixing and regulating the rates charged or to be charged
27 and services furnished by the cooperative.
28

29 C. To ensure that costs passed through to consumers are just and reasonable, the
30 commission shall, no less frequently than every other year, audit the adjustment clause filings
31 submitted by a public electric utility in this state, exercise its authorized review and determination
32 of such filings, and exercise its control and rate-fixing authority to modify fuel adjustment charges
33 of an electric utility as assessed by an electric utility to rate-paying consumers through operation
34 of the utility's fuel adjustment clause.
35

36 Prior version held unconstitutional in *Cajun Electric Power Cooperative, Inc. v. Louisiana Public*
37 *Service Commission*, 544 So. 2d 362 (La. 1989): “Rehearing was granted to reconsider
38 whether article IV, § 21(B) of the state constitution, by explicitly granting to the commission the
39 full authority over “all public utilities,” removes the ability of the legislature to alter the
40 commission's jurisdiction over any business defined as a public utility at the time the 1974
41 Constitution was adopted. We conclude that it does. Insofar as R.S. 45:1163 is inconsistent with
42 this plenary authority, it is unconstitutional. Article IV, § 21(B) provides that the public service
43 commission “shall regulate *all* common carriers and public utilities and have such other regulatory
44 authority as provided by law.” (Emphasis added). . . . Since the provision is unambiguous, this
45 court ought not base its decision on words used in argument at the convention proceedings but
46 should instead rely on the product that the convention ultimately produced. The language that the
47 voters of this state adopted granted, in mandatory language, constitutional jurisdiction to the

1 commission over all common carriers and public utilities. The legislature cannot by statute modify
2 that jurisdiction. If electric cooperatives are public utilities, then the commission has regulatory
3 jurisdiction over them. In 1970, the legislature amended R.S. 45:121 to include electric
4 cooperatives on the list of businesses classified as public utilities. Thus, at the time the 1974
5 constitution was drafted and adopted, electric cooperatives were statutorily defined as public
6 utilities and were under the jurisdiction of the commission. Electric cooperatives remain statutorily
7 defined as public utilities. . . . [N]either the plain language of this constitution nor the record of the
8 framers' debates indicates that the commission's jurisdiction over electric cooperatives should be
9 curtailed. As noted above, the legislature defined cooperatives as public utilities at the time of the
10 drafting and the adoption of the 1974 Constitution. . . . In addition, the cooperatives' argument
11 that they are not the kind of utilities intended to be subject to regulation is undercut by the very
12 statute they seek to have upheld as constitutional. R.S. 45:1163(B) allows electric cooperatives to
13 choose to have rates and services regulated by the commission under the provisions of R.S. 12:426.
14 If the structure and function of these cooperatives were such that regulation were unnecessary, it
15 would be illogical for the legislature to have exempted them from regulation in R.S.
16 45:1163(A) and yet provided for them to choose to be regulated in R.S. 45:1163(B) and R.S.
17 12:426.”

18
19 At the time this case was decided, R.S. 45:1163 read as follows:

20
21 A. The commission shall exercise all necessary power and authority over
22 any street railway, gas, electric light, heat, power, waterworks, or other local public
23 utility for the purpose of fixing and regulating the rates charged or to be charged by
24 and service furnished by any such public utilities; however, no aspect of direct sales
25 of natural gas by natural gas producers, natural gas pipeline companies, natural gas
26 distribution companies, or any other person engaging in the direct sale of natural
27 gas to industrial users for fuel or for utilization in any manufacturing process shall
28 be subject to such regulation by the commission. In addition, a schedule of rates of
29 an electric cooperative shall not require approval of the commission if the schedule
30 previously was approved by the board of directors of the electric cooperative and
31 by the federal government or any agency thereof, nor shall the authority of the
32 commission extend to the service rendered by electric cooperatives except to the
33 extent provided in R.S. 45:123 and in orders of the commission promulgated to
34 effectuate the purpose of R.S. 45:123.

35
36 B. The commission shall exercise all necessary power and authority over
37 any electric cooperative which by a vote of its membership, has elected to be
38 regulated by the commission, as provided in R.S. 12:426, for the purpose of fixing
39 and regulating the rates charged or to be charged and services furnished by the
40 cooperative.

41
42 During the 1990 Regular Session, R.S. 45:1163(A) was amended as follows:

43
44 A. The commission shall exercise all necessary power and authority over
45 any street railway, gas, electric light, heat, power, waterworks, or other local public
46 utility for the purpose of fixing and regulating the rates charged or to be charged by

1 and service furnished by any such public utilities; however, no aspect of direct sales
2 of natural gas by natural gas producers, natural gas pipeline companies, natural gas
3 distribution companies, or any other person engaging in the direct sale of natural
4 gas to industrial users for fuel or for utilization in any manufacturing process, or to
5 any person for use in vehicles capable of using compressed natural gas which when
6 combusted results in comparably lower emissions of oxides of nitrogen, volatile
7 organic compounds, carbon monoxide, or particulates or any combination thereof,
8 shall be subject to such regulation by the commission. In addition, a schedule of
9 rates of an electric cooperative shall not require approval of the commission if the
10 schedule previously was approved by the board of directors of the electric
11 cooperative and by the federal government or any agency thereof, nor shall the
12 authority of the commission extend to the service rendered by electric cooperatives
13 except to the extent provided in R.S. 45:123 and in orders of the commission
14 promulgated to effectuate the purpose of R.S. 45:123.

15
16 Additionally, during the 2016 Regular Session, the Legislature added Subsection C as reflected
17 above, but the statute's language concerning electric cooperatives remains unchanged.

18
19 **Recommendation:** It is recommended that the Legislature direct the Law Institute to direct the
20 printers to add a validity note citing the Louisiana Supreme Court's holding in *Cajun Electric* that
21 R.S. 45:1163 is unconstitutional to the extent that it is inconsistent with Article IV, Section 21(B)
22 of the Constitution of Louisiana.

1 **R.S. 56:1761 through 1766. Audubon Park Commission; creation; membership**
2 ***(Previously included in the 2018, 2020, 2022, and 2024 Biennial Reports)***
3

4 A. The Audubon Park Commission is hereby created as a political subdivision of the state
5 of Louisiana pursuant to Article VI, Section 19 of the Constitution. The commission shall exercise
6 the powers and duties hereinafter set forth or otherwise provided by law.
7

8 B. The commission shall be composed of twenty-four members who shall be appointed by
9 the governor. Each appointment by the governor shall be submitted to the Senate for
10 confirmation. The commission shall be composed as follows:
11

12 (1) Seven members, who shall be residents of the city of New Orleans, appointed from a
13 list of fifteen names eight of which shall be names submitted to the governor by the mayor of the
14 city of New Orleans and seven of which shall be names submitted to the governor by the council
15 of the city of New Orleans. Provided that one member shall be a resident of either the Eighth or
16 Ninth Ward of Orleans Parish.
17

18 (2) Six members, who shall be residents of the city of New Orleans, appointed from a list
19 comprised of two names submitted to the governor by each legislator who represents any portion
20 of the city of New Orleans.
21

22 (3) Five members, who shall be residents of Jefferson Parish, appointed from a list
23 comprised of two names submitted to the governor by each legislator who represents any portion
24 of Jefferson Parish.
25

26 (4) Two members, who shall be residents of St. Bernard Parish, appointed from a list
27 comprised of two names submitted to the governor by each legislator who represents any portion
28 of St. Bernard Parish.
29

30 (5) One member, who shall be a resident of Plaquemines Parish, appointed from a list
31 comprised of two names submitted to the governor by each legislator who represents any portion
32 of Plaquemines Parish.
33

34 (6) Two members, who shall be residents of St. Charles Parish or St. John the Baptist
35 Parish, appointed from a list comprised of two names submitted to the governor by each legislator
36 who represents any portion of St. Charles Parish or St. John the Baptist Parish.
37

38 (7) One member, who shall be a resident of St. Tammany Parish, appointed from a list
39 comprised of two names submitted to the governor by each legislator who represents any portion
40 of St. Tammany Parish.
41

42 (8) Of the total number of members appointed from the city of New Orleans and Jefferson
43 Parish, at least two shall be residents of the west bank of the Mississippi River. Provided further,
44 one of these members shall be a resident of the west bank of Orleans Parish and one member shall
45 be a resident of the west bank of Jefferson Parish.
46

1 (9) All initial nominations shall be made within twenty-one days of the date of signature
2 by the governor, or if not signed by the governor, within twenty-one days of the expiration of the
3 time for bills to become law without signature by the governor, as provided in Article III, Section
4 18 of the Constitution of Louisiana. All subsequent nominations shall be made no earlier than
5 twenty-eight days prior to the expiration of the term of office nor later than fourteen days prior to
6 the expiration of the term of office. If nominations are not made within the time specified, the
7 governor shall make his appointments without the necessity of nominations.
8

9 C.(1) Appointed members shall serve four-year terms. Vacancies shall be filled for the
10 remainder of the term by the Audubon Park Commission. Any person appointed by the
11 commission to fill a vacancy shall be a resident of the same parish as the member he is appointed
12 to replace.
13

14 (2) Notwithstanding the provisions of Paragraph (1) of this Subsection, the terms of the
15 initial members of the commission appointed pursuant to R.S. 56:1761(B) shall expire on
16 December 31 of the year designated below:
17

18 (a) The terms of the initial members appointed pursuant to R.S. 56:1761(B)(4), (5), (6),
19 and (7) shall expire in 1984.
20

21 (b) The terms of the initial members appointed pursuant to R.S. 56:1761(B)(3) shall expire
22 in 1985.
23

24 (c) The terms of the initial members appointed pursuant to R.S. 56:1761(B)(1) shall expire
25 in 1986.
26

27 (d) The terms of the initial members appointed pursuant to R.S. 56:1761(B)(2) shall expire
28 in 1987.
29

30 (3) The terms of the successors of the initial members shall expire on December 31 of the
31 last year of their respective terms. Members shall serve until their successors are appointed and
32 take office.
33

34 D. The commission shall meet and organize immediately after appointment of the
35 members and shall elect from its membership a chairman and a vice chairman and such other
36 officers as it may deem necessary. The commission shall prescribe the duties of its officers. The
37 commission shall adopt rules for the transaction of its business and shall keep a record of its
38 proceedings. Thirteen members shall constitute a quorum.
39

40 E. The commission shall meet at least once in each quarter of the fiscal year, or on call of
41 the chairman or any five members.
42

43 F. Members of the commission shall receive no compensation for their services.
44

45 G. The commission shall be domiciled in New Orleans.
46

1 Held unconstitutional by *City of New Orleans v. State*, 443 So. 2d 562 (La. 1983): “Act 485 of
2 1983, in contest here, essentially reenacts Act 352 of 1982. It abolishes the Audubon Park
3 Commission for the City of New Orleans and creates a new Audubon Park Commission as a
4 political subdivision of the state of Louisiana with twenty-four members appointed by the
5 governor. . . . The new Audubon Park Commission is named “the successor in every way to the
6 Audubon Park Commission for the City of New Orleans created by Act 191 of the 1914 regular
7 session”. . . . In deciding the constitutionality of Act 485 of 1983, the following issues must be
8 considered: (1) Does the City or the State own Audubon Park? (2) If the City owns Audubon Park,
9 may the State take the property by legislative act? . . . The City of New Orleans and not the State
10 owns the property occupied by the Audubon Park and Zoo, as well as the improvements upon that
11 property. The state contends that the Audubon Park and Zoo are natural resources of the state and
12 subject to the state's police power under Art. IX, § 1. . . . While the park contributes to the healthful,
13 scenic and esthetic quality of the environment, the legislature cannot assume its ownership and
14 regulation merely by declaring it a natural resource. The state contends that the park is public
15 property, which is not protected by the constitutional provision against taking without just
16 compensation. . . . A park, which is analogous to a public square, may belong to a political
17 subdivision of the state, such as the City of New Orleans. It is, of course, a public thing, owned by
18 the City for the benefit of all persons. . . . Article I, § 4, Louisiana Constitution of 1974 . . . prohibits
19 the state from taking any property including public property owned by political subdivisions,
20 except upon payment of just compensation. . . . The 1974 Louisiana Constitution does not allow
21 the state to take without payment any public thing belonging to a municipality. On the contrary,
22 the rights of local governmental entities are protected by Article VI, § 6. Since the City of New
23 Orleans owns Audubon Park, Act 485 of 1983, which creates a new Audubon Park Commission
24 as a political subdivision of the state of Louisiana, is an unconstitutional taking of the City's
25 property without just compensation.LSA-Const.1974, Art. I, § 4. The City is entitled to injunctive
26 relief against the irreparable injury which would be caused by the unconstitutional taking of its
27 park property and zoo. For the foregoing reasons, the judgment of the trial court permanently
28 enjoining implementation of Act 485 of 1983 is affirmed.”

29
30 **Recommendation:** It is recommended that the Legislature repeal R.S. 56:1761 through 1765 in
31 their entirety.

1 After the Fifth Circuit’s decision, the Legislature proposed a constitutional amendment in Acts
2 2010, No. 1048 to Article X, § 29(E)(5) to change Subparagraph (E)(5)(b) to Paragraph (F),
3 thereby converting Subparagraph (E)(5)(a) to Paragraph (E)(5), effective November 2010.
4 Nevertheless, the substance of the provision remained the same.

5
6 **Recommendation:** It is recommended that the Legislature direct the Law Institute to direct the
7 printers to note the *DeCay* decision in a validity note following Article X, Section 29 of the
8 Constitution of Louisiana.

1 **R.S. 9:2800.54. Manufacturer responsibility and burden of proof**
2 *(Previously included in the 2024 Biennial Report)*

3
4 A. The manufacturer of a product shall be liable to a claimant for damage proximately
5 caused by a characteristic of the product that renders the product unreasonably dangerous when
6 such damage arose from a reasonably anticipated use of the product by the claimant or another
7 person or entity.

8
9 B. A product is unreasonably dangerous if and only if:

10
11 (1) The product is unreasonably dangerous in construction or composition as provided in
12 R.S. 9:2800.55;

13
14 (2) The product is unreasonably dangerous in design as provided in R.S. 9:2800.56;

15
16 (3) The product is unreasonably dangerous because an adequate warning about the product
17 has not been provided as provided in R.S. 9:2800.57; or

18
19 (4) The product is unreasonably dangerous because it does not conform to an express
20 warranty of the manufacturer about the product as provided in R.S. 9:2800.58.

21
22 C. The characteristic of the product that renders it unreasonably dangerous under R.S.
23 9:2800.55 must exist at the time the product left the control of its manufacturer. The characteristic
24 of the product that renders it unreasonably dangerous under R.S. 9:2800.56 or 9:2800.57 must
25 exist at the time the product left the control of its manufacturer or result from a reasonably
26 anticipated alteration or modification of the product.

27
28 D. The claimant has the burden of proving the elements of Subsections A, B and C of this
29 Section.

30
31 **R.S. 9:2800.57. Unreasonably dangerous because of inadequate warning**

32
33 A. A product is unreasonably dangerous because an adequate warning about the product
34 has not been provided if, at the time the product left its manufacturer's control, the product
35 possessed a characteristic that may cause damage and the manufacturer failed to use reasonable
36 care to provide an adequate warning of such characteristic and its danger to users and handlers of
37 the product.

38
39 B. A manufacturer is not required to provide an adequate warning about his product when:

40
41 (1) The product is not dangerous to an extent beyond that which would be contemplated
42 by the ordinary user or handler of the product, with the ordinary knowledge common to the
43 community as to the product's characteristics; or

1 (2) The user or handler of the product already knows or reasonably should be expected to
2 know of the characteristic of the product that may cause damage and the danger of such
3 characteristic.

4
5 C. A manufacturer of a product who, after the product has left his control, acquires
6 knowledge of a characteristic of the product that may cause damage and the danger of such
7 characteristic, or who would have acquired such knowledge had he acted as a reasonably prudent
8 manufacturer, is liable for damage caused by his subsequent failure to use reasonable care to
9 provide an adequate warning of such characteristic and its danger to users and handlers of the
10 product.

11
12 Preempted by *Green v. BDI Pharmaceuticals*, 803 So. 2d 68 (La. App. 2 Cir. 2001): “BDI filed a
13 motion for summary judgment, urging that Green could not meet his burden of proof as to certain
14 elements of a product liability claim under the Louisiana Products Liability Act (“LPLA”), R.S.
15 9:2800.54. . . . The LPLA, La. R.S. 9:2800.51–2800.60, establishes the exclusive bases of liability
16 for manufacturers for damage caused by their products. The plaintiff’s burden of proof is contained
17 in R.S. 9:2800.54. . . . The labeling of bronchodilator and expectorant drug products is subject to
18 federal regulation. No State or political subdivision of a State may establish or continue in effect
19 any requirement that relates to the regulation of a drug that is “different from or in addition to, or
20 that is otherwise not identical with, a requirement under” the Food, Drug and Cosmetic Act. 21
21 U.S.C. § 379r(a)(2). When Federal law provides that “no requirement or prohibition * * * shall be
22 imposed under State law with respect to the advertising or promotion [of a product] labeled in
23 conformity with the provisions of” the Federal statute, courts have held that the Federal law
24 preempts State statutes and tort claims which would extend or enlarge labeling requirements. . . .
25 A product is unreasonably dangerous *only if* it meets one of the four criteria listed in R.S.
26 9:2800.54 B. Green’s petition alleged only two of these theories, *viz.* failure to warn and
27 unreasonably dangerous design. The design argument may be disposed of summarily. By his
28 second assignment of error Green contends the District Court committed legal error in finding that
29 his “failure to warn” claim was preempted by Federal law under *Glassner v. R.J. Reynolds*
30 *Tobacco Co.*, *supra*. This argument is somewhat more complicated but ultimately cannot
31 withstand the motion for summary judgment. BDI urges that Congress has expressed a clear intent,
32 by enacting 21 U.S.C. § 379r, to preempt State laws, such as R.S. 9:2800.54, which would impose
33 on manufacturers of nonprescription drugs additional and more burdensome labeling
34 requirements. We are unable to find any case explicitly holding that § 379r preempts R.S.
35 9:2800.54, but we find that it does, based on jurisprudence applying identical language in similar
36 statutes. . . . In the instant case, BDI shows that Congress has passed the “National Uniformity for
37 Nonprescription Drugs,” 21 U.S.C. § 379r. . . . The substantive requirements are set forth in 21
38 C.F.R. §§ 341.76 and 341.78, which regulate the labeling of bronchodilator and expectorant drug
39 products, mandating the use of particular warnings. . . . A plain reading of 21 U.S.C. § 379r shows
40 a clear intent to override any State labeling requirements. Notably, § 379r precisely tracks
41 the language of the Medical Device Amendment, which was held in *Sylvester v. Mentor Corp.*,
42 *supra*, to preempt the plaintiff’s claim based on failure to warn (subject to a showing that the
43 manufacturer had complied with all regulations). Moreover, § 379r is virtually identical to the
44 provision of FIFRA which, in *Hopkins v. American Cyanamid Co.*, *supra*, was found to preempt
45 the plaintiff’s products liability claim based on failure to warn. Section 379r also substantially
46 reproduces the portion of the Public Health Cigarette Smoking Act of 1969, which in *Cipollone v.*

1 *Liggett Group, supra*, was found to preempt the plaintiff's common-law claim based on failure to
2 warn. We therefore find that Federal law preempts Green's failure-to-warn claim.”

3
4 **Recommendation:** It is recommended that the Legislature direct the Law Institute to direct the
5 printers to add a validity note following R.S. 9:2800.54 and 2800.57 citing the Second Circuit’s
6 holding in *Green* that these provisions are preempted by 21 U.S.C. 379r because they impose upon
7 manufacturers of nonprescription drugs additional and more burdensome labeling requirements
8 for bronchodilator and expectorant drug products than prescribed by the Food, Drug, and Cosmetic
9 Act.

1 **R.S. 11:2182. Exemption from execution**
2 *(Previously included in the 2016, 2018, 2020, 2022, and 2024 Biennial Reports)*

3
4 Any annuity, retirement allowance or benefits, or refund of contributions, or any optional
5 benefit or any other benefit paid to any person under the provisions of the Sheriffs' Pension and
6 Relief Fund is exempt from any state or municipal tax and is exempt from levy and sale,
7 garnishment, attachment, or any other process whatsoever, except as provided in R.S. 11:292, and
8 is unassignable.

9
10 Limited on preemption grounds by *U.S. v. DeCay*, 620 F.3d 534, 543 (5th Cir. 2010): “The
11 appellants assert that the United States lacks the authority to garnish DeCay's and Barre's pension
12 benefits because Louisiana law precludes enforcement of a restitution order against pension
13 benefits. *See* LA. CONST. art. X, § 29(E)(5)(a) (1974); La.Rev.Stat. § 11:2182 (1991). To the
14 extent Louisiana law is inconsistent with the FDCPA and MVRA, Louisiana law is preempted. . .
15 In sum, the MVRA authorizes the United States to use its civil enforcement powers to garnish a
16 defendant's retirement plan benefits, notwithstanding the fact that pension benefits are generally
17 inalienable under federal and state law.”

18
19 **Recommendation:** It is recommended that the Legislature direct the Law Institute to direct the
20 printers to note the *DeCay* decision in a validity note following R.S. 11:2182.

1 **R.S. 14:100.13. Operating a vehicle without lawful presence in the United States**
2 **(Previously included in the 2016, 2018, 2020, 2022, and 2024 Biennial Reports)**

3
4 A. No alien student or nonresident alien shall operate a motor vehicle in the state without
5 documentation demonstrating that the person is lawfully present in the United States.
6

7 B. Upon arrest of a person for operating a vehicle without lawful presence in the United
8 States, law enforcement officials shall seize the driver's license and immediately surrender such
9 license to the office of motor vehicles for cancellation and shall immediately notify the INS of the
10 name and location of the person.
11

12 C. Whoever commits the crime of driving without lawful presence in the United States
13 shall be fined not more than one thousand dollars, imprisoned for not more than one year, with or
14 without hard labor, or both.
15

16 Preempted by *State v. Sarrabea*, 126 So. 3d 453, 465 (La. 2013): “Because La. R.S. 14:100.13
17 operates in the field of alien registration as interpreted by the Supreme Court in *Arizona*, by
18 regulating the circumstances under which non-citizens carry documentation establishing proof of
19 lawful status, the statute is preempted under the Supremacy Clause of the U.S. Constitution, as
20 interpreted by controlling federal jurisprudence.”
21

22 Held unconstitutional by *State v. Gomez*, 115 So. 3d 1200, 1202-04 (La. App. 3rd Cir. 2013): “In
23 *Arizona [v. United States]*, 132 S.Ct. 2492 [(2012)], the United States Supreme Court reviewed
24 the validity of four provisions of Arizona statute S.B. 1070, a statute enacted to address the issues
25 relating to the large number of unlawful aliens in that state. . . . The Supreme Court held Section
26 3 was preempted by federal law. . . . We find that Louisiana's statute, La. R.S. 14:100.13(A), is
27 similar to Section 3 of Arizona's statute. Both forbid the willful failure to carry documentation
28 demonstrating a lawful presence in the United States. Both provide a penalty in excess of the
29 penalty provided by federal law. . . . [W]e find that La. R.S. 14:100.13 is unconstitutional because
30 it is field preempted. Like Arizona's statute, Louisiana requires aliens to carry registration
31 documents. The Supreme Court has held in *Arizona*, 132 S.Ct. 2492, that such a requirement
32 intrudes on the field of alien registration that federal law has already occupied. Accordingly, we
33 hold that Louisiana's statute is field preempted. Further, we find that La. R.S. 14:100.13 is also
34 conflict preempted. Louisiana's statute makes a felony of an offense federal law considers a
35 misdemeanor. The Supreme Court found fault with a similar provision in Arizona's statute.
36 Accordingly, we hold that La. R.S. 14:100.13 is unconstitutional.” Although *State v. Gomez* is an
37 appellate court decision, the Louisiana Supreme Court dismissed an appeal from the decision as
38 moot, 133 So. 3d 669 (La. 2014) and also denied writs in this case, 133 So. 3d 671 (La. 2014).
39

40 **Recommendation:** It is recommended that the Legislature repeal R.S. 14:100.13 in its entirety.

**APPENDIX: PROVISIONS THAT WERE INCLUDED IN PREVIOUS REPORTS AND
HAVE BEEN ADDRESSED BY THE LEGISLATURE**

Constitution Article I, Section 10.	A-2
Constitution Article IX, Section 9.	A-6
Code of Civil Procedure Article 3662(A)(2).	A-9
Code of Criminal Procedure Article 412	A-13
Code of Criminal Procedure Article 413(B)	A-15
Code of Criminal Procedure Article 414(B) and (C)	A-17
Code of Criminal Procedure Article 795(C)	A-18
Code of Criminal Procedure Article 930.10	A-20
R.S. 9:2948 and Civil Code Article 477(B).	A-22
R.S. 11:62.	A-24
R.S. 11:102(B) and (C).	A-25
R.S. 11:542(C).	A-27
R.S. 11:883.1(C).	A-28
R.S. 11:1145.1(C) and (E).	A-29
R.S. 11:1399.1 et seq.	A-30
R.S. 13:5105(C).	A-31
R.S. 14:30(C) and 30.1(B)	A-32
R.S. 14:42, 44, 44.2, and 128.1.	A-35
R.S. 14:47	A-38
R.S. 14:48	A-39
R.S. 14:49	A-40
R.S. 14:87	A-41
R.S. 14:95.4	A-45
R.S. 14:122.	A-46
R.S. 15:114.	A-49
R.S. 17:1803.	A-50
R.S. 40:1788(B).	A-51
R.S. 42:261(E).	A-52
R.S. 42:1113(B)	A-53
R.S. 47:33(A)(4).	A-55
R.S. 47:301(3)(a) and (13)(a)	A-60
R.S. 47:301(10)(c)(i)(aa)(III)(aaa).	A-63
R.S. 47:301(14)(g)(i)(bb).	A-65
R.S. 47:337.102(I).	A-68

1 Constitution

2
3 **Article I, Section 10. Right to Vote; Disqualification from Seeking or Holding an Elective**
4 **Office**
5 *(Previously included in the 2018, 2020, and 2022 Biennial Reports)*
6

7 Section 10.(A) Right to Vote. Every citizen of the state, upon reaching eighteen years of
8 age, shall have the right to register and vote, except that this right may be suspended while a person
9 is interdicted and judicially declared mentally incompetent or is under an order of imprisonment
10 for conviction of a felony.

11
12 (B) Disqualification. The following persons shall not be permitted to qualify as a candidate
13 for elective public office or take public elective office or appointment of honor, trust, or profit in
14 this state:

15
16 (1) A person who has been convicted within this state of a felony and who has exhausted
17 all legal remedies, or who has been convicted under the laws of any other state or of the United
18 States or of any foreign government or country of a crime which, if committed in this state, would
19 be a felony and who has exhausted all legal remedies and has not afterwards been pardoned either
20 by the governor of this state or by the officer of the state, nation, government or country having
21 such authority to pardon in the place where the person was convicted and sentenced.

22
23 (2) A person actually under an order of imprisonment for conviction of a felony.
24

25 (C) Exception. Notwithstanding the provisions of Paragraph (B) of this Section, a person
26 who desires to qualify as a candidate for or hold an elective office, who has been convicted of a
27 felony and who has served his sentence, but has not been pardoned for such felony, shall be
28 permitted to qualify as a candidate for or hold such office if the date of his qualifying for such
29 office is more than fifteen years after the date of the completion of his original sentence.
30

31 Held unconstitutional in *Shepherd v. Schedler*, 209 So. 3d 752 (La. 2016): “For purposes of the
32 present challenge, the parties stipulated that the bill the legislature passed as a Joint Resolution,
33 Senate Bill No. 321, was not what was presented to the voters for ratification and adoption as an
34 amendment to the constitution, as the Green amendment was omitted from the enrolled bill which
35 became 1997 La. Acts 1492. Given this stipulation, the issue presented for this court's resolution
36 is whether, in light of this discrepancy, the amendment conforms with La. Const. art. XIII, § 1,
37 which delineates the procedural requirements for amending the constitution. . . . Pursuant to this
38 provision “five elements are indispensable to give validity to a proposed constitutional
39 amendment.” These elements are: “The assent of two-thirds of the Legislature, the submission of
40 only one amendment in each proposal, the designation by the Legislature of the date of the election
41 at which the submission shall take place, the publication of the proposed amendment, and a
42 majority of the popular vote.” In the present case, compliance with one of those indispensable
43 elements is called into question: the assent of two-thirds of the legislature. In declaring the 1998
44 amendment to La. Const. art. I, § 10 unconstitutional, the district court examined this essential
45 element of the amendment procedure in the context of the stipulated facts; *i.e.*, that the electors did
46 not vote on the proposed amendment to La. Const. art. I, § 10 in the form or with the full language

1 that was passed by the legislature because a lawfully adopted amendment (the Green amendment)
2 to the joint resolution was erroneously dropped from that resolution in the process of enrolling the
3 bill. Drawing on the provisions of La. Const. art. XIII, § 1, the district court reasoned as follows. .
4 . . If the proposed amendment is presented to the voters in a form that is not coextensive with what
5 the legislature intended, then the assent of two-thirds of the Legislature is lacking. In other words,
6 to pass muster under La. Const. art. XIII, § 1, what the legislature passes and what is submitted to
7 the voters for approval must be the same. Because, in this case, “the voters did not vote on what
8 was passed by the Louisiana Legislature in 1997,” the district court declared the 1998 amendment
9 to Const. art. I, § 10 unconstitutional. . . . In this case, we have a clear and affirmative showing, in
10 the form of a stipulation (which the parties appropriately made given the facts and circumstances),
11 that the enactment process did not conform with the constitutional requirements for promulgation
12 of an amendment to the Constitution. Under these circumstances, and for the foregoing reasons,
13 we find the district court was correct in declaring the 1998 amendment to La. Const. art. I, § 10 null
14 and void. . . . For the reasons assigned, therefore, we find that 1997 La. Acts 1492, which attempted
15 to amend La. Const. art. I, § 10, is null and void because it was not constitutionally adopted, and
16 we affirm the decision below.”

17
18 The Green amendments provided as follows:
19

20 **Article I, Section 10. Right to Vote; Disqualification from Seeking or Holding**
21 **an Elective Office**

22 * * *

23
24
25 (C) ~~Exception.~~ **Exceptions. (1)** Notwithstanding the provisions of
26 Paragraph (B) of this Section, a person who desires to qualify as a candidate for or
27 hold an elective office, who has been convicted of a felony **for which the person**
28 **was incarcerated** and who has served his sentence, but has not been pardoned for
29 such felony, shall be permitted to qualify as a candidate for or hold such office if
30 the date of his qualifying for such office is more than fifteen years after the date of
31 the completion of his original sentence.

32
33 **(2) Notwithstanding the provisions of Paragraph (B) of this Section, a**
34 **person who desires to qualify as a candidate for or hold an elective office, who**
35 **has been convicted of a felony for which the person was not incarcerated but**
36 **who received probation for such felony shall be permitted to qualify as a**
37 **candidate for or hold such office after successful completion of the probation**
38 **period.**
39

40 The Law Institute’s initial recommendation with respect to this provision was for the Legislature
41 to submit to the voters a proposal to repeal existing Paragraphs B and C and to amend and reenact
42 Article I, Section 10 of the Constitution of Louisiana to incorporate the language of both Acts
43 1997, No. 1492 and the Green amendments. After the issuance of the Law Institute’s 2018
44 Unconstitutional Statutes Biennial Report to the Legislature, a new provision of the Constitution
45 – Article I, Section 10.1 – was enacted by Acts 2018, No. 719, approved by the voters, and reads
46 as follows:

1
2 **§10.1. Disqualification from Seeking or Holding an Elective Office or**
3 **Appointment**
4

5 Section 10.1.(A) Disqualification. The following persons shall not be
6 permitted to qualify as a candidate for elective public office or hold elective public
7 office or appointment of honor, trust, or profit in this state:
8

9 (1) A person actually under an order of imprisonment for conviction of a
10 felony.
11

12 (2) A person who has been convicted within this state of a felony and who
13 has exhausted all legal remedies, or who has been convicted under the laws of any
14 other state or of the United States or of any foreign government or country of a
15 crime which, if committed in this state, would be a felony and who has exhausted
16 all legal remedies and has not afterwards been pardoned either by the governor of
17 this state or by the officer of the state, nation, government, or country having such
18 authority to pardon in the place where the person was convicted and sentenced.
19

20 (B) Exception. The provisions of Paragraph (A) of this Section shall not
21 prohibit a person convicted of a felony from qualifying as a candidate for elective
22 public office or holding such elective public office or appointment of honor, trust,
23 or profit if more than five years have elapsed since the completion of his original
24 sentence for the conviction.
25

26 (C) The provisions of Paragraph (A) of this Section shall not prohibit a
27 person from being employed by the state or a political subdivision.
28

29 The following note also appears on the legislative website at Article I, Section 10 of the
30 Constitution:

31
32 “NOTE: Acts 1997, No. 1492, which proposed to amend Art. 1, §10 of the
33 Constitution of Louisiana is null and void because it was not constitutionally
34 adopted. See *Shepherd v. State of Louisiana* No. 2015-CA-1750 (La. 2016)”
35

36 The Law Institute reviewed this development and makes the following updated recommendation.
37

38 **Recommendation:** It is recommended that the Legislature pass a resolution directing the Law
39 Institute to direct the printers to stop printing the unconstitutionally adopted language added by
40 Acts 1997, No. 1492 as reflected below:
41

42 **Article I, Section 10. Right to Vote; ~~Disqualification from Seeking or Holding~~**
43 **~~an Elective Office~~**
44

45 Section 10.~~(A)~~ Right to Vote. Every citizen of the state, upon reaching
46 eighteen years of age, shall have the right to register and vote, except that this right

1 may be suspended while a person is interdicted and judicially declared mentally
2 incompetent or is under an order of imprisonment for conviction of a felony.

3
4 ~~(B) Disqualification. The following persons shall not be permitted to~~
5 ~~qualify as a candidate for elective public office or take public elective office or~~
6 ~~appointment of honor, trust, or profit in this state:~~

7
8 ~~(1) A person who has been convicted within this state of a felony and~~
9 ~~who has exhausted all legal remedies, or who has been convicted under the~~
10 ~~laws of any other state or of the United States or of any foreign government or~~
11 ~~country of a crime which, if committed in this state, would be a felony and who~~
12 ~~has exhausted all legal remedies and has not afterwards been pardoned either~~
13 ~~by the governor of this state or by the officer of the state, nation, government~~
14 ~~or country having such authority to pardon in the place where the person was~~
15 ~~convicted and sentenced.~~

16
17 ~~(2) A person actually under an order of imprisonment for conviction of~~
18 ~~a felony.~~

19
20 ~~(C) Exception. (1) Notwithstanding the provisions of Paragraph (B) of~~
21 ~~this Section, a person who desires to qualify as a candidate for or hold an~~
22 ~~elective office, who has been convicted of a felony for which the person was~~
23 ~~incarcerated and who has served his sentence, but has not been pardoned for~~
24 ~~such felony, shall be permitted to qualify as a candidate for or hold such office~~
25 ~~if the date of his qualifying for such office is more than fifteen years after the~~
26 ~~date of the completion of his original sentence.~~

27
28 ~~(2) Notwithstanding the provisions of Paragraph (B) of this Section, a person who~~
29 ~~desires to qualify as a candidate for or hold an elective office, who has been convicted of a~~
30 ~~felony for which the person was not incarcerated but who received probation for such~~
31 ~~felony shall be permitted to qualify as a candidate for or hold such office after successful~~
32 ~~completion of the probation period.~~

33
34 Note to the Legislature

35
36 During the 2022 Regular Session, the Legislature passed House Concurrent Resolution No.
37 51, which directed the Law Institute to direct the printer to stop printing unconstitutionally adopted
38 language in Article I, Section 10 as recommended by the Law Institute.

1 **Article IX, Section 9. First Use Tax Trust Fund**
2 ***(Previously included in the 2020 and 2022 Biennial Reports)***
3

4 Section 9.(A)(1) Creation. The First Use Tax Trust Fund is hereby created and established
5 in the state treasury as a special and irrevocable trust fund for the deposit of the proceeds, and
6 interest derived therefrom, of the first use tax imposed by law in 1978 or thereafter and any other
7 tax imposed by law which would have the effect of imposing any new or alternative tax on uses
8 of those resources subject to the tax levied by the first use tax. The treasurer shall pay into the
9 state general fund, from the total proceeds of the first use tax, as imposed by law in 1978 or
10 thereafter such amounts as are necessary to fully reimburse the state general fund for tax credits
11 granted in 1978 against that tax pursuant to Part I-B of Chapter 6 of Title 47 of the Louisiana
12 Revised Statutes. The remainder of such tax proceeds shall be credited to the following accounts
13 within the First Use Tax Trust Fund and shall not be deposited into the Bond Security and
14 Redemption Fund or the general fund.
15

16 (2) Distribution; debt accounts. Seventy-five percent of the proceeds, and interest derived
17 therefrom, shall be deposited into the following accounts:
18

19 (a) Initial Proceeds Account. From this portion of the initial proceeds of the tax, the sum
20 of five hundred million dollars shall be maintained in an account within the First Use Tax Trust
21 Fund in the state treasury to be known as the "Initial Proceeds Account". Monies in the Initial
22 Proceeds Account shall be invested, and the investment earnings shall accrue to that
23 account. Except for investment and except as provided in Paragraph (C), monies on deposit in the
24 Initial Proceeds Account shall not be used. If the balance of the Initial Proceeds Account at any
25 time is less than five hundred million dollars, then an amount from the next proceeds of the tax
26 shall be credited to the Initial Proceeds Account until there is a balance therein of five hundred
27 million dollars.
28

29 (b) Debt Retirement and Redemption Account. All proceeds of this portion of the tax over
30 and above the amount required to be maintained in the Initial Proceeds Account shall be
31 maintained in an account in the First Use Tax Trust Fund to be known as the "Debt Retirement
32 and Redemption Account". Monies in the Debt Retirement and Redemption Account shall be
33 invested and the investment earnings shall accrue to that account. Except for investment, monies
34 on deposit in the Debt Retirement and Redemption Account shall be used only to purchase, in
35 advance of maturity, on the open market any outstanding obligations of the state, or to call, pay or
36 redeem in advance of maturity any outstanding bonds, notes or other evidence of state debt, or
37 both. No purchase or redemption of state debt shall occur with the monies unless the purchase or
38 redemption results in interest savings to the state. The methods used for retiring such future debt
39 shall be determined by the state treasurer, with concurrence of two-thirds of the members of the
40 State Bond Commission acting in open session.
41

42 (3) Distribution; conservation account. Twenty-five percent of the proceeds, and interest
43 derived therefrom, shall be deposited into the following account:
44

45 (a) Barrier Islands Conservation Account. Twenty-five percent of the proceeds of the tax
46 shall be maintained in an account in the First Use Tax Trust Fund to be known as the "Barrier

1 Islands Conservation Account". Monies in the Barrier Islands Conservation Account shall be
2 invested and the investment earnings shall accrue to that account. Except for investment, monies
3 on deposit in the Barrier Islands Conservation Account shall be used exclusively to fund capital
4 improvement projects designed to conserve, preserve and maintain the barrier islands, reefs, and
5 shores of the coastline of Louisiana. Only such capital improvements contained in the
6 comprehensive capital budget adopted by the legislature each year shall be funded.
7

8 (B) Investments. The state treasurer shall invest all monies on deposit in the accounts
9 established under Paragraph (A) in accordance with the law governing the investment of idle funds
10 of the state.
11

12 (C) Use of Investment Earnings of Initial Proceeds Account. If in the judgment of the
13 state treasurer the best interest of the state would be served, and only if the Debt Retirement and
14 Redemption Account is depleted or otherwise not funded, the treasurer may, with concurrence of
15 two-thirds of the members of the State Bond Commission, acting in open session, expend the
16 investment earnings which have accrued in excess of five hundred million dollars in the Initial
17 Proceeds Account for any purpose for which the Debt Retirement and Redemption Account may
18 be used.
19

20 (D) The funds deposited in the First Use Tax Trust Fund shall be considered escrowed and
21 shall not be used for the purposes enumerated herein until the proceeds of the first use tax are
22 determined to be available for such uses by the treasurer with concurrence of two-thirds of the
23 members of the State Bond Commission, acting in open session. During the time these funds are
24 escrowed such funds may be ordered remitted upon final action by a court of last resort, with the
25 interest earned thereon, as provided by law, if the tax is held to be invalid as to any taxpayer who
26 has paid the tax.
27

28 Louisiana's First Use Tax was held unconstitutional by the United States Supreme Court in
29 *Maryland v. Louisiana*, 451 U.S. 725 (1981): "In this original action, several States, joined by the
30 United States and a number of pipeline companies, challenge the constitutionality of Louisiana's
31 "First-Use Tax" imposed on certain uses of natural gas brought into Louisiana, principally from
32 the Outer Continental Shelf (OCS), as violative of the Supremacy Clause and the Commerce
33 Clause of the United States Constitution. . . . On the merits, plaintiffs argue that the First-Use Tax
34 violates the Supremacy Clause because it interferes with federal regulation of the transportation
35 and sale of natural gas in interstate commerce. . . . Plaintiffs argue that § 1303 C of the Act violates
36 the Natural Gas Act . . . The effect of § 1303 C is to interfere with the FERC's authority to regulate
37 the determination of the proper allocation of costs associated with the sale of natural gas to
38 consumers. . . . At the very least, there is an "imminent possibility of collision," *ibid*. The FERC
39 need not adjust its rulings to accommodate the Louisiana statute. To the contrary, the State may
40 not trespass on the authority of the federal agency. As we see it, plaintiffs are entitled to judgment
41 on the pleadings that § 1303 C is invalid under the Supremacy Clause. . . . Plaintiffs also argue
42 that the First-Use Tax violates the Commerce Clause of the United States Constitution which
43 provides that "[t]he Congress shall have Power ... [t]o regulate Commerce ... among the several
44 States...." . . . Initially, it is clear to us that the flow of gas from the OCS wells, through processing
45 plants in Louisiana, and through interstate pipelines to the ultimate consumers in over 30 States
46 constitutes interstate commerce. . . . A state tax must be assessed in light of its actual effect

1 considered in conjunction with other provisions of the State's tax scheme. . . . In this case, the
2 Louisiana First-Use Tax unquestionably discriminates against interstate commerce in favor of
3 local interests as the necessary result of various tax credits and exclusions. . . . In our view, the
4 First-Use Tax cannot be justified as a compensatory tax. . . . The common thread running through
5 the cases upholding compensatory taxes is the equality of treatment between local and interstate
6 commerce. As already demonstrated, however, the pattern of credits and exemptions allowed
7 under the Louisiana statute undeniably violates this principle of equality. . . . It may be true that
8 further hearings would be required to provide a precise determination of the extent of the
9 discrimination in this case, but this is an insufficient reason for not now declaring the Tax
10 unconstitutional and eliminating the discrimination. We need not know how unequal the Tax is
11 before concluding that it unconstitutionally discriminates. Accordingly, we grant plaintiffs'
12 exception that the First-Use Tax is unconstitutional under the Commerce Clause because it unfairly
13 discriminates against purchasers of gas moving through Louisiana in interstate commerce. In
14 conclusion, we hold that § 1303 C violates the Supremacy Clause and that the First-Use Tax is
15 unconstitutional under the Commerce Clause.”

16
17 **Recommendation:** It is recommended that the Legislature direct the Law Institute to direct the
18 printers to add a validity note following Article IX, Section 9 of the Louisiana Constitution noting
19 the *Maryland v. Louisiana* decision and the subsequent repeal of the First Use Tax, R.S. 47:1301
20 et seq., by Acts 1998, No. 4.

21
22 **Note to the Legislature**

23
24 During the 2023 Regular Session, a proposition to repeal Article IX, Section 9 of the
25 Constitution of Louisiana was adopted by the Legislature in Acts 2023, No. 199, §2, which was
26 approved by the voters in November of 2023.

1 Code of Civil Procedure

2
3 **Code of Civil Procedure Article 3662. Same; relief which may be granted successful plaintiff**
4 **in judgment; appeal**
5 ***(Previously included in the 2020 and 2022 Biennial Reports)***
6

7 A. A judgment rendered for the plaintiff in a possessory action shall:

8
9 (1) Recognize his right to the possession of the immovable property or real right therein,
10 and restore him to possession thereof if he has been evicted, or maintain him in possession thereof
11 if the disturbance has not been an eviction;

12
13 (2) Order the defendant to assert his adverse claim of ownership of the immovable property
14 or real right therein in a petitory action to be filed within a delay to be fixed by the court not to
15 exceed sixty days after the date the judgment becomes executory, or be precluded thereafter from
16 asserting the ownership thereof, if the plaintiff has prayed for such relief; and

17
18 (3) Award him the damages to which he is entitled and which he has prayed for.
19

20 B. A suspensive appeal from the judgment rendered in a possessory action may be taken
21 within the delay provided in Article 2123, and a devolutive appeal may be taken from such
22 judgment only within thirty days of the applicable date provided in Article 2087(A).
23

24 Prior version held unconstitutional as applied to the state in *Todd v. State*, 456 So. 2d 1340 (La.
25 1983): “With respect to the latter concern about the option available to the plaintiff
26 in La.C.C.P. art. 3662(2), to have the judge set a deadline not to exceed sixty days within which
27 the defendant/loser in a possessory action must bring his petitory action, there is constitutional and
28 legal reason to bar application to the state of that provision. This reason is based partly on the
29 public policy consideration attending the Constitution's prohibiting the loss of state lands by
30 acquisition prescription. More pointedly, however, it is based on the constitutional proscription to
31 the running of *liberative* prescription against the state, a provision which has been incorporated in
32 our state constitutions since 1898. “Prescription shall not run against the state in any civil matter,
33 unless otherwise provided in this constitution or expressly by law.” La. Const. art. 12 § 13, La.
34 Const. art. 19 § 16 (1921), La. Const. art. 193 (1913 and 1898). The sixty day period
35 in La.C.C.P. art. 3662(2), within which the trial judge when asked must tell the loser in a
36 possessory action to file a petitory action, fits indeed within the parameters of liberative
37 prescription. This sixty (60) day period finds its source in the jactitory action, a jurisprudentially-
38 created action which subsisted as a way of handling slander of title actions. In 1960 with the
39 adoption of the Louisiana Code of Civil Procedure, the former jactitory action was merged with
40 the former possessory action. That the sixty day period is a form of liberative prescription is
41 evident from jurisprudential history of the jactitory action. To give effect to La.C.C.P. art. 3662(2)
42 and the sixty day period when the state is the loser in a possessory action would impose on the
43 state a form of liberative prescription, which is constitutionally impermissible under La. Const.
44 art. 12 § 13. “Prescription shall not run against the stae [sic] in any civil matter, unless otherwise
45 provided in the constitution or expressly by law.” Nowhere in the constitution, nor expressly
46 in La.C.C.P. art. 3662(2) or any other statute is there provision for the sixty day period to run

1 against the state. Yet as we have indicated earlier in this opinion the possessory action, as
2 jurisprudentially permitted against the sovereign, insofar as private property is concerned, fits
3 clearly within the codal scheme of the property articles of the Civil Code, and is consistent with
4 our French tradition as well. Therefore, allowing a private litigant to maintain a possessory action
5 against the state is statutorily, constitutionally and jurisprudentially supported; although the sixty
6 day mandate in La.C.C.P. art. 3662(2) for bringing a petitory action, as applied to the state, is
7 constitutionally impermissible. . . . Therefore, for all of the foregoing reasons, we find that a
8 possessory action may be maintained against the state. We affirm its availability, except that the
9 plaintiff's option in La.C.C.P. art. 3663(2) to ask the judge to require in the judgment that the
10 defendant file a petitory action within a stated period not to exceed sixty days is not constitutionally
11 permissible when the state is the loser in the possessory action. Additionally we add a caveat
12 (acknowledging that the issue is not before us in this case) that we have not determined what the
13 state's burden of proof will be, if and when, after losing a possessory action to a private litigant,
14 the state seeks to assert its ownership in a petitory or other proceeding.”

15
16 A year and a half later, the Supreme Court's original opinion was amended on reargument by *Todd*
17 *v. State*, 474 So. 2d 430 (La. 1985), but the Court “reaffirm[ed] [its] determination in the original
18 opinion that the state shall not be subject to the requirement of La.Code Civ.Pro. art. 3662(2) that
19 it assert any adverse claim of ownership in a petitory action within 60 days of the judgment of
20 possession.”

21
22 At the time these cases were decided, Code of Civil Procedure Article 3662 read as follows:

23
24 **Article 3662. Same; relief which may be granted successful plaintiff in**
25 **judgment; appeal**

26
27 A judgment rendered for the plaintiff in a possessory action shall:

28
29 (1) Recognize his right to the possession of the immovable property or real
30 right therein, and restore him to possession thereof if he has been evicted, or
31 maintain him in possession thereof if the disturbance has not been an eviction;

32
33 (2) Order the defendant to assert his adverse claim of ownership of the
34 immovable property or real right therein in a petitory action to be filed within a
35 delay to be fixed by the court not to exceed sixty days after the date the judgment
36 becomes executory, or be precluded thereafter from asserting the ownership
37 thereof, if the plaintiff has prayed for such relief; and

38
39 (3) Award him the damages to which he is entitled and which he has prayed
40 for.

41
42 A suspensive appeal from the judgment rendered in a possessory action may
43 be taken within the delay provided in Article 2123, and a devolutive appeal may be
44 taken from such judgment only within thirty days of the applicable date provided
45 in Article 2087(1)-(3).
46

1 During the 2010 Regular Session, this Article was amended on recommendation of the Law
2 Institute by Acts 2010, No. 185 to add the Paragraph A and B designations and update the cross-
3 reference to Article 2087, but the provision has otherwise remained unchanged.
4

5 **Recommendation:** The Law Institute is presently considering proposed legislation to
6 address the constitutional infirmity recognized in *Todd v. State*. Until this proposed legislation can
7 be adopted, it is recommended that the Legislature direct the Law Institute to direct the printers to
8 add a validity note following Code of Civil Procedure Article 3662 noting the *Todd v. State*
9 decision and the unconstitutionality of Article 3662(A)(2) as applied to the state.
10

11 **Note to the Legislature**

12
13 During the 2023 Regular Session, Code of Civil Procedure Article 3662 was amended upon
14 the Law Institute’s recommendation by Acts 2023, No. 421, §2 to read as follows:
15

16 **Article 3662. Same; relief ~~which~~ that may be granted successful plaintiff in** 17 **judgment; appeal**

18
19 A. A judgment rendered for the plaintiff in a possessory action shall:
20

21 (1) Recognize ~~his~~ the plaintiff’s right to the possession of the immovable
22 property or real right therein, and restore him to possession thereof if he has been
23 evicted, or maintain him in possession thereof if the disturbance has not been an
24 eviction;
25

26 (2) Order the defendant to assert his adverse claim of ownership of the
27 immovable property or real right therein in a petitory action to be filed within ~~a~~
28 ~~delay to be fixed by the court not to exceed~~ sixty days after the date the judgment
29 becomes executory, or be precluded thereafter from asserting the ownership
30 thereof, if the plaintiff has prayed for ~~such~~ this relief; and this relief is not precluded
31 by Paragraph B of this Article.
32

33 (3) Award ~~him~~ the plaintiff the damages to which he is entitled and for
34 which he has prayed ~~for~~.
35

36 B. A judgment in a possessory action shall not grant the relief described in
37 Subparagraph (A)(2) of this Article against the state or against a defendant who
38 appeared in the action only through an attorney appointed to represent him under
39 Article 5091.
40

41 C. A suspensive appeal from the judgment rendered in a possessory action
42 may be taken within the delay provided in Article 2123, and a devolutive appeal
43 may be taken from ~~such~~ the judgment only within thirty days of the applicable date
44 provided in Article 2087(A).
45

1 As explained in the Comments, Paragraph B was added to remove the constitutional
2 infirmity recognized in *Todd v. State*.

1 Code of Criminal Procedure

2
3 **Code of Criminal Procedure Article 412. Drawing grand jury venire and subpoena of**
4 **veniremen; Orleans Parish**
5 **(Previously included in the 2016 and 2018 Biennial Reports)**
6

7 A. In Orleans Parish, upon order of the court, the commission shall draw the grand jury
8 venire pursuant to the provisions of Code of Criminal Procedure Article 411(A).
9

10 B. The commission shall prepare and certify a list containing the names so drawn, and the
11 list shall be delivered to the judge who ordered the drawing.
12

13 C. The court may direct the jury commission to prepare subpoenas directed to the persons
14 on the grand jury venire, ordering their appearance in court on the date set by the court for the
15 selection of the grand jury, and the jury commission shall then cause the subpoenas to be served
16 in accordance with the provisions of Article 404.1(B) or R.S. 15:112, as directed by the court.
17

18 Prior version held unconstitutional by *State v. Dilosa*, 848 So. 2d 546, 551 (La. 2003): “Because
19 the complained of statutes are local laws which concern the practice of the criminal courts in
20 Orleans Parish, we conclude that they are unconstitutional. . . .With regard to Article 412, it is
21 impossible to sever Paragraph A from the remainder of the statute without destroying the statute’s
22 intent. Article 412, then, as it was constituted at the time of defendants’ indictment, is
23 unconstitutional in its entirety.”
24

25 At the time this case was decided, the 1999 version of Code of Criminal Procedure Article 412(A)
26 read:
27

28 **Article 412. Drawing grand jury venire and subpoena of veniremen; Orleans**
29 **Parish**
30

31 A. In Orleans Parish, upon order of the court, the commission shall draw
32 indiscriminately and by lot from the general venire box the names of seventy-five
33 qualified persons, who shall constitute the grand jury venire.
34

35 * * *

36
37 Before the Louisiana Supreme Court’s decision, in Acts 2001, No. 281, the Legislature amended
38 Article 412 with respect to procedures for drawing of grand jury venire in Orleans Parish. Because
39 the Legislature amended Paragraph (A) of Article 412, which the *Dilosa* court later declared
40 unconstitutional, perhaps the current version of the statute is not unconstitutional or preempted.
41 However, Paragraphs (B) and (C), which were also declared unconstitutional because of their
42 relationship to Paragraph (A), have remained the same.
43

44 **Recommendation:** After review by the Law Institute’s Criminal Code and Code of Criminal
45 Procedure Committee, it is recommended that the Legislature repeal Code of Criminal Procedure
46 Article 412 in its entirety.

Note to the Legislature

1
2
3
4

During the 2016 Regular Session, Code of Criminal Procedure Article 412 was repealed by Acts 2016, No. 389, §3, as recommended by the Law Institute.

1 **Code of Criminal Procedure Article 413. Method of impaneling of grand jury; selection of**
2 **foreman**
3 **(Previously included in the 2016 and 2018 Biennial Reports)**
4

5 A. The grand jury shall consist of twelve persons plus no fewer than two nor more than
6 four alternates qualified to serve as jurors, selected or drawn from the grand jury venire.
7

8 B. The sheriff or his designee, or the clerk or a deputy clerk of court, or in Orleans Parish
9 the jury commissioner shall draw indiscriminately and by lot from the envelope containing the
10 remaining names on the grand jury venire a sufficient number of names to complete the grand
11 jury. The envelope containing the remaining names shall be replaced into the grand jury box for
12 use in filling vacancies as provided in Article 415. The court shall cause a random selection to be
13 made of one person from the impaneled grand jury to serve as foreman of the grand jury.
14

15 C. The alternate grand jurors shall receive the charge as provided in Article 432 but shall
16 not be sworn nor become members of the grand jury except as provided in Article 415.
17

18 Prior version limited on constitutional grounds by *State v. Dilosa*, 848 So. 2d 546, 551 (La. 2003):
19 “Because the complained of statutes are local laws which concern the practice of the criminal
20 courts in Orleans Parish, we conclude that they are unconstitutional. . . .The offending language in
21 Article 413, as it read in 1999 . . . is severable, however. Considering Article 413, the introductory
22 phrase of Paragraph B, as well as of Paragraph C, may be struck without damaging the intent of
23 the legislature, which, as indicated by the title of the statute, was to provide a method of impaneling
24 a grand jury and selecting its foreperson.”
25

26 At the time this case was decided, the 1999 version of Code of Criminal Procedure Article 413
27 was still in effect, the introductory phrase of Paragraph (B) of which read: “In parishes other than
28 Orleans . . .” and Paragraph (C) of which read: “In the parish of Orleans, the court shall select
29 twelve persons plus a first and second alternate for a total of fourteen persons from the grand jury
30 venire, who shall constitute the grand jury. The court shall thereupon select one of the jurors to
31 serve as foreman.” Before the Louisiana Supreme Court’s decision, in Acts 2001, No. 281, the
32 Legislature amended Article 413(B) to remove its exception for Orleans Parish and repealed
33 Article 413(C) in its entirety.
34

35 **Recommendation:** After review by the Law Institute’s Criminal Code and Code of Criminal
36 Procedure Committee, it is recommended that the Legislature amend Code of Criminal Procedure
37 Article 413(B) to remove the offending language as follows:
38

39 B. The sheriff or his designee, or the clerk or a deputy clerk of court, or ~~in~~
40 ~~Orleans Parish~~ the jury commissioner shall draw indiscriminately and by lot from
41 the envelope containing the remaining names on the grand jury venire a sufficient
42 number of names to complete the grand jury. The envelope containing the
43 remaining names shall be replaced into the grand jury box for use in filling
44 vacancies as provided in Article 415. The court shall cause a random selection to
45 be made of one person from the impaneled grand jury to serve as foreman of the
46 grand jury.

Note to the Legislature

1
2
3
4
5

During the 2016 Regular Session, Code of Criminal Procedure Article 413(B) was amended by Acts 2016, No. 389, §1 to remove the “in Orleans Parish” language from the provision, as recommended by the Law Institute.

1 **Code of Criminal Procedure Article 414. Time for impaneling grand juries; period of service**
2 **(Previously included in the 2016 and 2018 Biennial Reports)**

3
4 * * *

5
6 B. In parishes other than Orleans, the court shall fix the time at which a grand jury shall
7 be impaneled, but no grand jury shall be impaneled for more than eight months, nor less than four
8 months, except in the parish of Cameron in which the grand jury may be impaneled for a year.
9

10 C. In Orleans Parish, a grand jury venire shall be drawn by the jury commission on the
11 date set by the presiding judge. On the next legal day following the drawing, the jury commission
12 shall submit the grand jury venire to the presiding judge, who shall impanel the grand jury. A
13 grand jury in Orleans Parish shall be impaneled on the first Wednesday of March and September
14 of each year.
15

16 * * *

17
18 Held unconstitutional by *State v. Dilosa*, 848 So. 2d 546, 551 (La. 2003): “Because the complained
19 of statutes are local laws which concern the practice of the criminal courts in Orleans Parish, we
20 conclude that they are unconstitutional. . . . The offending language . . . in Article 414 is severable,
21 however. . . . Likewise, the introductory phrase of Paragraph B, as well as all of Paragraph C, may
22 be struck without doing violence to the legislature’s intent, which as to provide a time for
23 impaneling grand juries and their terms of service.”
24

25 **Recommendation:** After review by the Law Institute’s Criminal Code and Code of Criminal
26 Procedure Committee, it is recommended that the Legislature do both of the following:
27

28 1. Amend Code of Criminal Procedure Article 414(B) to remove the offending language
29 as follows:
30

31 B. ~~In parishes other than Orleans,~~ The court shall fix the time at which
32 a grand jury shall be impaneled, but no grand jury shall be impaneled for more than
33 eight months, nor less than four months, except in the parish of Cameron in which
34 the grand jury may be impaneled for a year.
35

36 2. Repeal Code of Criminal Procedure Article 414(C) in its entirety.
37

38 **Note to the Legislature**
39

40 During the 2016 Regular Session, Code of Criminal Procedure Article 414(B) was
41 amended by Acts 2016, No. 389, §1 to remove the “In parishes other than Orleans” language from
42 the provision, and Article 414(C) was repealed by Acts 2016, No. 389, §3, both as recommended
43 by the Law Institute.

1 **Code of Criminal Procedure Article 795. Time for challenges; method; peremptory**
2 **challenges based on race or gender; restrictions**
3 **(Previously included in the 2018 Biennial Report)**
4

5 * * *
6

7 C. No peremptory challenge made by the state or the defendant shall be based solely upon
8 the race or gender of the juror. If an objection is made that the state or defense has excluded a
9 juror solely on the basis of race or gender, and a prima facie case supporting that objection is made
10 by the objecting party, the court may demand a satisfactory race or gender neutral reason for the
11 exercise of the challenge, unless the court is satisfied that such reason is apparent from the voir
12 dire examination of the juror. Such demand and disclosure, if required by the court, shall be made
13 outside of the hearing of any juror or prospective juror.
14

15 * * *
16

17 Validity called into doubt by *State v. Crawford*, 218 So. 3d 13 (La. 2016): “Upon a *prima*
18 *facie* showing by the opponent of a strike, Batson and its progeny require the proponent of a
19 peremptory challenge to offer a race-neutral explanation for striking a potential juror. Louisiana
20 C.Cr.P. art. 795(C) seems to afford the trial court discretion in this regard: “the court **may**
21 **demand** a satisfactory race or gender neutral reason for the exercise of the challenge, **unless the**
22 **court is satisfied that such reason is apparent from the voir dire examination of the juror.**”
23 (Emphasis added.) . . . Although defendant has not asked nor does this court here purport to decide
24 the constitutionality of the last clause beginning with the word “unless” of La. C.Cr.P. art.
25 795(C) *per se*, the continued scrutiny given to that article should not go unnoticed by the bench
26 and bar of this state. Speculation by a trial court as to what the state's reasons might have been for
27 striking potential jurors, may, if the record is sufficiently clear on all three steps of the Batson test,
28 be sufficient to satisfy the requirements of Batson. *Elie* was such a case. However, nothing
29 in *Elie* counseled that having the trial court supply reasons for the prosecution's peremptory strikes
30 was a sound practice. This practice does not conform with Batson and its progeny, which mandate
31 that the state provide race-neutral reasons for the challenge even where those reasons are apparent
32 from the *voir dire* examination. Clearly, the procedure outlined in La. C.Cr.P. art. 795(C) must
33 yield to the demands of the Equal Protection Clause of the Constitution (as recognized in the
34 evolving Batson jurisprudence). Therefore, the trial court's failure to call on the state in this case
35 to provide race-neutral reasons upon its initial finding that a *prima facie* showing had been made
36 resulted in a violation of defendant's and the potential jurors' equal protection rights and
37 defendant's right to a fair trial.”
38

39 Constitutionality also called into doubt by *Snyder v. Louisiana*, 552 U.S. 472 (2008): “Petitioner .
40 . . . asks us to review a decision of the Louisiana Supreme Court rejecting his claim that the
41 prosecution exercised some of its peremptory jury challenges based on race, in violation of *Batson*
42 *v. Kentucky*, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986). We hold that the trial court
43 committed clear error in its ruling on a *Batson* objection, and we therefore reverse. . . . As
44 previously noted, the question presented at the third stage of the *Batson* inquiry is “ ‘whether the
45 defendant has shown purposeful discrimination.’ . . . As previously noted, the question presented
46 at the third stage of the *Batson* inquiry is “ ‘whether the defendant has shown purposeful

1 discrimination.’ . . . For present purposes, it is enough to recognize that a peremptory strike shown
2 to have been motivated in substantial part by discriminatory intent could not be sustained based
3 on any lesser showing by the prosecution. . . . For present purposes, it is enough to recognize that
4 a peremptory strike shown to have been motivated in substantial part by discriminatory intent
5 could not be sustained based on any lesser showing by the prosecution. . . . We therefore reverse
6 the judgment of the Louisiana Supreme Court and remand the case for further proceedings not
7 inconsistent with this opinion.”

8
9 **Recommendation:** After review by the Law Institute’s Criminal Code and Code of Criminal
10 Procedure Committee, it is recommended that the Legislature amend Article 795(C) to read as
11 follows:

12
13 C. No peremptory challenge made by the state or the defendant shall be
14 ~~based solely upon~~ **motivated in substantial part on the basis of** the race or
15 gender of the juror. If an objection is made that ~~the state or defense has excluded~~
16 ~~a juror solely~~ **a challenge was motivated in substantial part** on the basis of race
17 or gender, and a prima facie case supporting that objection is made by the objecting
18 party, the court ~~may~~ **shall** demand a satisfactory race or gender neutral reason for
19 the exercise of the challenge, ~~unless the court is satisfied that such reason is~~
20 ~~apparent from the voir dire examination of the juror.~~ Such demand and
21 disclosure, ~~if required by the court,~~ shall be made outside of the hearing of any
22 juror or prospective juror. **The court shall then determine whether the challenge**
23 **was motivated in substantial part on the basis of race or gender.**

24
25 The Legislature may also wish to include information in the digest of the bill providing
26 that the amendment to this Article is intended to be consistent with United States Supreme Court
27 opinions on this subject, such as *Snyder v. Louisiana*, 552 U.S. 472 (2008), and *Foster v. Chatman*,
28 136 S. Ct. 1737 (2016), as well as Louisiana Supreme Court opinions, such as *State v. Elie*, 936
29 So. 2d 791 (2006), and *State v. Crawford*, 218 So. 3d 13 (2016).

30
31 **Note to the Legislature**

32
33 During the 2019 Regular Session, Code of Criminal Procedure Article 795(C) was
34 amended by Acts 2019, No. 235, §1, as recommended by the Law Institute.

1 **Code of Criminal Procedure Article 930.10. Departure from this Title; post conviction plea**
2 **agreements**
3 ***(Previously included in the 2024 Biennial Report)***
4

5 A. Upon joint motion of the petitioner and the district attorney, the district court may
6 deviate from any of the provisions of this Title.
7

8 B. Notwithstanding the provisions of Article 930.3 or any provision of law to the contrary,
9 the district attorney and the petitioner may, with the approval of the district court, jointly enter into
10 any post conviction plea agreement for the purpose of amending the petitioner's conviction,
11 sentence, or habitual offender status. The terms of any post conviction plea agreement pursuant to
12 this Paragraph shall be in writing, shall be filed into the district court record, and shall be agreed
13 to by the district attorney and the petitioner in open court. The court shall, prior to accepting the
14 post conviction plea agreement, address the petitioner personally in open court, inform him of and
15 determine that he understands the rights that he is waiving by entering into the post conviction plea
16 agreement, and determine that the plea is voluntary and is not the result of force or threats, or of
17 promises apart from the post conviction plea agreement.
18

19 Held unconstitutional in *State v. Lee*, 370 So. 3d 408 (La. 2023): “[W]e now consider
20 whether Article 930.10 violates the doctrine of separation of powers by permitting the judicial
21 branch to exercise the governor's exclusive power to grant pardons. . . . Article 930.10 permits a
22 court to set aside a final conviction, without stating a basis in the law. In order to effectuate a “post
23 conviction plea agreement” for the purpose of “amending the petitioner's conviction,” Article
24 930.10 permits courts, first, to overturn the defendant's final conviction, and then, accept their
25 guilty plea and impose the agreed-to sentence. Article 930.10 allows a court to reverse a conviction
26 merely because the defendant and the district attorney jointly requested the court to do so. The
27 parties need not assert, nor is the court required to find, any legal defect requiring relief set forth
28 in La. C.Cr.P. art. 930.3, which provides the exclusive grounds for post-conviction relief. . . . The
29 court's ruling on the joint motion is not governed by what the law requires, but rather left to the
30 prerogative of the judge. . . . Moreover, Article 930.10 serves to upend the work of the jury, the
31 prosecutor, and the judge in the trial of the case without identifying a legal defect in those
32 proceedings. Contrary to the observation of the district court, a post-conviction plea agreement
33 pursuant to Article 930.10 *is* “tossing the jury's finding out.” The Constitution authorizes only the
34 governor to take such an action. La. Const. art. II, § 2; art. IV, § 5. For these reasons, we hold
35 that Article 930.10 permits courts to exercise the governor's exclusive power to pardon those
36 convicted of crimes, a violation of the separation of powers provision of the constitution. La.
37 Const. art. II, § 2. . . . We note that nothing in this decision prevents district attorneys, in their
38 broad discretion, from cooperating in a collateral challenge to a defendant's final conviction or
39 sentence. Our holding is based on the unconstitutional nature of the district court's action pursuant
40 to Article 930.10, not the joint effort by the parties. In short, our decision does not mandate that
41 collateral review of criminal convictions be unnecessarily adversarial, nor does it serve as a bar to
42 cooperation between parties in post-conviction proceedings to achieve the ends of justice. . . . Our
43 decision *does* mandate that courts overturn a final conviction only after finding a ground for relief
44 enumerated in La. C.Cr.P. art. 930.3. Were a court to vacate a conviction without such a finding,
45 as is permitted by Article 930.10, it would amount to an unconstitutional exercise of the governor's
46 exclusive pardon power in violation of the doctrine of separation of powers as provided in La.

1 Const. art. II, § 2. For the reasons explained above . . . Article 930.10 of the Code of Criminal
2 Procedure is hereby declared unconstitutional.”

3
4 **Recommendation:** After review by the Law Institute’s Criminal Code and Code of Criminal
5 Procedure Committee, a formal recommendation has been deferred pending further substantive
6 study by that Committee of *State v. Lee* and Article 930.10.

7
8 **Note to the Legislature**
9
10 During the 2025 Regular Session, Code of Criminal Procedure Article 930.10 was repealed
11 by Acts 2025, No. 393, §3.

1
2
3 **Revised Statutes**

4 **R.S. 9:2948. Bond for deed buyer deemed owner for purposes of homestead exemption**
5 ***(Previously included in the 2020 Biennial Report)***

6 Notwithstanding any other provisions of law to the contrary, the buyer under a bond for
7 deed contract shall be deemed, for purposes of the homestead exemption only, to own any
8 immovable property he has purchased and is occupying under bond for deed, and may be eligible
9 for the homestead exemption provided in Article VII, Section 20(A) of the Constitution of
10 Louisiana if otherwise qualified. The buyer under a bond for deed contract shall apply for the
11 homestead exemption each year.

12
13 Held unconstitutional by *Wooden v. Louisiana Tax Commission*, 650 So. 2d 1157 (La. 1995):
14 “Although La.Rev.Stat. 9:2948 does not contain the word “exemption,” the words and form used
15 legislatively in granting an exemption are not important if, in their essence, the Legislature creates
16 an exemption. The Legislature perhaps could have redefined ownership in the Civil Code to
17 include the status of a bond for deed buyer. See La.Civ.Code art. 477. However, the Legislature
18 did not do so. Rather, the Legislature enacted a special statute defining ownership solely for the
19 purpose of the homestead exemption, and thereby indirectly established an exemption from ad
20 valorem taxes for bond for deed buyers. This indirect exemption violates La. Const. art. VII, §§
21 20 and 21, which provide that property subject to the homestead exemption for property owners
22 under Section 20 and property listed in Section 21, *and no other*, shall be exempt from ad valorem
23 taxation. Immovable property subject to a bond for deed contract is not listed in Section 21, and
24 that same section clearly denies the Legislature the power to enact any other exceptions from ad
25 valorem taxation, directly or indirectly. The trial court correctly declared La.Rev.Stat.
26 9:2948 unconstitutional as violative of La. Const. art. VII, §§ 20 and 21. Accordingly, the
27 judgment of the trial court declaring La.Rev.Stat. 9:2948 unconstitutional is affirmed.”

28
29 During the 1995 Regular Session, the Legislature subsequently added a Paragraph B to Civil Code
30 Article 477, the provision of the Civil Code on ownership, to provide as follows:

31
32 “B. A buyer and occupant of a residence under a bond for deed contract is
33 the owner of the thing for purposes of the homestead exemption granted to other
34 property owners pursuant to Article VII, Section 20(A) of the Constitution of
35 Louisiana. The buyer under a bond for deed contract shall apply for the homestead
36 exemption each year.”

37
38 Additionally, in 2004, an amendment to Article VII, Section 20(A) of the Louisiana Constitution
39 was adopted, and Subparagraph (A)(7) now provides as follows:

40
41 “(7) No homestead exemption shall be granted on bond for deed
42 property. However, any homestead exemption granted prior to June 20, 2003 on
43 any property occupied upon the effective date of this Paragraph* by a buyer under
44 a bond for deed contract shall remain valid as long as the circumstances giving rise
45 to the exemption at the time the exemption was granted remain applicable.”

1 **Recommendation:** It is recommended that the Legislature repeal R.S. 9:2948 in its entirety. After
2 review by the Law Institute’s Property Committee, it is also recommended that the Legislature
3 amend Civil Code Article 477 as follows:
4

5 **A.** Ownership is the right that confers on a person direct, immediate, and
6 exclusive authority over a thing. The owner of a thing may use, enjoy, and dispose
7 of it within the limits and under the conditions established by law.
8

9 **B.** ~~A buyer and occupant of a residence under a bond for deed contract
10 is the owner of the thing for purposes of the homestead exemption granted to
11 other property owners pursuant to Article VII, Section 20(A) of the
12 Constitution of Louisiana. The buyer under a bond for deed contract shall
13 apply for the homestead exemption each year.~~
14

15 **Note to the Legislature**
16

17 During the 2020 Regular Session, R.S. 9:2948 was repealed by Acts 2020, No. 20, §2, and
18 Civil Code Article 477 was amended by Acts 2020, No. 20, §1, both as recommended by the Law
19 Institute.

1 **R.S. 11:62. Employee contribution rates established**
2 **(Previously included in the 2016 and 2018 Biennial Reports)**

3
4 Held unconstitutional by *Retired State Employees Ass'n v. State*, 119 So. 3d 568, 581 (La. 2013):
5 “The district court declared that Act No. 483 of the 2012 Regular Session of the Louisiana
6 Legislature was enacted in violation of the constitutional requirements found in Article X, Section
7 29(F) of the Louisiana Constitution. . . . Because the legislative auditor’s actuarial note for HB 61
8 (Act 483) estimated an actuarial increase for the proposed cash balance plan over the current
9 defined benefit plan, a vote of two-thirds of the elected members of the House was required
10 pursuant to La. Const. art. X, § 29(F). Because it was stipulated that a two-thirds vote was not
11 obtained in the House, the district court correctly found that Act 483 was enacted in violation of
12 Article X, § 29(F).”

13
14 **NOTE: Although the Legislature’s website no longer shows any of the amendments or**
15 **enactments as provided by Acts 2012, No. 483, West continues to print such provisions as**
16 **amended or enacted with a disclaimer that the cash balance retirement plan was held**
17 **unconstitutional.**

18
19 **Recommendation:** It is recommended that the Legislature do one of the following: (1) Reenact
20 R.S. 11:62 to exclude the language added by Acts 2012, No. 483; or (2) Pass a resolution directing
21 the Law Institute to direct the printer to stop printing the language added by Acts 2012, No. 483
22 as follows:

23
24 (4) Louisiana School Employees’ Retirement System ~~members in Tier 1:~~

25 ~~(4.1) Louisiana School Employees’ Retirement System members in the~~
26 ~~cash balance plan—8%~~

27
28 (5) Louisiana State Employees’ Retirement System ~~members in Tier 1:~~

29
30 ~~(5.1) Louisiana State Employees’ Retirement System members in the~~
31 ~~cash balance plan—8%~~

32
33 (11) Teachers’ Retirement System of Louisiana ~~members in Tier 1:~~

34
35 ~~(11.1) Teachers’ Retirement System of Louisiana members in the cash~~
36 ~~balance plan—8%~~

37
38 **Note to the Legislature**

39
40 During the 2017 Regular Session, the Legislature passed House Concurrent Resolution No.
41 46, which directed the Law Institute to direct the printer to stop printing the language added by
42 Acts 2012, No. 483 in R.S. 11:62(4), (5), and (11) and to stop printing R.S. 11:62(4.1), (5.1), and
43 (11.1) as enacted by Acts 2012, No. 483 in their entirety, both as recommended by the Law
44 Institute. The resolution also urged and requested the printer to “stop printing the headnote
45 regarding *Retired State Employees Association v. State*, 119 So.3d 568 (La., 2013) that appears at
46 R.S. 11:62, 102, 542, 883.1, and 1145.1.”

1 **R.S. 11:102. Employer contributions; determination; state systems**
2 **(Previously included in the 2016 and 2018 Biennial Reports)**

3
4 Held unconstitutional by *Retired State Employees Ass'n v. State*, 119 So. 3d 568, 581 (La. 2013):
5 “The district court declared that Act No. 483 of the 2012 Regular Session of the Louisiana
6 Legislature was enacted in violation of the constitutional requirements found in Article X, Section
7 29(F) of the Louisiana Constitution. . . . Because the legislative auditor’s actuarial note for HB 61
8 (Act 483) estimated an actuarial increase for the proposed cash balance plan over the current
9 defined benefit plan, a vote of two-thirds of the elected members of the House was required
10 pursuant to La. Const. art. X, § 29(F). Because it was stipulated that a two-thirds vote was not
11 obtained in the House, the district court correctly found that Act 483 was enacted in violation of
12 Article X, § 29(F).”

13
14 **NOTE: Although the Legislature’s website no longer shows any of the amendments or**
15 **enactments as provided by Acts 2012, No. 483, West continues to print such provisions as**
16 **amended or enacted with a disclaimer that the cash balance retirement plan was held**
17 **unconstitutional.**

18
19 **Recommendation:** It is recommended that the Legislature do one of the following: (1) Reenact
20 R.S. 11:102 to exclude the language added by Acts 2012, No. 483; or (2) Pass a resolution directing
21 the Law Institute to direct the printer to stop printing the language added by Acts 2012, No. 483
22 as follows:

23
24 (B)(1) Except as provided in Subsection C of this Section for the Louisiana
25 State Employees' Retirement System and Subsection D of this Section for the
26 Teachers' Retirement System of Louisiana and except as provided in R.S. 11:102.1,
27 102.2, and in Paragraph (5) of this Subsection, for each fiscal year, commencing
28 with Fiscal Year 1989-1990, for each of the public retirement systems referenced
29 in Subsection A of this Section, the legislature shall set the required employer
30 contribution rate equal to the actuarially required employer contribution, as
31 determined under Paragraph (3) of this Subsection, divided by the total projected
32 payroll of all active members ~~including cash balance plan members~~ of each
33 particular system for the fiscal year. Each entity funding a portion of a member's
34 salary shall also fund the employer's contribution on that portion of the member's
35 salary at the employer contribution rate specified in this Subsection.

36 (B)(3)(a) The employer's normal cost for that fiscal year, computed as of
37 the first of the fiscal year using the system's actuarial funding method as specified
38 in R.S. 11:22 and taking into account the value of future accumulated employee
39 contributions and interest thereon, such employer's normal cost rate multiplied by
40 the total projected payroll for all active members ~~including cash balance plan~~
41 ~~members~~ to the middle of that fiscal year. For the Louisiana State Employees'
42 Retirement System, effective for the June 30, 2010, system valuation and beginning
43 with Fiscal Year 2011-2012, the normal cost shall be determined in accordance
44 with Subsection C of this Section. For the Teachers' Retirement System of
45 Louisiana, effective for the June 30, 2011, system valuation and beginning with

1 Fiscal Year 2012-2013, the normal cost shall be determined in accordance with
2 Subsection D of this Section.

3
4 ~~(C)(1)(m) Members in the cash balance plan.~~

5
6 **Note to the Legislature**

7
8 During the 2016 Regular Session, R.S. 11:102(B)(1), (3)(a), and (C) were amended and
9 reenacted by Acts 2016, No. 95, §1 to exclude the language added by Acts 2012, No. 483, as
10 recommended by the Law Institute.

1 **R.S. 11:542. Experience account**
2 ***(Previously included in the 2016 and 2018 Biennial Reports)***
3

4 Held unconstitutional by *Retired State Employees Ass'n v. State*, 119 So. 3d 568, 581 (La. 2013):
5 “The district court declared that Act No. 483 of the 2012 Regular Session of the Louisiana
6 Legislature was enacted in violation of the constitutional requirements found in Article X, Section
7 29(F) of the Louisiana Constitution. . . . Because the legislative auditor’s actuarial note for HB 61
8 (Act 483) estimated an actuarial increase for the proposed cash balance plan over the current
9 defined benefit plan, a vote of two-thirds of the elected members of the House was required
10 pursuant to La. Const. art. X, § 29(F). Because it was stipulated that a two-thirds vote was not
11 obtained in the House, the district court correctly found that Act 483 was enacted in violation of
12 Article X, § 29(F).”
13

14 **NOTE: Although the Legislature’s website no longer shows any of the amendments or**
15 **enactments as provided by Acts 2012, No. 483, West continues to print such provisions as**
16 **amended or enacted with a disclaimer that the cash balance retirement plan was held**
17 **unconstitutional.**
18

19 **Recommendation:** It is recommended that the Legislature do one of the following: (1) Reenact
20 R.S. 11:542 to exclude the language added by Acts 2012, No. 483; or (2) Pass a resolution directing
21 the Law Institute to direct the printer to stop printing the language added by Acts 2012, No. 483
22 as follows:
23

24 ~~(C)(4)(d)(iii) Shall be a member of Tier 1.~~

25
26 ~~(C)(4)(e)(iii) If the benefits are based on Tier 1 service.~~
27

28 **Note to the Legislature**
29

30 During the 2016 Regular Session, R.S. 11:542(C) was amended and reenacted by Acts
31 2016, No. 95, §1 to exclude the language added by Acts 2012, No. 483, as recommended by the
32 Law Institute.

1 **R.S. 11:883.1. Experience account**
2 *(Previously included in the 2016 and 2018 Biennial Reports)*

3
4 Held unconstitutional by *Retired State Employees Ass'n v. State*, 119 So. 3d 568, 581 (La. 2013):
5 “The district court declared that Act No. 483 of the 2012 Regular Session of the Louisiana
6 Legislature was enacted in violation of the constitutional requirements found in Article X, Section
7 29(F) of the Louisiana Constitution. . . . Because the legislative auditor’s actuarial note for HB 61
8 (Act 483) estimated an actuarial increase for the proposed cash balance plan over the current
9 defined benefit plan, a vote of two-thirds of the elected members of the House was required
10 pursuant to La. Const. art. X, § 29(F). Because it was stipulated that a two-thirds vote was not
11 obtained in the House, the district court correctly found that Act 483 was enacted in violation of
12 Article X, § 29(F).”

13
14 **NOTE: Although the Legislature’s website no longer shows any of the amendments or**
15 **enactments as provided by Acts 2012, No. 483, West continues to print such provisions as**
16 **amended or enacted with a disclaimer that the cash balance retirement plan was held**
17 **unconstitutional.**

18
19 **Recommendation:** It is recommended that the Legislature do one of the following: (1) Reenact
20 R.S. 11:883.1 to exclude the language added by Acts 2012, No. 483; or (2) Pass a resolution
21 directing the Law Institute to direct the printer to stop printing the language added by Acts 2012,
22 No. 483 as follows:

23
24 ~~(C)(4)(d)(iii) Shall be a member of Tier 1.~~

25
26 ~~(C)(4)(e)(iii) If the benefits are based on a Tier 1 service.~~

27
28 **Note to the Legislature**

29
30 During the 2016 Regular Session, R.S. 11:883.1(C) was amended and reenacted by Acts
31 2016, No. 95, §1 to exclude the language added by Acts 2012, No. 483, as recommended by the
32 Law Institute.

1 **R.S. 11:1145.1. Employee Experience Account**
2 ***(Previously included in the 2016 and 2018 Biennial Reports)***

3
4 Held unconstitutional by *Retired State Employees Ass'n v. State*, 119 So. 3d 568, 581 (La. 2013):
5 “The district court declared that Act No. 483 of the 2012 Regular Session of the Louisiana
6 Legislature was enacted in violation of the constitutional requirements found in Article X, Section
7 29(F) of the Louisiana Constitution. . . . Because the legislative auditor’s actuarial note for HB 61
8 (Act 483) estimated an actuarial increase for the proposed cash balance plan over the current
9 defined benefit plan, a vote of two-thirds of the elected members of the House was required
10 pursuant to La. Const. art. X, § 29(F). Because it was stipulated that a two-thirds vote was not
11 obtained in the House, the district court correctly found that Act 483 was enacted in violation of
12 Article X, § 29(F).”

13
14 **NOTE: Although the Legislature’s website no longer shows any of the amendments or**
15 **enactments as provided by Acts 2012, No. 483, West continues to print such provisions as**
16 **amended or enacted with a disclaimer that the cash balance retirement plan was held**
17 **unconstitutional.**

18
19 **Recommendation:** It is recommended that the Legislature do one of the following: (1) Reenact
20 R.S. 11:1145.1 to exclude the language added by Acts 2012, No. 483; or (2) Pass a resolution
21 directing the Law Institute to direct the printer to stop printing the language added by Acts 2012,
22 No. 483 as follows:

23
24 (C)(4)(a) Except as provided in Subparagraph (c) of this Paragraph, in order
25 to be eligible for the cost-of-living adjustment, there shall be the funds available in
26 the ~~experience account~~ **Employee Experience Account** to pay for such an
27 adjustment, and a retiree:

28
29 ~~(C)(4)(a)(iii) Shall be a member of Tier 1.~~

30
31 ~~(C)(4)(b)(iii) If benefits are based on Tier 1 service.~~

32
33 (E) Effective July 1, 2007, the balance in the ~~experience account~~
34 **Employee Experience Account** shall be zero.

35
36 **Note to the Legislature**

37
38 During the 2016 Regular Session, R.S. 11:1145.1(C) and (E) were amended and reenacted
39 by Acts 2016, No. 95, §1 to exclude the language added by Acts 2012, No. 483, as recommended
40 by the Law Institute.

1 **R.S. 11:1399.1 through 1399.7. Cash Balance Plan for State Retirement Systems**
2 **(Previously included in the 2016 and 2018 Biennial Reports)**

3
4 Held unconstitutional by *Retired State Employees Ass'n v. State*, 119 So. 3d 568, 581 (La. 2013):
5 “The district court declared that Act No. 483 of the 2012 Regular Session of the Louisiana
6 Legislature was enacted in violation of the constitutional requirements found in Article X, Section
7 29(F) of the Louisiana Constitution. . . . Because the legislative auditor’s actuarial note for HB 61
8 (Act 483) estimated an actuarial increase for the proposed cash balance plan over the current
9 defined benefit plan, a vote of two-thirds of the elected members of the House was required
10 pursuant to La. Const. art. X, § 29(F). Because it was stipulated that a two-thirds vote was not
11 obtained in the House, the district court correctly found that Act 483 was enacted in violation of
12 Article X, § 29(F).”

13
14 **NOTE: Although the Legislature’s website no longer shows any of the amendments or**
15 **enactments as provided by Acts 2012, No. 483, West continues to print such provisions as**
16 **amended or enacted with a disclaimer that the cash balance retirement plan was held**
17 **unconstitutional.**

18
19 **Recommendation:** It is recommended that the Legislature pass a resolution directing the Law
20 Institute to direct the printer to stop printing R.S. 11:1399.1 through 1399.7 as enacted by Acts
21 2012, No. 483 in their entirety.

22
23 **Note to the Legislature**

24
25 During the 2017 Regular Session, the Legislature passed House Concurrent Resolution No.
26 46, which directed the Law Institute to direct the printer to stop printing R.S. 11:1399.1 through
27 1399.7 as enacted by Acts 2012, No. 483 in their entirety, as recommended by the Law Institute.

1 **R.S. 13:5105. Jury trial prohibited; demand for trial; costs**
2 **(Previously included in the 2016 and 2018 Biennial Reports)**

3
4 A. No suit against a political subdivision of the state shall be tried by jury. Except upon a
5 demand for jury trial timely filed in accordance with law by the state or a state agency or the
6 plaintiff in a lawsuit against the state or state agency, no suit against the state or a state agency
7 shall be tried by jury.

8
9 * * *

10
11 **C. Notwithstanding the provisions of Subsection A, except upon demand for jury trial**
12 **timely filed in accordance with law by the city of Baton Rouge or the parish of East Baton**
13 **Rouge or the plaintiff in a lawsuit against the city of Baton Rouge or the parish of East Baton**
14 **Rouge, no suit against the city of Baton Rouge or the parish of East Baton Rouge shall be**
15 **tried by jury. The rights to and limitations upon a jury trial shall be as provided in Code of**
16 **Civil Procedure Articles 1731 and 1732.**

17
18 * * *

19
20 Held unconstitutional by *Kimball v. Allstate Ins. Co.*, 712 So. 2d 46, 50, 52-53 (La. 1998): “The
21 first issue presented for our determination is whether La. R.S. 13:5105(C) is unconstitutional under
22 La. Const. Art. III, § 12(A). The legislature is prohibited from passing any local or special law
23 which deals with any of the subjects enumerated in La. Const. Art. III, § 12(A). . . . Subsection (C)
24 is, however, a special law. It singles out the City of Baton Rouge and the Parish of East Baton
25 Rouge, to the exclusion of all other political subdivisions, for special treatment without any
26 suggested or apparent justification for the disparate treatment, despite the fact that all political
27 subdivisions possess the requisite characteristics of the class. . . . Subsection (C) does, however,
28 concern civil actions. . . . Here, Subsection (C) concerns and affects not only an individual lawsuit,
29 but, more egregiously, any and all lawsuits in which the City of Baton Rouge of the Parish of East
30 Baton Rouge is made a defendant. Consequently, Subsection (C) is a special law which concerns
31 civil actions and is unconstitutional under La. Const. Art. III, § 12(A)(3).”

32
33 **Recommendation:** It is recommended that the Legislature repeal R.S. 13:5105(C) in its entirety.

34
35 **Note to the Legislature**

36
37 During the 2017 Regular Session, R.S. 13:5105(C) was repealed by Acts 2016, No. 341,
38 §1, as recommended by the Law Institute.

1 **R.S. 14:30. First degree murder**
2 *(Previously included in the 2018 Biennial Report)*

3
4 * * *

5
6 C. (1) If the district attorney seeks a capital verdict, the offender shall be punished by death
7 or life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence,
8 in accordance with the determination of the jury. The provisions of Code of Criminal Procedure
9 Article 782 relative to cases in which punishment may be capital shall apply.

10
11 (2) If the district attorney does not seek a capital verdict, the offender shall be punished by
12 life imprisonment at hard labor without benefit of parole, probation or suspension of sentence. The
13 provisions of Code of Criminal Procedure Article 782 relative to cases in which punishment is
14 necessarily confinement at hard labor shall apply.

15
16 * * *

17
18 **R.S. 14:30.1. Second degree murder**
19 *(Previously included in the 2018 Biennial Report)*

20
21 * * *

22
23 B. Whoever commits the crime of second degree murder shall be punished by life
24 imprisonment at hard labor without benefit of parole, probation, or suspension of sentence.

25
26 **Note to the Legislature**

27
28 No recommendations with respect to R.S. 14:30(C) and 30.1(B) were included in the Law
29 Institute’s initial Unconstitutional Statutes Biennial Report to the Legislature. However, it
30 appeared that both of these provisions were limited on constitutional grounds by the United States
31 Supreme Court’s holding in *Miller v. Alabama*, 132 S. Ct. 2455, 2469, 2475 (2012):

32
33 “We therefore hold that the Eighth Amendment forbids a sentencing scheme that
34 mandates life in prison without possibility of parole for juvenile offenders. . .
35 .*Graham, Roper*, and our individualized sentencing decisions make clear that a
36 judge or jury must have the opportunity to consider mitigating circumstances before
37 imposing the harshest possible penalty for juveniles. By requiring that all children
38 convicted of homicide receive lifetime incarceration without possibility of parole,
39 regardless of their age and age-related characteristics and the nature of their crimes,
40 the mandatory sentencing schemes before us violate this principle of
41 proportionality, and so the Eighth Amendment’s ban on cruel and unusual
42 punishment.”

43
44 A prior version of R.S. 14:30.1 was also held unconstitutional as applied by the Second
45 Circuit in *State v. Fletcher*, 112 So. 3d 1031 (La. App. 2 Cir. 2013), *writ denied* by 171 So. 3d 945
46 (La. 2015) and *certiorari denied* by 136 S. Ct. 254 (2015): “[C]onsidering the fact that the trial

1 court imposed the mandatory sentence pursuant to La. R.S. 14:30.1, we find that we must vacate
2 the defendant’s sentence and remand this case . . . Relying on jurisprudence, we find that the
3 defendant’s mandatory sentence of two concurrent terms of life imprisonment at hard labor,
4 without benefit of probation, parole, or suspension of sentence, violates *Graham, supra*, and
5 *Miller, supra*.”

6
7 At the time this case was decided, Paragraph B of R.S. 14:30.1 read exactly as it appears
8 above. Acts 2015, No. 184 amended Paragraph (A)(2) of the provision in conjunction with
9 amendments that designated the offenses of aggravated and forcible rape as first and second degree
10 rape, respectively, but the provision’s mandatory imposition of life imprisonment without the
11 benefit of parole has not changed. Additionally, R.S. 15:574.4(E) had not yet been enacted by the
12 Legislature as of the rendition of this opinion. In fact, the *Fletcher* court recognized that although
13 R.S. 15:574.4(D) applies to juvenile offenders who were sentenced to life imprisonment for the
14 conviction of certain offenses, it “does not apply to juveniles serving a life sentence for a
15 conviction of first degree or second degree murder.” The court further noted that “[t]he State of
16 Louisiana does not currently have a statute that would afford a juvenile offender convicted of first
17 or second degree murder consideration for parole.”

18
19 Mere months after this opinion was rendered, however, the Legislature enacted in Acts
20 2013, No. 239 both Code of Criminal Procedure Article 878.1 and R.S. 15:574.4(E), which prior
21 to the 2017 Regular Session provided that a person who is serving a sentence of life imprisonment
22 for first degree murder (R.S. 14:30) or second degree murder (R.S. 14:30.1) and who was under
23 the age of eighteen years at the time of the commission of the offense “shall be eligible for parole
24 consideration” provided that all of the conditions set forth in the provision are met and “a judicial
25 determination has been made that the person is entitled to parole eligibility pursuant to Code of
26 Criminal Procedure Article 878.1.” Both of these provisions were enacted in response to the
27 United States Supreme Court’s decision in *Miller v. Alabama* and were being applied prospectively
28 only until the Court’s decision in *Montgomery v. Louisiana*, 136 S.Ct. 718 (2016).

29
30 In the *Montgomery* case, the United States Supreme Court concluded that
31 “[b]ecause *Miller* determined that sentencing a child to life without parole is excessive for all but
32 “ ‘the rare juvenile offender whose crime reflects irreparable corruption,’ ” 567 U.S., at —, 132
33 S.Ct., at 2469 (quoting *Roper, supra*, at 573, 125 S.Ct. 1183), it rendered life without parole an
34 unconstitutional penalty for “a class of defendants because of their status”—that is, juvenile
35 offenders whose crimes reflect the transient immaturity of youth. *Penry*, 492 U.S., at 330, 109
36 S.Ct. 2934. As a result, *Miller* announced a substantive rule of constitutional law. Like other
37 substantive rules, *Miller* is retroactive because it “ ‘necessarily carr[ies] a significant risk that a
38 defendant’ ”—here, the vast majority of juvenile offenders—“ ‘faces a punishment that the law
39 cannot impose upon him.’ ” *Schriro*, 542 U.S., at 352, 124 S.Ct. 2519 (quoting *Bousley v. United*
40 *States*, 523 U.S. 614, 620, 118 S.Ct. 1604, 140 L.Ed.2d 828 (1998)).”

41
42 Consequently, during the 2017 Regular Session, the Legislature enacted a series of
43 amendments in Acts 2017, No. 277 to R.S. 15:574.4 and Code of Criminal Procedure Article
44 878.1. R.S. 15:574.4(F) now provides that if a person was under the age of eighteen at the time of
45 the commission of the offense of second degree murder (R.S. 14:30.1), for which he is serving a
46 sentence of life imprisonment, and was indicted on or after August 1, 2017, the person “shall be

1 eligible for parole consideration” provided that all of the conditions set forth in the provision are
2 met. R.S. 15:574.4(E) provides the same with respect to first degree murder (R.S. 14:30) and
3 further conditions eligibility for parole consideration upon whether a “judicial determination has
4 been made that the person is entitled to parole eligibility pursuant to Code of Criminal Procedure
5 Article 878.1(A).” One of these conditions, that the offender has served a certain number of years
6 of the sentence imposed, was also amended by the Act to reduce this amount of time from thirty
7 to twenty-five years. Additionally, Paragraph A of Article 878.1 now provides that if the juvenile
8 offender was indicted for the offense of first degree murder on or after August 1, 2017, “the district
9 attorney may file a notice of intent to seek a sentence of life imprisonment without possibility of
10 parole within one hundred eighty days after the indictment,” in which case “a hearing shall be
11 conducted after conviction and prior to sentencing to determine whether the sentence shall be
12 imposed with or without parole eligibility” pursuant to the provisions of R.S. 15:574.4(E).

13
14 Additionally, R.S. 15:574.4(G) provides that if a person was under the age of eighteen at
15 the time of the commission of the offense of first degree murder (R.S. 14:30), or second degree
16 murder (R.S. 14:30.1), for which he is serving a sentence of life imprisonment, and was indicted
17 prior to August 1, 2017, the person “shall be eligible for parole consideration” provided that all of
18 the conditions set forth in the provision are met and a “judicial determination has been made that
19 the person is entitled to parole eligibility pursuant to Code of Criminal Procedure Article
20 878.1(B).” Paragraph B of Article 878.1 then provides that if the juvenile offender was indicted
21 for the offense of first or second degree murder prior to August 1, 2017 and a hearing was not held
22 pursuant to this Article, “the district attorney may file a notice of intent to seek a sentence of life
23 imprisonment without possibility of parole within ninety days of August 1, 2017,” in which case
24 “a hearing shall be conducted to determine whether the sentence shall be imposed with or without
25 parole eligibility” pursuant to the provisions of R.S. 15:574.4(G). However, if the district attorney
26 fails to timely file the notice of intent, the juvenile offender will be eligible for parole pursuant to
27 R.S. 15:574.4(E). And, if a hearing was held prior to August 1, 2017, the juvenile offender’s parole
28 eligibility pursuant to the provisions of R.S. 15:574.4(G) will be decided based on the court’s
29 determination at the hearing.

30
31 The Law Institute considered the enactments of R.S. 15:574.4(F) and (G) and amendments
32 to R.S. 14:574.4(E) and Code of Criminal Procedure Article 878.1, as well as the appellate courts’
33 decisions in *State v. Fletcher*, 149 So. 3d 934 (La. App. 2 Cir. 2014), *State v. Graham*, 171 So. 3d
34 372 (La. App. 1 Cir. 2015), *State v. Doise*, 185 So. 3d 335 (La. App. 3 Cir. 2016), *State v. Williams*,
35 186 So. 3d 242 (La. App. 4 Cir. 2016), and *State v. Ross*, 182 So. 3d 983 (La. App. 5 Cir. 2014),
36 all of which either held or suggested that the Legislature was not required to amend the substantive
37 provisions themselves to provide for parole eligibility for juvenile offenders. Ultimately, the Law
38 Institute determined that both of these provisions are likely no longer unconstitutional and, as a
39 result, no additional recommendations with respect to them have been made.

1 **R.S. 14:42. First degree rape**
2 *(Previously included in the 2018 Biennial Report)*

3
4 A. First degree rape is a rape committed upon a person sixty-five years of age or older or
5 where the anal, oral, or vaginal sexual intercourse is deemed to be without lawful consent of the
6 victim because it is committed under any one or more of the following circumstances:

7
8 * * *

9
10 (4) When the victim is under the age of thirteen years. Lack of knowledge of the victim's
11 age shall not be a defense.

12
13 * * *

14
15 D. (1) Whoever commits the crime of first degree rape shall be punished by life
16 imprisonment at hard labor without benefit of parole, probation, or suspension of sentence.

17
18 (2) However, if the victim was under the age of thirteen years, as provided by Paragraph
19 A(4) of this Section:

20
21 (a) And if the district attorney seeks a capital verdict, the offender shall be punished by
22 death or life imprisonment at hard labor without benefit of parole, probation, or suspension of
23 sentence, in accordance with the determination of the jury. The provisions of C.Cr.P. Art. 782
24 relative to cases in which punishment may be capital shall apply.

25
26 (b) And if the district attorney does not seek a capital verdict, the offender shall be punished
27 by life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence.
28 The provisions of Code of Criminal Procedure Art. 782 relative to cases in which punishment is
29 necessarily confinement at hard labor shall apply.

30
31 * * *

32
33 **R.S. 14:44. Aggravated kidnapping**
34 *(Previously included in the 2018 Biennial Report)*

35
36 Aggravated kidnapping is the doing of any of the following acts with the intent thereby to
37 force the victim, or some other person, to give up anything of apparent present or prospective
38 value, or to grant any advantage or immunity, in order to secure a release of the person under the
39 offender's actual or apparent control:

- 40
41 (1) The forcible seizing and carrying of any person from one place to another; or
42
43 (2) The enticing or persuading of any person to go from one place to another; or
44
45 (3) The imprisoning or forcible secreting of any person.
46

1 “The issue before the Court is whether the Constitution permits a juvenile offender
2 to be sentenced to life in prison without parole for a nonhomicide crime. The
3 sentence was imposed by the State of Florida. Petitioner challenges the sentence
4 under the Eighth Amendment's Cruel and Unusual Punishments Clause, made
5 applicable to the States by the Due Process Clause of the Fourteenth Amendment.
6 . . . In sum, penological theory is not adequate to justify life without parole for
7 juvenile nonhomicide offenders. This determination; the limited culpability of
8 juvenile nonhomicide offenders; and the severity of life without parole sentences
9 all lead to the conclusion that the sentencing practice under consideration is cruel
10 and unusual. This Court now holds that for a juvenile offender who did not commit
11 homicide the Eighth Amendment forbids the sentence of life without parole. This
12 clear line is necessary to prevent the possibility that life without parole sentences
13 will be imposed on juvenile nonhomicide offenders who are not sufficiently
14 culpable to merit that punishment. Because “[t]he age of 18 is the point where
15 society draws the line for many purposes between childhood and adulthood,” those
16 who were below that age when the offense was committed may not be sentenced to
17 life without parole for a nonhomicide crime. . . . The Eighth Amendment does not
18 foreclose the possibility that persons convicted of nonhomicide crimes committed
19 before adulthood will remain behind bars for life. It does forbid States from making
20 the judgment at the outset that those offenders never will be fit to reenter society. .
21 . . The Constitution prohibits the imposition of a life without parole sentence on a
22 juvenile offender who did not commit homicide. A State need not guarantee the
23 offender eventual release, but if it imposes a sentence of life it must provide him or
24 her with some realistic opportunity to obtain release before the end of that term.”

25
26 Nevertheless, under R.S. 15:574.4(D), a person who was under the age of eighteen at the
27 time of the commission of the offense for which he is serving a sentence of life imprisonment,
28 with the exception of the offenses of first degree murder (R.S. 14:30) and second degree murder
29 (R.S. 14:30.1), “shall be eligible for parole consideration” provided that all of the conditions set
30 forth in the provision are met. One such condition, that the offender has served a certain number
31 of years of the sentence imposed, was amended by Acts 2017, No. 277 to reduce this amount of
32 time from thirty to twenty-five years.

33
34 The Law Institute considered the provisions of R.S. 15:574.4(D) as well as the appellate
35 courts’ decisions in *State v. Fletcher*, 149 So. 3d 934 (La. App. 2 Cir. 2014), *State v. Graham*, 171
36 So. 3d 372 (La. App. 1 Cir. 2015), *State v. Doise*, 185 So. 3d 335 (La. App. 3 Cir. 2016), *State v.*
37 *Williams*, 186 So. 3d 242 (La. App. 4 Cir. 2016), and *State v. Ross*, 182 So. 3d 983 (La. App. 5
38 Cir. 2014), all of which either held or suggested that the Legislature was not required to amend the
39 substantive provisions themselves to provide for parole eligibility for juvenile offenders.
40 Ultimately, the Law Institute determined that all of these provisions are likely no longer
41 unconstitutional and, as a result, no additional recommendations with respect to them have been
42 made.

1 **R.S. 14:47. Defamation**
2 *(Previously included in the 2016, 2018, and 2020 Biennial Reports)*

3
4 Defamation is the malicious publication or expression in any manner, to anyone other than
5 the party defamed, of anything which tends:

6
7 (1) To expose any person to hatred, contempt, or ridicule, or to deprive him of the benefit
8 of public confidence or social intercourse; or

9
10 (2) To expose the memory of one deceased to hatred, contempt, or ridicule; or

11
12 (3) To injure any person, corporation, or association of persons in his or their business or
13 occupation.

14
15 Whoever commits the crime of defamation shall be fined not more than five hundred
16 dollars, or imprisoned for not more than six months, or both.

17
18 Held unconstitutional by *State v. Defley*, 395 So. 2d 759, 761 (La. 1981): “LSA-R.S. 14:47 is
19 unconstitutional insofar as it punishes public expression about public officials.” In this case, the
20 Louisiana Supreme Court also cited *State v. Snyder*, 277 So. 2d 660, 668 (La. 1972), *on rehearing*:
21 “We hold R.S. 14:47, 48, and 49 to be unconstitutional insofar as they attempt to punish public
22 expression and publication concerning public officials, public figures, and private individuals who
23 are engaged in public affairs;” and *Garrison v. State of La.*, 379 U.S. 64, 77 (1964): “Applying the
24 principles of the New York Times case, we hold that the Louisiana statute, as authoritatively
25 interpreted by the Supreme Court of Louisiana, incorporates constitutionally invalid standards in
26 the context of criticism of the official conduct of public officials.”

27
28 **Recommendation:** After review by the Law Institute’s Criminal Code and Code of Criminal
29 Procedure Committee, it is recommended that the Legislature direct the Law Institute to direct the
30 printers to add a validity note following R.S. 14:47 to read as follows:

31
32 “In *State v. Snyder*, 277 So. 2d 660, 668 (La. 1972), the Louisiana Supreme
33 Court held that R.S. 14:47 is unconstitutional insofar as it attempts to punish public
34 expression and publication concerning public officials, public figures, and private
35 individuals who are engaged in public affairs. *See also State v. Defley*, 395 So. 2d
36 759, 761 (La. 1981) and *Garrison v. State of La.*, 379 U.S. 64, 77 (1964).”

37
38 **Note to the Legislature**

39
40 During the 2021 Regular Session, R.S. 14:47 was repealed by Acts 2021, No. 60, §1.

1 **R.S. 14:48. Presumption of malice**
2 *(Previously included in the 2016, 2018, and 2020 Biennial Reports)*

3
4 Where a non-privileged defamatory publication or expression is false it is presumed to be
5 malicious unless a justifiable motive for making it is shown.

6
7 Where such a publication or expression is true, actual malice must be proved in order to
8 convict the offender.

9
10 Recognized as unconstitutional by *State v. Snyder*, 277 So. 2d 660, 668 (La. 1972), *on rehearing*:
11 “We hold R.S. 14:47, 48, and 49 to be unconstitutional insofar as they attempt to punish public
12 expression and publication concerning public officials, public figures, and private individuals who
13 are engaged in public affairs.”

14
15 **Recommendation:** After review by the Law Institute’s Criminal Code and Code of Criminal
16 Procedure Committee, it is recommended that the Legislature direct the Law Institute to direct the
17 printers to add a validity note following R.S. 14:48 to read as follows:

18
19 “In *State v. Snyder*, 277 So. 2d 660, 668 (La. 1972), the Louisiana Supreme
20 Court held that R.S. 14:48 is unconstitutional insofar as it attempts to punish public
21 expression and publication concerning public officials, public figures, and private
22 individuals who are engaged in public affairs.”

23
24 **Note to the Legislature**

25
26 During the 2021 Regular Session, R.S. 14:48 was repealed by Acts 2021, No. 60, §1.

1 **R.S. 14:49. Qualified privilege**
2 ***(Previously included in the 2016, 2018, and 2020 Biennial Reports)***

3
4 A qualified privilege exists and actual malice must be proved, regardless of whether the
5 publication is true or false, in the following situations:

6
7 (1) Where the publication or expression is a fair and true report of any judicial, legislative,
8 or other public or official proceeding, or of any statement, speech, argument, or debate in the
9 course of the same.

10
11 (2) Where the publication or expression is a comment made in the reasonable belief of its
12 truth, upon,

13
14 (a) The conduct of a person in respect to public affairs; or

15
16 (b) A thing which the proprietor thereof offers or explains to the public.

17
18 (3) Where the publication or expression is made to a person interested in the
19 communication, by one who is also interested or who stands in such a relation to the former as to
20 afford a reasonable ground for supposing his motive innocent.

21
22 (4) Where the publication or expression is made by an attorney or party in a judicial
23 proceeding.

24
25 Recognized as unconstitutional by *State v. Snyder*, 277 So. 2d 660, 668 (La. 1972), *on rehearing*:
26 “We hold R.S. 14:47, 48, and 49 to be unconstitutional insofar as they attempt to punish public
27 expression and publication concerning public officials, public figures, and private individuals who
28 are engaged in public affairs.”

29
30 **Recommendation:** After review by the Law Institute’s Criminal Code and Code of Criminal
31 Procedure Committee, it is recommended that the Legislature direct the Law Institute to direct the
32 printers to add a validity note following R.S. 14:49 to read as follows:

33
34 “In *State v. Snyder*, 277 So. 2d 660, 668 (La. 1972), the Louisiana Supreme Court held that
35 R.S. 14:49 is unconstitutional insofar as it attempts to punish public expression and publication
36 concerning public officials, public figures, and private individuals who are engaged in public
37 affairs.”

38
39 **Note to the Legislature**

40
41 During the 2021 Regular Session, R.S. 14:49 was repealed by Acts 2021, No. 60, §1.

1 **R.S. 14:87. Abortion**
2 *(Previously included in the 2016, 2018, 2020, and 2022 Biennial Reports)*

3
4 A.(1) Abortion is the performance of any of the following acts, with the specific intent of
5 terminating a pregnancy:

6
7 (a) Administering or prescribing any drug, potion, medicine or any other substance to a
8 female; or

9
10 (b) Using any instrument or external force whatsoever on a female.

11
12 (2) This Section shall not apply to the female who has an abortion.

13
14 B. It shall not be unlawful for a physician to perform any of the acts described in
15 Subsection A of this Section if performed under the following circumstances:

16
17 (1) The physician terminates the pregnancy in order to preserve the life or health of the
18 unborn child or to remove a stillborn child.

19
20 (2) The physician terminates a pregnancy for the express purpose of saving the life,
21 preventing the permanent impairment of a life sustaining organ or organs, or to prevent a
22 substantial risk of death of the mother.

23
24 (3) The physician terminates a pregnancy by performing a medical procedure necessary in
25 reasonable medical judgment to prevent the death or substantial risk of death due to a physical
26 condition, or to prevent the serious, permanent impairment of a life-sustaining organ of a pregnant
27 woman.

28
29 C. As used in this Section, the following words and phrases are defined as follows:

30
31 (1) "Physician" means any person licensed to practice medicine in this state.

32
33 (2) "Unborn child" means the unborn offspring of human beings from the moment of
34 fertilization until birth.

35
36 D.(1) As used in this Subsection:

37
38 (a) "Abortion" means the specific intent to kill an unborn child consistent with the
39 provisions and exceptions of R.S. 40:1061.

40
41 (b) "Gestational age" means the age of an unborn child as calculated from the first day of
42 the last menstrual period of the pregnant woman, as determined by the use of standard medical
43 practices and techniques.

44
45 (2) It shall be unlawful for a physician to perform any of the acts described in Subsection
46 A of this Section after fifteen weeks gestational age.

1 E.(1) Whoever commits the crime of abortion shall be imprisoned at hard labor for not less
2 than one nor more than ten years and shall be fined not less than ten thousand dollars nor more
3 than one hundred thousand dollars.
4

5 (2) This penalty shall not apply to the female who has an abortion.
6

7 F. The provisions of Subsection D of this Section shall become effective upon final
8 decision of the United States Court of Appeals for the Fifth Circuit upholding the Act that
9 originated as House Bill 1510 of the 2018 Regular Session of the Mississippi Legislature, which
10 decision would thereby provide the authority for a state within the jurisdiction of that court of
11 appeals to restrict abortion past fifteen weeks gestational age.
12

13 G. The provisions of Subsection D of this Section are hereby repealed, in favor of the
14 provisions of R.S. 40:1061, immediately upon and to the extent that the United States Supreme
15 Court upholds the authority of the states to prohibit elective abortions on demand or by the
16 adoption of an amendment to the Constitution of the United States of America that would restore
17 to the state of Louisiana the authority to prohibit elective abortions.
18

19 Prior version held unconstitutional by *Sojourner T v. Edwards*, 974 F.2d 27, 28-31 (5th Cir. 1992):
20 “This suit challenges the Louisiana Abortion Statute, which criminalizes performing abortions
21 except under very limited circumstances. . . . The Statute makes it a crime to ‘administer [] or
22 prescrib[e] any drug, potion, medicine, or any other substance to a female’ or to ‘us[e] any
23 instrumental or external force whatsoever on a female’ ‘with the specific intent of terminating a
24 pregnancy.’ The Statute provides exceptions when: (1) the physician terminates the pregnancy in
25 order to preserve the life or health of the unborn baby or to remove a dead unborn child; (2) the
26 physician terminates the pregnancy to save the life of the mother . . . The Supreme Court recently
27 reaffirmed the essential holding of *Roe v. Wade* in *Casey*. In *Casey*, the Court held that a woman
28 has a right to choose to have an abortion before viability and that legislation restricting abortions
29 before viability must not place an undue burden on that right. . . . The Court held that before
30 viability, a State’s interests are not strong enough to support a prohibition of abortion. Thus, the
31 Louisiana statute is clearly unconstitutional under *Casey*. . . . In conclusion, we hold that the
32 Louisiana statute, on its face, is plainly unconstitutional under *Casey* because the statute imposes
33 an undue burden on women seeking an abortion before viability.” Although *Sojourner T v.*
34 *Edwards* is an appellate court decision, the Supreme Court of the United States denied writs in this
35 case, 507 U.S. 872 (1993).
36

37 At the time this case was decided, the 1992 version of the statute provided exceptions to the crime
38 of abortion when (1) the physician terminates the pregnancy in order to preserve the life or health
39 of the unborn child or to remove a dead unborn child; (2) the physician terminates a pregnancy for
40 the express purpose of saving the life of the mother; (3) the physician terminates a pregnancy
41 which is the result of rape; or (4) the physician terminates a pregnancy which is the result of incest.
42 In Acts 2006, No. 467, the Legislature amended R.S. 14:87 to remove the exceptions for rape and
43 incest, leaving the first two provisions and adding a third to prevent death or serious, permanent
44 impairment of the mother as the only exceptions to the crime of abortion. As a result, some of the
45 offensive portions of the statute that were held unconstitutional by the Fifth Circuit remain in the
46 statute’s current version.

1 The Law Institute’s initial recommendation with respect to this provision was for the Legislature
2 to direct the Law Institute to direct the printers to note the *Sojourner T v. Edwards* decision at R.S.
3 14:87 to assure consistent reporting. The validity note following R.S. 14:87 reads as follows:
4

5 “This section, as amended and reenacted by Acts 1991, No. 26, was
6 declared unconstitutional by *Sojourner, T. et al. v. Roemer and Okpalobi v. State*,
7 772 F.Supp. 930 (E.D.La.), Aug. 7, 1991), order affirmed by *Sojourner T. v.*
8 *Edwards, C.A.5 (La.)* 1992, 974 F.2d 27, 61 U.S.L.W. 2167 (5th Cir., Sept. 22,
9 1992), certiorari denied 113 S.Ct. 1414. See Notes of Decisions”

10
11 After the issuance of the Law Institute’s previous Unconstitutional Statutes Biennial Reports to
12 the Legislature, R.S. 14:87 was again amended during the 2018 Regular Session to add the
13 following provisions:
14

15 D.(1) As used in this Subsection:

16
17 (a) “Abortion” means the specific intent to kill an unborn child consistent
18 with the provisions and exceptions of R.S. 40:1061.
19

20 (b) “Gestational age” means the age of an unborn child as calculated from
21 the first day of the last menstrual period of the pregnant woman, as determined by
22 the use of standard medical practices and techniques.
23

24 (2) It shall be unlawful for a physician to perform any of the acts described
25 in Subsection A of this Section after fifteen weeks gestational age.
26

27 * * *

28
29 F. The provisions of Subsection D of this Section shall become effective
30 upon final decision of the United States Court of Appeals for the Fifth Circuit
31 upholding the Act that originated as House Bill 1510 of the 2018 Regular Session
32 of the Mississippi Legislature, which decision would thereby provide the authority
33 for a state within the jurisdiction of that court of appeals to restrict abortion past
34 fifteen weeks gestational age.
35

36 G. The provisions of Subsection D of this Section are hereby repealed, in
37 favor of the provisions of R.S. 40:1061, immediately upon and to the extent that
38 the United States Supreme Court upholds the authority of the states to prohibit
39 elective abortions on demand or by the adoption of an amendment to the
40 Constitution of the United States of America that would restore to the state of
41 Louisiana the authority to prohibit elective abortions.
42

43 In *Jackson Women’s Health Organization v. Dobbs*, 945 F.3d 265 (5th Cir. 2019), the United
44 States Court of Appeals for the Fifth Circuit considered House Bill 1510, “a Mississippi law that
45 prohibits abortions, with limited exceptions, after 15 weeks’ gestational age” and considered “[t]he
46 central question” of “whether this law is an unconstitutional ban on pre-viability abortions.” The

1 Fifth Circuit explained that “[i]n an unbroken line dating to *Roe v. Wade*, the Supreme Court’s
2 abortion cases have established (and affirmed, and re-affirmed) a woman’s right to choose an
3 abortion before viability. States may *regulate* abortion procedures prior to viability so long as they
4 do not impose an undue burden on the woman’s right, but they may not ban abortions. The law at
5 issue is a ban. Thus, we affirm the district court’s invalidation of the law.”
6

7 The Law Institute reviewed this development and makes the following updated recommendation
8 with respect to R.S. 14:87.
9

10 **Recommendation:** It is recommended that the validity note concerning the *Sojourner T v.*
11 *Edwards* decision be retained and that the Legislature direct the Law Institute to direct the printers
12 to add an additional validity note concerning the effectiveness of R.S. 14:87(D) as follows:
13

14 “In *Jackson Women’s Health Organization v. Dobbs*, 945 F.3d 265, the United States Court of
15 Appeals for the Fifth Circuit failed to uphold the Act that originated as House Bill 1510 of the
16 2018 Regular Session of the Mississippi Legislature, deciding instead that the law at issue is an
17 unconstitutional ban on pre-viability abortions. As a result, the provisions of R.S. 14:87(D) have
18 not become effective. The Supreme Court of the United States has granted certiorari in the *Jackson*
19 *Women’s Health Organization v. Dobbs* case.”
20

21 **Note to the Legislature**
22

23 During the 2022 Regular Session, R.S. 14:87 was repealed in its entirety by Acts 2022, No.
24 545, §4.

1 **R.S. 14:95.4. Consent to search; alcoholic beverage outlet**
2 ***(Previously included in the 2016 and 2018 Biennial Reports)***
3

4 A. Any person entering an alcoholic beverage outlet as defined herein, by the fact of such
5 entering, shall be deemed to have consented to a reasonable search of his person for any firearm
6 by a law enforcement officer or other person vested with police power, without the necessity of a
7 warrant.
8

9 * * *

10
11 Held unconstitutional by *Ringe v. Romero*, 624 F. Supp. 417, 418-19, 425 (W.D. La. 1985):
12 “Plaintiffs claim that the above statute and ordinance violate their right to be secure from
13 unreasonable searches and seizures as protected by the Fourth Amendment of the United States
14 Constitution. The fundamental purpose of the fourth amendment’s prohibition against
15 unreasonable searches and seizures ‘is to safeguard the privacy and security of individuals against
16 arbitrary invasions by government officials.’ . . . The Supreme Court has consistently held that
17 police must, whenever practicable, obtain advance judicial approval of a proposed search by
18 obtaining a warrant based on probable cause. . . . Pursuant to the fourteenth amendment, the fourth
19 amendment prohibition against unreasonable searches is applicable to state action. This court must
20 therefore determine whether the warrantless searches authorized by the laws in the instant case fit
21 within one of the few exceptions established by the Supreme Court to the warrant-based-on-
22 probable cause requirement of the fourth amendment, or whether they violate the fourth
23 amendment prohibition against unreasonable searches. . . . As defendants offer no other basis for
24 finding the searches authorized by these laws reasonable within the meaning of the fourth
25 amendment, this court finds that the authorized searches are unreasonable and, hence, the statute
26 and ordinance authorizing such searches are facially unconstitutional.”
27

28 **Recommendation:** It is recommended that the Legislature direct the Law Institute to direct the
29 printer to note the federal district court judgment holding R.S. 14:95.4 unconstitutional.
30

31 **Note to the Legislature**
32

33 During the 2016 Regular Session, R.S. 14:95.4 was repealed by Acts 2016, No. 201, § 1.

1 **R.S. 14:122. Public intimidation and retaliation**
2 ***(Previously included in the 2020 Biennial Report)***
3

4 A. Public intimidation is the use of violence, force, extortionate threats, or true threats upon
5 any of the following persons, with the intent to influence his conduct in relation to his position,
6 employment, or duty:
7

8 (1) Public officer or public employee.
9

10 (2) Grand or petit juror.
11

12 (3) Witness, or person about to be called as a witness upon a trial or other proceeding before
13 any court, board or officer authorized to hear evidence or to take testimony.
14

15 (4) Voter or election official at any general, primary, or special election.
16

17 (5) School bus operator.
18

19 B. Retaliation against an elected official is the use of violence, force, extortionate threats,
20 or true threats upon a person who is elected to public office, where:
21

22 (1) The violence, force, or threat is related to the duties of the elected official.
23

24 (2) Is in retaliation or retribution for actions taken by the elected official as part of his
25 official duties.
26

27 C. For purposes of this Section:
28

29 (1) "Extortionate threats" occur when a person communicates an unlawful threat to harm
30 another person with the intention to obtain anything of value or any acquittance, advantage, or
31 immunity of any description and the person would not otherwise be able to lawfully secure such
32 advantage willingly from the victim.
33

34 (2) "True threats" occur when a person communicates a serious expression of an intent to
35 commit an unlawful act of violence upon a person or group of persons with the intent to place such
36 persons in fear of bodily harm or death. The person need not actually intend to carry out the threat.
37

38 D. Whoever commits the crime of public intimidation or retaliation against an elected
39 official shall be fined not more than one thousand dollars or imprisoned, with or without hard
40 labor, for not more than five years, or both.
41

42 Prior version held unconstitutional by *Seals v. McBee*, 898 F. 3d 587 (U.S. 5th Cir. 2018):
43 "Louisiana Revised Statutes § 14:122 criminalizes "the use of violence, force, or threats" on any
44 public officer or employee with the intent to influence the officer's conduct in relation to his
45 position. . . . Because the meaning of "threat" is broad enough to sweep in threats to take lawful,
46 peaceful actions—such as threats to sue a police officer or challenge an incumbent officeholder—
47 Section 14:122 is unconstitutionally overbroad. We affirm the judgment invalidating it. . . . [W]e
48 can narrow Section 14:122 no further. According to the state, we should construe the statute to

1 apply only to true threats, i.e. “a serious expression of an intent to commit an act of unlawful
2 violence” toward specific persons. There are several reasons why we cannot do so. First, the
3 definition of “threat” is broader than true threats: any “statement of an intention to inflict pain,
4 injury, *damage*, or *other hostile action* on someone in retribution for something done or not
5 done.” Second, the reporter’s comments to Section 14:122 provide that the statute “should include
6 threats of harm or injury to the character of the person threatened as well as actual or threatened
7 physical violence.” LA. R.S. § 14:122, cmt. Thus, the section is not “readily susceptible” to such
8 a limiting construction. Finally, Louisiana’s reliance on its caselaw proves to be a double-edged
9 sword. As plaintiffs note, the Louisiana Court of Appeals has upheld the conviction of a defendant
10 who violated Section 14:122 by threatening “to sue” an officer and “get [his] job” if the officer
11 arrested him. *See State v. Mouton*, 129 So.3d 49, 54, 59 (La. App. 3d Cir. 2013). Plainly, such a
12 threat suggests no violence—indeed, the threat appears to be a plan to take perfectly lawful actions.
13 Accordingly, we cannot construe Section 14:122 to apply only to true threats of violence. It
14 follows that, properly understood, Section 14:122 applies to any threat meant to influence a public
15 official or employee, in the course of his duties, to obtain something the speaker is not entitled to
16 as a matter of right. But so construed, the statute reaches both true threats—such as “don’t arrest
17 me or I’ll hit you”—and threats to take wholly lawful actions—such as “don’t arrest me or I’ll sue
18 you.” In both those examples, the speaker may be legally subject to arrest and is trying to influence
19 a police officer in the course of his duties. Thus, Section 14:122 makes both threats a criminal act.
20 . . . Thus, insofar as it criminalizes “threats,” Section 14:122 is unconstitutionally overbroad.”
21

22 At the time this case was decided, the relevant portions of R.S. 14:122 read as follows:
23

24 **R.S. 14:122. Public intimidation and retaliation**
25

26 A. Public intimidation is the use of violence, force, or threats upon any of
27 the following persons, with the intent to influence his conduct in relation to his
28 position, employment, or duty:
29

30 * * *

31
32 B. Retaliation against an elected official is the use of violence, force, or
33 threats upon a person who is elected to public office, where:
34

35 * * *

36
37 C. Whoever commits the crime of public intimidation or retaliation against
38 an elected official shall be fined not more than one thousand dollars or imprisoned,
39 with or without hard labor, for not more than five years, or both.
40

41 This provision was also recognized as unconstitutional by the Louisiana Fourth Circuit Court of
42 Appeals in *State v. James*, 2019 WL 5791589 (La. App. 4 Cir. 2019), in which the court vacated
43 the defendant’s conviction in violation of R.S. 14:122 pursuant to a timely filed application for
44 postconviction relief based on the U.S. Fifth Circuit’s decision in *Seals* that R.S. 14:122 “is
45 unconstitutionally overbroad”, a decision that the Fourth Circuit held to be “retroactive in
46 application.”
47

1 **Note to the Legislature**

2

3 During the 2019 Regular Session, R.S. 14:122 was amended by Acts 2019, No. 311 to
4 change “threats” to “extortionate threats or true threats” and to define both terms as reflected in
5 Subsection C above. According to the author of the legislation, the intent of this amendment was
6 to remedy the constitutional deficiency by using narrowing language that has been held to be
7 acceptable in other jurisdictions. The constitutionality of the amendment has not been ruled upon
8 by the courts, and no further recommendation with respect to R.S. 14:122 is being made by the
9 Law Institute at this time.

1 **R.S. 15:114. Parish of Orleans; rotation and selection of grand jury; control of grand jury**
2 **(Previously included in the 2016 and 2018 Biennial Reports)**
3

4 Each judge of the criminal district court for the parish of Orleans shall, in rotation, select
5 the grand jury for the Parish of Orleans. The order of rotation among the judges in the selection of
6 the grand jury prevailing at the time this Section goes into effect shall be preserved and continued.
7 The judge of the section of the criminal district court who shall have appointed said grand jury
8 shall have control and instruction over the grand jury, exclusive of all other judges of the criminal
9 district court, and such grand jury shall make all findings and returns in open court to said judge;
10 and in addition thereto may make reports and requests in open court as provided by law; provided
11 that if the judge to whom the control of the grand jury shall belong shall not be from any cause in
12 the actual discharge of his duties as judge, the judges of the criminal district court then present
13 shall designate some other judge to impanel and instruct said grand jury, or to receive its returns
14 and findings, as the case may be, and the judge so designated shall continue to act for the judge to
15 whom the control of such grand jury shall belong until said last-mentioned judge shall return to
16 the discharge of duties; provided, further, that the grand jury in office at the time of the adoption
17 of this Section shall, until the expiration of that term of office, be under the control of the presiding
18 judge of the section by whom it was selected and shall return all indictments and findings to said
19 judge in open court.
20

21 Held unconstitutional by *State v. Dilosa*, 848 So. 2d 546, 551 (La. 2003): “Because the complained
22 of statutes are local laws which concern the practice of the criminal courts in Orleans Parish, we
23 conclude that they are unconstitutional. . . . Likewise, § 15:144 [*sic, correct citation is § 15:114*]
24 is unconstitutional in its entirety.”
25

26 **Recommendation:** After review by the Law Institute’s Criminal Code and Code of Criminal
27 Procedure Committee, it is recommended that the Legislature repeal R.S. 15:114 in its entirety.
28

29 **Note to the Legislature**
30

31 During the 2016 Regular Session, R.S. 15:114 was repealed by Acts 2016, No. 389, § 2, as
32 recommended by the Law Institute.

1 **R.S. 17:1803. Parking violations on campuses of state owned colleges and universities;**
2 **maximum fines**
3 ***(Previously included in the 2016 and 2018 Biennial Reports)***
4

5 The fine which may be imposed for violation of any parking regulation established by the
6 governing authority of any state supported college or university in this state, including Louisiana
7 State University and Agricultural and Mechanical College, where the violation occurred upon the
8 streets and roadways of such college or university, shall not exceed the sum of one dollar.
9

10 Held unconstitutional by *Student Government Association of Louisiana State University v. Board*
11 *of Supervisors of Louisiana State University*, 264 So. 2d 916, 920 (La. 1972): “In the present case,
12 we hold that the intent of Article XII, Section 7 was, upon ratification of the constitutional
13 amendment, to grant to the university’s Board of Supervisors exclusive administrative authority
14 over operation of the university. . . . Especially in view of the specific intent underlying Section
15 7’s adoption, we find that this constitutional provision unambiguously grants the Board of
16 Supervisors full administrative control of the university. . . . The power to regulate student parking,
17 and to enforce such reasonable parking regulations by administrative penalties (including fines),
18 is clearly within this grant to the Board of Supervisors of exclusive administrative authority over
19 students in their relationship with the university and in their use of the university campus. The
20 legislative act seeking to limit the Board’s administrative regulation of student parking is therefore
21 invalid, since by it the legislature sought to interfere with the Board’s exclusive administrative
22 power over university affairs, granted to it by our constitution.”
23

24 **Recommendation:** It is recommended that the Legislature repeal R.S. 17:1803 in its entirety.
25

26 **Note to the Legislature**
27

28 During the 2016 Regular Session, R.S. 17:1803 was repealed by Acts 2016, No. 383, § 1,
29 as recommended by the Law Institute.

1 **R.S. 40:1788. Identification with number or other mark; obliteration or alteration of number**
2 **or mark**
3 *(Previously included in the 2016 and 2018 Biennial Reports)*
4

5 * * *

6
7 B. No one shall obliterate, remove, change, or alter this number or mark. **Whenever, in a**
8 **trial for a violation of this Sub-section, the defendant is shown to have or to have had**
9 **possession of any firearm upon which the number or mark was obliterated, removed,**
10 **changed, or altered, that possession is sufficient evidence to authorize conviction unless the**
11 **defendant explains it to the satisfaction of the court.**

12 Held unconstitutional by *State v. Taylor*, 396 So. 2d 1278, 1281 (La. 1981): “For the reason that
13 the second sentence of R.S. 17:1788(B) establishes a mandatory presumption that does not meet
14 the ‘beyond a reasonable doubt’ standard, it literally throws the burden upon a defendant to
15 establish his innocence once the prosecution proves the evidentiary fact of possession. Therefore,
16 it is unconstitutional. The unconstitutionality of one portion of a statute, however, does not
17 necessarily render the entire statute unenforceable. . . . We find in the present case that the
18 remainder of the statute can stand.”
19

20 **Recommendation:** After review by the Law Institute’s Criminal Code and Code of Criminal
21 Procedure Committee, it is recommended that the Legislature amend R.S. 40:1788(B) to remove
22 the offending language as follows:
23

24 B. No one shall obliterate, remove, change, or alter this number or mark.
25 ~~**Whenever, in a trial for a violation of this Sub-section, the defendant is shown**~~
26 ~~**to have or to have had possession of any firearm upon which the number or**~~
27 ~~**mark was obliterated, removed, changed, or altered, that possession is**~~
28 ~~**sufficient evidence to authorize conviction unless the defendant explains it to**~~
29 ~~**the satisfaction of the court.**~~
30

31 **Note to the Legislature**
32

33 During the 2016 Regular Session, R.S. 40:1788(B) was amended by Acts 2016, No. 340,
34 § 1 to remove the second sentence of the provision as recommended by the Law Institute.

1 **R.S. 42:261. District attorneys; counsel for boards and commissions**
2 **(Previously included in the 2016 and 2018 Biennial Reports)**

3
4 * * *

5
6 E. (1) Any party who files suit against any duly elected or appointed public official of this
7 state or of any of its agencies or political subdivisions for any matter arising out of the performance
8 of the duties of his office other than matters pertaining to the collection and payment of taxes and
9 those cases where the plaintiff is seeking to compel the defendant to comply with and apply the
10 laws of this state relative to the registration of voters, and who is unsuccessful in his demands,
11 shall be liable to said public official for all attorneys fees incurred by said public official in the
12 defense of said lawsuit or lawsuits, which attorneys fees shall be fixed by the court.

13
14 (2) The defendant public official shall have the right, by rule, to require the plaintiff to
15 furnish bond as in the case of bond for costs, to cover such attorneys fees before proceeding with
16 the trial of said cause.

17
18 * * *

19
20 Held unconstitutional by *Detraz v. Fontana*, 416 So. 2d 1291, 1296-97 (La. 1982): “In the case
21 before us, the instant statute also divides tortfeasors into two classes: governmental tortfeasors and
22 private tortfeasors. Simultaneously two classes of victims are created: victims of governmental
23 tortfeasors and victims of private tortfeasors. Only the first class of victims must suffer the
24 additional burden of a bond for attorney’s fees. No reasonable justification for this disparate
25 treatment has been supplied. The statute violates the equal protection clauses of the state and
26 federal constitutions. The challenged provision is also defective because it deprives the plaintiff of
27 due process and denies open access to the courts. . . . For these reasons, that portion of the judgment
28 of the Court of Appeal upholding the constitutionality of R.S. 42:261 E is reversed, and R.S.
29 42:261 E is declared unconstitutional.”

30
31 **Recommendation:** It is recommended that the Legislature repeal R.S. 42:261(E) in its entirety
32 and direct the Law Institute to redesignate R.S. 42:261(F) through (K) accordingly.

33
34 **Note to the Legislature**

35
36 During the 2016 Regular Session, R.S. 42:261(E) was repealed by Acts 2016, No. 168, §2,
37 and the Law Institute was directed to redesignate R.S. 42:261(F) through (K) as R.S. 42:261(E)
38 through (J) by Acts 2016, No. 168, §2, both as recommended by the Law Institute.

1 **R.S. 42:1113. Prohibited contractual arrangements; exceptions; reports**
2 **(Previously included in the 2024 Biennial Report)**

3
4 * * *

5
6 B. Other than a legislator, no appointed member of any board or commission, member of
7 his immediate family, or legal entity in which he has a substantial economic interest shall bid on
8 or enter into or be in any way interested in any contract, subcontract, or other transaction which is
9 under the supervision or jurisdiction of the agency of such appointed member.

10
11 * * *

12
13 Held unconstitutional in *Cartesian Company v. Division of Administrative Law Ethics*
14 *Adjudicatory Board Panel A*, 371 So. 3d 1041 (La. 2023): “Plaintiffs assert that the phrase “in any
15 way interested in” is vague, and this Court has previously held the same phrase unconstitutional
16 in *Murtes*, 94 So.2d 446. . . . As in *Murtes*, the phrase “in any way interested in” set forth in La.
17 R.S. 42:1113(B) is undefined by the Ethics Code or cases interpreting the Ethics Code. . . . Looking
18 to common and approved usage of the word “interested” in the phrase at issue in context of the
19 Ethics Code as a whole, we find the phrase is unconstitutionally vague as applied to the facts in
20 the instant case. Plaintiffs, as movers, proved they did not have a reasonable opportunity to know
21 what conduct was prohibited under the phrase “in any way interested in.” The phrase at issue
22 prohibits no specific or definite act and “leaves open the widest conceivable inquiry, the scope of
23 which no one can foresee and the result of which no one can foreshadow or adequately guard
24 against.” . . . Thus, the trial court was correct in finding Plaintiffs established that the phrase “in
25 any way interested in” was unconstitutionally vague as applied to them, in violation of Plaintiffs’
26 federal and state constitutional right to due process. As the Plaintiffs established the phrase was
27 unconstitutionally vague as applied to their conduct, the trial court was correct in finding, as
28 in *Murtes*, the phrase unconstitutionally vague on its face in all of its applications. There are no set
29 of circumstances under which the phrase “in any way interested in” as set forth in La. R.S.
30 42:1113(B) would be valid. . . . [W]e find the trial court correctly determined the phrase was
31 unconstitutionally vague as applied to Plaintiffs, in violation of Plaintiffs’ federal and state
32 constitutional right to due process, and unconstitutionally vague on its face in all of its applications.
33 As a result, the phrase “or be in any way interested in” is hereby struck from La. R.S. 42:1113(B).
34 We find the remainder of the statute remains viable and can stand.”

35
36 **Recommendation:** It is recommended that the Legislature amend R.S. 42:1113(B) as follows in
37 accordance with the Supreme Court’s decision:

38
39 B. Other than a legislator, no appointed member of any board or commission, member of
40 his immediate family, or legal entity in which he has a substantial economic interest shall bid on
41 or enter into ~~or be in any way interested in~~ any contract, subcontract, or other transaction which
42 is under the supervision or jurisdiction of the agency of such appointed member.
43

1 **Note to the Legislature**

2
3 During the 2024 Regular Session, R.S. 42:1113(B) was amended by Acts 2024, No. 223 to
4 strike “be in any way interested” as recommended by the Law Institute and to replace that language
5 with “have a substantial economic interest.” The provision now reads as follows:
6

7 B. Other than a legislator, no appointed member of any board or
8 commission, member of his immediate family, or legal entity in which the
9 appointed member has a substantial economic interest shall bid on, ~~or~~ enter into, or
10 ~~be in any way interested~~ have a substantial economic interest in any contract,
11 subcontract, or other transaction which is under the supervision or jurisdiction of
12 the agency of such appointed member.
13

14 By striking the offending language, it appears that the Legislature remedied the
15 constitutional deficiency recognized in *Cartesian Company v. Division of Administrative Law*
16 *Ethics Adjudicatory Board Panel A*.

1 **R.S. 47:33. Credit for taxes paid in other states**
2 *(Previously included in the 2020 and 2022 Biennial Reports)*
3

4 A. Subject to the following conditions, resident individuals shall be allowed a credit against
5 the taxes imposed by this Chapter for net income taxes imposed by and paid to another state on
6 income taxable under this Chapter, provided that:
7

8 (1) The credit shall be allowed only for taxes paid to the other state on income which is
9 taxable under its law irrespective of the residence or domicile of the recipient.
10

11 (2) If accrued taxes when paid differ from the amounts claimed as credits by the taxpayer,
12 or if any tax paid is refunded in whole or in part, the taxpayer shall notify the secretary who shall
13 redetermine the amount of the tax for the year or years affected, and the amount of tax due upon
14 such redetermination, if any, shall be paid by the taxpayer upon notice and demand by the
15 secretary, or the amount of tax overpaid, if any, shall be credited or refunded to the taxpayer in
16 accordance with the provisions of R.S. 47:261 et seq. In the case of such tax accrued but not paid,
17 the secretary as a condition precedent to the allowance of this credit may require the taxpayer to
18 give a bond with sureties approved by the secretary in such sum as the secretary may require,
19 conditioned upon the payment by the taxpayer of any amount of tax found due upon any such
20 redetermination, and the bonds herein prescribed shall contain such further conditions as the
21 secretary may require.
22

23 (3) The credits provided for in this Section shall be allowed only for the same taxable
24 period as that for which the tax liability to the other state arose, irrespective of the method of
25 accounting employed by the taxpayer. No deduction shall be allowed under R.S. 47:55 for any net
26 income taxes paid to another state if any portion of such tax has been claimed as a credit under this
27 Section.
28

29 (4) The credit shall be allowed only if the other state provides a similar credit for Louisiana
30 income taxes paid on income derived from property located in, or from services rendered in, or
31 from business transacted in Louisiana.
32

33 (5)(a) The credit shall be limited to the amount of Louisiana income tax that would have
34 been imposed if the income earned in the other state had been earned in Louisiana.
35

36 (b) The credit shall not be allowed for tax paid on income that is not subject to tax in
37 Louisiana. The amount of the credit shall not exceed the ratio which shall be determined by
38 multiplying the taxpayer's Louisiana income tax liability before consideration of any credit
39 described in this Section by a fraction, the numerator of which is the taxpayer's Louisiana tax table
40 income attributable to other states to which net income taxes were paid by a resident individual,
41 and the denominator of which is total Louisiana tax table income.
42

43 (6) The credit shall not be allowed for income taxes paid to a state that allows a nonresident
44 a credit against the income taxes imposed by that state for taxes paid or payable to the state of
45 residence.
46

1 (7)(a) For taxes paid on or after January 1, 2018, an individual partner, member, or
2 shareholder that pays another state's entity-level tax that is based solely upon net income included
3 in the entity's federal taxable income without any capital component shall be allowed a deduction
4 equal to their proportionate share of the entity-level tax paid.
5

6 (b) The deduction pursuant to this Paragraph shall be allowed only to the extent that the
7 proportionate share of the related income on the tax paid to the other state is included in the
8 calculation of Louisiana taxable income that is reported on the Louisiana return of the individual
9 partner or member.
10

11 B. Terminated July 1, 2000. See Acts 1998, No. 53.
12

13 Prior version held unconstitutional by *Smith v. Robinson*, 265 So. 3d 740 (La. 2018): “The United
14 States Supreme Court established a four-part test to assess the validity of state taxes under the
15 Commerce Clause in *Complete Auto Transit, Inc.*, 430 U.S. 274, 97 S.Ct. 1076 (“*Complete Auto*”).
16 Under the *Complete Auto* test, a state tax on interstate commerce is upheld if the tax: (1) is applied
17 to an activity with a substantial nexus with the taxing state; (2) is fairly apportioned; (3) does not
18 discriminate against interstate commerce; and, (4) is fairly related to the services provided by the
19 state. . . . Taxpayers argue that Act 109 violates the second and third prong of the *Complete Auto*
20 test pertaining to the apportionment of the tax and discrimination against interstate commerce. . .
21 . Taxpayers argue that Act 109 fails the fair apportionment test because its tax liability does not
22 reasonably reflect how and where Taxpayers' income is generated. Act 109 fails to fairly apportion
23 the tax according to each state's relation to the income. Since no credit is given with respect to the
24 taxes paid on income earned from sources in Texas, Taxpayers maintain that Act 109 fails to
25 apportion the out-of-state income in the first instance. Not only is it not apportioned, it creates the
26 potential for multiple taxation of the same income. We agree with Taxpayers that Act 109 fails the
27 external consistency test. The third prong of the *Complete Auto* test addresses whether the state
28 tax discriminates against interstate commerce. . . . Taxpayers maintain that Act 109 discriminates
29 against interstate commerce in two ways. First, the amended language of La.R.S.
30 47:33(A)(4) exposes one hundred percent of the interstate income of Louisiana residents to double
31 taxation. By virtue of their ownership in the Pass-Through Entities, which earned income was
32 derived from sources in Texas, Taxpayers paid taxes on income from Texas sources. Additionally,
33 since Texas has no reciprocal credit provision, Act 109 does not allow a credit to Taxpayers on
34 their Louisiana income taxes for the income taxes they paid on the revenue earned from Texas
35 sources. Therefore, in this case, Taxpayers are paying income tax twice on their interstate income.
36 However, on income earned in Louisiana, Taxpayers pay only the Louisiana income tax.
37 Additionally, Taxpayers state that La.R.S. 47:33(A)(5) provides another provision for the double
38 taxation of a portion of a Louisiana resident's interstate income. The amended language now
39 provides that even if a state offers a reciprocal credit (thereby satisfying the requirement of La.R.S.
40 47:33(A)(4)), the amount of the credit is limited to the amount of Louisiana income tax a taxpayer
41 would have paid if the income had been earned in Louisiana. Therefore, the effect is to discriminate
42 against interstate commerce by twice taxing a portion of a taxpayer's out-of-state income. We agree
43 with Taxpayers that Act 109 results in the double taxation of interstate income as compared with
44 the taxation of intrastate income. This disparate treatment impermissibly discriminates against
45 interstate commerce, and it fails the third prong of the *Complete Auto* test. . . . Act 109's failure to
46 provide a credit results in the double taxation of income that is earned outside Louisiana, i.e.,
47 interstate commerce, but not intrastate income. Because the income, if earned in Louisiana, would

1 only be taxed once, Act 109 “creates an incentive for taxpayers to opt for intrastate rather than
2 interstate economic activity” which, pursuant to *Wynne*, is violative of the dormant Commerce
3 Clause. Louisiana residents who earn interstate income are forced into double taxation on all or a
4 portion of their interstate income, whereas Louisiana residents with only intrastate income are not.
5 This tax scheme impermissibly discriminates against interstate commerce and violates the dormant
6 Commerce Clause of the United States Constitution. For the above reasons, we hold herein that
7 Act 109 is unconstitutional.”

8
9 On rehearing, the Louisiana Supreme Court clarified its original opinion: “This Court’s opinion
10 found that Act 109, taken as a whole, did in fact create an impermissible double taxation in that it
11 impermissibly discriminated against interstate commerce in violation of the dormant Commerce
12 Clause of the United States Constitution. The issue of severability of the various subparts of Act
13 109, vis-à-vis the constitutionality of the act as a whole, was neither raised nor addressed until this
14 application for rehearing was filed. Upon this Court’s review of the issue of severability within the
15 act, we find that only La.R.S. 47:33(A)(4), and not any other part or portion of the act, creates the
16 prohibited double taxation. Thus, we modify and amend this Court’s original opinion to reflect an
17 affirmation of the district court’s finding of unconstitutionality of Act 109 as it pertains to La.R.S.
18 47:33(A)(4) only, and we do not rule upon the unaddressed issue of any other portions of the act,
19 particularly, La.R.S. 47:33(A)(5) and (A)(6). . . . For the reasons stated herein, we affirm the
20 district court judgment declaring 2015 La. Acts No. 109 unconstitutional only as to La.R.S.
21 47:33(A)(4) and no further.”

22
23 Acts 2015, No. 109 amended R.S. 47:33 as follows, effective from July 1, 2015 to June 30, 2018:

24
25 **§33. Credit for taxes paid in other states**

26
27 A. Subject to the following conditions, resident individuals shall be allowed
28 a credit against the taxes imposed by this Chapter for net income taxes imposed by
29 and paid to another state on income taxable under this Chapter, provided that:

30
31 (1) The credit shall be allowed only for taxes paid to the other state on
32 income which is taxable under its law irrespective of the residence or domicile of
33 the recipient.

34
35 * * *

36
37 (4) The credit shall be allowed only if the other state provides a similar
38 credit for Louisiana income taxes paid on income derived from property located in,
39 or from services rendered in, or from business transacted in Louisiana.

40
41 (5) The credit shall be limited to the amount of Louisiana income tax that
42 would have been imposed if the income earned in the other state had been earned
43 in Louisiana.
44

Note to the Legislature

1
2
3
4

During the 2023 Regular Session, R.S. 47:33(A)(4) was deleted by the Legislature in Acts 2023, No. 413, §1 as recommended by the Law Institute.

1 **R.S. 47:301. Definitions**
2 *(Previously included in the 2016, 2018, 2020, 2022, and 2024 Biennial Reports)*

3
4 As used in this Chapter, the following words, terms, and phrases have the meaning ascribed
5 to them in this Section, unless the context clearly indicates a different meaning:

6
7 * * *

8
9 (3)(a) “Cost price” means the actual cost of the articles of tangible personal property
10 without any deductions therefrom on account of the cost of materials used, labor, or service cost,
11 except those service costs for installing the articles of tangible personal property if such cost is
12 separately billed to the customer at the time of installation, **transportation charges**, or any other
13 expenses whatsoever, or the reasonable market value of the tangible personal property at the time
14 it becomes susceptible to the use tax, whichever is less.

15
16 * * *

17
18 (13)(a) “Sales price” means the total amount for which tangible personal property is sold,
19 less the market value of any article traded in including any services, except services for financing,
20 that are a part of the sale valued in money, whether paid in money or otherwise, and includes the
21 cost of materials used, labor or service costs, except costs for financing which shall not exceed the
22 legal interest rate and a service charge not to exceed six percent of the amount financed, and losses;
23 provided that cash discounts allowed and taken on sales shall not be included, nor shall the sales
24 price include the amount charged for labor or services rendered in installing, applying, remodeling,
25 or repairing property sold.

26
27 * * *

28
29 Held unconstitutional by *Chicago Bridge & Iron Co. v. Cocreham*, 317 So. 2d 605, 613-15 (La.
30 1975): “Having found that transportation cost is an includable element (added value) in
31 determining the use tax basis as applied to the out of state manufacturer-user, we turn now to the
32 question of whether the tax as so applied is unenforceable because illegally discriminatory in
33 violation of the protection guaranteed by the commerce clause of the United States Constitution.
34 Neither the sales nor use tax is imposed upon the in-state manufacturer-user for comparable
35 transportation costs. . . . [D]iscrimination is evident since the out of state purchaser pays use tax
36 fully on the element of transportation cost from state boundary to job site (or plant) while the in-
37 state purchaser pays no tax (sales or use) on transportation cost from in-state retail shop to plant
38 (and/or job site). . . . We conclude that insofar as the use tax is imposed upon the element of
39 transportation cost for shipping . . . from out of state plant to in-state job site, it is unconstitutional
40 and unenforceable because in violation of the commerce clause of the United States Constitution.”
41 Also held unconstitutional by *Pensacola Const. Co. v. McNamara*, 558 So. 2d 231, 233-34 (La.
42 1990): “The purpose of a state sales/use tax scheme is to make all tangible property sold or used
43 subject to a uniform tax burden regardless of whether it is acquired inside the state and subject to
44 a sales tax or acquired outside the state and subject to a use tax. . . . The use tax imposed by LSA-
45 R.S. 47:301(3)(a) on transportation or freight charges is unconstitutional because there is no

1 parallel assessment of sales tax. The statute has not been amended since *Chicago Bridge* to correct
2 the unconstitutional discrimination between out-of-state and in-state sales.”

3
4 **Recommendation:** It is recommended that the Legislature do one of the following: (1) Amend
5 R.S. 47:301(3)(a) to remove the inclusion of “transportation charges” as follows, which would
6 reflect current practice:

7
8 (3)(a) “Cost price” means the actual cost of the articles of tangible personal
9 property without any deductions therefrom on account of the cost of materials used,
10 labor, or service cost, except those service costs for installing the articles of tangible
11 personal property if such cost is separately billed to the customer at the time of
12 installation, ~~transportation charges~~, or any other expenses whatsoever, or the
13 reasonable market value of the tangible personal property at the time it becomes
14 susceptible to the use tax, whichever is less.

15
16 Or (2) Amend R.S. 47:301(13)(a) to include “transportation charges” as follows, which would
17 result in a tax increase:

18
19 (13)(a) “Sales price” means the total amount for which tangible personal
20 property is sold, less the market value of any article traded in including any
21 services, except services for financing, that are a part of the sale valued in money,
22 whether paid in money or otherwise, and includes the cost of materials used, labor
23 or service costs, except costs for financing which shall not exceed the legal interest
24 rate and a service charge not to exceed six percent of the amount financed,
25 **transportation charges**, and losses; provided that cash discounts allowed and
26 taken on sales shall not be included, nor shall the sales price include the amount
27 charged for labor or services rendered in installing, applying, remodeling, or
28 repairing property sold.

29
30 **Note to the Legislature**

31
32 Since the issuance of the Law Institute’s last Biennial Report, these definitions were
33 amended by the Legislature in Acts 20243ES, Nos. 10 and 11 and Acts 2025, No. 384 to read as
34 follows:

35
36 (3)(a) “Cost price” means the actual cost of the articles of tangible personal
37 property or digital products without any deductions therefrom on account of the
38 cost of materials used, labor, or service cost, ~~except those service costs for installing~~
39 ~~the articles of tangible personal property if such cost is separately billed to the~~
40 ~~customer at the time of installation~~, including service costs for installation, and
41 **transportation charges**, or any other expenses whatsoever, or the reasonable
42 market value of the tangible personal property or digital product at the time it
43 becomes susceptible to the use tax, whichever is less. Cost price shall not include
44 the amount charged for labor or services rendered in installing, applying,
45 remodeling, or repairing property sold if such cost is separately billed to the
46 customer at the time of installation.

1
2 * * *

3
4 (13)(a) "Sales price" means the total amount for which tangible personal
5 property ~~is~~ or digital products are sold, less the market value of any article traded
6 in including any services, except services for financing which shall not exceed the
7 legal interest rate and a service charge not to exceed six percent of the amount
8 financed, and losses, that are a part of the sale valued in money, whether paid in
9 money or otherwise, and includes the cost of materials used, labor or service costs,
10 including service costs for installation, and transportation charges ~~except costs~~
11 ~~for financing which shall not exceed the legal interest rate and a service charge not~~
12 ~~to exceed six percent of the amount financed, and losses~~; provided that cash
13 discounts allowed and taken on sales shall not be included; ~~nor~~ Sales price shall
14 ~~the sales price~~ not include the amount charged for labor or services rendered in
15 installing, applying, remodeling, or repairing property sold if that charge is
16 separately billed to the customer at the time of the sale.

17 * * *

18
19
20 By adding "transportation charges" to the definition of "sales price" as was recommended above,
21 it appears that the Legislature remedied the constitutional deficiency recognized by the Louisiana
22 Supreme Court in the *Chicago Bridge* case.

1 **R.S. 47:301. Definitions**
2 *(Previously included in the 2022 and 2024 Biennial Reports)*

3
4 As used in this Chapter, the following words, terms, and phrases have the meanings
5 ascribed to them in this Section, unless the context clearly indicates a different meaning:

6
7 * * *
8
9 (10)(a)(i) * * *
10
11 * * *

12
13 (c)(i)(aa) The term "sale at retail" does not include sale of materials for further processing
14 into articles of tangible personal property for sale at retail when all of the criteria in Subsubitem
15 (I) of this Subitem are met.

16
17 (I)(aaa) The raw materials become a recognizable and identifiable component of the end
18 product.

19
20 (bbb) The raw materials are beneficial to the end product.

21
22 (ccc) The raw materials are material for further processing, and as such, are purchased for
23 the purpose of inclusion into the end product.

24
25 (II) For purposes of this Subitem, the term "sale at retail" shall not include the purchase of
26 raw materials for the production of raw or processed agricultural, silvicultural, or aquacultural
27 products.

28
29 **(III)(aaa) If the materials are further processed into a byproduct for sale, such**
30 **purchases of materials shall not be deemed to be sales for further processing and shall be**
31 **taxable. For purposes of this Subitem, the term "byproduct" shall mean any incidental**
32 **product that is sold for a sales price less than the cost of the materials.**

33
34 (bbb) In the event a byproduct is sold at retail in this state for which a sales and use tax has
35 been paid by the seller on the cost of the materials, which materials are used partially or fully in
36 the manufacturing of the byproduct, a credit against the tax paid by the seller shall be allowed in
37 an amount equal to the sales tax collected and remitted by the seller on the taxable retail sale of
38 the byproduct.

39
40 * * *

41
42 Held unconstitutional in *Calcasieu Parish School Board Sales & Use Department v. Nelson*
43 *Industrial Steam Company*, 332 So. 3d 606 (La. 2021): "This Court's interpretation of the pre-Act
44 3 further processing exclusion was clear: NISCO's limestone purchases were outside the scope of
45 the pre-Act 3 sales tax regime, *ab initio*, regardless of the end product's relative profitability. In

1 contrast, the Act 3 amendments to the further processing exclusion do include an economic
2 consideration, directing that materials further processed into a byproduct ‘shall not be deemed to
3 be sales for further processing and *shall be taxable.*’ A byproduct is defined by the statute as ‘any
4 incidental product that is sold for a sales price less than the cost of the materials.’ Reviewing these
5 changes to La. R.S. 47:301(10)(c)(i)(aa), this Court in *NISCO II* determined that the same
6 limestone purchases that were not taxable under the pre-Act 3 sales tax have been rendered taxable
7 by Act 3. . . . *NISCO II* thus recognized that the very same transaction that was found not to be
8 subject to taxation in *NISCO I* was subject to taxation pursuant to La. R.S. 47:301(10)(c)(i)(aa) *as*
9 *amended by Act 3* because the amendments incorporated an economic test that the law previously
10 did not recognize. In narrowing the further process exclusion to exclude purchases of materials
11 that are further processed into a byproduct, the Act subjected NISCO's purchases of limestone,
12 which were ‘beyond the reach of tax’ before Act 3, to a new tax. . . . Act 3 represents new
13 substantive law passed under the guise of interpretative legislation. The amendments therein
14 unquestionably legislatively overruled *NISCO I*'s interpretation of the further processing
15 exclusion. Regardless of whether designated as ‘interpretative,’ a legislative enactment cannot
16 abrogate this Court's interpretation of the tax code in order to increase tax liability without
17 garnering sufficient support of the legislators pursuant to the Tax Limitation Clause. It matters not
18 what the Legislature said, it matters what it did. And here, it imposed a new tax. In sum, Act 3
19 rendered taxable the very purchases of limestone deemed excluded from tax by *NISCO I*. Because
20 it thus created a ‘new tax’ on these purchases, its failure to garner supermajority support violates
21 the Tax Limitation Clause and renders the legislation unconstitutional thereunder. For the
22 foregoing reasons, we find that Act 3 is a ‘new tax’ and therefore unconstitutional under the Tax
23 Limitation Clause for failure to garner a two-thirds (*i.e.*, supermajority) vote in each house of the
24 Legislature.”

25
26 **Recommendation:** If the Legislature wishes to retain the substance of the prior amendment to
27 R.S. 47:301(10)(c)(i)(aa), it is recommended that the Legislature amend and reenact this provision
28 to obtain the necessary two-thirds vote in each house of the Legislature.

29
30 **Note to the Legislature**

31
32 During the 2024 Third Extraordinary Session, R.S. 47:301(10)(c)(i)(aa) was deleted in its
33 entirety by Acts 20243ES, No. 11.

1 **R.S. 47:301. Definitions**
2 *(Previously included in the 2018, 2020, 2022, and 2024 Biennial Reports)*

3
4 As used in this Chapter, the following words, terms, and phrases have the meanings
5 ascribed to them in this Section, unless the context clearly indicates a different meaning:

6 * * *

7
8
9 (14) "Sales of services" means and includes the following:

10 * * *

11
12
13 (g)(i)(aa) * * *

14
15 (bb)(I) For purposes of the sales and use tax levied by the state and by tax authorities in
16 East Feliciana Parish, charges for the furnishing of repairs to tangible personal property shall be
17 excluded from sales of services, as defined in this Subparagraph, when the repaired property is (1)
18 delivered to a common carrier or to the United States Postal Service for transportation outside the
19 state, or (2) delivered outside the state by use of the repair dealer's own vehicle or by use of an
20 independent trucker. However, as to aircraft, delivery may be by the best available means. This
21 exclusion shall not apply to sales and use taxes levied by any other parish, municipality or school
22 board. However, any other parish, municipality or school board may apply the exclusion as defined
23 in this Subparagraph to sales or use taxes levied by any such parish, municipality, or school board.
24 Offshore areas shall not be considered another state for the purpose of this Subparagraph.

25
26 (II) For purposes of the sales and use tax levied by the tax authorities in Calcasieu Parish,
27 charges for the furnishing of repairs to aircraft shall be excluded from sales of services, as defined
28 in this Subparagraph, provided that the repairs are performed at an airport with a runway that is at
29 least ten thousand feet long, one hundred sixty feet wide, and fourteen inches thick.

30 * * *

31
32
33 Prior version held unconstitutional in *Arrow Aviation Company, LLC v. St. Martin Parish School*
34 *Board Tax Sales Dept.*, 218 So. 3d 1031 (La. 2016): “Under the Louisiana Constitution, Article
35 VI, Section 29(D) governs the legislature's power to enact tax exclusions. Section 29(D)(1) limits
36 the legislature's authority to enacting tax exclusions that are “*uniformly applicable* to the taxes of
37 all local governmental subdivisions, school boards, and other political subdivisions.” But it does
38 not require the tax exclusions to be *uniformly applied* by these local tax authorities. In 2013, the
39 legislature amended the exclusion provided for in La. R.S. 47:301(14)(g)(i)(bb)—which was
40 previously optional for all parishes, municipalities, and school boards—to make it mandatory for
41 tax authorities in East Feliciana Parish. . . . We find the 2013–amendment does not treat all local
42 governmental subdivisions, school boards, and other political subdivisions the same because tax
43 authorities in all parishes are not able to apply the exclusion in the same form, manner, or degree.
44 That the exclusion is mandatory for tax authorities in East Feliciana—but optional for tax
45 authorities in all other parishes—is an example of non-uniformity prohibited by the constitution.

1 Therefore, we, like the district court, hold that, under La. Const. art. VI, § 29(D)(1), the exclusion
2 provided for in La. R.S. 47:301(14)(g)(i)(bb), as amended in 2013, is unconstitutional. . . . Here,
3 the constitutionally offensive portion of the La. R.S. 47:301(14)(g)(i)(bb) (2013) is the portion
4 mandating tax authorities in East Feliciana Parish apply the exclusion. We find that this portion of
5 the exclusion is severable because the legislature's 2007 and 2011 versions of the exclusion did
6 not mandate that tax authorities in East Feliciana Parish apply the exclusion. The purpose of the
7 statute, therefore, is not dependent on the unconstitutional portion. *See World Trade Ctr. Taxing*
8 *Dist.*, 908 So.2d at 638. Thus, the district court properly ordered the severing of the offending
9 mandatory language of the exclusion applicable to tax authorities in East Feliciana Parish.”

10
11 At the time this case was decided, R.S. 47:301(14)(g)(i)(bb) was not divided into Subsubitems. In
12 2015, the Legislature amended R.S. 47:301(14)(g)(i)(bb) to add Subsubitem (II) relative to
13 Calcasieu Parish and to redesignate Subitem (bb) as Subsubitem (bb)(I). The substance of this
14 provision, however, has remained unchanged.

15
16 **Recommendation:** It is recommended that the Legislature amend R.S. 47:301(14)(g)(i)(bb)(I) to
17 remove the unconstitutional reference to East Feliciana Parish as follows:

18
19 (bb)(I) For purposes of the sales and use tax levied by the state ~~and by tax~~
20 ~~authorities in East Feliciana Parish~~, charges for the furnishing of repairs to
21 tangible personal property shall be excluded from sales of services, as defined in
22 this Subparagraph, when the repaired property is (1) delivered to a common carrier
23 or to the United States Postal Service for transportation outside the state, or (2)
24 delivered outside the state by use of the repair dealer's own vehicle or by use of an
25 independent trucker. However, as to aircraft, delivery may be by the best available
26 means. This exclusion shall not apply to sales and use taxes levied by ~~any other a~~
27 parish, municipality or school board. However, any ~~other~~ parish, municipality or
28 school board may apply the exclusion as defined in this Subparagraph to sales or
29 use taxes levied by any such parish, municipality, or school board. Offshore areas
30 shall not be considered another state for the purpose of this Subparagraph.

31
32 It is also recommended that the Legislature amend R.S. 47:337.10(F) to remove the reference to
33 East Feliciana Parish and to update cross-references as follows:

34
35 **R.S. 47:337.10. Optional exclusions and exemptions**

36
37 * * *

38
39 F. As provided for in R.S. 47:301(14)(g)(i)(bb)(~~I~~), any political
40 subdivision, ~~other than a tax authority in East Feliciana Parish to which the~~
41 ~~exclusion already applies~~, may apply the exclusion as defined in R.S.
42 47:301(14)(g)(i)(bb)(~~I~~) to sales or use taxes levied by any such political
43 subdivision, so that a charge for the furnishing of repairs to tangible personal
44 property shall be excluded from sales of services, as defined in R.S.
45 47:301(14)(g)(i), when the repaired property is (1) delivered to a common carrier
46 or to the United States Post Office for transportation outside the state, or (2)

1 delivered outside the state by use of the repair dealer's own vehicle or by use of an
2 independent trucker. However, as to aircraft, delivery may be by the best available
3 means. Offshore areas shall not be considered another state for the purpose of this
4 Subsection and R.S. 47:301(14)(g)(i).

5
6 **Note to the Legislature**

7
8 During the 2024 Third Extraordinary Session, R.S. 47:301(14)(g)(i)(bb) and 337.10(F)
9 were deleted in their entirety by Acts 20243ES, No. 11.

1 **R.S. 47:337.102. Louisiana Uniform Local Sales Tax Board; creation; membership; powers**
2 **and duties**
3 *(Previously included in the 2020 and 2022 Biennial Reports)*
4

5 A. Creation of the board. The Louisiana Uniform Local Sales Tax Board, hereinafter
6 referred to in this Section as "board", is hereby created as a political subdivision of the state as
7 such term is defined in the Constitution of Louisiana. The board shall be subject to all legal
8 requirements applicable to a public body, including procurement, ethics, record retention, fiscal
9 and budgetary controls, and legislative audit in the same manner as any local political subdivision.
10 The domicile of the board shall be East Baton Rouge Parish. The board may meet and conduct
11 business at other locations within the state of Louisiana.
12

13 * * *
14

15 I. Funding. (1) The board shall be funded through a dedication of a percentage of the total
16 statewide collections of local sales and use tax on motor vehicles, in accordance with the
17 limitations provided in this Paragraph and the budgetary policy as provided in Paragraph (2) of
18 this Subsection. Monies shall be payable monthly from the current collections of the tax. The
19 dedication shall be considered a cost of collection and shall be deducted by the state and disbursed
20 to the board prior to distribution of tax collections to local taxing authorities. The dedication shall
21 be in addition to any fee imposed by the office of motor vehicles for the collection of the local
22 sales and use tax on motor vehicles. The amount to be disbursed to the board in any fiscal year
23 shall not, under any circumstances and notwithstanding any budget adopted by the board, exceed
24 the following:
25

26 (a) In Fiscal Year 2017-2018, one-fifth of one percent of the collections.
27

28 (b) In Fiscal Year 2018-2019, one-quarter of one percent of the collections.
29

30 (c) In Fiscal Year 2019-2020 and each fiscal year thereafter, three-tenths of one percent of
31 the collections.
32

33 (2)(a) The actual amount to be disbursed to the board by the office of motor vehicles in any
34 fiscal year shall be determined by the requirements of the annual budget adopted by the board for
35 that year, subject to the limitations established in Subparagraphs (a) through (c) of Paragraph (1)
36 of this Subsection. To accomplish this, by the first day of June each year the chairman of the board
37 shall notify the commissioner of the office of motor vehicles regarding the amount to be disbursed
38 to the board for the ensuing fiscal year, with the exception of Fiscal Year 2018, when the date for
39 such notification shall be determined by agreement of the chairman and the commissioner.
40

41 (b) The board shall develop and adopt a budget as required by the Louisiana Local
42 Government Budget Act, R.S. 39:1301, et seq. The board shall have the same fiscal year as the
43 state. The adopted budget may be amended as deemed necessary by the board.
44

45 (3) If use tax collections pursuant to R.S. 47:302(K) yields insufficient revenue to fulfill
46 the dedication made pursuant to R.S. 47:302(K)(7) for interagency transfers to the Department of
47 State Civil Service, Board of Tax Appeals, Local Tax Division, the board shall pay any remaining

1 amount necessary to satisfy the dedication, which payment shall be made into the Local Tax
2 Division Expense Fund within the first thirty days of the fiscal year. The board is authorized to
3 enter into an agreement with the Department of State Civil Service, Board of Tax Appeals, Local
4 Tax Division to pay an amount sufficient to compensate the Local Tax Division for workload
5 increases.

6
7 * * *

8
9 Held unconstitutional by *West Feliciana Parish Government v. State*, 286 So. 3d 987 (La. 2019):
10 “In this case, Plaintiffs assert that La.R.S. 47:337.102(I)'s funding mechanism violates
11 both La.Const. art. VI, § 29 and La.Const. art. VII, § 3. As framed by Plaintiffs, the constitutional
12 questions presented are: (1) whether the legislature may, constitutionally, redirect local sales and
13 use taxes, the use of which were established in the ballot propositions that authorized the levy of
14 those taxes; and, (2) whether the legislative rededication of local sales and use taxes as a mandatory
15 funding mechanism for the Board infringes on the authority of the single local collector in each
16 parish. . . . An examination of the remaining ballot propositions at issue herein readily reveals that
17 the taxes passed by the voters were dedicated for the specific purposes identified therein. . . .
18 Therefore, as dedicated taxes, absent the voters' approval to rededicate those local sales and use
19 taxes to the Board, the legislature is not empowered to override the authority granted by the voters
20 by enacting La.R.S. 47:337.102(I). . . . In reaching our conclusion herein, we emphasize that the
21 intended purpose of the legislature for the use of the sales and use tax proceeds, i.e. the funding of
22 the Board, is irrelevant. The relevant inquiry is whether the voters approved the legislature's
23 assessment of the local tax. In this case, they did not. Absent the voters' approval to rededicate the
24 local sales and use taxes to the Board, there is no constitutional directive granting the legislature
25 the power to override the decision of the voters on the use of the local sales and use taxes. . . . For
26 the foregoing reasons, we find that La.R.S. 47:337.102(I) violates La.Const. art. VI, § 29 in
27 impermissibly rededicating local sales and use taxes to fund the Board. . . . We acknowledge that
28 the unconstitutionality of one portion of a statute does not necessarily render the entire statute
29 unenforceable. If the offending portion of the statute is severable from the remainder, this Court
30 may strike only the offending portion and leave the remainder intact. But, where the purpose of
31 the statute is defeated by the invalidity of the offending portion, the entire statute is void. In this
32 case, the district court expressly found La.R.S. 47:337.102(I) was severable; thus, the remainder
33 of the statute remained in full force and effect. Additionally, Plaintiffs' constitutional challenge to
34 the statute is limited solely to the funding mechanism found in La.R.S. 47:337.102(I), and they do
35 not urge any issue relative to severability before this Court. For these reasons, the district court's
36 finding relative to severability is affirmed. . . . Plaintiffs also challenge the funding mechanism of
37 the Board pursuant to La.R.S. 47:337.102(I) as an impermissible infringement on the authority and
38 right of the single local collector in each parish to collect local sales and use taxes, thereby
39 violating of La.Const. art. VII, § 3(B)(1) . . . Given our holding that the statute violates La.Const.
40 art. VI, § 29, we preterm a constitutional analysis of whether La.R.S. 47:337.102(I) also violates
41 this second constitutional provision. After *de novo* review, we find that the funding mechanism for
42 the Louisiana Uniform Local Sales Tax Board, as set forth in La.R.S. 47:337.102(I), is violative
43 of La.Const. art. VI, § 29. For the reasons stated herein, the judgment of the district court
44 declaring La.R.S. 47:337.102(I) unconstitutional and permanently enjoining the State of
45 Louisiana, Department of Public Safety and Corrections, Office of Motor Vehicles from
46 withholding locally levied sales and use taxes under the authority of La.R.S. 47:337.102(I) and

1 from disbursing any funds withheld to the Louisiana Uniform Local Sales Tax Board is hereby
2 affirmed.”

3
4 **Recommendation:** It is recommended that the Legislature repeal R.S. 47:337.102(I) in its entirety,
5 unless the Legislature wishes to replace this provision with a funding mechanism that meets
6 constitutional requirements.

7
8 **Note to the Legislature**

9
10 The Legislature amended R.S. 47:337.102(I) in Acts 2022, No. 596, §1 and Acts 2023, No.
11 375, §1, effective January 1, 2024, to read as follows:

12
13 I. Funding. (1) ~~The~~ Except as provided for in Paragraph (4) of this Subsection, the
14 board shall be funded through a dedication of a percentage of the total statewide collections
15 of local sales and use tax on motor vehicles, as provided for in an agreement with local
16 collectors and in accordance with the limitations provided in this Paragraph and the
17 budgetary policy as provided in Paragraph (2) of this Subsection. Monies shall be payable
18 monthly from the current collections of the tax. The dedication shall be considered a cost
19 of collection and shall be deducted by the ~~state office of motor vehicles~~ and disbursed to
20 the board prior to distribution of tax collections to local taxing authorities. The dedication
21 shall be in addition to any fee imposed by the office of motor vehicles for the collection of
22 the local sales and use tax on motor vehicles. The amount to be disbursed to the board in
23 any fiscal year ~~after Fiscal Year 2018-2019~~ shall not, ~~under any circumstances and~~
24 ~~notwithstanding any budget adopted by the board,~~ exceed the following:

25
26 (a) ~~In Fiscal Year 2017-2018, one-fifth of one percent of the collections.~~

27
28 (b) ~~In Fiscal Year 2018-2019, one-quarter of one percent of the collections.~~

29
30 (c) ~~In Fiscal Year 2019-2020 and each fiscal year thereafter, three-tenths of one~~
31 percent of the collections.

32
33 (2)(a) The actual amount to be disbursed to the board by the office of motor vehicles
34 in any fiscal year shall be determined by the requirements of the annual budget adopted by
35 the board for that year, subject to the limitations established in Subparagraphs ~~(1)(a)~~
36 ~~through (c) of Paragraph (1) of this Subsection.~~ To accomplish this, by the first day of June
37 each year the chairman of the board shall notify the commissioner of the office of motor
38 vehicles regarding the amount to be disbursed to the board for the ensuing fiscal year, ~~with~~
39 ~~the exception of Fiscal Year 2018, when the date for such notification shall be determined~~
40 ~~by agreement of the chairman and the commissioner.~~

41
42 (b) The board shall develop and adopt a budget as required by the Louisiana Local
43 Government Budget Act, R.S. 39:1301, et seq. The board shall have the same fiscal year
44 as the state. The adopted budget may be amended as deemed necessary by the board.

45
46 (3) If use tax collections pursuant to R.S. 47:302(K) yields insufficient revenue to
47 fulfill the dedication made pursuant to R.S. 47:302(K)(7) for interagency transfers to the

1 Department of State Civil Service, Board of Tax Appeals, Local Tax Division, the board
2 shall pay any remaining amount necessary to satisfy the dedication, which payment shall
3 be made into the Local Tax Division Expense Fund within the first thirty days of the fiscal
4 year. The board is authorized to enter into an agreement with the Department of State Civil
5 Service, Board of Tax Appeals, Local Tax Division to pay an amount sufficient to
6 compensate the Local Tax Division for workload increases.

7
8 (4)(a) The board shall fund the initial costs incurred for designing and
9 implementing a single remittance system from the percentage of funding it currently
10 receives pursuant to the provisions of Paragraph (1) of this Subsection. Thereafter, the
11 board shall fund the costs associated with the management, maintenance, and supervision
12 of the single remittance system from the funding it currently receives pursuant to the
13 provisions of Paragraph (1) of this Subsection, subject to the state providing funding for
14 any maintenance or modifications to the single remittance system requested by the state.

15
16 (b) The Department of Revenue shall continue to operate the electronic local return
17 and remittance system used and administered by the department as of January 1, 2024, until
18 the board certifies to the Department of Revenue that the uniform electronic local return
19 and remittance system required in this Section is fully designed, implemented, and
20 available for use by taxpayers. The uniform electronic local return and remittance system
21 required in this Section shall be fully designed, implemented, and available for use by
22 taxpayers no later than January 1, 2026. However, from January 1, 2024, through
23 December 31, 2025, the Department of Revenue's annual cost to continue to operate the
24 electronic local return and remittance system shall not exceed five hundred four thousand
25 dollars. Any enhancement to the electronic local return and remittance system requested
26 between January 1, 2024, and December 31, 2025, shall be paid for on a pro rata basis by
27 the collector or collectors requesting the enhancement.

28
29 By referencing in Paragraph (I)(1) the board's alternative funding mechanism entered into
30 via voluntary agreements with the local tax collectors after the Supreme Court's decision, it
31 appears that the Legislature remedied the constitutional deficiency recognized in *West Feliciana*
32 *Parish Government v. State* as recommended by the Law Institute.