

LOUISIANA STATE LAW INSTITUTE

THE MEETING OF THE COUNCIL

December 18-19, 2015

Friday, December 18, 2015

Persons Present:

Adams, Marguerite (Peggy) L.	Levy, H. Mark
Bergstedt, Thomas	Little, F. A., Jr.
Breard, L. Kent	Lovett, John
Chatelain, Mallory	Medlin, Kay C.
Crawford, William E.	Morris, Glenn G.
Crigler, James C., Jr.	Norman, Rick J.
Cromwell, L. David	Odinet, Christopher
Curry, Kevin C.	Riviere, Christopher H.
Curry, Robert L., III	Robert, Deidre D.
Davidson, James J., III	Sole, Emmett C.
Dimos, Jimmy N.	Suprenant, Monica T.
Doguet, Andre	Talley, Susan G.
Gasaway, Grace B.	Tate, George Jr.
Hamilton, Leo C.	Thibaut, Martha
Hayes, Thomas M., III	Thibeaux, Robert P.
Hebert, Christopher B.	Title, Peter S.
Hester, Mary C.	Tucker, Zelda W.
Hogan, Lila T.	Veith, Rebekka
Holdridge, Guy	Weems, Charles S., III
Jewell, John Wayne	White, Roederick
Knighten, Arlene D.	Wilson, Evelyn
Kostelka, Robert "Bob" W.	Woodruff-White, Lisa
Landry, Ron J.	Ziober, John David
Leefe, Richard K.	

President James Crigler, Jr., opened the Friday session of the December 2015 Council meeting at 10:00 AM on Friday, December 18, 2015 at the Hotel Monteleone in New Orleans, Louisiana. The President called on Professor Glenn Morris, Reporter of the Corporations Committee, to present the Committee's proposed amendments to the Louisiana Business Corporations Act as well as several post-enactment ABA amendments to the Model Act.

Corporations Committee

The Reporter began by suggesting that the Council first consider the Committee's proposed amendments to the Louisiana Business Corporations Act. The Council then turned to page 1 of the Proposed 2016 LBCA Amendments materials and considered the proposed revisions to R.S. 12:1-202, on pages 1 and 2. The Reporter explained that prior to the 2014 Revision, exculpation was an opt-in provision, meaning that corporations were required to adopt exculpation provisions in the articles of incorporation. However, the 2014 Revision changed this opt-in provision to an opt-out provision, and under current law, corporations are required to include their selection to accept, reject, or limit exculpation in the articles of incorporation. The Reporter explained that the Committee's proposed revision would eliminate the mandatory nature of including such a selection in the articles of incorporation, instead only requiring a statement to be made if the corporation chooses to reject or limit the default exculpation provisions. It was moved and seconded to adopt the proposed revisions to R.S. 12:1-202 as presented, as well as the proposed Comment, and the motion passed with no objection.

The Council then turned to the proposed revision to R.S. 12:1-832, on pages 3 through 6. The Reporter explained that Subsection D was added to provide a transitional rule for corporations whose articles of incorporation contain an opt-in exculpation provision that was permitted under former law. He also explained that the 2016 Comment was added to reproduce the substance of former provision in its entirety and to provide additional clarity with respect to the proposed amendments. It was moved and seconded to adopt the proposed revision to R.S. 12:1-832 as presented, as well as the proposed Comment, and the motion passed with no objection.

Next, the Council considered the proposed revision to R.S. 12:1-820, on page 7. The Reporter explained that under the 2014 Revision, there was an issue in that the statute did not provide that a meeting of the board of directors could be called in accordance with the bylaws. The Committee's proposed revision would solve this issue by allowing such a meeting to be called as provided in the bylaws. It was moved and seconded to adopt the proposed revision to R.S. 12:1-820 as presented, and the motion passed with no objection.

The Reporter then called the Council's attention to the proposed revisions to R.S. 12:1-805, on page 8, and R.S. 12:1-1022, on pages 9 and 10. The Reporter explained that the proposed amendments to § 1-1022 would remove some of the specific details concerning provisions in public corporations' bylaws allowing shareholders to vote against the election of a director, and would replace those details with a more general statement of authority. The Reporter also explained that the 2016 Comment was added to address these revisions as well as to clarify that the plurality vote rule remains unchanged by any bylaws authorized by this provision. It was moved and seconded to adopt the proposed revisions to R.S. 12:1-1022 as presented, as well as the proposed Comment, and the motion passed with no objection. The Reporter then explained that the proposed revisions to R.S. 12:1-805, on page 8, were merely technical corrections in light of the amendments to § 1-1022. It was moved and seconded to adopt the proposed revisions to R.S. 12:1-805 as presented, and the motion passed with no objection.

The Council then turned to the proposed revisions to R.S. 12:1-854, on page 12. The Reporter explained that, as provided on page 11 of the materials, the ABA made a technical correction to an editorial error with respect to the court-ordered indemnity provision, and the Committee approved the technical correction. However, the ABA also made a substantive amendment to this provision to eliminate the written affirmation requirement, which the Committee ultimately rejected. The Council agreed with the Committee, approving the

proposed technical amendments but rejecting the elimination of the written affirmation requirement. It was moved and seconded to adopt the proposed revisions to R.S. 12:1-854 as presented, and the motion passed with no objection.

Next, the Council considered the proposed revision to R.S. 12:1-955, on pages 13 and 14. The Reporter explained that for mergers, service of process can be made on a foreign unincorporated entity as if the entity were a foreign corporation, but the same cannot be said for entity conversions under current law. The Committee's proposed addition of Subsection F would allow for the rules with respect to serving foreign unincorporated entities in the context of entity conversions as in the context of mergers. It was moved and seconded to adopt the proposed revision to R.S. 12:1-955 as presented, and the motion passed with no objection. The Council also considered a proposed technical correction to the merger provision, R.S. 12:1-1107, on page 15, that would make the word "exist" on line 13 of that page past tense. It was moved and seconded to adopt the proposed revision to R.S. 12:1-1107 as presented, and the motion passed with no objection.

The Council then turned to the proposed revisions to R.S. 12:1-1435 and 1436, on pages 16 through 18. The Reporter explained that the proposed amendments to these statutes would recognize the possibility that a shareholder's share certificate may have been previously delivered to the corporation. It was moved and seconded to adopt the proposed revisions to R.S. 12:1-1435 and 1436 as presented, and the motion passed with no objection.

The Council also considered proposed technical corrections to R.S. 12:1-1444, on pages 19 through 21. It was moved and seconded to adopt the technical corrections to R.S. 12:1-1444 on lines 6 and 7, and the motion passed with no objection.

Next, the Council considered the proposed addition of R.S. 12:1-1705, on pages 22 and 23. The Reporter explained that prior to the 2014 Revision, if a corporation failed to file its articles of incorporation, that corporation's charter was revoked, but the corporation could be reinstated within three years. However, if the corporation's charter was revoked for more than three years, the corporation could still be reinstated, but it would be forced to change its name. The Reporter then explained that current law eliminates the indefinite reinstatement provision in favor of having only a three-year reinstatement rule, but a problem was created in that lots of corporations were relying on the indefinite reinstatement provision. As a result, the Committee's proposed revision would provide a transitional rule to allow a corporation whose charter was revoked prior to January 1, 2015 to be reinstated under the old indefinite reinstatement provision.

One member of the Council suggested adding "charter-revocation" before "reinstatement" on line 20 of page 22, and the Reporter agreed. Another Council member suggested replacing "entitled to reinstatement as provided in this Section" with "whose charter was revoked before January 1, 2015" on line 12 of the same page, and the Reporter accepted this change as well. The Council then engaged in a great deal of policy discussion concerning whether the three-year reinstatement period as provided under current law is even necessary. Members of the Council discussed the numerous practical issues plaguing real estate and title attorneys as a result of the three-year reinstatement period. As an alternative, Council members suggested requiring the revoked corporation to pay back all of the filing fees assessed during the revocation period. The Reporter offered to organize a Committee meeting and invite practitioners to vet this three-year reinstatement period issue, and the Council voted to recommit that issue in general to the Committee, but to consider the enactment of the transitional rule separately. It was moved and seconded to adopt R.S. 12:1-1705

as amended, and the motion passed with no objection. The adopted proposal reads as follows:

§ 1-1705. Transition rule for reinstatement of a corporation with a revoked charter

A. A corporation whose charter was revoked before January 1, 2015, may be reinstated as provided in R.S. 12:1-1444 for a corporation that was terminated administratively. Subject to the time limitation stated in Subsection (F) of this Section, a corporation whose charter was revoked before January 1, 2015, may also be reinstated as provided in Subsections (B) through (E) of this Section.

B. A corporation whose charter was revoked before January 1, 2015, may request reinstatement by delivering to the secretary of state for filing articles of charter-revocation reinstatement and an annual report. The articles of charter-revocation reinstatement and the annual report shall be signed by an officer or director of the corporation who is entitled to approve articles of reinstatement under R.S. 12:1-1444 (B). The annual report shall be accompanied by a written consent to appointment signed by the registered agent named in the annual report.

C. The articles of charter-revocation reinstatement shall state all of the following:

(1) The name of the corporation.

(2) That the charter of the corporation was revoked before January 1, 2015.

(3) That the reinstatement was approved by an officer or director who is entitled to approve articles of reinstatement pursuant to R.S. 12:1-1444 (B).

(4) That the corporation is reinstated, effective retroactively as if the corporation had never been terminated.

D. If the corporation's name is no longer available for use, the secretary of state shall file the articles of charter-revocation reinstatement only if the corporation also delivers for filing articles of amendment that change the name of the corporation to a name that meets the requirements of R.S. 12:1-401.

E. When the secretary of state files articles of charter-revocation reinstatement, the existence of the corporation is reinstated retroactively, and the corporation continues to exist as if the termination had never occurred.

F. A corporation may be reinstated pursuant to Subsections (B) through (E) of this Section only if the documents required by those Subsections, and entitled to filing pursuant to R.S. 12:1-120, are delivered for filing to the secretary of state before January 1, 2019.

The Council then turned to the proposed revisions to R.S. 12:1-725 and 727, on pages 25 and 26. The Reporter explained that under current law, there is a tension between these two provisions with respect to the default quorum and voting requirements. The Committee's proposed amendments to these two

statutes would clarify that either increases or decreases are allowed with respect to the quorum requirement, subject to a floor of 25% of the shares entitled to vote, but only increases are allowed with respect to the voting requirement. It was moved and seconded to adopt R.S. 12:1-725 as presented, as well as the proposed Comment, and the motion passed with no objection. With respect to R.S. 12:1-727, one Council member suggested several changes to Subsection A of the provision, the Council agreed, and the Reporter accepted these changes. It was moved and seconded to adopt R.S. 12-1727 as amended, as well as the proposed Comment, and the motion passed with no objection. The adopted proposal reads as follows:

§ 1-727. Greater quorum or voting requirements

A. The articles of incorporation may provide for a greater ~~quorum~~ or voting requirement for shareholders, or voting groups of shareholders, than is provided for by this Chapter. The articles of incorporation may make a quorum requirement for shareholders, or for a voting group of shareholders, greater or lesser than that provided by this Chapter, but the requirement may not be lower than twenty-five percent of the shares entitled to vote on a matter.

B. An amendment to the articles of incorporation that adds, changes, or deletes a greater quorum or voting requirement must meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect or proposed to be adopted, whichever is greater.

Comments – 2016

This Section was amended in 2016 to clarify the extent to which the quorum and voting requirements provided by this Chapter could be changed by provisions in the articles of incorporation. This Section effectively adopts the approach to the issue taken by the former LBCL. While the LBCL did permit the voting requirement for most fundamental decisions, such as mergers and amendments of the articles of incorporation, to be reduced from its statutory default standard of two-thirds of shares present, it did not permit the standard to be reduced to less than a majority of voting power. This Chapter provides the equivalent of that minimum standard, a majority of shares entitled to vote on a matter, as the default rule for fundamental decisions. Hence, by allowing only increases in that standard in the articles of incorporation, this Section is effectively retaining the floor that was imposed by the LBCL with respect to decisions of that kind. The other two voting requirements provided by this Chapter – plurality voting for directors and a majority-of-votes-cast standard for decisions not governed by other rules – are already as low as they practically could be for such decisions. They may be increased, but not decreased, by a provision in the articles of incorporation.

The Reporter then directed the Council's attention to the proposed technical corrections to various provisions on pages 27 through 49. These provisions include R.S. 12:1-124, 128, 140, 141, 302, 303, 401, 601, 621, 622, 623, 624, 703, 721, 833, 842, 851, 860, 1107, 1301, 1432, and 1602. It was moved and seconded to adopt all of these proposed technical corrections as presented, and the motion passed with no objection.

Next, the Reporter directed the Council's attention to the Short Form Merger Amendment Handout, and the Council considered the proposed revision

to R.S. 12:1-1106, on page 2. One member of the Council suggested changing "became" on line 5 of page 2 to "is," and the Reporter accepted the change. It was moved and seconded to adopt the proposed revision to R.S. 12:1-1106 as amended, and the motion passed with no objection. The adopted proposal reads as follows:

§1-1106. Articles of merger or share exchange

A. After a plan of merger or share exchange has been adopted and approved as required by this Subpart, articles of merger or share exchange shall be signed on behalf of each party to the merger or share exchange by any officer or other duly authorized representative. Articles of merger need not be signed on behalf of any subsidiary that is a party to a merger authorized by R.S. 12:1-1105 (A) without the approval of the subsidiary's board of directors or shareholders. The articles shall set forth all of the following:

* * *

At this point, the Reporter ended the morning portion of his presentation. The President then announced that Interim Co-Dean Cheney Joseph had passed away. He informed the Council of when the services would take place and asked that the Council remember Co-Dean Joseph's family in their prayers.

Membership and Nominating Committee

Following the President's announcement, Mr. Emmett Sole, Chairman of the Membership and Nominating Committee, presented a report by the Committee, a copy of which is attached. In the report, the Committee proposed several nominations of officers and members to fill vacancies on the Council for 2016. It was moved and seconded that the Committee's nominations be approved, and the motion passed with no objection.

The Council recessed for lunch at noon.

LUNCH

The Council resumed its meeting at 1:30 p.m., at which time Professor Glenn Morris, Reporter of the Corporations Committee, resumed his presentation. Professor Morris directed the Council's attention to the Post-Enactment ABA Amendments to Model Act materials. The Council first considered the Committee's proposed enactment of R.S. 12:1-709, on page 2, in light of the Council's previous adoption of remote participation for shareholders. It was moved and seconded to adopt the proposal to enact R.S. 12:1-709 as presented, and the motion passed with no objection.

The Council then turned to the proposed revision to R.S. 12:1-1434, on pages 5 and 6, regarding the proposed elimination of dissolution as an alternative to a previously-elected buyout in a deadlock proceeding. After a great deal of discussion, it was moved and seconded to reject the Committee's proposal, thereby retaining the struck-through language on lines 2 through 8 of page 6, and the Reporter agreed. Next, the Reporter presented the Committee's proposed revisions to R.S. 12:1-802, on pages 9 and 10, in light of the ABA's amendments with respect to qualifications for directors and director nominees. The Reporter suggested replacing "prescribe" with "provide" on line 22 of page 9 and "prescribed" with "adopted" throughout the provision, and the Council agreed. It was moved and seconded to adopt the revisions to R.S. 12:1-802 as

amended, and the motion passed with no objection. The adopted proposal reads as follows:

§ 1-802. Qualifications of directors

A. The articles of incorporation or bylaws may prescribe qualifications for directors or for nominees for director. A director need not be a resident of this state or a shareholder of the corporation unless the articles of incorporation or bylaws so prescribe.

B. A requirement that is based on a past, current or prospective action, or expression of an opinion, by a nominee or director that could limit the ability of a nominee or director to discharge his or her duties as a director is not a permissible qualification under this section. Notwithstanding the foregoing, qualifications may include not being or having been subject to specified criminal, civil or regulatory sanctions or not having been removed as a director by judicial action or for cause.

C. A director need not be a resident of this state or a shareholder of the corporation unless the articles of incorporation or bylaws so provide.

D. A qualification for nomination for director adopted before a person's nomination shall apply to such person at the time of nomination. A qualification for nomination for director adopted after a person's nomination shall not apply to such person with respect to such nomination.

E. A qualification for director adopted before the start of a director's term may apply only at the time an individual becomes a director or may apply during a director's term. A qualification adopted during a director's term shall not apply to that director before the end of that term.

The Council then turned to the proposed revisions to R.S. 12:1-202, on pages 12 through 14, with respect to permitting advance action to limit or eliminate duties regarding business opportunities. The Reporter explained that because the ABA's version of this amendment is long, complicated, and confusing, the Committee proposed a more streamlined revision containing the same substance. It was moved and seconded to adopt the Committee's proposed revisions to R.S. 12:1-202 as presented, and the motion passed with no objection.

Next, the Council considered the proposed revision to R.S. 12:1-143, on page 15, which was made in light of the proposed revisions to R.S. 12:1-202. One member of the Council suggested replacing "has a material relationship with" on line 8 of that page with "is a related person to" and the Reporter agreed. It was moved and seconded to adopt the proposed revision to R.S. 12:1-143 as amended, and the motion passed with no objection. The adopted proposal reads as follows:

§ 1-143. Qualified director

A. A "qualified director" is a director who meets the following criteria:

* * *

(5) At the time action is to be taken under R.S. 12:1-2.02(B)(6), a director who is neither of the following:

(a) A director to whom the limitation or elimination of the duty of an officer to offer potential business opportunities to the corporation would apply.

(b) A director who is a related person to another officer to whom the limitation or elimination would apply.

The Council then turned to the proposed revisions to R.S. 12:1-831, on page 16. It was moved and seconded to adopt the proposal as presented, and the motion passed with no objection. The Council also considered the proposed revisions to R.S. 12:1-860, on page 17. It was moved and seconded to adopt the proposal as presented, and the motion passed with no objection.

Finally, the Council considered the proposed revisions to R.S. 12:1-870, on pages 18 and 19. It was moved and seconded to adopt the proposal as presented, and the motion passed with no objection.

At this time, Professor Morris concluded his presentation of materials from the Corporations Committee.

President James Crigler, Jr. then introduced Mr. Charles S. Weems, III, Reporter of the Unconstitutional Statutes Committee, to present the Committee's biennial report to the legislature.

Unconstitutional Statutes Committee

The Reporter began presenting the Unconstitutional Statutes Committee's draft biennial report to the legislature by providing the Council with background information regarding the formation of the Committee. The Reporter explained that in accordance with Acts 2014, No. 598, which enacted La. R.S. 24:204(A)(10), the Law Institute formed the Unconstitutional Statutes Committee to make recommendations to the legislature on a biennial basis for the repeal, removal, or revision of provisions of law that have been declared unconstitutional by final and definitive court judgment. The Reporter noted that the Committee decided to make varying recommendations based on the nature of the court's holding, and some of those recommendations were made subject to review by one of the Law Institute's substantive committees.

The Council then turned to the proposed recommendation with respect to Article XII, Section 15 of the Louisiana Constitution, on pages 3 and 4 of the materials. One Council member suggested amending the second alternative in the recommendation to include a note to the *Obergefell* decision as well as a constitutional amendment, and the Reporter accepted the change. It was moved and seconded to adopt the recommendation as amended, and the motion passed with no objection. The adopted recommendation reads as follows:

Recommendation: It is recommended that the Legislature do one of the following: (1) Direct the Law Institute to note the *Obergefell* decision at Const. Art. XII, § 15; or (2) Direct the Law Institute to note the *Obergefell* decision at Const. Art. XII, § 15 and submit to the voters a proposal to amend Art. XII, § 15 to replace "one man and one woman" with "two natural persons" as follows: "Marriage in the state of Louisiana shall consist only of the union of ~~one man and one woman~~ **two natural persons**. No official or court of the state of Louisiana shall construe this constitution or any state law to require that marriage or the legal incidents thereof be conferred upon any member of a union other than the union of ~~one man and~~

~~one-woman~~ two natural persons. A legal status identical or substantially similar to that of marriage for unmarried individuals shall not be valid or recognized. No official or court of the state of Louisiana shall recognize any marriage contracted in any other jurisdiction which is not the union of ~~one man and one woman~~ two natural persons.”

Next, the Council considered the proposed recommendation with respect to Civil Code Article 89, on pages 4 and 5 of the materials. It was moved and seconded to adopt the recommendation as presented, and after one Council member questioned whether this recommendation was consistent with the Marriage-Persons Committee’s Same-Sex Marriage Report, the motion to adopt passed with no objection. Similarly, upon consideration of the proposed recommendation with respect to Civil Code Article 3520, on pages 5 and 6 of the materials, it was moved and seconded to adopt the recommendation as presented, and the motion passed with no objection.

The Council then approved the Committee’s decision to refer Code of Criminal Procedure Articles 412 through 414, on pages 6 through 8 of the materials, to the Law Institute’s Criminal Code and Code of Criminal Procedure Committee for substantive review. The Reporter then asked the Council to tentatively adopt the proposed recommendation to amend Code of Criminal Procedure Article 800, on pages 8 and 9 of the materials, pending substantive review by the Criminal Code and Code of Criminal Procedure Committee. It was moved and seconded to tentatively adopt the recommendation as presented, and the motion passed with no objection.

Next, the Reporter turned the Council’s attention to the proposed recommendations with respect to various provisions in Title 11 of the Revised Statutes, including R.S. 11:62, 102, 542, 883.1, 1145.1, and 1399.1 through 1399.7, on pages 9 through 13 of the materials. It was moved and seconded to adopt all of these recommendations as presented, and the motion passed with no objection. The Council then considered the proposed recommendation with respect to R.S. 13:3715.1, on pages 13 through 17 of the materials. It was moved and seconded to tentatively adopt the recommendation as presented, and the motion passed with no objection.

The Council also considered the proposed recommendation to repeal R.S. 13:4210, on page 17 of the materials. It was moved and seconded to adopt the recommendation as presented, and the motion passed with no objection. Similarly, the Council considered the proposed recommendation to repeal R.S. 13:5105(C), on pages 17 through 18 of the materials. It was moved and seconded to adopt the recommendation as presented, and the motion passed with no objection.

Next, the Reporter asked the Council to tentatively adopt the proposed recommendation with respect to R.S. 14:30(C), on pages 18 and 19 of the materials. One Council member questioned whether the age restrictions for juvenile offenders in the *Miller* case were the same as those in Louisiana, and the Reporter agreed to refer that issue to the Law Institute’s Criminal Code and Code of Criminal Procedure Committee. Another Council member suggested changing “Consider adding” to “Add” on line 16 of page 19, and the Reporter accepted that change. It was then moved and seconded to tentatively adopt the recommendation as amended, and the motion passed with no objection. The adopted recommendation reads as follows:

Recommendation: The Committee tentatively recommends the following, subject to review by the Law Institute’s Criminal Code and Code of Criminal Procedure Committee:

1. Amend R.S. 14:30(C)(1) and (2) to include an exception for cases involving juvenile offenders as follows:

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

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

2. Add a third paragraph to Subsection (C) to specifically address those cases involving juvenile offenders, perhaps including a comment that references Miller v. Alabama.

The Council then turned to the proposed recommendation to repeal R.S. 14:42(D)(2), on pages 19 and 20 of the materials. It was moved and seconded to tentatively adopt the recommendation as presented, and the motion passed with no objection. The Council also considered the proposed recommendation with respect to R.S. 14:44, on pages 20 and 21 of the materials. Again, the Council suggested changing "Consider adding" to "Add" on line 31 of page 21, and the Reporter accepted that change. It was moved and seconded to tentatively adopt the proposed recommendation as amended, and the motion passed with no objection. The adopted recommendation reads as follows:

Recommendation: The Committee tentatively recommends the following, subject to review by the Law Institute's Criminal Code and Code of Criminal Procedure Committee:

1. Amend R.S. 14:44 to include an exception for cases involving juvenile offenders as follows:

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

(1) The forcible seizing and carrying of any person from one place to another; or

(2) The enticing or persuading of any person to go from one place to another; or

(3) The imprisoning or forcible secreting of any person.

Except in cases involving juvenile offenders, ~~W~~whoever commits the crime of aggravated kidnapping shall be punished by life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence.

2. Add a second sentence or another paragraph to R.S. 14:44 to specifically address those cases involving juvenile offenders, perhaps including a comment that references Graham v. Florida.

Next, the Council approved the Committee's decision to refer R.S. 14:47 through 49, on pages 21 through 23 of the materials, to the Law Institute's Criminal Code and Code of Criminal Procedure Committee for substantive review. It was then moved and seconded to adopt the proposed recommendation with respect to R.S. 14:87, on pages 23 through 25 of the materials, and the motion passed with no objection.

The Reporter then asked the Council to tentatively adopt the recommendation with respect to R.S. 14:89, on pages 25 through 27, pending substantive review by the Criminal Code and Code of Criminal Procedure Committee. It was moved and seconded to tentatively adopt the recommendation as presented, and the motion passed with no objection.

Next, the Council considered the proposed recommendation with respect to R.S. 14:95.4, on pages 27 and 28 of the materials. One Council member questioned whether the recommendation was to note the case rather than repeal the statute, and the Reporter explained that because this was a federal district court judgment, the Committee did not feel comfortable repealing the provision based on that one case. It was moved and seconded to adopt the recommendation as presented, and the motion passed with no objection.

The Reporter directed the Council's attention to the proposed recommendation to repeal R.S. 15:114, on page 28 of the materials, and asked the Council to tentatively adopt the recommendation pending substantive review. One Council member questioned whether Orleans Parish would be governed by a general provision if this statute was removed, and the Reporter assured the Council that he would refer that issue to the Criminal Code and Code of Criminal Procedure Committee. It was then moved and seconded to tentatively adopt the recommendation as presented, and the motion passed with no objection.

The Council then considered the proposed recommendation with respect to R.S. 15:902.1, on page 29 of the materials. It was moved and seconded to adopt the recommendation as presented, and the motion passed with no objection. The Council also considered the proposed recommendation to repeal R.S. 15:1171 through 1179, on pages 29 and 30 of the materials. It was moved and seconded to adopt the recommendation as presented, and the motion passed with no objection. Similarly, it was moved and seconded to adopt the proposed recommendation to repeal R.S. 17:1803, on pages 30 and 31 of the materials, and the motion passed with no objection.

Next, the Council considered the proposed recommendation to repeal R.S. 17:286.1 through 286.7, on page 31 on the materials. It was moved and seconded to adopt the recommendation as presented, and the motion passed with no objection. Similarly, it was moved and seconded to adopt the proposed recommendation to repeal R.S. 24:513(J)(4)(a) and (b), on pages 31 and 32 of the materials, and the motion passed with no objection.

The Reporter then directed the Council's attention to the proposed recommendation with respect to R.S. 32:57, on pages 32 and 33 of the materials. It was moved and seconded to adopt the recommendation as presented, and the motion passed with no objection. The Council also considered the proposed recommendations to repeal R.S. 39:1951 through 1993, including R.S. 39:1962, on pages 33 through 35 of the materials. It was moved and seconded to adopt the recommendations as presented, and the motion passed with no objection.

The Reporter asked the Council to tentatively adopt the proposed recommendation to amend R.S. 40:1788(B), on page 35 of the materials, pending substantive review by the Criminal Code and Code of Criminal Procedure Committee. It was moved and seconded to tentatively adopt the recommendation as presented, and the motion passed with no objection. The Council also considered the proposed recommendation to amend R.S. 42:39, on pages 35 through 37 of the materials. It was moved and seconded to adopt the recommendation as presented, and the motion passed with no objection. Similarly, it was moved and seconded to adopt the proposed recommendation to repeal R.S. 42:261(E), on page 37 of the materials, and the motion passed with no objection.

Next, the Council considered the proposed recommendation to amend R.S. 42:1141.4(L)(1), on pages 37 and 38 of the materials. One Council member questioned whether independent contractors working for the Board of Ethics should be included in this prohibition, and the Reporter explained that this would be an example of one of the reasons the Legislature may want to add more categories of individuals as a result of the removal of the "any other person" language. It was then moved and seconded to adopt the recommendation as presented, and the motion passed with no objection.

The Council then turned to the proposed recommendation to repeal R.S. 42:1451, on pages 38 and 39 of the materials. It was moved and seconded to adopt the recommendation as presented, and the motion passed with no objection. Similarly, it was moved and seconded to adopt the recommendation with respect to R.S. 47:301, on pages 39 and 40 of the materials, and the motion passed with no objection.

The Reporter then directed the Council's attention to the provisions of law that had been declared or recognized by a court as preempted by federal law. The Council first considered the proposed recommendation with respect to Article X, Section 29 of the Louisiana Constitution, on pages 40 and 41 of the materials. It was moved and seconded to adopt the recommendation as presented, and the motion passed with no objection. Similarly, it was moved and seconded to adopt the proposed recommendation with respect to R.S. 11:2182, on pages 41 and 42 of the materials, and the motion passed with no objection. It was also moved and seconded to adopt the proposed recommendation to repeal R.S. 14:100.13(A), on page 42 of the materials, and the motion passed with no objection.

At this time, Mr. Weems concluded his presentation, and there being no additional business, the Friday session of the December 2015 Council meeting was adjourned.

LOUISIANA STATE LAW INSTITUTE

THE MEETING OF THE COUNCIL

December 18-19, 2015

Saturday, December 19, 2015

Persons Present:

Bergstedt, Thomas
Braun, Jessica
Breard, L. Kent
Crawford, William E.
Crigler, James C., Jr.
Cromwell, L. David
Curry, Kevin C.
Curry, Robert L., III
Dimos, Jimmy N.
Doguet, Andre
Hamilton, Leo C.
Hayes, Thomas M., III
Hebert, Christopher B.
Hester, Mary C.
Hogan, Lila T.
Hogan, Thomas J., Jr.
Holdridge, Guy
Jewell, John Wayne

Knighten, Arlene D.
Kostelka, Robert "Bob" W.
Landry, Ron J.
Levy, H. Mark
Lovett, John
Molina, Luz
Norman, Rick J.
Odinet, Christopher
Schonekas, McClain
Sole, Emmett C.
Tate, George J.
Tucker, Zeldia W.
Veith Rebekka
Wilson, Evelyn L.
Woodruff-White, Lisa
Ziober, John David

President James C. Crigler, Jr. opened the Saturday session of the December 2015 Council meeting at 9:05 AM on December 19, 2015 at the Monteleone Hotel in New Orleans, LA. During today's session, Professor Luz Molina represented the Unpaid Wages Committee and presented a Revision of Louisiana's Wage Payment Act.

Revision of Louisiana's Wage Payment Act:

1. The Reporter began by introducing the committee members present and reminding the Council of the directive in House Concurrent Resolution 76 of the 2012 Regular Session of the Legislature which asked the Law Institute to study all options and make recommendations for legislation to provide an effective remedy for unpaid wages without requiring expensive litigation. She also pointed out in the materials two memoranda which recount the background work of the committee and highlight the problems in the law which this proposal addresses.

2. The Reporter summarized the proposal as providing clear guidance to employers and employees when wages are in dispute, requiring the demand for wages to be in writing, making the terms of employment easily ascertainable, and clarifying when penalty wages attach. With these goals in mind, she directed to Council to page 16 of the materials to begin the discussion.

3. The Reporter explained that proposed R.S. 23:631(B)(1) is the key provision to protect employers. If the terms of employment are documented, the "he said, she said" element is eliminated. After some discussion, the Reporter agreed to add the term "basic" before "terms of employment" to be consistent with the form which allows employers to add additional terms as they see fit. It was also suggested and accepted that the employee's address be added to the form. Finally, the discussion turned to how changes in the terms of employment are communicated to the employee. The Committee proposed that the changes be documented by the employer and communicated to the employee as to not overly burden employers. However, the Council added the requirement that changes be communicated in writing to employees. Therefore, R.S. 23:631(B)(1) was adopted as follows:

B.(1) At the time of hire, it shall be the duty of each employer subject to this Section to inform his employees at the time of hire each employee in writing of the basic terms of employment. The basic terms of employment, at a minimum, shall include the full name and address of the employer, the job title, what the wages they will to be paid, the method in by which they will be paid, where they will be paid, and the frequency of payment, and thereafter any subsequent changes thereto. The employer and the employee shall sign the basic terms of employment and a copy shall be furnished to the employee. All changes in the basic terms of employment shall be documented by the employer and contemporaneously communicated in writing to the employee.

4. The Council also extensively discussed whether this proposal applies to independent contractors. The Reporter and fellow Committee members informed the Council that independent contractors do not need a special carve out in this proposal because that type of relationship is a defense to the Louisiana Wage Payment Act. "Independent contractor" is not defined in statutory law, but the federal government has a definition and the courts have jurisprudentially defined it. A presumption of employment exists in our law to protect employees and this should not be jeopardized. However, many Council members thought it would be best to add language to the definition of "employee" to be clear that these proposals do not apply to that unique relationship.

5. Moving to proposed R.S. 23:631(B)(2), which is the recordkeeping element of the statute, the Reporter explained that employers have a recordkeeping obligation under existing law. The intent of including this requirement in the LWPA is to emphasize that the onus is on an employer to keep records because he is in the best position to keep such records. The Council was concerned about the length of time an employer would be required to keep records. A member observed that if an employer hired an employee who then worked for thirty years before retiring, the employer would be required to keep thirty five years of records. Therefore, the Council approved the following:

(2) Every employer shall keep a true and accurate record of the name, address, and job title of each person employed basic terms of employment and any subsequent changes of each employee, of the daily and weekly hours worked, including overtime, and of the

wages paid each pay period ~~to each employee~~. The employer shall maintain the last three years of records for no less than five years after termination. The failure to keep and maintain these records shall give rise to a rebuttable presumption in favor of the employee with regard to the basic terms of employment, hours worked, and wages paid.

6. With little discussion, the form in proposed R.S. 23:631(C) was adopted with the addition of the term "basic" where appropriate before the "terms of employment" language and with the inclusion of an address for the employee.

7. Moving to proposed R.S. 23:631(D), the Reporter explained that this is the notice that will be posted in all workplaces to advise employees of their rights. It was noted that this proposal was kept simple on purpose as to not confuse workers. The Council made one change and the following was approved:

D. Employers shall post, in the same location where they post other employee notices required by state or federal laws, a notice provided by the Louisiana Workforce Commission that states, as follows:

"Your employer has a duty to inform you in writing at the time of ~~your hire~~ of its full name and address, how much you will be paid, how often you will be paid, and how you will be paid, and to advise you in writing of any changes ~~to your pay~~."

8. The Reporter accepted the suggestion to change the word "pay" to the word "wages" in proposed R.S. 23:631(E). The Council then began discussing the deletion of the requirement in present 23:633(B) that certain types of employees be paid at least twice a month. The Reporter explained that those workers were folded into the broader proposed Subsection E. The Council voted to recommit Subsection E back to the Committee for further discussion regarding preserving present law 23:633(B) and (C).

9. The final Subsection presented was R.S. 23:631(F). The Reporter informed the Council that this provision is entirely new and is intended to make the LWPA applicable to people who are still employed. The Reporter accepted the deletion of the word "business" to make the time periods consistent throughout the proposal and the Subsection was approved without further discussion.

The Council adjourned at 11:15 AM.


Mallory Chatelain Waller 4/15/2016
Date


Jessica Braun 4-15-16
Date

12.17.15

Signed

**MEMBERSHIP AND NOMINATING COMMITTEE REPORT
December 18, 2015**

This committee respectfully makes the following nominations of officers and members to fill vacancies on the Council of the Louisiana State Law Institute for 2016 as follows:

OFFICERS OF THE INSTITUTE - 2016

As Chair:

James C. Crigler, Jr.; 1808 Roselawn Avenue, Monroe, Louisiana, 71201.

Chair Emeriti:

J. David Garrett; 526 Cumberland Drive, Shreveport, Louisiana, 71106.

James A. Gray, II; 1010 Common Street, Suite 2560, New Orleans, Louisiana, 70112-2406.

Charles S. Weems, III; 2001 MacArthur Drive, P.O. Box 6118, Alexandria, Louisiana, 71307-6118.

Cordell H. Haymon; 725 Main Street, Baton Rouge, Louisiana, 70802-5594.

Marilyn C. Maloney; First City Tower, 1001 Fannin, Suite 1800, Houston, Texas, 77002.

Thomas M. Bergstedt; P.O. Drawer 3004, Lake Charles, Louisiana, 70602.

Emmett C. Sole; One Lakeside Plaza, P.O. Box 2900, Lake Charles, Louisiana, 70602-2900.

Max Nathan, Jr.; Place St. Charles, 201 St. Charles Avenue, Suite 3815, New Orleans, Louisiana, 70170.

Robert L. Curry, III; P.O. Drawer 4768, Monroe, Louisiana, 71211.

As President:

John David Ziober; 320 Somerulos Street, Baton Rouge, Louisiana, 70802.

As Vice-Presidents:

Susan G. Talley; 546 Carondelet Street, New Orleans, Louisiana, 70130.

Rick J. Norman; 145 East Street, Lake Charles, Louisiana, 70601.

L. David Cromwell; P.O. Box 1786, Shreveport, Louisiana, 71166-1786.

Thomas M. Hayes, III; P.O. Box 8032, Monroe, Louisiana, 71211-8032.

As Director:

William E. Crawford; Paul M. Hebert Law Center, Room 438, University Station, Baton Rouge, Louisiana, 70803-1016.

As Secretary:

William R. Corbett; Paul M. Hebert Law Center, Room 350, University Station, Baton Rouge, Louisiana, 70803.

As Assistant Secretary:

Robert "Bob" W. Kostelka; 1216 Stubbs Avenue, Monroe, Louisiana, 71201.

As Treasurer:

Joseph W. Mengis; P.O. Drawer 83260, Baton Rouge, Louisiana, 70884.

As Assistant Treasurer:

Glenn Morris; Paul M. Hebert Law Center, Room 348, University Station, Baton Rouge, Louisiana, 70803.

SENIOR OFFICER

Kevin C. Curry; P.O. Box 3513, Baton Rouge, Louisiana, 70821.

EXECUTIVE COMMITTEE:

For one-year terms, expiring December 31, 2016

Andrea B. Carroll; Paul M. Hebert Law Center, Room 450, LSU Law Center, Baton Rouge, Louisiana, 70803.

Leo C. Hamilton; One American Place, 301 Main Street, Suite 2300, Baton Rouge, Louisiana, 70825.

Guy Holdridge; 1st Circuit Court of Appeal, P.O. Box 4408, Baton Rouge, Louisiana, 70821.

PRACTICING ATTORNEYS ELECTED AS MEMBERS:

For four-year terms expiring December 31, 2019

Andre Doguet; 1223 St. John Street, Lafayette, Louisiana, 70506.

Isaac M. "Mack" Gregorie; II City Plaza, 400 Convention Street, Suite 700, Baton Rouge, Louisiana, 70802.

Edwin R. McIntyre, Jr.; 810 Pine Street, Winnsboro, Louisiana, 71295.

Harry "Skip" J. Philips, Jr.; 451 Florida Street, Floor 8, Baton Rouge, Louisiana, 70801-1700.

James A. Stuckey; 365 Canal Street, Suite 2000, New Orleans, Louisiana, 70130-6534.

Peter S. Title; 201 St. Charles Avenue, Suite 3500, New Orleans, Louisiana, 70170.

REPRESENTATIVE OF THE YOUNG LAWYERS SECTION:

For two-year terms expiring December 31, 2017

Peter Pohorelsky; 901 Lakeshore Drive, 9th Floor, P.O. Drawer 3028 (70602), Lake Charles, Louisiana, 70601.

OBSERVERS OF THE YOUNG LAWYERS SECTION:

For one-year terms expiring December 31, 2016

Anna "Annie" Scardulla; 195 Greenbriar Boulevard, Suite 200, Covington, Louisiana, Louisiana, 71104.

Betty Marianne Wise; 1 Galleria Boulevard, Suite 1400, Metairie, Louisiana, 70001.

REPRESENTATIVE, LOYOLA UNIVERSITY SCHOOL OF LAW

For a four-year term expiring, December 31, 2019

Sandi S. Varnado; Loyola University School of Law, 7214 St. Charles Avenue, Campus Box 901, New Orleans, Louisiana, 70118.

REPRESENTATIVE, SOUTHERN UNIVERSITY LAW CENTER

For a four-year term expiring, December 31, 2019

Christopher K. Odinet; 1329 Drehr Avenue, Baton Rouge, Louisiana, 70806.

Shawn D. Vance; Southern University Law Center, P.O. Box 9294, Baton Rouge, Louisiana, 70813.

Roederick White; Southern University Law Center, P.O. Box 9294, Baton Rouge, Louisiana, 70813.

REPRESENTATIVE, TULANE UNIVERSITY SCHOOL OF LAW
For a four-year term expiring, December 31, 2019

Jeanne Louise Carriere; Tulane University School of Law, 6329 Freret Street, New Orleans, Louisiana, 70118.

THREE HONOR GRADUATES OF EACH LAW SCHOOL NOMINATED
FOR JUNIOR HONORARY MEMBERSHIP IN THE INSTITUTE:
For one year terms, expiring December 31, 2016

PAUL M. HEBERT LAW CENTER

Molly L. Csaki; II City Plaza, 400 Convention Street, Suite 1100, Baton Rouge, Louisiana, 70802.

Rodger "Rory" Green; One Shell Square, 701 Poydras Street, Suite 4700, New Orleans, Louisiana, 70139.

Ahmed M. Mohamed; 400 Convention Street, #700, Baton Rouge, Louisiana, 70802. (P.O. Box 3513, Baton Rouge, Louisiana, 70821).

LOYOLA UNIVERSITY SCHOOL OF LAW

Annie McBride; 3828 Bienville Street, New Orleans, Louisiana, 70119.

Justin Swaim; 273 Heather Drive, Mandeville, Louisiana, 70471.

Francis (Frankie) Waguespack; 405 St. John Drive, Thibodaux, Louisiana, 70301.

SOUTHERN UNIVERSITY LAW CENTER

Kelley R. Dick, Jr.; 450 Laurel Street, Floor 8, Baton Rouge, Louisiana, 70801.

Cranay D. Murphy; 133 John Paul Drive, Opelousas, Louisiana, 70570.

Johanna A. Posada; 8440 Jefferson Highway, Suite 301, Baton Rouge, Louisiana, 70809.

TULANE UNIVERSITY SCHOOL OF LAW

Chloe Chetta; Law Clerk, The Chambers of Honorable Sarah S. Vance, 500 Poydras Street, Room C255, New Orleans, Louisiana, 70130.

Jeffrey Gelpi; Law Clerk, The Chambers of Honorable Carl J. Barbier, 500 Poydras Street, Room C256, New Orleans, Louisiana, 70130.

James Gilbert; Law Clerk, The Chambers of Honorable Jane Riche Milazzo, 500 Poydras Street, Room C206, New Orleans, Louisiana, 70130.

APPOINTMENTS BY OPERATION OF LAW

ANY LOUISIANA MEMBER OF THE BOARD OF GOVERNORS OF THE NATIONAL BAR ASSOCIATION

For one-year term, expiring July 28, 2016

Christopher B. Hebert; 4552 Winnebago Street, Baton Rouge, Louisiana, 70805.

A LOUISIANA MEMBER OF THE NATIONAL BAR ASSOCIATION TO BE APPOINTED BY THE PRESIDENT OF THE ORGANIZATION

For a one-year, expiring July 15, 2016

Angelique Reed; 421 Loyola Avenue, New Orleans, Louisiana, 70125.

A LOUISIANA MEMBER OF THE NATIONAL BAR ASSOCIATION APPOINTED BY THE PRESIDENT OF THE LOUISIANA JUDICIAL COUNCIL

For unexpired term of Luke Lavergne, October 8, 2015 to June 30, 2016

Angelique Reed; 421 Loyola Avenue, New Orleans, Louisiana, 70125.

THE PRESIDENT OF THE STATE CHAPTER OF THE LOUIS A. MARTINET SOCIETY OR HIS DESIGNEE

For one-year term, expiring December 31, 2016

Deidre D. Robert; 14430 Highway 16, Glynn, Louisiana, 70736.

THE STATE PUBLIC DEFENDER OR HIS DESIGNEE

For a one-year term, expiring December 31, 2016

John E. DiGiulio; 8075 Jefferson Highway, Baton Rouge, Louisiana, 70809.

REPRESENTATIVE, SUPREME COURT

For four year term, expiring December 31, 2019

Jefferson D. Hughes, III; Supreme Court of Louisiana, 400 Royal Street, New Orleans, Louisiana, 70130.

MEMBER, HOUSE OF DELEGATES, ABA

For two-year terms, expiring August, 2017

Richard K. Leefe; 3900 North Causeway Boulevard, Suite 1470, New Orleans, Louisiana, 70002-7253.

Judy Perry Martinez; 1724 Martinez, New Orleans, Louisiana, 70115.

Darrel J. Papillion; 12345 Perkins Road, Baton Rouge, Louisiana, 70810.

Respectfully submitted,

L. David Cromwell

Kevin C. Curry

James C. Crigler, Jr.

Leo C. Hamilton

Thomas M. Hayes, III

Emmett C. Sole

Monica T. Surprenant

Susan G. Talley

MEMBERSHIP AND NOMINATING COMMITTEE

By:  _____,

Emmett C. Sole, Chair