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March 9, 2018

Senator John A. Alario, Jr.
President of the Senate
P.O. Box 94183
Baton Rouge, Louisiana 70804

RE: SENATE RESOLUTION NO. 143 OF THE 2016 REGULAR SESSION

Dear Mr. President:

The Louisiana State Law Institute respectfully submits herewith its annual report relative to state law post-Obergefell v Hodges.

Sincerely,

A handwritten signature in black ink that reads "William E. Crawford".

William E. Crawford
Director

WEC/puc

Enclosure

cc: Senator Jean-Paul "J.P." Morrell

email cc: David R. Poynter Legislative Research Library
drplibrary@legis.la.us
Secretary of State, Mr. Tom Schedler
admin@sos.louisiana.gov

**LOUISIANA STATE LAW INSTITUTE
MARRIAGE-PERSONS COMMITTEE**

**REPORT TO THE LEGISLATURE
IN RESPONSE TO SR NO. 143 OF THE 2016 REGULAR SESSION**

Relative to state law post-*Obergefell v. Hodges*

Prepared for the
Louisiana Legislature on

March 9, 2018

Baton Rouge, Louisiana

**LOUISIANA STATE LAW INSTITUTE
MARRIAGE-PERSONS COMMITTEE**

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* * * * *

Katherine S. Spaht, Chair

Andrea B. Carroll, Reporter

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SENATE RESOLUTION NO. 143

BY SENATOR MORRELL

A RESOLUTION

To urge and request the Marriage-Persons Committee of the Louisiana State Law Institute to study, and the Louisiana State Law Institute to make, annual comprehensive and ongoing recommendations to the Legislature regarding state law post *Obergefell v. Hodges*, including but not limited to recommendations in the form of proposed legislation for revisions to laws governing families, persons, community property, successions, immovable property, the rights of third parties, procedure, and the stability and validity of transactions.

WHEREAS, in *Obergefell v. Hodges*, the United States Supreme Court in 2015 held that state bans on same-sex marriage violate both the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution, and further recognized that there was no lawful basis to uphold so-called "recognition bans" purporting to ban the recognition of same-sex marriages performed under the laws of other states; and

WHEREAS, in state cases such as *Costanza v. Caldwell* the Louisiana Supreme Court discussed the effects of *Obergefell* and pointed out that the United States Supreme Court's interpretation of the federal constitution is final and binding upon all of the courts of Louisiana, and further that *Obergefell* compels the conclusion that the state of Louisiana may not bar same-sex couples from the civil effects of marriage on the same terms accorded to opposite-sex couples; and

WHEREAS, in a preliminary report to the Legislature concerning same-sex marriage dated March 16, 2016, the Marriage-Persons Committee of the Louisiana State Law Institute pointed out that these rulings have immediately and significantly impacted many areas of Louisiana law and have further immediately made invalid and inaccurate and outdated the present language of numerous existing statutory provisions, including constitutional provisions and laws governing the rights of individuals, family law, maternity, paternity, community property, debt and other obligations of spouses, transactions involving immovable property, successions, procedure, and the rights and settled expectations of third parties under existing law; and

WHEREAS, an additional significant concern noted by the report was the potential retroactive application of the effects of *Obergefell* and the impact of such retroactive application upon marital relationships, community property, successions, and the rights of third parties, including buyers of immovable property and creditors alike; and

WHEREAS, in light of these rulings and issues, the study and development of comprehensive and ongoing revisions to numerous existing provisions of Louisiana law is necessary in order to enact statutory language that reduces legal uncertainty, promotes the orderly administration of justice, provides protections to persons and stability to family relationships and property regimes, and prevents problematic judicial action and interpretation of law adversely impacting families and innocent third parties; and

WHEREAS, the Marriage-Persons Committee of the Louisiana State Law Institute should conduct such a study and the Louisiana State Law Institute should prepare, on an annual basis, comprehensive and ongoing recommendations in the form and content of substantive legislation to revise existing provisions, or enact new provisions, of Louisiana law in order to address these issues.

THEREFORE, BE IT RESOLVED that the Senate of the Legislature of Louisiana does hereby urge and request the Marriage-Persons Committee of the Louisiana State Law Institute to study, and the Louisiana State Law Institute to make, annual comprehensive and ongoing recommendations to the Legislature regarding state law post *Obergefell v. Hodges*, including but not limited to recommendations in the form of proposed legislation for revisions to laws governing family relations, community property, successions, immovable property, the rights of third parties, procedure, and the stability and validity of transactions.

BE IT FURTHER RESOLVED that, at least forty-five days prior to the convening of each regular legislative session, the Louisiana State Law Institute shall report its findings and recommendations in the form of proposed legislation to the Legislature of Louisiana.

BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the director of the Louisiana State Law Institute.

PRESIDENT OF THE SENATE

March 9, 2018

To: Senator John A. Alario, Jr.
President of the Senate
P.O. Box 94183
Baton Rouge, Louisiana 70804

**REPORT TO THE LEGISLATURE
IN RESPONSE TO SR NO. 143 OF THE 2016 REGULAR SESSION**

Senate Resolution No. 143 of the 2016 Regular Session urged and requested the Marriage-Persons Committee of the Louisiana State Law Institute to study, and the Louisiana State Law Institute to make, annual comprehensive and ongoing recommendations to the legislature regarding state law post-*Obergefell v. Hodges*, including but not limited to recommendations in the form of proposed legislation for revisions to laws governing families, persons, community property, successions, immovable property, the rights of third parties, procedure, and the stability and validity of transactions.

The Marriage-Persons Committee, which is comprised of judges, practitioners, and law professors with expertise in this area, met and conducted research with respect to the approaches of other states. The Committee offered its proposals to the Law Institute's Council in January of 2017, and although the Council approved the project and the Committee's recommendations were submitted to the legislature, proposed legislation was not introduced during the 2017 Regular Session. Proposed legislation was, however, prefiled for the 2018 Regular Session as Senate Bill No. 98, a copy of which is attached to this report. The proposal makes necessary changes to the law to recognize that same-sex couples are permitted to marry and benefit from the civil effects of marriage and to provide that same-sex marriages validly contracted elsewhere should be given full faith and credit in Louisiana. With respect to community property, the bill proposes to enact a new statute to extend the one-year grace period afforded to new Louisiana domiciliaries to same-sex couples married on or before June 26, 2015, the date of *Obergefell v. Hodges*.

2018 Regular Session

SENATE BILL NO. 98

BY SENATOR MORRELL (On Recommendation of the Louisiana State Law Institute)

FAMILY LAW. Provides for the revision of certain terminology in marriage law. (8/1/18)

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AN ACT

To amend and reenact the headings of Chapter 1 and Title IV of Book I of the Civil Code and Civil Code Articles 86, 87, 96, 221, 236, 246, 257, 259, 263, 270, 2315.1(A)(2) and (4), (D), and (E), 2315.2(A)(2) and (4), (D), and (E), 2315.6(A)(2) and (4), 2318, 2333, 3506(8), and 3520, Code of Civil Procedure Article 3947, the headings of Chapter 1 and Code Title IV of Code Book I of Title 9 of the Louisiana Revised Statutes of 1950 and R.S. 9:223, 224(A)(2) and (C), 273(A)(1), 273.1(A), 275(C)(1)(a), 275.1(A), 309(A)(1) and 2729, R.S. 13:1832(D), and R.S. 35:11(A), to enact Civil Code Article 3506(9), R.S. 1:18, and R.S. 9:2831 and 2832, and to repeal Civil Code Articles 89 and 3506(12), relative to marriage; to provide relative to terminology; to revise terminology to be gender neutral; to provide for certain definitions, procedures, and effects; to provide for the application of law to same-sex couples; to provide relative to the community property regime and effects; to provide for the rights of third persons; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. The headings of Chapter 1 and Title IV of Book I of the Civil Code and Civil Code Articles 86, 87, 96, 221, 236, 246, 257, 259, 263, 270, 2315.1(A)(2) and (4), (D),

1 and (E), 2315.2(A)(2) and (4), (D), and (E), 2315.6(A)(2) and (4), 2318, 2333, 3506(8) and
 2 3520 are hereby amended and reenacted, and Civil Code Article 3506(9) is hereby enacted,
 3 to read as follows:

4 **TITLE IV - ~~HUSBAND AND WIFE~~ MARRIAGE**

5 **CHAPTER 1 - ~~MARRIAGE~~: GENERAL PRINCIPLES**

6 **Art. 86. Marriage; definition**

7 **Marriage is a legal relationship between a ~~man and a woman~~ two natural**
 8 **persons that is created by civil contract. The relationship and the contract are subject**
 9 **to special rules prescribed by law.**

10 **Revision Comments - 2018**

11
 12 The 2018 revision modified this Article to comply with the mandate of the United
 13 States Supreme Court that same-sex couples be permitted to exercise the right to
 14 marry in Louisiana and that same-sex marriages validly contracted elsewhere be
 15 given full faith and credit in Louisiana. *Obergefell v. Hodges*, 576 U.S. ___, 135 S.
 16 Ct. 2584 (2015). See also *Costanza v. Caldwell*, 167 So. 3d 619 (La. 2015).

17 **Art. 87. Contract of marriage; requirements**

18
 19 The requirements for the contract of marriage are:

20 The absence of legal impediment.

21 A marriage ceremony.

22 The free consent of the parties to take each other as ~~husband and wife~~
 23 **spouses**, expressed at the ceremony.

24 **Revision Comments - 2018**

25 The 2018 revision modified this Article to comply with the mandate of the United
 26 States Supreme Court that same-sex couples be permitted to exercise the right to
 27 marry in Louisiana and that same-sex marriages validly contracted elsewhere be
 28 given full faith and credit in Louisiana. *Obergefell v. Hodges*, 576 U.S. ___, 135 S.
 29 Ct. 2584 (2015). See also *Costanza v. Caldwell*, 167 So. 3d 619 (La. 2015).

30 * * *

31
 32 **Art. 96. Civil effects of absolutely null marriage; putative marriage**

33 An absolutely null marriage nevertheless produces civil effects in favor of a
 34 party who contracted it in good faith for as long as that party remains in good faith.

35 When the cause of the nullity is one party's prior undissolved marriage, the
 36 civil effects continue in favor of the other party, regardless of whether the latter

1 remains in good faith, until the marriage is pronounced null or the latter party
2 contracts a valid marriage.

3 A marriage contracted by a party in good faith produces civil effects in favor
4 of a child of the parties.

5 ~~A purported marriage between parties of the same sex does not produce any~~
6 ~~civil effects.~~

7 Revision Comments - 2018

8 The 2018 revision modified this Article to comply with the mandate of the Louisiana
9 Supreme Court that same-sex spouses be extended "the civil effects of marriage on
10 the same terms as those accorded to opposite-sex couples." Costanza v. Caldwell,
11 167 So. 3d 619, 621 (La. 2015).

12 * * *

13 Art. 221. Authority of married parents

14 ~~The father and mother~~ **Parents** who are married to each other have parental
15 authority over their minor child during the marriage.

16 Revision Comments - 2018

17 "Parent" as used in this Article is defined in Civil Code Article 3506(9) (Rev. 2018).

18 * * *

19 Art. 236. Filial honor and respect

20 A child regardless of age owes honor and respect to his ~~father and mother~~
21 **parents**.

22 Revision Comments - 2018

23 "Parent" as used in this Article is defined in Civil Code Article 3506(9) (Rev. 2018).

24 * * *

25 Art. 246. Occasion for tutorship

26 The minor not emancipated is placed under the authority of a tutor after the
27 dissolution of the marriage of his ~~father and mother~~ **parents** or the separation from
28 bed and board of either one of them from the other.

29 Revision Comments - 2018

30 "Parent" as used in this Article is defined in Civil Code Article 3506(9) (Rev. 2018).

31 * * *

1 Art. 257. Surviving parent's right of appointment

2 The right of appointing a tutor, whether a relation or a stranger, belongs
3 exclusively to the ~~father or mother~~ parent dying last.

4 The right of appointing a tutor, whether a relation or a stranger, also belongs
5 to a parent who has been named the curator for the other living spouse, when that
6 other living spouse has been interdicted, subject only to the right of the interdicted
7 parent to claim the tutorship should his incapacity be removed by a judgment of a
8 court of competent jurisdiction.

9 This is called tutorship by will, because generally it is given by testament; but
10 it may likewise be given by any declaration of the surviving ~~father or mother~~ parent,
11 or the parent who is the curator of the other spouse, executed before a notary and two
12 witnesses.

13 Revision Comments - 2018

14 "Parent" as used in this Article is defined in Civil Code Article 3506(9) (Rev. 2018).

15 * * *

17 Art. 259. Option of acceptance of tutorship

18 The tutor by will is not compelled to accept the tutorship to which he is
19 appointed by the ~~father or mother~~ parent.

20 But if he refuses the tutorship, he loses in that case all the legacies and other
21 advantages, which the person who appointed him may have made in his favor under
22 a persuasion that he would accept this trust.

23 Revision Comments - 2018

24 "Parent" as used in this Article is defined in Civil Code Article 3506(9) (Rev. 2018).

25 * * *

26 Art. 263. Qualified ascendants; collaterals by blood; surviving spouse

27 When a tutor has not been appointed to the minor by ~~father or mother~~ the
28 parent dying last, or if the tutor thus appointed has not been confirmed or has been
29 excused, then the judge shall appoint to the tutorship, from among the qualified
30 ascendants in the direct line, collaterals by blood within the third degree and the

1 surviving spouse of the minor's ~~mother or father~~ parent dying last, the person whose
2 appointment is in the best interests of the minor.

3 Revision Comments - 2018

4 "Parent" as used in this Article is defined in Civil Code Article 3506(9) (Rev. 2018).
5 Art. 270. Occasion for tutorship

6 When a minor is an orphan, and has no tutor appointed by ~~his father or~~
7 ~~mother~~ a parent, nor any relations who may claim the tutorship by effect of law, or
8 when the tutor appointed in some of the modes above expressed is liable to be
9 excluded or disqualified, or is excused legally, the judge shall appoint a tutor to the
10 minor.

11 Revision Comments - 2018

12 "Parent" as used in this Article is defined in Civil Code Article 3506(9) (Rev. 2018).

13 * * *

14 Art. 2315.1. Survival action

15 A. If a person who has been injured by an offense or quasi offense dies, the
16 right to recover all damages for injury to that person, his property or otherwise,
17 caused by the offense or quasi offense, shall survive for a period of one year from
18 the death of the deceased in favor of:

19 * * *

20 (2) The surviving ~~father and mother~~ parents of the deceased, or either of
21 them if he left no spouse or child surviving.

22 * * *

23 (4) The surviving ~~grandfathers and grandmothers~~ grandparents of the
24 deceased, or any of them, if he left no spouse, child, parent, or sibling surviving.

25 * * *

26 D. As used in this Article, the words "child", "brother", "sister", ~~"father";~~
27 ~~"mother"; "grandfather"; and "grandmother"~~ "parent", and "grandparent" include
28 a child, brother, sister, ~~father, mother, grandfather, and grandmother~~ parent, and
29 grandparent by adoption, respectively.

1 E. For purposes of this Article, a ~~father or mother~~ parent who has abandoned
2 the deceased during his minority is deemed not to have survived him.

3 Revision Comments - 2018

4 "Parent" as used in this Article is defined in Civil Code Article 3506(9) (Rev. 2018).
5 Art. 2315.2. Wrongful death action

6 A. If a person dies due to the fault of another, suit may be brought by the
7 following persons to recover damages which they sustained as a result of the death:

8 * * *

9 (2) The surviving ~~father and mother~~ parents of the deceased, or either of
10 them if he left no spouse or child surviving.

11 * * *

12 (4) The surviving ~~grandfathers and grandmothers~~ grandparents of the
13 deceased, or any of them, if he left no spouse, child, parent, or sibling surviving.

14 * * *

15 D. As used in this Article, the words "child", "brother", "sister", "~~father",~~
16 "~~mother", "grandfather", and "grandmother"~~ "parent", and "grandparent" include
17 a child, brother, sister, ~~father, mother, grandfather, and grandmother~~ parent, and
18 grandparent by adoption, respectively.

19 E. For purposes of this Article, a ~~father or mother~~ parent who has abandoned
20 the deceased during his minority is deemed not to have survived him.

21 Revision Comments - 2018

22 "Parent" as used in this Article is defined in Civil Code Article 3506(9) (Rev. 2018).

23 * * *

24 Art. 2315.6. Liability for damages caused by injury to another

25 A. The following persons who view an event causing injury to another
26 person, or who come upon the scene of the event soon thereafter, may recover
27 damages for mental anguish or emotional distress that they suffer as a result of the
28 other person's injury:

29 * * *

1 (2) ~~The father and mother~~ parents of the injured person, or either of them.

2 * * *

3 (4) ~~The grandfather and grandmother~~ grandparents of the injured person,
4 or either of them.

5 Revision Comments - 2018

6 "Parent" as used in this Article is defined in Civil Code Article 3506(9) (Rev. 2018).

7 * * *

8 Art. 2318. Acts of a minor

9 ~~The father and the mother~~ parents are responsible for the damage occasioned
10 by their minor child, who resides with them or who has been placed by them under
11 the care of other persons, reserving to them recourse against those persons.
12 However, ~~the father and mother~~ parents are not responsible for the damage
13 occasioned by their minor child who has been emancipated by marriage, by
14 judgment of full emancipation, or by judgment of limited emancipation that
15 expressly relieves the parents of liability for damages occasioned by their minor
16 child.

17 The same responsibility attaches to the tutors of minors.

18 Revision Comments - 2018

19 (a) "Parent" as used in this Article is defined in Civil Code Article 3506(9) (Rev.
20 2018).

21 (b) It is possible that only one parent will be held vicariously liable for a child's torts
22 under this Article. In R.P. v. W. Feliciana Parish Sch. Bd., 2014 WL 4667589 (La.
23 App. 1st Cir. 2014), the First Circuit held that a divorced father was not vicariously
24 liable for the damages resulting from a rape committed by his son. The father and
25 son had not resided together for many years, and the mother was awarded custody
26 of the son at the time of the parents' divorce.

27 * * *

28 Art. 2329. Exclusion or modification of matrimonial regime

29 * * *

30 Revision Comments - 2018

31 R.S. 9:2831 (2018) extends the one-year grace period afforded to new Louisiana
32 domiciliaries to same-sex couples married on or before June 26, 2015, the date of
33 Obergefell v. Hodges, 576 U.S. ___, 135 S. Ct. 2584 (2015). Much like new
34 domiciliaries, those couples will now be afforded a year to become acquainted with

1 the newly applicable community property regime, and to opt out of it without court
2 approval within a relatively short period, if they so desire.

3 * * *

4 Art. 2333. Minors

5 Unless fully emancipated, a minor may not enter into a matrimonial
6 agreement without the written concurrence of his ~~father and mother~~ parents, or of
7 the parent having his legal custody, or of the tutor of his person.

8 Revision Comments - 2018

9 (a) "Parent" as used in this Article is defined in Civil Code Article 3506(9) (Rev.
10 2018).

11 (b) If the minor's parents are married to each other, the consent of both parents is
12 required.
13

14 Art. 2334. Persons; scope of application of the legal regime

15 * * *

16 Revision Comments - 2018

17 With the 2015 decisions in Obergefell v. Hodges, 576 U.S. ___, 135 S. Ct. 2584
18 (2015), and Costanza v. Caldwell, 167 So. 3d 619 (La. 2015), same-sex marriages
19 became permissible in Louisiana. Because jurisprudence - particularly that
20 recognizing constitutional rights - has retroactive effect (see, e.g., James B. Beam
21 Distilling Co. v. Georgia, 501 U.S. 529, 549 (1991); Harper v. Va. Dept. of Taxation,
22 509 U.S. 86, 97 (1993)), the legal regime of community property may apply to
23 spouses domiciled in Louisiana and validly married in another state prior to 2015.
24 R.S. 9:2832 (2018) mitigates the effects for third parties.

25 * * *

26 Art. 3506. General definitions of terms

27 Whenever the terms of law, employed in this Code, have not been
28 particularly defined therein, they shall be understood as follows:

29 * * *

30 8. ~~Children~~ Child. ~~Under this name are included those persons~~ Child
31 signifies a person born of the marriage, those adopted, and those whose filiation to
32 the parent has been established in the manner provided by law or otherwise filiated
33 to a parent, as well as the descendants of them in the direct line the child.

34 A child born of marriage is a child conceived or born during the marriage of
35 his parents or adopted by them.

1 A child born outside of marriage is a child conceived and born outside of the
2 marriage of his parents.

3 **9. Parent. Parent signifies an ascendant of the first degree who is filiated**
4 **to a child.**

5 * * *

6 Revision Comments - 2018

7 The term "parent" includes both filiative relations by biology and by adoption,
8 persons presumed to be parents under the Civil Code, and those whose parentage has
9 been established by a judgment of filiation. See R.S. 9:355.2, cmt. (c); Ch.C. Arts.
10 116(17) and 1193.

11 * * *

12 Art. 3520. Marriage

13 A: A marriage that is valid in the state where contracted, or in the state where
14 the parties were first domiciled as husband and wife spouses, shall be treated as a
15 valid marriage unless to do so would violate a strong public policy of the state whose
16 law is applicable to the particular issue under Article 3519.

17 ~~B: A purported marriage between persons of the same sex violates a strong~~
18 ~~public policy of the state of Louisiana and such a marriage contracted in another state~~
19 ~~shall not be recognized in this state for any purpose, including the assertion of any~~
20 ~~right or claim as a result of the purported marriage.~~

21 Revision Comments - 2018

22 The 2018 revision modified this Article to comply with the mandate of the United
23 States Supreme Court that same-sex couples be permitted to exercise the right to
24 marry in Louisiana and that same-sex marriages validly contracted elsewhere be
25 given full faith and credit in Louisiana. Obergefell v. Hodges, 576 U.S. ___, 135 S.
26 Ct. 2584 (2015). See also Costanza v. Caldwell, 167 So. 3d 619 (La. 2015).

27 Section 2. Code of Civil Procedure Article 3947 is hereby amended and reenacted
28 to read as follows:

29 Art. 3947. Name confirmation

30 A. Marriage does not change the name of either spouse. However, a married
31 person may use the surname of either or both spouses as a surname.

32 B. The court may enter an order confirming the name of a ~~married woman~~
33 spouse in a divorce proceeding, whether ~~she~~ he is the plaintiff or defendant, which

1 confirmation shall be limited to the name which ~~she~~ he was using at the time of the
2 marriage, or the name of her his minor children, or her ~~maiden name~~ his surname
3 on the birth certificate, without complying with the provisions of R.S. 13:4751
4 through 4755. This Article shall not be construed to allow her to amend her an
5 amendment to a birth certificate with the Bureau of Vital Statistics.

6 Section 3. R.S. 1:18 is hereby enacted to read as follows:

7 **§18. Husband or wife denotes spouse**

8 **Unless otherwise clearly indicated by the context, the term "husband"**
9 **or "wife" shall mean "spouse".**

10 Section 4. The headings of Chapter 1 and Code Title IV of Code Book I of Title 9
11 of the Louisiana Revised Statutes of 1950 and R.S. 9:223, 224(A)(2) and (C), 273(A)(1),
12 273.1(A), 275(C)(1)(a), 275.1(A), 309(A)(1) and 2729 are hereby amended and reenacted
13 and R.S. 9:2831 and 2832 are hereby enacted to read as follows:

14 **CODE TITLE IV - ~~HUSBAND AND WIFE~~ MARRIAGE**

15 **CHAPTER 1. ~~MARRIAGE~~: GENERAL PRINCIPLES**

16 * * *

17 **§223. Form**

18 **A. An application for a marriage license shall be made on a form provided**
19 **by Subsection B of this Section.**

20 **B. The application form shall be as follows:**

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Application for Marriage (Parish), State of Louisiana				
Date of Application: _____				
Hour of Application: _____				
GROOM Applicant 1	Last Name of Groom Surname of Applicant 1	First Name of Groom Applicant 1	Middle/Second Name of Groom Applicant 1	Surname on Birth Certificate of Applicant 1
	Address	Is residence inside city limits? <input type="checkbox"/> Yes <input type="checkbox"/> No	Parish/County	State
	Race/Ethnicity	Date of Birth (month-day-year)	State of Birth	
	Father's Parent's Full Birth Name	State of Birth	Mother's Maiden Parent's Full Birth Name	State of Birth
BRIDE Applicant 2	Last Name of Bride Surname of Applicant 2	First Name of Bride Applicant 2	Middle/Second Name of Bride Applicant 2	Maiden Name of Bride Surname on Birth Certificate of Applicant 2
	Address	Is residence inside city limits? <input type="checkbox"/> Yes <input type="checkbox"/> No	Parish/County	State
	Race/Ethnicity	Date of Birth (month-day-year)	State of Birth	
	Father's Parent's Full Birth Name	State of Birth	Mother's Maiden Parent's Full Birth Name	State of Birth
Covenant Marriage	Covenant Marriage <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, complete the following: We, _____ and _____ do hereby declare our intent to contract a Covenant Marriage and, accordingly, have executed a declaration of intent attached hereto.			
Groom Applicant 1	Has the groom Applicant 1 been formerly married? _____ How many times? _____		Are you Has Applicant 1 been divorced?	
Bride Applicant 2	Has the bride Applicant 2 been formerly married? _____ How many times? _____		Are you Has Applicant 2 been divorced?	
SSN	Grooms's Applicant 1's Social Security Number		Bride's Applicant 2's Social Security Number	

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I _____ (print name of groom) do swear or affirm that the information contained in this application for marriage is true and correct. I further swear or affirm that this is my _____ (1st, 2nd, etc. number) marriage but that I am not currently married to anyone else, and that I am free to marry under the laws of the state of Louisiana. I further understand and acknowledge that giving any false information or false statement in this application of marriage shall constitute the crime of filing a false public record in violation of the Louisiana Criminal Code (R.S. 14:133).

Signature of Groom **Applicant 1**

Sworn to and subscribed before me this _____ day of _____, 20____.

Notary Public/Deputy Clerk/Deputy Registrar

I _____ (print name of bride) do swear or affirm that the information contained in this application for marriage is true and correct. I further swear or affirm that this is my _____ (1st, 2nd, etc. number) marriage but that I am not currently married to anyone else, and that I am free to marry under the laws of the state of Louisiana. I further understand and acknowledge that giving any false information or false statement in this application of marriage shall constitute the crime of filing a false public record in violation of the Louisiana Criminal Code (R.S. 14:133).

Signature of Bride **Applicant 2**

Sworn to and subscribed before me this _____ day of _____, 20____.

Notary Public/Deputy Clerk/Deputy Registrar

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§224. Application; information required

A. The application for a marriage license provided by R.S. 9:223, and containing all of the following information, shall be sworn to and signed by both parties before a notary public, deputy clerk, or deputy registrar:

* * *

(2) The full name, residence, race or ethnicity, and age of each party.

* * *

C. In cases wherein the parties intend to contract a covenant marriage, the application for a marriage license must also include the following statement completed by at least one of the two parties:

"We, (~~name of intended husband~~) and (~~name of intended wife~~ **names of intended spouses**), do hereby declare our intent to contract a Covenant Marriage and, accordingly, have executed a declaration of intent attached hereto."

* * *

§273. Covenant marriage; contents of declaration of intent

A. A declaration of intent to contract a covenant marriage shall contain all of

1 the following:

2 (1) A recitation signed by both parties to the following effect:

3 "A COVENANT MARRIAGE

4 We do solemnly declare that marriage is a covenant between ~~a man and a~~
5 ~~woman~~ **two natural persons** who agree to live together as ~~husband and wife~~ **spouses**
6 for so long as they both may live. We have chosen each other carefully and disclosed
7 to one another everything which could adversely affect the decision to enter into this
8 marriage. We have received premarital counseling on the nature, purposes, and
9 responsibilities of marriage. We have read the Covenant Marriage Act, and we
10 understand that a Covenant Marriage is for life. If we experience marital difficulties,
11 we commit ourselves to take all reasonable efforts to preserve our marriage,
12 including marital counseling.

13 With full knowledge of what this commitment means, we do hereby declare
14 that our marriage will be bound by Louisiana law on Covenant Marriages and we
15 promise to love, honor, and care for one another as ~~husband and wife~~ **spouses** for the
16 rest of our lives."

17 * * *

18 §273.1. Declaration of intent; form

19 A. The following is suggested as a form for the recitation which may be used
20 by the couple:

21 "DECLARATION OF INTENT

22 We do solemnly declare that marriage is a covenant between ~~a man and a~~
23 ~~woman~~ **two natural persons** who agree to live together as ~~husband and wife~~ **spouses**
24 for so long as they both may live. We have chosen each other carefully and disclosed
25 to one another everything which could adversely affect the decision to enter this
26 marriage. We have received premarital counseling on the nature, purposes, and
27 responsibilities of marriage. We have read the Covenant Marriage Act, and we
28 understand that a Covenant Marriage is for life. If we experience marital difficulties,
29 we commit ourselves to take all reasonable efforts to preserve our marriage,

1 including marital counseling.

2 With full knowledge of what this commitment means, we do hereby declare
3 that our marriage will be bound by Louisiana law on Covenant Marriages and we
4 promise to love, honor, and care for one another as ~~husband and wife~~ spouses for the
5 rest of our lives."

6 * * *

7 §275. Covenant marriage; applicability to already married couples

8 * * *

9 C.(1) A declaration of intent to designate a marriage as a covenant marriage
10 shall contain all of the following:

11 (a) A recitation signed by both parties to the following effect:

12 "A COVENANT MARRIAGE

13 We do solemnly declare that marriage is a covenant between ~~a man and a~~
14 ~~woman~~ two natural persons who agree to live together as ~~husband and wife~~ spouses
15 for so long as they both may live. We understand the nature, purpose, and
16 responsibilities of marriage. We have read the Covenant Marriage Act, and we
17 understand that a Covenant Marriage is for life. If we experience marital difficulties,
18 we commit ourselves to take all reasonable efforts to preserve our marriage,
19 including marital counseling.

20 With full knowledge of what this commitment means, we do hereby declare
21 that our marriage will be bound by Louisiana law on Covenant Marriage, and we
22 renew our promise to love, honor, and care for one another as husband and wife for
23 the rest of our lives."

24 * * *

25 §275.1. Declaration of intent; married couples; form

26 A. The following is suggested as a form for the recitation which may be used
27 by the couple:

28 "DECLARATION OF INTENT

29 We do solemnly declare that marriage is a covenant between ~~a man and a~~

1 ~~woman~~ two natural persons who agree to live together as husband and wife spouses
 2 for so long as they both may live. We understand the nature, purpose, and
 3 responsibilities of marriage. We have read the Covenant Marriage Act, and we
 4 understand that a Covenant Marriage is for life. If we experience marital difficulties,
 5 we commit ourselves to take reasonable efforts to preserve our marriage, including
 6 marital counseling.

7 With full knowledge of what this commitment means, we do hereby declare
 8 that our marriage will be bound by Louisiana law on Covenant Marriage, and we
 9 renew our promise to love, honor, and care for one another as husband and wife
 10 spouses for the rest of our lives."

11 * * *

12 §309. Separation from bed and board in a covenant marriage; effects

13 A.(1) Separation from bed and board in a covenant marriage does not
 14 dissolve the bond of matrimony, since the separated husband and wife spouses are
 15 not at liberty to marry again; but it puts an end to their conjugal cohabitation, and to
 16 the common concerns, which existed between them.

17 * * *

18 §2729. Presumption of uniform intent and ownership

19 Co-owners are presumed to acquire in equal portions. For the purposes of
 20 this presumption, ~~a husband and wife~~ spouses acquiring together for the community
 21 property regime are considered one co-owner.

22 * * *

23 **§2831. Matrimonial agreement without court approval for same-sex couples**

24 **Same-sex couples married on or before June 26, 2015, may enter into a**
 25 **matrimonial agreement without court approval until the expiration of one year**
 26 **from August 1, 2018.**

27 Revision Comments - 2018

28 (a) This Section extends the one-year grace period afforded to new Louisiana
 29 domiciliaries to same-sex couples married on or before June 26, 2015, the date of
 30 Obergefell v. Hodges, 576 U.S. ___, 135 S. Ct. 2584 (2015). Much like new
 31 domiciliaries, those couples will now be afforded a year to become acquainted with

1 the newly applicable community property regime, and to opt out of it without court
2 approval within a relatively short period, if they so desire.

3 (b) This Section sanctions matrimonial agreements that modify or terminate the
4 community property regime, entered into both before and after the effective date of
5 the enactment of this Section.

6 (c) The enactment of this Section is not intended to affect the validity of contracts
7 created between same-sex couples before June 26, 2015.

8 **§2832. Application of the community property regime to same-sex couples;**

9 **third persons**

10 **For same-sex couples married on or before June 26, 2015, the application**
11 **of the legal regime of the community of acquets and gains shall be without**
12 **prejudice to the rights of third parties validly acquired before August 1, 2018.**

13 Revision Comments - 2018

14 This Section is intended to protect third parties dealing with same-sex couples who
15 may have a community property regime created retroactively by the decisions in
16 Obergefell v. Hodges, 576 U.S. ___, 135 S. Ct. 2584 (2015), and Costanza v.
17 Caldwell, 167 So. 3d 619 (La. 2015). Because neither the spouses nor those third
18 parties could likely have anticipated the retroactive creation of a community property
19 regime, the regime applies only in a manner that does not prejudice rights of third
20 parties.

21 Section 5. R.S. 13:1832(D) is hereby amended and reenacted to read as follows:

22 §1832. Hearing and order

23 * * *

24 D. A privilege against disclosure of communications between spouses and
25 a defense of immunity based on the relationship of ~~husband and wife~~ spouses or
26 parent and child may not be invoked in a proceeding under this Subpart.

27 Section 6. R.S. 35:11(A) is hereby amended and reenacted to read as follows:

28 §11. Marital status of parties to be given

29 A. Whenever notaries pass any acts they shall give the marital status of all
30 parties to the act, viz. ~~If either or any party or parties are men, they shall be~~
31 ~~described as single, married, or widower. If married or widower the christian and~~
32 ~~family name of wife shall be given. If either or any party or parties are women, they~~
33 ~~shall be described as single, married or widow. If married or widow, their christian~~
34 ~~and family name shall be given, adding that she is the wife of or widow of . . . the~~

1 ~~husband's name. Parties shall be described as single, married, or widowed. If~~
2 ~~married or widowed, the full name of each party, including any maiden name~~
3 ~~or other surname, shall be listed, along with the name of the party's spouse.~~

4 * * *

5 Section 7. Civil Code Articles 89 and 3506(12) are hereby repealed in their entirety.

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Xavier Alexander.

DIGEST

SB 98 Original

2018 Regular Session

Morrell

Proposed law revises terminology in present law referring to marriage as between a man and a woman and husband and wife by deleting and making substitutions for obsolete terms.

Present law (C.C. Art. 96) provides that a marriage between parties of the same sex does not produce civil effects.

Proposed law deletes present law.

Proposed law revises terminology in present law referring to "father", "mother", "grandfather", and "grandmother" by deleting and substituting with the term "parent" or "grandparent".

Proposed law defines "parent" as an ascendant of the first degree who is filiated to a child.

Present law (C.C. Art. 3520) provides that a purported marriage between same-sex persons violates a strong public policy of the state, and such a marriage contracted in another state shall not be recognized in Louisiana.

Proposed law deletes present law.

Proposed law (R.S. 1:18) provides that the terms "husband" or "wife" shall mean "spouse".

Proposed law (R.S. 9:2831) allows same-sex couples married on or before June 26, 2015, to enter into a matrimonial agreement, without court approval, until the expiration of one year from August 1, 2018.

Proposed law (R.S. 9:2832) provides that the application of the community property regime to same-sex couples married on or before June 26, 2015, shall be without prejudice to the rights of third parties acquired prior to August 1, 2018.

Proposed law repeals present law (C.C. Art. 89) that prohibited persons of the same sex from entering into a marriage contract.

Proposed law repeals present law (C.C. Art. 3506(12)) which defined "family" to include servants.

Effective August 1, 2018.

(Amends C.C. Arts. 86, 87, 96, 221, 236, 246, 257, 259, 263, 270, 2315.1(A)(2) and (4), (D), and (E), 2315.2(A)(2) and (4), (D), and (E), 2315.6(A)(2) and (4), 2318, 2333, 3506(8), and 3520, C.C.P. Art. 3947, and R.S. 9:223, 224(A)(2) and (C), 273(A)(1), 273.1(A),

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275(C)(1)(a), 275.1(A), 309(A)(1) and 2729, R.S. 13:1832(D), and R.S. 35:11(A); adds C.C. Art. 3506(9), R.S. 1:18, R.S. 9:2831 and 2832; repeals C.C. Arts. 89 and 3506(12))