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January 15, 2020

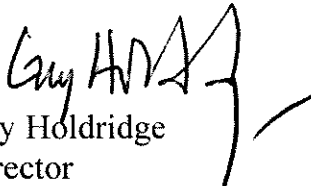
Senator Page Cortez
President of the Senate
P.O. Box 94183
Baton Rouge, Louisiana 70804

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

Dear Mr. President:

The Louisiana State Law Institute respectfully submits its report to the legislature relative to state law post-*Obergefell v. Hodges*.

Sincerely,


Guy Holdridge
Director

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

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

**ANNUAL 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

January 15, 2020

Baton Rouge, Louisiana

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

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* * * * *

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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

January 15, 2020

To: Senator Patrick Page Cortez
President of the Senate
P.O. Box 94183
Baton Rouge, Louisiana 70804

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

Senate Resolution No. 143 of the 2016 Regular Session 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 met and conducted research with respect to the approaches of other states. Council recommendations were submitted to the legislature in 2017 but no legislation was introduced. Senate Bill No. 98, was, however, filed during the 2018 Regular Session but failed to pass the Senate Committee on Judiciary A. Updated recommendations are attached to this report. The recommendations make 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 draft 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*.

Respectfully submitted,

Professor Andrea B. Carroll, Reporter
Marriage Persons Committee
Louisiana State Law Institute

2020 Regular Session

SENATE BILL NO.

BY SENATOR

(On Recommendation of the Louisiana State Law Institute)

MARRIAGE: Provides for the revision of terminology in marriage law

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 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 provide Comments to Civil Code Articles 2329 and 2334, to enact R.S. 1:18 and R.S. 9:2831 and 2832, and to repeal Civil Code Article 89, relative to marriage; to change the terminology to be gender neutral; to provide for the application of law to same-sex couples; to provide for the effect of the community property regime; to provide for the rights of third persons; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

1 Section 1. The headings of Chapter 1 and Title IV of Book I of the Civil Code and Civil
2 Code Articles 86, 87, 96, 221, 236, 246, 257, 259, 263, 270, 2315.1(A)(2) and (4), (D), and (E),
3 2315.2(A)(2) and (4), (D), and (E), 2315.6(A)(2) and (4), 2318, 2333, and 3520 are hereby
4 amended and reenacted and Comments to Civil Code Articles 2329 and 2334 are hereby provided
5 to read as follows:

6 TITLE IV - ~~HUSBAND AND WIFE~~ MARRIAGE

7 CHAPTER 1 - ~~MARRIAGE~~: GENERAL PRINCIPLES

8 Art. 86. Marriage; definition

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

12 Revision Comments – 2020

13 The 2020 revision modified this Article to comply with the mandate of the United
14 States Supreme Court that same-sex couples be permitted to exercise the right to marry in
15 Louisiana and that same-sex marriages validly contracted elsewhere be given full faith and
16 credit in Louisiana. *Obergefell v. Hodges*, 576 U.S. ___, 135 S. Ct. 2584 (2015). *See also*
17 *Costanza v. Caldwell*, 167 So. 3d 619 (La. 2015).

18 Art. 87. Contract of marriage; requirements

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~~ spouses,
23 expressed at the ceremony.

24 Revision Comments – 2020

1 Art. 236. Filial honor and respect

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

3 * * *

4 Art. 246. Occasion for tutorship

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

8 * * *

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

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

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

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

20 * * *

21 Art. 259. Option of acceptance of tutorship

1 offense or quasi offense, shall survive for a period of one year from the death of the
2 deceased in favor of:

3 * * *

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

6 * * *

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

9 * * *

10 D. As used in this Article, the words "child", "brother", "sister", "~~father", "mother",~~
11 "~~grandfather", and "grandmother"~~ "parent", and "grandparent" include a child, brother,
12 sister, ~~father, mother, grandfather, and grandmother~~ parent, and grandparent by adoption,
13 respectively.

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

16 Art. 2315.2. Wrongful death action

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

19 * * *

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

22 * * *

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

3 * * *

4 D. As used in this Article, the words "child", "brother", "sister", "~~father", "mother",~~
5 "~~grandfather", and "grandmother"~~ "parent", and "grandparent" include a child, brother,
6 sister, ~~father, mother, grandfather, and grandmother~~ parent, and grandparent by adoption,
7 respectively.

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

10 * * *

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

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

15 * * *

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

17 * * *

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

20 * * *

21 Art. 2318. Acts of a minor

1 A minor under the age of sixteen may not enter into a matrimonial agreement. A
2 minor sixteen or seventeen years of age may not enter into a matrimonial agreement
3 without judicial authorization and the written concurrence of his ~~father and mother~~ parents,
4 or of the parent having his legal custody, or of the tutor of his person.

5 Revision Comments – 2020

6 If the minor’s parents are married to each other, the consent of both parents is
7 required.

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

9 * * *

10 Revision Comments – 2020

11 With the 2015 decisions in *Obergefell v. Hodges*, 576 U.S. ___, 135 S. Ct. 2584
12 (2015), and *Costanza v. Caldwell*, 167 So. 3d 619 (La. 2015), same-sex marriages became
13 permissible in Louisiana. Because jurisprudence – particularly that recognizing
14 constitutional rights – has retroactive effect (*see, e.g., James B. Beam Distilling Co. v.*
15 *Georgia*, 501 U.S. 529, 549 (1991); *Harper v. Va. Dept. of Taxation*, 509 U.S. 86, 97
16 (1993)), the legal regime of community property may apply to spouses domiciled in
17 Louisiana and validly married in another state prior to 2015. R.S. 9:2832 (2020) mitigates
18 the effects for third parties.

19 * * *

20 Art. 3520. Marriage

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

25 ~~B.~~ A ~~purported marriage between persons of the same sex violates a strong public~~
26 ~~policy of the state of Louisiana and such a marriage contracted in another state shall not be~~

1 recognized in this state for any purpose, including the assertion of any right or claim as a
2 result of the purported marriage.

3 Revision Comments – 2020

4 The 2020 revision modified this Article to comply with the mandate of the United
5 States Supreme Court that same-sex couples be permitted to exercise the right to marry in
6 Louisiana and that same-sex marriages validly contracted elsewhere be given full faith and
7 credit in Louisiana. *Obergefell v. Hodges*, 576 U.S. ___, 135 S. Ct. 2584 (2015). *See also*
8 *Costanza v. Caldwell*, 167 So. 3d 619 (La. 2015).

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

11 Art. 3947. Name confirmation

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

14 B. The court may enter an order confirming the name of a ~~married woman~~ spouse
15 in a divorce proceeding, whether ~~she~~ the person is the plaintiff or defendant, which
16 confirmation shall be limited to the name ~~which she~~ that the person was using at the time
17 of the marriage, or the name of ~~her~~ the person's minor children, or ~~her maiden name~~ the
18 person's surname on the birth certificate, without complying with the provisions of R.S.
19 13:4751 through 4755. This Article shall not be construed to allow ~~her to amend her an~~ an
20 amendment to a birth certificate with the Bureau of Vital Statistics.

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

22 §18. Husband or wife denotes spouse

23 Unless otherwise clearly indicated by the context, the term “husband” or “wife”
24 shall mean “spouse.”

1 Section 4. The headings of Chapter 1 and Code Title IV of Code Book I of Title 9 of the
 2 Louisiana Revised Statutes of 1950 and R.S. 9:223, 224(A)(2) and (C), 273(A)(1), 273.1(A),
 3 275(C)(1)(a), 275.1(A), 309(A)(1), and 2729 are hereby amended and reenacted and R.S. 9:2831
 4 and 2832 are hereby enacted to read as follows:

5 CODE TITLE IV - ~~HUSBAND AND WIFE~~ MARRIAGE

6 CHAPTER 1. ~~MARRIAGE~~: GENERAL PRINCIPLES

7 * * *

8 §223. Form

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

11 B. The application form shall be as follows:

Application for Marriage _____ (Parish), State of Louisiana Date of Application: Hour of Application:				
GROOM <u>Applicant 1</u>	Last Name of Groom <u>Surname of Applicant 1</u>	First Name of Groom <u>Applicant 1</u>	Middle/Second Name of Groom <u>Applicant 1</u>	<u>Surname on Birth Certificate of Applicant 1</u>
	Address	Is residence inside city limits? <input type="checkbox"/> Yes <input type="checkbox"/> No	Parish/County	State
	<u>Race/Ethnicity</u>	Date of Birth (month-day-year)	State of Birth	
	Father's <u>Parent's Full Birth Name</u>	State of Birth	Mother's Maiden <u>Parent's Full Birth Name</u>	State of Birth

BRIDE- Applicant 2	Last Name of Bride <u>Surname of Applicant 2</u>	First Name of Bride <u>Applicant 2</u>	Middle/Second Name of Bride <u>Applicant 2</u>	Maiden Name of Bride <u>Surname on Birth Certificate of Applicant 2</u>
	Address	Is residence inside city limits? <input type="checkbox"/> Yes <input type="checkbox"/> No	Parish/County	State
	<u>Race/Ethnicity</u>	Date of Birth (month-day-year)	State of Birth	
	Father's <u>Parent's Full Birth Name</u>	State of Birth	Mother's Maiden <u>Parent's Full Birth Name</u>	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 <u>Applicant 1</u> been formerly married? _____ How many times? _____		Are you <u>Has Applicant 1 been</u> divorced _____?	
Bride- Applicant 2	Has the bride <u>Applicant 2</u> been formerly married? _____ How many times? _____		Are you <u>Has Applicant 2 been</u> divorced _____?	
SSN	Grooms's <u>Applicant 1's</u> Social Security Number		Bride's <u>Applicant 2's</u> Social Security Number	

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

1

2

§224. Application; information required

3

A. The application for a marriage license provided by R.S. 9:223, and containing

4

all of the following information, shall be sworn to and signed by both parties before a

5

notary public, deputy clerk, or deputy registrar:

6

* * *

7

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

8

* * *

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

4 "We, [~~name of intended husband~~] and [~~name of intended wife~~ names of intended
5 spouses], do hereby declare our intent to contract a Covenant Marriage and, accordingly,
6 have executed a declaration of intent attached hereto."

7 * * *

8 §273. Covenant marriage; contents of declaration of intent

9 A. A declaration of intent to contract a covenant marriage shall contain all of the
10 following:

11 (1) 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 woman~~
14 two natural persons who agree to live together as ~~husband and wife~~ spouses for so long as
15 they both may live. We have chosen each other carefully and disclosed to one another
16 everything which could adversely affect the decision to enter into this marriage. We have
17 received premarital counseling on the nature, purposes, and responsibilities of marriage.
18 We have read the Covenant Marriage Act, and we understand that a Covenant Marriage is
19 for life. If we experience marital difficulties, we commit ourselves to take all reasonable
20 efforts to preserve our marriage, including marital counseling.

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

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

4 "A COVENANT MARRIAGE

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

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

15 * * *

16 §275.1. Declaration of intent; married couples; form

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

19 "DECLARATION OF INTENT

20 We do solemnly declare that marriage is a covenant between ~~a man and a woman~~
21 two natural persons who agree to live together as ~~husband and wife~~ spouses for so long as
22 they both may live. We understand the nature, purpose, and responsibilities of marriage.

1 We have read the Covenant Marriage Act, and we understand that a Covenant Marriage is
2 for life. If we experience marital difficulties, we commit ourselves to take reasonable
3 efforts to preserve our marriage, including marital counseling.

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

8 * * *

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

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

14 * * *

15 §2729. Presumption of uniform intent and ownership

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

19 * * *

20 §2831. Matrimonial agreement without court approval for same-sex couples

21 Same-sex couples married on or before June 26, 2015 may enter into a matrimonial
22 agreement without court approval until the expiration of one year from August 1, 2020.

Revision Comments – 2020

(a) This Section extends 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*, 576 U.S. ___, 135 S. Ct. 2584 (2015). Much like new domiciliaries, those couples will now be afforded a year to become acquainted with the newly applicable community property regime, and to opt out of it without court approval within a relatively short period, if they so desire.

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

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

§2832. Application of the community property regime to same-sex couples; third persons

For same-sex couples married on or before June 26, 2015, the application of the legal regime of the community of acquets and gains shall be without prejudice to the rights of third parties validly acquired before August 1, 2020.

Revision Comments – 2020

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

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

§1832. Hearing and order

* * *

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

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

5 §11. Marital status of parties to be given

6 A. Whenever notaries pass any acts they shall give the marital status of all parties
7 to the act, viz: ~~If either or any party or parties are men, they shall be described as single,~~
8 ~~married, or widower. If married or widower the christian and family name of wife shall be~~
9 ~~given. If either or any party or parties are women, they shall be described as single, married~~
10 ~~or widow. If married or widow, their christian and family name shall be given, adding that~~
11 ~~she is the wife of or widow of . . . the husband's name. Parties shall be described as~~
12 single, married, or widowed. If married or widowed, the full name of each party, including
13 any maiden name or other surname, shall be listed, along with the name of the party's
14 spouse.

15 * * *

16 Section 7. Civil Code Article 89 is hereby repealed in its entirety.

DIGEST

The digest printed below was prepared by the Louisiana State Law Institute. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

SB _____ 2020 Regular Session

Abstract: Revises the terminology in the marriage laws to be gender neutral and provides for the application of the community property regime to same-sex married couples.

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.”

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, 2020.

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, 2020.

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

(Amends the headings of Chapter 1 and Title IV of Book I of the Civil Code and 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 and 3520, C.C.P. Art. 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); Provides Comments to C.C. Arts. 2329 and 2334; Adds R.S. 1:18, and R.S. 9:2831 and 2832; Repeals C.C. Art. 89)