



LOUISIANA STATE LAW INSTITUTE

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May 15, 2014

Representative Charles "Chuck" Kleckley
Speaker of the House of Representatives
P.O. Box 94062
Baton Rouge, Louisiana 70804-9062

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

RE: HCR 107 of 2013

Dear Mr. Speaker and Mr. President:

The Louisiana State Law Institute respectfully submits herewith its report to the legislature in response to 2013 House Concurrent Resolution No. 107, relative to will registry.

Sincerely,

A handwritten signature in cursive script that reads "William E. Crawford".

William E. Crawford
Director

WEC/puc

Enclosure

cc: Representative Jay Morris

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

SUCCESSIONS AND DONATIONS COMMITTEE

**REPORT TO THE LOUISIANA LEGISLATURE
IN RESPONSE TO HCR No. 107 OF THE 2013 REGULAR SESSION
(Will Registry)**

May 15, 2014
Baton Rouge, Louisiana

Max Nathan, Jr., Chairman and Reporter

Claire Popovich, Staff Attorney

LOUISIANA STATE LAW INSTITUTE
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Max Nathan, Jr., Chairman and Reporter
Claire Popovich, Staff Attorney

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To: Representative Charles "Chuck" Kleckley
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**REPORT TO THE LEGISLATURE IN RESPONSE TO HCR NO. 107 OF
THE 2013 REGULAR SESSION RELATIVE TO WILL REGISTRY**

House Concurrent Resolution No. 107 of the 2013 regular session requests that the Law Institute "study and make recommendations relative to the feasibility of creating a central database for testaments and to report its findings and recommendations to the Louisiana Legislature no later than January 1, 2015."

Two provisions in the Louisiana Revised Statutes already provide for a database of testaments. They are R.S. 9:2446 and 2447. Revised Statute 9:2446 provides:

The secretary of state shall establish a registry in which a testator, or his attorney, if authorized by the testator to do so, may register information regarding the execution of the testator's will. Such information shall be kept in strictest confidence until the death of the testator and then it shall be made available to any person who presents a death certificate, or affidavit of death and heirship, or other satisfactory evidence of the death of the testator. Information that may be received, preserved in confidence until death, and reported as indicated is limited to the name, social security or other individual identifying number established by law, address, date, place of birth of the testator, and the intended place of deposit or safekeeping of the instrument pending the death of the testator or the name and address of the attorney or other person having information regarding the place of deposit or safekeeping.

Revised Statute 9:2447 simply provides a fee schedule for the will registry. These Statutes became law through Acts 1981, No. 222, §1.

In order to fulfil its duty by giving the resolution full consideration, the Successions and Donations Committee of the Louisiana State Law Institute continued its research despite the fact that R.S. 9:2446 and 2247 seem to adequately answer the question as to whether a will registry could or should exist in Louisiana.

During the course of the Committee’s research, it was found that two states, Maryland and Idaho, currently have state-wide databases of testaments. The Maryland regime is the more comprehensive of the two and actually assesses liability to a party who has custody of the will and “willfully fails or refuses to deliver” the will to the register after she is informed of the death of the testator.¹ This liability is rather broad in that the recalcitrant custodian is thereafter liable to any person who is “aggrieved for the damages sustained by reason of the failure or refusal.”² Such a wide grant of liability upon a custodian gives some heft to the statute. This is in opposition to Idaho’s will registry. The Idaho scheme is comprised mainly of one Statute that has no liability provision. Rather, it specifically disclaims liability for the secretary of state and the attorney who represents an “interested person.”³ For the most part, Idaho simply creates a repository for wills for Idahoans.

After studying these Statutes, the Committee considered the possibility and desirability of creating a state-wide repository for wills in Louisiana—as is used in Maryland. After some discussion, the Committee concluded that a registry that would serve as a repository for individuals’ wills is not needed. The only change that the Committee decided to recommend is that the will registration form, as found on the secretary of state website⁴, eliminate any reference to social security numbers. The Committee agreed that the use of personal social security numbers is unnecessary and can be potentially harmful in light of modern identity theft concerns.

In response to the issues presented in HCR No. 107 of the 2013 regular legislative session, the Louisiana State Law Institute has thoroughly considered the possible benefits and disadvantages that could flow from will registration in Louisiana. After months of careful consideration and study, the Louisiana State Law Institute has concluded that the current will registry, as provided by R.S. 9:2446 and 2447, sufficiently meets the intent of the resolution.

¹ MD Code, Estates and Trusts, §4-202.

² Ibid.

³ I.C. §15-2-1001.

⁴ It can be found at: <http://www.sos.la.gov/OurOffice/EndOfLifeRegistries/Pages/default.aspx>.

HOUSE CONCURRENT RESOLUTION NO. 107

BY REPRESENTATIVE JAY MORRIS

A CONCURRENT RESOLUTION

To authorize and direct the Louisiana State Law Institute to study and make recommendations relative to the feasibility of creating a central database for testaments and to report its findings and recommendations to the Louisiana Legislature no later than January 1, 2015.

WHEREAS, executing a testament is one of the most important aspects of estate planning; and

WHEREAS, a testament is crucial to the orderly handling of a person's estate, not only for financial matters, but also for personal matters such as tutorship and the caring for the family of the testator; and

WHEREAS, properly executed testaments are occasionally misplaced or even improperly concealed or destroyed in order to subvert the decisions of the testator as to his estate; and

WHEREAS, in order to alert interested parties that a testament has been executed and to deter the improper concealment or destruction of a testament, it may be beneficial to establish a voluntary central database to store testaments, the contents of a testament, or information noting the existence of a testament; and

WHEREAS, a central database could be created within the office of the secretary of state or the clerk of court for the parish in which the testator is domiciled.

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby authorize and direct the Louisiana State Law Institute to study and make recommendations relative to the feasibility of creating a central database for testaments and that it report its findings and recommendations to the Louisiana Legislature no later than January 1, 2015.

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

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE