



LOUISIANA STATE LAW INSTITUTE

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January 30, 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 174 of 2013

Dear Mr. Speaker and Mr. President:

The Louisiana State Law Institute respectfully submits herewith its interim report to the legislature in response to 2013 House Concurrent Resolution No. 174, relative to self-authenticating records in the Code of Evidence.

Sincerely,


William E. Crawford
Director

WEC/puc

Enclosure

cc: Representative Franklin Foil

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

CODE OF CIVIL PROCEDURE COMMITTEE

**Continuous Revision of the
CODE OF CIVIL PROCEDURE**

**INTERIM REPORT TO THE LOUISIANA LEGISLATURE
IN RESPONSE TO HCR 174 OF THE 2013 REGULAR SESSION**

SELF-AUTHENTICATED RECORDS IN THE EVIDENCE CODE

January 30, 2014

Baton Rouge, Louisiana

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* * * * *

Richard F. Knight, Chairman

William R. Forrester, Reporter

H. "Hal" Mark Levy, Staff Attorney

Regular Session, 2013

HOUSE CONCURRENT RESOLUTION NO. 174

BY REPRESENTATIVE FOIL

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A CONCURRENT RESOLUTION

To urge and request the Louisiana State Law Institute to study and make recommendations relative to Code of Evidence Article 902 to provide for certain self-authenticated records and to report its findings and recommendations to the Louisiana Legislature no later than February 1, 2014.

WHEREAS, Code of Evidence Article 902 provides exceptions from the requirement of extrinsic evidence of authenticity for certain documents; and

WHEREAS, business records of regularly conducted activities within the scope of Code of Evidence Article 803(6) are frequently required to be admitted into evidence; and

WHEREAS, admitting such business records into evidence frequently requires the testimony of an employee of the business in order to authenticate the records; and

WHEREAS, in many cases the parties to the action incur unnecessary expenses in presenting the witness to the court when the parties would otherwise agree to recognizing a certification from the witness to authenticate the records; and

WHEREAS, as is currently provided in the Mississippi Rules of Evidence, authorizing certified records of regularly conducted business activities to be admitted into evidence without having to call a witness to certify the records could, with certain safeguards and procedures, eliminate unnecessary costs and delays in court proceedings.

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby urge and request the Louisiana State Law Institute to study and make recommendations relative to Code of Evidence Article 902 to provide for certain self-authenticated business records and that it report its findings and recommendations to the Louisiana Legislature no later than February 1, 2014.

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

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

January 30, 2014

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

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**INTERIM REPORT TO THE LOUISIANA LEGISLATURE
IN RESPONSE TO HCR 174 OF THE 2013 REGULAR SESSION:
SELF-AUTHENTICATED RECORDS IN THE EVIDENCE CODE**

House Concurrent Resolution No. 174 of the 2013 Regular Legislative Session by Representative Foil requested the Louisiana State Law Institute to study and make recommendations relative to Code of Evidence Article 902, providing for self-authenticated records. The Resolution noted that admission into evidence of business records, often requiring testimony of an employee of the business, in many cases entails unnecessary expenses in presenting the witness when the parties would otherwise agree to recognize the certification from the witness to authenticate the records. Referencing the Mississippi Rules of Evidence, the Resolution suggested that unnecessary costs could be eliminated with a procedure, including safeguards, that would authorize certified records of regularly conducted business activities to be admitted into evidence without having to call a witness to certify the records.

The Resolution was assigned to the Code of Civil Procedure Continuous Revision Committee, William Forrester, Reporter. Amendments to Code of Evidence Articles 803 and 902 were presented to the Committee and approved for presentation to the Council of the Law Institute at its November 23, 2013 meeting. The proposals presented to Council provided a procedure that allows, in appropriate cases, the offer of certain business records as authentic without calling a live witness at the trial or hearing for that purpose. To protect the receiving party from the burden of asserting objections to authenticity at trial to a submission of voluminous business records, the records and the affidavit must be provided at a determined time period before the trial or hearing, or as otherwise ordered by the court. Once objections to authenticity are timely made the proponent is obligated to have them set for hearing before trial. If the trial court is unable to rule on the objections before trial the proponent must produce a live witness at trial to establish authenticity.

The Council at its meeting on November 23, 2013 recommitted the materials for further study. The Reporter prepared modifications, including changes in the time-lines for notice and objections, and revisions clarifying that the Article applies only to establishing “authenticity as a condition precedent to admissibility.” The modifications were presented to members of the Committee, some of whom raised further questions relating to party/non-party production of records, cost allocation, distinguishing authenticity/hearsay/admissibility, and incorporation of CCP Arts. 1466-68 into the Code of Evidence. Others questioned the application of timelines in summary matters. In addition, there is uncertainty as to the scope of the 2012 revision to R.S.13:3733(D), which authorizes businesses to use an affidavit to authenticate business records for “all purposes” under C.E. 902.

With these issues in mind, a recap of the Committee’s work on HCR 174 will be presented at the Law Institute’s Council meeting on February 21, 2014. The Committee, with oversight from the Council, will continue its efforts to prepare a workable solution to the issues raised in the Resolution.

Respectfully submitted,

William R. Forrester, Reporter
Code of Civil Procedure Committee
Louisiana State law Institute