

SENATE RESOLUTION NO. 149

BY SENATOR MORRISH

A RESOLUTION

To express the will of the Louisiana Senate regarding certain Restatements of the Law.

WHEREAS, the Louisiana Senate recognizes its inherent and exclusive duty, shared by the Louisiana House of Representatives, in determining and articulating public policy for the betterment of the citizens of our great state; and

WHEREAS, public policy is set by the legislature through the legislative process; and

WHEREAS, the sources of law in the state of Louisiana are legislation and custom; and

WHEREAS, legislation is a solemn expression of legislative will, while custom results from long-repeated practice generally accepted as having acquired the force of law; however, custom may not abrogate legislation; and

WHEREAS, when a law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written and no further interpretation may be made in search of the intent of the legislature; and

WHEREAS, it is the province of the Louisiana judiciary to interpret Louisiana law, and when the meaning of a law cannot be ascertained by the application of the laws governing statutory interpretation, the court shall consider the intent of the legislature; and

WHEREAS, when no rule for a particular situation can be derived from legislation or custom, the court is bound to proceed according to equity; and

WHEREAS, attorneys and other legal professionals and scholars, at times, rely on secondary sources in seeking to ascertain the most equitable resolution in a matter or to bolster an argument for a particular resolution in a given situation, including legal treatises, periodicals, scholarly essays, and Restatements of the Law; and

WHEREAS, the highly regarded American Law Institute describes the Restatements it produces as "aim[ing] at clear formulations of common law and its statutory elements"; and

WHEREAS, even the most carefully crafted secondary source may infringe on the legislative prerogative of the Legislature of Louisiana or the authority of the Louisiana judiciary, if it purports to pronounce public policy that is inconsistent with or in conflict with any source of law in Louisiana.

THEREFORE, BE IT RESOLVED that the Senate of the Legislature of Louisiana does hereby declare that any statement of the law contained in the Restatement of the Law, Liability Insurance does not constitute the public policy of Louisiana if the statement of the law is inconsistent with or in conflict with Louisiana law.

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PRESIDENT OF THE SENATE