

2017 Regular Session

HOUSE CONCURRENT RESOLUTION NO. 2

BY REPRESENTATIVE FOIL

CHILDREN/TUTORSHIP: Requests the Louisiana State Law Institute to study tutorship and the legal capacity of an emancipated minor

1 A CONCURRENT RESOLUTION

2 To authorize and request the Louisiana State Law Institute to study and make
3 recommendations regarding the 2009 legislative changes to the laws of tutorship and
4 emancipation.

5 WHEREAS, it is of the utmost importance to protect those individuals who lack the
6 necessary mental ability to administer their own estates; and

7 WHEREAS, one of the articles relied upon for tutorship, Civil Code Article 359,
8 places restrictions on "the legal capacity of a person with intellectual disability to that of a
9 permanent minor, except that after the age of eighteen the person, unless formally
10 interdicted, shall have the legal capacity of a minor who has been granted the emancipation
11 conferring the power of administration as set forth in Chapter 2, Section 2 of this Book and
12 Title"; and

13 WHEREAS, those articles which are referenced in Civil Code Article 359, and which
14 governed the emancipation process until 2009, have been repealed by the revision of the
15 emancipation articles by Acts 2008, No. 786, §1, which became effective January 1, 2009;
16 and

17 WHEREAS, in the case of *In re Continuing Tutorship of Mitchell Layne Franques*,
18 74 So.3d 812 (La. App. 3 Cir. 2011), the Louisiana Third Circuit Appellate Court held that
19 a person placed under a continuing tutorship who reached age eighteen years prior to the
20 2009 revision of those emancipation articles has been granted emancipation conferring the
21 power of administration authorized by those repealed articles; and

1 WHEREAS, given the *Franques* decision, those under continuing tutorship prior to
2 the 2009 change in the law may be legally able to enter into contracts and obligations for
3 which they lack the mental capability.

4 THEREFORE, BE IT RESOLVED by the Legislature of Louisiana that the Louisiana
5 State Law Institute study the laws of continuing tutorship and emancipation to establish
6 procedures for those under a continuing tutorship and to address the needed protections for
7 those individuals placed under a continuing tutorship prior to the legislative revisions of
8 2009.

9 BE IT FURTHER RESOLVED that a suitable copy of this Resolution be transmitted
10 to the director of the Louisiana State Law Institute and that the Louisiana State Law Institute
11 reports its findings and recommendations to the Legislature of Louisiana on or before
12 January 1, 2018.

DIGEST

The digest printed below was prepared by House Legislative Services. 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)]

HCR 2 Engrossed

2017 Regular Session

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Requests the La. State Law Institute to study the laws of tutorship and emancipation, particularly with regard to the changes to these areas of the law enacted in 2009.

Requests a report of its findings and recommendations to the legislature no later than Jan. 1, 2018.