

2017 Regular Session

HOUSE CONCURRENT RESOLUTION NO. 2

BY REPRESENTATIVE FOIL

A CONCURRENT RESOLUTION

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

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

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

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which are referenced in Civil Code Article 359, and which governed the emancipation process until 2009, have been repealed by the revision of the emancipation articles by Acts 2008, No. 786, §1, which became effective January 1, 2009; and

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of those emancipation articles has been granted emancipation conferring the power of administration authorized by those repealed articles; and

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

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

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

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE