

SENATE CONCURRENT RESOLUTION NO. 87

BY SENATOR CLAITOR

A CONCURRENT RESOLUTION

To urge and request the Louisiana State Law Institute to conduct a comprehensive and thorough study of electronic discovery in civil proceedings.

WHEREAS, after many years of applying the traditional paper discovery rules to electronic discovery, the United States Supreme Court adopted, effective September 1, 2006, and subject to modifying congressional legislation, amendments to the Federal Rules of Civil Procedure, which were developed by the Committee on Rules of Practice, to accommodate the discovery of electronically stored information; and

WHEREAS, the stated goals of such amendments were to recognize the importance of electronically stored information and to respond to the increasingly prohibitive costs of documents review and protection of privileged documents; and

WHEREAS, the Study Committee on Electronic Discovery of the Uniform Law Commission developed and proposed, and the commission has adopted in 2007, the Uniform Rules Relating to the Discovery of Electronically Stored Information, for member states to consider for adoption; and

WHEREAS, in 2007, upon the recommendation of the Louisiana State Law Institute, the Louisiana Legislature enacted House Bill 203 as Act 140 of the session, a bill to provide for the scope of discovery, exceptions to disclosure, remedies for inadvertent disclosure, discovery of experts, discovery of electronically stored information, live trial testimony by video, and delivery of process by commercial carrier; and

WHEREAS, in 2008, again upon recommendation of the Louisiana State Law Institute, House Bill 548 was enacted as Act 824 of the 2008 Regular Session of the Louisiana Legislature, which provided relative to consolidation of cases, consent, peremptory exception, affirmative defenses, subpoenas duces tecum, service of subpoenas by private persons, failure to comply with an order compelling discovery, pretrial conferences and orders, preparation of judgments and signing of judgments, and the use of summary proceedings; and

WHEREAS, Senate Bill No. 65 has been introduced which proposes to provide for discovery of electronically stored information, specific limitations on the discovery of electronically stored information, and sanctions; and

WHEREAS, while the Louisiana State Law Institute has undertaken to study the issue of discovery of electronic documents in civil proceedings as part of its continuous revision of the Code of Civil Procedure and the Louisiana Legislature has enacted legislation upon its recommendations, it is necessary that a comprehensive and thorough study be made of the varied issues regarding electronic discovery in civil proceedings, including but not limited to scope of electronic information, cost of discovery, preservation and spoilage of electronic information, procedural issues such as interrogatories, requests for production of documents to electronically stored information, assertion of privilege after production, and the application of sanctions, possession and control of electronic information, better management of discovery into electronically stored information, and consistency with existing law.

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby urge and request the Louisiana State Law Institute to conduct a comprehensive and thorough study of electronic discovery in civil proceedings.

BE IT FURTHER RESOLVED that the institute shall submit a written report of its findings and recommendations, including any suggested legislation, to the legislature on or before March 1, 2010.

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PRESIDENT OF THE SENATE

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SPEAKER OF THE HOUSE OF REPRESENTATIVES