

2022 Regular Session

HOUSE RESOLUTION NO. 242

BY REPRESENTATIVES THOMAS AND MAGEE

CHILDREN/CUSTODY: Requests the Louisiana State Law Institute to study the Bergeron standard

1 A RESOLUTION

2 To urge and request the Louisiana State Law Institute to study the *Bergeron* standard applied
3 to requests to modify a considered decree of permanent custody as it compares to
4 similar standards in other states and make recommendations on the codification of
5 an appropriate standard.

6 WHEREAS, Civil Code Article 131 provides that in a proceeding for divorce or
7 thereafter, the court shall award custody of a child in accordance with the best interest of the
8 child; and

9 WHEREAS, as described in the revision comments of Civil Code Article 131, an
10 additional, jurisprudential requirement is imposed in actions to change custody decisions
11 rendered in considered decrees which was established by the Louisiana Supreme Court in
12 *Bergeron v. Bergeron*, 492 So.2d 1193 (La. 1986); and

13 WHEREAS, referred to as the *Bergeron* standard, the court held that "[w]hen a trial
14 court has made a considered decree of permanent custody the party seeking a change bears
15 a heavy burden of proving that the continuation of the present custody is so deleterious to
16 the child as to justify a modification of the custody decree, or of proving by clear and
17 convincing evidence that the harm likely to be caused by a change of environment is
18 substantially outweighed by its advantages to the child", *Id.* at 1200; and

19 WHEREAS, it is in the legislature's interest to codify an appropriate standard for
20 such considerations, whether that standard be a direct codification of the *Bergeron* standard
21 or an alternate standard; and

1 WHEREAS, as part of its consideration of codification, it is in the legislature's
2 interest to determine how the *Bergeron* standard compares to similar standards in other
3 states.

4 THEREFORE, BE IT RESOLVED that the House of Representatives of the
5 Legislature of Louisiana does hereby urge and request the Louisiana State Law Institute to
6 study the *Bergeron* standard as it compares to similar standards in other states and make
7 recommendations on the codification of an appropriate standard to be applied by Louisiana
8 courts in actions to modify custody decisions rendered in considered decrees and report its
9 findings, including any proposed legislation, no later than March 10, 2023.

10 BE IT FURTHER RESOLVED that the Louisiana State Law Institute shall submit
11 one print copy and one electronic copy of any report produced pursuant to this Resolution
12 to the David R. Poynter Legislative Research Library as required by R.S. 24:772.

13 BE IT FURTHER RESOLVED that a copy of this resolution be forwarded to the
14 director of the Louisiana State Law Institute.

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)]

HR 242 Original

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Thomas

Requests the La. State Law Institute to study the *Bergeron* standard as it compares to similar standards in other states and make recommendations on the codification of an appropriate standard to be applied by the courts in actions to modify custody decisions rendered in considered decrees and report its findings, including any proposed legislation, no later than March 10, 2023.