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February 29, 2024

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Speaker of the House  
P.O. Box 94062  
Baton Rouge, Louisiana 70804

Senator Cameron Henry  
President of the Senate  
P.O. Box 94183  
Baton Rouge, Louisiana 70804

**RE: ACT 440 OF THE 2023 REGULAR SESSION**

Dear Mr. Speaker and Mr. President:

The Louisiana State Law Institute respectfully submits its report to the legislature relative to contracts with minors.

Sincerely,

A handwritten signature in blue ink, appearing to read "Guy Holdridge".

Guy Holdridge  
Director

GH/pc

Enclosure

cc: Representative Laurie Schlegel  
Representative Beryl Amedee  
Representative Rhonda Gaye Butler  
Representative R. Dewith Carrier  
Representative Paula Davis  
Representative Kathy Edmonston  
Representative Julie Emerson  
Representative Michael "Gabe" Firment

Representative Adrian Fisher  
Representative Bryan Fontenot  
Senator Valarie Hodges  
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**LOUISIANA STATE LAW INSTITUTE  
OBLIGATIONS COMMITTEE**

**REPORT IN RESPONSE TO ACT NO. 440  
OF THE 2023 REGULAR SESSION**

**Relative to contracts with minors**

Prepared for the  
Louisiana Legislature on

**February 29, 2024**

Baton Rouge, Louisiana

# **LOUISIANA STATE LAW INSTITUTE OBLIGATIONS COMMITTEE**

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**ACT No. 440**

2023 Regular Session

HOUSE BILL NO. 61

BY REPRESENTATIVES SCHLEGEL, AMEDEE, BUTLER, CARRIER, DAVIS, EDMONSTON, EMERSON, FIRMENT, FISHER, FONTENOT, HODGES, HORTON, MIKE JOHNSON, KNOX, LARVADAIN, MACK, MOORE, CHARLES OWEN, SCHAMERHORN, THOMPSON, VILLIO, AND WHITE

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AN ACT

To enact R.S. 9:2717.1, relative to contracts with minors; to provide relative to interactive computer services; to provide for consent by a legal representative; to provide for exceptions; to provide for nullity; to provide for definitions; to provide for an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 9:2717.1 is hereby enacted to read as follows:

§2717.1. Legal representative consent in contracts between a minor and an interactive computer service

A.(1) No interactive computer service shall enter into a contract or other agreement, including the creation of an online account, with a minor without obtaining the consent of the legal representative of the minor.

(2) The interactive computer service may rely on the consent of the legal representative of the minor to enter into a contract or agreement, including the creation of an online account, with a minor unless the interactive computer service knows or reasonably should know that the legal representative is no longer authorized to represent the minor.

1                    B. Any contract or agreement entered into between a minor and an  
2                    interactive computer service without the consent of the legal representative of the  
3                    minor shall be a relative nullity.

4                    C. Nothing in this Section shall bar the use of third parties to obtain the  
5                    consent of the legal representative, including the consent of the legal representative  
6                    as to multiple minors and multiple interactive computer services.

7                    D. This Section applies only to minors who are domiciled in this state as  
8                    provided by Civil Code Article 41.

9                    E. Nothing in this Section shall supersede or modify the provisions relative  
10                   to contracts made pursuant to Civil Code Article 1923.

11                   F. For the purposes of this Section:

12                   (1) "Account" means any website, application, or similar electronic means  
13                   by which users are able to create and share information, ideas, personal messages,  
14                   and other content, including texts, photos, and videos, or to participate in social  
15                   networking, gaming, or a similar online service.

16                   (2) "Consent" means having the written authority of a legal representative  
17                   of a minor to permit the minor to enter into a contract or other agreement with the  
18                   interactive computer service.

19                   (3) "Interactive computer service" means any information service, system,  
20                   or access software provider that provides or enables computer access by multiple  
21                   users to a computer server, including a service or system that provides access to the  
22                   internet and such systems operated or services offered by libraries or educational  
23                   institutions.

24                   (4) "Legal representative" means any of the following:

25                   (a) A parent with legal authority over a minor.

26                   (b) The tutor of the minor as confirmed or appointed by the court.

27                   (5) "Minor" means any person under the age of eighteen who is not  
28                   emancipated.

- 1           Section 2. The Louisiana State Law Institute is directed to do all of the following:
- 2           (1) Study and report to the Legislature by March 1, 2024, as to the impact this Act
- 3 is expected to have on the relevant Civil Code Articles regarding contracts and consent as
- 4 they relate to minors.
- 5           (2) Make recommendations to address any discrepancies or ambiguities associated
- 6 with the matters contained in this Act.
- 7           (3) Review similar legislation enacted in other states regarding best practices and
- 8 compatibility with the Louisiana Civil Code.
- 9           Section 3. Section 1 of this Act shall become effective on August 1, 2024.

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_

February 29, 2024

To: Representative Phillip DeVillier  
Speaker of the House  
P.O. Box 94062  
Baton Rouge, Louisiana 70804-9062

Senator Cameron Henry  
President of the Senate  
P.O. Box 94183  
Baton Rouge, Louisiana 70804

## **REPORT TO THE LEGISLATURE IN RESPONSE TO ACT NO. 440 OF THE 2023 REGULAR SESSION**

Acts 2023, No. 440 contained three directives for the Law Institute: (1) study the Act’s potential impact on the relevant Civil Code articles regarding contracts and consent as they relate to minors; (2) make recommendations to address any discrepancies or ambiguities associated with the Act; and (3) review similar legislation enacted in other states regarding best practices and compatibility with the Civil Code. In fulfillment of these requests, the Law Institute assigned this project to its Obligations Committee, which operates under the direction of Professor Melissa T. Lonegrass as Reporter. The Law Institute submits the following report in response to the Act.

### **I. Overview of Act 440 of the 2023 Regular Session**

Act 440 of the 2023 Regular Session enacted R.S. 9:2717.2, which regulates contracts between interactive computer services and minors. The effective date of the new law is August 1, 2024.

The main thrust of R.S. 9:2717.2 is to prohibit any “interactive computer service” from entering into a contract or other agreement with a minor, including the creation of an online account, without obtaining the consent of the minor’s legal representative.<sup>1</sup> The statute also makes any contract or agreement entered into between an interactive computer service and a minor without the consent of the legal representative of the minor a relative nullity.<sup>2</sup> The statute applies only to minors domiciled in the state of Louisiana as provided by Civil Code Article 41.<sup>3</sup>

With respect to the manner in which an interactive computer service obtains the consent of the minor, R.S. 9:2717.2 requires the interactive computer service to obtain the “written authority” of the minor’s legal representative.<sup>4</sup> The interactive computer service may rely on the consent of the minor’s legal representative to enter into a contract or agreement unless the

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<sup>1</sup> R.S. 9:2717.2(A)(1).

<sup>2</sup> R.S. 9:2717.2(B).

<sup>3</sup> R.S. 9:2717.2(D).

<sup>4</sup> R.S. 9:2717.2(F)(2).



interactive computer service knows or reasonably should know that the legal representative is no longer authorized to represent the minor.<sup>5</sup> The provision states that it does not bar the use of third parties to obtain the consent of the legal representative.<sup>6</sup>

## **II. The Existing Law Governing Contracts with Minors**

According to Civil Code Article 1918, unemancipated minors do not have the capacity to contract.<sup>7</sup> A natural person is a minor until attaining the age of eighteen.<sup>8</sup> As a general matter, any contract made by an unemancipated minor is relatively null.<sup>9</sup> As expressed by the Louisiana Supreme Court, “[b]ecause of the relative nullity of contracts when a minor is a party thereto, persons who contract with minors do so at their own peril.”<sup>10</sup>

### **A. General Rules**

As a relative nullity, a contract with unemancipated minors may be declared null by a court and, after such a declaration, is deemed never to have existed and to have no effects whatsoever.<sup>11</sup> Following the declaration of relative nullity, the parties must be restored to the situation that existed before the contract was made.<sup>12</sup> If it is impossible or impracticable to make restoration in kind, it may be made through an award of damages.<sup>13</sup>

The relative nullity of a contract made by an unemancipated minor may be invoked only by the minor, through the minor’s legal representative before attaining the age of majority or on the minor’s own behalf after attaining the age of majority.<sup>14</sup> An action for the annulment of a contract made by a minor must be brought within five years from the time the ground for nullity ceased, that is, five years from the time the minor attains the age of majority or is emancipated.<sup>15</sup> Finally, like all relatively null contracts, a contract made by a minor may be confirmed.<sup>16</sup> A contract with a minor may be confirmed by the minor’s legal representative before the minor attains the age of majority or by the minor on his own behalf after attaining the age of majority.<sup>17</sup>

### **B. Exceptions**

The Civil Code contains three exceptions to the general rules outlined above. The first is an exception to the rule governing the invocation of relative nullity. Generally, only the minor or the minor’s representative may invoke the relative nullity of the contract; the other contracting

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<sup>5</sup> R.S. 9:2717.2(A)(2).

<sup>6</sup> R.S. 9:2717.2(C).

<sup>7</sup> Civil Code Article 1918.

<sup>8</sup> Civil Code Article 29.

<sup>9</sup> Civil Code Articles 1919 and 2031.

<sup>10</sup> *Deville v. Federal Savings Bank of Evangeline Parish*, 635 So. 2d 195, 197 (La. 1994).

<sup>11</sup> Civil Code Article 2033.

<sup>12</sup> Civil Code Articles 1921 and 2033.

<sup>13</sup> Civil Code Articles 1921 and 2033.

<sup>14</sup> Civil Code Articles 1919 and 2031.

<sup>15</sup> Civil Code Article 2032.

<sup>16</sup> Civil Code Article 2031.

<sup>17</sup> *Id.*

party may not invoke minority to avoid the contract's effects.<sup>18</sup> Under Civil Code Article 1920, however, one who is ignorant of the minority at the time of contracting with a minor may, immediately upon discovering it, require that the minor or his legal representative either confirm or rescind the contract.<sup>19</sup> This rule relieves the capable party from the uncertainty of waiting until the incapable party decides to confirm or rescind the contract to determine whether the contract is valid.<sup>20</sup>

Second, under Civil Code Article 1923, a contract made with a minor may not be rescinded on grounds of incapacity if the contract was made for the purpose of providing the minor with something necessary for his support or education, or for a purpose related to his business.<sup>21</sup> In such a case, the capable party has the burden of proving to what extent, if any, the minor has received a benefit described in this Article.<sup>22</sup>

Third, under Civil Code Article 1924, when the other party reasonably relies on the minor's representation of majority, the contract may not be rescinded by the minor or the minor's representative.<sup>23</sup> The capable party must establish that he relied on the minor's false representation and that such reliance was reasonable; the mere representation of majority by an unemancipated minor does not preclude an action for rescission of the contract.<sup>24</sup>

### **III. Harmonization with Existing Law**

The primary effect of Act 440, which is to render contracts between interactive computer services and minors relatively null, is largely duplicative of existing law. The Civil Code already provides for the relative nullity of any contract made by a minor unless an exception applies. This duplication is essentially harmless and arguably beneficial by clearly indicating to interactive computer services that the contracts they make with minors are unenforceable under Louisiana law.

It is, however, a commonplace rule of statutory interpretation that when a matter is addressed by both general provisions and provisions of a more specific character, the specific provisions control over the more general statutes.<sup>25</sup> Thus, with respect to contracts between interactive computer services and minors, Act 440 could be interpreted to supersede the existing law, potentially displacing nuances of existing law that are not expressly contained in the new legislation.

The Law Institute identified the four significant differences between Act 440 and existing law for the Legislature's consideration and makes the following recommendations to better align Act 440 with existing law.

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<sup>18</sup> Civil Code Article 1919.

<sup>19</sup> Civil Code Article 1920.

<sup>20</sup> *Id.*, comment (b).

<sup>21</sup> Civil Code Article 1923.

<sup>22</sup> *Deville v. Federal Savings Bank of Evangeline Parish*, 635 So. 2d 195, 198 (La. 1994).

<sup>23</sup> Civil Code Article 1924.

<sup>24</sup> *Id.*

<sup>25</sup> *Catahoula Parish School Board v. Louisiana Machinery Rentals, LLC*, 124 So. 3d 1065 (La. 2013).

## **A. Interactive Computer Services’ Right to Require Confirmation or Rescission**

The Civil Code permits a contracting party who was ignorant of the other party’s minority at the time of contracting, immediately upon discovering the incapacity, to require the minor confirm or rescind the contract.<sup>26</sup> As discussed above, this rule relieves the capable party from the uncertainty of waiting until the incapable party decides to confirm or rescind the contract to determine whether the contract is valid.<sup>27</sup>

Act 440 does not provide an interactive computer service with this right. Instead, R.S. 9:2717.2(B) provides simply that a contract entered into between a minor and an interactive computer service without the consent of the legal representative of the minor shall be a “relative nullity.”<sup>28</sup> Unless otherwise provided by law, the relative nullity of a contract made with a minor may be raised only by the minor.<sup>29</sup> If Act 440 were held to exclusively regulate contracts between minors and interactive computer services, displacing the rules that would otherwise apply under the Civil Code, interactive computer services would not have the right to require a minor to immediately confirm or rescind the contract.

### Recommendation

Though the Legislature did not specifically refer to Civil Code Article 1920, the Law Institute’s understanding of its mandate was to harmonize Act 440 with the Civil Code. The Law Institute, therefore, recommends that R.S. 9:2717.2 should be revised to make clear that Civil Code Article 1920 is not displaced by the new law. Subsection E currently provides that the new law does not “supersede or modify the provisions relative to contracts made pursuant to Civil Code Article 1923.” The Law Institute recommends the revision of this language to state that the new law does not “supersede or modify the provisions relative to contracts made pursuant to Chapter 2 of Title IV of Book III of the Civil Code.” Chapter 2 of Title IV of Book III of the Civil Code contains the rules of the Civil Code Title on Conventional Obligations relating to contracts with minors, including Article 1920.

## **B. Interactive Computer Services’ Reasonable Reliance on Majority**

As discussed above, Article 1924 of the Civil Code does not permit a minor to rescind a contract when the other contracting party reasonably relied upon the minor’s false representation of majority.<sup>30</sup> Thus, the other party’s reasonable reliance on the minor’s false representation of majority is an exception to the general rule that contracts with minors are relatively null.<sup>31</sup> This rule protecting the interests of a party who relied in good faith on a minor’s false representation of majority prevails in modern Civil Codes.<sup>32</sup>

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<sup>26</sup> Civil Code Article 1920.

<sup>27</sup> *Id.*, comment (b).

<sup>28</sup> R.S. 9:2717.2(B).

<sup>29</sup> Civil Code Articles 1921 and 2031.

<sup>30</sup> Civil Code Article 1924.

<sup>31</sup> *Id.*

<sup>32</sup> Civil Code Article 1924, comment (b).

Act 440 does not address the circumstance of the minor’s false representation of majority and thus arguably eliminates this exception for contracts between minors and interactive computer services.

### Recommendation

Though the Legislature did not specifically refer to Civil Code Article 1924, the Law Institute recommends that R.S. 9:2717.2 should be revised to make clear that Civil Code Article 1924 is not displaced by the new law. Subsection E currently provides that the new law does not “supersede or modify the provisions relative to contracts made pursuant to Civil Code Article 1923.” The Law Institute recommends the revision of this language to state that the new law does not “supersede or modify the provisions relative to contracts made pursuant to Chapter 2 of Title IV of Book III of the Civil Code.” Chapter 2 of Title IV of Book III of the Civil Code contains the rules of the Civil Code Title on Conventional Obligations relating to contracts with minors, including Article 1924.

#### **C. Identification of Legal Representatives of the Minor; Reliance on Consent by a Person Who Lacks Authority**

R.S. 9:2717.2(F)(4) defines “legal representative” for purposes of the statute to mean either of the following: (1) a parent with legal authority over a minor; or (2) the minor’s tutor as confirmed or appointed by the court.<sup>33</sup> The statute also provides protection to an interactive computer service in the event that the person who gives consent is a legal representative who is “no longer authorized to represent the minor.”<sup>34</sup> According to R.S. 9:2717.2(A)(2), in such a case, the interactive computer service may rely on the consent of a legal representative “unless the interactive computer service knows or reasonably should know that the legal representative is no longer authorized to represent the minor.”<sup>35</sup>

The definition of “legal representative” in R.S. 9:2717.2(F)(4) is consistent with the general rules of parental authority and tutorship, according to which parental authority and the authority of a tutor include the representation of the child.<sup>36</sup> R.S. 9:2717.2(A)(2), however, derogates from the general law of parental authority and tutorship. Whereas under the Civil Code, a contract made by a person who lacks authority to represent the minor is relatively null, under R.S. 9:2717.2(A)(2), such a contract is nevertheless binding “unless the interactive computer service knows or reasonably should know that the legal representative is no longer authorized to represent the minor.”<sup>37</sup> Not only is this provision contrary to the existing law of minority, but it also works at cross-purposes with the legislative intent by validating certain contracts made on behalf of minors by persons who are not the legal representatives of those minors.

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<sup>33</sup> R.S. 9:2717.2(F)(4).

<sup>34</sup> R.S. 9:2717.2(A)(2).

<sup>35</sup> R.S. 9:2717.2(A)(2).

<sup>36</sup> Civil Code Article 222.

<sup>37</sup> R.S. 9:2717.2(A)(2).

## Recommendation

To align Act 440 with the existing law of minority and to prevent any portion of Act 440 from working at cross-purposes with the overarching legislative intent of protecting minors, the Law Institute recommends the repeal of R.S. 9:2717.2(A)(2).

### **D. Requirement of Written Consent**

R.S. 9:2717.2(F)(2) defines consent, stating that “[c]onsent” means having the *written authority* of a legal representative of a minor to permit the minor to enter into a contract or other agreement with the interactive computer service.”<sup>38</sup> This provision requires the consent of the legal representative to be obtained in writing. This writing requirement deviates from the general rule of the Civil Code that consent can be given verbally, in writing, or even by a party’s action or inaction, unless the law provides otherwise.<sup>39</sup>

The Law Institute’s Obligations Committee discussed the requirement of “written” consent at length. Although the writing requirement varies from current law, this deviation is of little practical significance. As a practical matter, the consent of the legal representative will be obtained electronically. The Louisiana Uniform Electronic Transactions Act provides that a writing requirement can be satisfied with an “electronic record”<sup>40</sup> when the parties have agreed to conduct their transaction by electronic means.<sup>41</sup> The term “electronic record” is defined to mean “a record created, generated, sent, communicated, received, or stored by electronic means” and would include the completion of an online form, email and other electronic communications, and even recordings of telephone conversations.<sup>42</sup>

## Recommendation

Given the practical reality that electronic contracting necessarily produces electronic records that will satisfy the writing requirement of R.S. 9:2717.2(F)(2) and given the likelihood that this writing requirement will incentivize interactive computer services to maintain a record of a legal representative’s consent to a minor’s contract, the Law Institute does not recommend any change to the definition of “consent” set forth in Act 440. It does, however, recommend that Subsection B be amended to set forth clearly that any confirmation of a contract that is relatively null under this provision must be not only in writing, but also express. This will prevent tacit confirmation of a contract that is relatively null under this provision by either the minor upon attaining the age of majority or the minor’s legal representative.

### **E. Application to Minors Domiciled in Louisiana; Conflict of Laws**

R.S. 9:2717.2 provides, in Subsection D, that its provisions apply only to “minors who are domiciled in this state as provided by Civil Code Article 41.” Under Article 41, the domicile of an

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<sup>38</sup> R.S. 9:2717.2(F)(2) (emphasis added).

<sup>39</sup> Civil Code Article 1927.

<sup>40</sup> R.S. 9:2607(C).

<sup>41</sup> R.S. 9:2605(B)(1).

<sup>42</sup> R.S. 9:2602, comment 6.

unemancipated minor is that of the parent or parents “with whom the minor usually resides.”<sup>43</sup> If the minor has been placed by court order under the legal authority of a parent or other person, the domicile of that person is the domicile of the minor, unless the court directs otherwise.<sup>44</sup> The domicile of an unemancipated minor under tutorship is that of his tutor.<sup>45</sup> In case of joint tutorship, the domicile of the minor is that of the tutor with whom the minor usually resides, unless the court directs otherwise.

In limiting its application to minors domiciled in Louisiana, R.S. 9:2717.2(D) is inconsistent with Book VI of the Civil Code, which provides general provisions governing conflicts of laws. Book IV provides a comprehensive scheme for the determination of which state’s law applies to a contract that has contacts with multiple states. According to Civil Code Article 3539, for example, “[a] person is capable of contracting if he possesses that capacity under the law of either the state in which he is domiciled at the time of making the contract or the state whose law is applicable to the contract under Article 3537.” Civil Code Article 3537, in turn, provides that the law of the state “whose policies would be most seriously impaired if its law were not applied” should apply to any matter relating to a contract.<sup>46</sup> The determination of which state’s “policies would be most seriously impaired” is nuanced.<sup>47</sup> After much discussion, the Law Institute concluded that the question of whether Louisiana law applies to a contract with a minor should be determined by the general law of conflicts of law, not the mere domicile of the minor.

Considering that, under the general law of conflicts of law, the question of whether Louisiana law applies to a contract between an interactive computer service and a minor turns upon whether Louisiana public policy would be impaired if Louisiana law were not applied, the Law Institute determined that it would be useful to include in the new legislation an express statement of Louisiana’s public policy regarding contracts with minors.

### Recommendation

The Law Institute recommends the repeal of R.S. 9:2717.2(D). The Law Institute also recommends the addition of a new sentence in R.S. 9:2717.2(A) expressly stating that it is the policy of this state that minors be protected in the online environment and that interactive computer services be discouraged from contracting with minors without the consent of a legal representative.

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<sup>43</sup> Civil Code Article 41.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> Civil Code Article 3537.

<sup>47</sup> Civil Code Article 3537 provides: “That state is determined by evaluating the strength and pertinence of the relevant policies of the involved states in the light of: (1) the pertinent contacts of each state to the parties and the transaction, including the place of negotiation, formation, and performance of the contract, the location of the object of the contract, and the place of domicile, habitual residence, or business of the parties; (2) the nature, type, and purpose of the contract; and (3) the policies referred to in Article 3515, as well as the policies of facilitating the orderly planning of transactions, of promoting multistate commercial intercourse, and of protecting one party from undue imposition by the other.”

#### IV. Other Ambiguities of Act 440

The Legislature tasked the Law Institute with identifying other “ambiguities” associated with Act 440, even those that do not rise to the level of “discrepancies” with existing law. The Law Institute identified several ambiguities that require the Legislature’s attention and makes the following recommendations regarding these ambiguities.

##### A. “Contract or Agreement”

R.S. 9:2717.2 requires interactive computer services to obtain the legal consent of the legal representative of a minor before entering into a “contract or other agreement” with the minor, including the creation of an online account. Neither the term “contract” nor the term “agreement” is defined in the legislation. The term “account,” however, is defined as “any website, application, or other similar electronic means by which users are able to create and share information, ideas, personal messages, and other content, including texts, photos, and videos, or to participate in social networking, gaming, or a similar online service.”<sup>48</sup>

The Civil Code does not differentiate between “contracts” and “agreements.” Instead, “contracts” and “agreements” are viewed as one and the same. Indeed, the term “contract” is defined by the Civil Code as an “*agreement* by two or more parties whereby obligations are created, modified, or extinguished.”<sup>49</sup> Presumably, a user’s creation of an online account with an interactive computer service falls within the Civil Code’s existing definition of “contract.”

##### Recommendation

To avoid unnecessary and potential confusing duplication of terms, the Law Institute recommends the deletion of the phrase “or other agreement” following “contract” wherever that phrase appears in R.S. 9:2717.2.

##### B. “Interactive Computer Service”

R.S. 9:2717.2 applies to contracts between minors and “interactive computer services.” The term “interactive computer service” is defined as “any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including a service or system that provides access to the internet and such systems operated or services offered by libraries or educational institutions.”<sup>50</sup> This term and its definition were borrowed from Section 230 of the Federal Communications Decency Act.<sup>51</sup> Courts interpreting the Communications Decency Act have held that social media companies such as Facebook qualify as interactive computer services.<sup>52</sup> Courts have held also that internet service providers, website

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<sup>48</sup> R.S. 9:2717.2(F)(1).

<sup>49</sup> Civil Code Article 1906 (emphasis added).

<sup>50</sup> R.S. 9:2717.2(F)(3).

<sup>51</sup> 47 U.S.C. 230(f)(2).

<sup>52</sup> See, e.g., *Caroccioli v. Facebook, Inc.*, 167 F. Supp. 3d 1056, 1065 (N.D. Cal. 2016).

exchange systems, online message boards, and search engines fall within this definition.<sup>53</sup> In addition, courts have found that broadband providers, domain name registrars, website hosting companies, and website operators all fall within the definition.<sup>54</sup>

Some members of the Law Institute’s Obligations Committee expressed concern that the definition of “interactive computer service” might be so broad as to also encompass small business and small-scale retail exchanges with electronic storefronts. “Mom and pop” retail businesses would therefore be subject to the provisions of R.S. 9:2717.2 in the same manner as more well-resourced companies like Facebook, YouTube, and Google. Following much discussion, however, the Obligations Committee concluded that the breadth of the definition is of little significance since R.S. 9:2717.2 is largely duplicative of existing law. That is, all contracts with minors – whether or not made online and regardless of the size and sophistication of the other contracting party – are relatively null according to the Civil Code. Even in its current form and without any of the revisions recommended by the Obligations Committee, R.S. 9:2717.2 makes few changes to the law governing contracts with minors. Thus, concerns about the overbreadth of the definition of “interactive computer service” are largely unfounded. The definition also has the benefit of having existed in federal law for several decades; thus, it is a well-known and well-understood term among industry representatives.

### Recommendation

The Law Institute does not recommend that the definition of “interactive computer service” be revised.

### **C. Relationship with Act 456 of 2023**

Act 456 of the 2023 Regular Session requires social media companies to make commercially reasonable efforts to verify the age of Louisiana account holders and prohibits a Louisiana resident who is a minor from being an account holder on a platform unless the minor has the express consent of a “parent or guardian.”<sup>55</sup> This new law prohibits social media companies from permitting certain activity with respect to minors’ accounts relating to who can send direct messages to a minor, the advertisements displayed on minors’ accounts, and the collection of personal information and data from minors’ accounts.<sup>56</sup> The law requires social media companies to provide parents or guardians of minors with the access to and the means to supervise the minor’s account.<sup>57</sup> The law bestows authority in the Department of Justice to investigate consumer complaints and to enforce the law.<sup>58</sup>

Act 456 is far broader in its scope and intent than R.S. 9:2717.2, and it imposes requirements different from those imposed by R.S. 9:2717.2 on parties contracting with minors. For example, whereas R.S. 9:2717.2 defines minors as persons under the age of eighteen who are

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<sup>53</sup> See, e.g., *Rigsby v. Godaddy Inc.*, 59 F. 4th 998, 1007 (9th Cir. 2023) (quoting *Federal Trade Commission v. LeadClick Media, LLC*, 838 F. 3d 158, 174 (2d Cir. 2016)).

<sup>54</sup> See *id.* at 1009 (collecting cases).

<sup>55</sup> R.S. 51:1752.

<sup>56</sup> R.S. 51:1753.

<sup>57</sup> R.S. 51:1754.

<sup>58</sup> R.S. 51:1755–56.



not emancipated, Act 456 defines minors as those persons under the age of sixteen who are neither emancipated nor married. R.S. 9:2717.2 applies to “interactive computer services,” but Act 456 applies to a narrower subset of entities described as “social media companies.” Additionally, while R.S. 9:2717.2 requires the consent of a “legal representative” of a minor, including a parent or tutor, Act 456 requires the consent of a “parent or guardian.” Finally, R.S. 9:2717.2 requires the consent of the proper party to be in the form of “written authority.” In contrast, Act 456 permits consent to be given in written form or by telephone, video conference, provision of identification, email, or “other commercially reasonable means.”

Industry representatives wrote to the Law Institute’s Obligations Committee to express their concern about the discrepancies between Act 456 and R.S. 9:2717.2. Ultimately, the Law Institute determined that the reconciliation of Act 456 and R.S. 9:2717.2 was beyond the scope of the Legislature’s request in Act 440 and therefore makes no recommendations regarding Act 456 at this time.

### Recommendation

The Law Institute does not recommend any revisions to R.S. 9:2717.2 in light of Acts 2023, No. 456, nor does the Law Institute recommend any revisions to Act 456.

## **V. Comparison with Other States**

Louisiana’s law governing contracts with minors is consistent with that of other states. At common law, under the Restatement Second of Contracts, and according to state-specific legislation, “infants” – defined as persons who have not yet attained the age of majority – lack the capacity to contract.<sup>59</sup> In most states, the age of majority is eighteen years; in some states, the age of majority is nineteen years, and in still other states, infancy persists until age twenty-one years for some purposes.<sup>60</sup> Infants who are emancipated have limited or full capacity to contract.<sup>61</sup> An unemancipated infant’s contracts are voidable and may be disaffirmed. Alternatively, they may be ratified.<sup>62</sup> As in Louisiana, a minor may remain liable for “necessaries” procured through contract, even though the contract may be voidable as a technical matter.<sup>63</sup> State law may set forth other exceptions to disaffirmance.<sup>64</sup>

The issue of minors contracting online in other states has received some scholarly attention but has not been addressed by many courts. Reported cases indicate that courts apply the

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<sup>59</sup> Williston on Contracts §§ 9.1; 10.1; see also 1 Leg. Rts. Child. Rev. 3D § 10:1 (3d ed.).

<sup>60</sup> Williston on Contracts § 9.3.

<sup>61</sup> *Id.* § 9.4.

<sup>62</sup> *Id.* § 9.5.

<sup>63</sup> *Id.* § 9.18. For example, California law excludes the following contracts from disaffirmance when all of the following are met: (1) the contract was made for necessities for the minor or the minor’s family; (2) the things were actually furnished to the minor or the minor’s family; and (3) the contract was entered into when the minor was not under the care of a parent or guardian. Cal. Fam. Code. § 6712.

<sup>64</sup> See, e.g., Cal. Fam. Code § 6711 (“A minor cannot disaffirm an obligation, otherwise valid, entered into by the minor under the express authority or direction of a statute.”).

general law of contracts to contracts made by minors in the online environment.<sup>65</sup> One notable case is *A.V. v. iParadigms, Limited Liability Company* out of the Eastern District of Virginia.<sup>66</sup> This case concerned a number of minor students who were required by their high school teachers to submit school papers electronically and to consent to an online agreement with Turnitin.com. Turnitin is an antiplagiarism website that cross-references various student works to determine if students are copying each other's papers. While the primary issue in this case was whether the website violated the students' copyrights to their work when it archived them for future comparison with other students' works, the enforceability of Turnitin's agreements with the minor students was also at issue. Turnitin had a "clickwrap" agreement in which the high school students clicked "I Agree" to acknowledge their acceptance of the terms of the clickwrap agreement. The *iParadigms* court had no issue with this form of consent, but the Virginia high school students were all under the age of eighteen when they agreed to the clickwrap terms. In Virginia, "a contract with an infant is not void, only voidable by the infant upon attaining the age of majority." The high school students thereby argued that because they were under age eighteen at the time of entering into the contracts, they could not be bound by the contracts. The court found that the students could not use this doctrine to void the contract while simultaneously retaining the benefits of the contract – high school credit and standing to sue.

The *iParadigms* case illustrates that contracts between minors and computer service providers are voidable under American contract law, but that those contracts may not be subject to disaffirmance if the minor has benefitted from the contract in some material way. The outcome of *iParadigms* could have been similar if Louisiana law had been applied.

That said, Louisiana is the only state to date to enact special legislation designed to address contracts between minors and interactive computer service providers. In other states, the matter is addressed by the general law of contracts.

## **VI. Summary of Recommendations**

The recommendations of the Law Institute include all of the following:

- Subsection A should be revised to include a statement of public policy.
- Paragraph (A)(1) should remain unchanged, with the exception of deleting "or other agreement" following the word "contract."
- Paragraph (A)(2) should be repealed entirely.

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<sup>65</sup> See, e.g., *Durrett v. ACT, Inc.*, 130 Hawai'i 346 (Haw. 2011) (finding that under the infancy doctrine, an arbitration agreement in an online contract between a minor and ACT, Inc. was voidable rather than void); *Devine v. Bethesda Softworks, LLC*, 636 F. Supp. 3d 564 (2022) (applying general infancy doctrine in case regarding online contracts between minors and video game developer); *Lopez v. Kmart Corporation*, 2015 WL 2062606 (N.D. Cal. 2015) (arbitration agreement in online contract between plaintiff and his employer was subject to disaffirmance statute because plaintiff was a minor when he signed it).

<sup>66</sup> 544 F. Supp. 2d 473 (E.D. Va. 2008), reversed on other grounds.

- Subsection B should include a statement indicating that confirmation of a contract between an interactive computer service and a minor must be express and in writing.
- Subsection C should remain unchanged.
- Subsection D should be repealed entirely.
- Subsection E should replace “Civil Code Article 1923” with “Chapter 2 of Title IV of Book III of the Civil Code.”
- Subsection F should remain unchanged, with the exception of deleting “or other agreement” from the definition of “consent.”

**APPENDIX: SUGGESTED REVISIONS TO R.S. 9:2717.2**

**R.S. 9:2717.2. Legal representative consent in contracts between a minor and an interactive computer service**

A.(1) It is declared to be the public policy of this state that minors are protected in the online environment and that interactive computer services shall be discouraged from contracting with minors without the consent of a legal representative.

(2) No interactive computer service shall enter into a contract or other agreement, including the creation of an online account, with a minor without obtaining the consent of the legal representative of the minor.

~~(2) The interactive computer service may rely on the consent of the legal representative of the minor to enter into a contract or agreement, including the creation of an online account, with a minor unless the interactive computer service knows or reasonably should know that the legal representative is no longer authorized to represent the minor.~~

B. Any contract ~~or agreement~~ entered into between a minor and an interactive computer service without the consent of the legal representative of the minor shall be a relative nullity. The confirmation of a contract that is relatively null in accordance with this Section shall be express and in writing.

C. Nothing in this Section shall bar the use of third parties to obtain the consent of the legal representative, including the consent of the legal representative as to multiple minors and multiple interactive computer services.

~~D. This Section applies only to minors who are domiciled in this state as provided by Civil Code Article 41.~~

~~E~~D. Nothing in this Section shall supersede or modify the provisions relative to contracts made pursuant to Chapter 2 of Title IV of Book III of the Civil Code Article 1923.

~~FE~~. For the purposes of this Section:

(1) "Account" means any website, application, or similar electronic means by which users are able to create and share information, ideas, personal messages, and other content, including texts, photos, and videos, or to participate in social networking, gaming, or a similar online service.

(2) "Consent" means having the written authority of a legal representative of a minor to permit the minor to enter into a contract ~~or other agreement~~ with the interactive computer service.

(3) "Interactive computer service" means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including a service or system that provides access to the internet and such systems operated or services offered by libraries or educational institutions.

(4) "Legal representative" means any of the following:

(a) A parent with legal authority over a minor.

(b) The tutor of the minor as confirmed or appointed by the court.

(5) "Minor" means any person under the age of eighteen who is not emancipated.