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## DIGEST

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Aubert

HB No. 363

**Abstract:** Provides for rules relative to reimbursement claims of spouses asserted after termination of the community property regime.

Present law (C.C. Art. 2358) provides that a spouse has a reimbursement claim against the other spouse upon termination of a community property regime.

Proposed law resolves a split in the circuit courts of appeal as to whether present law referred to when a claim could be made or the timing of the use of the property on which the reimbursement claim is based by providing that the reimbursement claim may be asserted only after termination of the community property regime.

Present law (C.C. Art. 2362.1) provides that attorney fees and costs in a divorce case incurred before the date of the judgment of divorce that terminates the community property regime is a community obligation.

Proposed law retains present law but clarifies that actions other than divorce may terminate the community property regime and that attorney fees in actions incidental to the divorce, such as child support, are also community obligations.

Present law (C.C. Art. 2363) provides that an obligation incurred after termination of a community property regime is a separate obligation.

Proposed law retains present law but clarifies that such obligations are technically not separate obligations in that they do not impact the community property regime.

Present law (C.C. Art. 2363) provides that an obligation arising from an intentional wrong not perpetrated for the benefit of the community is a separate obligation.

Proposed law changes present law by removing the inquiry as to a spouse's intent in committing an intentional wrong and puts the focus on whether the result benefits the community.

Present law (C.C. Art. 2364) provides for reimbursement when community property has been used to satisfy a separate obligation of a spouse.

Proposed law retains present law but clarifies that the reimbursement claim may be asserted if community property was used during the existence of the legal regime or former community

thereafter.

Present law (C.C. Art. 2364.1) provides that if community property is seized as a result of a criminal act committed by a spouse, not for the benefit of the community, the other spouse is entitled to reimbursement.

Proposed law repeals present law but does not change the law in that the same result will be obtained under general principles.

Present law (C.C. Art. 2365) provides for reimbursement claims when a community obligation is satisfied with separate property.

Proposed law resolves a split in the circuit courts of appeal as to whether reimbursement is available for the use of separate property to satisfy a community debt after termination of the legal regime but before partition by providing that post-termination, pre-partition uses of separate property to satisfy community debts are subject to a reimbursement claim.

Proposed law adds rules to provide for reimbursement claims for the use of separate property to satisfy a community debt on movable property required by law to be registered (i.e., a vehicle) such that the reimbursement claim is reduced in proportion to the value of the claimant's use and by providing that the value of the use and the amount of the claim is presumed to be equal.

Present law (C.C. Art. 2366) provides rules governing reimbursement when community property is used for the benefit of separate property.

Proposed law retains present law but clarifies that reimbursement claims may be asserted if community property was used during the existence of the legal regime or former community thereafter.

Present law (C.C. Art. 2367) provides rules governing reimbursement when separate property is used for the benefit of community property.

Proposed law clarifies present law to provide that the use of separate property for the benefit of community property must occur during the existence of the community regime.

Present law (C.C. Art. 2367.1) provides rules governing the ownership and reimbursement claims of improvements made to separate property.

Proposed law adds rules to allow reimbursement when a spouse uses separate property for the benefit of the separate property of the other spouse.

Proposed law (C.C. Art. 2367.3) fills a gap in the law for rules governing when a separate obligation is satisfied with separate property.

Present law (R.S. 9:374) provides rules for the possession and use of the family residence of

community movables and immovables.

Proposed law changes present law to authorize the court to use the same rental reimbursement rules when a spouse occupies a residence other than the family residence, such as a hunting camp or vacation home.

(Amends C.C. Arts. 2358, 2362.1-2364, and 2365-2367.2 and R.S. 9:374; Adds C.C. Art. 2367.3; Repeals C.C. Art. 2364.1)