

SENATE BILL NO. 67

BY SENATOR FOIL AND REPRESENTATIVES WILFORD CARTER, NEWELL AND
TAYLOR (On Recommendation of the Louisiana State Law Institute)

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

1 AN ACT

2 To amend and reenact Code of Civil Procedure Arts. 2881, 2882, 2889, 2890, 2901, the
3 heading of Chapter 5 of Title I of Book VI of the Code of Civil Procedure, and Code
4 of Civil Procedure Arts. 5181(A) and 5186, relative to the continuous revision of
5 successions and donations; to provide for ex parte probate; to provide for cross-
6 references; to provide for proceeding without the prior payment of costs; and to
7 provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. Code of Civil Procedure Arts. 2881, 2882, 2889, 2890, 2901, the heading
10 of Chapter 5 of Title I of Book VI of the Code of Civil Procedure, and Code of Civil
11 Procedure Arts. 5181(A) and 5186 are hereby amended and reenacted to read as follows:

12 Art. 2881. Ex parte probate if no objection

13 The court shall proceed to probate the testament ex parte ~~as provided in~~
14 ~~Article 2882~~, unless an objection ~~thereto~~ is made ~~at the hearing~~.

15 ~~An objection to the ex parte probate of a testament may be presented in an~~
16 ~~opposition, or made orally at the hearing. The opposition must comply with the~~
17 ~~provisions of Article 2902, and must be filed prior to the hearing. The oral objection~~
18 ~~must specify the grounds of invalidity of the testament asserted, and must be urged~~
19 ~~immediately after the objector has had an opportunity to examine the purported~~
20 ~~testament.~~

Art. 2882. Proceedings at probate hearing **Ex parte probate if objection**

~~At the probate hearing the court shall open the testament, if it is enclosed in a sealed envelope, receive proof of the making of the testament as provided in Articles 2883 through 2889, may read the testament to those present, and shall paraph the top and bottom of each page of the testament by inscribing it "ne varietur" over the judicial signature.~~ **An objection to the ex parte probate of a testament may be presented in an opposition. The opposition shall comply with the provisions of Article 2902 and shall be filed.**

* * *

Art. 2889. Depositions of witnesses

A petitioner for the probate of a testament ~~under~~ **in accordance with** the provisions of Articles ~~2882~~ **2883** through 2888 may obtain leave of court ex parte for the taking of the deposition of any witness whose testimony otherwise would not be available. The provisions of Articles 1426, 1434 through 1436, 1443 through 1446, 1449, 1452, and 1469 through 1471, ~~so far as applicable,~~ shall govern the taking of ~~such~~ **the** deposition.

Art. 2890. Proces verbal of probate

A. A proces verbal of the hearing shall be prepared; **and shall be** signed by the judge or ~~by~~ the clerk, and by the witnesses who testified **personally** at the hearing. **The proces verbal,** which shall be a record of the succession proceeding, ~~and which~~ shall recite or include:

(1) The opening of the testament, and the manner in which proof of its authenticity and validity was submitted;

(2) The names ~~and surnames~~ of the witnesses testifying, either personally or by affidavit or deposition; the substance of the testimony of the witnesses who testify personally at the hearing; and that any affidavits or depositions used are made a part thereof by attachment or by reference;

~~(3) The paraphing of the testament by the court, as set forth in Article 2882;~~

~~(4)~~**(3)** An order that the testament be recorded, filed, and executed, if the court finds that it has been proved in accordance with law; or an order refusing to

1 probate the testament, giving the substance of the court's reasons therefor.

2 B. If written affidavits only are used to prove a will ~~under~~ **pursuant to**
3 Articles 2883 through ~~2887~~ **2888**, the proces verbal shall be dispensed with, and the
4 court shall render a written order that the testament be recorded, filed, and executed,
5 if the court finds that it has been proved in accordance with law, or a written order
6 refusing to probate the testament, giving the substance of the court's reasons therefor.

7 * * *

8 Art. 2901. Contradictory trial required; time to file opposition

9 If an objection is made to the ex parte probate of a testament, as provided in
10 Article ~~2881~~ **2882**, the testament may be probated only at a contradictory trial of the
11 matter. ~~If only an oral objection is made to the ex parte probate, the court shall allow~~
12 ~~the opponent a reasonable delay, not exceeding ten days, to file his opposition.~~

13 * * *

14 CHAPTER 5. ~~PAYMENT OF STATE INHERITANCE TAXES~~

15 **DETAILED DESCRIPTIVE LIST IN LIEU OF INVENTORY**

16 * * *

17 Art. 5181. Privilege of ~~litigating~~ **proceeding** without prior payment of costs

18 A. Except as provided in Paragraph B of this Article, an individual who is
19 unable to pay the costs of court because of ~~his~~ poverty and lack of means may
20 prosecute or defend a judicial proceeding, **including a succession proceeding**, in
21 any trial or appellate court without paying the costs in advance or as they accrue or
22 furnishing security therefor.

23 * * *

24 Art. 5186. Account and payment of costs

25 **A.** An account shall be kept of all costs incurred by a party who has been
26 permitted to litigate without the payment of costs, by the public officers to whom
27 these costs would be payable.

28 **B. If a party has been permitted to proceed without the payment of costs**
29 **in a succession proceeding, the court shall order the payment from succession**
30 **assets of all costs due to any public officer.**

1 C. If judgment is rendered in favor of the indigent party, the party against
 2 whom the judgment is rendered shall be condemned to pay all costs due ~~such officers~~
 3 **to a public officer**, who **shall** have a privilege on the judgment superior to the rights
 4 of the indigent party or his attorney. If judgment is rendered ~~against~~ **condemning** the
 5 indigent ~~plaintiff and he is condemned~~ **party** to pay court costs, an affidavit of the
 6 account by an officer to whom costs are due; **shall be** recorded in the mortgage
 7 records; **and** shall have the effect of a judgment for the payment due.

 PRESIDENT OF THE SENATE

 SPEAKER OF THE HOUSE OF REPRESENTATIVES

 GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____