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## DIGEST

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Tim Burns

HB No. 527

**Abstract:** Provides for the continuous revision of the law on donations.

Proposed law provides for the continuous revision of the law on donations. The following is a summary of the most significant changes. A DETAILED DIGEST follows this summary.

- (1) Present law (C.C. Art. 1535) provides that if the right of return is stipulated and the thing is returned to the donor, it returns free and clear of encumbrance.

Proposed law changes the law in that the right of return is subject to the right of a good faith transferee for value and provides that the donee and his successors are held accountable for losses sustained by the donor when the thing cannot be returned due to the rights acquired by a good faith transferee.

- (2) Present law (C.C. Art. 1538) provides that an act of donation shall contain a detailed estimate of the things given.

Proposed law clarifies the law by providing that the act of donation shall identify both the donor and the donee and describe the object that is given and provides that the codal identification requirements are satisfied if the identity of the parties and the object of the donation are reasonably ascertainable from information contained in the act.

- (3) Present law (C.C. Art. 1536) provides that a donation of an incorporeal movable, such as rents, credits, rights, or actions, shall be made by notarial act.

Proposed law does not change the law, but further requires that a donation of an incorporeal movable evidenced by a certificate, document, instrument, or other writing may be made by authentic act or as provided in special rules applicable to the particular kind of movable.

Proposed law provides that investment property may be donated by a document directing the transfer of the property in favor of the donee or for his benefit.

- (4) Present law (C.C. Art. 1559) provides that grounds for revocation or dissolution of a donation are the donee's ingratitude, the nonfulfillment or nonperformance of conditions to which the donation was subject, or the legal or conventional return.

Proposed law clarifies the law and makes it more technically accurate by eliminating the legal or conventional return as a ground for invalidating a donation.

Present law (C.C. Art. 1560) provides that a donation may be revoked for ingratitude when the donee has attempted to kill the donor, has engaged in cruel treatment towards the donor, or has refused the donor food when in distress.

Proposed law changes the law by eliminating failing to provide food to the donor as a ground for revoking a donation for ingratitude.

- (5) Present law (C.C. Art. 1563) provides that in case of revocation the donee shall return the value of the thing given, along with the fruits from the day the action for revocation was brought.

Proposed law clarifies the law by expressly providing that in cases of revocation, the donee's principal obligation is to return the thing.

- (6) Present law (C.C. Art. 1567) provides that an action for revocation or rescission of a donation based on the nonperformance of conditions imposed on the donee is subject to the usual prescription.

Proposed law clarifies the law by providing that such an action is subject to the prescription of five years.

- (7) Present law (C.C. Art. 1568) provides that in case of revocation or dissolution of a donation of an immovable for nonexecution of the conditions, the property shall be returned to the donor unless the donee has alienated the property by onerous title; in the latter case, the donee shall return the value of the immovable at the time of the donation.

Proposed law changes the law by providing that when the donee fails to fulfill the conditions, the immovable donated shall be returned to the donor, even if the donee had alienated, leased, or encumbered the immovable.

- (8) Present law (C.C. Art. 1569) provides that in cases of revocation the donee need not return the fruits gathered prior to the filing of the suit for revocation.

Proposed law changes the law by providing the trial court discretion to award restoration of fruits and products if the donee's failure to perform was due to his fault.

Proposed law provides that when the donee is unable to return the thing in the condition that it was at the time of the donation the donor may require its return and hold the donee accountable for any diminution in value.

## DETAILED DIGEST:

Present law (C.C. Art. 1467) provides that property can only be disposed of gratuitously by donation in one of the forms provided by law.

Proposed law does not change the law.

Present law (C.C. Art. 1468) provides that a donation inter vivos is an act by which the donor gratuitously divests himself of property by consent in favor of the accepting donee, and which is irrevocable.

Proposed law does not change the law.

Present law (C.C. Art. 1469) provide that a donation mortis causa is an act by which the donor divests himself of his property that is effective at the donor's death, and which is revocable while the donor is alive.

Proposed law does not change the law.

Present law (C.C. Arts. 1524, 1526) provides that the rules peculiar to donations inter vivos do not apply to a donation subject to charges, except when the value of the thing given exceeds the value of the charge by fifty percent or more.

Proposed law does not change the law.

Present law (C.C. Arts. 1525, 1526) provides that the rules peculiar to donations inter vivos do not apply to remunerative donations except when the value of the gift exceeds the value of the services by fifty percent or more.

Proposed law does not change the law.

Present law (C.C. Art. 1527) provides that the donor may impose any changes or conditions provided that the charges do not violate public policy or good morals.

Proposed law does not change the law.

Present law (C.C. Art. 1529) provides that a donation conditioned on the will of the donor is null.

Proposed law does not change the law.

Present law (C.C. Art. 1530) provides that a donation conditioned on payment of future unexpressed debts or charges is null.

Proposed law does not change the law.

Present law (C.C. Art. 1534) provides that the donor may stipulate the right of return of the thing given in certain cases.

Proposed law does not change the law.

Present law (C.C. Art. 1535) provides that if the right of return is stipulated and the thing is returned to the donor, it returns free and clear of encumbrance.

Proposed law changes the law in that the right of return is subject to the right of a good faith transferee for value.

Proposed law changes the law in that the donee and his successors are held accountable for losses sustained by the donor when the thing cannot be returned due to the rights acquired by a good faith transferee.

Present law (C.C. Art. 1536) provides that donations of immovable property or incorporeal rights shall be passed before a notary public and two witnesses.

Proposed law does not change the law.

Present law (C.C. Art. 1538) provides that an act of donation shall contain a detailed estimate of the things given.

Proposed law clarifies the law by providing that the act of donation shall identify both the donor and the donee and describe the object that is given.

Proposed law clarifies the law by providing that the codal identification requirements are satisfied if the identity of the parties and the object of the donation are reasonably ascertainable from information contained in the act.

Present law (C.C. Art. 1539) provides that a corporeal movable thing can be donated by delivery and is not subject to any other formality.

Proposed law does not change the law.

Present law (C.C. Art. 1540) provides that a donation is effective from the time of acceptance by the donee.

Proposed law does not change the law.

Present law clarifies the law by expressly providing that possession by the donee of a movable delivered to him by the donor constitutes acceptance.

Present law (C.C. Arts. 1542-43) provides that a donation may be accepted by the donee in person or by mandatary.

Proposed law does not change the law.

Present law (C.C. Art. 1543) provides that a donation shall be accepted during the lifetime of the donee.

Proposed law does not change the law.

Present law (C.C. Art. 1543) provides that if the donee fails to accept a donation, the donation cannot be accepted by his creditors.

Proposed law does not change the law.

Present law (C.C. Art. 1546) provides that a donation made to an unemancipated minor shall be accepted by his tutor; and may be accepted by a parent or other ancestor when the parent or ancestor is either the donor or the minor's tutor.

Proposed law does not change the law.

Present law (C.C. Art. 1551) provides that a donee acquires the thing donated subject to all charges burdening the same, even those imposed after the donation.

Proposed law does not change the law.

Present law (C.C. Art. 1536) provides that a donation of an incorporeal movable, such as rents, credits, rights, or actions, shall be made by notarial act.

Proposed law does not change the law.

Proposed law provides that a donation of an incorporeal movable evidenced by a certificate, document, instrument, or other writing may be made by authentic act or as provided in special rules applicable to the particular kind of movable.

Proposed law provides that investment property may be donated by a document directing the transfer of the property in favor of the donee or for his benefit.

Present law (C.C. Art. 1550) provides that a donation is perfected by the donee's acceptance.

Proposed law does not change the law.

Present law (C.C. Art. 1559) provides that grounds for revocation or dissolution of a donation are the donee's ingratitude, the nonfulfillment or nonperformance of conditions to which the donation was subject, or the legal or conventional return.

Proposed law clarifies the law and makes it more technically accurate by eliminating the legal or conventional return as a ground for invalidating a donation.

Present law (C.C. Art. 1560) provides that a donation may be revoked for ingratitude when the donee has attempted to kill the donor, has engaged in cruel treatment towards the donor, or has refused the donor food when in distress.

Proposed law changes the law by eliminating failing to provide food to the donor as a ground for revoking a donation for ingratitude.

Present law (C.C. Art. 1561) provides that an action of revocation for ingratitude shall be brought within one year of the act of ingratitude.

Proposed law does not change the law.

Present law (C.C. Art. 1562) provides that an action for revocation does not affect donations or encumbrances made by the donee prior to the filing of the action for revocation.

Proposed law does not change the law.

Present law (C.C. Art. 1563) provides that in case of revocation the donee shall return the value of the thing given, along with the fruits from the day the action for revocation was brought.

Proposed law clarifies the law by expressly providing that in cases of revocation, the donee's principal obligation is to return the thing.

Present law (C.C. Art. 1565) provides that when a donation is subject to a suspensive condition that can no longer be accomplished, the donation is dissolved of right.

Proposed law does not change the law.

Present law (C.C. Art. 1566) provides that if the donation is subject to a condition that the donee can perform or prevent, the nonperformance of the condition does not result in an automatic dissolution of the donation; it shall be sued for and decreed judicially.

Proposed law does not change the law.

Present law (C.C. Art. 1567) provides that an action for revocation or rescission of a donation based on the nonperformance of conditions imposed on the donee is subject to the usual prescription.

Proposed law clarifies the law by providing that such an action is subject to the prescription of five years.

Present law (C.C. Art. 1568) provides that in case of revocation or dissolution of a donation of an immovable for nonexecution of the conditions, the property shall be returned to the donor unless the donee has alienated the property by onerous title; in the latter case, the donee shall return the value of the immovable at the time of the donation.

Proposed law changes the law by providing that when the donee fails to fulfill the conditions, the immovable donated shall be returned to the donor, even if the donee had alienated, leased, or encumbered the immovable.

Present law (C.C. Art. 1569) provides that in cases of revocation the donee need not return the fruits gathered prior to the filing of the suit for revocation.

Proposed law changes the law by providing the trial court discretion to award restoration of fruits and products if the donee's failure to perform was due to his fault.

Proposed law provides that when the donee is unable to return the thing in the condition that it was at the time of the donation the donor may require its return and hold the donee accountable for any diminution in value.

(Amends C.C. Arts. 1467-1469 and 1523-1569.1)