

This Act is a revision of the Civil Code and Code of Civil Procedure Articles on the subject of interdiction and curatorship.

Civil Code

Article 389: Prior law: Full interdiction was appropriate when the defendant either was "subject to an habitual state of imbecility, insanity or madness" or "owing to any infirmity, (was) incapable of taking care of (his person) and administering (his estate)". New law: Full interdiction is appropriate only when the defendant is functionally unable to care for his person and property and to make or communicate reasoned decision regarding such care.

Article 390: New law retains the existing law principle of limited interdiction. It reproduces the principle that a right not specifically restricted in the judgment of limited interdiction is retained by the limited interdict. It retains the principle that the rights of a limited interdict shall be infringed in the least restrictive manner consistent with his incapacities.

Article 391: New law retains the existing law principle that a temporary or preliminary interdict is an interdict, a temporary or preliminary curator is a curator, a temporary or preliminary limited interdict is a limited interdict, and a temporary or preliminary limited curator is a limited curator.

Article 392: New law changes prior law. New law sets forth in general terms the duties of care and loyalty that the curator owes to the interdict.

Article 393: New law changes prior law. New law sets forth generally the undercurator's duties of care and loyalty.

Article 394: New law changes prior law. New law provides that interdiction does not affect the validity of a juridical act made by the interdict prior to the effective date of the interdiction.

Article 395: New law codifies the general rule that interdiction deprives the interdict of the capacity to make juridical acts. In addition, it explicitly acknowledges that specific legislation may override this general lack of legal capacity. Finally, it provides that a judgment of limited interdiction provides the limits on the capacity of a limited interdict.

Article 396: New law retains the existing law principle that a judgment of interdiction has effect retroactive to the date of the filing of the petition for interdiction.

Article 397: New law retains the existing law principle that a judgment of interdiction terminates by death of the interdict or later judgment. New law changes prior law with regard to the termination date of a judgment of temporary or preliminary interdiction by permitting a court to extend the life of an ex parte judgment of temporary interdiction for one period not exceeding 10 days upon motion of the defendant or for extraordinary reasons shown at a contradictory hearing.

Article 398: New law retains the existing law principle that an order modifying or terminating interdiction is effective on the date signed by the court.

Article 399: New law retains the existing law principle that there is a cause of action against someone who files an unwarranted petition for

interdiction. New law changes prior law in a few respects. New law requires that the petitioner either know or should have known that a material factual allegation was false rather than providing that the petitioner acted as a result of motives of interest or passion.

Article 1482: New law retains existing law regarding proof of incapacity to donate by clear and convincing evidence.

Article 2319: New law changes prior law. Under prior law the curator of an insane person was answerable for the damage occasioned by an interdict under his care. New law absolves curators of vicarious liability for the torts of interdicts in their charge.

Code of Civil Procedure

Article 4541: New law changes prior law. First, it sets forth in detail the required elements of an interdiction petition. Second, it requires that every interdiction petition be verified by the petitioner. New law retains the substance of prior law by providing that any person may petition for interdiction.

Article 4542: New law retains the existing law for venue for interdiction proceedings in the parish where the defendant is domiciled; where he resides if he has no domicile in this state; or where he is physically present if he has no residence in this state.

Article 4543: New law changes prior law. First, it mandates personal service on the defendant in all cases. Domiciliary service will not be effective in interdiction suits. Second, it requires the mailing of notice by certified mail, return receipt requested, to those with a possible interest in the defendant's interdiction.

Article 4544: New law changes prior law. Under prior law, every defendant who failed to answer an interdiction petition through counsel was afforded an attorney. New law continues to mandate the appointment of counsel in all interdiction cases, but it requires the petitioner's attorney affirmatively to move for the appointment of counsel if the defendant has either filed no answer, or has answered in proper person. Unlike prior law, new law requires an attorney to personally visit his client and advise him of the allegations made in the petition, the nature of the interdiction proceeding, and the client's rights and options.

Article 4545: Prior law provided that the court may appoint any person, including a health-care professional, to visit and to examine the defendant prior to an interdiction hearing. New law retains the substance of prior law but more fully defines the reporting requirements of any such court-appointed examiner. An appointed examiner is considered a court-appointed expert within the meaning of Louisiana Code of Evidence Article 706(A).

Article 4546: New law changes prior law. While new law retains the prior law procedure for notifying a defendant and his attorney of interdiction hearings, it adds the requirement that the petitioner/movant shall personally serve the notice on the defendant and give notice (by first-class mail) to other persons with a potential interest in the defendant's interdiction. The lack of proper notice to each other person will not affect the validity of the interdiction proceeding.

Article 4547: New law changes prior law. While new law retains much of the prior law regarding interdiction hearings, it changes the law by permitting the court to require the presence of any proposed curator at the

interdiction hearing and by giving the defendant the right to be present at the hearing, to present evidence, to testify, and to cross examine witnesses. New law further provides that the court shall not conduct the hearing in absence of the defendant, unless the court determines that good cause exists to do so. New law further provides that the court hold the hearing where the defendant is located if the defendant is unable to come to the courthouse.

Article 4548: New law changes prior law by making it clear that the burden of proof in all interdiction proceedings is "clear and convincing evidence" rather than a "preponderance of the evidence".

Article 4549: New law changes prior law. While new law retains much of the prior law regarding preliminary and temporary interdiction enacted by the legislature in 1997, some differences exist. First, new law tracks to a greater extent the provisions of the Code of Civil Procedure relating to preliminary injunctions and temporary restraining orders and adopts that terminology rather than "provisional interdiction" and "ex parte provisional interdiction". Second, new law assures that there is no period during which the interdict is not protected by a curator pending a final interdiction hearing.

Article 4550: New law resolves a conflict in the prior law between C.C. Art. 397 (1870) and C.C.P. Art. 4551 by giving the court full discretion in awarding attorney fees and court costs, unless a judgment has been granted against the petitioner or the petition is dismissed on the merits.

Article 4551: New law changes the prior law that only a judgment of limited interdiction had to meet specified requirements. New law provides a single code Article that sets forth all matters that must be addressed in every judgment of interdiction, including judgments of full interdiction, limited interdiction, and temporary or preliminary interdiction.

Article 4552: New law changes prior law by requiring the clerk of court to record a notice of the filing of an interdiction suit in the mortgage records as well as the conveyance records of the parish in which the interdiction suit is pending. New law allows a curator 15 days from his qualification, rather than 10 days from his appointment, to record an interdiction judgment in parishes other than the one in which judgment was rendered. New law relieves the curator of the obligation to record a judgment of interdiction in the parish in which judgment was rendered because, the clerk of court has this responsibility.

Article 4553: New law changes prior law in part. The phrase "(e)xcept for good cause shown", clarifies that there is no jurisdictional problem associated with a court other than that which rendered the interdiction judgment to conduct a post-judgment proceeding.

Article 4554: New law retains existing law that on motion the court may modify or terminate its judgment when the court finds that the terms of that judgment are either excessive or insufficient or that the ability of the interdict has so changed as to warrant modification or termination.

Article 4555: New law changes prior law by deleting the substance of present law, Civil Code Article 396 (1870), that provides for the "hearing of new proofs" in interdiction appeals.

Article 4556: New law retains existing law for ancillary curatorship proceedings that allow the conservator of a ward residing outside of Louisiana to appear in court on behalf of the ward without qualifying as a curator when no curator has been appointed in this state and to perform acts affecting the property of the ward in accordance with the authority set forth in his letters

when authorized by the court to do so.

Articles 4557 through 4560: Reserved

Article 4561: New law changes prior law. Under prior law, a defendant's pre-incapacity choice regarding a curator was given priority. Thereafter, the court must give preference to the defendant's spouse. New law retains these preferences, but enumerates several others. New law preserves the existing law option of appointing separate curators over the interdict's person and over the interdict's property.

Article 4562: New law changes prior law to permit the extension of the time period allowed for qualification as curator for good cause shown. New law provides that a court rendering an interdiction judgment may issue protective orders to protect the interdict in the interim between appointment and qualification of the curator.

Article 4563: New law changes prior law by permitting the substitution of a sworn descriptive list for an inventory in all cases. New law changes prior law to clarify that the provisions setting forth special security rules for natural tutors have no application in the context of interdiction.

Article 4564: New law changes prior law to require that letters set forth the date of qualification and the date, if any, on which the letters expire. New law requires that letters of limited curatorship set forth the powers of the limited curator.

Article 4565: New law changes prior law so that an undercurator is no longer empowered to act for the interdicted person when there is a conflict of interest between the curator and the interdict.

Article 4566: New law retains existing law with respect to extensive cross-references to tutorship articles governing management of a minor's affairs, but new law changes prior law by omitting cross-references that are not necessary or that are referred to elsewhere as a cross-reference or a provision of law. New law further provides that the appointed curator shall have no authority to admit the defendant to a residential or long-term care facility in absence of good cause shown at a contradictory hearing.

Article 4567: New law does not change existing law with respect to allowing the curator to expend a portion of the revenue of the interdict as is necessary to care properly for his person or affairs, and with court authorization, to support his legal dependents. If the revenue is insufficient the curator may expend the interdict's capital, with court authorization in the manner provided by Article 4271.

Article 4568: New law changes prior law to omit a provision establishing a maximum term of 10 years for certain curators.

Article 4569: New law changes prior law by mandating the filing of a final account or personal report at the termination of every curator's appointment. New law changes prior law to eliminate the requirement that all accounts be served and homologated.

Effective on July 1, 2001.

(Amends Title IX of Book I of the Civil Code, comprising C.C. Arts. 389-399, C.C. Arts. 1482 and 2319, Title VIII of Book VII of the Code of Civil Procedure, comprising C.C.P. Arts. 4541-4556 and Arts. 4561-4569; Repeals R.S. 9:1001-1004)