

First Extraordinary Session, 2000

HOUSE BILL NO. 94

BY REPRESENTATIVES MCMAINS AND ANSARDI

(On Recommendation of the Louisiana State Law Institute)

CIVIL/INTERDICTION: Provides relative to interdiction and curatorship

1 AN ACT

2 To amend and reenact Title IX of Book I of the Civil Code, presently
3 composed of Articles 389 through 426, to comprise Articles 389
4 through 399, Civil Code Articles 1482 and 2319, Title VIII of Book VII
5 of the Code of Civil Procedure, presently composed of Articles 4541
6 through 4557, to comprise Articles 4541 through 4556 and Articles
7 4561 through 4569, and to repeal R.S. 9:1001 through 1004, all relative
8 to interdiction and curatorship; to provide for full interdiction, limited
9 interdiction, temporary interdiction, and preliminary interdiction; to
10 provide for curatorship, curators, and undercurators; to provide for the
11 effects of interdiction, the modification of interdiction, the termination
12 of interdiction, and the wrongful filing of a petition for interdiction; to
13 provide for the proof of the incapacity of a person to donate; to provide
14 for the responsibility of a curator or an undercurator for the delictual
15 obligations of an interdict; to provide for the petition for interdiction;
16 to provide for the venue for an interdiction proceeding; to provide for
17 the service of citation upon the defendant and notice to interested
18 persons; to provide for the appointment of an attorney for the
19 defendant; to provide for the appointment of an examiner for the
20 defendant; to provide for the fixing of a hearing or a trial; to provide for

1 the burden of proof in an interdiction proceeding; to provide for the
2 judgment of interdiction; to provide for the recordation of a notice of
3 suit for interdiction and of the judgment of interdiction; to provide for
4 the inventory and security of a curator, the oath of a curator and of an
5 undercurator, and the letters of curatorship; to provide for the costs of
6 an interdiction proceeding and attorney fees; to provide for the appeal
7 of a judgment or order relative to interdiction or curatorship; to provide
8 for the management of an interdict's affairs and the expenses of an
9 interdict and his legal dependents; to provide for the modification and
10 termination of the appointment of a curator or an undercurator, the
11 post-judgment monitoring and reporting, and the procedures relative to
12 an ancillary proceeding; to repeal special statutes for the interdiction of
13 inebriates; to provide for an effective date; and to provide for related
14 matters.

15 Be it enacted by the Legislature of Louisiana:

16 Section 1. Title IX of Book I of the Civil Code, presently composed of
17 Articles 389 through 426, to comprise Articles 389 through 399, is hereby
18 amended and reenacted to read as follows:

19 CIVIL CODE

20 BOOK I. OF PERSONS

21 TITLE IX. PERSONS UNABLE TO CARE FOR THEIR

22 PERSONS OR PROPERTY

23 CHAPTER 1. GROUNDS FOR INTERDICTION

24 Art. 389. Full Interdiction

25 A court may order the full interdiction of a natural person of the
26 age of majority, or an emancipated minor, who due to an infirmity, is

unable consistently to make reasoned decisions regarding the care of his person and property, or to communicate those decisions, and whose interests cannot be protected by less restrictive means.

Source: New. Cf. C.C. Arts. 389, 422, and 426 (1870). Cf. Uniform Guardianship and Protective Proceedings Act (UGPPA) (1998) Sections 5-102 (4) and 5-311.

Comments

(a) This Article changes the law. Under prior law, full interdiction was appropriate when the defendant was "subject to an habitual state of imbecility, insanity or madness," or when the defendant "owing to any infirmity", was incapable of taking care of his person and administering his estate. See Civil Code Articles 389 and 422 (1870). This Article changes the law by making eligibility for interdiction dependent upon functional inability and is uncomplicated by considerations of "insanity", "madness", and the like.

(b) For a person to be interdicted under this Article, the inability to make reasoned decisions regarding the care of his person and his property must result from an infirmity, including among others, chronic substance abuse. Advanced age alone is not an infirmity. Consequently, a person who is merely caring for his person and property in an imprudent manner, but who does not suffer from an infirmity affecting his ability to make reasoned decisions, is not a candidate for full interdiction. However, categorizing the infirmity from which a person suffers is significantly less important than evaluating his functional ability to make reasoned decisions and to communicate those decisions. A decision is not unreasoned merely because it appears risky, unwise, or imprudent.

(c) A person lacks the ability to communicate reasoned decisions only when he cannot convey his thoughts in an understandable manner to other persons. Thus, a person who can consistently communicate his reasoned decisions through any form of verbal or nonverbal communication is not a candidate for full interdiction.

(d) A person is unable consistently to make reasoned decisions if, for example, he suffers from an infirmity which intermittently deprives him of reason. A person who experiences periodic deprivations of reason can inflict substantial harm to himself or his property during such bouts and is a candidate for full interdiction. In short, that a person suffering from an infirmity may experience lucid intervals does not render him ineligible for full interdiction.

(e) Full interdiction is a last resort and, as a result, is warranted only when a person's interests cannot be protected by less restrictive means. A person's interests can be protected by less restrictive means

1 if, for example, his interests (1) are currently being protected by other
2 legal arrangements, including a procuration, mandate, or trust, or (2)
3 could be protected by other legal arrangements, including limited
4 interdiction, see Civil Code Article 390 (Rev. 2000). If the court
5 determines that less restrictive means can protect the defendant's
6 interests, the court should deny full interdiction.

7 (f) Full interdiction is distinct from civil commitment. See
8 Vance v. Ellerbe, 150 La. 388, 90 So. 735, 740 (1922). Civil
9 commitment requires compliance with the standards and procedures set
10 forth in the mental health law. See R.S. 28:1 through 28:173.

11 (g) The petitioner in a full interdiction proceeding shall prove
12 by clear and convincing evidence all facts justifying interdiction. See
13 Code of Civil Procedure Article 4548 (Rev. 2000).

14 Art. 390. Limited interdiction

15 A court may order the limited interdiction of a natural person of
16 the age of majority, or an emancipated minor, who due to an infirmity
17 is unable consistently to make reasoned decisions regarding the care of
18 his person or property, or any aspect of either, or to communicate those
19 decisions, and whose interests cannot be protected by less restrictive
20 means.

21 Source: New, Cf. in part C.C. Art. 389.1 (1981). Cf. UGPPA (1998)
22 Section 5-311.

23 Comments

24 (a) This Article reproduces the principle that a right not
25 specifically restricted in the judgment of limited interdiction is retained
26 by the limited interdict. See Civil Code Article 389.1 as enacted by
27 Acts 1981, No. 167.

28 (b) A person is a candidate for limited interdiction if he is
29 consistently unable to make reasoned decisions regarding the care of
30 his person or property, or any aspect of either, or to communicate those
31 decisions. If he is consistently unable to make reasoned decisions
32 regarding the care of both his person and his property, or to
33 communicate those decisions, he is a candidate for full interdiction.

34 (c) Various Louisiana laws, including Civil Code articles within
35 this Title, refer to "interdicts" and "curators of interdicts." To the
36 extent that doing so is consistent with the terms and purposes of the
37 judgment of limited interdiction, such legislation should be applied to
38 "limited interdicts" and to "curators of limited interdicts."

1 (d) A judgment of limited interdiction does not deprive a limited
2 interdict of the capacity to make a disposition mortis causa. See Civil
3 Code Articles 395 and 1482 (Rev. 2000).

4 Art. 391. Temporary and preliminary interdiction

5 When a petition for interdiction is pending, a court may order a
6 temporary or preliminary interdiction when there is a substantial
7 likelihood that grounds for interdiction exist and substantial harm to the
8 health, safety, or property of the person sought to be interdicted is
9 imminent.

10 Source: New, Cf. in part C.C. Art. 394 (1997) and C.C.P. Art. 4549
11 (1997). Cf. UGPPA (1998) Section 5-312.

12 Comments

13 (a) This Article is based upon Civil Code Article 394 and Code
14 of Civil Procedure Article 4549 as amended by Acts 1997, No. 1117.
15 It does not change the law.

16 (b) A court can order either full interdiction or limited
17 interdiction on a temporary or preliminary basis.

18 (c) For purposes of this Title and other Louisiana legislation, a
19 temporary or preliminary interdict is an interdict, a temporary or
20 preliminary curator is a curator, a temporary or preliminary limited
21 interdict is a limited interdict, and a temporary or preliminary limited
22 curator is a limited curator.

23 (d) The terms temporary interdiction and preliminary
24 interdiction parallel similar terms used in the context of injunctive
25 relief. See Code of Civil Procedure Articles 3601-3613.

26 CHAPTER 2. GENERAL DUTIES OF CURATORS
27 AND UNDERCURATORS

28 Art. 392. Curators

29 The court shall appoint a curator to represent the interdict in
30 juridical acts and to care for the person or affairs of the interdict, or any
31 aspect of either. The duties and powers of a curator commence upon his
32 qualification. In discharging his duties, a curator shall exercise

1 reasonable care, diligence, and prudence and shall act in the best
2 interest of the interdict.

3 The court shall confer upon a curator of a limited interdict only
4 those powers required to protect the interests of the interdict.

5 Source: New. Cf. C.C. Arts. 389.1, 404, 405, and 418 (1870). Cf.
6 C.C. Art. 2985 (Rev. 1997). Cf. C.C.P. Arts. 4550, 4552, 4554, and
7 4556. Cf. C.C.P. Art. 4262. Cf. UGPPA (1998) Sections 5-304, 5-314,
8 5-315, 5-316, 5-410, and 5-418.

9 Comments

10 (a) This Article is new. It sets forth in general terms the duties
11 of care and loyalty that the curator owes to the interdict.

12 (b) Code of Civil Procedure Articles 4566, 4567, and 4569
13 (Rev. 2000), contain provisions setting forth more particular duties of
14 curators.

15 (c) In making decisions regarding the interdict, the curator
16 should consider the interdict's preinterdiction expressions of will set
17 forth in any preplanning documents, wills, or other directives.
18 Moreover, the curator should consider the interdict's preferences,
19 religious beliefs, and values to the extent known to the curator.

20 (d) To the extent reasonably possible, a curator should
21 encourage the interdict to participate in decisions and to develop or to
22 regain the ability to care for his person, to manage his affairs, or both.

23 (e) The term "affairs" is used throughout this title to refer to
24 interests of the interdict that are distinct from his person. This term
25 includes the interdict's estate, property, and business, but may include
26 other interests as well. The use of this term is consistent with the
27 terminology used in the mandate Articles, see Civil Code Article 2989
28 (Rev. 1997), Comment (d), and confirms that interdiction serves to
29 empower the curator to protect the interdict from harm to all his
30 interests.

31 (f) A curator's duties and powers commence upon his taking an
32 oath and furnishing security, irrespective of when letters of curatorship
33 evidencing such qualification are issued.

34 Art. 393. Undercurators

35 The court shall appoint an undercurator to discharge the duties
36 prescribed for him by law. The duties and powers of an undercurator
37 shall commence upon qualification. In discharging his duties, an

undercurator shall exercise reasonable care, diligence, and prudence
and shall act in the best interest of the interdict.

Source: New. Cf. C.C. Arts. 406, 407, 409, 410, and 411 (1870). Cf.
C.C.P. Art. 4553. Cf. R.S. 9:1031(F).

Comment

This Article changes the law. It sets forth generally the
undercurator's duties of care and loyalty. Code of Civil Procedure
Article 4565 (Rev. 2000), contains provisions setting forth the
particular duties of undercurators. The undercurator has no particular
duties, either expressed or implied, other than those specifically set
forth in that Article.

CHAPTER 3. EFFECTS OF INTERDICTION

Art. 394. Pre-interdiction juridical acts

Interdiction does not affect the validity of a juridical act made
by the interdict prior to the effective date of interdiction.

Source: New. Cf. C.C. Arts. 402 and 403 (1870).

Comments

(a) This Article is new.

(b) This Article relates only to juridical acts predating
interdiction. Whether a pre-interdiction juridical act creates, modifies,
transfers, or terminates a personal or real right turns on the substantive
law potentially giving effect to the act.

Art. 395. Capacity to make juridical acts

A full interdict lacks the capacity to make a juridical act, except
as otherwise provided by law. A limited interdict retains the capacity
to make a juridical act, except as otherwise provided by law or the
judgment of limited interdiction. A judgment of interdiction does not
remove the capacity of the interdict to make or revoke a disposition
mortis causa, except as otherwise provided by law.

Source: Cf. C.C. Arts. 28 (Rev. 1987), 389.1 (1981), 1918 (Rev. 1984),
and 2031 (Rev. 1984).

1 Comments

2 (a) This Article is new. This Article provides an exception to
3 the general rule that natural persons have the capacity to make juridical
4 acts, see Civil Code Article 28 (Rev. 1987). In addition, it explicitly
5 acknowledges that specific legislation may override this general lack of
6 legal capacity of an interdict.

7 (b) A juridical act is a lawful volitional act intended to have
8 legal consequences. It may be a unilateral act, such as an affidavit, or
9 a bilateral act, such as a contract. It may be onerous or gratuitous. See
10 Civil Code Article 3471 (Rev. 1982), Comment (c) (citing 1 A.N.
11 Yiannopoulos, Louisiana Civil Law System Coursebook Section 77
12 (1977)); 1 Planiol & Ripert, Treatise on the Civil Law, pt. 1, no. 265,
13 at 187 (La. St. L. Inst. trans., 12th ed. 1939).

14 (c) The interdict lacks capacity to make a juridical act including
15 an act purporting to create, modify, transfer, or extinguish rights and
16 obligations, whether personal or real.

17 (d) A juridical act by an interdict is a relative nullity. See Civil
18 Code Articles 1919 and 2031 (Rev 1984). Likewise, a marriage
19 contracted by an interdict would lack consent and, thus, would be a
20 relative nullity. See Civil Code Article 93 (Rev. 1987).

21 (e) This Article qualifies the general rule that an interdict lacks
22 capacity to make juridical acts with the proviso "except as otherwise
23 provided by law". Other statutes expressly reserve to interdicts the
24 limited capacity to make specified juridical acts. See Code of Civil
25 Procedure Article 4554 (Rev. 2000), (reserving capacity of an interdict
26 to seek termination of interdiction). Moreover, this Article specifically
27 reserves for an interdict the capacity to make and to revoke a
28 disposition mortis causa. Nevertheless, the proponent of a testament
29 executed by an interdict shall prove the testator's capacity by clear and
30 convincing evidence. See Civil Code Article 1482 (Rev. 2000).

31 (f) Because interdiction affects only the interdict's capacity to
32 make juridical acts, it has no effect on obligations that do not arise
33 through an exercise of will. For example, an interdict remains
34 responsible for obligations arising under tort law or family law.

35 Art. 396. Effective date of judgment of interdiction

36 A judgment of interdiction has effect retroactive to the date of
37 the filing of the petition for interdiction.

38 Source: C.C. Arts. 400 and 401 (1870).

39 Comment

40 This Article reproduces the substance of Civil Code Articles
41 400 and 401 (1870).

1 CHAPTER 4. MODIFICATION AND TERMINATION OF
2 INTERDICTION

3 Art. 397. Modification and termination of interdiction

4 The court may modify or terminate a judgment of interdiction
5 for good cause. Interdiction terminates upon death of the interdict or
6 by judgment of the court.

7 A judgment of preliminary interdiction granted after an
8 adversarial hearing terminates thirty days after being signed, unless
9 extended by the court for good cause for a period not exceeding thirty
10 days. A judgment of temporary interdiction granted ex parte terminates
11 ten days after being signed. On motion of the defendant or for
12 extraordinary reasons shown at a contradictory hearing, the court may
13 extend the judgment of temporary interdiction for one additional period
14 not to exceed ten days.

15 Source: New. Cf. C.C. Arts. 420 and 421 (1870). Cf. C.C.P. Art.
16 4557 and C.C.P. Art. 4549 (1997). Cf. UGPPA (1998) Section 5-318.

17 Comments

18 (a) This Article is new. This Article does not change the law
19 with regard to the termination date of a final judgment of interdiction.
20 This Article, however, does change the law with regard to the
21 termination date of a judgment of temporary interdiction by permitting
22 a court to extend the life of an ex parte judgment of temporary
23 interdiction for an additional ten day period. A separate hearing must
24 be held prior to the granting of such an extension.

25 (b) For the procedures associated with modification or
26 termination of a judgment of interdiction, see Code of Civil Procedure
27 Article 4554 (Rev. 2000).

28 Art. 398. Effective date of modification or termination of a judgment
29 of interdiction

30 An order modifying or terminating a judgment of interdiction is
31 effective on the date signed by the court.

1 Source: C.C. Art. 420 (1870).

2 Comment

3 This Article reproduces the substance of Civil Code Article 420
4 (1870).

5 Chapter 5. Responsibility for Wrongful Filing of Interdiction Petition

6 Art. 399. Responsibility for wrongful filing of interdiction petition

7 A petitioner whose petition for interdiction is denied is liable for
8 resulting damages caused to the defendant if the petitioner knew or
9 should have known at the time of filing that any material factual
10 allegation regarding the ability of the defendant consistently to make
11 reasoned decisions or to communicate those decisions was false.

12 Source: C.C. Art. 419 (1870).

13 Comments

14 (a) This Article is based upon Civil Code Article 419 (1870).
15 This Article retains a cause of action against those who file
16 unwarranted petitions for interdiction. However, this Article changes
17 the law. It requires that the petitioner knew or should have known that
18 a material factual allegation was false. In contrast, Civil Code Article
19 419 (1870) premised liability on proof that the petitioner acted from
20 motives of interest or passion.

21 (b) This Article does not limit or restrict other remedies that
22 may be available to the defendant, including court-imposed sanctions
23 or delictual damages.

24 Section 2. Civil Code Articles 1482 and 2319 are hereby amended and
25 reenacted to read as follows:

26 Art. 1482. Proof of incapacity to donate

27 A person who challenges the capacity of a donor ~~must~~ shall
28 prove by clear and convincing evidence that the donor lacked capacity
29 at the time the ~~donor made the~~ donation inter vivos was made or
30 ~~executed the testament~~ was executed. ~~However, if the donor made the~~
31 ~~donation or executed the testament at a time when he was judicially~~

1 ~~declared to be mentally infirm, then the proponent of the challenged~~
2 ~~donation or testament must prove the capacity of the donor by clear and~~
3 ~~convincing evidence. A person who makes or revokes a disposition~~
4 ~~mortis causa while interdicted from the care of property is presumed to~~
5 ~~lack capacity. This presumption may be rebutted by clear and~~
6 ~~convincing evidence.~~

7 Source: C.C. Art. 1482 (Rev. 1991).

8 * * *

9 Art. 2319. Acts of ~~insane persons~~ interdicts

10 ~~The curators of insane persons are answerable for the damage~~
11 ~~occasioned by those under their care.~~

12 Neither a curator nor an undercurator is personally responsible
13 to a third person for a delictual obligation of the interdict in his charge
14 solely by reason of his office.

15 Source: New. C.C. Art. 2319 (Rev. 1870). Cf. UGPPA (1998)
16 Section 5-316.

17 Comments

18 (a) This Article is new and changes the law. This Article was
19 revised by the legislature in 2000 as part of a comprehensive revision
20 of Louisiana's interdiction laws. Under Article 2319 of the Civil Code
21 of 1870, "(t)he curators of insane persons are answerable for the
22 damage occasioned by those under their care". See Civil Code Article
23 2319 (1870). As revised, this Article shields curators from vicarious
24 liability for the torts of interdicts in their charge.

25 (b) Although a curator is not personally responsible for an
26 interdict's torts solely by reason of the relationship, the curator may be
27 liable for damages resulting from his own acts or omissions. For
28 example, if a curator negligently supervises an interdict in his charge
29 and, as a result, the interdict causes damages to himself or to a third
30 party, the curator may be personally responsible for the resulting
31 damages.

32 Section 3. Title VIII of Book VII of the Code of Civil Procedure,
33 presently composed of Articles 4541 through 4557, to comprise Articles 4541

1 through 4556 and Articles 4561 through 4569, is hereby amended and
2 reenacted to read as follows:

3 CODE OF CIVIL PROCEDURE

4 BOOK VII. SPECIAL PROCEEDINGS

5 TITLE VIII. INTERDICTION AND CURATORSHIP

6 OF INTERDICTS

7 CHAPTER 1. IN GENERAL

8 Art. 4541. Petition for interdiction

9 Any person may petition for the interdiction of a natural person
10 of the age of majority or an emancipated minor. The petitioner shall
11 verify the petition and set forth the following with particularity:

12 (1) The name, domicile, age, and current address of the
13 petitioner and his relationship to the defendant.

14 (2) The name, domicile, age, and current address of the
15 defendant and the place the petitioner proposes the defendant will
16 reside if the relief sought in the petition is awarded.

17 (3) The reasons why interdiction is necessary, including a brief
18 description of the nature and extent of the alleged infirmities of the
19 defendant.

20 (4) If full interdiction is requested, the reasons why limited
21 interdiction is inappropriate.

22 (5) If limited interdiction is requested, the capacity sought to be
23 removed from the limited interdict, and the powers sought to be
24 conferred upon the limited curator.

25 (6) The name and address of the spouse of the defendant.

(7) The name and address of the adult children of the defendant or, if he has none, of his parents and siblings or, if he has none, of his nearest adult relative.

(8) The name and address of any legal representative of the defendant.

(9) The name and address of any person previously designated as curator by the defendant in a writing signed by the defendant.

(10) The name, domicile, age, education, and current address of the proposed curator, and the reasons why the proposed curator should be appointed.

Source: New. Cf. C.C.P. Art. 4543. Cf. UGPPA (1998) Sections 5-106, 5-304, and 5-403.

Comments

(a) This Article changes the law. Most significantly, it sets forth in detail the required elements of an interdiction petition. Moreover, it requires that every interdiction petition be verified by the petitioner.

(b) Article 10 of the Code of Civil Procedure addresses jurisdiction over interdiction proceedings. See C.C.P. Art. 10. Under that Article, a Louisiana district court has jurisdiction over an interdiction proceeding if the person sought to be interdicted is domiciled in this state, or is present in this state and has property herein. See C.C.P. Art. 10(A)(3).

Art. 4542. Venue

Venue for an interdiction proceeding is 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.

Source: C.C.P. Art. 4541. Cf. C.C. Art. 392 (1870). Cf. C.C.P. Art. 10 (A)(3),(4). Cf. UGPPA (1998) Section 5-108 (b).

Comments

(a) This Article reproduces the substance of Code of Civil Procedure Article 4541 as it existed prior to the 2000 Revision.

(b) An ancillary interdiction proceeding is governed by Code of Civil Procedure Article 4556 (Rev. 2000).

Art. 4543. Service upon defendant and notice to interested persons

A. Service of the citation and petition shall be personal. Nevertheless, if the defendant is domiciled in this state, but is located elsewhere, service may be made by the delivery of a certified copy of the petition, citation, and all attachments, to the defendant personally by any person over the age of eighteen years. Service is effective as of the date a notarized affidavit is filed into the record affirming the personal delivery. Failure to serve the defendant as provided in this Paragraph shall preclude the court from granting the relief sought in the petition.

B. Within three days of filing the petition, the petitioner shall mail a copy of the petition by first-class United States mail postage prepaid, to the last known address of each other person named in the petition. Failure to mail a copy of the petition to any such person shall not affect the validity of the proceeding, but may subject the petitioner or his attorney to sanctions.

Source: New. Cf. C.C.P. Arts. 4544 and 4545. Cf. UGPPA (1998) Sections 5-309 and 5-404.

Comments

(a) This Article changes the law. First, it mandates personal service (or delivery) on the defendant in all cases. Thus, domiciliary service is not effective in interdiction suits. Second, it requires the mailing of notice to those with a possible interest in the defendant's interdiction.

1 (b) If the defendant cannot be served in accordance with this
2 Article, the court cannot interdict him. However, if the circumstances
3 warrant it, the court may treat the defendant as an absent person and
4 appoint a curator pursuant to Civil Code Articles 47 through 59 (Rev.
5 1990).

6 Art. 4544. Appointment of attorney

7 A. If the defendant makes no timely appearance through an
8 attorney, the petitioner shall apply for an order appointing an attorney
9 to represent the defendant. Pursuant to such a motion, or on its own
10 motion, the court shall appoint an attorney to represent the defendant.
11 If the defendant either retains his own attorney, or intelligently and
12 voluntarily waives the assistance of an attorney, the court shall
13 discharge the court-appointed attorney. The court-appointed attorney
14 shall represent the defendant until discharged by the court.

15 B. The attorney representing a defendant shall personally visit
16 the defendant, unless such visit is excused by the court for good cause.
17 To the extent possible, the attorney shall discuss with the defendant the
18 allegations in the petition, the relevant facts and law, and the rights and
19 options of the defendant regarding the disposition of the case. Failure
20 of the attorney to perform any of the duties imposed by this Paragraph
21 shall not affect the validity of the proceeding, but may subject the
22 attorney to sanctions.

23 Source: New. C.C.P. Arts. 4544 and 4545. C.C. Art. 391 (1870).
24 Texas Probate Code Section 647. Cf. UGPPA (1998) Sections 5-305
25 and 5-406.

26 Comments

27 (a) This Article changes the law. Under prior law, every
28 defendant who did not answer an interdiction petition through counsel
29 was afforded an attorney. While this Article continues to mandate the
30 appointment of counsel in all interdiction cases, it requires the
31 petitioner's attorney affirmatively to move for the appointment of
32 counsel if the defendant has either filed no answer or has answered in

proper person. Finally, unlike prior law, this Article 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.

(b) If the court previously appointed counsel in connection with a motion for temporary or preliminary interdiction and that attorney has not withdrawn as counsel of record, the court need not appoint or reappoint an attorney under this Article.

(c) An attorney appointed pursuant to this Article is not empowered to accept service of the petition and citation on behalf of a defendant whom the petitioner has failed to serve in accordance with Code of Civil Procedure Article 4543 (Rev. 2000). See *Segur v. Pellerin*, 16 La. 63 (1840).

Art. 4545. Appointment of examiner

After the filing of a petition for interdiction, the court may appoint an examiner who has training or experience in the type of infirmity alleged. The court may compel the defendant to submit to an examination by the examiner. Not less than seven days prior to a hearing, the examiner shall provide a written report to the court, all counsel of record, and any unrepresented parties. The report shall include such matters as the court directs. The report may consider the infirmities suffered by the defendant, the appropriateness of interdiction, including whether a less restrictive means of intervention is available, the type of interdiction that is appropriate, and any other relevant matters.

Source: New. Cf. C.C. Art. 393 (1870) and C.C.P. Art. 4547. Cf. UGPPA (1998) Sections 5-305 and 5-406.

Comments

(a) This Article refines prior law. Under Civil Code Article 393 (1870), the court could appoint "any" person, including a health-care professional, to visit and to examine the defendant prior to an interdiction hearing. This Article preserves the substance of prior law but more fully defines the reporting requirements of any such court-appointed examiner.

1 (b) An appointed examiner is considered a court-appointed
2 expert within the meaning of Louisiana Code of Evidence Article
3 706(A).

4 Art. 4546. Fixing of hearings or trial

5 A hearing or trial in an interdiction proceeding shall be fixed and
6 notice shall be served in the manner prescribed for summary
7 proceedings. In addition, such notice shall be served on the defendant
8 in the manner prescribed by Paragraph A of Article 4543. Except as
9 provided in Article 4549, the petitioner shall mail a copy of the order
10 fixing a hearing or trial by first-class United States mail, postage
11 prepaid, to the last known address of each other person named in the
12 petition at least ten days prior to the hearing. Failure to mail a copy of
13 the order to any such person shall not affect the validity of the
14 proceeding, but may subject the petitioner or his attorney to sanctions.

15 Source: New. Cf. C.C.P. Arts. 4544 and 4546. Cf. UGPPA (1998)
16 Sections 5-309 and 5-404.

17 Comments

18 (a) This Article changes the law. This Article adds the
19 requirement that the petitioner/movant give notice (by first-class mail)
20 to other persons with a potential interest in the defendant's interdiction,
21 and to the defendant personally. However, the lack of proper notice to
22 "each other person" will not affect the validity of the interdiction
23 proceeding.

24 (b) A summary hearing in an interdiction matter may be
25 requested through the filing of a contradictory motion or rule to show
26 cause, and may be fixed by order of the court. See C.C.P. Arts. 2593-
27 2596.

28 Art. 4547. Hearing

29 An interdiction proceeding shall be heard summarily and by
30 preference. The defendant has a right to be present at the hearing and
31 the court shall not conduct the hearing in his absence, unless the court
32 determines that good cause exists to do so. The defendant has the right

1 to present evidence, to testify, to cross examine witnesses, and to
2 otherwise participate at the hearing. If the defendant is unable to come
3 to the courthouse for the hearing, the judge may hold the hearing where
4 the defendant is located. The hearing may be closed for good cause.
5 The court may call witnesses not called by the parties and may require
6 the presence of a proposed curator.

7 Source: New. Cf. C.C.P. Art. 4546. Cf. UGPPA (1998) Sections 5-
8 308 and 5-408.

9 Comments

10 (a) This Article changes the law. While this Article preserves
11 much of the existing law regarding interdiction hearings, it changes the
12 law by permitting the court to require the presence of the defendant and
13 any proposed curator at the interdiction hearing.

14 (b) The Louisiana rules of evidence apply to interdiction
15 hearings. See Louisiana Code of Evidence Article 1101(A)(1).

16 Art. 4548. Burden of proof

17 The petitioner in an interdiction proceeding shall prove by clear
18 and convincing evidence all facts justifying interdiction.

19 Source: New. Cf. C.C. Art. 393 (1870). Cf. UGPPA (1870) Section
20 5-311.

21 Comments

22 (a) This Article clarifies the law by making it clear that the
23 burden of proof in all interdiction proceedings is "clear and convincing
24 evidence" rather than a "preponderance of the evidence."

25 (b) The "clear and convincing" burden of proof applies in all
26 interdiction proceedings, including those in which the petitioner seeks
27 full interdiction, limited interdiction, temporary interdiction, or
28 preliminary interdiction.

29 Art. 4549. Temporary and preliminary interdiction

30 A. Temporary Interdiction: (1) When the court finds that
31 immediate and irreparable injury, loss, or damage will result to the
32 person or property of the defendant before a hearing can be held, the

1 court may order temporary interdiction without notice and without an
2 adversarial hearing. In that order, the court shall schedule a preliminary
3 interdiction hearing to be held not more than ten days following the
4 signing of the ex parte judgment of temporary interdiction. On motion
5 of the defendant or for extraordinary reasons shown at a contradictory
6 hearing, the court may continue the hearing for one additional period
7 not to exceed ten days.

8 (2) A pleading requesting ex parte temporary interdiction shall
9 be accompanied by all of the following:

10 (a) An affidavit by a licensed physician or psychologist attesting
11 to facts supporting the claim that all grounds for temporary interdiction
12 set forth in Civil Code Article 391 exist.

13 (b) A verified petition or affidavit attesting to facts supporting
14 the claim that immediate and irreparable injury, loss, or damage will
15 result to the person or property of the defendant before he or his
16 attorney can be heard.

17 (c) An affidavit by the movant or his attorney attesting to the
18 efforts made to give notice to the defendant or the reasons supporting
19 a claim that notice should not be required.

20 B. Preliminary Interdiction: (1) The court shall not grant a
21 judgment of preliminary interdiction prior to an adversarial hearing.
22 The court shall conduct a preliminary interdiction hearing within
23 twenty days of signing the order scheduling the hearing.

24 (2) No later than seventy-two hours prior to a preliminary
25 interdiction hearing, all orders, pleadings, and supporting documents
26 shall be served personally on the defendant and his attorney. To the

1 extent possible, the movant shall give reasonable notice of the
2 preliminary interdiction hearing to all other persons named in the
3 petition.

4 C. Attorney. In an ex parte judgment of temporary interdiction
5 and in every order scheduling a preliminary interdiction hearing, the
6 court shall appoint an attorney to represent the defendant. If the
7 defendant either retains his own attorney, or intelligently and
8 voluntarily waives the assistance of an attorney, the court shall
9 discharge the court-appointed attorney.

10 Source: New. Cf. C.C.P. Art. 4549 (1997) and C.C. Art. 394 (1997).
11 Cf. UGPPA (1998) Section 5-312.

12 Comments

13 (a) This Article changes the law. While this Article is
14 substantially similar to the provisions enacted by the legislature in
15 1997, some differences exist. First, this Article tracks to a greater
16 extent the provisions of the Code of Civil Procedure relating to
17 preliminary injunctions and temporary restraining orders. See C.C.P.
18 Arts. 3601-3613. Indeed, this Article adopts that terminology rather
19 than "provisional interdiction" and "ex parte provisional interdiction."
20 Second, this Article assures that there is no period during which the
21 interdict is not protected by a curator pending a final interdiction
22 hearing.

23 (b) Civil Code Article 391 (Rev. 2000), sets forth the grounds
24 for temporary interdiction and preliminary interdiction. Civil Code
25 Article 397 (Rev. 2000), prescribes the time at which any judgment of
26 interdiction shall terminate. See C.C. Art. 397(B) (Rev. 2000). This
27 termination date, or any earlier date established by the court, shall
28 appear on any judgment of temporary interdiction or preliminary
29 interdiction.

30 Art. 4550. Costs and attorney fees

31 The court may render judgment for costs and attorney fees, or
32 any part thereof, against any party, as the court may consider fair.
33 However, no attorney fees shall be awarded to a petitioner when

1 judgment is granted against the petitioner or the petition is dismissed
2 on the merits.

3 Source: New. Cf. C.C. Art. 397 (1870) and C.C.P. Art. 4551.

4 Comments

5 (a) This Article resolves a conflict in the law between C.C. Art.
6 397 (1870) and C.C.P. Art. 4551 as it existed prior to the 2000
7 Revision.

8 (b) Costs may include the fees of any examiner or other health-
9 care professional.

10 (c) This Article applies to all proceedings relating to
11 interdiction, including those taking place after the entry of judgment.

12 Art. 4551. Judgment

13 A. In the judgment of interdiction, the court shall:

14 (1) Appoint a curator.

15 (2) Appoint an undercurator, unless an undercurator is not
16 required by law.

17 (3) State that the powers of the curator commence only upon
18 qualification.

19 (4) Direct the clerk of court to record the judgment in the
20 conveyance and mortgage records of the parish where it was rendered.

21 B. In addition, a judgment of limited interdiction shall confer
22 upon the limited curator only those powers necessitated by the interests
23 of the limited interdict to be protected through limited interdiction and
24 shall state that the limited interdict retains the capacity of a natural
25 person except as expressly limited by the judgment.

26 C. In addition, a judgment granting or extending temporary or
27 preliminary interdiction shall set forth the date of termination.

28 Source: New. Cf. C.C. Art. 389.1 (1981). Cf. C.C.P. Art. 4542. Cf.
29 R.S. 9:1031 (F).

1 Comments

2 (a) This Article changes the law. This Article sets forth all
3 matters that shall be addressed in every judgment of interdiction,
4 including judgments of full interdiction, limited interdiction, temporary
5 interdiction, and preliminary interdiction.

6 (b) The court shall appoint a curator in every judgment of
7 interdiction. However, if the court believes that additional hearings are
8 necessary regarding the appointment of a more permanent curator, the
9 court can conduct such hearings after entry of the judgment of
10 interdiction.

11 (c) The court need not appoint an undercurator when it appoints
12 as curator a nonprofit curatorship program. R.S. 9:1031(F):
13 "Notwithstanding any law to the contrary, in cases wherein the program
14 is appointed curator . . . , the appointment of an undercurator . . . is not
15 required."

16 Art. 4552. Recordation of notice of suit and judgment

17 A. The clerk of court shall cause to be recorded a notice of the
18 filing of the interdiction suit in the conveyance and mortgage records
19 of the parish in which the interdiction action is pending. The clerk of
20 court shall record every judgment granting, modifying, or terminating
21 interdiction in the conveyance and mortgage records of the parish in
22 which the judgment was rendered.

23 B. Within fifteen days of his qualification, the curator shall
24 cause every judgment granting, modifying, or terminating interdiction
25 to be recorded in the conveyance and mortgage records of every other
26 parish in which the interdict owns immovable property.

27 C. A clerk or curator whose failure to perform his duties causes
28 damage is liable only to those who contract with the interdict and who
29 neither knew nor should have known of the interdiction proceedings or
30 judgment.

31 Source: New. Cf. C.C.P. Art. 4552.

1 Comments

2 (a) This Article changes the law. This Article requires the clerk
3 of court to record a notice of the filing of an interdiction suit in the
4 mortgage records as well as the conveyance records of the parish in
5 which the interdiction suit is pending. This Article allows a curator
6 fifteen days from his qualification, rather than ten days from his
7 appointment, to record an interdiction judgment in parishes other than
8 the one in which judgment was rendered. This Article relieves the
9 curator of the obligation to record a judgment of interdiction in the
10 parish in which judgment was rendered because, the clerk of court has
11 this responsibility.

12 (b) A petitioner may, but is not required to, file notices of
13 pendency of the interdiction proceeding in parishes in which the
14 interdict owns immovable property in accordance with Code of Civil
15 Procedure Articles 3751 through 3753.

16 Art. 4553. Post-judgment proceedings

17 Except for good cause shown, the court rendering an interdiction
18 judgment shall conduct all post-judgment proceedings related to the
19 interdiction.

20 Source: Cf. C.C.P. Art. 4542.

21 Comment

22 This Article changes the law in part. The phrase "(e)xcept for
23 good cause shown," clarifies that there is no jurisdictional problem
24 associated with a court other than that which rendered the interdiction
25 judgment conducting a post-judgment proceeding.

26 Art. 4554. Modification or termination of interdiction

27 On motion of the court or any person, including the interdict, the
28 court may modify or terminate its judgment when the court finds, by a
29 preponderance of the evidence, that the terms of that judgment are
30 currently either excessive or insufficient or that the ability of the
31 interdict to care for his person or property has so changed as to warrant
32 modification or termination. Except for good cause, the court shall
33 follow substantially the same procedures that apply to an original

petition for interdiction before it modifies or terminates an interdiction judgment.

Source: C.C. Art. 421 and C.C.P. Art. 4557. Cf. UGPPA (1998) Sections 5-318 and 5-431.

Comment

This Article does not change the law.

Art. 4555. Appeal

An appeal from a judgment of interdiction, an order or judgment appointing or removing a curator or undercurator, or a judgment modifying or terminating interdiction, shall be taken within thirty days from the applicable date provided by Article 2087. The order or judgment is not suspended during the pendency of an appeal. The acts of a curator or an undercurator shall not be invalidated by the annulment of his appointment on appeal.

Source: C.C.P. Art. 4548. Cf. C.C. Art. 396 (1870).

Comment

This Article changes the law in part. This Article does not reproduce the substance of Civil Code Article 396 (1870) that provided for the "hearing of new proofs" in interdiction appeals. This Article does not change the general law of interdiction appeals as provided in Code Civil Procedure Article 4548 as it existed prior to the 2000 Revision.

Art. 4556. Ancillary interdiction procedure

A. Upon producing proof of his appointment, a conservator of a ward residing outside Louisiana who was appointed by a court outside of Louisiana, may appear in court on behalf of the ward without qualifying as a curator according to the law of Louisiana when no curator has been appointed in this state. In accordance with the authority set forth in his letters, such a conservator may perform acts

1 affecting the ward's property in Louisiana when authorized by the court
2 of the parish in which the property is located. Once so authorized, the
3 conservator shall act in the same manner and in accordance with the
4 same procedures as a curator appointed by a court in Louisiana.
5 Whenever the action of an undercurator would be necessary, the court
6 shall appoint an undercurator ad hoc.

7 B. In order to take possession of the ward's property, or to
8 remove any of it from the state, a conservator appointed by a court
9 outside Louisiana shall file a petition for authority to do so in the court
10 of the parish in which any of the property is located. The court shall
11 render a judgment granting the authority prayed for if the foreign
12 conservator alleges in the petition that there are no Louisiana creditors
13 of the ward, or that all such known creditors have been paid, and if the
14 foreign conservator attaches to the petition an irrevocable power of
15 attorney appointing a resident of this state to receive service of process
16 in any action or proceeding brought in Louisiana to enforce a claim
17 against the ward, or against any of the ward's property located in this
18 state.

19 Source: C.C.P. Arts. 4554, 4431, 4432, and 4433.

20 Comment

21 This Article does not change the law.

22 Arts. 4557 through 4560 (Reserved).

23 CHAPTER 2. CURATORS AND UNDERCURATORS

24 Art. 4561. Appointment of curator

25 A. The court shall appoint as curator the qualified person who
26 is best able to fulfill the duties of his office.

1 B.(1) The following persons are not qualified to serve as a
2 curator of an interdict:

3 (a) A person under eighteen years of age.

4 (b) An interdicted person.

5 (c) A nonresident of the state without a resident agent for
6 service of process.

7 (2) Except for good cause shown, the following persons are not
8 qualified to serve as a curator of an interdict:

9 (a) A convicted felon.

10 (b) A person indebted to the interdict at the time of
11 appointment.

12 (c) An adverse party in a lawsuit pending against the interdict
13 at the time of appointment.

14 (d) An owner, operator, or employee of long-term care
15 institutions where the interdict is receiving care, unless he is related to
16 the interdict.

17 C.(1) The court shall consider the qualified persons in the
18 following order of preference:

19 (a) A person designated by the defendant in a writing signed by
20 him while he had sufficient ability to communicate a reasoned
21 preference.

22 (b) The spouse of the defendant.

23 (c) An adult child of the defendant.

24 (d) A parent of the defendant.

25 (e) An individual with whom the defendant has resided for more
26 than six months prior to the filing of the petition.

1 (f) Any other person.

2 (2) The court may appoint separate curators for the person and
3 affairs of the interdict pursuant to Article 4069.

4 D. At any time prior to qualification, the court may revoke the
5 appointment for good cause and appoint another qualified person.

6 Source: New. Cf. C.C.P. Arts. 4550 and 4231. Cf. UGPPA (1998)
7 Sections 5-310 and 5-413.

8 Comments

9 (a) This Article changes the law. Under this Article, a
10 defendant's preincapacity choice regarding a curator is given priority.
11 Formerly, the defendant's preincapacity choice was given preference
12 only if expressed in a power of attorney. Furthermore, this Article
13 changes the law by enumerating additional persons (other than the
14 defendant's designee and spouse) in the statutory order of preference.
15 This Article preserves the option of appointing separate curators over
16 the person and property of the interdict. This Article changes the law,
17 however, by rendering ineligible for service as a curator (but not as
18 undercurator) the operator of a nursing home or similar facility.

19 (b) As to what constitutes a signed writing, see Comment (c),
20 Civil Code Article 1837 (Rev. 1984).

21 (c) The court may appoint a nonprofit curatorship service
22 program to serve as curator. See R.S. 9:1031-9:1034.

23 Art. 4562. Qualification of curator

24 A. The person appointed qualifies as curator upon furnishing
25 the security required by law and taking an oath to discharge faithfully
26 the duties of his office.

27 B.(1) If the person fails to qualify for office within ten days
28 from his appointment or within such other period specified by the
29 court, the court on its own motion, or on motion of any interested
30 person, may revoke the appointment and appoint another qualified
31 person.

1 (2) The delay allowed for qualification may be extended by the
2 court for good cause.

3 C. The court rendering an interdiction judgment may issue any
4 protective order necessary to protect the interest of the interdict in the
5 interim between the appointment and qualification of the curator.

6 Source: New. Cf. C.C.P. Arts. 4554, 4172, and 4232.

7 Comments

8 (a) This Article changes the law to permit the extension of the
9 time period allowed for qualification "for good cause."

10 (b) Code of Civil Procedure Article 4562 (Rev. 2000) states that
11 a court rendering an interdiction judgment may issue protective orders
12 to protect the interdict in the interim between appointment and
13 qualification of the curator.

14 Art. 4563. Inventory and security

15 A. The person appointed as the curator shall furnish security
16 conditioned on the faithful discharge of his duties. The rules provided
17 in Articles 4101 through 4102, 4131 through 4133, and 4136 apply to
18 curatorship of interdicts. Provisions establishing special rules for
19 natural tutors and parents shall not apply in the context of interdiction
20 and curatorship.

21 B. A detailed descriptive list, sworn to and subscribed by the
22 applicant setting forth the fair market value of each item of property of
23 the interdict, shall be permitted in lieu of an inventory in interdiction
24 matters, unless otherwise ordered by the court.

25 Source: New. Cf. C.C.P. Arts. 4554, 4101, 4102, 4131, 4132, 4133,
26 and 4136.

27 Comment

28 This Article changes the law by permitting the substitution of a
29 sworn descriptive list for an inventory in all cases. See Cf. C.C.P. Art.
30 4462. Furthermore, this Article clarifies that the provisions setting

forth special security rules for "natural tutors" have no application in the context of interdiction.

Art. 4564. Letters of curatorship

Upon qualification of the appointed curator, the court or clerk thereof shall issue letters of curatorship in the name and under the seal of the court. The letters shall set forth the date of the qualification of the curator and the date, if any, on which the letters expire. Letters of curatorship issued to a limited curator shall also set forth the powers of the limited curator.

Source: New. C.C.P. Arts. 4554 and 4172. Cf. UGPPA (1998) Sections 5-110 and 5-410.

Comment

This Article changes the law. This Article requires that letters set forth the date of qualification and the date, if any, on which the letters expire. This Article requires that letters of limited curatorship set forth the powers of the limited curator.

Art. 4565. Undercurators

A.(1) The court shall appoint as undercurator the qualified person best able to fulfill the duties of his office. The person appointed as undercurator qualifies by taking an oath to discharge faithfully the duties of his office.

(2) At any time prior to qualification, the court may revoke the appointment for good cause and appoint another qualified person.

(3) If a person fails to qualify within ten days from his appointment or within the period specified by the court, the court on its own motion or on motion of any interested person, may revoke the appointment and appoint another qualified person. The delay allowed for qualification may be extended by the court for good cause.

B. The undercurator shall:

(1) Notify the court when the curator has failed to qualify timely for office.

(2) Have free access to the interdict and to all records relating to the interdict relevant to his office.

(3) Review all accounts and personal reports filed by the curator.

(4) Notify the court when he has reason to believe that the curator has failed to perform any duties imposed by law, including the duties to file necessary accounts and personal reports, and to maintain adequate security.

(5) Approve or disapprove any transactions that require his concurrence.

(6) Move to appoint a successor for a curator who becomes disqualified or whose office terminates.

C. The undercurator shall have no duties, either express or implied, other than those set forth in this Article and in Civil Code Article 393.

Source: Cf. C.C. Arts. 406, 407, 409, and 410 (1870). Cf. C.C.P. Arts. 4553, 4554, 4201 through 4206, and 4271.

Comments

(a) This Article changes the law.

(b) Like a curator, an undercurator shall take an oath to discharge faithfully the duties of his office to qualify for office. Under Code of Civil Procedure Article 4565 (Rev. 2000), the undercurator's powers commence upon his qualification.

(c) An undercurator's access to records is limited to those "relevant to his office". For example, an undercurator appointed to monitor a curator of the interdict's property does not need access to the interdict's medical and personal records.

1 Art. 4566. Management of affairs of the interdict

2 A. Except as otherwise provided by law, the relationship
3 between interdict and curator is the same as that between minor and
4 tutor. The rules provided by Articles 4261 through 4269, 4270 through
5 4274, 4301 through 4342, and 4371 apply to curatorship of interdicts.
6 Nevertheless, provisions establishing special rules for natural tutors and
7 parents shall not apply in the context of interdiction.

8 B. A curator who owns an interest in property with the interdict
9 or who holds a security interest or lien that encumbers the property of
10 the interdict may acquire the property, or any interest therein, from the
11 interdict upon compliance with Article 4271, with prior court
12 authorization, and when it would be in the best interest of the interdict.
13 Except for good cause shown, the court shall appoint an independent
14 appraiser to value the interest to be acquired by the curator.

15 C. A curator may accept donations made to the interdict. A
16 curator shall not make donations of the property of the interdict except
17 as provided by law.

18 D. A curator may place the property of the interdict in trust in
19 accordance with the provisions of Article 4269.1. The trust shall be
20 subject to termination at the option of the interdict upon termination of
21 the interdiction, or if the interdict dies during the interdiction, at the
22 option of his heirs or legatees.

23 E. A curator shall inform the undercurator reasonably in
24 advance of any material changes in the living arrangements of the
25 interdict and any transactions materially affecting his person or affairs.

1 F. A curator shall not establish or move the place of dwelling
2 of the interdict outside this state without prior court authorization.

3 G. A curator may not consent to an abortion or sterilization of
4 the interdict without prior court authorization.

5 H. Neither a curator nor a court shall admit or commit an
6 interdict to a mental-health treatment facility except in accordance with
7 the provisions of R.S. 28:50 through 64.

8 I. A curator appointed in an order of temporary interdiction
9 shall have no authority to admit the defendant to a residential or long
10 term care facility absent a contradictory hearing.

11 Source: New. Cf. C.C.P. Arts. 4554, 4261-4269, 4269.1, 4270-4274,
12 4301-4342, and 4371. Cf. R.S. 28:50 through 64.

13 Comments

14 (a) This Article changes the law. Although this Article retains
15 the basic structure of Code of Civil Procedure Article 4554 as it existed
16 prior to the 2000 Revision (by retaining extensive cross-references to
17 tutorship Articles governing management of a minor's affairs), it omits
18 cross-references that are not necessary or that are made elsewhere in
19 the Revision.

20 (b) R.S. 9:1022-1024 set forth detailed provisions governing a
21 curator's ability to donate the interdict's property.

22 Art. 4567. Expenses of interdict and legal dependents

23 The curator shall expend that portion of the revenue from the
24 property of the interdict as is necessary to care properly for his person
25 or affairs, and with court authorization, to support his legal dependents.
26 If the revenue is insufficient for these purposes, the curator may expend
27 the capital of the interdict, with court authorization in the manner
28 provided by Article 4271.

29 Source: C.C.P. Art. 4556. Cf. UGPPA (1998) Sections 5-314 and 5-
30 316.

Comment

This Article does not change the law.

Art. 4568. Removal of curator or undercurator

On motion of any interested person, or on its own motion, the court may remove a curator or undercurator from office for good cause.

Unless otherwise ordered by the court, removal of the curator or undercurator by the court is effective upon qualification of the appointed successor.

Source: New. Cf. C.C. Art. 414 (1870), R.S. 9:1025, and C.C.P. Arts. 4552, 4553, and 4557. Cf. UGPPA (1998) Sections 5-112 and 5-414.

Comments

(a) This Article changes the law. This Article omits any provision establishing a maximum term of ten years for certain curators. See C.C. Art. 414 (1870). This Article omits cross-references to Code of Civil Procedure Articles 4231-4238 because the substance of those tutorship Articles is set forth in this Article.

(b) In a temporary interdiction or preliminary interdiction, the temporary curator or preliminary curator is removed from office and replaced by the curator appointed in the judgment of interdiction.

(c) Good cause for removal exists when the curator becomes disqualified because he no longer satisfies the requirements set forth in Code of Civil Procedure Article 4561 (Rev. 2000).

(d) R.S. 9:1025 supplements this Article by enumerating several circumstances under which good cause exists for removal.

(e) A curator's office terminates automatically upon his death or upon termination of interdiction. In such cases, "removal" from office is unnecessary.

Art. 4569. Post-judgment monitoring and reporting

A. A curator with responsibility for affairs of the interdict shall file an account annually, upon the termination of his office, and at any other time ordered by the court. A curator with responsibility for the person of an interdict shall file a personal report describing the location

1 and condition of the interdict annually, upon the termination of his
2 responsibilities, and at any other time ordered by the court. At the time
3 of filing, the curator shall send copies of any required account or
4 personal report by first class United States mail postage prepaid to the
5 undercurator and any successor curator. The provisions of Articles
6 4393 and 4398 shall apply to accounts by curators.

7 B. The court may appoint an examiner at any time to review an
8 account or personal report of the curator, to interview the interdict,
9 curator, or undercurator, or to make any other investigation. At any
10 time, the court may appoint an attorney to represent the interdict.

11 Source: New. Cf. C.C. Arts. 405 and 424 (1870). Cf. C.C.P. Arts.
12 4555, 3333, and 4391-4398. Cf. UGPPA (1998) Sections 5-317 and 5-
13 420.

14 Comments

15 (a) This Article changes the law. This Article omits any cross-
16 reference to Code of Civil Procedure Article 4392, because that Article
17 makes final accounts merely permissive in most cases. This Article
18 changes the law by mandating the filing of a final account or personal
19 report at the termination of every curator's appointment. This Article
20 eliminates the requirement that all accounts be served and homologated
21 in accordance with Code of Civil Procedure Articles 4394 through
22 4396.

23 (b) The curator's personal report should, among other things,
24 describe whether there has been a material change in the functional
25 ability of the interdict to care for his person and affairs.

26 (c) The accounting and personal-reporting requirements applies
27 to all curators, including temporary and preliminary curators.

28 Section 4. R.S. 9:1001 through 1004 are hereby repealed in their
29 entirety.

30 Section 5. The headings, source lines, and comments in this Act are not
31 part of the law and are not enacted into law by virtue of their inclusion in this
32 Act.

1 Section 6. This Act shall become effective on January 1, 2001.

DIGEST

The digest printed below was prepared by Louisiana State Law Institute. It constitutes no part of the legislative instrument.

McMains, Ansardi

HB No. 94

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

Civil Code

Article 389: Present law: Full Interdiction is appropriate when the defendant either is "subject to an habitual state of imbecility, insanity or madness" or "owing to any infirmity, (is) incapable of taking care of (his person) and administering (his estate)". Proposed 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: Proposed law retains the present 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: Proposed law retains the present 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: Proposed law is new and changes the present law. It sets forth in general terms the duties of care and loyalty that the curator owes to the interdict.

Article 393: Proposed law changes the present law. It sets forth generally the undercurator's duties of care and loyalty.

Article 394: Proposed law changes the present law because it does not reproduce the substance of Civil Code Articles 402 and 403 (1870).

Article 395: Proposed law is new and 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: Proposed law retains the present law principle that a judgment of interdiction has effect retroactive to the date of the filing of the petition for interdiction.

Article 397: Proposed law retains the present law principle that a judgment of interdiction terminates by death of the interdict or later judgment. Proposed law changes the present 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: Proposed law retains the present law principle that an order modifying or terminating interdiction is effective on the date signed by the court.

Article 399: Proposed law retains the present law principle that there is a cause of action against someone who files an unwarranted petition for interdiction. Proposed law changes the present law in a few respects. It 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: Proposed law retains the present law.

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

Code of Civil Procedure

Article 4541: Proposed law changes the present 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. Proposed law retains substance of present law by providing that any person may petition for interdiction.

Article 4542: Proposed law retains the present 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: Proposed law changes the present 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 to those with a possible interest in the defendant's interdiction.

Article 4544: Proposed law changes the present law. Under present law, every defendant who does not answer an interdiction petition through counsel is afforded an attorney. Proposed 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 present law, proposed 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: Present law provides that the court may appoint any person, including a health-care professional, to visit and to examine the defendant prior to an interdiction hearing. Proposed law retains the substance of present 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: Proposed law changes the present law. While proposed law retains the present 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: Proposed law changes the present law. While proposed law retains much of the present 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. Proposed 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. Proposed 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: Proposed law changes the present 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: Proposed law changes the present law. While proposed law retains much of the present law regarding preliminary and temporary interdiction enacted by the legislature in 1997, some differences exist. First, proposed 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, proposed law assures that there is no period during which the interdict is not protected by a curator pending a final interdiction hearing.

Article 4550: Proposed law resolves a conflict in the present 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: Proposed law changes the present law that only a judgment of limited interdiction had to meet specified requirements. Proposed 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: Proposed law changes the present 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. Proposed 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. Proposed 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: Proposed law changes the present 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: Proposed law retains the present 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: Proposed law changes the present 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: Proposed law retains the present 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: Proposed law changes the present law. Under present law, a defendant's pre-incapacity choice regarding a curator is given priority. Thereafter, the court must give preference to the defendant's spouse. Proposed law retains these preferences, but enumerates several others. Proposed law preserves the present law option of appointing separate curators over the interdict's person and over the interdict's property.

Article 4562: Proposed law changes the present law to permit the extension of the time period allowed for qualification as curator for good cause shown. Proposed 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: Proposed law changes the present law by permitting the substitution of a sworn descriptive list for an inventory in all cases. Proposed law changes the present law to clarify that the provisions setting forth special security rules for natural tutors have no application in the context of interdiction.

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

Article 4565: Proposed law changes the present 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: Proposed law does not change the present law by retaining extensive cross-references to tutorship articles governing management of a minor's affairs, but proposed law changes the present law by omitting cross-references that are not necessary or that are referred to elsewhere as a cross-reference or a provision of law. Proposed law further provides that the appointed curator shall have no authority to admit the defendant to a residential or long-term care facility absent a contradictory hearing.

Article 4567: Proposed law does not change the present law by 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: Proposed law changes the present law to omit a provision establishing a maximum term of 10 years for certain curators.

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

Effective on January 1, 2001.

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