

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

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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

the burden of proof in an interdiction proceeding; to provide for the judgment of interdiction; to provide for the recordation of a notice of suit for interdiction and of the judgment of interdiction; to provide for the inventory and security of a curator, the oath of a curator and of an undercurator, and the letters of curatorship; to provide for the costs of an interdiction proceeding and attorney fees; to provide for the appeal of a judgment or order relative to interdiction or curatorship; to provide for the management of an interdict's affairs and the expenses of an interdict and his legal dependents; to provide for the modification and termination of the appointment of a curator or an undercurator, the post-judgment monitoring and reporting, and the procedures relative to an ancillary proceeding; to repeal special statutes for the interdiction of inebrates; to provide for an effective date; and to provide for related matters.

15        Be it enacted by the Legislature of Louisiana:

## CIVIL CODE

## BOOK I. OF PERSONS

## TITLE IX. PERSONS UNABLE TO CARE FOR THEIR

## PERSONS OR PROPERTY

## 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

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

7 Comments

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

41 (e) Full interdiction is a last resort and, as a result, is warranted  
42 only when a person's interests cannot be protected by less restrictive  
43 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."

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

### Art. 391. Temporary and preliminary interdiction

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

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

## Comments

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

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

(c) For purposes of this Title and other Louisiana legislation, 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.

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

## CHAPTER 2. GENERAL DUTIES OF CURATORS AND UNDERCURATORS

## Art. 392. Curators

The court shall appoint a curator to represent the interdict in juridical acts and to care for the person or affairs of the interdict, or any aspect of either. The duties and powers of a curator commence upon his 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.

## 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.

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.

34 Art. 393. Undercurators

1 undercurator shall exercise reasonable care, diligence, and prudence  
2 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).

## 5 Comment

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

12 CHAPTER 3. EFFECTS OF INTERDICTION

### 13 Art. 394. Pre-interdiction juridical acts

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

17 Comments

18 (a) This Article is new.

### 23 Art. 395. Capacity to make juridical acts

24                   A full interdict lacks the capacity to make a juridical act, except  
25                   as otherwise provided by law. A limited interdict retains the capacity  
26                   to make a juridical act, except as otherwise provided by law or the  
27                   judgment of limited interdiction. A judgment of interdiction does not  
28                   remove the capacity of the interdict to make or revoke a disposition  
29                   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).

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## Comments

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

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

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

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

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

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

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Art. 396. Effective date of judgment of interdiction

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

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

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## Comment

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This Article reproduces the substance of Civil Code Articles 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 interdiction30                  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

## 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).

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Art. 2319. Acts of ~~insane persons~~ interdicts  
The curators of ~~insane persons~~ are answerable for the damage  
occasioned by those under their care.

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

## Comments

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

## CODE OF CIVIL PROCEDURE

## BOOK VII. SPECIAL PROCEEDINGS

## TITLE VIII. INTERDICTION AND CURATORSHIP

## OF INTERDICTS

## CHAPTER 1. IN GENERAL

#### 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.

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

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

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

13 Comments

24 Art. 4542. Venue

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).

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## Comments

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

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

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

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A. Service of the citation and petition shall be personal.

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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.

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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.

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

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## Comments

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(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.

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

#### Art. 4544. Appointment of attorney

A. If the defendant makes no timely appearance through an attorney, the petitioner shall apply for an order appointing an attorney to represent the defendant. Pursuant to such a motion, or on its own motion, the court shall appoint an attorney to represent the defendant.

If the defendant either retains his own attorney, or intelligently and voluntarily waives the assistance of an attorney, the court shall discharge the court-appointed attorney. The court-appointed attorney shall represent the defendant until discharged by the court.

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

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

## Comments

(a) This Article changes the law. Under prior law, every defendant who did not answer an interdiction petition through counsel was afforded an attorney. While this Article continues to mandate the appointment of counsel in all interdiction cases, 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

1 proper person. Finally, unlike prior law, this Article requires an  
2 attorney to personally visit his client and advise him of the allegations  
3 made in the petition, the nature of the interdiction proceeding, and the  
4 client's rights and options.

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

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

14 Art. 4545. Appointment of examiner

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

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

28 Comments

29 (a) This Article refines prior law. Under Civil Code Article 393  
30 (1870), the court could appoint "any" person, including a health-care  
31 professional, to visit and to examine the defendant prior to an  
32 interdiction hearing. This Article preserves the substance of prior law  
33 but more fully defines the reporting requirements of any such court-  
34 appointed examiner.

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.

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

17 Comments

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.

## Comments

### Art. 4548. Burden of proof

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

## 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."

#### Art. 4549. Temporary and preliminary interdiction

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.

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.

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

12 Comments

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

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**

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

14 (1) Appoint a curator.

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.

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

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

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## Comments

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(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.

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(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.

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(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."

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Art. 4552. Recordation of notice of suit and judgment

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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.

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## Comments

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(a) This Article changes the law. This Article requires 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. This Article allows a curator fifteen days from his qualification, rather than ten days from his appointment, to record an interdiction judgment in parishes other than the one in which judgment was rendered. This Article 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.

12

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

16

Art. 4553. Post-judgment proceedings

17

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

20

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

21

## Comment

22

This Article changes the 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 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 court may modify or terminate its judgment when the court finds, by a preponderance of the evidence, that the terms of that judgment are currently either excessive or insufficient or that the ability of the interdict to care for his person or property has so changed as to warrant modification or termination. Except for good cause, the court shall follow substantially the same procedures that apply to an original

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

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

## 5 Comment

6 This Article does not change the law.

7 Art. 4555. Appeal

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

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

16 Comment

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

## 23 Art. 4556. Ancillary interdiction procedure

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.

8 Comments

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

23 Art. 4562. Qualification of curator

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

## Comments

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

(b) Code of Civil Procedure Article 4562 (Rev. 2000) states 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.

### Art. 4563. Inventory and security

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

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

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

## Comment

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

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

3 Art. 4564. Letters of curatorship

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

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

12                  Comment

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

17                  Art. 4565. Undercurators

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

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

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

29                  B. The undercurator shall:

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

## Comments

21 (a) This Article changes the law.

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

1 Art. 4566. Management of affairs of the interdict

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.

1

## Comment

2

This Article does not change the law.

3

## Art. 4568. Removal of curator or undercurator

4

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

6

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

9

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.

11

## Comments

12

(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.

17

(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.

20

(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).

23

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

25

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

28

## Art. 4569. Post-judgment monitoring and reporting

29

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.

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**DIGEST**

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

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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)