

2020 Regular Session

SENATE BILL NO. 153

BY SENATOR FOIL (On Recommendation of the Louisiana State Law Institute)

TUTORSHIP. Provides relative to continuing tutorship. (8/1/20)

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AN ACT

To amend and reenact Civil Code Articles 355 and 356, relative to continuing tutorship; to provide for the filing of a petition; to provide for the appointment of tutors; to provide for the appointment of co-tutors; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Civil Code Articles 355 and 356 are hereby amended and reenacted to read as follows:

Art. 355. Petition for continuing or permanent tutorship

When a person above the age of fifteen possesses less than two-thirds of the intellectual functioning of a person of the same age with average intellectual functioning, evidenced by standard testing procedures administered by competent persons or other relevant evidence acceptable to the court, the parents of such person, or the person entitled to custody or tutorship if one or both parents are dead, incapacitated, ~~or an absent person~~ or absent persons, or if the parents are judicially separated or divorced or have never been married to each other, may, with the written concurrence of the coroner of the parish of the intellectually disabled person's domicile, petition the court of that district to place such person under a continuing

1 tutorship which shall not automatically end at any age but shall continue until
2 revoked by the court of domicile. The petitioner shall not bear the coroner's costs or
3 fees associated with securing the coroner's concurrence.

4 Art. 356. Title of proceedings; procedural rules; ~~parents as tutor and undertutor~~

5 **parent to be named tutor**

6 The title of the proceedings shall be Continuing Tutorship of (Name of
7 Person), A Person with an Intellectual Disability.

8 (1) When the person to be placed under the continuing tutorship is above the
9 age of fifteen, and under the age of majority, the proceeding shall be conducted
10 according to the procedural rules established for ordinary tutorships.

11 (2) When the person to be placed under the continuing tutorship is above the
12 age of majority, the proceeding shall be conducted according to the procedural rules
13 established for interdictions.

14 (3) ~~Upon the petition of both~~ **When the** parents of the ~~mentally deficient~~
15 person ~~during their marriage one parent shall be named as tutor and the other as~~
16 ~~undertutor~~ **to be placed under the continuing tutorship are married to each other**
17 **and petition jointly, the court shall appoint the parents as co-tutors**, unless for
18 good reasons the judge **good cause the court** decrees otherwise.

19 (4) **When the parents of the person to be placed under the continuing**
20 **tutorship are married to each other but do not petition jointly, the court shall**
21 **appoint either a petitioning parent as tutor or both individually petitioning**
22 **parents as co-tutors, in accordance with the best interest of the child.**

23 (5) **Upon the petition of a parent of the person to be placed under the**
24 **continuing tutorship, the court shall, unless good cause requires otherwise,**
25 **appoint as tutor the petitioning parent who is:**

26 **(a) The surviving parent, if one parent is dead.**

27 **(b) The parent awarded custody during minority of the person to be**
28 **placed under the continuing tutorship, if the parents are divorced or judicially**
29 **separated.**

1 **(c) The parent who was tutor or tutrix during minority, if the parents**
 2 **were never married to each other.**

3 Revision Comments - 2020

4 (a) Subparagraph (5) incorporates Louisiana's child custody rules. See, e.g.,
 5 Articles 131 through 135. Although there are no provisions of law addressing
 6 custody of an adult descendant, for the purposes of this Article, the custodial
 7 determination made during minority informs the naming of a tutor for a major placed
 8 under continuing tutorship.

9 (b) See also Article 273 (requiring an undertutor in all cases). It may be
 10 appropriate for the court to name one parent tutor and the other undertutor under this
 11 Article.

12 (c) Under Subparagraph (5)(b), a parent with sole custody who petitions may
 13 be named tutor of the person to be placed under continuing tutorship. Likewise,
 14 parents with joint custody may be named co-tutors if each petitions. The rule
 15 established here is intended to approximate that applicable to tutorship during
 16 minority. See, e.g., Article 250 (making parents joint custody co-tutors unless
 17 otherwise ordered by the court).

The original instrument and the following digest, which constitutes no part
 of the legislative instrument, were prepared by Xavier I. Alexander.

DIGEST

SB 153 Engrossed

2020 Regular Session

Foil

Present law (C.C. Art. 355) authorizes the parents or legal custodians of a person with intellectual disabilities to petition for continuing tutorship.

Proposed law retains present law and authorizes parents who have never been married to each other to petition for continuing tutorship.

Present law (C.C. Art. 356) requires the court to name one parent as tutor and the other parent as undertutor.

Proposed law changes present law to allow the court to name parents as co-tutors when they petition jointly or when it is in the best interest of the child.

Proposed law also provides for the naming of a tutor when one parent is dead, when the parents are divorced or judicially separated, and when the parents were never married to each other.

Effective August 1, 2020.

(Amends C.C. Arts. 355 and 356)