

2020 Regular Session

HOUSE BILL NO. 125

BY REPRESENTATIVE GREGORY MILLER

(On Recommendation of the Louisiana State Law Institute)

SUCCESSIONS: Provides for the continuous revision of succession law

1 AN ACT

2 To amend and reenact Civil Code Articles 897, 1495, and 1505(A) and (B) and Code of
3 Civil Procedure Articles 2952 and 3396.18(A), to enact Civil Code Article 1495.1,
4 and to repeal R.S. 9:2401, relative to successions; to modernize terminology; to
5 provide for the calculation of the legitime; to provide for the calculation of the active
6 mass of a succession; to provide for the independent administration of a succession;
7 to provide for the sealing of a detailed descriptive list in a succession without
8 administration; to repeal the Uniform Wills Law; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Civil Code Articles 897, 1495, and 1505(A) and (B) are hereby amended
11 and reenacted and Civil Code Article 1495.1 is hereby enacted to read as follows:

12 Art. 897. Ascendant's right to inherit immovables donated to descendant.

13 Ascendants, to the exclusion of all others, inherit the immovables given by
14 them to their children or their descendants of a more remote degree who died without
15 ~~posterity~~ descendants, when these objects are found in the succession.

16 If these objects have been alienated, and the price is yet due in whole or in
17 part, the ascendants have the right to receive the price. They also succeed to the right
18 of reversion on the happening of any event which the child or descendant may have
19 inserted as a condition in his favor in disposing of those objects.

20 Revision Comments - 2020

21 The term "posterity" as used in the first paragraph of Article 897 has been
22 replaced with the term "descendants," as "posterity" is no longer defined in the Civil

1 Code. Under the Civil Code of 1870, the term "posterity" was defined to mean "all
2 the descendants in the direct line." Article 3556(24) (1870). It was deleted in 1999.

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4 Art. 1495. Amount of forced portion and disposable portion

5 Donations *inter vivos* and *mortis causa* may not exceed three-fourths of the
6 property of the donor if he leaves, at his death, one forced heir, and one-half if he
7 leaves, at his death, two or more forced heirs. The portion reserved for the forced
8 heirs is called the forced portion and the remainder is called the disposable portion.

9 ~~Nevertheless, if the fraction that would otherwise be used to calculate the~~
10 ~~legitime is greater than the fraction of the decedent's estate to which the forced heir~~
11 ~~would succeed by intestacy, then the legitime shall be calculated by using the~~
12 ~~fraction of an intestate successor.~~

13 Art. 1495.1. Calculation of the legitime

14 To determine the legitime of a forced heir when all forced heirs are of the
15 first degree, the division of the forced portion is made by heads.

16 When representation occurs for purposes of forced heirship, the division is
17 made by roots among those qualifying as forced heirs or being represented. Within
18 each root, any subdivision is also made by roots in each branch with those qualifying
19 as forced heirs by representation taking by heads.

20 Nevertheless, if the fraction that would otherwise be used to calculate the
21 legitime is greater than the fraction of the decedent's estate to which the forced heir
22 would succeed by intestacy, then the legitime shall be calculated by using the
23 fraction of an intestate successor.

24 Revision Comments - 2020

25 (a) This Article provides a definitive statement as to how to calculate an
26 individual forced heir's legitime. In that vein, it should be read in conjunction with
27 Article 1495, which provides the method of calculation of the forced portion, i.e., the
28 amount to which all forced heirs are collectively entitled.

29 (b) The first paragraph of this Article is applicable when all forced heirs are
30 forced heirs of the first degree. When one or more forced heirs is a forced heir by
31 representation, the second paragraph specifies the method by which the legitime is
32 calculated. Both the first and the second paragraphs of this Article are subject to the
33 limitation provided in the third paragraph.

1 (c) The second paragraph of this Article closes a gap that has long existed
 2 in Louisiana law, namely, how to calculate the legitime of a forced heir grandchild.
 3 Under this Article, the forced portion is initially calculated by assessing the number
 4 of descendants who are forced heirs in their own right or who are forced heirs by
 5 virtue of being represented by their descendants. The legitime is then calculated by
 6 roots and within each root by heads, but only among those who qualify as forced
 7 heirs by representation. Descendants of those who are treated as forced heirs under
 8 this Article but do not themselves qualify as forced heirs by representation are not
 9 considered for purposes of calculation of the legitime. By way of example, A may
 10 have two predeceased children B and C, neither of whom qualified as a forced heir
 11 in his own right. B has a child D, who is a forced heir by representation, and C has
 12 three children, E, F, and G, but only E and F qualify as forced heirs by
 13 representation. Under this example, the calculation of the forced portion would be
 14 made at the generational level of B and C because B and C are both represented by
 15 forced heirs although neither B nor C is a forced heir in his own right. Consequently,
 16 the forced portion would be 1/2. B's root (or his 1/4 share) would be distributed to D,
 17 his child who is a forced heir by representation. C's root (or his 1/4 share) would be
 18 divided equally between E and F, but not G, as E and F are the only forced heirs by
 19 representation in C's root.

20 (d) The third paragraph of this Article specifies the limitation commonly
 21 known as the Greenlaw rule, which has been moved from Article 1495 to this
 22 Article. This revision has not disturbed its applicability in the ordinary case where
 23 the legitime share of a forced heir of the first degree is reduced to an intestate share.
 24 Rather, this Article clarifies that the Greenlaw rule is also applicable to the share of
 25 a forced heir by representation and may, in some instances, serve to reduce the
 26 legitime fraction of a forced heir by representation to that of an intestate successor.
 27 Whenever the Greenlaw rule applies, the reduction in the fraction used to calculate
 28 the legitime of a forced heir correspondingly reduces the overall forced portion to
 29 which all of the forced heirs are collectively entitled.

30 * * *

31 Art. 1505. Calculation of disposable portion on mass of succession

32 A. To determine the reduction to which the donations, either *inter vivos* or
 33 *mortis causa*, are subject, an aggregate is formed of all property belonging to the
 34 donor or testator at the time of his death; the sums due by the estate are deducted
 35 from this aggregate amount; to that is fictitiously added the property disposed of by
 36 donation *inter vivos* within three years of the date of the donor's death, according to
 37 its value at the time of the donation.

38 B. ~~The sums due by the estate are deducted from this aggregate amount, and~~
 39 ~~the disposable quantum is calculated~~ determined on the ~~balance~~ above calculation,
 40 taking into consideration the number of forced heirs.

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Revision Comments - 2020

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This revision corrects a mistake that has long existed in Louisiana law regarding the calculation of the mass of the succession for purposes of forced heirship. Paragraph A of the prior version of Article 1505 declared that in ascertaining the reduction to which donations are subject, an aggregate is formed of all of the decedent's property and certain donations inter vivos are fictitiously added. Paragraph B then provided that the "sums due by the estate" were to be subtracted from the aggregate amount formed in Paragraph A. This language was derived from Article 922 of the French Civil Code, which has been characterized as "not clearly express[ing] the intention of the legislation." Aubry & Rau, *Droit Civil Français: Testamentary Successions and Gratuitous Dispositions* § 684 n.15. Specifically, the order of calculation suggested by the prior version of Article 1505 proved problematic in instances in which the value of the property left at death is less than the debts. In such a case, the value of debts must be subtracted prior to adding fictitiously certain donations inter vivos. After all, "the sum [that] the donees are permitted to keep can [not] be affected by the payment of the debts[] because creditors cannot profit by the reduction ..." *Id.* See also Philippe Malaurie et Claude Brenner, *Droit des Successions et des Libéralités* 431 (8th ed. 2018). The current revision makes clear that the proper method of computing the succession mass is to deduct the debts of the succession from the aggregate of the extant property. Only after the "net estate" is calculated does one "fictitiously add[] the property disposed of by donation inter vivos within three years of the date of the donor's death, according to its value at the time of the donation." Article 1505(A). In light of the above, it should also be clear that when the decedent's estate is insolvent and the amount of debts exceeds the assets, the "net estate" is considered to be zero, and the succession mass for forced heirship purposes is based solely upon the donations inter vivos that are fictitiously added back. See Malaurie et Brenner, *supra*, at 431.

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Section 2. Code of Civil Procedure Articles 2952 and 3396.18(A) are hereby amended and reenacted to read as follows:

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Art. 2952. Descriptive list of property, if no inventory

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A. If no inventory of the property left by the deceased has been taken, any heir, legatee, or other interested party shall file in the succession proceeding a detailed, descriptive list, sworn to and subscribed by him, of all items of property composing the succession of the deceased, stating the actual cash value of each item at the time of the death of the deceased.

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B. The detailed descriptive list shall be sealed upon the request of an heir or legatee.

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C. If the detailed descriptive list is sealed, a copy shall be provided to the decedent's universal successors and surviving spouse. Upon motion of any successor, surviving spouse, or creditor of the estate, the court may furnish relevant information contained in the detailed descriptive list regarding assets and liabilities of the estate.

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1 Comments - 2020

2 This revision extends the procedure adopted in 2017 in the context of
3 independent administration to successions in which an heir is sent into possession
4 without an administration of the succession. For the reasons explained in the
5 Comments to Article 3396.18, the detailed descriptive list may be filed under seal.

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7 Art. 3396.18. Inventory or sworn descriptive list

8 A. Before the succession can be closed, a judgment of possession rendered,
9 and the independent administrator discharged, there ~~must~~ shall be filed an inventory
10 or sworn detailed descriptive list of assets and liabilities of the estate verified by the
11 independent administrator.

12 * * *

13 Comments - 2020

14 This revision clarifies the law by definitively stating that the rendition of a
15 judgment of possession is still necessary even when a succession is independently
16 administered. The 2017 amendments did not intend to repeal the requirement of a
17 judgment of possession, even though independent administrators have "all the rights,
18 powers, authorities, privileges, and duties of a succession representative provided in
19 Chapters 4 through 12" of Title II of Book VI of the Louisiana Code of Civil
20 Procedure. See Article 3395.15. Nothing in this Article affects the rendition of a
21 partial judgment of possession pursuant to Articles 3362 or 3372.

22 Section 3. R.S. 9:2401 is hereby repealed in its entirety.

DIGEST

The digest printed below was prepared by Louisiana State Law Institute. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 125 Original

2020 Regular Session

Gregory Miller

Abstract: Provides for miscellaneous revisions to the law of successions.

Present law (C.C. Art. 897) provides that ascendants inherit immovables that they gave to their children or descendants of a more remote degree when the donee dies without posterity and the immovable is part of the succession.

Proposed law does not change the law but simply updates the term "posterity."

Present law (C.C. Art. 1495) provides for the reduction of the legitime share of a forced heir to an intestate share in certain circumstances. This is known as the Greenlaw rule.

Proposed law does not change the law but moves the Greenlaw rule to proposed C.C. Art. 1495.1 to ensure its applicability to both the share of a forced heir in the first degree and a share of a forced heir by representation.

Proposed law (C.C. Art. 1495.1) provides for the calculation of an individual forced heir's legitime when all forced heirs are of the first degree and when one or more forced heirs are heirs by representation.

Present law (C.C. Art. 1505) provides for the calculation of the disposable portion of the mass of the succession.

Proposed law provides for the proper mathematical order of the calculation so that the value of the debts of a succession are subtracted prior to fictitiously adding donations within three years of the date of the donor's death.

Present law (C.C.P. Art. 2952) provides for the filing of a detailed descriptive list if no inventory of the property left by the deceased has been taken.

Proposed law provides that the detailed descriptive list may be sealed upon the request of an heir or legatee and authorizes the court to release relevant information.

Present law (C.C.P. Art. 3396.18) provides for the filing and sealing of an inventory or detailed descriptive list in an independent administration of a succession.

Proposed law clarifies that a judgment of possession is also required prior to the closing of an independent administration of a succession.

Present law (R.S. 9:2401) provides for the effectiveness of a will executed outside of this state.

Proposed law repeals present law as duplicative because the Conflicts of Laws provisions in the Civil Code provide similar rules for the effectiveness of a will executed outside of this state.

(Amends C.C. Arts. 897, 1495, and 1505(A) and (B) and C.C.P. Arts. 2952 and 3396.18(A); Adds C.C. Art. 1495.1; Repeals R.S. 9:2401)