

2020 Regular Session

HOUSE BILL NO. 125

BY REPRESENTATIVE GREGORY MILLER

(On Recommendation of the Louisiana State Law Institute)

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 Part 1 of Chapter 4 of Title 9 of the Louisiana Revised Statutes of 1950,  
5 comprised of R.S. 9:2401, relative to successions; to modernize terminology; to  
6 provide for the calculation of the legitime; to provide for the calculation of the active  
7 mass of a succession; to provide for the independent administration of a succession;  
8 to provide for the sealing of a detailed descriptive list in a succession without  
9 administration; to repeal the Uniform Wills Law; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

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

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

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

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

21 Revision Comments - 2020

22 The term "posterity" as used in the first paragraph of Article 897 has been  
23 replaced with the term "descendants," as "posterity" is no longer defined in the Civil  
24 Code. Under the Civil Code of 1870, the term "posterity" was defined to mean "all  
25 the descendants in the direct line." Article 3556(24) (1870). It was deleted in 1999.

26 \* \* \*

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

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

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

10 Art. 1495.1. Calculation of the legitime

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

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

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

21 Revision Comments - 2020

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

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

31 (c) The second paragraph of this Article closes a gap that has long existed  
 32 in Louisiana law, namely, how to calculate the legitime of a forced heir grandchild.  
 33 Under this Article, the forced portion is initially calculated by assessing the number  
 34 of descendants who are forced heirs in their own right or who are forced heirs by  
 35 virtue of being represented by their descendants. The legitime is then calculated by  
 36 roots and within each root by heads, but only among those who qualify as forced

1 heirs by representation. Descendants of those who are treated as forced heirs under  
 2 this Article but do not themselves qualify as forced heirs by representation are not  
 3 considered for purposes of calculation of the legitime. By way of example, A may  
 4 have two predeceased children B and C, neither of whom qualified as a forced heir  
 5 in his own right. B has a child D, who is a forced heir by representation, and C has  
 6 three children, E, F, and G, but only E and F qualify as forced heirs by  
 7 representation. Under this example, the calculation of the forced portion would be  
 8 made at the generational level of B and C because B and C are both represented by  
 9 forced heirs although neither B nor C is a forced heir in his own right. Consequently,  
 10 the forced portion would be 1/2. B's root (or his 1/4 share) would be distributed to D,  
 11 his child who is a forced heir by representation. C's root (or his 1/4 share) would be  
 12 divided equally between E and F, but not G, as E and F are the only forced heirs by  
 13 representation in C's root.

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

24 \* \* \*

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

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

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

35 \* \* \*

36 Revision Comments - 2020

37 This revision corrects a mistake that has long existed in Louisiana law  
 38 regarding the calculation of the mass of the succession for purposes of forced  
 39 heirship. Paragraph A of the prior version of Article 1505 declared that in  
 40 ascertaining the reduction to which donations are subject, an aggregate is formed of  
 41 all of the decedent's property and certain donations *inter vivos* are fictitiously added.  
 42 Paragraph B then provided that the "sums due by the estate" were to be subtracted  
 43 from the aggregate amount formed in Paragraph A. This language was derived from  
 44 Article 922 of the French Civil Code, which has been characterized as "not clearly

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 express[ing] the intention of the legislation." Aubry & Rau, Droit Civil Français:  
 2 Testamentary Successions and Gratuitous Dispositions § 684 n.15. Specifically, the  
 3 order of calculation suggested by the prior version of Article 1505 proved  
 4 problematic in instances in which the value of the property left at death is less than  
 5 the debts. In such a case, the value of debts must be subtracted prior to adding  
 6 fictitiously certain donations inter vivos. After all, "the sum [that] the donees are  
 7 permitted to keep can [not] be affected by the payment of the debts[] because  
 8 creditors cannot profit by the reduction ..." Id. See also Philippe Malaurie et Claude  
 9 Brenner, Droit des Successions et des Libéralités 431 (8th ed. 2018). The current  
 10 revision makes clear that the proper method of computing the succession mass is to  
 11 deduct the debts of the succession from the aggregate of the extant property. Only  
 12 after the "net estate" is calculated does one "fictitiously add[] the property disposed  
 13 of by donation inter vivos within three years of the date of the donor's death,  
 14 according to its value at the time of the donation." Article 1505(A). In light of the  
 15 above, it should also be clear that when the decedent's estate is insolvent and the  
 16 amount of debts exceeds the assets, the "net estate" is considered to be zero, and the  
 17 succession mass for forced heirship purposes is based solely upon the donations inter  
 18 vivos that are fictitiously added back. See Malaurie et Brenner, supra, at 431.

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

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

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

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

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

34 Comments - 2020

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

39 \* \* \*

1 Art. 3396.18. Inventory or sworn descriptive list

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

6 \* \* \*

7 Comments - 2020

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

16 Section 3. Part 1 of Chapter 4 of Title 9 of the Louisiana Revised Statutes of 1950  
17 is hereby repealed in its entirety.

\_\_\_\_\_  
SPEAKER OF THE HOUSE OF REPRESENTATIVES

\_\_\_\_\_  
PRESIDENT OF THE SENATE

\_\_\_\_\_  
GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_