

SENATE RESOLUTION NO. 31

BY SENATOR FOIL

A RESOLUTION

To urge and request the Louisiana State Law Institute to study and make recommendations to the legislature on whether a limited continuing tutorship should be established.

WHEREAS, Civil Code Art. 355 provides that "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 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 tutorship which shall not automatically end at any age but shall continue until revoked by the court of domicile"; and

WHEREAS, Civil Code Art. 356(2) provides that "when the person to be placed under the continuing tutorship is above the age of majority, the proceeding shall be conducted according to the procedural rules established for interdictions"; and

WHEREAS, Civil Code Art. 389 allows a court to order the full interdiction of a natural person of the age of majority, or an emancipated minor, who due to an infirmity, is unable to consistently make reasoned decisions regarding the care of his person and property, or to communicate those decisions, and whose interests cannot be protected by less restrictive means; and

WHEREAS, Civil Code Art. 390 authorizes the limited interdiction of a natural person of the age of majority, or an emancipated minor, who due to an infirmity is unable consistently to make reasoned decisions regarding the care of his person or property, or any aspect of either, or to communicate those decisions, and whose interests cannot be protected by less restrictive means; and

WHEREAS, a limited continuing tutorship may be seen as a mixture of a tutorship and an interdiction, which unlike a regular tutorship, the continuing tutorship does not end when the person reaches the age of eighteen; and

WHEREAS, additionally, a limited continuing tutorship may be viewed the same as a tutorship and a full interdiction, wherein the person under a continuing tutorship loses most of his rights and the person appointed as the tutor is responsible for the person just as if he were a minor; and

WHEREAS, a continuing tutorship would authorize the tutor to make certain decisions on behalf of the individual; and

WHEREAS, there is no provision of law that addresses a limited continuing tutorship, which allows a person to marry, enter into contracts and obligations, make medical decisions, or participate in the electoral process; and

WHEREAS, it is important to consider that while an adult may be under a continuing tutorship he may also be capable of independently making certain decisions regarding his personal life; and

WHEREAS, in an effort to provide for consistency, a review of the laws, rules, regulations, policies, and procedures related to a limited continuing tutorship and an interdiction should be considered.

THEREFORE, BE IT RESOLVED that the Senate of the Legislature of Louisiana does hereby urge and request the Louisiana State Law Institute to study and make recommendations to the legislature on whether a limited continuing tutorship should be established.

BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the director of the Louisiana State Law Institute and that the Louisiana State Law Institute report its findings and recommendations to the legislature on or before March 1, 2024.

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PRESIDENT OF THE SENATE