

SENATE BILL NO. 61

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

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AN ACT

To amend and reenact Section 12 of Chapter 1 of Title VIII of Book I of the Civil Code, comprised of Arts. 354 through 362, relative to continuing tutorship; to provide for full continuing tutorship; to provide for limited continuing tutorship; to provide procedures; to provide for the petition; to provide for the contents of the decree; to provide for the authority of the tutor and undertutor; to provide for termination; to provide for legal capacity; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Section 12 of Chapter 1 of Title VIII of Book I of the Civil Code, comprised of Arts. 354 through 362, is hereby amended and reenacted to read as follows:

SECTION 12 - OF CONTINUING ~~OR PERMANENT~~ TUTORSHIP OF
PERSONS WITH ~~INTELLECTUAL~~ DISABILITIES

Art. 354. ~~Procedure for placing~~ **Placing** under continuing tutorship
~~Persons, including certain~~ Certain children; with ~~intellectual~~ disabilities ~~or~~
~~mental deficiencies~~ may be placed under full or limited continuing ~~or permanent~~
tutorship ~~without formal or complete interdiction~~ in accordance with the following
rules and the ~~procedures stated in the Louisiana~~ provisions of the Code of Civil
Procedure.

Revision Comments – 2024

(a) This revision changes the law to provide for the possibility of a limited continuing tutorship for an unemancipated minor and to mirror the law of interdiction, which provides for the possibility of both full and limited interdiction for emancipated minors and persons over the age of majority. Where the unemancipated minor who is a candidate for continuing tutorship has an intellectual or adaptive functioning level that renders him consistently able to make reasoned decisions regarding some but not all matters, a limited continuing tutorship may be appropriate.

(b) This revision changes the nomenclature to refer only to "continuing" tutorship. Previously, the phrases "continuing tutorship" and "permanent tutorship" were used interchangeably. This revision suppresses the use of the phrase

1 "permanent tutorship" to promote accuracy and to avoid superfluity.

2 Art. 355. Petition for **full or limited** continuing ~~or permanent~~ tutorship

3 When a ~~person~~ **an unemancipated minor** above the age of fifteen possesses
 4 less than two-thirds of the intellectual **or adaptive** functioning of a person of the
 5 same age with average intellectual **or adaptive** functioning, evidenced by standard
 6 testing procedures administered by competent persons or other relevant evidence
 7 acceptable to the court, the parents of ~~such person~~ **the minor**, or the person entitled
 8 to custody or tutorship **of the minor** if one or both parents are dead, incapacitated,
 9 or absent persons; or if the parents are judicially separated or divorced or have never
 10 been married to each other, may, with the written concurrence of the coroner of the
 11 parish of the ~~intellectually disabled person's~~ **minor's** domicile, petition the court of
 12 that district to place ~~such person~~ **the minor** under a **full or limited** continuing
 13 tutorship ~~which~~ **that** shall not automatically end at any age but shall continue until
 14 revoked by the court of domicile. The petitioner shall not bear the coroner's costs or
 15 fees associated with securing the coroner's concurrence.

16 Revision Comments – 2024

17 (a) This revision changes the standard for placing a person under continuing
 18 tutorship to allow the court to consider either intellectual or adaptive functioning.
 19 Prior law did not allow children functioning at very low levels in the areas of
 20 communication, daily living skills, and socialization to be placed under continuing
 21 tutorship if their intellectual functioning was near average. This revision permits
 22 broader considerations of disability, including, for example, adaptive functioning
 23 under the Vineland-3 Adaptive Behavior Scales.

24
 25 (b) This revision also clarifies that continuing tutorship may be sought only
 26 for persons between the ages of fifteen and eighteen. Once a person reaches the age
 27 of majority, Louisiana's law of interdiction applies. See, e.g., Civil Code Article 389
 28 et seq.

29 Art. 356. Title of proceedings; procedural rules; parent to be named tutor

30 The title of the proceedings shall be Continuing Tutorship of (Name of
 31 Person), A Person with ~~an Intellectual~~ **a** Disability~~;~~

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

35 ~~(2) When the person to be placed under the continuing tutorship is above the~~

1 age of majority, the proceeding shall be conducted according to the procedural rules
2 established for interdictions.

3 ~~(3)~~**(1)** When the parents of the person to be placed under ~~the~~ **a full or limited**
4 continuing tutorship are married to each other and petition jointly, the court shall
5 appoint the parents as co-tutors, unless for good cause the court decrees otherwise.

6 ~~(4)~~**(2)** When the parents of the person to be placed under ~~the~~ **a full or limited**
7 continuing tutorship are married to each other but do not petition jointly, the court
8 shall appoint either a petitioning parent as tutor or both individually petitioning
9 parents as co-tutors, in accordance with the best interest of the child.

10 ~~(5)~~**(3)** Upon the petition of a parent of the person to be placed under the **full**
11 **or limited** continuing tutorship, the court shall, unless good cause requires
12 otherwise, appoint as tutor the petitioning parent who is:

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

14 (b) The parent awarded custody ~~during minority~~ of the ~~person~~ **child** to be
15 placed under the **full or limited** continuing tutorship, if the parents are divorced or
16 judicially separated.

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

19 Art. 357. Decree; place of recording; notice:

20 If the prayer for **full or limited** continuing ~~or permanent~~ tutorship ~~be~~ **is**
21 granted, the decree shall be recorded in the conveyance and mortgage records of the
22 parish of the minor's domicile, and of any future domicile, and in ~~such~~ other parishes
23 as may be deemed expedient. The decree shall not be effective as to persons without
24 notice thereof outside of the parishes in which it is recorded.

25 Art. 358. ~~Authority,~~ **Full continuing tutorship; authority;** privileges; and duties of
26 tutor and undertutor; ~~termination of tutorship~~

27 The granting of ~~the~~ **a** decree **of full continuing tutorship** shall confer upon
28 the tutor and undertutor the same authority, privileges, and responsibilities as in
29 other tutorships, including the same authority to give consent for any medical
30 treatment or procedure, to give consent for any educational plan or procedure, and

1 to obtain medical, educational, or other records, but the responsibility of the tutor for
 2 the offenses or quasi-offenses of the person ~~with an intellectual disability~~ **under full**
 3 **continuing tutorship** shall be the same as that of a curator for those of ~~the~~ **an**
 4 interdicted person ~~and the tutorship shall not terminate until the decree is set aside~~
 5 ~~by the court of the domicile, or the court of last domicile if the domicile of the~~
 6 ~~person with an intellectual disability is removed from the State of Louisiana.~~

7 **Art. 358.1. Limited continuing tutorship; authority; privileges and duties of**
 8 **tutor and undertutor**

9 **The granting of a decree of limited continuing tutorship shall confer**
 10 **upon the tutor and undertutor only the authority, privileges, and**
 11 **responsibilities required to protect the interest of the person under limited**
 12 **continuing tutorship.**

13 **Art. 358.2. Termination of continuing tutorship**

14 **A full or limited continuing tutorship shall not terminate until the decree**
 15 **is set aside by the court of the domicile of the person under continuing**
 16 **tutorship, or the court of last domicile if the domicile of the person under**
 17 **continuing tutorship is removed from the state.**

18 Art. 359. Restriction on legal capacity

19 ~~The decree if granted shall restrict~~ **A person under full continuing**
 20 **tutorship has** the legal capacity of the person ~~with an intellectual disability to that~~
 21 ~~of a minor.~~ **of an unemancipated minor or any lesser capacity as may be ordered**
 22 **in the decree. A person under limited continuing tutorship has legal capacity in**
 23 **accordance with the decree of continuing tutorship.**

24 Art. 360. Parents' rights of administration

25 In addition to the rights of tutorship, the parents shall retain, during the
 26 marriage and for **during** the minority of the child ~~with an intellectual disability~~
 27 **under full or limited continuing tutorship**, all rights of administration granted to
 28 parents of children ~~without an intellectual disability~~ **not under continuing tutorship**
 29 during their minority.

30 Art. 361. Contest of decree restricting legal capacity

1 The decree restricting ~~his~~ legal capacity may be contested in the court of
2 domicile by the person **under full or limited continuing tutorship** ~~himself~~ or by
3 anyone adversely affected by the decree. For good cause, the court may modify or
4 terminate the decree restricting legal capacity.

Revision Comments – 2024

6 Under this Article, a person may contest the decree by objecting to its initial
7 issuance or by seeking a later modification or termination of the decree.

8 Art. 362. Persons subject to interdiction.

9 Persons subject to ~~mental or physical illness or disability, whether of a~~
10 ~~temporary or permanent nature, of such a degree as to render them subject to~~
11 interdiction, **under in accordance with** the provisions of Title IX ~~hereof~~ **of this**
12 **Book**, remain subject to interdiction as provided in Articles 389 ~~to~~ **through** 399;
13 ~~inclusive~~; and ~~such~~ **any** other **applicable** laws ~~as may relate thereto~~.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____