

SENATE BILL NO. 127

BY SENATOR MILLER

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AN ACT

To amend and reenact Code of Civil Procedure Art. 4566(C) and to enact R.S. 9:1026 and 2374, relative to donations; to provide relative to management of affairs of the interdict; to provide relative to donations made by a curator on behalf of an interdict; to provide relative to the net worth of an interdict; to provide relative to donations inter vivos and testamentary and charitable dispositions; to provide with respect to limitations and exceptions on donations and testamentary and charitable dispositions in certain circumstances; to provide with respect to tax exclusions, exemptions, and maximum limits in certain circumstances; to provide relative to forced heirs with disabilities; to provide relative to forced portion in certain circumstances; to provide relative to the net worth of a forced heir with disabilities; to provide for certain terms, conditions, and procedures; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Code of Civil Procedure Art. 4566(C) is hereby amended and reenacted to read as follows:

Art. 4566. Management of affairs of the interdict

* * *

C. A curator may accept donations made to the interdict. A curator shall not

1 make donations of the property of the interdict except as provided by law. A
 2 charitable donation inter vivos or testamentary charitable disposition made in
 3 compliance with the provisions of R.S. 9:1026 and approved by the court shall
 4 not constitute a breach of the fiduciary duty or conflict of interest by the
 5 curator even if the curator, undercurator, parent, direct descendant, sibling, or
 6 descendant of a sibling of the interdict is affiliated with the charity or a
 7 recipient of the donation. A curator without court approval may refuse,
 8 renounce, or disclaim a donation, inheritance, or bequest made to an interdict
 9 with a direct or beneficial net worth as a trust beneficiary or otherwise of one
 10 hundred million dollars or more.

11 * * *

12 Section 2. R.S. 9:1026 and 2374 are hereby enacted to read as follows:

13 §1026. Interdicts; donations; limitations; net worth

14 A. Notwithstanding the provisions of R.S. 9:1022 through 1024 and
 15 pursuant to Subsection C of this Section, upon request of the curator and
 16 undercurator, the court may authorize a curator, in the name of and on behalf
 17 of an interdict with a direct or beneficial net worth of one hundred million
 18 dollars or more as a trust beneficiary or otherwise, to make the following
 19 donations:

20 (1) Subject to Paragraph (2) of this Subsection and Subsection C of this
 21 Section, other than to charitable recipients, an interdict may make, directly or
 22 indirectly, donations inter vivos of money and other assets from surplus funds
 23 of the interdict utilizing all or a portion of the interdict's annual federal gift tax
 24 exclusions pursuant to 26 U.S.C. 2503(b) and the interdict's lifetime credits and
 25 exemptions from federal estate tax and the tax on generation skipping transfers,
 26 pursuant to 26 U.S.C. 2010 and 2631 et seq., to one or more of the following: an
 27 interdict's direct descendant, sibling, descendant of a sibling, stepsibling,
 28 descendant of a stepsibling, or step-descendant of a sibling, or to one or more
 29 trusts for the benefit of the recipient or one or more class trusts for the benefit
 30 of such present and future recipients, including to grantor trusts. Additional

1 donations inter vivos pursuant to this Paragraph may be made, except to a
2 stepsibling, descendant of a stepsibling, step-descendant of a sibling, or a trust
3 for the benefit of a stepsibling or step-descendant of a sibling, subject to a
4 maximum lifetime limit of five times the prevailing federal estate tax lifetime
5 exemption equivalent.

6 (2) Inter vivos noncharitable donations authorized in Paragraph (1) of
7 this Subsection in the name or on behalf of an interdict shall be made in equal
8 amounts to each member of the same class and generation descending from a
9 common parent. Inter vivos noncharitable donations authorized in Paragraph
10 (1) of this Subsection and made to nieces and nephews, including step-nieces and
11 step-nephews, with the same parent shall be made equally to each descendant
12 of that parent of the same generation.

13 (3) If the federal gift tax has been repealed, cumulative inter vivos
14 transfers otherwise authorized in Paragraph (1) of this Subsection are
15 permitted subject to an aggregate lifetime amount equal to six hundred percent
16 of the highest gift tax lifetime exemption in effect prior to the gift tax being
17 repealed. Annual exclusion donations may be made subject to the provisions of
18 this Section after donations in the maximum allowable amounts pursuant to
19 Paragraph (1) of this Subsection.

20 (4) Noncharitable testamentary dispositions made upon the death of the
21 interdict, other than through intestacy, including a self-settled trust in which the
22 interdict is a beneficiary may only be made to a direct descendant, sibling,
23 descendant of a sibling of an interdict, one or more trusts for the benefit of such
24 recipients, or one or more class trusts for the benefit of such present and future
25 recipients, including to grantor trusts, but may not be made to a stepsibling,
26 descendant of a stepsibling, or trust for the benefit of such recipient.
27 Testamentary dispositions pursuant to this Paragraph shall be made in equal
28 amounts to recipients of the same class and generation, except that a catch-up
29 bequest may be made to an interdict's direct descendant, sibling, or descendant
30 of a sibling to equalize a donation to a permissible recipient born after inter

1 vivos donations were made to other recipients of the same degree.

2 (5) Nothing in this Section shall be construed to annul or supersede a
 3 lawful will or trust in effect prior to a person being interdicted.

4 (6) Inter vivos charitable dispositions may be made to charitable
 5 recipients, including split interest trusts, donor-advised funds, charitable trusts,
 6 and private foundations, even if such donees are controlled by a parent, direct
 7 descendant, sibling, or descendant of a sibling of an interdict, up to a maximum
 8 annual aggregate amount of ten percent of the interdict's net worth in excess of
 9 one hundred million dollars. An inter vivos charitable disposition pursuant to
 10 this Paragraph shall not be allowed if the interdict's net worth is less than one
 11 hundred million dollars.

12 B. Inter vivos donations, testamentary and charitable dispositions,
 13 including a charitable remainder trust, to one or more charities may be made
 14 that take effect upon the death of the interdict provided that such charitable
 15 donations shall not exceed an aggregate of seventy-five percent of the interdict's
 16 gross estate at the time of his death for federal estate tax reporting purposes.

17 C.(1) The court may authorize a curator to make a donation pursuant
 18 to Subsection A of this Section when the procedure provided for in Code of Civil
 19 Procedure Articles 4271 and 4566 is complied with and the donation does not
 20 materially impair the financial condition of the interdict and is not likely to
 21 deprive the interdict of sufficient funds to provide for his future needs and
 22 support. The court may require the curator to provide documentation to
 23 substantiate the request to make a donation and place the information obtained
 24 under seal.

25 (2) For purposes of this Subsection, it is presumed that a donation does
 26 not materially impair the financial condition of the interdict or deprive the
 27 interdict of sufficient resources if the curator shows that the direct or beneficial
 28 net worth of the interdict is not less than one hundred million dollars as a trust
 29 beneficiary or otherwise, after subtracting the value of the donation.

30 * * *

1 **§2374. Forced heirs; disability; forced portion; limitations; net worth**
2 **Notwithstanding the provisions of Civil Code Article 1495, a forced heir**
3 **who has attained the age of majority, is permanently incapable of taking care**
4 **of his person or administering his estate due to mental incapacity, physical**
5 **infirmity, an inherited incurable disease, or other documented medical**
6 **condition at the time of the death of a decedent who is an ancestor of such**
7 **forced heir, and who has a direct or beneficial net worth in excess of fifty**
8 **million dollars as a trust beneficiary or otherwise, shall have a forced portion**
9 **of one dollar.**

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____