

2016 Regular Session

HOUSE BILL NO. 350

BY REPRESENTATIVE HILFERTY

FAMILY LAW: Prohibits certain persons from preventing or limiting communication, visitation, or interaction with others

1 AN ACT

2 To amend and reenact Civil Code Article 2995 and Code of Civil Procedure Article 4568
3 and to enact Civil Code Article 2997(7) and Code of Civil Procedure Articles
4 3601(E), 4565(B)(7), 4566(J), and 4570 and R.S. 9:3851(E), relative to persons; to
5 provide with respect to interdicted persons; to provide relative to persons subject to
6 mandate; to provide for duties and restrictions of curators, undercurators, and
7 mandataries; to provide with respect to injunctions; to provide for an effective date;
8 and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Civil Code Article 2995 is hereby amended and reenacted and Civil Code
11 Article 2997(7) is hereby enacted to read as follows:

12 Art. 2995. Incidental, necessary, or professional acts

13 The mandatory may perform all acts that are incidental to or necessary for the
14 performance of the mandate.

15 The authority granted to a mandatory to perform an act that is an ordinary
16 part of his profession or calling, or an act that follows from the nature of his
17 profession or calling, need not be specified.

18 A mandatory shall not prevent or limit reasonable communication, visitation,
19 or interaction between a principal who is over the age of eighteen years and another
20 person without prior court approval, to be granted only upon a showing of good

1 by any other individual, curator, or mandatary, including but not limited to violations
2 of Civil Code Article 2995 or Code of Civil Procedure Article 4566(J).

3 * * *

4 Art. 4565. Undercurators

5 * * *

6 B. The undercurator shall:

7 * * *

8 (7) Move to appoint a successor for a curator who violates any of the
9 provisions of Code of Civil Procedure Article 4566.

10 * * *

11 Art. 4566. Management of affairs of the interdict

12 * * *

13 J. A curator shall allow communication, visitation, and interaction between
14 an interdict who is over the age of eighteen years and a relative of the interdict by
15 blood, adoption, or affinity within the third degree, or another individual who has a
16 relationship with the interdict based on or productive of strong affection if it would
17 serve the best interest of the interdict.

18 * * *

19 Art. 4568. Removal of a curator or undercurator

20 On motion of any interested person, or on its own motion, the court may
21 remove a curator or undercurator from office for good cause. Good cause may
22 include but not be limited to a violation of Code of Civil Procedure Article 4566(J).

23 Unless otherwise ordered by the court, removal of the curator or undercurator
24 by the court is effective upon qualification of the appointed successor.

25 * * *

26 Art. 4570. Cause of action for visitation with the interdict

27 A. Any relative of an interdict by blood, adoption, or affinity within the third
28 degree, or an individual who has a relationship with the interdict based on or
29 productive of strong affection may file a rule to show cause seeking visitation,

1 communication, or interaction with an interdict who is over the age of eighteen
2 years.

3 B. Any person filing a cause of action pursuant to Paragraph A of this Article
4 may request an expedited hearing on the cause of action, and upon showing of good
5 cause, shall be entitled to an expedited hearing.

6 C. Good cause shall include but is not limited to a showing that the interdict
7 suffers from an illness or condition because of which he is not likely to survive
8 beyond six months.

9 Section 3. R.S. 9:3851(E) is hereby enacted to read as follows:

10 §3851. Who may file; petition contents; service; venue

11 * * *

12 E. On motion of any interested person or on its own motion, the court may
13 review the acts of a mandatary and for good cause, grant any relief provided in R.S.
14 9:3854 or Code of Civil Procedure Article 3605. Good cause shall include but not
15 be limited to a violation of Civil Code Article 2995.

16 Section 4. This Act shall become effective upon signature by the governor or, if not
17 signed by the governor, upon expiration of the time for bills to become law without signature
18 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
19 vetoed by the governor and subsequently approved by the legislature, this Act shall become
20 effective on the day following such approval.

DIGEST

The digest printed below was prepared by House Legislative Services. 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 350 Reengrossed

2016 Regular Session

Hilferty

Abstract: Prohibits certain persons from preventing or limiting reasonable communication, visitation, or interaction with certain persons.

Present law provides that a mandatary may perform all acts which are incidental or necessary to fulfill the obligations as mandatary.

Proposed law specifies that a mandatary may not prevent or limit reasonable communication, visitation, or interaction between a principal who is over the age of 18 years and another

person without prior court approval and only upon a showing of good cause by the mandatory, unless express authority to do so has been given to the mandatory by the principal.

Proposed law specifies that the individuals whom the mandatory may not limit or prevent reasonable communication, visitation, or interaction with the principal include relatives by blood, adoption, or affinity within the third degree or other individuals who have a relationship with the principal based on or productive of strong affection.

Present law allows a curator to care for the person or affairs of an interdict.

Proposed law specifies that a curator shall allow communication, visitation, and interaction between an interdict who is over the age of eighteen years and a relative of the interdict by blood, adoption, or affinity within the third degree, or another individual who has a relationship with the interdict based on or productive of strong affection if it would serve the best interest of the interdict.

Proposed law requires an undercurator to move the court to appoint a successor to a curator if the undercurator learns that the curator has denied an interdicted individual from communicating, visiting, or interacting with a person, unless the court has previously approved such denial.

Proposed law adds that any interested party may petition for the removal of a curator or undercurator specifically if the curator or undercurator is prohibiting visitation of an interdict.

Present law provides for injunctive relief to a party who can demonstrate that irreparable injury, loss, or damage will result in the absence of injunctive relief.

Proposed law provides that the isolation of an individual over the age of 18 years may qualify as causing irreparable injury, loss, or damage to an individual, and thus allows for injunctive relief to be granted.

Proposed law provides that a rule to show cause may be filed by any relatives by blood, adoption, or affinity within the third degree, or other individuals who have a relationship based on or productive of strong affection who are seeking visitation, communication, or interaction with an interdict. Provides for an expedited hearing on a rule to show cause when the interdict is suffering from an illness or condition which he is not likely to survive beyond six months.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends C.C. Art. 2995 and C.C.P. Art. 4568; Adds C.C. Art. 2997(7), C.C.P. Arts. 3601(E), 4565(B)(7), 4566(J), and 4570, and R.S. 9:3851(E))

Summary of Amendments Adopted by House

The House Floor Amendments to the engrossed bill:

1. Adds emergency effective date.
2. Adds that a mandatory may limit communication, visitation, or interaction with certain people if express authority has been granted by the principal for the mandatory to do so.
3. Specifies that the individuals with whom the mandatory may not limit communication, visitation, or interaction include relatives by blood, adoption, or

affinity within the third degree, or other individuals who have a relationship based on or productive of strong affection.

4. Specifies that a curator shall allow communication, visitation, and interaction between an interdict who is over the age of eighteen years and a relative of the interdict by blood, adoption, or affinity within the third degree, or another individual who has a relationship with the interdict based on or productive of strong affection if it would serve the best interest of the interdict.
5. Provides that the principals, interdicts, and individuals with whom visitation is sought must be 18 years or older.
6. Provides that a rule to show cause may be filed by any relatives by blood, adoption, or affinity within the third degree, or other individuals who have a relationship based on or productive of strong affection who are seeking visitation, communication, or interaction with an interdict.
7. Provides for an expedited hearing on a rule to show cause when the interdict is suffering from an illness or condition which he is not likely to survive beyond six months.