

2017 Regular Session

HOUSE BILL NO. 115

BY REPRESENTATIVE CROMER

(On Recommendation of the Louisiana State Law Institute)

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

FAMILY LAW: Provides for the continuous revision of community property laws

1 AN ACT

2 To amend and reenact Civil Code Articles 2350, 2369.3, and 2375, relative to community
3 property; to provide relative to a community enterprise; to provide for the effect of
4 a judgment of separation of property upon reconciliation; and to provide for related
5 matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. Civil Code Articles 2350, 2369.3, and 2375 are hereby amended and
8 reenacted to read as follows:

9 Art. 2350. Alienation of movable assets of business:

10 The spouse who is the sole manager of a community enterprise has the
11 exclusive right to alienate, encumber, or lease its movables unless the movables are
12 issued in the name of the other spouse or the concurrence of the other spouse is
13 required by law.

14 A community enterprise is a business that is not a juridical person.

15 Revision Comments - 2017

16 The definition of "community enterprise" provided herein is not new. It has
17 been relocated from Article 2369.3 to its more appropriate placement in this Article.
18 See *Lanza v. Lanza*, 898 So. 2d 280 (La. 2005). The change in terminology from
19 "legal entity" to "juridical person" is intended to be consistent with language used
20 throughout the Civil Code and does not change the law.

21 * * *

1 Art. 2369.3. Duty to preserve; standard of care

2 A spouse has a duty to preserve and to manage prudently former community
3 property under his control, ~~including a former community enterprise~~, in a manner
4 consistent with the mode of use of that property immediately prior to termination of
5 the community regime. He is answerable for any damage caused by his fault,
6 default, or neglect.

7 ~~A community enterprise is a business that is not a legal entity.~~

8 Revision Comments - 2017

9 (a) The deletion of the reference to a community enterprise in the first
10 paragraph does not change the law. That reference was both redundant and
11 unnecessary. The duty to preserve applies to all community assets, regardless of their
12 form.

13 (b) The 2017 revision moved the definition of a community enterprise to
14 Article 2350.

15 * * *

16 Art. 2375. Effect of judgment

17 A. Except as provided in Paragraph C of this Article, a judgment decreeing
18 separation of property terminates the regime of community property retroactively to
19 the day of the filing of the petition or motion therefor, without prejudice to rights
20 validly acquired in the interim between filing of the petition or motion and rendition
21 of judgment.

22 B. If a judgment has been rendered ~~on the ground that the spouses have lived~~
23 ~~separate and apart either after the filing of a petition for divorce without having~~
24 ~~reconciled or for six months, in accordance with Article 2374(C) or (D), a~~
25 reconciliation reestablishes the regime of community property between the spouses
26 retroactively to the day of its termination ~~the filing of the motion or petition therefor~~,
27 unless prior to the reconciliation the spouses execute a matrimonial agreement to the
28 contrary. This agreement need not be approved by the court and is effective toward
29 third persons when filed for registry in the manner provided by Article 2332. The
30 reestablishment of the community is effective toward third persons when a notice
31 thereof is filed for registry in the same manner.

1 C. If a judgment is rendered on the ground that the spouses were living
 2 separate and apart without having reconciled for at least thirty days from the date of,
 3 or prior to, the filing of the petition for divorce, the judgment shall be effective
 4 retroactively to the date the petition for divorce was filed, without prejudice to rights
 5 validly acquired in the interim. ~~All subsequent pleadings or motions involving~~
 6 ~~matters incidental to the divorce shall be filed in the first filed suit.~~

7 Revision Comments - 2017

8 (a) The 2017 revision to this Article closed a gap that previously existed
 9 when a judgment of separation of property was awarded on the ground that the
 10 spouses had lived separate and apart for 30 days *before* the filing of a petition for
 11 divorce . Under those circumstances, the Article failed to provide for a retroactive
 12 reestablishment of the community property regime. Further, the date to which a
 13 reconciliation retroactively reestablished the community property regime in the case
 14 of judgments of separation of property issued on other grounds was also flawed.
 15 This revision clarifies the connection between reconciliation and the reestablishment
 16 of the community property regime in the wake of a judgment of separation of
 17 property.

18 (b) The 2017 revision deleted language referencing the effect of a
 19 reconciliation on matters incidental to the cause of action for divorce. Procedural
 20 matters, including consolidation of suits and cumulation of actions, are governed by
 21 the Code of Civil Procedure.

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 115 Engrossed

2017 Regular Session

Cromer

Abstract: Provides for the continuous revision of the community property articles in the Civil Code.

Present law (C.C. Art. 2350) provides for the alienation of movable assets of a business.

Proposed law retains present law and adds a definition of "community enterprise".

Present law (C.C. Art. 2369.3) provides a duty to preserve former community property including a former community enterprise.

Proposed law moves present law to C.C. Art. 2350 and maintains a duty to preserve all former community property and removes the specific provision regarding the duty to preserve and manage prudently a former community enterprise.

Present law (C.C. Art. 2375) provides for the effect of a judgment of separation of property when the spouses reconcile after filing for divorce but prior to obtaining a divorce.

Proposed law maintains present law and further provides for the effect of reconciliation on a judgment of separation of property when the spouses have lived separate and apart, filed for divorce, and then obtained a judgment of separation of property.

(Amends C.C. Arts. 2350, 2369.3, and 2375)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill:

1. Eliminate the provision regarding the duty to preserve and manage prudently a former community enterprise, providing that the duty applies to all former community property of a spouse under his control.