

2018 Regular Session

HOUSE BILL NO. 395

BY REPRESENTATIVE FOIL

(On Recommendation of the Louisiana State Law Institute)

CHILDREN/TUTORSHIP: Provides relative to tutorship

1 AN ACT

2 To amend and reenact Civil Code Articles 355, 359 and 361, relative to continuing tutorship;
3 to provide for restrictions on legal capacity; to provide for modification or
4 termination of decrees restricting legal capacity; to provide for prospective and
5 retroactive application; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. Civil Code Articles 355, 359, and 361 are hereby amended and reenacted
8 to read as follows:

9 Art. 355. Petition for continuing or permanent tutorship

10 When a person above the age of fifteen possesses less than two-thirds of the
11 intellectual functioning of a person of the same age with average intellectual
12 functioning, evidenced by standard testing procedures administered by competent
13 persons or other relevant evidence acceptable to the court, the parents of such person,
14 or the person entitled to custody or tutorship if one or both parents are dead,
15 incapacitated, or an absent person, or if the parents are judicially separated or
16 divorced, may, with the written concurrence of the coroner of the parish of the
17 intellectually disabled person's domicile, petition the court of that district to place
18 such person under a continuing tutorship which shall not automatically end at any
19 age but shall continue until revoked by the court of domicile. The petitioner shall
20 not bear the coroner's costs or fees associated with securing the coroner's
21 concurrence.

22 * * *

1 Art. 359. Restriction on legal capacity

2 The decree if granted shall restrict the legal capacity of the person with an
3 intellectual disability to that of a permanent minor, ~~except that after the age of~~
4 ~~eighteen the person, unless formally interdicted, shall have the legal capacity of a~~
5 ~~minor who has been granted the emancipation conferring the power of administration~~
6 ~~as set forth in Chapter 2, Section 2 of this Book and Title.~~

7 Revision Comments - 2018

8 The 2018 revision eliminates the provision that a person under continuing
9 tutorship retains the powers of a minor operating under "emancipation conferring the
10 power of administration." The concept of emancipation conferring the power of
11 administration was eliminated from Louisiana law in the 2008 revision of the
12 Louisiana Civil Code. Today, both emancipation and interdiction may be limited or
13 full. The revision is intended to make clear that continuing tutorship provides for
14 restrictions on legal capacity akin to those applying to minors, with the possibility
15 that the court may modify the decree of tutorship under Article 361 to provide the
16 minor with capacity to engage in some juridical acts.

17 * * *

18 Art. 361. Contest of decree restricting legal capacity.

19 The decree restricting his legal capacity may be contested in the court of
20 domicile by the person himself or by anyone adversely affected by the decree, ~~and~~
21 ~~upon evidence which would justify the full emancipation of a minor above the age~~
22 ~~of eighteen the decree shall be rescinded and set aside.~~ For good cause, the court
23 may modify or terminate the decree restricting legal capacity.

24 Revision Comments - 2018

25 (a) The standard of good cause for modifying or terminating a decree of
26 continuing or permanent tutorship is drawn from the modification standard in
27 interdiction. See Article 397.

28 (b) The Civil Code provides for the limited emancipation of a minor by
29 authentic act, which gives the minor the capacity to make only the juridical acts
30 specified in the authentic act. See Article 368. "The parties may provide that the
31 emancipated minor has the capacity to execute all juridical acts, or certain kinds of
32 juridical acts, or only specific juridical acts." Id., at cmt. (b). In the continuing
33 tutorship context, the court's ability to modify the decree of permanent tutorship to
34 permit the minor to make some juridical acts mirrors the possibility of the
35 emancipated minor's capacity to execute some acts. See also Article 395 (providing
36 for the capacity of limited interdicts).

37 Section 2. The provisions of this Act shall be given prospective and retroactive
38 application.

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 395 Engrossed

2018 Regular Session

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Abstract: Provides for restrictions on legal capacity for persons with intellectual disabilities.

Present law (C.C. Art. 355) requires the concurrence of the coroner for the filing of a petition for continuing tutorship.

Proposed law retains present law but requires the coroner's concurrence to be written.

Present law (C.C. Art. 359) provides for restrictions on legal capacity and exceptions to those restrictions.

Proposed law retains present law but eliminates the exception stating that a person with intellectual disabilities over the age of eighteen has the legal capacity of minor operating under emancipation conferring the power of administration.

Present law (C.C. Art. 361) provides that a decree restricting legal capacity may be contested in court and provides for the standard of proof.

Proposed law retains present law but replaces the standard of proof with good cause.

(Amends C.C. Arts. 355, 359 and 361)