

SENATE BILL NO. 153

BY SENATORS FOIL, ALLAIN, BARROW, BERNARD, CATHEY, CLOUD, CONNICK, CORTEZ, FESI, HARRIS, HENRY, HEWITT, JACKSON, MCMATH, MILLIGAN, MORRIS, PRICE, REESE, SMITH, WARD AND WOMACK AND REPRESENTATIVE AMEDEE (On Recommendation of the Louisiana State Law Institute)

1 AN ACT

2 To amend and reenact Civil Code Articles 355 and 356, relative to continuing tutorship; to
3 provide for the filing of a petition; to provide for the appointment of tutors; to
4 provide for the appointment of co-tutors; and to provide for related matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. Civil Code Articles 355 and 356 are hereby amended and reenacted to
7 read as follows:

8 Art. 355. Petition for continuing or permanent tutorship

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

21 Art. 356. Title of proceedings; procedural rules; ~~parents as tutor and undertutor~~
22 **parent to be named tutor**

23 The title of the proceedings shall be Continuing Tutorship of (Name of
24 Person), A Person with an Intellectual Disability.

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

4 (2) When the person to be placed under the continuing tutorship is above the
 5 age of majority, the proceeding shall be conducted according to the procedural rules
 6 established for interdictions.

7 (3) ~~Upon the petition of both~~ **When the** parents of the ~~mentally deficient~~
 8 person ~~during their marriage one parent shall be named as tutor and the other as~~
 9 ~~undertutor~~ **to be placed under the continuing tutorship are married to each other**
 10 **and petition jointly, the court shall appoint the parents as co-tutors,** unless for
 11 good reasons the judge ~~good cause the court~~ decrees otherwise.

12 **(4) When the parents of the person to be placed under the continuing**
 13 **tutorship are married to each other but do not petition jointly, the court shall**
 14 **appoint either a petitioning parent as tutor or both individually petitioning**
 15 **parents as co-tutors, in accordance with the best interest of the child.**

16 **(5) Upon the petition of a parent of the person to be placed under the**
 17 **continuing tutorship, the court shall, unless good cause requires otherwise,**
 18 **appoint as tutor the petitioning parent who is:**

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

20 **(b) The parent awarded custody during minority of the person to be**
 21 **placed under the continuing tutorship, if the parents are divorced or judicially**
 22 **separated.**

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

25 Revision Comments - 2020

26 (a) Subparagraph (5) incorporates Louisiana's child custody rules. See, e.g.,
 27 Articles 131 through 135. Although there are no provisions of law addressing
 28 custody of an adult descendant, for the purposes of this Article, the custodial
 29 determination made during minority informs the naming of a tutor for a major placed
 30 under continuing tutorship.

1 (b) See also Article 273 (requiring an undertutor in all cases). It may be
2 appropriate for the court to name one parent tutor and the other undertutor under this
3 Article.

4 (c) Under Subparagraph (5)(b), a parent with sole custody who petitions may
5 be named tutor of the person to be placed under continuing tutorship. Likewise,
6 parents with joint custody may be named co-tutors if each petitions. The rule
7 established here is intended to approximate that applicable to tutorship during
8 minority. See, e.g., Article 250 (making parents joint custody co-tutors unless
9 otherwise ordered by the court).

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____