

2022 Regular Session

HOUSE BILL NO. 146

BY REPRESENTATIVE CHARLES OWEN

CIVIL/INTERDICTION: Provides relative to consent with regard to certain medical procedures

1 AN ACT

2 To amend and reenact Civil Code Article 358 and to enact Code of Civil Procedure Article
3 4566.1, relative to interdiction and persons under continuing tutorship; to provide
4 relative to consent to abortion or sterilization; to provide for judicial authorization;
5 to provide for attorney appointment; to provide for procedure; to provide for notice;
6 to provide for legislative intent; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. Civil Code Article 358 is hereby amended and reenacted to read as
9 follows:

10 Art. 358. Authority, privileges, and duties of tutor and undertutor; termination of
11 tutorship

12 The granting of the decree shall confer upon the tutor and undertutor the
13 same authority, privileges, and responsibilities as in other tutorships, including the
14 same authority to give consent for any medical treatment or procedure, subject to the
15 limitations provided by Code of Civil Procedure Article 4566.1, to give consent for
16 any educational plan or procedure, and to obtain medical, educational, or other
17 records, but the responsibility of the tutor for the offenses or quasi-offenses of the
18 person with an intellectual disability shall be the same as that of a curator for those
19 of the interdicted person and the tutorship shall not terminate until the decree is set

1 aside by the court of the domicile, or the court of last domicile if the domicile of the
2 person with an intellectual disability is removed from the State of Louisiana.

3 Section 2. Code of Civil Procedure Article 4566.1 is hereby enacted to read as
4 follows:

5 Art. 4566.1. Consent to abortion or sterilization of an interdict or person under
6 continuing tutorship

7 A. A curator or tutor shall not consent to a medical procedure that is to be
8 performed for the primary purpose of sterilization or abortion, except in the
9 following situations:

10 (1) Where the curator or tutor petitions the court for an order allowing either
11 procedure, the court shall appoint an independent attorney empowered to act on
12 behalf of the interdict or person under continuing tutorship. The attorney shall have
13 the ability to arrange for an independent medical examination to assist the interdict
14 or person under continuing tutorship in expressing their wishes to the court.

15 (a) In the event that the interdict or person under continuing tutorship is
16 receiving financial assistance or is otherwise unable to afford counsel, an attorney
17 shall be appointed at no cost.

18 (b) In the case of a person under a limited interdiction, an attorney shall not
19 be appointed if the person retains the capacity to contract for legal and medical
20 services.

21 (2) Notice shall be served upon the entity designated by the state to
22 administer and operate the Protection and Advocacy System for people with
23 disabilities under 45 CFR 1326.20 within forty-eight hours of filing the petition.

24 (3) The court shall hold a contradictory hearing. The physical presence of
25 the interdict or person under continuing tutorship shall be required, except on a
26 showing that the person cannot safely attend, in which case arrangement shall be
27 made for the person to participate via video link.

28 (4) At the hearing, the interdict or person under continuing tutorship shall be
29 given the opportunity to fully express their preferences. The court shall issue an

1 order authorizing the procedure only after a finding by clear and convincing evidence
 2 that the procedure is needed to preserve the health and safety of the interdict or
 3 person under continuing tutorship after considering the expression of preference by
 4 the interdict or person under continuing tutorship and all relevant evidence.

5 B. The hearing on a petition for abortion shall be held on an expedited basis,
 6 and a final judgment shall be issued within forty-eight hours after the hearing.

7 C. The provisions of this Article shall not be construed as creating or
 8 recognizing a right to abortion and shall not be interpreted to supersede any law
 9 prohibiting an abortion.

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 146 Original

2022 Regular Session

Charles Owen

Abstract: Provides relative to civil proceedings authorizing a sterilization or abortion of an interdict or person under continuing tutorship.

Present law (C.C. Art. 354) provides that certain children with intellectual disabilities or mental deficiencies may be placed under continuing or permanent tutorship without formal or complete interdiction.

Present law (C.C. Art. 358) provides for the authority, privileges, and duties of a tutor or undertutor regarding a person placed under continuing tutorship.

Present law (C.C. Art. 358) provides that tutors and undertutors may give consent for any medical treatment or procedure.

Proposed law changes present law (C.C. Art. 358) and requires the tutor to obtain court authorization for abortion or sterilization for a person under continuing tutorship.

Present law (C.C.P. Art. 4561) provides that the court shall appoint a qualified person to serve as curator of an interdict.

Present law (C.C.P. Art. 4566) provides for management of the affairs of an interdict. Present law provides that a curator may not consent to an abortion or sterilization of the interdict without prior court authorization.

Proposed law retains present law and provides for procedures to petition the court for authorization for an interdict or person under continuing tutorship's abortion or sterilization.

Proposed law requires a curator or tutor to petition the court to allow for a procedure that is to be performed for the primary purpose of sterilization or abortion.

Proposed law provides that the court shall appoint an independent attorney to act on behalf of the interdict or person under continuing tutorship. The attorney shall be appointed at no

cost if the interdict or person under continuing tutorship is receiving financial assistance or is otherwise unable to afford counsel.

Proposed law provides that notice of the petition for consent to a medical procedure for sterilization or abortion shall be submitted to the entity designated by the state to act as the state's Protection and Advocacy agency for people with disabilities under 45 CFR 1326.20. 45 CFR 1326.20 provides that an official must designate a state official or public or private agency to be accountable for the proper use of funds and conduct of the Protection and Advocacy System.

Proposed law provides that the court shall hold a contradictory hearing and the physical presence of the interdict or person under continuing tutorship is required. If the person is unable to attend safely, the person may participate via video link.

Proposed law provides that the interdict or person under continuing tutorship shall be given the opportunity to fully express their preferences.

Proposed law provides that the court shall issue an order authorizing the procedure after a finding by clear and convincing evidence that the procedure is required to preserve the health and safety of the interdict or person under continuing tutorship after consideration of the person's preference and all relevant evidence.

Proposed law provides that the abortion petition hearing shall be expedited and a final judgment shall be issued within 48 hours of the hearing.

Proposed law provides that proposed law shall not be construed as creating or recognizing a right to abortion and shall not be interpreted to supersede any law prohibiting an abortion.

(Amends C.C. Art. 358; Adds C.C.P. Art. 4566.1)