HLS 24RS-676 ORIGINAL

2024 Regular Session

HOUSE BILL NO. 722

1

BY REPRESENTATIVE THOMAS

(On Recommendation of the Louisiana State Law Institute)

AN ACT

CHILDREN/CUSTODY: Provides for the modification of custody

2	To enact Civil Code Article 138, relative to modification of child custody; to provide for the
3	modification of custody under certain circumstances; to provide for certain
4	evidentiary standards; and to provide for related matters.
5	Be it enacted by the Legislature of Louisiana:
6	Section 1. Civil Code Article 138 is hereby enacted to read as follows:
7	Art. 138. Modification of custody award
8	A. When a court has awarded custody pursuant to a judgment of custody
9	rendered by consent of the parties, the award may be modified by the court upon a
10	change in circumstances that materially affects the welfare of the child if the
11	modification is in the best interest of the child.
12	B. When a court has awarded custody pursuant to a judgment of custody
13	rendered by a considered decree, based on evidence presented after a full evidentiary
14	hearing or trial, the award may be modified by the court in accordance with the best
15	interest of the child upon proof of either of the following:
16	(1) By clear and convincing evidence, that the harm likely to be caused by
17	a change of custody is substantially outweighed by the advantages to the child.
18	(2) That the continuation of the present custody award is so harmful to the
19	child as to justify modification.

1	C. By written agreement, parties may adopt either of the standards set forth
2	in this Article or a lesser standard.
3	Revision Comments- 2024
4 5 6 7 8 9 10	(a) This revision codifies the standard set by the Louisiana Supreme Court for modification of custody orders pursuant to considered decrees in <i>Bergeron v. Bergeron</i> , 492 So. 2d 1193, 1200 (La. 1986). It also codifies the existing, and lesser, standard for modifying consent decrees. See, e.g., <i>McCorvey v. McCorvey</i> , 916 So. 2d 357, 370-71 (La. App. 3 Cir. 2005). This revision is not intended to abrogate the jurisprudence interpreting the Bergeron case; rather, it is intended to add clarity by codifying the Bergeron standard and by calling attention to the often jurisprudentially overlooked alterative weighing standard set forth in Bergeron.
12 13 14 15	(b) The change in circumstances described in Paragraph A of this Article refers to a change that materially affects the child's welfare. <i>Burns v. Burns</i> , 236 So. 3d 571, 574 (La. App. 1 Cir. 2017). A parent's remarriage, engagement, and similar life changes do not necessarily rise to such a level. See id.
16 17 18 19 20 21 22 23 24 25 26	(c) Louisiana jurisprudence explains that a consent decree subject to the best interest standard is one made through "a stipulated judgment, such as when the parties consent to a custodial arrangement, and no evidence of parental fitness is taken" Alternatively, a considered decree is one "wherein the trial court receives evidence of parental fitness to exercise care, custody, and control of a child." <i>McCorvey v. McCorvey</i> , 916 So. 2d 357, 370-71 (La. App. 3 Cir. 2005); see also <i>Evans v. Lungrin</i> , 708 So. 2d 731 (La. 1998). Some Louisiana courts have noted that judgments may be "hybrid" proceedings as when the court received some evidence of parental fitness but the parties enter into a stipulated judgment prior to the court's ruling. Such judgments should be treated under the modification standard applicable to consent decrees. Id. at 371.
27 28 29	(d) The standards set forth in this Article apply to modifications of judgments of custody rendered by consent decree or considered decree but not to minor changes in decisionmaking authority or in custodial schedules.
30 31	(e) Interim, temporary, or interlocutory custodial orders are not governed by the standards set forth in this Article.
32	Section 2. The Louisiana State Law Institute is hereby directed to print the following
33	comment to Civil Code Article 131:
34	Revision Comments-2024
35 36	(a) The standard set forth in this Article applies in actions to change custody as well as in those to initially set custody.
37 38 39 40	(b) On account of the 2024 enactment of Article 138, Comment (d) of the 1993 Revision Comments has been superseded. New Article 138 should be consulted, as it elaborates upon and modifies jurisprudential treatment of custody modification.

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 722 Original

2024 Regular Session

Thomas

Abstract: Provides for the modification of child custody.

<u>Proposed law</u> (C.C. Art. 138) codifies the jurisprudential standards for the modification of custody set forth in *Bergeron v. Bergeron*, 492 So. 2d 1193, 1200 (La. 1986).

<u>Proposed law</u> provides for modification upon a change of circumstances that materially affects the welfare of the child, when the parties consented to the award of custody, if modification is in the best interest of the child.

<u>Proposed law</u> provides for modification in the best interest of the child, when the award of custody was by considered decree and based on evidence presented at a hearing or trial, when either the present custody award is harmful to the child or the harm likely to be caused by a change in custody is outweighed by the advantages.

<u>Proposed law</u> authorizes the parties to agree in writing to the standards provided in <u>proposed</u> law or to lesser standards.

(Adds C.C. Art. 138)