SLS 25RS-250 **ENGROSSED**

2025 Regular Session

SENATE BILL NO. 49

BY SENATOR MILLER (On Recommendation of the Louisiana State Law Institute)

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

WILLS/TESTAMENTS. Provides for validity of testaments. (8/1/25)

AN ACT

To amend and reenact Civil Code Art. 1575, 1576, and 1581 and Code of Civil Procedure Art. 2891, to enact Code of Civil Procedure Art. 2887, and to repeal Civil Code Art. 1577 through 1580.1, relative to testaments; to provide for the requirements of form for olographic testaments; to provide for the requirements of form for notarial testaments; to eliminate special requirements for notarial testaments for persons who are unable to sign or read; to eliminate special law for the execution of a testament in braille; to eliminate special requirements for notarial testaments for persons who are deaf or deaf and blind; to provide for the competency of witnesses to testaments; to provide for proof of testaments for probate; to provide for retroactive application; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Civil Code Arts. 1575, 1576, and 1581 are hereby amended and reenacted to read as follows:

Art. 1575. Olographic testament**; requirements of form**

A. An olographic testament is one entirely written, dated, and signed in the handwriting of the testator. ~~Although the date may appear anywhere in the testament,~~

~~the testator must sign the testament at the end of the testament. If anything is written by the testator after his signature, the testament shall not be invalid and such writing may be considered by the court, in its discretion, as part of the testament.~~ The olographic testament is subject to no other requirement as to form. ~~The date is sufficiently indicated if the day, month, and year are reasonably ascertainable from information in the testament, as clarified by extrinsic evidence, if necessary.~~

B. **The signature may appear anywhere in the testament and is sufficient if it identifies the testator and evidences an intent by the testator to adopt the document as the testator's testament.**

C. The date may appear anywhere in the testament, may be clarified by extrinsic evidence, and is sufficient if it resolves those controversies for which the date is relevant.

D. Additions and deletions on the testament **made after the execution of the testament** may be given effect only if made by the hand of the testator **and need not comply with the formalities for the execution of a will or the revocation of a legacy.**

Revision Comments – 2025

(a) This revision changes the law to simplify the execution of olographic wills in Louisiana and return Louisiana law to the approach traditionally used for nearly two hundred years. See Article 1588 (1870); Article 1581 (1825); La. Digest Article 103 (1808). The simplified approach of this revision is consistent with the more streamlined approach employed by other civil law jurisdictions and other American states. See, e.g., Fr. Civ. Code Art. 970; BGB §2247; Quebec Civ. Code Art. 726; Unif. Prob. Code §2-502(b) (2008). For discussion of the application of will formalities under Louisiana law, see generally Ronald J. Scalise, Jr., Will Formalities in Louisiana: Yesterday, Today, and Tomorrow, 80 La. L. Rev. 1333 (2020).

(b) Under long-standing Louisiana law, an olographic will must be "entirely" written, dated, and signed in the testator's handwriting. Question has arisen as to the exact meaning of the word "entirely." Louisiana courts have adopted the "surplusage" approach to this problem, which, stated briefly, provides that the portions of the document in the testator's handwriting are given effect as an olographic will if they make sense as a will standing alone. Andrew's Heirs v. Andrew's Executors, 12 Mart. (o.s.) 713 (La. 1823). In some instances, the handwritten material may be insufficient, standing alone, to constitute an olographic will and thus cannot be given effect. See, e.g., Succession of Plummer, 847 So. 2d 185 (La. App. 2 Cir. 2003). This revision maintains the traditional "surplusage" approach and does not adopt the more permissive approaches to olographic wills advocated by various versions of the Uniform Probate Code. See Unif. Prob. Code §2-503 (1990) (requiring only "material provisions" to be in the testator's handwriting); Unif. Prob. Code §2-502(b) and (c) (requiring only "material portions"

to be in the testator's handwriting and allowing preprinted material to serve as extrinsic evidence of a testator's intent); Restatement (Third) of Property: Wills and Other Donative Transfers §3.2, cmt b.

(c) Under prior law, the signature in an olographic will was required to appear "at the end of the testament," but "anything . . . written by the testator after his signature . . . [did not invalidate] the testament . . . [but could] be considered by the court, in its discretion." Article 1575 (2001). This revision changes the law but declines to impose a location requirement for a signature in an olographic will. Rather, it defines what is required to constitute a signature, irrespective of its location. This approach is consistent with historical Louisiana law and with the law of other jurisdictions. See, e.g., Fr. Civ. Code Art. 970; BGB §2247; Quebec Civ. Code Art. 726; Unif. Prob. Code §2-502 (2008); Unif. Prob. Code §2-503 (1990). The 1870 Civil Code merely provided that "[t]he olographic testament is that which is written by the testator himself. In order to be valid, it must be entirely written, dated and signed by the hand of the testator. It is subject to no other form, and may be made anywhere, even out of the State." Article 1588 (1870). In 1999, when the revision to the law on donations went into effect, Article 1575 read as follows:

"An olographic testament is one entirely written, dated, and signed in the handwriting of the testator. It is subject to no other requirement as to form. Additions and deletions on the testament may be given effect only if made by the hand of the testator."

The language regarding signatures at the end was added in 2001 to overrule an ill-starred case, Succession of King, 595 So. 2d 805, 809 (La. App. 2 Cir. 1992), which invalidated an olographic will that had not been signed at the end. Although overruling Succession of King was a laudable goal, the 2001 revision unfortunately precluded courts from even considering wills in which the signature was not at the end and rather was contained in the exordium to the will, such as in Succession of Ally, 354 So. 3d 1248 (La. App. 5 Cir. 2022). See also Thomas E. Atkinson, Handbook of the Law of Wills 255 (1937).

This revision also makes clear that no rigid rule exists as to how one must sign one's name. To the extent that Succession of Frabbiele, 397 So.3d 391 (La. 2024), may have been applicable by analogy, the holding of that case is legislatively rejected by the adoption of a broader definition of "signing" or "signature." Prior to Frabbiele, Louisiana jurisprudence was replete with varying manifestations of a testator's signature. Although one's full legal name may be signed in some cases, a full legal name is not a requirement. See, e.g., In re Succession of Caillouet, 935 So. 2d 713 (La. App. 4 Cir. 2006) (finding "Auntie" to be a sufficient signature); Succession of Cordaro, 126 So. 2d 809 (La. App. 2 Cir. 1961) (finding an olographic will valid that was signed only with the testator's first name, Lorene); Balot y Ripoll v. Morina, 12 Rob. 552, 558 (La. 1846) (holding a false name was a signature); Succession of Squires, 640 So. 2d 813 (La. App. 3 Cir. 1994) (holding that initialing constitutes a signature); Succession of Armstrong, 636 So. 2d 1109 (La. App. 4 Cir. 1994) (holding that initialing constitutes a signature); Succession of McKlinski, 331 So. 3d 414 (La. App. 4 Cir. 2021) (holding that initialing constitutes a signature); Succession of Pedescleaux, 341 So. 3d 1224 (La. App. 5 Cir. 2022) (holding that initialing constitutes a signature); Succession of Spain, 344 So. 3d 115 (La. App. 4 Cir. 2022) (holding that initialing constitutes a signature). Under this revision, a full legal name, a nickname, a pseudonym, or even initials may constitute a signature. A broad definition of "signing" or "signature" is consistent with both civil and common law practices. For instance, French law is untroubled by first names or initials as signatures. Philippe Malaurie & Claude Brenner, Droit des Successions et des Libéralités 297 (8th ed. 2018). Italian law provides that "[A] signature is valid even without the forename and surname so long as it designates with certainty the person of the testator. . . . Accordingly, . . . it is possible to sign the will by using, for instance, only the surname or the first name (whether with or without the initial of the surname) or a nickname if that is habitually used to identify the testator or even the initials of the first name and surname." Alexandra Braun, Testamentary Formalities in Italy, in Testamentary Formalities 51, 64 (Kenneth G.C. Reid, Marius

J de Waal, & Reinhard Zimmermann eds., 2011); Italian Civil Code Art. 602 ("La sottoscrizione deve essere posta alla fine delle disposizioni. Se anche non è fatta indicando nome e cognome, è tuttavia valida quando designa con certezza la persona del testatore."). Under Brazilian law, a signature by "a pseudonym may also be sufficient if it is a name which the testator generally uses." Jan Peter Schmidt, Testamentary Formalities in Latin America with Particular Reference to Brazil, in Testamentary Formalities 51, 64 (Kenneth G.C. Reid, Marius J de Waal, & Reinhard Zimmermann eds., 2011). German law is also flexible on the signature requirement. BGB §2247(3) ("The signature should contain the first name and the last name of the testator. If the testator signs in another manner and this signature suffices to establish the identity of the testator and the seriousness of his declaration, such a signature does not invalidate the will."). Common law sources are also in accord. *See, e.g.*, 2 Page on the Law of Wills §§19.41, at 89 (2003) ("The testator may sign his name by writing it out in full or by abbreviating it, or by writing his initials, . . . or by using an assumed name where not done with intent to deceive."); Restatement (Third) of Property: Wills and Other Donative Transfers §3.1, cmt j ("Ideally, the testator 'signs' the will by writing out his or her name in full. Signature by mark or cross is sufficient, however. So also is signature by term of relationship (such as 'Dad,' 'Mom,' or 'Auntie'), abbreviation, nickname, a pet name, a first name, a last name, initials, or pseudonym, or even by fingerprint or seal. The name need not be spelled correctly. It need not be legible. It may be made with the assistance of another, who guides the testator's hand. The crucial requirement is that it must be done with intent of adopting the document as the testator's will.").

(d) Under prior law, the date was sufficient only if the "day, month, and year are reasonably ascertainable from information in the testament, as clarified by extrinsic evidence, if necessary." Article 1575 (2001). Question, however, may exist as to the exact date when slash or numeric dates are used and both the first and second numbers are below twelve. In fact, early Louisiana courts invalidated wills with slash dates, such as "10/3/50," "12.10.1934," and "9/8/18," because in all such cases the date was uncertain. Succession of Mayer, 144 So. 2d 896 (La. App. 4 Cir. 1962); Succession of Lasseigne, 181 So. 879 (La. App. 1 Cir. 1938). Prior law altered the above results by allowing extrinsic evidence to be admitted to clarify an ambiguous date. Article 1575; see also Succession of Beird, 82 So. 881 (La. 1919). Extrinsic evidence, however, was still needed to render the day, month, and year "reasonably ascertainable." In Succession of Raiford, 404 So. 2d 251 (La. 1981), the Louisiana Supreme Court considered an olographic will dated "Monday.8 1968." Even after the admission of extrinsic evidence, the Supreme Court concluded that "[t]he only certain thing about the date here is the year 1968. The figure 8 could reflect either the day or the month." Thus, "the will [was] invalid." Other decisions from the Louisiana Supreme Court have been equally clear that "the month, without the day, is no date" at all. Heffner v. Heffner, 20 So. 281 (La. 1896). See also Succession of Robertson, 21 So. 586 (La. 1897) (holding a will invalid when the first three digits of the date (i.e., 189) were in print, and the testator merely supplied the last numeral).

This revision takes a more expansive approach as to what constitutes a sufficient date, declining to establish a rigid definition of what constitutes a date and rather adopting a more flexible approach of allowing courts to examine what might be "sufficient if it resolves those controversies for which the date is relevant." In other words, if a testator dies with two wills dated "March 2024," a sufficient date will require determining temporal priority of the wills in order to probate either. On the other hand, if the testator has only one will and there are no issues regarding capacity or free consent, knowing only that the will was executed in March of 2024 could be entirely sufficient. Along these lines, Justice Lemmon in dissent in the Raiford case observed similarly in concluding that a will dated only by the year ought to be valid when the purposes for which the date are required (i.e., competency of the testator and order of multiple wills) are not thwarted. Succession of Raiford, 404 So. 2d 251 (La. 1981) (Lemmon, J., dissenting). Commentators have likewise criticized a strict rule requiring a date and argued that "[o]ne need only say that the

'date' must be sufficient to resolve those controversies present in the case and for which the requirement of a date was intended." H. Alston Johnson, Successions and Donations, 43 La. L. Rev. 585, 601 (1982); Ronald J. Scalise, Jr., Will Formalities in Louisiana: Yesterday, Today, and Tomorrow, 80 La. L. Rev. 1331 (2020); Succession of Boyd, 306 So. 2d 687 (La. 1975). See also Succession of Raiford, 404 So. 2d 251, 254 (1981) (Lemmon, J., dissenting) (arguing that a will dated "1968" should be valid because it establishes "the point in time of its making sufficiently to show that this will was made later than the 1963 will in which decedent left the property to her brother."). Other civil law jurisdictions have also shown flexibility regarding the date requirement for an olographic will. See, e.g., Cass. Civ. 1re, 22 nov. 2023, No. 21-17.524 (upholding an olographic will without a handwritten date, despite an explicit requirement in the French Civil Code to the contrary); BGB §2247 (providing that an olographic will may be made by a writing signed by the testator and may still be valid without a date); Quebec Civ. Code Art. 726 ("Le testament olographe doit être entièrement écrit par le testateur et signé par lui, autrement par un moyen technique."). See also Unif. Prob. Code §2-502 (allowing for holographic wills provided they are signed and "material portions of the document are in the testator's handwriting").

(e) Paragraph D of this Article continues the approach of prior law but clarifies that handwritten additions or deletions made on olographic wills may be given effect by a court, even if the amendments are not in the form of a will or the revocation of a legacy. This has long been the law in Louisiana and in other jurisdictions. See, e.g., Article 1589 (1870) ("Erasures not approved by the testator are considered as not made, and words added by the hand of another as not written."); Succession of Melancon, 330 So. 2d 679 (La. App. 3 Cir. 1976) ("We recognize that Article 1589 of the Revised Civil Code and the jurisprudence interpreting the provisions thereof recognize that the writer of an olographic will may later or completely change testamentary dispositions in his handwritten testament without affecting its validity so long as the alterations or additions are made by the hand of the testator."); Succession of Butterworth, 196 So. 39 (La. 1940); Restatement (Third) Property: Wills and Other Donative Transfers §3.2, cmt f ("After the testator signs a holographic will, the testator may validly make a handwritten alteration of the will without re-signing the document.").

(f) An olographic will, like a notarial will, must be in "writing." Prior to the 1997 revision, Louisiana law allowed for certain extraordinary oral wills. Those wills have been suppressed. See, e.g., Articles 1597-1604 (1870). Today, all wills must be in writing. Traditionally, the writing is on paper, but neither Louisiana law, nor the law of other jurisdictions, has ever required that a will be on paper. See, e.g., Restatement (Third) Property: Wills and Other Donative Transfers §3.1, cmt i ("The requirement of a writing does not require that the will be written on sheets of paper, but it does require a medium that allows the markings to be detected. A will, for example, scratched in the paint on the fender of a car would be in writing, but one "written" by waving a finger in the air would not be."). In the modern day, it is even possible that an olographic will could be written on an electronic tablet. See, e.g., In re Estate of Javier Castro, No. 2013ES11140 (Lorain Cnty. Ohio Ct. Com. Pl. June 19, 2013). There is also no requirement that a will be written in English. See, e.g., Article 1577, cmt (d) (1997). Louisiana law contains examples of wills written in French, among other languages. See, e.g., Lagrave v. Merle, 5 La. Ann. 278 (La. 1850).

Art. 1576. Notarial testament**; requirements of form**

~~A notarial testament is one that is executed in accordance with the formalities of Articles 1577 through 1580.1.~~

~~Art. 1577. Requirements of form~~

A. The notarial testament shall be prepared in writing**,** ~~and~~ dated**, executed before a notary public in the presence of two witnesses, and signed by the testator, each witness, and the notary. If a testator is unable to sign, the testator may affix his mark in place of signing or direct another person to sign on behalf of the testator and in the presence of the testator.** ~~and shall be executed in the following manner. If the testator knows how to sign his name and to read, and is physically able to do both, then:~~

~~(1) In the presence of a notary and two competent witnesses, the testator shall declare or signify to them that the instrument is his testament and shall sign his name at the end of the testament and on each other separate page.~~

~~(2) In the presence of the testator and each other, the notary and the witnesses shall sign the following declaration, or one substantially similar: "In our presence the testator has declared or signified that this instrument is his testament and has signed it at the end and on each other separate page, and in the presence of the testator and each other we have hereunto subscribed our names this ____day of _____, ____."~~

B. The signature may appear anywhere in the testament and is sufficient if it identifies the testator and evidences an intent by the testator to adopt the document as the testator's testament.

C. The date may appear anywhere in the testament, may be clarified by extrinsic evidence, and is sufficient if it resolves those controversies for which the date is relevant.

Revision Comments – 2025

(a) This revision changes the law to simplify the execution of notarial wills in Louisiana. This approach is consistent with the law of other states. See, e.g., Unif. Prob. Code §2-502 (2008). For discussion of the application of will formalities under Louisiana law, see Ronald J. Scalise, Jr., Will Formalities in Louisiana: Yesterday, Today, and Tomorrow, 80 La. L. Rev. 1333 (2020). Although this revision alters the requirements necessary for the validity of a notarial will, a notarial will properly executed under the prior law would still be valid and self-proving under this revision.

(b) Most importantly, this revision eliminates the "attestation clause" as a condition of "validity" for notarial wills, a requirement under prior law that caused much litigation. See, e.g., Succession of Liner, 320 So. 3d 1133 (La. 2021); Successions of Toney, 226 So. 3d 397 (La. 2017). Attestation clauses may still be used in notarial wills to make wills self-proving. See, e.g., Code of Civil Procedure

Article 2887. Under this revision, the absence of an attestation clause from a notarial will does not invalidate a will. Rather, the absence of an attestation clause or a subsequently executed affidavit will require proof of proper execution in accordance with Code of Civil Procedure Article 2887(B). The Louisiana Supreme Court long ago observed that the attestation clause is of only "evidentiary" value, rather than substantive value. See, e.g., Succession of Porche, 288 So. 2d 27 (La. 1973) ("[T]he purpose of the attestation clause is primarily to evidence, at the time the will was executed, that the statutory formalities . . . had been satisfied").

(c) This revision aligns the formalities required for the execution of a notarial will more closely with the formalities required for the execution of an authentic act. See, e.g., Article 1833. Unlike an authentic act, however, a notarial will still requires a date for purposes of validity and a particular standard for competency of witnesses as provided in Article 1581. The date requirement, as with all formalities for wills, should not be interpreted strictly. Rather, a substantial compliance approach should be used by courts in assessing whether the formalities of a particular document sufficiently protect against fraud. Extrinsic evidence may be used to complete or clarify the date of a will. For the meaning of the requirement of date, see the Comments to Article 1575. Although a date has always been required for olographic wills, the date requirement was added for notarial wills only in 1999. Prior to that time, the statutory will, on which the notarial will is based, did not require a date. Lemuel E. Hawsey III, Louisiana's Statutory Will: The Role of Formal Requirements, 32 La. L. Rev. 452, 459 (1972) ("Although neither the statute nor the jurisprudence make the date a formal requirement for validity of a statutory will, it is still necessary to determine whether some general principle at either common or civil law necessitates inclusion of the date of execution in order for a testament to be valid. The Louisiana Wills Statute had as its origin similar statutes existing in all of the common law states. It is well settled at common law that, in the absence of an express statutory requirement, the date of execution is not essential to the validity of a statutory will."). Attested wills that are common in other states do not generally require a date. See, e.g., Unif. Prob. Code §2-502.

(d) For the meaning of the signature requirement, see the Comments to Article 1575. The revision expressly avoids using the phrase "sign his name," which the Louisiana Supreme Court has interpreted to exclude signing by initialing. See Successions of Toney, 226 So. 3d 397 (La. 2017), overruled in part by Succession of Liner, 320 So. 3d 1133 (La. 2021) (on rehearing); Succession of Frabbiele, 397 So. 3d 391 (La. 2024).

(e) Both notarial and olographic wills must be in writing. Former Article 1580 allowed for a notarial will to be executed in braille. Although that article has been suppressed in this revision, no change in the law is intended, as braille is unquestionably a form of "writing." For the meaning and requirements of a writing, see the Comments to Article 1575.

(f) This revision also eliminates the "publication" requirement that existed in prior law as a condition of validity. Publication, simply stated, is "the declaration by the testator that the instrument is his will." No major statutory enactment has ever required that a will be published, and it is hard to understand why this formality persists in the modern day. Specifically, publication was not required by the English Wills Act, the Statute of Frauds, or by any version of the Uniform Probate Code. Although English courts did impose such a requirement at one point, it has long since been abandoned. Today, only a very few states require publication as a condition of validity. See, e.g., Ark. Code §28-25-103; Iowa Code §633.279; N.Y. Est. Power & Trust Law §3-2.1; 84 Okla. Stat. Ann. §55; Tenn. Code §32-1-104. Moreover, the significance of the "publication" requirement under prior law has largely eroded. *See, e.g.*, Article 1577 (2001), cmt (c) ("The testator's indication that the instrument contains his last wishes may be given verbally or in any other manner that indicates his assent to its provisions."); Succession of Guidry, 160 So. 2d 759 (La. App. 3 Cir. 1964) (Nothing in the statute requires a "verbal signification," and thus a testatrix may signify her intention "by shaking her head."); Succession of Saarela, 151 So. 2d 144 (La. App. 4 Cir. 1963) (Reference in a will to "this is my last

will and testament" was a sufficient declaration to constitute publication of the will.); Succession of Porche, 273 So. 2d 665 (La. App. 4 Cir. 1973); Succession of Thibodeaux, 527 So. 2d 559 (La. App. 3 Cir. 1988) (The very signing of the will itself can be a sufficient declaration, even when there is no verbal declaration or other significant action.).

(g) Although signing a will on every page is good practice, it is no longer required as a condition of validity. To make a will self-proving, however, a signature on every page of the will is necessary. See Code of Civil Procedure Article 2887. The requirement in prior law that every page of the notarial will be signed appears to be a somewhat unique Louisiana rule copied, most likely, from the same innovation imposed upon statutory wills. In Succession of Hoyt, the court observed that "[t]he purpose of the requirement is to prevent fraud by the substitution of one typewritten page for another after the execution of the will by the testator." Succession of Hoyt, 303 So. 2d 189 (La. App. 1 Cir. 1974). Despite good practice, the requirement that each page be signed has wrought substantial havoc in Louisiana law. For instance, in Succession of Hoyt, a Louisiana court declared invalid a two-page will that was signed only on the last page. Succession of Hoyt, 303 So. 2d 189 (La. App. 1 Cir. 1974). The court noted that "[t]he failure of the testator to sign each sheet is fatal to the validity of the will." Id. Similarly, in Land v. Succession of Newsom, the court found that failure to sign each page of a two-page will was "fatal" to the validity of the entire will. Land v. Succession of Newsom, 193 So. 2d 411 (La. App. 2 Cir. 1966). More recently, a court held invalid a will that was not signed on every page by noting that it was "undisputed that [the testator] did not sign one of the pages of the . . . testament that contained dispositive provisions in favor of his three sisters." In re Hendricks, 28 So. 3d 1057 (La. App. 1 Cir. 2009). But see Succession of Simonson, 982 So. 2d 143 (La. App. 5 Cir. 2008) (a will was not rendered invalid under prior law if the testator fails to sign a page relating solely to the powers of a trustee and other administrative matters); Succession of Guezuraga, 512 So. 2d 366 (La. 1987) (same regarding end of attestation clause). Experience has shown that, although good practice would encourage the signing of every page, the absence of a signature on every page should not be an absolute bar to a will's validity, especially when no fraud or similar allegation is made, or when the testator made some identifying mark, such as initialing, to indicate assent to the will's provisions. But see Succession of Frabbiele, 397 So. 3d 391 (La. 2024) (invalidating a will under prior law that was initialed on every page). No other document must be signed on every page as a condition of validity. Similarly, experience from other jurisdictions and conventions is likewise illuminating. Many civil and common law jurisdictions do not require the signing of every page of a will. See, e.g., Fr. Civ. Code Arts. 971-974; BGB §2231-2233; Unif. Prob. Code §2-502. Some civil law jurisdictions still require that "secret" wills be signed on every page. See, e.g., Ital. Civ. Code Art. 604; Sp. Civ. Code Art. 706. Although the Uniform Law on International Wills also requires a signature on every page, it does not consider it a core formality, such that its absence does not affect the validity of the will. Unif. Int'l Wills Act Arts. 1 and 6.

(h) This revision repeals former Articles 1578 and 1579, which provided special procedures for testators who were unable to sign or unable to read. Although well intentioned, those articles proved unnecessarily cumbersome in the modern day. A testator who is unable to sign can direct another person to sign in his place under this Article. Similarly, a testator who is unable to read can still sign a legal document, including a will. Before doing so, however, it is important that the document be explained to the signatory to ensure that it represents his intent. Former Article 1580.1, which provided special procedures for testators who were deaf or deaf and blind, was again well intentioned but either unnecessary or impractical in its application. For an explanation of the difficulties of utilizing Article 1580.1, see Ronald J. Scalise, Jr., Will Formalities in Louisiana: Yesterday, Today, and Tomorrow, 80 La. L. Rev. 1333 (2020).

* * *

Art. 1581. Persons incompetent to be witnesses

A person cannot be a witness to any testament if ~~he~~ **the person** is insane, blind, under the age of sixteen, or unable to sign his name. ~~A person who is competent but deaf or unable to read cannot be a witness to a notarial testament under Article 1579.~~

Section 2. Code of Civil Procedure Art. 2891 is hereby amended and reenacted and Code of Civil Procedure Art. 2887 is hereby enacted to read as follows:

Art. 2887. Notarial testament

A.(1) A notarial testament executed pursuant to Civil Code Article 1576 does not need to be proved if it is signed on each separate page at the time of execution and is accompanied by either of the following declarations:

(a) In the testament, the following declaration, or one that is substantially similar, signed by the notary and the subscribing witnesses: "In our presence the testator has declared or signified that this instrument is his testament and has signed each separate page."

(b) In an affidavit attached to the testament but executed after the execution of the testament, the following declaration, or one that is substantially similar, signed by the notary and the witnesses who subscribed to the will: "In our presence the testator has declared or signified that the attached instrument is his testament and has signed each separate page."

(2) If the testator is unable to sign and has directed another person to sign on his behalf, the testament shall be signed on each separate page by the person directed to sign by the testator, and the declarations provided in Subparagraph (1) of this Paragraph shall be modified to indicate that a person other than the testator signed at the direction of the testator.

B.(1) A notarial testament that does not comply with Paragraph A of this Article shall be proved to have been signed by the testator or by another person at the testator's direction either by the testimony of the notary and at least one

of the subscribing witnesses or by the testimony of the two subscribing witnesses.

(2) If only the notary or only one of the subscribing witnesses is living in the state, not incapacitated, or can be located, the testimony of the notary or one of the witnesses that the testament was signed by the testator or by another person at the testator's direction shall be sufficient.

(3) If the notary and all of the subscribing witnesses are dead, absent from the state, incapacitated, or cannot be located, the testament may be proved by the testimony of two credible witnesses who recognize the signature of the testator on the testament.

(4) A person's testimony for the purpose of this Paragraph may be given in the form of an affidavit executed after the death of the testator, unless the court in its discretion requires the person to appear and testify orally. All affidavits accepted by the court in lieu of oral testimony shall be filed in the probate proceedings. This Subparagraph does not apply to testimony with respect to the genuineness of a will that is judicially attacked.

Comments – 2025

(a) This Article is new. It changes the law by providing that an attestation clause for testaments executed pursuant to Civil Code Article 1576 is no longer a condition of validity for the execution of a notarial will, nor is signing the will on every page or the publication of the will. This Article provides that notarial wills may be self-proving if the will or a subsequently executed affidavit contains an appropriate attestation clause and the will is signed on every page and declared by the testator to be his will. Notarial wills executed pursuant to Civil Code Article 1576 that do not contain attestation clauses, are not signed on every page, or are not declared by the testator to be his will may still be probated in accordance with Paragraph B of this Article if sufficient proof can be adduced that the testament was properly executed.

(b) Paragraph A of this Article provides examples of attestation clauses that may be used to make a will under Civil Code Article 1576 self-proving. The exact wording of this Paragraph need not be used. Language substantially similar is sufficient. Also, to be signed on every page, a full legal name of the testator is not required. Nicknames or initials may constitute a signature under this Article. For further discussion of what constitutes a signature, see Comment (d) to Civil Code Article 1576. Similarly, a testator may declare or signify that a document is his will in any number of ways. See, e.g., Comment (f) to Civil Code Article 1576.

(c) Subparagraph (B)(1) of this Article provides that if a testament or subsequently executed affidavit does not contain an attestation clause substantially similar to the example in Paragraph A, then the testament is not self-proving and must be proved by the testimony of the notary and one of the subscribing witnesses or by the testimony of both subscribing witnesses. Subparagraph (B)(2) adopts a

procedure for probating a notarial will with respect to which only the notary or only one of the witnesses can testify. It is similar to the prior procedure for probating a statutory will. See Article 2887 (repealed). Subparagraph (B)(3) adopts a procedure for probating a notarial will with respect to which neither the notary nor the witnesses can testify. It is similar to the prior procedure for probating a statutory will and to the procedure that already exists in the law for similar situations involving nuncupative wills by private act and mystic wills. See Articles 2886(B) and 2887 (repealed). Notarial wills signed by another person at the testator's direction cannot be probated pursuant to Subparagraph (B)(3). Subparagraph (B)(4) allows for a person's testimony to be given by affidavit. See Articles 2883(B), 2884(B), 2885(B), and 2886(C).

* * *

Art. 2891. Notarial testament~~,~~**;** nuncupative testament by public act~~, and~~**;** statutory testament executed without probate

A notarial testament **that complies with the provisions of Article 2887(A)**, a nuncupative testament by public act, and a statutory testament do not need to be proved. Upon production of the testament, the court shall order it filed and executed and this order shall have the effect of probate.

Comments – 2025

This revision changes the law to recognize that notarial wills are not always self-proving, but only when they comply with the requirements of Article 2887(A).

Section 3. Civil Code Arts. 1577 through 1580.1 are hereby repealed in their entirety.

Section 4. The provisions of this Act shall apply both prospectively and retroactively and shall be applied to all claims existing and pending on the effective date of this Act and all claims arising or actions filed on and after the effective date of this Act. The provisions of this Act shall not be applied to revive claims prescribed as of the effective date of this Act or to affect claims adjudicated on the merits by a final and definitive judgment prior to the effective date of this Act.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Senate Legislative Services. The keyword, summary, 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)]

DIGEST

SB 49 Engrossed 2025 Regular Session Miller

Present law (C.C. Art. 1575) provides the requirements of form for validity for olographic testaments, including that the testament be written, dated, and signed by the testator.

Proposed law maintains for validity that an olographic testament must be written, dated, and signed by the testator but eliminates the requirements that the signature appear at the end of

the testament and that the date is sufficient if indicated by the day, month, and year.

Proposed law further provides that the signature of the testator may appear anywhere in the testament and is sufficient if it identifies the testator.

Proposed law further provides that the date may appear anywhere in the testament and may be clarified by extrinsic evidence.

Present law (C.C. Art. 1576) defines notarial testaments as those executed in accordance with certain formalities.

Proposed law provides that for validity the notarial testament shall be prepared in writing, dated, executed before a notary and two witnesses, and signed by the testator, each witness, and the notary.

Proposed law eliminates the requirement that the testator declare that the instrument is his testament and that the testament include an attestation clause.

Proposed law further provides that the signature of the testator may appear anywhere in the testament and is sufficient if it identifies the testator.

Proposed law provides that the date may appear anywhere in the testament and may be clarified by extrinsic evidence.

Present law (C.C. Art. 1577) provides the requirements of form for validity for notarial testaments, including a declaration that the instrument is the testator's testament, signatures on every page and at the end, and a declaration by the notary and the witnesses.

Proposed law repeals present law.

Present law (C.C. Art. 1578) provides the requirements of form for notarial testaments when the testator is literate and sighted but physically unable to sign.

Proposed law repeals present law.

Present law (C.C. Art. 1579) provides the requirements for form for notarial testaments when the testator is unable to read.

Proposed law repeals present law.

Present law (C.C. Art. 1580) provides for the execution of a notarial testament in braille.

Proposed law repeals present law.

Present law (C.C. Art. 1580.1) provides the requirements of form for notarial testaments when the testator is deaf or deaf and blind.

Proposed law repeals present law.

Present law (C.C. Art. 1581) provides that certain persons are incompetent to be witnesses to testaments.

Proposed law eliminates the prohibition against persons who are competent but deaf or unable to read from witnessing a notarial testament for a testator who is unable to read.

Proposed law (C.C.P. Art. 2887) provides the standard of proof for notarial testaments.

Proposed law provides that a notarial testament executed in accordance with C.C. Art. 1576

is self-proving if it is signed on every page and contains an attestation clause signed by the notary and the subscribing witnesses.

Proposed law further provides that a notarial testament executed in accordance with C.C. Art. 1576 is self-proving if it is signed on every page and the notary and the subscribing witnesses attach an affidavit executed after the date of the testament stating that the testator declared the instrument to be his testament and that the testator signed every page.

Proposed law provides that a notarial testament that is not self-proving may be proved to have been signed by the testator by the testimony of the notary and at least one subscribing witness or by the testimony of the two subscribing witnesses.

Proposed law further provides that if only the notary or only one subscribing witness is alive or can be located, the notarial testament that is not self-proving may be proved by the testimony of either.

Proposed law also provides that if the notary and none of the witnesses are available, the notarial testament may be proved by the testimony of two credible witnesses who recognize the signature of the testator.

Proposed law authorizes the testimony of the notary and the witnesses to be by affidavit or orally at a hearing.

Proposed law (C.C.P. Art. 2891) provides that notarial testaments do not have to be proved to be probated.

Proposed law provides that if the notarial testament complies with the provisions of proposed law that make it self-proving, it does not have to be proved to be probated.

Proposed law provides that the provisions of proposed law apply prospectively and retroactively and shall be applied to existing and pending claims but shall not revive prescribed claims or final and definitive judgments.

Effective August 1, 2025.

(Amends C.C. Arts. 1575, 1576, and 1581 and C.C.P. Art. 2891; adds C.C.P. Art. 2887; repeals C.C. Arts. 1577 - 1580.1)