

2025 Regular Session

SENATE BILL NO. 67

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

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

SUCCESSIONS. Provides for the continuous revision of successions. (8/1/25)

AN ACT

To amend and reenact Code of Civil Procedure Arts. 2881, 2882, 2889, 2890, 2901, the heading of Chapter 5 of Title I of Book VI of the Code of Civil Procedure, and Code of Civil Procedure Arts. 5181(A) and 5186, relative to the continuous revision of successions and donations; to provide for ex parte probate; to provide for cross-references; to provide for proceeding without the prior payment of costs; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Code of Civil Procedure Arts. 2881, 2882, 2889, 2890, 2901, the heading of Chapter 5 of Title I of Book VI of the Code of Civil Procedure, and Code of Civil Procedure Arts. 5181(A) and 5186 are hereby amended and reenacted to read as follows:

Art. 2881. Ex parte probate if no objection

The court shall proceed to probate the testament ex parte ~~as provided in Article 2882~~, unless an objection ~~thereto~~ is made ~~at the hearing~~.

~~An objection to the ex parte probate of a testament may be presented in an opposition, or made orally at the hearing. The opposition must comply with the provisions of Article 2902, and must be filed prior to the hearing. The oral objection~~

1 must specify the grounds of invalidity of the testament asserted, and must be urged
2 immediately after the objector has had an opportunity to examine the purported
3 testament.

4 Art. 2882. Proceedings at probate hearing **Ex parte probate if objection**

5 ~~At the probate hearing the court shall open the testament, if it is enclosed in~~
6 ~~a sealed envelope, receive proof of the making of the testament as provided in~~
7 ~~Articles 2883 through 2889, may read the testament to those present, and shall~~
8 ~~paraph the top and bottom of each page of the testament by inscribing it "ne varietur"~~
9 ~~over the judicial signature.~~ **An objection to the ex parte probate of a testament**
10 **may be presented in an opposition. The opposition shall comply with the**
11 **provisions of Article 2902 and shall be filed.**

12 * * *

13 Art. 2889. Depositions of witnesses

14 A petitioner for the probate of a testament ~~under~~ **in accordance with** the
15 provisions of Articles ~~2882~~ **2883** through 2888 may obtain leave of court ex parte for
16 the taking of the deposition of any witness whose testimony otherwise would not be
17 available. The provisions of Articles 1426, 1434 through 1436, 1443 through 1446,
18 1449, 1452, and 1469 through 1471, ~~so far~~ as applicable, shall govern the taking of
19 ~~such~~ **the** deposition.

20 Art. 2890. Proces verbal of probate

21 A. A proces verbal of the hearing shall be prepared; **and shall be** signed by
22 the judge or ~~by~~ the clerk, and by the witnesses who testified **personally** at the
23 hearing. **The proces verbal,** which shall be a record of the succession proceeding,
24 ~~and which~~ shall recite or include:

25 (1) The opening of the testament, and the manner in which proof of its
26 authenticity and validity was submitted;

27 (2) The names ~~and surnames~~ of the witnesses testifying, either personally or
28 by affidavit or deposition; the substance of the testimony of the witnesses who testify
29 personally at the hearing; and that any affidavits or depositions used are made a part

thereof by attachment or by reference;

~~(3) The paraphing of the testament by the court, as set forth in Article 2882;~~

(4) ~~(3)~~ An order that the testament be recorded, filed, and executed, if the court finds that it has been proved in accordance with law; or an order refusing to probate the testament, giving the substance of the court's reasons therefor.

B. If written affidavits only are used to prove a will ~~under~~ pursuant to Articles 2883 through ~~2887~~ 2888, the proces verbal shall be dispensed with, and the court shall render a written order that the testament be recorded, filed, and executed, if the court finds that it has been proved in accordance with law, or a written order refusing to probate the testament, giving the substance of the court's reasons therefor.

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Art. 2901. Contradictory trial required; time to file opposition

If an objection is made to the ex parte probate of a testament, as provided in Article ~~2881~~ 2882, the testament may be probated only at a contradictory trial of the matter. ~~If only an oral objection is made to the ex parte probate, the court shall allow the opponent a reasonable delay, not exceeding ten days, to file his opposition.~~

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CHAPTER 5. ~~PAYMENT OF STATE INHERITANCE TAXES~~

DETAILED DESCRIPTIVE LIST IN LIEU OF INVENTORY

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Art. 5181. Privilege of ~~litigating~~ proceeding without prior payment of costs

A. Except as provided in Paragraph B of this Article, an individual who is unable to pay the costs of court because of his poverty and lack of means may prosecute or defend a judicial proceeding, including a succession proceeding, in any trial or appellate court without paying the costs in advance or as they accrue or furnishing security therefor.

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Art. 5186. Account and payment of costs

A. An account shall be kept of all costs incurred by a party who has been

permitted to litigate without the payment of costs, by the public officers to whom these costs would be payable.

B. If a party has been permitted to proceed without the payment of costs in a succession proceeding, the court shall order the payment from succession assets of all costs due to any public officer.

C. If judgment is rendered in favor of the indigent party, the party against whom the judgment is rendered shall be condemned to pay all costs due ~~such officers~~ **to a public officer**, who **shall** have a privilege on the judgment superior to the rights of the indigent party or his attorney. If judgment is rendered ~~against~~ **condemning** the indigent ~~plaintiff and he is condemned~~ **party** to pay court costs, an affidavit of the account by an officer to whom costs are due; **shall be** recorded in the mortgage records; **and** shall have the effect of a judgment for the payment due.

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 67 Engrossed

2025 Regular Session

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Present law (C.C.P. Art. 2881) authorizes ex parte probate if there is no objection and requires objections to be made orally at a hearing or filed prior to the hearing.

Proposed law authorizes ex parte probate if there is no objection.

Present law (C.C.P. Art. 2882) provides for the procedure at probate hearings, including the opening of a testament, receiving proof of its making, reading, and paraphing the top and bottom of each page.

Proposed law deletes present law and provides that an objection to ex parte probate may be presented in an opposition and shall be filed.

Present law (C.C.P. Art. 2889) provides for the deposition of witnesses by a petitioner for probate.

Proposed law retains present law and makes a technical change to a cross-reference.

Present law (C.C.P. Art. 2890) provides for the proces verbal of probate.

Proposed law retains present law and makes technical changes.

Present law (C.C.P. Art. 2901) provides for a contradictory hearing when an opposition is filed.

Proposed law makes a technical change to a cross-reference and deletes the language relative

to a reasonable delay when an oral objection is made to the ex parte probate.

Present law (C.C.P. Art. 5181) provides for the privilege of litigating without the prior payment of costs.

Proposed law retains present law and specifically includes succession proceedings in the privilege.

Present law (C.C.P. Art. 5186) provides for the account and payment of costs incurred by a party granted the right to litigate without the prior payment of costs.

Proposed law retains present law and provides that when a party is permitted to proceed without the payment of costs in a succession proceeding, the payment of costs due shall be ordered to be paid from the succession assets.

Effective August 1, 2025.

(Amends C.C.P. Arts. 2881, 2882, 2889, 2890, 2901, the heading of Chapter 5 of Title I of Book VI, and C.C.P. Arts. 5181(A) and 5186)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary A to the original bill

1. Makes technical changes.
2. Authorizes the court to order payment of costs from succession assets.