HLS 14RS-2298 ORIGINAL

Regular Session, 2014

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HOUSE BILL NO. 1114

BY REPRESENTATIVE ABRAMSON

(On Recommendation of the Louisiana State Law Institute)

AN ACT

SUCCESSIONS: Provides relative to successions and donations

2 To amend and reenact Civil Code Articles 1495 and 1522 and Code of Civil Procedure 3 Article 3396.9, and to repeal Civil Code Article 1493(E), relative to successions and 4 donations; to provide for forced heirs and the amount of the forced portion and 5 disposable portion; to provide for separate donations of usufruct and naked 6 ownership; to provide for concurrence of successors who are interdicts or 7 unemancipated minors; to provide for an effective date; and to provide for related 8 matters. 9 Be it enacted by the Legislature of Louisiana: 10 Section 1. Civil Code Articles 1495 and 1522 are hereby amended and reenacted 11 to read as follows: 12 Art. 1495. Amount of forced portion and disposable portion 13 Donations inter vivos and mortis causa may not exceed three-fourths of the 14 property of the donor if he leaves, at his death, one forced heir, and one-half if he 15 leaves, at his death, two or more forced heirs. The portion reserved for the forced 16 heirs is called the forced portion and the remainder is called the disposable portion. 17 The forced portion shall be calculated according to the number of descendants of the 18 first degree who qualify as forced heirs in their own right or are represented for 19 purposes of forced heirship.

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1 Nevertheless, if when the fraction that would otherwise be used to calculate 2 the legitime share of a forced heir who qualifies in his own right or is represented is greater than the fraction of the decedent's estate to which the forced heir would 3 4 succeed by intestacy, then the legitime his share shall be calculated by using the 5 fraction of an intestate successor. When representation occurs for purposes of forced heirship, the division is 6 7 made by roots among those qualifying as forced heirs or being represented. Within 8 each root, the division is made by heads among those qualifying as forced heirs by 9 representation. A forced heir by representation may not receive a share of the 10 division exceeding that of an intestate successor of the person being represented. 11 Revision Comments - 2014 12 This Article clarifies an area of the law that previously had no clear answer: 13 how to calculate the legitime of a grandchild who is a forced heir. The Article now 14 provides the solution that the ascendant of a grandchild who is a forced heir should be treated as a single forced heir, and his share, as such, should be divided by his 15 descendants who qualify as forced heirs by representation. For example, if the 16 17 predeceased parent of a forced heir would not have attained age twenty-four at the 18 time of the decedent's death, then all of his children would qualify together as one 19 forced heir by representation, dividing the parent's root. On the other hand, if the 20 predeceased parent would have attained the age of twenty-four at that time, then only those children of the predeceased parent who qualify as forced heirs by virtue of their 21 22 permanent incapability would divide the root of the predeceased parent. As provided 23 in the last sentence of the Article, this division of the root is limited - a forced heir by representation may not receive a share of the division that exceeds the share of 24 25 an intestate successor of the person being represented. 26 27 Art. 1522. Separate donations of usufruct and naked ownership 28 The same shall be observed as to the disposition inter vivos or mortis causa, 29 by which the usufruct is given to one, and the naked ownership to another. A 30 disposition inter vivos or mortis causa by which the usufruct is given to one person 31 and the naked ownership to another is not a prohibited substitution. 32 Section 2. Code of Civil Procedure Article 3396.9 is hereby amended and 33 reenacted to read as follows: 34 Art. 3396.9. Unemancipated Interdict or unemancipated minor 35 If a successor whose concurrence is required for independent A.

administration is an unemancipated minor, the concurrence may be made on his

1 behalf by the administrator of his estate or his natural tutor, as appropriate, without 2 the need for a formal tutorship proceeding and or concurrence of an undertutor. 3 B. If a successor whose concurrence is required is an interdict, the 4 concurrence may be made on his behalf by the curator without need for court 5 authorization in the interdiction proceeding or concurrence of the undercurator. Section 3. Civil Code Article 1493(E) is hereby repealed in its entirety. 6 7 Section 4. This Act shall be effective January 1, 2015, and shall apply to all 8 actions pending on that date or filed thereafter.

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)]

Abramson HB No. 1114

Abstract: Amends provisions in the Civil Code and the Code of Civil Procedure relating to forced heirship and its representation, the amount of the forced portion and disposable portion, separate donations of usufruct and naked ownership, and interdicts or emancipated minors whose concurrence is required in the administration of a succession.

<u>Present law</u> (C.C. Art. 1495) provides that donations *inter vivos* or *mortis causa* cannot exceed three-fourths of the property of the donor if he leaves one forced heir at the time of his death or one-half if there are two or more forced heirs at the time of the decedent's death. If the fraction that would be used to calculate the legitime is greater than the fraction of the decedent's estate that the forced heir would succeed by intestacy, the legitime is calculated using the smaller fraction.

<u>Proposed law</u> clarifies <u>present law</u> by providing that when there is representation by reason of forced heirship, the division is made by roots among those qualifying as forced heirs or being represented. Within each root, the division is made by heads among those qualifying as forced heirs by representation. Provides that a forced heir by representation may not receive a share of the division exceeding that of an intestate successor of the person being represented.

<u>Present law</u> (C.C. Art. 1522) provides that a disposition *inter vivos* or *mortis causa* wherein the usufruct is given to one person and the naked ownership to another is permissible under the law.

<u>Proposed law</u> retains <u>present law</u> but clarifies the language.

<u>Present law</u> (C.C.P. Art. 3396.9) provides that if a successor is an unemancipated minor, his concurrence may be made on his behalf by the administrator of his estate or his natural tutor, as appropriate, without the need for a formal tutorship proceeding and concurrence of an undertutor.

<u>Proposed law</u> expands application of <u>present law</u> to interdicts.

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CODING: Words in struck through type are deletions from existing law; words <u>underscored</u> are additions.

<u>Present law</u> (C.C. Art. 1493(E)), for purposes of forced heirship, provides that the phrase "permanently incapable of taking care of their persons or administering their estates at the time of the death of the decedent" includes descendants who have an incurable disease or condition at the time of the decedent's death that may render the descendant incapable of caring for his person or administering his estate in the future.

Proposed law repeals present law.

Effective January 1, 2015.

(Amends C.C. Arts. 1495 and 1522 and C.C.P. Art. 3396.9; Repeals C.C. Art. 1493(E))