
DIGEST

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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.

Present law (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.

Proposed law clarifies present law 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.

Present law (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.

Proposed law retains present law but clarifies the language.

Present law (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.

Proposed law expands application of present law to interdicts.

Present law (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))