

SENATE BILL NO. 469 (Substitute of Senate Bill No. 290 by Senator LaFleur)

BY SENATOR LAFLEUR

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AN ACT

To amend and reenact Civil Code Article 3367, relative to the cancellation of recordation after effect of recordation has ceased; to provide for the cancellation of prescribed state tax liens; to provide certain procedures; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Civil Code Article 3367 is hereby amended and reenacted to read as follows:

Art. 3367. Cancellation of recordation after effect of recordation has ceased

If the effect of recordation of a mortgage, pledge, or privilege has ceased for lack of reinscription **or has prescribed by lapse of time under R.S. 9:5685**, the recorder upon receipt of a written signed application shall cancel its recordation.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

ACT No. 629

2016 Regular Session

HOUSE BILL NO. 556

BY REPRESENTATIVE MORENO

1 AN ACT

2 To amend and reenact Civil Code Article 3493.10 and to enact Civil Code Article 3496.2,
3 relative to liberative prescription; to provide for prescription relative to crimes of
4 sexual assault; and to provide for related matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. Civil Code Article 3493.10 is hereby amended and reenacted and Civil
7 Code Article 3496.2 is hereby enacted to read as follows:

8 Art. 3493.10. Delictual actions; two-year prescription; criminal act

9 Delictual actions which arise due to damages sustained as a result of an act
10 defined as a crime of violence under Chapter 1 of Title 14 of the Louisiana Revised
11 Statutes of 1950, except as provided in Article 3496.2, are subject to a liberative
12 prescription of two years. This prescription commences to run from the day injury
13 or damage is sustained.

14 * * *

15 Art. 3496.2. Action against a person for sexual assault

16 A delictual action against a person for any act of sexual assault, as defined
17 in R.S. 46:2184, is subject to a liberative prescription of three years. This
18 prescription commences to run from the day the injury or damage is sustained or the
19 day the victim is notified of the identity of the offender by law enforcement or a

1 judicial agency, whichever is later. This prescriptive period shall be subject to any
2 exception of peremption provided by law.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

ACT No. 495

2016 Regular Session

HOUSE BILL NO. 150

BY REPRESENTATIVE TALBOT

1 AN ACT

2 To amend and reenact R.S. 9:133 and to enact Civil Code Article 1493.1, relative to forced
3 heirship; to provide relative to children conceived through gamete donation; to
4 provide relative to inheritance rights; to provide for exceptions; and to provide for
5 related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. Civil Code Article 1493.1 is hereby enacted to read as follows:

8 Art. 1493.1. Children conceived through donation of gametes

9 Any child conceived from the use of gametes donated by an individual shall
10 not be deemed a forced heir of that individual, unless the individual would be an
11 ascendant of first or second degree notwithstanding the donation of genetic material
12 through an in vitro fertilization process.

13 Section 2. R.S. 9:133 is hereby amended and reenacted to read as follows:

14 §133. Inheritance rights

15 Inheritance rights will not flow to the in vitro fertilized ovum as a juridical
16 person, unless the in vitro fertilized ovum develops into an unborn child that is born
17 in a live birth, or at any other time when rights attach to an unborn child in
18 accordance with law. As a juridical person, the embryo or child born as a result of
19 in vitro fertilization and in vitro fertilized ovum donation to another couple does not

1 retain its inheritance rights from the in vitro fertilization patients or a donor of
2 gametes used in the in vitro fertilization process, unless the donor is a person from
3 whom the child could otherwise inherit under laws of succession notwithstanding the
4 in vitro fertilization process.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

ACT No. 309

2016 Regular Session

HOUSE BILL NO. 388

BY REPRESENTATIVES JEFFERSON AND HUNTER

(On Recommendation of the Louisiana State Law Institute)

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AN ACT

To amend and reenact Civil Code Articles 189, 191, 195, and 196 and R.S. 9:406(B), (C), (D)(2), and (E)(2) and to enact R.S. 9:408, relative to the filiation of children; to provide for the commencement of the prescriptive period; to provide for the revocation of an act of acknowledgment; to provide for necessary parties; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Civil Code Articles 189, 191, 195, and 196 are hereby amended and reenacted to read as follows:

Art. 189. Time limit for disavowal by the husband

The action for disavowal of paternity is subject to a liberative prescription of one year. This prescription commences to run from the day of the birth of the child, or the day the husband learns or should have learned of the birth knew or should have known that he may not be the biological father of the child, whichever occurs later.

Nevertheless, if the husband lived separate and apart from the mother continuously during the three hundred days immediately preceding the birth of the child, this prescription does not commence to run until the husband is notified in writing that a party in interest has asserted that the husband is the father of the child.

Revision Comments - 2016

This revision alters the time periods within which a presumed father must bring an action for disavowal. Rather than the husband's actual or constructive knowledge of the birth of the child marking the commencement of the period, this revision changes the law to provide for commencement on the later of the birth of the child, or the husband's actual or constructive knowledge that he may not be the child's biological father. This change better addresses cases in which a husband has

1 the man who acknowledges the child is the father. The presumption can be invoked
 2 only on behalf of the child. Except as otherwise provided in custody, visitation, and
 3 child support cases, the acknowledgment does not create a presumption in favor of
 4 the man who acknowledges the child.

5 Revision Comment - 2016

6 (a) To rebut the presumption of paternity created by subsequent marriage and
 7 formal acknowledgment of the child, a timely disavowal action must be brought.
 8 Merely revoking the formal act of acknowledgment in accordance with R.S. 9:406
 9 is not sufficient to rebut the presumption of paternity under this Article.

10 (b) The elimination of signing the birth certificate as a means of
 11 accomplishing a formal acknowledgment is intended to have prospective effect only.
 12 Formal acknowledgments that were accomplished in this manner prior to the
 13 effective date of the 2016 revision will therefore remain effective.

14 * * *

15 Section 2. R.S. 9:406(B), (C), (D)(2), and (E)(2) are hereby amended and reenacted
 16 and R.S. 9:408 is hereby enacted to read as follows:

17 §406. Revocation or annulment of authentic act; with and without cause; procedure

18 * * *

19 B.(1) If the notarial act of acknowledgment has not been revoked within
 20 sixty days in accordance with the provisions of Subsection A of this Section, a
 21 person who executed an authentic act of acknowledgment may petition the court to
 22 ~~revoke such~~ annul the acknowledgment only upon proof, by clear and convincing
 23 evidence, that such act was induced by fraud, duress, material mistake of fact or
 24 error, or that the person is not the biological parent of the child.

25 (2) The ~~mover~~ petitioner shall institute the annulment proceeding by
 26 ordinary process, ~~within a two-year period commencing with the execution of the~~
 27 ~~authentic act of acknowledgment of paternity;~~ in a court of competent jurisdiction
 28 upon notice to the other party who executed the notarial act of acknowledgment and
 29 other necessary parties including the office of children and family services, child
 30 support enforcement section of the Department of Children and Family Services.

31 (3) If the court finds based upon the evidence presented at the hearing that
 32 there is substantial likelihood that fraud, duress, material mistake of fact or error
 33 existed in the execution of the act or that the person who executed the authentic act

1 of acknowledgment is not the biological father, then, and only then, the court shall
 2 order genetic tests pursuant to R.S. 9:396. Nothing herein shall preclude the ~~mover~~
 3 petitioner from presenting any other evidence as a substitute for the genetic tests if
 4 it is not possible to conduct such tests.

5 ~~(3)~~(4) The test results certified under oath by an authorized representative
 6 of an accredited laboratory shall be filed with the court and shall be admissible on
 7 the issue of paternity pursuant to R.S. 9:397.3. If the test results show a statistical
 8 probability of ninety-nine point nine percent or greater, a rebuttable presumption of
 9 paternity shall be established. If the acknowledged father is found to be excluded by
 10 the tests, an action seeking support or an established order of support shall be
 11 dismissed and the acknowledgment of paternity shall be ~~revoked~~ annulled. A
 12 judgment dismissing an established order of support does not affect any child support
 13 payment or arrearages paid, due or owing prior to the date the ~~revocation-action~~
 14 annulment was filed.

15 ~~(4)~~(5) The burden of proof in this proceeding shall be upon the party seeking
 16 to revoke the authentic act of acknowledgment. The testimony of the petitioner shall
 17 be corroborated by other evidence.

18 C.(1) Except for good cause shown, the court shall not suspend during the
 19 pendency of this proceeding any legal obligations, including a support obligation, of
 20 the person who petitions the court to revoke or ~~rescind~~ annul the authentic act of
 21 acknowledgment under this Section.

22 (2) Neither the state of Louisiana, its officers, employees, agents,
 23 contractors, nor the office of children and family services, child support enforcement
 24 section of the Department of Children and Family Services shall be liable to
 25 compensate any person for child support paid or any other costs as a result of the
 26 revocation of any authentic act of acknowledgment or the ~~revocation~~ annulment of
 27 any judgment of paternity or support in accordance with this Section.

28 D.

29 * * *

1 (2) However, if the voluntary acknowledgment is ~~revoked~~ annulled by order
2 of the court based upon genetic tests conducted in accordance with Subsection B of
3 this Section which excluded a person as a parent and an order of support has not been
4 established, no further action may be initiated against the excluded person.

5 E.

6 * * *

7 (2) Upon receipt of the form revoking the authentic act of acknowledgment
8 which was executed and filed with the registrar within the sixty-day period or upon
9 receipt of the judgment which shows that the voluntary acknowledgment has been
10 revoked at the hearing which is held no later than the sixtieth day following the
11 execution of the voluntary acknowledgment, or upon receipt of a certified copy of
12 a judgment with a finding shown clearly in the judgment that the authentic act of
13 acknowledgment was ~~revoked~~ annulled due to fraud, duress, material mistake of fact
14 or error that existed in the execution of the act or that the person who executed the
15 authentic act of acknowledgment is not the biological father, the registrar shall make
16 the appropriate amendments to the birth record of the child who was the subject of
17 the order.

18 Revision Comment - 2016

19 The 2016 revision repeals the two-year prescriptive period previously
20 imposed for revocation of authentic acts of acknowledgment. That prescriptive
21 period was illogical where the acknowledgment was executed by a man who was not
22 the biological father of the child. The Louisiana Supreme Court has held the
23 execution of such an acknowledgment to be an absolute nullity absent the requisite
24 biological relationship supporting it. Succession of Robinson, 654 So. 2d 682 (La.
25 1995). To speak of prescription when a father seeks a declaration of absolute nullity
26 is inappropriate, as absolute nullities are imprescriptible by nature. C.C. Art. 2032.

27 * * *

28 §408. Filiation and paternity proceeding; parties

29 The child's mother, the husband of the mother, and the biological father, if
30 known, shall be joined in a filiation or paternity proceeding, except that joinder is not
31 required of a person whose parental rights have been terminated, or who is deceased,
32 or whose joinder is determined otherwise not to be feasible.

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 Section 3. Civil Code Article 196 as amended in this Act shall have prospective
2 application only.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

ACT No. 227

2016 Regular Session

HOUSE BILL NO. 956

BY REPRESENTATIVE GREGORY MILLER

1 AN ACT

2 To amend and reenact R.S. 9:2721 and to repeal Civil Code Article 3275, relative to
3 mortgage and conveyance records; to provide for the recordation of certain
4 documents; to provide relative to information contained in certain documents; and
5 to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 9:2721 is hereby amended and reenacted to read as follows:

8 §2721. Filing in office of parish recorder

9 B.A. An act of safe conveyance of immovable property or attachment thereto
10 filed for registry in the office of the parish recorder ~~pursuant to Subsection A of this~~
11 ~~Section~~ shall designate the name of the person responsible for all property taxes and
12 assessments and include the address where property tax and assessment notices are
13 to be mailed. The person responsible for the taxes and assessments of the
14 immovable being transferred shall provide the above information to the tax assessor
15 for the parish in which the immovable property is located for the purpose of issuing
16 tax and assessment notices.

17 C.B. Anyone who acquires immovable property in this state, whether by
18 sale, sheriff's sale, giving in payment, or in any other manner, which property is
19 subject to a recorded lease agreement that is not divested by the acquisition, shall
20 take the property subject to all of the provisions of the lease, including any provision
21 for the payment of a commission to a leasing agent or other third party, provided that
22 the lease was recorded prior to the recordation of the document which establishes the

1 rights of the person who acquires the property. Such document shall include but is
2 not limited to a mortgage, option to purchase, or other writing.

3 Section 2. Civil Code Article 3275 is hereby repealed in its entirety.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

ACT No. 210

2016 Regular Session

HOUSE BILL NO. 93

BY REPRESENTATIVE GREGORY MILLER AND SENATOR THOMPSON

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AN ACT

To amend and reenact Civil Code Articles 256(A) and (C) and 261, relative to terminology; to provide for updated language; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Civil Code Articles 256(A) and (C) and 261 are hereby amended and reenacted to read as follows:

Art. 256. ~~Hlegitimate children~~ Children born outside of marriage

A. The mother is of right the tutrix of her ~~illegitimate~~ child born outside of marriage not acknowledged by the father, or acknowledged by him ~~alone~~ without her concurrence.

* * *

C. If both parents have acknowledged their ~~illegitimate~~ child born outside of marriage, the judge shall appoint as tutor the one by whose care the best interests of the child will be served. However, if the parents are awarded joint custody of such acknowledged ~~illegitimate~~ child born outside of marriage, then the cotutorship of such child shall belong of right to both parents, with equal authority, privileges, and responsibilities, unless modified by order of the court or by an agreement of the parents, approved by the court awarding joint custody.

* * *

1 Art. 261. ~~Illegitimate child~~ Child born outside of marriage

2 The father or mother who is entitled to the tutorship of the ~~illegitimate child~~
3 born outside of marriage, according to the provisions of Article 256, can choose a
4 tutor for him, whose appointment, to be valid, must be approved by the judge.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

ACT No. 115

2016 Regular Session

HOUSE BILL NO. 447

BY REPRESENTATIVE GREGORY MILLER

1 AN ACT

2 To amend and reenact Civil Code Article 355, relative to continuing tutorships; to provide
3 for procedures for continuing tutorships; to provide relative to certain costs; and to
4 provide for related matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. Civil Code Article 355 is hereby amended and reenacted to read as
7 follows:

8 Art. 355. Petition for continuing or permanent tutorship

9 When a person above the age of fifteen possesses less than two-thirds of the
10 ~~average mental ability~~ intellectual functioning of a ~~normal~~ person of the same age
11 with average intellectual functioning, evidenced by standard testing procedures
12 administered by competent persons or other relevant evidence acceptable to the
13 court, the parents of such person, or the person entitled to custody or tutorship if one
14 or both parents ~~be~~ are dead, incapacitated, or an absent person, or if the parents ~~be~~
15 are judicially separated or divorced, may, with the concurrence of the coroner of the
16 parish of the ~~mentally deficient~~ intellectually disabled person's domicile, petition the
17 court of that district to place such person under a continuing tutorship which shall
18 not automatically end at any age but shall continue until revoked by the court of

1 domicile. The petitioner shall not bear the coroner's costs or fees associated with
2 securing the coroner's concurrence.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

ACT No. 110

2016 Regular Session

HOUSE BILL NO. 350

BY REPRESENTATIVE HILFERTY

1 AN ACT

2 To amend and reenact Civil Code Article 2995 and Code of Civil Procedure Article 4568
3 and to enact Civil Code Article 2997(7) and Code of Civil Procedure Articles
4 3601(E), 4565(B)(7), 4566(J), and 4570 and R.S. 9:3851(E), relative to persons; to
5 provide with respect to interdicted persons; to provide relative to persons subject to
6 mandate; to provide for duties and restrictions of curators, undercurators, and
7 mandataries; to provide with respect to injunctions; to provide for an effective date;
8 and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Civil Code Article 2995 is hereby amended and reenacted and Civil Code
11 Article 2997(7) is hereby enacted to read as follows:

12 Art. 2995. Incidental, necessary, or professional acts

13 The mandatory may perform all acts that are incidental to or necessary for the
14 performance of the mandate.

15 The authority granted to a mandatory to perform an act that is an ordinary
16 part of his profession or calling, or an act that follows from the nature of his
17 profession or calling, need not be specified.

18 A mandatory shall not prevent or limit reasonable communication, visitation,
19 or interaction between a principal who is over the age of eighteen years and another
20 person without prior court approval, to be granted only upon a showing of good
21 cause by the mandatory, unless express authority has been provided pursuant to Civil
22 Code Article 2997(7).

23 * * *

1 Art. 2997. Express authority required

2 Authority also must be given expressly to:

3 (1) Make an inter vivos donation, either outright or to a new or existing trust
4 or other custodial arrangement, and, when also expressly so provided, to impose such
5 conditions on the donation, including, without limitation, the power to revoke, that
6 are not contrary to the other express terms of the mandate.

7 (2) Accept or renounce a succession.

8 (3) Contract a loan, acknowledge or make remission of a debt, or become a
9 surety.

10 (4) Draw or endorse promissory notes and negotiable instruments.

11 (5) Enter into a compromise or refer a matter to arbitration.

12 (6) Make health care decisions, such as surgery, medical expenses, nursing
13 home residency, and medication.

14 (7) Prevent or limit reasonable communication, visitation, or interaction
15 between the principal and a relative by blood, adoption, or affinity within the third
16 degree, or another individual who has a relationship based on or productive of strong
17 affection.

18 Section 2. Code of Civil Procedure Article 4568 is hereby amended and reenacted
19 and Code of Civil Procedure Articles 3601(E), 4565(B)(7), 4566(J), and 4570 are hereby
20 enacted to read as follows:

21 Art. 3601. Injunction, grounds for issuance; preliminary injunction; temporary
22 restraining order

23 * * *

24 E. The irreparable injury, loss, or damage enumerated in Paragraph A of this
25 Article may result from the isolation of an individual over the age of eighteen years
26 by any other individual, curator, or mandatary, including but not limited to violations
27 of Civil Code Article 2995 or Code of Civil Procedure Article 4566(J).

28 * * *

29 Art. 4565. Undercurators

30 * * *

1 B. The undercurator shall:

2 * * *

3 (7) Move to appoint a successor for a curator who violates any of the
4 provisions of Code of Civil Procedure Article 4566.

5 * * *

6 Art. 4566. Management of affairs of the interdict

7 * * *

8 J. A curator shall allow communication, visitation, and interaction between
9 an interdict who is over the age of eighteen years and a relative of the interdict by
10 blood, adoption, or affinity within the third degree, or another individual who has a
11 relationship with the interdict based on or productive of strong affection if it would
12 serve the best interest of the interdict.

13 * * *

14 Art. 4568. Removal of a curator or undercurator

15 On motion of any interested person, or on its own motion, the court may
16 remove a curator or undercurator from office for good cause. Good cause may
17 include but not be limited to a violation of Code of Civil Procedure Article 4566(J).

18 Unless otherwise ordered by the court, removal of the curator or undercurator
19 by the court is effective upon qualification of the appointed successor.

20 * * *

21 Art. 4570. Cause of action for visitation with the interdict

22 A. Any relative of an interdict by blood, adoption, or affinity within the third
23 degree, or an individual who has a relationship with the interdict based on or
24 productive of strong affection may file a rule to show cause seeking visitation,
25 communication, or interaction with an interdict who is over the age of eighteen
26 years.

27 B. Any person filing a cause of action pursuant to Paragraph A of this Article
28 may request an expedited hearing on the cause of action, and upon showing of good
29 cause, shall be entitled to an expedited hearing.

ACT No. 86

2016 Regular Session

HOUSE BILL NO. 269

BY REPRESENTATIVES GREGORY MILLER AND MIKE JOHNSON

(On Recommendation of the Louisiana State Law Institute)

1 AN ACT

2 To amend and reenact Civil Code Article 1522 and Code of Civil Procedure Article 3396.9,
3 relative to successions and donations; to provide for separate donations of usufruct
4 and naked ownership; to provide for concurrence of an interdict or unemancipated
5 minor; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. Civil Code Article 1522 is hereby amended and reenacted to read as
8 follows:

9 Art. 1522. Separate donations of usufruct and naked ownership.

10 ~~The same shall be observed as to the disposition inter vivos or mortis causa,~~
11 ~~by which the usufruct is given to one, and the naked ownership to another. A~~
12 ~~disposition inter vivos or mortis causa by which the usufruct is given to one person~~
13 ~~and the naked ownership to another is not a prohibited substitution.~~

14 Section 2. Code of Civil Procedure Article 3396.9 is hereby amended and reenacted
15 to read as follows:

16 Art. 3396.9. ~~Unemancipated~~ Interdicted or unemancipated minor

17 A. If a successor whose concurrence is required for ~~independent~~
18 ~~administration~~ is an unemancipated minor, the concurrence may be made on his
19 behalf by the administrator of his estate or his natural tutor, as appropriate, without
20 the need for a formal tutorship proceeding ~~and~~ or concurrence of an undertutor.

1 B. If a successor whose concurrence is required is an interdict, the
2 concurrence may be made on his behalf by the curator without the need for court
3 authorization in the interdiction proceeding or concurrence of the undercurator.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

ACT No. 86

2016 Regular Session

HOUSE BILL NO. 269

BY REPRESENTATIVES GREGORY MILLER AND MIKE JOHNSON

(On Recommendation of the Louisiana State Law Institute)

1 AN ACT

2 To amend and reenact Civil Code Article 1522 and Code of Civil Procedure Article 3396.9,
3 relative to successions and donations; to provide for separate donations of usufruct
4 and naked ownership; to provide for concurrence of an interdict or unemancipated
5 minor; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. Civil Code Article 1522 is hereby amended and reenacted to read as
8 follows:

9 Art. 1522. Separate donations of usufruct and naked ownership.

10 ~~The same shall be observed as to the disposition inter vivos or mortis causa,~~
11 ~~by which the usufruct is given to one, and the naked ownership to another. A~~
12 disposition *inter vivos* or *mortis causa* by which the usufruct is given to one person
13 and the naked ownership to another is not a prohibited substitution.

14 Section 2. Code of Civil Procedure Article 3396.9 is hereby amended and reenacted
15 to read as follows:

16 Art. 3396.9. ~~Unemancipated~~ Interdicted or unemancipated minor

17 A. If a successor whose concurrence is required for ~~independent~~
18 ~~administration~~ is an unemancipated minor, the concurrence may be made on his
19 behalf by the administrator of his estate or his natural tutor, as appropriate, without
20 the need for a formal tutorship proceeding ~~and~~ or concurrence of an undertutor.

1 B. If a successor whose concurrence is required is an interdict, the
2 concurrence may be made on his behalf by the curator without the need for court
3 authorization in the interdiction proceeding or concurrence of the undercurator.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

ACT No. 110

2016 Regular Session

HOUSE BILL NO. 350

BY REPRESENTATIVE HILFERTY

1 AN ACT

2 To amend and reenact Civil Code Article 2995 and Code of Civil Procedure Article 4568
3 and to enact Civil Code Article 2997(7) and Code of Civil Procedure Articles
4 3601(E), 4565(B)(7), 4566(J), and 4570 and R.S. 9:3851(E), relative to persons; to
5 provide with respect to interdicted persons; to provide relative to persons subject to
6 mandate; to provide for duties and restrictions of curators, undercurators, and
7 mandataries; to provide with respect to injunctions; to provide for an effective date;
8 and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Civil Code Article 2995 is hereby amended and reenacted and Civil Code
11 Article 2997(7) is hereby enacted to read as follows:

12 Art. 2995. Incidental, necessary, or professional acts

13 The mandatory may perform all acts that are incidental to or necessary for the
14 performance of the mandate.

15 The authority granted to a mandatory to perform an act that is an ordinary
16 part of his profession or calling, or an act that follows from the nature of his
17 profession or calling, need not be specified.

18 A mandatory shall not prevent or limit reasonable communication, visitation,
19 or interaction between a principal who is over the age of eighteen years and another
20 person without prior court approval, to be granted only upon a showing of good
21 cause by the mandatory, unless express authority has been provided pursuant to Civil
22 Code Article 2997(7).

23 * * *

1 Art. 2997. Express authority required

2 Authority also must be given expressly to:

3 (1) Make an inter vivos donation, either outright or to a new or existing trust
4 or other custodial arrangement, and, when also expressly so provided, to impose such
5 conditions on the donation, including, without limitation, the power to revoke, that
6 are not contrary to the other express terms of the mandate.

7 (2) Accept or renounce a succession.

8 (3) Contract a loan, acknowledge or make remission of a debt, or become a
9 surety.

10 (4) Draw or endorse promissory notes and negotiable instruments.

11 (5) Enter into a compromise or refer a matter to arbitration.

12 (6) Make health care decisions, such as surgery, medical expenses, nursing
13 home residency, and medication.

14 (7) Prevent or limit reasonable communication, visitation, or interaction
15 between the principal and a relative by blood, adoption, or affinity within the third
16 degree, or another individual who has a relationship based on or productive of strong
17 affection.

18 Section 2. Code of Civil Procedure Article 4568 is hereby amended and reenacted
19 and Code of Civil Procedure Articles 3601(E), 4565(B)(7), 4566(J), and 4570 are hereby
20 enacted to read as follows:

21 Art. 3601. Injunction, grounds for issuance; preliminary injunction; temporary
22 restraining order

23 * * *

24 E. The irreparable injury, loss, or damage enumerated in Paragraph A of this
25 Article may result from the isolation of an individual over the age of eighteen years
26 by any other individual, curator, or mandatary, including but not limited to violations
27 of Civil Code Article 2995 or Code of Civil Procedure Article 4566(J).

28 * * *

29 Art. 4565. Undercurators

30 * * *

1 B. The undercurator shall:

2 * * *

3 (7) Move to appoint a successor for a curator who violates any of the
4 provisions of Code of Civil Procedure Article 4566.

5 * * *

6 Art. 4566. Management of affairs of the interdict

7 * * *

8 J. A curator shall allow communication, visitation, and interaction between
9 an interdict who is over the age of eighteen years and a relative of the interdict by
10 blood, adoption, or affinity within the third degree, or another individual who has a
11 relationship with the interdict based on or productive of strong affection if it would
12 serve the best interest of the interdict.

13 * * *

14 Art. 4568. Removal of a curator or undercurator

15 On motion of any interested person, or on its own motion, the court may
16 remove a curator or undercurator from office for good cause. Good cause may
17 include but not be limited to a violation of Code of Civil Procedure Article 4566(J).

18 Unless otherwise ordered by the court, removal of the curator or undercurator
19 by the court is effective upon qualification of the appointed successor.

20 * * *

21 Art. 4570. Cause of action for visitation with the interdict

22 A. Any relative of an interdict by blood, adoption, or affinity within the third
23 degree, or an individual who has a relationship with the interdict based on or
24 productive of strong affection may file a rule to show cause seeking visitation,
25 communication, or interaction with an interdict who is over the age of eighteen
26 years.

27 B. Any person filing a cause of action pursuant to Paragraph A of this Article
28 may request an expedited hearing on the cause of action, and upon showing of good
29 cause, shall be entitled to an expedited hearing.

ACT No. 115

2016 Regular Session

HOUSE BILL NO. 447

BY REPRESENTATIVE GREGORY MILLER

1 AN ACT

2 To amend and reenact Civil Code Article 355, relative to continuing tutorships; to provide
3 for procedures for continuing tutorships; to provide relative to certain costs; and to
4 provide for related matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. Civil Code Article 355 is hereby amended and reenacted to read as
7 follows:

8 Art. 355. Petition for continuing or permanent tutorship

9 When a person above the age of fifteen possesses less than two-thirds of the
10 ~~average mental ability~~ intellectual functioning of a ~~normal~~ person of the same age
11 with average intellectual functioning, evidenced by standard testing procedures
12 administered by competent persons or other relevant evidence acceptable to the
13 court, the parents of such person, or the person entitled to custody or tutorship if one
14 or both parents ~~be~~ are dead, incapacitated, or an absent person, or if the parents ~~be~~
15 are judicially separated or divorced, may, with the concurrence of the coroner of the
16 parish of the ~~mentally deficient~~ intellectually disabled person's domicile, petition the
17 court of that district to place such person under a continuing tutorship which shall
18 not automatically end at any age but shall continue until revoked by the court of

1 domicile. The petitioner shall not bear the coroner's costs or fees associated with
2 securing the coroner's concurrence.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

ACT No. 210

2016 Regular Session

HOUSE BILL NO. 93

BY REPRESENTATIVE GREGORY MILLER AND SENATOR THOMPSON

1 AN ACT

2 To amend and reenact Civil Code Articles 256(A) and (C) and 261, relative to terminology;
3 to provide for updated language; and to provide for related matters.

4 Be it enacted by the Legislature of Louisiana:

5 Section 1. Civil Code Articles 256(A) and (C) and 261 are hereby amended and
6 reenacted to read as follows:

7 Art. 256. ~~Hlegitimate children~~ Children born outside of marriage

8 A. The mother is of right the tutrix of her ~~illegitimate~~ child born outside of
9 marriage not acknowledged by the father, or acknowledged by him ~~alone~~ without her
10 concurrence.

11 * * *

12 C. If both parents have acknowledged their ~~illegitimate~~ child born outside
13 of marriage, the judge shall appoint as tutor the one by whose care the best interests
14 of the child will be served. However, if the parents are awarded joint custody of
15 such acknowledged ~~illegitimate~~ child born outside of marriage, then the cotutorship
16 of such child shall belong of right to both parents, with equal authority, privileges,
17 and responsibilities, unless modified by order of the court or by an agreement of the
18 parents, approved by the court awarding joint custody.

19 * * *

1 Art. 261. ~~Illegitimate child~~ Child born outside of marriage

2 The father or mother who is entitled to the tutorship of the ~~illegitimate child~~
3 born outside of marriage, according to the provisions of Article 256, can choose a
4 tutor for him, whose appointment, to be valid, must be approved by the judge.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

ACT No. 227

2016 Regular Session

HOUSE BILL NO. 956

BY REPRESENTATIVE GREGORY MILLER

1 AN ACT

2 To amend and reenact R.S. 9:2721 and to repeal Civil Code Article 3275, relative to
3 mortgage and conveyance records; to provide for the recordation of certain
4 documents; to provide relative to information contained in certain documents; and
5 to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 9:2721 is hereby amended and reenacted to read as follows:

8 §2721. Filing in office of parish recorder

9 B.A. An act of safe conveyance of immovable property or attachment thereto
10 filed for registry in the office of the parish recorder ~~pursuant to Subsection A of this~~
11 ~~Section~~ shall designate the name of the person responsible for all property taxes and
12 assessments and include the address where property tax and assessment notices are
13 to be mailed. The person responsible for the taxes and assessments of the
14 immovable being transferred shall provide the above information to the tax assessor
15 for the parish in which the immovable property is located for the purpose of issuing
16 tax and assessment notices.

17 C.B. Anyone who acquires immovable property in this state, whether by
18 sale, sheriff's sale, giving in payment, or in any other manner, which property is
19 subject to a recorded lease agreement that is not divested by the acquisition, shall
20 take the property subject to all of the provisions of the lease, including any provision
21 for the payment of a commission to a leasing agent or other third party, provided that
22 the lease was recorded prior to the recordation of the document which establishes the

1 rights of the person who acquires the property. Such document shall include but is
2 not limited to a mortgage, option to purchase, or other writing.

3 Section 2. Civil Code Article 3275 is hereby repealed in its entirety.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

ACT No. 309

2016 Regular Session

HOUSE BILL NO. 388

BY REPRESENTATIVES JEFFERSON AND HUNTER

(On Recommendation of the Louisiana State Law Institute)

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AN ACT

To amend and reenact Civil Code Articles 189, 191, 195, and 196 and R.S. 9:406(B), (C), (D)(2), and (E)(2) and to enact R.S. 9:408, relative to the filiation of children; to provide for the commencement of the prescriptive period; to provide for the revocation of an act of acknowledgment; to provide for necessary parties; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Civil Code Articles 189, 191, 195, and 196 are hereby amended and reenacted to read as follows:

Art. 189. Time limit for disavowal by the husband

The action for disavowal of paternity is subject to a liberative prescription of one year. This prescription commences to run from the day of the birth of the child, or the day the husband learns or should have learned of the birth knew or should have known that he may not be the biological father of the child, whichever occurs later.

Nevertheless, if the husband lived separate and apart from the mother continuously during the three hundred days immediately preceding the birth of the child, this prescription does not commence to run until the husband is notified in writing that a party in interest has asserted that the husband is the father of the child.

Revision Comments - 2016

This revision alters the time periods within which a presumed father must bring an action for disavowal. Rather than the husband's actual or constructive knowledge of the birth of the child marking the commencement of the period, this revision changes the law to provide for commencement on the later of the birth of the child, or the husband's actual or constructive knowledge that he may not be the child's biological father. This change better addresses cases in which a husband has

1 the man who acknowledges the child is the father. The presumption can be invoked
2 only on behalf of the child. Except as otherwise provided in custody, visitation, and
3 child support cases, the acknowledgment does not create a presumption in favor of
4 the man who acknowledges the child.

5 Revision Comment - 2016

6 (a) To rebut the presumption of paternity created by subsequent marriage and
7 formal acknowledgment of the child, a timely disavowal action must be brought.
8 Merely revoking the formal act of acknowledgment in accordance with R.S. 9:406
9 is not sufficient to rebut the presumption of paternity under this Article.

10 (b) The elimination of signing the birth certificate as a means of
11 accomplishing a formal acknowledgment is intended to have prospective effect only.
12 Formal acknowledgments that were accomplished in this manner prior to the
13 effective date of the 2016 revision will therefore remain effective.

14 * * *

15 Section 2. R.S. 9:406(B), (C), (D)(2), and (E)(2) are hereby amended and reenacted
16 and R.S. 9:408 is hereby enacted to read as follows:

17 §406. Revocation or annulment of authentic act; with and without cause; procedure

18 * * *

19 B.(1) If the notarial act of acknowledgment has not been revoked within
20 sixty days in accordance with the provisions of Subsection A of this Section, a
21 person who executed an authentic act of acknowledgment may petition the court to
22 ~~revoke such~~ annul the acknowledgment only upon proof, by clear and convincing
23 evidence, that such act was induced by fraud, duress, material mistake of fact or
24 error, or that the person is not the biological parent of the child.

25 (2) The ~~mover~~ petitioner shall institute the annulment proceeding by
26 ordinary process, ~~within a two-year period commencing with the execution of the~~
27 ~~authentic act of acknowledgment of paternity~~, in a court of competent jurisdiction
28 upon notice to the other party who executed the notarial act of acknowledgment and
29 other necessary parties including the office of children and family services, child
30 support enforcement section of the Department of Children and Family Services.

31 (3) If the court finds based upon the evidence presented at the hearing that
32 there is substantial likelihood that fraud, duress, material mistake of fact or error
33 existed in the execution of the act or that the person who executed the authentic act

1 of acknowledgment is not the biological father, then, and only then, the court shall
 2 order genetic tests pursuant to R.S. 9:396. Nothing herein shall preclude the ~~mover~~
 3 petitioner from presenting any other evidence as a substitute for the genetic tests if
 4 it is not possible to conduct such tests.

5 ~~(3)~~(4) The test results certified under oath by an authorized representative
 6 of an accredited laboratory shall be filed with the court and shall be admissible on
 7 the issue of paternity pursuant to R.S. 9:397.3. If the test results show a statistical
 8 probability of ninety-nine point nine percent or greater, a rebuttable presumption of
 9 paternity shall be established. If the acknowledged father is found to be excluded by
 10 the tests, an action seeking support or an established order of support shall be
 11 dismissed and the acknowledgment of paternity shall be ~~revoked~~ annulled. A
 12 judgment dismissing an established order of support does not affect any child support
 13 payment or arrearages paid, due or owing prior to the date the ~~revocation-action~~
 14 annulment was filed.

15 ~~(4)~~(5) The burden of proof in this proceeding shall be upon the party seeking
 16 to revoke the authentic act of acknowledgment. The testimony of the petitioner shall
 17 be corroborated by other evidence.

18 C.(1) Except for good cause shown, the court shall not suspend during the
 19 pendency of this proceeding any legal obligations, including a support obligation, of
 20 the person who petitions the court to revoke or ~~rescind~~ annul the authentic act of
 21 acknowledgment under this Section.

22 (2) Neither the state of Louisiana, its officers, employees, agents,
 23 contractors, nor the office of children and family services, child support enforcement
 24 section of the Department of Children and Family Services shall be liable to
 25 compensate any person for child support paid or any other costs as a result of the
 26 revocation of any authentic act of acknowledgment or the ~~revocation~~ annulment of
 27 any judgment of paternity or support in accordance with this Section.

28 D.

29 * * *

1 (2) However, if the voluntary acknowledgment is ~~revoked~~ annulled by order
2 of the court based upon genetic tests conducted in accordance with Subsection B of
3 this Section which excluded a person as a parent and an order of support has not been
4 established, no further action may be initiated against the excluded person.

5 E.

6 * * *

7 (2) Upon receipt of the form revoking the authentic act of acknowledgment
8 which was executed and filed with the registrar within the sixty-day period or upon
9 receipt of the judgment which shows that the voluntary acknowledgment has been
10 revoked at the hearing which is held no later than the sixtieth day following the
11 execution of the voluntary acknowledgment, or upon receipt of a certified copy of
12 a judgment with a finding shown clearly in the judgment that the authentic act of
13 acknowledgment was ~~revoked~~ annulled due to fraud, duress, material mistake of fact
14 or error that existed in the execution of the act or that the person who executed the
15 authentic act of acknowledgment is not the biological father, the registrar shall make
16 the appropriate amendments to the birth record of the child who was the subject of
17 the order.

18 Revision Comment - 2016

19 The 2016 revision repeals the two-year prescriptive period previously
20 imposed for revocation of authentic acts of acknowledgment. That prescriptive
21 period was illogical where the acknowledgment was executed by a man who was not
22 the biological father of the child. The Louisiana Supreme Court has held the
23 execution of such an acknowledgment to be an absolute nullity absent the requisite
24 biological relationship supporting it. Succession of Robinson, 654 So. 2d 682 (La.
25 1995). To speak of prescription when a father seeks a declaration of absolute nullity
26 is inappropriate, as absolute nullities are imprescriptible by nature. C.C. Art. 2032.

27 * * *

28 §408. Filiation and paternity proceeding; parties

29 The child's mother, the husband of the mother, and the biological father, if
30 known, shall be joined in a filiation or paternity proceeding, except that joinder is not
31 required of a person whose parental rights have been terminated, or who is deceased,
32 or whose joinder is determined otherwise not to be feasible.

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 Section 3. Civil Code Article 196 as amended in this Act shall have prospective
2 application only.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

ACT No. 495

2016 Regular Session

HOUSE BILL NO. 150

BY REPRESENTATIVE TALBOT

1 AN ACT

2 To amend and reenact R.S. 9:133 and to enact Civil Code Article 1493.1, relative to forced
3 heirship; to provide relative to children conceived through gamete donation; to
4 provide relative to inheritance rights; to provide for exceptions; and to provide for
5 related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. Civil Code Article 1493.1 is hereby enacted to read as follows:

8 Art. 1493.1. Children conceived through donation of gametes

9 Any child conceived from the use of gametes donated by an individual shall
10 not be deemed a forced heir of that individual, unless the individual would be an
11 ascendant of first or second degree notwithstanding the donation of genetic material
12 through an in vitro fertilization process.

13 Section 2. R.S. 9:133 is hereby amended and reenacted to read as follows:

14 §133. Inheritance rights

15 Inheritance rights will not flow to the in vitro fertilized ovum as a juridical
16 person, unless the in vitro fertilized ovum develops into an unborn child that is born
17 in a live birth, or at any other time when rights attach to an unborn child in
18 accordance with law. As a juridical person, the embryo or child born as a result of
19 in vitro fertilization and in vitro fertilized ovum donation to another couple does not

1 retain its inheritance rights from the in vitro fertilization patients or a donor of
2 gametes used in the in vitro fertilization process, unless the donor is a person from
3 whom the child could otherwise inherit under laws of succession notwithstanding the
4 in vitro fertilization process.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

ACT No. 629

2016 Regular Session

HOUSE BILL NO. 556

BY REPRESENTATIVE MORENO

1 AN ACT

2 To amend and reenact Civil Code Article 3493.10 and to enact Civil Code Article 3496.2,
3 relative to liberative prescription; to provide for prescription relative to crimes of
4 sexual assault; and to provide for related matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. Civil Code Article 3493.10 is hereby amended and reenacted and Civil
7 Code Article 3496.2 is hereby enacted to read as follows:

8 Art. 3493.10. Delictual actions; two-year prescription; criminal act

9 Delictual actions which arise due to damages sustained as a result of an act
10 defined as a crime of violence under Chapter 1 of Title 14 of the Louisiana Revised
11 Statutes of 1950, except as provided in Article 3496.2, are subject to a liberative
12 prescription of two years. This prescription commences to run from the day injury
13 or damage is sustained.

14 * * *

15 Art. 3496.2. Action against a person for sexual assault

16 A delictual action against a person for any act of sexual assault, as defined
17 in R.S. 46:2184, is subject to a liberative prescription of three years. This
18 prescription commences to run from the day the injury or damage is sustained or the
19 day the victim is notified of the identity of the offender by law enforcement or a

1 judicial agency, whichever is later. This prescriptive period shall be subject to any
2 exception of peremption provided by law.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____