

Regular Session, 2013

# ACT No. 88

HOUSE BILL NO. 588

BY REPRESENTATIVE ABRAMSON

(On Recommendation of the Louisiana State Law Institute)

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

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AN ACT

To amend and reenact Civil Code Article 2041 and to enact Civil Code Articles 3505, 3505.1, 3505.2, 3505.3, and 3505.4, relative to modes of acquiring ownership; to provide relative to obligations and contracts; to provide for enforcement and termination; to provide for the extension of liberative prescription; to provide for actions in cases of fraud; to provide formal requirements for the extension of liberative prescription; to provide for the commencement of the period of extension; to provide for the effect of the extension on other obligors and obligees; to provide for the interruption or suspension of prescription during a period of extension; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Civil Code Article 2041 is hereby amended and reenacted and Civil Code Articles 3505, 3505.1, 3505.2, 3505.3, and 3505.4 are hereby enacted to read as follows:

Art. 2041. Action must be brought within one year

The action of the obligee must be brought within one year from the time he learned or should have learned of the act, or the result of the failure to act, of the obligor that the obligee seeks to annul, but never after three years from the date of that act or result.

The three year period provided in this Article shall not apply in cases of fraud.

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Art. 3505. Acts extending liberative prescription

After liberative prescription has commenced to run but before it accrues, an obligor may by juridical act extend the prescriptive period. An obligor may grant successive extensions. The duration of each extension may not exceed one year.

## Revision Comments – 2013

(a) Under this Article, an obligor may extend the liberative prescriptive period only after a cause of action exists and prescription has begun to run. This approach is consistent with those of a variety of other civil law jurisdictions and international conventions. *See, e.g.,* Cour de Cassation (Comm.), No. 03-21156 (30 Mars 2005); Sophie Stijns et Ilse Samoy, *La Prescription Extinctive: Le Rôle de la Volonté et du Comportement des Parties* 355, in Patrice Jourdain et Patrick Wéry, *La Prescription Extinctive: Études de Droit Comparé* (2010); Convention on the Limitations Period in the International Sale of Goods Art. 22 (2). Prescription may not be extended before it has begun to run, see C.C. Art. 3471, or after it has accrued. Nonetheless, after prescription has accrued, an obligor may renounce prescription. *See, e.g.,* C.C. Art. 3449.

(b) An extension of prescription may be granted by the obligor only in a juridical act that complies with the form requirements of C.C. Art. 3505.1. *See, e.g.,* Convention on the Limitations Period in the International Sale of Goods Art. 22 (2) (allowing modification of the limitations period by means of a "declaration"). For the definition of a juridical act, see C.C. Art. 3471, Comment (c) (Rev. 1982).

(c) An obligor may grant multiple extensions of prescription, each for no more than one year. Although this Article gives priority to individual freedom, that freedom is not absolute. Limitations on the ability to extend prescription are common. *See, e.g.,* Convention on the Limitations Period in the International Sale of Goods Art. 22(2); Civil Code (Fr.) Art. 2254; BGB § 202; Principles of European Contract Law art. 14:601; Unidroit Principles Art. 10.3. The one-year limitation on each extension is designed to allow parties sufficient time to negotiate and settle a dispute rather than having to file suit to interrupt prescription. At the same time, however, the one-year limitation prevents an obligor from rashly granting an excessively long or indefinite period of extension. A renewable one-year limitation provides an appropriate balance. For commencement of the duration of each extension, see C.C. Art. 3505.2 (Rev. 2013).

(d) An extension of prescription is explicitly recognized by legislation, see C.C. Art. 3505, and thus is not violative of the prohibition in Article 3457, which is designed to prohibit the recognition of the common law doctrine of laches. *See* C.C. Art. 3457 (Rev. 2013), Comment (b).

Art. 3505.1. Formal requirements

An extension of liberative prescription must be express and in writing.

## Revision Comments – 2013

(a) The policy behind this Article is not one of public interest but one of evidence. Oral or implied extensions would allow evidentiary debates and unnecessary doubts as to the existence of an agreement. The requirement that an extension be express and in writing exists for proof purposes and is common throughout the Louisiana Civil Code. *See, e.g.,* C.C. Arts. 963 (renunciation of succession rights); 3038 (creation of suretyship); 3450 (renunciation of acquisitive prescription with respect to immovables).

1 (b) The phrase "in writing" requires the existence of either an authentic act  
 2 or an act under private signature. *See* C.C. Arts. 1833 and 1837. Under certain  
 3 circumstances, an electronic transmission may satisfy the requirement of a writing.  
 4 *See, e.g.,* R.S. 9:2601 *et seq.*

5 Art. 3505.2. Commencement of period of extension

6 The period of extension commences to run on the date of the juridical act  
 7 granting it.

8 Revision Comment – 2013

9 This Article specifies the time at which the period of extension commences  
 10 to run. Successive extensions each restart the period of extension but only from the  
 11 date of the act granting it.

12 Art. 3505.3. Effect of extension on other obligors and obligees

13 A. An extension of liberative prescription is effective against only the  
 14 obligor granting it but benefits all joint obligees of an indivisible obligation and all  
 15 solidary obligees.

16 B. An extension of liberative prescription by a principal obligor is effective  
 17 against his surety. An extension of liberative prescription by a surety is effective  
 18 only if the principal obligor has also granted it.

19 Revision Comments – 2013

20 (a) This Article provides that an extension granted by an obligor does not  
 21 grant an obligee an extension against other solidary or joint obligors. The same is  
 22 true with respect to joint tortfeasors. Thus, an obligee who obtains an extension from  
 23 one solidary obligor may, after the original prescriptive period has run, pursue a  
 24 claim against only the obligor granting the extension. To that extent, the effects of  
 25 an extension are not analogous to an interruption. *Cf.* C.C. Arts. 1799, 2324(C), and  
 26 3503. Similarly, an obligor who renders performance outside the original  
 27 prescriptive period but during a period of extension he granted may not recover from  
 28 his co-obligors who did not concur in the extension, as subrogation will be  
 29 inoperative. *See generally Perkins v. Scaffolding Rental and Erection Service, Inc.,*  
 30 *568 So. 2d 549 (La. 1990); Cf. C.C. Art. 1804.*

31 (b) Unlike co-obligors, joint obligees of an indivisible obligation and  
 32 solidary obligees all benefit from an extension granted by an obligor. To that extent,  
 33 the effect of an extension of liberative prescription is similar to an interruption. *See,*  
 34 *e.g.,* C.C. Art. 1793.

35 (c) The second paragraph of this Article makes an exception to the general  
 36 rule that extensions of liberative prescription will be effective only against the  
 37 obligor granting the extension. Because of the nature of the surety arrangement, a  
 38 special rule is necessary. A principal obligor's extension of prescription is effective  
 39 against his surety because of the accessory nature of the contract. *See, e.g.,* C.C.  
 40 Arts. 3035 and 3504. This Article does not, however, preclude the application of  
 41 Article 3062, which must be read *in pari materia* with this and other Articles that  
 42 may serve to modify a principal obligation. This Article also makes clear that for an

1 extension of prescription granted by a surety to be effective, the principal obligor  
2 must also grant the extension. Because suretyship is an accessorial obligation, a  
3 prescriptive period cannot effectively be extended, even as to the surety who granted  
4 the extension, without a similar grant by the principal obligor.

5 Art. 3505.4. Interruption or suspension during a period of extension

6 Prescription may be interrupted or suspended during the period of extension.

7 Revision Comments – 2013

8 (a) Because an extension of prescription is an extension of the original  
9 prescriptive period, an interruption may occur or a suspension may exist during a  
10 contractually granted extension. *See, e.g., Taranto v. Louisiana Citizens Prop. Ins.*  
11 *Corp.*, 62 So. 3d 721 (La. 2011) (holding that a contractually shortened prescriptive  
12 period is a liberative rather than contractual period and thus may be suspended under  
13 C.C.P. Art. 596). *But see id.* at 737 (Victory, J., dissenting); *Dixey v. Allstate Ins.*  
14 *Co.*, 681 F. Supp.2d 740 (E.D. La. 2010).

15 (b) If an interruption occurs during a period of extension, after the last day  
16 of the interruption, only the original prescriptive period commences to run anew, not  
17 the extension. If prescription is suspended during a period of extension, after the  
18 termination of the period of suspension, the remainder of the period of extension runs  
19 again. *See, e.g., C.C. Art. 3472.*

20 (c) For the effect of an interruption of prescription, see C.C. Art. 3466. For  
21 the effect of a suspension of prescription, see C.C. Art. 3472.

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_