

2015 Regular Session

SENATE CONCURRENT RESOLUTION NO. 45

BY SENATOR LAFLEUR

IMMOVABLE PROPERTY. Requests the Louisiana State Law Institute to study and make recommendations regarding Civil Code Article 2628 and contracts predating such article that contain no specified term for an option or right of first refusal.

1 A CONCURRENT RESOLUTION

2 To urge and request the Louisiana State Law Institute to study and make recommendations
3 regarding Civil Code Article 2628, and the negotiation and sale of immovable
4 property affected by contracts that contain no specific term for an option or right of
5 first refusal and were conected prior to the enactment in 1993 of such article.

6 WHEREAS, in 1993, the legislature enacted Civil Code Article 2628, providing that
7 an option or right of first refusal that concerns an immovable thing may not be granted for
8 a term longer than ten years; and

9 WHEREAS, the legislature subsequently amended Civil Code Article 2628 by Act
10 No. 1005 of the 2003 Regular Session, adding language providing that if a longer time for
11 an option or right of first refusal has been stipulated in a contract, that time shall be reduced
12 to ten years; and

13 WHEREAS, Section 2 of Act No. 1005 further stated that the provisions of the Act
14 "shall be applicable to all claims existing or actions pending on its effective date and all
15 claims arising or actions filed on and after its effective date"; and

16 WHEREAS, in Act No. 24 of the 2004 Regular Session, the legislature repealed the
17 above language in Section 2 of Act No. 1005 and instead provided that the "provisions of
18 Civil Code Article 2628, as amended by Act 1005 of the 2003 Regular Session, are hereby

1 declared to be substantive and shall have prospective application only"; and

2 WHEREAS, in seeking to properly interpret and apply Civil Code Article 2628 as
3 originally enacted and amended there now exists uncertainty regarding the sale or other
4 movement in commerce of immoveable property subject to older contracts that predate Civil
5 Code Article 2628 and that contain an option or right of first refusal but no specified term
6 for how long such option or right of first refusal exists; and

7 WHEREAS, such uncertainty includes the potential issue of whether attempting to
8 add a specified term for an option or right of first refusal to an older contract not originally
9 containing such a term is an action that may or may not be constitutionally prohibited as an
10 impairment of contract or other right.

11 THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby
12 urge and request the Louisiana State Law Institute to study Civil Code Article 2628 as
13 originally enacted and amended and report to the legislature any recommendations regarding
14 the need for further revisions to the language of the article, and also addressing the proper
15 manner regarding the article's application to contracts predating the enactment and
16 amendment of the article, including contracts that provide for an option or right of first
17 refusal but provide no specified term.

18 BE IT FURTHER RESOLVED that any recommendations for revising state law shall
19 be in the form of proposed legislation containing appropriate language to effect such
20 recommendations in a statutorily consistent and coordinated matter.

21 BE IF FURTHER RESOLVED that such report and recommendations shall be
22 submitted to the Legislature of Louisiana not later than February 1, 2016.

23 BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the
24 Louisiana State Law Institute.

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Julie J. Baxter.

Institute submit a report and any recommendations in the form of proposed legislation not later than February 1, 2016.