

2020 Regular Session

SENATE BILL NO. 377

BY SENATOR LAMBERT (On Recommendation of the Louisiana State Law Institute)

PRESCRIPTION. Provides relative to prescription. (8/1/20)

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AN ACT

To amend and reenact Civil Code Articles 2041, 2534, and 3463, and to repeal Civil Code Article 3502, relative to prescription; to provide for prescription of the revocatory action; to provide for prescription of actions for redhibition and breach of the warranty of fitness for use; to provide for the interruption of prescription; to provide with respect to prescription of actions for recognition of inheritance rights; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Civil Code Articles 2041, 2534, and 3463 are hereby amended and reenacted 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.~~

## 1 Revision Comments - 2020

2 This revision changes the law by deleting the second paragraph of prior  
 3 Article 2041, which was added in 2013 and which created an exception to the  
 4 three-year period in the first paragraph in cases of fraud. The 2013 amendment had  
 5 the potential to create instability in title to immovables, as any instance in which a  
 6 transfer of property occurred "fraudulently" and in violation of the law on revocatory  
 7 actions potentially allowed the original transferor to recover the property within "one  
 8 year from the time he learned or should have learned of the act, or the result of the  
 9 failure to act." The three-year period provided in this Article creates an important  
 10 protection for third parties and an obvious effort "to protect the security of  
 11 transactions." In addition, the 2013 amendment risked re-injecting the concept of  
 12 fraud into the revocatory action - a concept that was eliminated in the general  
 13 revision to the law of obligations in 1984 because of the confusion and uncertainty  
 14 that the concept of fraud caused. Accordingly, the 1984 revision eliminated the  
 15 concept of fraud from the revocatory action and in its place substituted the concept  
 16 of insolvency. This revision restores Article 2041 to its original text as revised in  
 17 1984.

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## 19 Art. 2534. Prescription

20 A.(1) The action for redhibition against a seller who did not know of the  
 21 existence of a defect in the thing sold ~~prescribes~~ **and the action asserting that a**  
 22 **thing is not fit for its ordinary or intended use prescribes** in four years ~~two years~~  
 23 from the day ~~of~~ delivery of ~~the~~ **such** thing ~~was made~~ to the buyer or one year from  
 24 the day the defect **or unfitness** was discovered by the buyer, whichever occurs first.

25 (2) ~~However, when the defect is of residential or commercial immovable~~  
 26 ~~property, an action for redhibition against a seller who did not know of the existence~~  
 27 ~~of the defect prescribes in one year from the day delivery of the property was made~~  
 28 ~~to the buyer.~~

29 B. The action for redhibition against a seller who knew, or is presumed to  
 30 have known, of the existence of a defect in the thing sold prescribes in one year from  
 31 the day the defect was discovered by the buyer **or ten years from the perfection of**  
 32 **the contract of sale, whichever occurs first.**

33 C. In any case prescription **on an action for redhibition** is interrupted when  
 34 the seller accepts the thing for repairs and commences anew from the day he tenders  
 35 it back to the buyer or notifies the buyer of his refusal or inability to make the  
 36 required repairs.

## 37 Revision Comments - 2020

1 (a) This revision changes the law to create uniform prescriptive periods for  
 2 movables and immovables. It maintains the distinction between sellers who knew  
 3 or should have known of the defect in the thing sold as opposed to those sellers who  
 4 did not. Prior law created separate prescriptive periods for the sale of movables and  
 5 for the sale of "residential or commercial immovable[s]," and in many instances it  
 6 provided a longer prescriptive period for the sale of movables than for immovables.  
 7 Moreover, the creation of a special prescriptive period for redhibitory defects in  
 8 "residential or commercial immovable property" created uncertainty as to  
 9 prescriptive period for other immovable property. See, e.g., MGD Partners, LLC v.  
 10 5-Z Investments, Inc., 145 So. 3d 1053 (La. App. 1 Cir. 2014) (holding that a claim  
 11 for redhibitory defects in undeveloped immovable property is subject to "the  
 12 four-year prescriptive period and/or discovery rule of La. Civ. Code art. 2534(A)(1)  
 13 ... and not the one-year prescriptive period found in La. Civ. Code art. 2534(A)(2),  
 14 which, by its terms, pertains to residential or commercial immovable property.")  
 15 This revision makes all good faith sellers subject to a uniform prescriptive period of  
 16 two years from the day of delivery of the thing to the buyer or one year from the day  
 17 the defect was discovered by the buyer, whichever occurs first.  
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19 (b) This revision also unifies the relevant prescriptive periods for actions in  
 20 redhibition and those for breach of the warranty of fitness for use. Prior law  
 21 provided no specific prescriptive period for breach of the warranty of fitness for use.  
 22 Consequently, the ten-year prescription in Article 3499 prevailed. Because the law  
 23 on redhibition and fitness for use is largely overlapping, the dichotomy between the  
 24 prescriptive periods could create stark differences in outcome. See, e.g., Cunard  
 25 Line Ltd. Co. v. Datrex, Inc., 926 So. 2d 109 (La. App. 3 Cir. 2006). This revision  
 26 unifies the law on prescription for purposes of redhibition and fitness for use.  
 27 Because the law of sales does not distinguish between good faith and bad faith sellers  
 28 for purposes of the warranty of fitness for use, this revision does not purport to create  
 29 different prescriptive periods on that basis.  
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31 (c) This revision also provides clarity regarding the prescriptive period for  
 32 bad faith sellers. Comment (b) to the 1993 revision suggested that in all cases, "an  
 33 action in redhibition prescribes ten years from the time of perfection of the contract  
 34 regardless of whether the seller was in good or bad faith. See C.C. Art. 3499."  
 35 Article 3499, by its terms, however, applies only to personal actions in which a  
 36 prescriptive period is not "otherwise provided by legislation," whereas this Article  
 37 comprehensively provides for different prescriptive periods depending both upon the  
 38 characterization of the property and the good faith or bad faith of the seller.  
 39 Moreover, courts' rulings were not consistent in holding whether Article 3499 was  
 40 applicable in the context of redhibition. See, e.g. Tiger Bend, L.L.C. v.  
 41 Temple-Inland, Inc., 56 F. Supp. 2d 686 (M.D. La. 1999); Mouton v. Generac Power  
 42 Systems, Inc., 152 So. 3d 985 (La. App. 3d Cir. 2014); Grenier v. Medical  
 43 Engineering Corp., 243 F. 3d 200 (5th Cir. 2001). This revision adopts a legislative  
 44 solution to this issue and provides that liberative prescription for an action against  
 45 a bad faith seller accrues in one year from when the defect was discovered by the  
 46 buyer or ten years from the perfection of the contract of sale, whichever occurs first.  
 47 For the time of perfection for a contract of sale, see Article 2439.  
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50 Art. 3463. Duration of interruption; abandonment or discontinuance of suit

51 An interruption of prescription resulting from the filing of a suit in a  
 52 competent court and in the proper venue or from service of process within the  
 53 prescriptive period continues as long as the suit is pending.

1                    Interruption is considered never to have occurred if the plaintiff abandons **the**  
 2                    **suit**, voluntarily dismisses the ~~action~~ **suit** at any time either before the defendant has  
 3                    made any appearance of record or thereafter, or fails to prosecute the suit at the trial.  
 4                    ~~A settlement and subsequent~~ **The** dismissal of a ~~defendant~~ **suit** pursuant to a  
 5                    ~~transaction or compromise shall not qualify as~~ **does not constitute** a voluntary  
 6                    dismissal ~~pursuant to this Article.~~

7                    Revision Comments - 2020

8                    The 2020 revision makes semantic changes and is not intended to change the law.  
 9                    Section 2. Civil Code Art. 3502 is hereby repealed.

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The original instrument and the following digest, which constitutes no part  
 of the legislative instrument, were prepared by Margaret M. Corley.

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DIGEST

SB 377 Original

2020 Regular Session

Lambert

Present law (C.C. Art. 2041) provides that the revocatory action must be brought within one year of discovery of the obligor's act or failure to act but never after three years from the act or failure to act itself, except in cases of fraud.

Proposed law removes the exception to the three-year period provided by present law in cases of fraud.

Present law (C.C. Art. 2534(A)(1)) provides that actions for redhibition against good faith sellers of movables and immovables other than residential or commercial immovables prescribe four years from delivery or one year from discovery, whichever occurs first.

Present law (C.C. Art. 2534(A)(2)) provides that actions for redhibition against good faith sellers of commercial and residential immovables prescribe one year from delivery.

Proposed law (C.C. Art. 2534(A)) changes the prescriptive periods under present law by providing that actions for redhibition against good faith sellers of movables and immovables prescribe two years from delivery or one year from discovery, whichever occurs first.

Present law (C.C. Art. 3499) provides that unless otherwise provided by legislation, personal actions prescribe in ten years.

Proposed law (C.C. Art. 2534(A)) creates an exception to present law by providing that actions for breach of the warranty of fitness for use prescribe two years from delivery or one year from discovery, whichever occurs first.

Present law (C.C. Art. 2534(B)) provides that actions for redhibition against bad faith sellers of movables and immovables prescribe one year from discovery.

Proposed law retains present law but provides an outside time limitation of ten years from the perfection of the contract of sale, whichever occurs first.

Present law (C.C. Art. 2534(C)) provides that prescription is interrupted when the seller accepts the thing for repairs and begins running again when the thing is returned to the buyer

or when the buyer is notified of the seller's inability or refusal to make repairs.

Proposed law retains present law but clarifies that this provision applies only to actions for redhibition.

Present law (C.C. Art. 3463) provides that a settlement and subsequent dismissal of a defendant pursuant to a transaction or compromise does not qualify as a voluntary dismissal for purposes of determining whether prescription has been interrupted.

Proposed law retains present law but makes nonsubstantive changes to employ terminology that is consistent with language used throughout the Civil Code.

Present law (C.C. Art. 3502) provides that an action for the recognition of a right of inheritance is subject to a liberative prescription of thirty years.

Proposed law repeals present law.

Effective August 1, 2020.

(Amends C.C. Arts. 2041, 2534, and 3463; repeals C.C. Art. 3502)