

Regular Session, 2013

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.

PRESCRIPTION: Provides relative to extending liberative prescriptive periods

1 AN ACT

2 To enact Civil Code Articles 3505, 3505.1, 3505.2, 3505.3, and 3505.4, relative to modes  
3 of acquiring ownership; to provide relative to obligations and contracts; to provide  
4 for enforcement and termination; to provide for the extension of liberative  
5 prescription; to provide formal requirements for the extension of liberative  
6 prescription; to provide for the commencement of the period of extension; to provide  
7 for the effect of the extension on other obligors and obligees; to provide for the  
8 interruption or suspension of prescription during a period of extension; and to  
9 provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. Civil Code Articles 3505, 3505.1, 3505.2, 3505.3, and 3505.4 are hereby  
12 enacted to read as follows:

13 Art. 3505. Acts extending liberative prescription

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

17 Revision Comments – 2013

18 (a) Under this Article, an obligor may extend the liberative prescriptive  
19 period only after a cause of action exists and prescription has begun to run. This  
20 approach is consistent with those of a variety of other civil law jurisdictions and  
21 international conventions. *See, e.g.,* Cour de Cassation (Comm.), No. 03-21156 (30  
22 Mars 2005); Sophie Stijns et Ilse Samoy, *La Prescription Extinctive: Le Rôle de la*  
23 *Volonté et du Comportement des Parties* 355, in Patrice Jourdain et Patrick Wéry,  
24 *La Prescription Extinctive: Études de Droit Comparé* (2010); Convention on the  
25 Limitations Period in the International Sale of Goods Art. 22 (2). Prescription may  
26 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).

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

#### Art. 3505.2. Commencement of period of extension

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

#### Revision Comment – 2013

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

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

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

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

## Revision Comments – 2013

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

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

(c) The second paragraph of this Article makes an exception to the general rule that extensions of liberative prescription will be effective only against the obligor granting the extension. Because of the nature of the surety arrangement, a special rule is necessary. A principal obligor's extension of prescription is effective against his surety because of the accessory nature of the contract. *See, e.g.*, C.C. Arts. 3035 and 3504. This Article does not, however, preclude the application of Article 3062, which must be read *in pari materia* with this and other Articles that may serve to modify a principal obligation. This Article also makes clear that for an extension of prescription granted by a surety to be effective, the principal obligor must also grant the extension. Because suretyship is an accessorial obligation, a prescriptive period cannot effectively be extended, even as to the surety who granted the extension, without a similar grant by the principal obligor.

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

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

## Revision Comments – 2013

(a) Because an extension of prescription is an extension of the original prescriptive period, an interruption may occur or a suspension may exist during a contractually granted extension. *See, e.g., Taranto v. Louisiana Citizens Prop. Ins. Corp.*, 62 So. 3d 721 (La. 2011) (holding that a contractually shortened prescriptive period is a liberative rather than contractual period and thus may be suspended under

1 C.C.P. Art. 596). *But see id.* at 737 (Victory, J., dissenting); *Dixey v. Allstate Ins.*  
2 Co., 681 F. Supp.2d 740 (E.D. La. 2010).

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

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

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### DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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Abramson

HB No. 588

**Abstract:** Revises the Civil Code to provide for the extension of liberative prescription.

Proposed law (C.C. Art. 3505) provides that an obligor may extend a period of liberative prescription by juridical act after it has commenced to run, and that an obligor may grant successive extensions, each of which may not exceed one year.

Proposed law (C.C. Art. 3505.1) provides that an extension of liberative prescription must be express and in writing.

Proposed law (C.C. Art. 3505.2) provides that the period of extension commences to run on the date of the juridical act granting it.

Proposed law (C.C. Art. 3505.3) provides that the extension of liberative prescription is effective against only the obligor granting it. Further provides that the extension benefits all joint obligees of an indivisible obligation and all solidary obligees.

Proposed law provides that an extension of liberative prescription by a principal obligor is effective against his surety.

Proposed law provides that an extension of liberative prescription by a surety is effective only if the principal obligor has also granted it.

Proposed law (C.C. Art. 3505.4) provides that prescription may be interrupted or suspended during the period of extension.

(Adds C.C. Arts. 3505-3505.4)

### Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill.

1. Deleted provisions amending Civil Code Article 3471 governing limits of contractual freedom.