

2021 Regular Session

HOUSE BILL NO. 81

BY REPRESENTATIVE PRESSLY

(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 prescription

1 AN ACT

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

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. Civil Code Articles 2041, 2534, and 3463 are hereby amended and
10 reenacted to read as follows:

11 Art. 2041. Action must be brought within one year

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

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

18 Revision Comments - 2021

19 This revision changes the law by deleting the second paragraph of prior
20 Article 2041, which was added in 2013 and which created an exception to the
21 three-year period in the first paragraph in cases of fraud. The 2013 amendment had
22 the potential to create instability in title to immovables, as any instance in which a

1 transfer of property occurred "fraudulently" and in violation of the law on revocatory
 2 actions potentially allowed the original transferor to recover the property within "one
 3 year from the time he learned or should have learned of the act, or the result of the
 4 failure to act." The three-year period provided in this Article creates an important
 5 protection for third parties and an obvious effort "to protect the security of
 6 transactions." In addition, the 2013 amendment risked re-injecting the concept of
 7 fraud into the revocatory action - a concept that was eliminated in the general
 8 revision to the law of obligations in 1984 because of the confusion and uncertainty
 9 that the concept of fraud caused. Accordingly, the 1984 revision eliminated the
 10 concept of fraud from the revocatory action and in its place substituted the concept
 11 of insolvency. This revision restores Article 2041 to its original text as revised in
 12 1984.

13 * * *

14 Art. 2534. Prescription

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

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

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

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

32 Revision Comments - 2021

33 (a) This revision changes the law to create uniform prescriptive periods for
 34 movables and immovables. It maintains the distinction between sellers who knew
 35 or should have known of the defect in the thing sold as opposed to those sellers who
 36 did not. Prior law created separate prescriptive periods for the sale of movables and
 37 for the sale of "residential or commercial immovable[s]," and in many instances it

1 provided a longer prescriptive period for the sale of movables than for immovables.
 2 Moreover, the creation of a special prescriptive period for redhibitory defects in
 3 "residential or commercial immovable property" created uncertainty as to the
 4 prescriptive period for other immovable property. See, e.g., MGD Partners, LLC v.
 5 5-Z Investments, Inc., 145 So. 3d 1053 (La. App. 1 Cir. 2014) (holding that a claim
 6 for redhibitory defects in undeveloped immovable property is subject to "the
 7 four-year prescriptive period and/or discovery rule of La. Civ. Code art. 2534(A)(1)
 8 ... and not the one-year prescriptive period found in La. Civ. Code art. 2534(A)(2),
 9 which, by its terms, pertains to residential or commercial immovable property.")
 10 This revision makes all good faith sellers subject to a uniform prescriptive period of
 11 two years from the day of delivery of the thing to the buyer or one year from the day
 12 the defect was discovered by the buyer, whichever occurs first.

13 (b) This revision also unifies the relevant prescriptive periods for actions in
 14 redhibition and those for breach of the warranty of fitness for use. Prior law
 15 provided no specific prescriptive period for breach of the warranty of fitness for use.
 16 Consequently, the ten-year prescription in Article 3499 prevailed. Because the law
 17 on redhibition and fitness for use is largely overlapping, the dichotomy between the
 18 prescriptive periods could create stark differences in outcome. See, e.g., Cunard
 19 Line Ltd. Co. v. Datrex, Inc., 926 So. 2d 109 (La. App. 3 Cir. 2006). This revision
 20 unifies the law on prescription for purposes of redhibition and fitness for use.
 21 Because the law of sales does not distinguish between good faith and bad faith sellers
 22 for purposes of the warranty of fitness for use, this revision does not purport to create
 23 different prescriptive periods on that basis.

24 (c) This revision also provides clarity regarding the prescriptive period for
 25 bad faith sellers. Comment (b) to the 1993 revision suggested that in all cases, "an
 26 action in redhibition prescribes ten years from the time of perfection of the contract
 27 regardless of whether the seller was in good or bad faith. See C.C. Art. 3499."
 28 Article 3499, by its terms, however, applies only to personal actions in which a
 29 prescriptive period is not "otherwise provided by legislation," whereas this Article
 30 comprehensively provides for different prescriptive periods depending both upon the
 31 characterization of the property and the good faith or bad faith of the seller.
 32 Moreover, courts' rulings were not consistent in holding whether Article 3499 was
 33 applicable in the context of redhibition. See, e.g. Tiger Bend, L.L.C. v.
 34 Temple-Inland, Inc., 56 F. Supp. 2d 686 (M.D. La. 1999); Mouton v. Generac Power
 35 Systems, Inc., 152 So. 3d 985 (La. App. 3d Cir. 2014); Grenier v. Medical
 36 Engineering Corp., 243 F. 3d 200 (5th Cir. 2001). This revision adopts a legislative
 37 solution to this issue and provides that liberative prescription for an action against
 38 a bad faith seller accrues in one year from when the defect was discovered by the
 39 buyer or ten years from the perfection of the contract of sale, whichever occurs first.
 40 For the time of perfection for a contract of sale, see Article 2439.

41 * * *

42 Art. 3463. Duration of interruption; abandonment or discontinuance of suit

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

46 B. Interruption is considered never to have occurred if the plaintiff abandons
 47 the suit, voluntarily dismisses the ~~action~~ suit at any time either before the defendant
 48 has made any appearance of record or thereafter, or fails to prosecute the suit at the

1 trial. ~~A settlement and subsequent~~ The dismissal of a ~~defendant~~ suit pursuant to a
 2 ~~transaction or compromise shall not qualify as~~ does not constitute a voluntary
 3 dismissal ~~pursuant to this Article.~~

4 Revision Comments - 2021

5
 6 The 2021 revision makes semantic changes and is not intended to change the
 7 law.

8 Section 2. Civil Code Article 3502 is hereby repealed in its entirety.

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)]

HB 81 Original

2021 Regular Session

Pressly

Abstract: Provides relative to prescription for revocatory and redhibition actions, interruption of prescription, and inheritance recognition.

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 10 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 10 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 non-substantive 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 30 years.

Proposed law repeals present law.

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