

2024 Regular Session

SENATE CONCURRENT RESOLUTION NO. 26

BY SENATOR LUNEAU

PRESCRIPTION. Provides relative to legislative intent of certain Acts relating to causes of action for abuse of a minor.

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A CONCURRENT RESOLUTION

To provide for legislative intent of certain Acts of the Legislature relating to causes of action for abuse of a minor.

WHEREAS, prior to the adoption of Act No. 322 of the 2021 Regular Session of the Legislature of Louisiana, R.S. 9:2800.9 provided for a liberative prescriptive period of ten years for an action against a person for sexual abuse of a minor, commencing to run from the day the minor attained the age of majority; and

WHEREAS, Act No. 322 became effective on June 14, 2021, and eliminated the ten-year prescriptive period, providing instead that actions against a person for sexual abuse of a minor do not prescribe; and

WHEREAS, Section 2 of Act No. 322 authorized any party whose action against a person under R.S. 9:2800.9, but would have been barred by the ten-year liberative prescriptive period eliminated by the Act, to file the action for a period of three years from the effective date of the Act, thus reviving, for three years, any claim against a party that would have been barred prior to the enactment of the Act; and

WHEREAS, the legislature intended that Act No. 322 be applied retroactively; and

WHEREAS, Act No. 386 of the 2022 Regular Session of the Legislature affirmed the legislature's intent that the provisions of R.S. 9:2800.9, as amended by Act No. 322

1 providing that actions against a person for sexual abuse of a minor do not prescribe, be  
2 applied retroactively to permit those persons who may have had a cause of action barred by  
3 the previous ten-year liberative prescriptive period to file an action under R.S. 9:2800.9 until  
4 June 14, 2024; and

5 WHEREAS, there have been numerous constitutional challenges to the retroactive  
6 application reviving previously prescribed causes of action for sexual abuse against minors,  
7 alleging that retroactive application violates Art. I, Sec. 2 of the Constitution of Louisiana;  
8 and

9 WHEREAS, pending the outcome of these various legal challenges and considering  
10 the expiration of the revival period established in Act No. 322 of the 2021 Regular Session  
11 and Act No. 386 of the 2022 Regular Session, Senate Bill No. 246 of the 2024 Regular  
12 Session of the Legislature of Louisiana was prefiled in the legislature on March 1, 2024, and  
13 was introduced in the Senate on March 11, 2024, in order to preserve the retroactive  
14 application and revival of claims for those victims of acts of sexual abuse suffered as a  
15 minor who are now adults and whose claims were barred by the previous ten-year  
16 prescriptive period of R.S. 9:2800.9 that existed prior to the enactment of Act No. 322 of the  
17 2021 Regular Session; and

18 WHEREAS, on March 22, 2024, the Louisiana Supreme Court issued a ruling in  
19 *Douglas Bienvenu, et al. vs. Defendant 1 and Defendant 2, C/W John Doe, et al., vs*  
20 *Defendant 1 and Defendant 2, 23-01194, (La. 03/22/24)*, wherein the court found defendants  
21 have a vested property right in accrued prescription, that the Legislature of Louisiana lacks  
22 the authority to revive prescribed claims for cases of sexual abuse against minors, and  
23 declared Sections 2 of Act No. 322 of the 2021 and Act No. 386 of the 2022 Regular  
24 Sessions of the Legislature of Louisiana unconstitutional; and

25 WHEREAS, Article II of the Constitution of Louisiana provides that the powers of  
26 the government of the state of Louisiana are exercised by the legislative, executive, and  
27 judicial branches of government and prohibits any branch from exercising power belonging  
28 to either of the other unless explicitly provided by the constitution; and

29 WHEREAS, Art. I, Sec. 2 of the Constitution of Louisiana provides that no person  
30 shall be deprived of life, liberty, or property, except by due process of law; and

1           WHEREAS, it is well settled that the legislature may enact any legislation that the  
2           Constitution of Louisiana does not prohibit and the burden of proving a constitutional  
3           provision prohibits the enactment of a statute rests with the party challenging the  
4           constitutionality; and

5           WHEREAS, the legislature respects that interpretation of the laws is vested with the  
6           judiciary, but does take note of the distinction between liberative prescription, which serves  
7           to bar an action as a result of inaction for a certain period of time, and peremption, which  
8           acknowledges the existing of a right and the extinguishing of that right upon the expiration  
9           of the preemptive period – this is not a distinction without a difference; and

10          WHEREAS, the Legislature of Louisiana does hereby recognize the hierarchy of the  
11          sources of law in the state of Louisiana, established in Civil Code, making superior  
12          legislative enactment over custom; and

13          WHEREAS, the constitution does not anticipate that the rights afforded under Art.  
14          I, Sec. 2 are absolute, instead they are conditioned upon whether the guarantee of due  
15          process has been met; and

16          WHEREAS, whether a right is a vested property right or a fundamental right is not  
17          dispositive of whether a due process analysis is required in the court's evaluation of the  
18          constitutionality of an enactment of the legislature under Art. I, Sec. 2 of the Constitution  
19          of Louisiana; rather this determination is necessary and relevant only for the purposes of  
20          determining the applicable standard the court should apply in evaluating whether an action  
21          of the government violates a party's substantive due process protections; and

22          WHEREAS, in the case of fundamental rights, government restrictions are subject  
23          to a strict scrutiny analysis, compared to the rational basis analysis that is applicable to  
24          evaluation of government action as it relates to rights that are not fundamental; and

25          WHEREAS, sexual abuse of a minor is a unique tort to which ordinary laws of  
26          prescription should not apply.

27          THEREFORE, BE IT RESOLVED that the Legislature of Louisiana hereby finds  
28          that laws requiring claims of sexual abuse of a minor be filed within a certain period of time  
29          of the actions that serve as the basis of the cause of action do not create vested rights for the  
30          alleged perpetrator against whom the action is claimed.

1           BE IT FURTHER RESOLVED that the Legislature of Louisiana does hereby find  
2 that the time within which a cause of action may be filed by an adult, who is a victim of acts  
3 of sexual abuse committed against him as a minor, should not be limited in time by  
4 legislative enactment.

5           BE IT FURTHER RESOLVED that the Legislature of Louisiana does hereby find  
6 that the Constitution of Louisiana requires any restriction on rights enumerated in Art. I, Sec.  
7 2 of the Constitution be balanced against the protections required by due process.

8           BE IT FURTHER RESOLVED that the Legislature of Louisiana hereby finds that  
9 due process does not require the outright prohibition of retroactive application of substantive  
10 law when the legislature's intent on retroactivity is clear, but instead requires an analysis of  
11 whether implementation of retroactive application survives due process scrutiny.

12           BE IT FURTHER RESOLVED that the Legislature of Louisiana recognizes that the  
13 judiciary has established different levels of due process analyses depending on the right  
14 alleged to be violated by government action.

15           BE IT FURTHER RESOLVED that the Legislature of Louisiana hereby asserts that  
16 the passage of the provisions of Act No. 322 of the 2021 Regular Session of the Legislature  
17 of Louisiana, and each amending Act relative to retroactive application, is rationally related  
18 to the legitimate governmental interest of addressing a systemic societal problem impacting  
19 children, who are the most vulnerable among us, that has remained hidden for years and  
20 serves a public purpose by preventing abuse of children in the future by identifying hidden  
21 child predators, educating the public about the prevalence and harm from child sex abuse in  
22 an effort to prevent future abuse, and shifting the costs of abuse to the predator rather than  
23 the victim and the public in general.

24           BE IT FURTHER RESOLVED that, in addition to the original Acts of the legislature  
25 themselves, the Legislature of Louisiana does hereby expressly declare its intent that the  
26 provisions of Act No. 322 of the 2021 Regular Session of the Legislature, as amended by  
27 Act No. 386 of the 2022 Regular Session of the Legislature and the Act that originated as  
28 Senate Bill No. 246 of the 2024 Regular Session of the Legislature, be applied retroactively  
29 for the limited period of time contained in those Acts to permit child victims of sexual abuse  
30 who have attained the age of majority and would otherwise be barred from a cause of action

1 against the alleged perpetrators under prior law, to assert claims in furtherance of the  
 2 legitimate government interests enumerated by the legislature in the passage of Act No. 322,  
 3 each amending provision thereafter, and this Concurrent Resolution.

4 BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted  
 5 individually to the justices of the Louisiana Supreme Court.

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The original instrument and the following digest, which constitutes no part  
 of the legislative instrument, were prepared by Dawn Romero Watson.

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## DIGEST

SCR 26 Engrossed

2024 Regular Session

Luneau

Expressly declares that the Legislature's intent in enacting Act No. 322 of the 2021 Regular Session of the Legislature, as amended by Act No. 386 of the 2022 Regular Session of the Legislature and by the Act that originated as Senate Bill No. 246 of the 2024 Regular Session of the Legislature, be applied retroactively for the limited period of time contained in those Acts to permit child victims of sexual abuse who have attained the age of majority and would otherwise be barred from a cause of action against the alleged perpetrators under prior law, to assert claims in furtherance of the legitimate government interests enumerated by the legislature in the passage of Act No. 322, each amending provision thereafter, and this Concurrent Resolution.