

SENATE CONCURRENT RESOLUTION NO. 26

BY SENATORS LUNEAU, ABRAHAM, ALLAIN, BARROW, BASS, BOUDREAUX, CARTER, CATHEY, CLOUD, CONNICK, DUPLESSIS, EDMONDS, FIELDS, FOIL, HARRIS, HENRY, HODGES, JACKSON-ANDREWS, JENKINS, KLEINPETER, MIGUEZ, PRICE, TALBOT AND WOMACK AND REPRESENTATIVES BACALA, BAMBURG, BAYHAM, BERAULT, BILLINGS, BOYD, BOYER, BRASS, BROWN, BRYANT, BUTLER, CARPENTER, WILFORD CARTER, CARVER, CHASSION, CHENEVERT, COATES, COX, CREWS, DAVIS, DESHOTEL, DEVILLIER, DEWITT, DOMANGUE, EDMONSTON, EGAN, FISHER, FONTENOT, FREEMAN, FREIBERG, GLORIOSO, GREEN, HEBERT, HILFERTY, HORTON, HUGHES, JACKSON, MIKE JOHNSON, TRAVIS JOHNSON, JORDAN, KERNER, KNOX, LACOMBE, LAFLEUR, JACOB LANDRY, MANDIE LANDRY, LARVADAIN, LYONS, MACK, MARCELLE, MCMAHEN, MCMAKIN, MELERINE, MILLER, MYERS, NEWELL, OWEN, PHELPS, SCHAMERHORN, SCHLEGEL, SELDERS, ST. BLANC, STAGNI, TAYLOR, THOMPSON, VENTRELLA, VILLIO, WALTERS, WILDER, WILEY, WILLARD, WYBLE, YOUNG AND ZERINGUE

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

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

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

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

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

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

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

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

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

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

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

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

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

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana hereby finds that laws requiring claims of sexual abuse of a minor be filed within a certain period of time

of the actions that serve as the basis of the cause of action do not create vested rights for the alleged perpetrator against whom the action is claimed.

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

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

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

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

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

BE IT FURTHER RESOLVED that, in addition to the original Acts of the legislature themselves, the Legislature of Louisiana does hereby expressly declare its intent that the provisions of 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 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.

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

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PRESIDENT OF THE SENATE

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SPEAKER OF THE HOUSE OF REPRESENTATIVES