

First Extraordinary Session, 2005

HOUSE BILL NO. 90

BY REPRESENTATIVES ANSARDI AND GALLOT AND SENATOR LENTINI

PRESCRIPTION: Provides for the suspension of prescription

1 AN ACT

2 To enact Chapter 1 of Code Title III of Code Book III of Title 9 of the Louisiana Revised  
3 Statutes of 1950, to be comprised of R.S. 9:2551 through 2565, relative to the effect  
4 of obligations during certain emergencies and disasters; to provide relative to  
5 suspension of prescription and preemptive periods and other legal deadlines; to  
6 provide relative to the extension of prescription and preemptive periods and other  
7 legal deadlines; to provide relative to the ratification of Executive Orders KBB 2005-  
8 32, 48, and 67; to provide for retroactive application; and to provide for related  
9 matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. Chapter 1 of Code Title III of Code Book III of Title 9 of the Louisiana  
12 Revised Statutes of 1950, comprised of R.S. 9:2551 through 2565, is hereby enacted to read  
13 as follows:

14 CODE TITLE III—OBLIGATIONS IN GENERAL

15 CHAPTER 1. OF OBLIGATIONS DURING CERTAIN

16 EMERGENCIES AND DISASTERS

17 §2551. Purpose; ratification

18 A. The legislature finds that Hurricanes Katrina and Rita created a statewide  
19 emergency disrupting and forcing the closure of certain courts and public offices and  
20 further resulting in the displacement of courts, offices, clients, and counsel. This

1 Chapter is enacted for the benefit and protection of the state as a whole and its  
2 citizens, and to prevent injustice, inequity, and undue hardship to persons who were  
3 prevented by these hurricanes from timely access to courts and offices in the exercise  
4 of their legal rights, including the filing of documents and pleadings as authorized  
5 or required by law. Therefore, this Chapter shall be liberally construed to effect its  
6 purposes.

7 B. The action of the governor of this state in issuing Executive Orders KBB  
8 2005-32, 48, and 67 is hereby approved, ratified, and confirmed subject to the  
9 provisions of R.S. 9:2552 through 2554.

10 §2552. Suspension and extension of prescription and peremption; exceptions

11 A.(1) All prescriptions, including liberative, acquisitive, and the prescription  
12 of nonuse, and all preemptive periods shall be subject to a limited suspension and/or  
13 extension during the time period of August 26, 2005, through January 3, 2006;  
14 however, the suspension and/or extension of these periods shall be limited and shall  
15 only apply if these periods would have otherwise accrued or lapsed during the time  
16 period of August 26, 2005, through January 3, 2006. This limited suspension and/or  
17 extension shall terminate on January 3, 2006, and any right, claim, or action which  
18 would have expired during the time period of August 26, 2005, through January 3,  
19 2006, shall accrue or lapse on January 4, 2006.

20 (2) Provisions applicable within the jurisdiction of certain courts.  
21 Notwithstanding the provisions provided in Paragraph (1) of this Subsection, as to  
22 a district court or justice of the peace court within the parishes of Cameron, St.  
23 Bernard, or Plaquemines, a party who is domiciled within the jurisdiction of such  
24 courts, or whose cause of action arose within or an attorney who is domiciled in or  
25 has a law office within the jurisdiction of any such courts, shall have the right to seek  
26 a limited suspension and/or extension of prescription or peremption periods by  
27 contradictory motion or declaratory judgment. The party seeking the suspension  
28 and/or extension shall bear the burden of proving by clear and convincing evidence  
29 that, the motion was filed at the earliest time practicable and but for the catastrophic

1 effects of Hurricane Katrina or Rita, the action would have been timely filed. If the  
2 court grants the motion, the prescription or peremptive period shall be suspended or  
3 extended for a period not to exceed thirty days from the date of the granting of the  
4 motion. However, in no case shall the court suspend and/or extend the prescription  
5 or peremption period beyond June 1, 2006.

6 B. The provisions of Subsection A shall not apply to any matter concerning  
7 the prescription of nonuse applicable to mineral servitudes, mineral royalty interests,  
8 and executive rights and shall be governed by the Louisiana Mineral Code and are  
9 not subject to the suspension provisions in this Section.

10 §2553. Suspension of legal deadlines; extension of legal deadlines; contradictory  
11 hearing

12 A. All deadlines in legal proceedings, which were suspended by Executive  
13 Orders KBB 2005-32, 48, and 67, shall be subject to a limited suspension and/or  
14 extension during the time period of November 25, 2005, through January 3, 2006;  
15 however, the suspension and/or extension of these deadlines shall be limited and  
16 shall only apply if these deadlines would have otherwise accrued or lapsed during  
17 the time period of November 25, 2005, through January 3, 2006. This limited  
18 suspension and/or extension shall terminate on January 3, 2006, and any deadline in  
19 legal proceedings which would have expired during the time period of November 25,  
20 2005, through January 3, 2006, shall accrue or lapse on January 4, 2006.

21 B. Notwithstanding the provisions of Subsection A and to the extent that  
22 deadlines in legal proceedings were not suspended by Executive Orders KBB 2005-  
23 48 and 67, if a deadline in a legal proceeding accrued or lapsed during the time  
24 period of October 25, 2005, through November 25, 2005, a party shall have the right  
25 to seek an extension or suspension of that deadline by contradictory motion or  
26 declaratory judgment. The party seeking the extension shall bear the burden of  
27 proving that either the party or his attorney was adversely affected by Hurricane  
28 Katrina or Rita and but for the catastrophic effects of Hurricane Katrina or Rita, the  
29 legal deadline would have been timely met. For good cause shown, the court shall

1        extend the deadline in the legal proceeding, but in no instance shall the extension be  
2        later than January 3, 2006.

3        §2554. Applicability

4                Notwithstanding any other provision of law, R.S. 9:2552 and 2553, shall not  
5        apply to landlord-tenant disputes, evictions proceedings, and lease disputes regarding  
6        immovable property, provided the proceedings are carried out in accordance with  
7        Executive Order KBB 2005-67.

8         §§2555-2565 (Reserved).

9        Section 2. (A) The provisions of this Act shall preempt and supersede but not repeal  
10       any conflicting provision of the Civil Code or any other provision of law to the extent that  
11       such provision conflicts with the provisions of this Act.

12               (B) However, notwithstanding the provisions of Paragraph A of this Section, nothing  
13       contained in this Act shall be construed as to invalidate, supersede, or modify the provisions  
14       of House Bill No. 92 of this 2005 First Extraordinary Session if it is subsequently enacted  
15       into law.

16        Section 3. The Louisiana State Law Institute is hereby directed to redesignate and  
17       renumber the provisions of this Act as follows:

18               A. The provisions of this Act shall be redesignated as Part IV of Code Title XXIV  
19       of Title 9 of the Louisiana Revised Statutes of 1950, and shall be renumbered sequentially,  
20       beginning with R.S. 9:5821.

21               B. Part IV of Code Title XXIV of Title 9 of the Louisiana Revised Statutes of 1950,  
22       as created by the provisions of this Act, shall be entitled "Suspension or Extension of  
23       Prescription, Peremption, and other legal deadlines during Hurricanes Katrina and Rita."

24        Section 4. This Act is declared to be remedial, curative, and procedural and therefore  
25       is to be applied retroactively as well as prospectively.

26        Section 5. The Louisiana State Law Institute shall include as notes to this Act  
27       Executive Orders KBB 2005-32, 48, and 67.

28        Section 6. This Act shall become effective upon signature by the governor or, if not  
29       signed by the governor, upon expiration of the time for bills to become law without signature

1 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
2 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
3 effective on the day following such approval.

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## DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument.

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Ansardi

HB No. 90

**Abstract:** Provides for the suspension of prescriptive and peremptive periods and other legal deadlines and ratifies certain executive orders.

Proposed law ratifies Executive Orders KBB 2005-32, 48, and 67.

Proposed law creates a limited suspension of all prescription and peremptive periods from Aug. 26, 2005, until Jan. 3, 2006, with certain exceptions.

Proposed law provides that this limited suspension of prescription shall apply only to a prescriptive or peremptive period which would have otherwise expired during the period from Aug. 26, 2005, through Jan. 3, 2006.

Proposed law provides that this limited suspension shall terminate on Jan. 3, 2006, and any right, claim, or action which was suspended shall accrue or lapse on Jan. 4, 2006.

Proposed law provides that if an attorney is domiciled or has his principal place of business within or if a party is domiciled or his cause of action arose within the jurisdiction of the courts in Cameron, St. Bernard, or Plaquemines, he may seek a limited extension or suspension of prescription or preemption by contradictory motion or declaratory judgment, but in no case shall the period extend beyond June 1, 2006.

Proposed law provides that the mineral code shall govern all matters concerning the prescription of nonuse applicable to mineral servitudes, mineral royalty interests, and executive rights.

Proposed law creates a limited suspension and/or extension of all legal deadlines from Nov. 25, 2005, through Jan. 3, 2006, if the deadline would have accrued during this time period.

Proposed law provides that if a legal deadline accrued or lapsed during the time period from Oct. 25, 2005, through Nov. 25, 2005, the party may seek an extension by contradictory motion or declaratory judgment, but in no case shall the deadline be extended beyond Jan. 3, 2006.

Proposed law provides that these provisions of this Act shall not apply to landlord-tenant disputes, eviction proceedings, or lease disputes in the proceeding and was done in accordance with Executive Order KBB 2005-67.

Proposed law provides that this Act shall preempt and supersede but not repeal any conflicting provisions of law, but it shall not be construed to supersede HB No. 92 of the 2005 1st E.S.

Proposed law provides that this Act is remedial, curative, and procedural and shall be applied retroactively as well as prospectively.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Adds R.S. 9:2551-2565)

Summary of Amendments Adopted by House

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

1. Clarifies that Executive Orders KBB 2005-32, 48, and 67 are approved, ratified, and confirmed in their entirety.
2. Changes the time period of the limited suspension from Jan. 1, 2006, to Jan. 3, 2006.
3. Changes the accrual or lapse date for any rights, claims, or actions from Jan. 2, 2006, to Jan. 4, 2006.

House Floor Amendments to the engrossed bill.

1. Provides that this Chapter shall be liberally construed to effects its purposes.
2. Clarifies that Executive Orders KBB 2005-32, 48, and 67 are ratified subject to the provisions of this Chapter.
3. Provides a procedure for attorneys or parties within Cameron, St. Bernard, or Plaquemines parishes to seek a suspension or extension or prescription or peremption periods by contradictory motion or declaratory judgment through June 1, 2006.
4. Provides for the limited suspension or extension of all deadlines in legal proceedings from Nov. 25, 2005, through Jan. 3, 2006, if the deadline would have lapsed during the time period.
5. Provides a procedure for the extension or suspension of a legal deadline which was not suspended by Executive Orders KBB 2005-48 and 67 and which lapsed during the time period of Oct. 25, 2005, through Nov. 25, 2005.
6. Provides that this Chapter shall not apply to landlord-tenant disputes, evictions, or lease disputes regarding immovable property if the proceeding was in accordance with Executive Order KBB 2005-67.
7. Clarifies that this Act shall not supersede HB No. 92 of the 2005 1st E.S.
8. Directes the Louisiana State Law Institute to redesignate the provisions of this Act as Part IV of Code Title XXIV of Title 9 of the Louisiana Revised Statutes of 1950 and to publish Executive Orders KBB 2005-32, 48, and 67 in the notes.