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DIGEST

Peacock (SB 89)

Present law Title XX provides for "Of Pledge."

Proposed law provides for "Security" and provides for "Pledge" in new Title XX-A.

Present law (C.C. Art. 3133) provides the definition of pledge.

Proposed law provides that an obligor is obligated to fulfill his obligation out of all of his property, present and future.

Present law (C.C. Art. 3133.1) provides how pledges relate to Chapter 9 of the Louisiana Commercial Laws.

Proposed law suppresses this provision.

Present law (C.C. Art. 3134) provides that there are the two kinds of pledge; pawn and antichresis.

Proposed law provides that in the absence of a preference an obligor's property is available to all of his creditors and the proceeds of its sale are distributed ratably.

Present law (C.C. Art. 3135) provides the distinction between pawn and antichresis.

Proposed law provides that a written contract can restrict the obligee's recourse against the obligor to a particular property or a specified class or kind of property.

Present law (C.C. Art. 3136) provides that every lawful obligation can be enforceable by pledge.

Proposed law provides a definition of "security" but it does not change the law.

Present law (C.C. Art. 3137) provides that if the principal obligation is conditional then the pledge is confirmed or extinguished with it.

Proposed law clarifies the law by providing that security can be either personal or real and provides definitions of "personal" and "real" property.

Present law (C.C. Art. 3138) provides that if the obligation is null then so too is the pledge.

Proposed law provides that suretyship, privilege, mortgage, pledge, and a security interest established to secure a performance of an obligation are kinds of security.

Present law (C.C. Art. 3139) provides that a natural obligation can be the basis of a pledge.

Proposed law does not change the law. It provides that the laws of security interest are defined by the Uniform Commercial Code.

Present law (C.C. Art. 3140) provides that pledge can be given in money and for any other object.

Proposed law provides that unless expressly permitted by law, a clause in a contract that provides in advance that the ownership of a thing given as security will transfer upon default in performance of the obligation is absolutely null.

Proposed law provides for a new Title XX-A, "Pledge".

Present law (C.C. Art. 3141) provides that a pledge can be given for another's debt.

Proposed law provides a definition of "pledge".

Present law (C.C. Art. 3142) provides that a debtor can give in pledge whatever belongs to him, but cannot confer to a creditor any further right than what he himself has.

Proposed law clarifies the law by providing an exhaustive list of things susceptible of pledge.

Present law (C.C. Art. 3143) provides that to determine whether a thing given in pledge belonged to the debtor, reference must be made to the time when the pawn was made.

Proposed law clarifies that a contract by which a person purports to pledge a thing that is susceptible of encumbrance by security interest does not create a pledge under this Title, but may create a security interest in the thing.

Present law (C.C. Art. 3144) provides that when the debtor pledges a thing not owned and then subsequently acquires ownership of thing pledged, his ownership relates back to the time of the contract and the pledge is good.

Proposed law provides that a pledge is an accessory to the obligation that it secures.

Present law (C.C. Art. 3145) provides that one may pledge another's property so long as it is with the express or tacit consent of the owner.

Proposed law provides that a pledge gives the pledgee the right to be satisfied from the thing pledged and its fruits in preference to unsecured creditors of the pledgor.

Present law (C.C. Art. 3146) provides that the tacit consent of the owner must be inferred from circumstances so strong as to leave no doubt of the owner's intention.

Proposed law provides that a pledge may be given to secure the performance of any lawful obligation.

Present law (C.C. Art. 3147) provides that as long as the owner of the thing pledged refrains from claiming it, the debtor cannot seek to have it restored until his debt has been discharged.

Proposed law provides a new rule that is similar to the rule for contracts of mortgage wherein a pledge that secures an obligation other than the payment of money secures the claim of the pledgee for the damages he may suffer from the breach of the obligation.

Present law (C.C. Art. 3148) provides that the pledge of a thing by fiduciaries requires authorization in the manner prescribed by law.

Proposed law provides that a person may pledge his property to secure an obligation of another person.

Present law (C.C. Art. 3149) provides that a mandatary cannot give a thing in pledge unless he has express power to do so or the principal gives his consent.

Proposed law provides the formal requirements of a contract of pledge.

Present law (C.C. Art. 3150) provides that pledges by cities or other corporations can only be given in pledge according to their acts of incorporation.

Proposed law provides a new rule, which is similar to a similar rule for contracts of mortgage, that a written contract of pledge need not be signed by the pledgee because his acceptance is presumed.

Present law (C.C. Art. 3151) was repealed by Acts 1980, No. 150.

Proposed law provides that a contract of pledge may be established only by a person having the power to alienate the thing pledged.

Present law (C.C. Art. 3152) provides that it is essential that the creditor be put in possession of the thing pledged and that he receive actual delivery.

Proposed law provides that a pledge given over a thing that the pledgor does not own is established when the thing is acquired by the pledgor and the other requirements for the establishment of the pledge have been satisfied.

Present law (C.C. Art. 3153) provides that delivery is only necessary for corporeal things pledged.

Proposed law provides that a pledge is without effect as to third persons unless it has become effective between the parties and is established by written contract.

Present law (C.C. Art. 3154) provides that every corporeal thing susceptible of alienation can be pawned, even money.

Proposed law provides for the requirements that must be satisfied for a pledge of the lessor's rights in the lease of an immovable and its rents to have effect against third persons.

Present law (C.C. Art. 3155) provides that incorporeal movables, such as credits, can be pawned.

Proposed law provides that if the thing pledged is another person's obligation not arising under the lease of an immovable, the pledge is effective against third persons only from the time that the obligor has actual knowledge of the pledge or has been given notice of it.

Present law (C.C. Art. 3156) provides that when a debtor wishes to pawn a claim on another person, he must make a transfer of it in the act of pledge and deliver to the creditor to whom it is transferred the note or instrument that provides its existence.

Proposed law provides that the pledgee is not obligated to return the pledged thing until all secured obligations have been extinguished.

Present law (C.C. Art. 3157) provides that pawn invests the creditor with the right of having his debt satisfied by privilege in preference to other creditors out of the thing pledged.

Proposed law provides that the contract of pledge is indivisible.

Present law (C.C. Art. 3158) provides for the formalities and contents of a pledge and the requirements for pledge of promissory notes and other written obligation to be effective against third persons.

Proposed law provides a new rule wherein if agreed in a written contract of pledge of a movable upon failure of performance of the secured obligation, the pledgee may dispose of the thing pledged.

Present law (C.C. Art. 3159) provides for the necessary formalities for an act of pledge in favor of banks to be effective.

Proposed law provides that the pledgee is entitled to receive the fruits of the thing pledged, to retain it as security, and to apply it to the secured obligation.

Present law (C.C. Art. 3160) was repealed by Acts 1988, No. 243.

Proposed law provides that the pledgee may apply collections from the third person's obligation to the secured obligation even if the secured obligation has not yet matured.

Present law (C.C. Art. 3161) was repealed by Acts 1900, No. 157.

Proposed law provides the notice that is required when performance is to be made by an obligor of a pledged obligation and what performance of that obligation accomplishes.

Present law (C.C. Art. 3162) provides that if thing pledged was a corporeal movable or evidence of a credit or other instrument under private signature the privilege does not subsist on the pledge unless the thing is actually put and remains in the possession of the creditor or agree-upon third person.

Proposed law provides a new rule wherein the obligor may assert against the pledgee any defense arising out of the transaction that gave rise to the pledged obligation, or assert any other defense that arises against the pledgor before the obligor has been given written notice of the pledge.

Present law (C.C. Art. 3163) provides that when several things have been pawned, the owner cannot retake one of the things unless the whole debt is satisfied.

Proposed law provides a new rule wherein a clause prohibiting pledge is without effect.

Present law (C.C. Art. 3164) provides that creditors in possession of the pledge enjoy a right of retention until the whole debt is paid.

Proposed law provides that parties to a contract from which a pledged obligation arises can agree to modify or terminate the contract or substitute a new contract, and if made in good faith is effective against the pledgee without his consent.

Present law (C.C. Art. 3165) provides the rights of a pledgee upon debtor's default and the procedure to enforce those rights.

Proposed law provides that upon the modification of a contract from which a pledged obligation arises, the substitution of a new contract encumbers the corresponding rights of the pledgor.

Present law (C.C. Art. 3166) provides that until the debtor is divested of his property, he remains the proprietor of the pledge.

Proposed law provides that the pledgor and pledgee may agree that a modification or termination of the contract from which the pledged obligation of a third person arises or a new contract is substituted is a default by the pledgor.

Present law (C.C. Art. 3167) provides that the creditor is responsible for loss or decay of the pledge that is the result of his fault; the debtor is responsible to the creditor for necessary expenses incurred for the preservation of the thing pledged.

Proposed law provides that the pledgee is not bound for the pledgor's obligations.

Present law (C.C. Art. 3168) provides that the fruits of the thing pledged are part of it so they remain in the hands of the creditor; but the creditor must give an account of them to the debtor or deduct them from the amount due him.

Proposed law provides the requirements for a contract establishing a pledge of the lessor's rights in the lease of an immovable and its rents.

Present law (C.C. Art. 3169) provides for the imputation of interest earned by credit that is pledged.

Proposed law provides that the pledge of the lessor's rights in the lease of an immovable and its rents is without effect as to third persons unless the contract establishing the pledge is recorded in the manner prescribed by law, nevertheless, the pledge is effective against the lessee from the time that he is given written notice of the pledge.

Present law (C.C. Art. 3170) provides that the creditor can enforce the pledgee's right to enforce payment of credit pledged but when received, he must apply it to the payment of the debt due and any excess given to the pledgor.

Proposed law provides that a pledge of the lessor's rights in the lease of an immovable and its rents may be established in an act of mortgage of the immovable.

Present law (C.C. Art. 3171) provides that the pawn cannot be divided between the heirs of the debtor or creditor.

Proposed law provides that a pledge can be established over all or part of the leases of an immovable, even those not yet in existence, and that it can be made effective against third persons.

Present law (C.C. Art. 3172) provides that if the proceeds of the sale exceed the debt, the surplus shall be given to the owner; if there is a deficit, the creditor can claim the balance from the debtor's other property.

Proposed law provides that the owner of land or holder of a mineral servitude can pledge bonuses, delay rentals, royalties, and shut-in payments by express provision in a contract establishing a pledge.

Present law (C.C. Art. 3173) provides that debtor taking pledge without the creditor's consent commits a sort of theft.

Proposed law provides under what circumstances a pledgee shall account to other pledgees for rent collected.

Present law (C.C. Art. 3174) provides that a creditor who has been deceived on the substance or quality of the thing pledged can demand another thing or immediate payment.

Proposed law provides that a pledge of the lessor's rights in the lease of an immovable and its rents does not entitle the pledgee to cause the rights of the lessor to be sold by judicial process, any clause to the contrary is absolutely null.

Present law (C.C. Art. 3175) provides that the creditor cannot acquire the thing through acquisitive prescription.

Proposed law provides that in all matters not provided for in Chapter 2 of this Title, the pledge of the lessor's rights in the lease of an immovable and its rents is governed by the provisions of the first Chapter of this Title.

Present law (C.C. Art. 3176) provides that the antichresis shall be written; the creditor acquires the right of reaping the fruits the immovable produces so long as he annually deducts their proceeds from the interest and then from the principal of the debt.

Proposed law repeals this provision.

Present law (C.C. Art. 3177) provides that the creditor must pay the taxes, annual charges, and repairs for the property, unless agreed otherwise.

Proposed law repeals this provision.

Present law (C.C. Art. 3178) provides that before full payment the debtor cannot claim the enjoyment of the immovable given in pledge; however, the creditor can compel the debtor to retake the enjoyment of the immovable.

Proposed law repeals this provision.

Present law (C.C. Art. 3179) provides that the creditor does not become owner of the pledged immovable upon failure of payment at a stated time; any clause to the contrary is null.

Proposed law repeals this provision.

Present law (C.C. Art. 3180) provides that an agreement that fruits or revenues be compensated with interest can be performed in any way not prohibited by law.

Proposed law repeals this provision.

Present law (C.C. Art. 3181) provides that every provision on antichresis cannot prejudice the rights that a third person may have on the immovable; the creditor in possession of the immovable cannot have any right of preference to other creditors.

Proposed law repeals this provision.

Present law (C.C. Art. 3182) relative to privileges, provides that the debtor has general liability.

Proposed law repeals this provision.

Present law (C.C. Art. 3183) relative to privileges, provides that the property of the debtor is the common pledge of his creditors and the proceeds of its sale must be distributed among them ratable unless otherwise there exist some lawful causes of preference.

Proposed law repeals this provision.

Present law (C.C. Art. 3184) relative to privilege, provides that privilege and mortgages are lawful causes of preference.

Proposed law repeals this provision.

Present law (C.C. Art. 3346) relative to recordation, provides for the place of recordation and the duty of the recorder relative to an instrument creating, establishing, or relating to a mortgage or privilege over an immovable.

Proposed law provides the place where the instrument creating, establishing, or relating to a mortgage or privilege over an immovable, or the pledge of the lessor's rights in the lease of an immovable and its rents must be recorded and the duty of the recorder.

Present law (C.C. Art. 3354) relative to recordation, provides the applicability of Chapter 2 of Title XXII-A of Book III of the Civil Code.

Proposed law provides that the provisions of Chapter 2 of Title XXII-A of Book III of the Civil Code apply to mortgages and privileges encumbering immovables and to pledges of the lessor's rights in the lease of an immovable and its rents.

Present law (C.C. Art. 3355) provides that mortgages or privileges affecting property in several parishes may be executed in multiple originals for recordation in each of the several parishes; a certified copy of an instrument that recorded in the records of a parish need only describe property that is within the parish where it is filed.

Proposed law retains present law but adds pledges to this provision.

Present law (C.C. Art. 3356) provides for the transfers, amendments, and releases of an obligation secured by a mortgage.

Proposed law retains present law but adds pledges to this provision.

Present law (C.C. Art. 3357) provides that the effect of recordation of an instrument creating a mortgage or evidencing a privilege ceases ten years after the date of the instrument.

Proposed law retains present law but adds pledges to this provision.

Present law (C.C. Art. 3358) provides that the duration of recordation of an instrument creating a mortgage or evidencing a vendor's privilege matures nine years or more after the date of the instrument, the effect of recordation ceases six years after the latest maturity date described in the instrument.

Proposed law retains present law but adds pledges to this provision.

Present law (C.C. Art. 3359) provides that the effect of recordation of a judgment creating a judicial mortgage ceases ten years after the date of the judgment.

Proposed law retains present law but clarifies it with new Comments.

Present law (C.C. Art. 3360) provides for the duration of recordation of a mortgage given by a tutor, curator, or succession representative.

Proposed law retains present law.

Present law (C.C. Art. 3361) provides that if prior to the cessation of the effect of recordation, an instrument is recorded that amends a recorded mortgage or privilege then the effect of recordation is determined by reference to the maturity of the obligation last becoming due as amended.

Proposed law retains present law but adds pledges to this provision.

Present law (C.C. Art. 3362) provides for the method of reinscribing a recorded instrument that has created a mortgage or evidenced a vendor's privilege by recording a signed written notice of reinscription.

Proposed law retains present law but adds pledges to this provision.

Present law (C.C. Art. 3363) provides that the method of reinscribing provided in the Chapter is exclusive.

Proposed law retains present law but adds pledges to this provision.

Present law (C.C. Art. 3364) provides that the effect of a timely recorded notice of reinscription continues for ten years from the date the notice is recorded.

Proposed law retains present law but clarifies it with a Comment.

Present law (C.C. Art. 3365) provides that if the notice of reinscription was recorded after the effect of recordation has ceased, the effects of recordation continue but only for ten years from the time the notice of reinscription was recorded.

Proposed law retains present law with some technical clarification to the text, adds pledges to

this provision, and removes some of the text of the accompanying Comments.

Present law (C.C. Art. 3366) provides for the form and consent for the cancellation upon request of a mortgage or privilege by the recorder of mortgages.

Proposed law retains present law but adds pledges to this provision.

Present law (C.C. Art. 3367) provides that if the effect of recordation ceases for lack of reinscription, the recorder upon receipt of a written signed application shall cancel the recordation of the mortgage or privilege.

Proposed law retains present law but adds pledges to this provision.

Present law (C.C. Art. 3368) provides for the cancellation of a prescribed judicial mortgage.

Proposed law clarifies the law by providing that both a timely reinscription and a timely suit for revival are necessary for a judicial mortgage to continue to have effect.

Present law (R.S. 9:4401) provides for conditional or collateral assignment of leases or rents.

Proposed law provides that any obligation may be secured by a pledge of the rights of a lessor or sublessor in the lease or sublease of an immovable and its rents.

Present law (R.S. 9:4402) there is no present law.

Proposed law provides the right of the pledgee to cash proceeds of rent.

Present law (R.S. 9:4403) there is no present law.

Proposed law provides the transitional filing rules for assignments of leases and rents recorded prior to January 1, 2015.

Present law (R.S. 9:5386) provides for mortgages including collateral assignments and the pledge of certain incorporeal rights.

Proposed law clarifies the law by providing that a mortgage of an immovable may contain a pledge of the mortgagor's rights under policies of insurance covering the immovable and the procedure detailing how to pledge a mortgagor's right to insurance.

Present law (R.S. 10:9-102) provides for the definition of "Account" for Chapter 9 of Title 10 of the Louisiana Revised Statutes of 1950.

Proposed law provides a new definition of "Account" for Chapter 9 of Title 10 of the Louisiana Revised Statutes of 1950.

Proposed law repeals Civil Code Articles 3176, 3177, 3178, 3179, 3180, 3181, 3182, 3183, and 3184.

Proposed law authorizes the Louisiana State Law Institute to add Comments for Civil Code Articles 3359 and 3364.

Proposed law authorizes the Louisiana State Law Institute to amend or to provide headings in the Civil Code and the Louisiana Revised Statutes of 1950.

Effective January 1, 2015.

(Amends Title XX of Book III of the Civil Code, consisting of C.C. Arts. 3133 through 3140, C.C. Arts. 3346, 3354, 3355, 3356, 3357, 3358, 3361, 3362, 3363, 3365, 3366, 3367, and 3368, the heading of Part IV of Chapter 1 of Code Title XX-A of Code Book III of Title 9 of the Louisiana Revised Statutes of 1950, R.S. 9:4401 and 5386, and R.S. 10:9-102(a)(2); adds Title XX-A of Book III of the Civil Code to consist of C.C. Arts. 3141 through 3175, R.S. 9:4402 and 4403; repeals C.C. Arts. 3176, 3177, 3178, 3179, 3180, 3181, 3182, 3183, and 3184).

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary A to the original bill

1. Amends proposed law CC 3140 relative to nullity of agreement of forfeiture to provide exception for a clause expressly permitted by law.