

2018 Regular Session

HOUSE CONCURRENT RESOLUTION NO. 88

BY REPRESENTATIVE JAMES

PREScription: Requests the Louisiana State Law Institute to study liberative prescription applicable to suits on open accounts

1 A CONCURRENT RESOLUTION

2 To urge and request the Louisiana State Law Institute to study the effects of enacting a law
3 that would amend Code of Civil Procedure Article 927 and Civil Code Article 3452
4 to allow courts to raise prescription *sua sponte* in suits on open accounts filed by
5 entities buying consumer debt for collection purposes and to report its findings of the
6 study to the legislature no later than February 1, 2019.

7 WHEREAS, Louisiana Civil Code Article 3494 states that the prescriptive period for
8 an action on an open account is subject to a liberative prescription period of three years; and

9 WHEREAS, Louisiana Appleseed published a report in 2015 on debt buyer lawsuits
10 in Louisiana finding that ninety-one percent of defendants were not represented and half of
11 the cases result in default judgments in the sample studied; and

12 WHEREAS, Civil Code Article 3452 and Code of Civil Procedure Article 927(B)
13 state that prescription must be pleaded and the court is not permitted to supply a plea of
14 prescription; and

15 WHEREAS, prescription is the only peremptory exception that may not be raised by
16 the court; and

17 WHEREAS, a default judgment can be rendered on a prescribed debt and result in
18 wage garnishments for unrepresented defendants; and

19 WHEREAS, the practice of filing suit on prescribed debts results in legally
20 unenforceable obligations becoming enforceable against unrepresented consumers, creating
21 an access to justice issue that clashes with legislative intent and public policy; and

1 WHEREAS, filing suit after the prescriptive period is a violation of the Fair Debt
2 Collection Practices Act.

3 THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby
4 urge and request the Louisiana State Law Institute to commission a study regarding a law
5 that would allow the courts to raise prescription *sua sponte* in suits on open accounts filed
6 by entities buying consumer debt for collection purposes and to report the findings to the
7 Louisiana Legislature no later than February 1, 2019.

8 BE IT FURTHER RESOLVED that a suitable copy of this Resolution be transmitted
9 to the director of the Louisiana State Law Institute.

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)]

HCR 88 Engrossed

2018 Regular Session

James

Requests the Louisiana State Law Institute to commission a study regarding a law that would allow the courts to raise prescription *sua sponte* in suits on open accounts filed by entities buying consumer debt for collection purposes and to report the findings to the Louisiana Legislature no later than February 1, 2019.