

2018 Regular Session

HOUSE CONCURRENT RESOLUTION NO. 88

BY REPRESENTATIVE JAMES

A CONCURRENT RESOLUTION

To urge and request the Louisiana State Law Institute to study the effects of enacting a law that would amend Code of Civil Procedure Article 927 and Civil Code Article 3452 to allow courts to raise prescription *sua sponte* in lawsuits and to report its findings of the study to the legislature no later than February 1, 2019.

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

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

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

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

WHEREAS, filing suit on a prescribed debt can result in legally unenforceable obligations becoming enforceable against unrepresented consumers; and

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

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby urge and request the Louisiana State Law Institute to commission a study regarding a law that would allow the courts to raise prescription *sua sponte* in lawsuits and to report its findings of the study to the Louisiana Legislature no later than February 1, 2019.

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

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE