2020 Regular Session

HOUSE BILL NO. 593

BY REPRESENTATIVE SEABAUGH

CHILDREN/SUPPORT: Provides relative to the prescriptive period for child support judgments

1	AN ACT
2	To amend and reenact R.S. 13:4291(A) and (B), relative to judicial and legal mortgages
3	securing child support payments; to provide for a prescriptive period; to provide for
4	the effect of recordation; to provide for retroactivity; to provide an effective date;
5	and to provide for related matters.
6	Be it enacted by the Legislature of Louisiana:
7	Section 1. R.S. 13:4291(A) and (B) are hereby amended and reenacted to read as
8	follows:
9	§4291. Effect of child support payments; legal judicial mortgage and privilege;
10	affidavit of support owed; prescription
11	A. (1) Each payment of child support that is past due under the provisions of
12	an award for child support rendered in a court of this state, or under a foreign child
13	support order registered under the provisions of the Uniform Interstate Family
14	Support Act shall on and after such payment is due be deemed a judgment by
15	operation of law and shall be executory in all respects except that the court shall, in
16	a summary proceeding, determine the amount actually owed. A judgment rendered
17	in such summary proceeding shall not have the effect of a judicial mortgage until it
18	is final and has been recorded in the manner provided by law. Each payment of child
19	support made pursuant to the judgment ordering support, including those payments
20	made through income assignment orders, seizures, or tax intercepts, shall interrupt

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prescription. Notwithstanding any other law to the contrary, prescription shall not
begin to run against any such judgment until the child reaches the age of majority or
the obligation to provide child support ceases.

4 (2) A judgment rendered in a summary proceeding determining the amount
5 of delinquent child support owed shall become a judicial mortgage when it is final
6 and has been recorded in the manner provided by law. The effect of recordation of
7 the judgment provided in this Subsection shall prescribe ten years from the date of
8 the judgment, unless revived and reinscribed in accordance with law.

9 B.(1) In all cases where the Department of Children and Family Services is 10 enforcing child support services, a judgment created by operation of law pursuant to 11 Subsection A of this Section shall be executory in all respects, without the necessity 12 of a judicial proceeding to determine the amount actually owed. The director of the 13 child support enforcement section, office of children and family services, 14 Department of Children and Family Services, or his designee shall certify the actual 15 amount in an affidavit entitled "Child Support Mortgage and Privilege by Affidavit 16 of DCFS". Such affidavit shall have the effect of a judgment and when filed and 17 recorded in the manner provided by law shall create a legal mortgage and privilege as provided in R.S. 46:236.16. Notwithstanding any other law to the contrary, 18 19 prescription shall not begin to run against any such judgment until the child reaches 20 the age of majority or the obligation to provide child support ceases.

(2) When filed and recorded in the manner provided by law, the affidavit
showing delinquent child support shall create a lien, privilege, and legal mortgage
as provided in R.S. 46:236.16. The effect of recordation of the affidavit provided in
this Subsection shall prescribe ten years from the date of the affidavit, provided that
the filing of a subsequent affidavit pertaining to the same matter shall interrupt
prescription and shall maintain the ranking secured by the original filing.

27 (3) Notwithstanding Paragraph (2) of this Subsection, the effect of 28 recordation of any such affidavit that was of record on or before the effective date 29 of this Act shall not cease until August 31, 2022.

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1	(2)(4) The intentional making of a false statement in an affidavit provided for		
2	in this Subsection shall constitute a false statement as provided for in R.S. 14:125.		
3	* * *		
4	Section 2. This Act is declared to be interpretative, curative, and procedural and		
5	therefore is to be applied retroactively as well as prospectively to judgments or affidavite		
6	recorded in the manner provided by law.		
7	Section 3. This Act shall become effective upon signature by the governor or, if not		
8	signed by the governor, upon expiration of the time for bills to become law without signature		
9	by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If		
10	vetoed by the governor and subsequently approved by the legislature, this Act shall becom		
11	effective on the day following such approval.		
	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)]

HB 593 Engrossed	2020 Regular Session	Seabaugh
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Abstract: Provides a prescriptive period on judicial mortgages securing past-due child support payments.

<u>Present law</u> provides that each payment of child support that is past due shall be deemed a judgment by operation of law and shall be executory in all respects. For cases where the Department of Children and Family Services (DCFS) is enforcing child support services, DCFS shall certify the actual amount past due in an affidavit. For cases where DCFS is not enforcing child support services, the court shall by summary proceeding determine the amount actually owed. <u>Proposed law</u> retains <u>present law</u>.

<u>Present law</u> provides that the resulting judgment or affidavit shall have the effect of a legal mortgage once recorded as provided by law.

<u>Proposed law</u> retains <u>present law</u> but provides that the effect of recordation shall prescribe 10 years from the date of the judgment or affidavit unless appropriately reinscribed or filed. <u>Proposed law</u> further provides that the effect of recordation of an affidavit that was of record on or before the effective date of this Act shall not cease until August 31, 2022.

Proposed law provides for retroactive application of proposed law.

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

(Amends R.S. 13:4291(A) and (B))

Summary of Amendments Adopted by House

- The Committee Amendments Proposed by <u>House Committee on Civil Law and</u> <u>Procedure to the original bill:</u>
- 1. Remove <u>proposed law</u> provisions related to the contents of the judgment or affidavit.
- 2. Restore <u>present law</u> relative to the running of prescription.
- 3. Provide for prescription of the effect of recordation of the judgment or affidavit.
- 4. Provide for the effect of recordation of affidavits filed on or before the effective date of the Act.
- 5. Provide for retroactivity.
- 6. Change the effective date <u>from</u> Jan. 1, 2021, <u>to</u> upon the governor's signature.