

2021 Regular Session

HOUSE BILL NO. 81

BY REPRESENTATIVE PRESSLY

(On Recommendation of the Louisiana State Law Institute)

1 AN ACT

2 To amend and reenact Civil Code Articles 2041, 2534, and 3463, relative to prescription; to  
3 provide for prescription of the revocatory action; to provide for prescription of  
4 actions for redhibition and breach of the warranty of fitness for use; to provide for  
5 the interruption of prescription; to provide with respect to prescription of actions for  
6 recognition of inheritance rights; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. Civil Code Articles 2041, 2534, and 3463 are hereby amended and  
9 reenacted to read as follows:

10 Art. 2041. Action must be brought within one year

11 The action of the obligee must be brought within one year from the time he  
12 learned or should have learned of the act, or the result of the failure to act, of the  
13 obligor that the obligee seeks to annul, but never after three years from the date of  
14 that act or result.

15 ~~The three year period provided in this Article shall not apply in cases of~~  
16 ~~fraud.~~

17 Revision Comments - 2021

18 This revision changes the law by deleting the second paragraph of prior  
19 Article 2041, which was added in 2013 and which created an exception to the  
20 three-year period in the first paragraph in cases of fraud. The 2013 amendment had  
21 the potential to create instability in title to immovables, as any instance in which a  
22 transfer of property occurred "fraudulently" and in violation of the law on revocatory  
23 actions potentially allowed the original transferor to recover the property within "one  
24 year from the time he learned or should have learned of the act, or the result of the  
25 failure to act." The three-year period provided in this Article creates an important  
26 protection for third parties and an obvious effort "to protect the security of  
27 transactions." In addition, the 2013 amendment risked re-injecting the concept of  
28 fraud into the revocatory action - a concept that was eliminated in the general  
29 revision to the law of obligations in 1984 because of the confusion and uncertainty

1 that the concept of fraud caused. Accordingly, the 1984 revision eliminated the  
 2 concept of fraud from the revocatory action and in its place substituted the concept  
 3 of insolvency. This revision restores Article 2041 to its original text as revised in  
 4 1984.

5 \* \* \*

6 Art. 2534. Prescription

7 A.~~(1)~~ The action for redhibition against a seller who did not know of the  
 8 existence of a defect in the thing sold ~~prescribes~~ and the action asserting that a thing  
 9 is not fit for its ordinary or intended use prescribe in ~~four~~ two years from the day of  
 10 delivery of ~~such the~~ thing ~~was made~~ to the buyer or one year from the day the defect  
 11 or unfitness was discovered by the buyer, whichever occurs first.

12 ~~(2) However, when the defect is of residential or commercial immovable~~  
 13 ~~property, an action for redhibition against a seller who did not know of the existence~~  
 14 ~~of the defect prescribes in one year from the day delivery of the property was made~~  
 15 ~~to the buyer.~~

16 B. The action for redhibition against a seller who knew, or is presumed to  
 17 have known, of the existence of a defect in the thing sold prescribes in one year from  
 18 the day the defect was discovered by the buyer or ten years from the perfection of the  
 19 contract of sale, whichever occurs first.

20 C. In any case prescription on an action for redhibition is interrupted when  
 21 the seller accepts the thing for repairs and commences anew from the day he tenders  
 22 it back to the buyer or notifies the buyer of his refusal or inability to make the  
 23 required repairs.

24 Revision Comments - 2021

25 (a) This revision changes the law to create uniform prescriptive periods for  
 26 movables and immovables. It maintains the distinction between sellers who knew  
 27 or should have known of the defect in the thing sold as opposed to those sellers who  
 28 did not. Prior law created separate prescriptive periods for the sale of movables and  
 29 for the sale of "residential or commercial immovable[s]," and in many instances it  
 30 provided a longer prescriptive period for the sale of movables than for immovables.  
 31 Moreover, the creation of a special prescriptive period for redhibitory defects in  
 32 "residential or commercial immovable property" created uncertainty as to the  
 33 prescriptive period for other immovable property. See, e.g., MGD Partners, LLC v.  
 34 5-Z Investments, Inc., 145 So. 3d 1053 (La. App. 1 Cir. 2014) (holding that a claim  
 35 for redhibitory defects in undeveloped immovable property is subject to "the  
 36 four-year prescriptive period and/or discovery rule of La. Civ. Code art. 2534(A)(1)  
 37 ... and not the one-year prescriptive period found in La. Civ. Code art. 2534(A)(2),  
 38 which, by its terms, pertains to residential or commercial immovable property.")

1 This revision makes all good faith sellers subject to a uniform prescriptive period of  
 2 two years from the day of delivery of the thing to the buyer or one year from the day  
 3 the defect was discovered by the buyer, whichever occurs first.

4 (b) This revision also unifies the relevant prescriptive periods for actions in  
 5 redhibition and those for breach of the warranty of fitness for use. Prior law  
 6 provided no specific prescriptive period for breach of the warranty of fitness for use.  
 7 Consequently, the ten-year prescription in Article 3499 prevailed. Because the law  
 8 on redhibition and fitness for use is largely overlapping, the dichotomy between the  
 9 prescriptive periods could create stark differences in outcome. See, e.g., *Cunard*  
 10 *Line Ltd. Co. v. Datrex, Inc.*, 926 So. 2d 109 (La. App. 3 Cir. 2006). This revision  
 11 unifies the law on prescription for purposes of redhibition and fitness for use.  
 12 Because the law of sales does not distinguish between good faith and bad faith sellers  
 13 for purposes of the warranty of fitness for use, this revision does not purport to create  
 14 different prescriptive periods on that basis.

15 (c) This revision also provides clarity regarding the prescriptive period for  
 16 bad faith sellers. Comment (b) to the 1993 revision suggested that in all cases, "an  
 17 action in redhibition prescribes ten years from the time of perfection of the contract  
 18 regardless of whether the seller was in good or bad faith. See C.C. Art. 3499."  
 19 Article 3499, by its terms, however, applies only to personal actions in which a  
 20 prescriptive period is not "otherwise provided by legislation," whereas this Article  
 21 comprehensively provides for different prescriptive periods depending both upon the  
 22 characterization of the property and the good faith or bad faith of the seller.  
 23 Moreover, courts' rulings were not consistent in holding whether Article 3499 was  
 24 applicable in the context of redhibition. See, e.g. *Tiger Bend, L.L.C. v.*  
 25 *Temple-Inland, Inc.*, 56 F. Supp. 2d 686 (M.D. La. 1999); *Mouton v. Generac Power*  
 26 *Systems, Inc.*, 152 So. 3d 985 (La. App. 3d Cir. 2014); *Grenier v. Medical*  
 27 *Engineering Corp.*, 243 F. 3d 200 (5th Cir. 2001). This revision adopts a legislative  
 28 solution to this issue and provides that liberative prescription for an action against  
 29 a bad faith seller accrues in one year from when the defect was discovered by the  
 30 buyer or ten years from the perfection of the contract of sale, whichever occurs first.  
 31 For the time of perfection for a contract of sale, see Article 2439.

32 \* \* \*

33 Art. 3463. Duration of interruption; abandonment or discontinuance of suit

34 A. An interruption of prescription resulting from the filing of a suit in a  
 35 competent court and in the proper venue or from service of process within the  
 36 prescriptive period continues as long as the suit is pending.

37 B. Interruption is considered never to have occurred if the plaintiff abandons  
 38 the suit, voluntarily dismisses the ~~action~~ suit at any time either before the defendant  
 39 has made any appearance of record or thereafter, or fails to prosecute the suit at the  
 40 trial. ~~A settlement and subsequent~~ The dismissal of a defendant suit pursuant to a  
 41 ~~transaction or compromise shall not qualify as~~ does not constitute a voluntary  
 42 dismissal ~~pursuant to this Article.~~

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Revision Comments - 2021

The 2021 revision makes semantic changes and is not intended to change the law.

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_