



LOUISIANA STATE LAW INSTITUTE

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January 30, 2019

Representative Taylor Barras
Speaker of the House of Representatives
P.O. Box 94062
Baton Rouge, Louisiana 70804

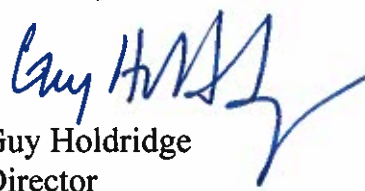
Senator John A. Alario, Jr.
President of the Senate
P.O. Box 94183
Baton Rouge, Louisiana 70804

**RE: HOUSE CONCURRENT RESOLUTION NO. 88 OF THE 2018
REGULAR SESSION**

Dear Mr. Speaker and Mr. President:

The Louisiana State Law Institute respectfully submits its interim report to the legislature relative to allowing courts to raise the exception of prescription sua sponte.

Sincerely,


Guy Holdridge
Director

cc: Representative Edward C. "Ted" James

email cc: David R. Poynter Legislative Research Library
drplibrary@legis.la.gov
Secretary of State, Mr. R. Kyle Ardoin
admin@sos.louisiana.gov

**LOUISIANA STATE LAW INSTITUTE
CODE OF CIVIL PROCEDURE COMMITTEE**

**INTERIM REPORT IN RESPONSE TO
HCR NO. 88 OF THE 2018 REGULAR SESSION**

Relative to allowing courts to raise the exception of prescription sua sponte

Prepared for the
Louisiana Legislature on

January 30, 2019

Baton Rouge, Louisiana

**LOUISIANA STATE LAW INSTITUTE
CODE OF CIVIL PROCEDURE COMMITTEE**

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William R. Forrester, Jr., Reporter
Mallory C. Waller, Staff Attorney

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.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

January 30, 2019

Representative Taylor F. Barras
Speaker of the House of Representatives
P.O. Box 94062
Baton Rouge, Louisiana 70804

Senator John A. Alario, Jr.
President of the Senate
P.O. Box 94183
Baton Rouge, Louisiana 70804

**INTERIM REPORT TO THE LEGISLATURE IN RESPONSE TO
HCR NO. 88 OF THE 2018 REGULAR SESSION**

House Concurrent Resolution No. 88 of the 2018 Regular Session urges and requests 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. In fulfillment of this request, the Law Institute assigned this project to its Code of Civil Procedure Committee.

After conducting research and compiling information with respect to this issue, the Committee met to discuss the resolution and formulate its proposed recommendations. The Committee drafted revisions to both Code of Civil Procedure Article 927 and Civil Code Article 3452 to address the issue but determined that these proposals should be reviewed by the Law Institute's Prescription Committee prior to being presented to the Council.

The Prescription Committee reviewed the Code of Civil Procedure Committee's recommendations and concluded that the proposed amendments should more specifically address the concerns expressed by the resolution – namely, the rendition of default judgments on prescribed debts against unrepresented consumers. As a result, the Prescription Committee proposed that as an alternative, perhaps Code of Civil Procedure Article 1702 should be amended. This proposal is scheduled to be presented at an upcoming meeting of the Law Institute's Council, and a final report will be submitted to the Legislature once the Council has approved the recommendations.

Respectfully submitted,

William R. Forrester, Jr., Reporter
Code of Civil Procedure Committee
Louisiana State Law Institute