

HOUSE COMMITTEE AMENDMENTS

2019 Regular Session

Amendments proposed by House Committee on Insurance to Engrossed Senate Bill No. 212
by Senator Appel

1 AMENDMENT NO. 1

2 On page 1, delete lines 2 through 7 in their entirety and insert in lieu thereof:

3 "To amend and reenact Civil Code Article 3493.10, Code of Civil Procedure
4 Article 1732(1), R.S. 22:1269, and R.S. 44:4.1(B)(11) and 4.1(B)(11)
5 as amended by Section 2 of Act 371 of the 2018 Regular Session, to
6 enact R.S. 9:2800.25 and R.S. 22:1290.1, and to repeal Civil Code
7 Article 3492 and R.S. 22:333(E), relative to automobile insurance; to
8 extend the general prescriptive period for delictual actions; to
9 prohibit the court from awarding a plaintiff the amount of medical
10 expenses reduced or paid by a collateral source; to provide with
11 respect to jury trials; to repeal the right of direct action against an
12 insurer; to require annual rate filing with the commissioner of
13 insurance; to require automobile insurers to submit annual data to the
14 commissioner of insurance; to provide for aggregation and public
15 posting of the data; to provide for confidentiality; to provide for an
16 effective date; to provide for a sunset date; and to provide for related
17 matters."

18 AMENDMENT NO. 2

19 On page 1, between lines 8 and 9, insert the following:

20 "Section 1. Civil Code Article 3493.10 is hereby amended and
21 reenacted to read as follows:

22 Art. 3493.10. Delictual actions; two-year prescription; ~~criminal act~~
23 Delictual actions ~~which arise due to damages sustained as a~~
24 ~~result of an act defined as a crime of violence under Chapter 1 of~~
25 ~~Title 14 of the Louisiana Revised Statutes of 1950~~, except as
26 provided in Article 3496.2, are subject to a liberative prescription of
27 two years. This prescription commences to run from the day injury
28 or damage is sustained. **It does not run against minors or**
29 **interdicts in actions involving permanent disability and brought**
30 **pursuant to the Louisiana Products Liability Act or state law**
31 **governing product liability actions in effect at the time of the**
32 **injury or damage.**

33 Section 2. Code of Civil Procedure Article 1732(1) is hereby
34 amended and reenacted to read as follows:

35 Art. 1732. Limitation upon jury trials
36 A trial by jury shall not be available in:

37 (1) A suit where the amount of no individual petitioner's
38 cause of action exceeds ~~fifty~~ **five** thousand dollars exclusive of
39 interest and costs, except as follows:

40 (a) If an individual petitioner stipulates or otherwise
41 judicially admits sixty days or more prior to trial that the amount of
42 the individual petitioner's cause of action does not exceed ~~fifty~~ **five**
43 thousand dollars exclusive of interest and costs, a defendant shall not
44 be entitled to a trial by jury.

45 (b) If an individual petitioner stipulates or otherwise
46 judicially admits for the first time less than sixty days prior to trial
47 that the amount of the individual petitioner's cause of action does not
48 exceed ~~fifty~~ **five** thousand dollars exclusive of interest and costs, any
49 other party may retain the right to a trial by jury if that party is

1 entitled to a trial by jury pursuant to this Article and has otherwise
2 complied with the procedural requirements for obtaining a trial by
3 jury.

4 (c) Notwithstanding Subsubparagraphs (a) and (b) of this
5 Subparagraph, if, as a result of a compromise or dismissal of one or
6 more claims or parties which occurs less than sixty days prior to trial,
7 an individual petitioner stipulates or otherwise judicially admits that
8 the amount of the individual petitioner's cause of action does not
9 exceed ~~fifty~~ five thousand dollars exclusive of interest and costs, a
10 defendant shall not be entitled to a trial by jury.

11 * * *

12 Section 3. R.S. 9:2800.25 is hereby enacted to read as follows:

13 **§2800.25. Recoverable medical expenses; collateral sources;**
14 **limitations**

15 **A.(1) Reductions in medical bills based upon the write-**
16 **offs or write-downs by insurance companies or Medicare are not**
17 **collateral sources and are therefore not recoverable as damages**
18 **in civil litigation. In cases where a plaintiff's medical expenses**
19 **have been paid by a health insurance company or Medicare, the**
20 **plaintiff's recovery of medical expenses is limited to the amount**
21 **actually paid to the healthcare provider by the insurer or**
22 **Medicare, and not the amount billed.**

23 **(2) If a plaintiff does not submit medical bills to an**
24 **available health insurer or Medicare for payment, plaintiff's**
25 **recovery is limited to the amount that would have been paid by**
26 **the insurer or Medicare had the medical bills been submitted to**
27 **the insurer or Medicare for payment.**

28 **B.(1) In cases where a plaintiff's medical expenses are**
29 **paid pursuant to the Workers' Compensation Law as provided**
30 **in R.S. 23:1020.1 et seq., a plaintiff's recovery of medical**
31 **expenses is limited to the amount payable under the medical**
32 **payments fee schedule of the Workers' Compensation Law.**

33 **(2) If a plaintiff chooses not to submit medical expenses**
34 **for payment pursuant to the Workers' Compensation Law, and**
35 **the medical expenses were eligible for payment under the**
36 **Workers' Compensation Law, then the plaintiff's recovery of**
37 **damages for medical expenses is limited to the amount that would**
38 **have been payable had the medical expenses been submitted for**
39 **payment under the provisions of the Workers' Compensation**
40 **Law."**

41 AMENDMENT NO. 3

42 On page 1, line 9, delete "Section 1." and insert in lieu thereof "Section 4. R.S. 22:1269 is
43 hereby amended and reenacted and"

44 AMENDMENT NO. 4

45 On page 1, between lines 9 and 10, insert the following:

46 "§1269. Liability policy; insolvency or bankruptcy of insured and
47 inability to effect service of citation or other process; ~~direct~~
48 ~~action against insurer~~

49 A. No policy or contract of liability insurance shall be issued
50 or delivered in this state, unless it contains provisions to the effect
51 that the insolvency or bankruptcy of the insured shall not release the
52 insurer from the payment of damages for injuries sustained or loss
53 occasioned during the existence of the policy, and any judgment
54 which may be rendered against the insured for which the insurer is
55 liable which shall have become executory, shall be deemed prima

1 facie evidence of the insolvency of the insured, and an action may
 2 thereafter be maintained within the terms and limits of the policy by
 3 the injured person, or his survivors, mentioned in Civil Code Art.
 4 2315.1, or heirs against the insurer.

5 B.(1) The injured person or his survivors or heirs mentioned
 6 in Subsection A of this Section, at their option, shall have a right of
 7 direct action against the insurer within the terms and limits of the
 8 policy; and, such action may be brought against the insurer alone, or
 9 against both the insured and insurer jointly and in solido, in the parish
 10 in which the accident or injury occurred or in the parish in which an
 11 action could be brought against either the insured or the insurer under
 12 the general rules of venue prescribed by Code of Civil Procedure Art.
 13 42 only; however, such action may be brought against the insurer
 14 alone only when at least one of the following applies:

15 ~~(a) The insured has been adjudged bankrupt by a court of~~
 16 ~~competent jurisdiction or when proceedings to adjudge an insured~~
 17 ~~bankrupt have been commenced before a court of competent~~
 18 ~~jurisdiction.~~

19 (b) The insured is insolvent.

20 ~~(c) Service of citation or other process cannot be made on the~~
 21 ~~insured.~~

22 ~~(d) When the cause of action is for damages as a result of an~~
 23 ~~offense or quasi-offense between children and their parents or~~
 24 ~~between married persons.~~

25 ~~(e) When the insurer is an uninsured motorist carrier.~~

26 ~~(f) The insured is deceased.~~

27 ~~(2) This right of direct action shall exist whether or not the~~
 28 ~~policy of insurance sued upon was written or delivered in the state of~~
 29 ~~Louisiana and whether or not such policy contains a provision~~
 30 ~~forbidding such direct action, provided the accident or injury~~
 31 ~~occurred within the state of Louisiana. Nothing contained in this~~
 32 ~~Section shall be construed to affect the provisions of the policy or~~
 33 ~~contract if such provisions are not in violation of the laws of this~~
 34 ~~state.~~

35 C. It is the intent of this Section that any action brought under
 36 the provisions of this Section shall be subject to all of the lawful
 37 conditions of the policy or contract and the defenses which could be
 38 urged by the insurer to a direct action brought by the insured;
 39 provided the terms and conditions of such policy or contract are not
 40 in violation of the laws of this state.

41 ~~D. B.~~ It is also the intent of this Section that all liability
 42 policies within their terms and limits are executed for the benefit of
 43 all injured persons and their survivors or heirs to whom the insured
 44 is liable; and, that it is the purpose of all liability policies to give
 45 protection and coverage to all insureds, whether they are named
 46 insured or additional insureds under the omnibus clause, for any legal
 47 liability the insured may have as or for a tortfeasor within the terms
 48 and limits of the policy.

49 * * *

50 AMENDMENT NO. 5

51 On page 4, line 3, change "Section 2." to "Section 5."

52 AMENDMENT NO. 6

53 On page 4, line 18, change "Section 3." to Section 6."

1 AMENDMENT NO. 7

2 On page 5, delete lines 6 and 7 in their entirety and insert in lieu thereof:

3 "Section 7. Civil Code Article 3492 and R.S. 22:333(E) are hereby
4 repealed in their entirety.

5 Section 8. Pursuant to the provisions of this Act, every motor vehicle
6 insurer authorized to transact business in the state of Louisiana shall make
7 a motor vehicle policy rate filing with the Department of Insurance at least
8 once every twelve months for the thirty-six-month period following the
9 effective date of this Act and shall reduce rates when actuarially justified.

10 Section 9. The provisions of this Section, Sections 1, 2, 3, 7, and 8,
11 and R.S. 22:1269 as amended and reenacted by Section 4 of this Act shall be
12 known as the "Omnibus Premium Reduction Act of 2019". Whereas motor
13 vehicle accident claims comprise a major portion of the lawsuits filed in
14 Louisiana's state courts, and whereas the enactment of civil justice reforms
15 and their general applicability have a positive effect toward the reduction of
16 the cost of motor vehicle insurance, the Omnibus Premium Reduction Act of
17 2019 is designed to achieve a significant reduction in the premium rate of
18 motor vehicle insurance by legislating in regard not only to specific motor
19 vehicle accidents and insurance suits, but also to civil law issues of general
20 applicability. A secondary purpose of the Omnibus Premium Reduction Act
21 of 2019 is to further encourage all persons who own or operate motor
22 vehicles on the public streets and highways of this state to comply with the
23 Motor Vehicle Safety Responsibility Law by correcting the imbalances and
24 abuses which are prevalent in Louisiana's current civil law and motor vehicle
25 insurance systems thereby resulting in a direct cost savings to all citizens of
26 the state of Louisiana.

27 Section 10.(A) The provisions of Sections 1 through 3 and Sections
28 6 through 9 and R.S. 22:1269 as amended and reenacted by Section 4 of this
29 Act shall become effective on January 1, 2020.

30 (B) The provisions of this Section, Section 5, and R.S. 22:1290.1 as
31 enacted by Section 4 of this Act shall become effective on August 1, 2019."