

2020 Regular Session

HOUSE BILL NO. 9

BY REPRESENTATIVE GAROFALO

INSURANCE/AUTOMOBILE: Enacts the Omnibus Premium Reduction Act of 2020

1 AN ACT

2 To amend and reenact Civil Code Articles 3492 and 3493.10, Code of Civil Procedure

3 Article 1732(1), and R.S. 22:1269(B), to enact R.S. 9:2800.25, and to repeal R.S.

4 22:333(E) and 32:295.1(E), relative to liability; to provide relative to civil liability

5 and to motor vehicle liability coverage; to extend the general prescriptive period for

6 delictual actions involving motor vehicle accidents; to prohibit the court from

7 awarding a plaintiff the amount of medical expenses reduced or paid by a collateral

8 source; to provide for definitions; to provide with respect to a jury trial in a lawsuit

9 arising from a motor vehicle accident; to limit the right of direct action against an

10 insurer; to provide relative to the requirement to wear safety belts while operating

11 a motor vehicle; to provide for the introduction of evidence of the failure to wear a

12 safety belt; to require certain annual rate filings with the commissioner of insurance;

13 to provide for a mandatory rate reduction under certain circumstances; to provide for

14 prospective application; to provide for an effective date; and to provide for related

15 matters.

16 Be it enacted by the Legislature of Louisiana:

17 Section 1. The provisions of this Act shall be known as the "Omnibus Premium

18 Reduction Act of 2020". Whereas motor vehicle accident claims comprise a major portion

19 of the lawsuits filed in Louisiana's state courts, and whereas the enactment of civil justice

20 reforms and their general applicability have a positive effect toward the reduction of the cost

1 of motor vehicle insurance, the Omnibus Premium Reduction Act of 2020 is designed to
 2 achieve a significant reduction in the premium rate of motor vehicle accidents and insurance
 3 by legislating in regard not only to specific motor vehicle accidents and insurance suits, but
 4 also to civil law issues of general applicability. A secondary purpose of the Omnibus
 5 Premium Reduction Act of 2020 is to further encourage all persons who own or operate
 6 motor vehicles on the public streets and highways of this state to comply with the Motor
 7 Vehicle Safety Responsibility Law by correcting the imbalances and abuses which are
 8 prevalent in Louisiana's current civil law and motor vehicle insurance systems thereby
 9 resulting in a direct cost savings to all citizens of the state of Louisiana.

10 Section 2. Civil Code Articles 3492 and 3493.10 are hereby amended and reenacted
 11 to read as follows:

12 Art. 3492. Delictual actions

13 ~~Delictual~~ Except as otherwise provided, delictual actions are subject to a
 14 liberative prescription of one year. This prescription commences to run from the day
 15 injury or damage is sustained. It does not run against minors or interdicts in actions
 16 involving permanent disability and brought pursuant to the Louisiana Products
 17 Liability Act or state law governing product liability actions in effect at the time of
 18 the injury or damage.

19 * * *

20 Art. 3493.10. Delictual actions; two-year prescription; ~~criminal act; operation or~~
 21 control of a motor vehicle

22 Delictual actions for injury or damage arising from the operation or control
 23 of any motor vehicle, aircraft, watercraft, or other means of conveyance which
 24 arise due to damages sustained as a result of an act defined as a crime of violence
 25 under Chapter 1 of Title 14 of the Louisiana Revised Statutes of 1950, except as
 26 provided in Article 3496.2, are subject to a liberative prescription of two years. This
 27 prescription commences to run from the day injury or damage is sustained. It does
 28 not run against minors or interdicts in actions involving permanent disability and

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

9 (a) The insured has been adjudged bankrupt by a court of competent
 10 jurisdiction or when proceedings to adjudge an insured bankrupt have been
 11 commenced before a court of competent jurisdiction.

12 ~~(b) The insured is insolvent.~~

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

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

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

17 ~~(f)~~(c) The insured is deceased.

18 (2) This ~~right of~~ direct action shall exist ~~whether or not the policy of~~
 19 ~~insurance sued upon was written or delivered in the state of Louisiana and whether~~
 20 ~~or not such policy contains a provision forbidding such direct action, provided the~~
 21 ~~accident or injury occurred within the state of Louisiana.~~ may be brought against the
 22 insurer alone in the parish in which the accident or injury occurred or in the parish
 23 in which an action could be brought against either the insured or the insurer under
 24 the general rules of venue prescribed by Code of Civil Procedure Article 42 only.

25 Nothing contained in this Section shall be construed to affect the provisions of the
 26 policy or contract if such provisions are not in violation of the laws of this state.

27 (3) When the circumstances enumerated in Paragraph (1) of this Subsection
 28 do not apply, neither the injured person nor the survivors or heirs mentioned in
 29 Subsection A of this Section shall have a right of direct action against the insurer.

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 9 Engrossed

2020 Regular Session

Garofalo

Abstract: Creates the Omnibus Premium Reduction Act of 2020 which increases the general one-year prescriptive period for delictual actions arising from a vehicular accident to a two-year prescriptive period, reduces the threshold for a jury trial to \$5,000, provides for reduced damages for amounts paid or payable from collateral sources, repeals the limitation on presenting evidence of the failure to wear a safety belt, and limits the right of direct action against an insurer.

Proposed law creates the Omnibus Premium Reduction Act of 2020, which has as its general purpose the reduction of the cost of motor vehicle insurance by legislating in regard to civil law and insurance policies.

Present law provides a general one-year liberative prescriptive period for delictual actions (C.C. Art. 3492), and a two-year period for delictual actions for damages arising from an act defined as a crime of violence, except for any act of sexual assault which is subject to a liberative prescription of three years (C.C. Art. 3493.10).

Proposed law increases the general one-year prescriptive period for delictual actions for injury or damages arising from the operation of any motor vehicle, aircraft, watercraft, or other means of conveyance to a two-year prescriptive period and retains the liberative prescription of three years for any act of sexual assault.

Present law (C.C.P. Art. 1732) authorizes a jury trial when the amount in controversy exceeds \$50,000.

Proposed law reduces the threshold for a jury trial to \$5,000 for causes of action that arise on or after Jan. 1, 2021.

Proposed law (R.S. 9:2800.25) provides that in cases where a plaintiff's medical expenses have been paid, in whole or in part, by a health insurance issuer, Medicaid, or Medicare to a medical provider, the plaintiff's recovery of medical expenses is limited to the amount actually paid to the medical provider and not the amount billed.

Proposed law provides that payment for medical expenses is limited to the amount payable pursuant to the fee schedule of the present law Worker's Compensation Law when that present law is applicable.

Proposed law provides that in an action for damages where a person suffers injury, death, or loss, the court may receive evidence of the following:

- (1) Any amount which has been paid or contributed by or on behalf of the claimant to secure his right to a private insurance benefit received as a result of the injury, death, or loss.
- (2) The amount the health insurance issuer would have paid if the medical bills would have been submitted by the claimant to his health insurance issuer, Medicare, or Medicaid provider.

Proposed law defines "health insurance issuer" and "medical provider".

Present law (R.S. 22:1269 (B)) provides relative to liability policies and direct action against an insurer.

Present law provides that an injured third party has the right to take direct legal action against the insurer if that right is provided for within the terms and limits of the policy. Provides for action against the insurer alone if at least one of the following applies:

- (1) The insured has been adjudged bankrupt or bankruptcy proceedings have commenced in a court of competent jurisdiction.
- (2) The insured is insolvent.
- (3) Service of citation or other process cannot be made on the insured.
- (4) The cause of action is for damages resulting from an offense or quasi-offense between children and parents or between married persons.
- (5) The insurer is an uninsured motorist carrier.
- (6) The insured is deceased.

Proposed law removes an action against the insurer alone under the following circumstances:

- (1) The insured is insolvent.
- (2) Service of citation or other process cannot be made on the insured.
- (3) The insurer is an uninsured motorist carrier.

Proposed law further provides that if direct action is not available, the injured person or his survivors or heir's shall bring an action against the insured in a court of competent jurisdiction.

Proposed law provides that the insured's right to enforce the terms of the policy against the insurer remains unaffected.

Present law provides that, if the accident or injury occurred within the state of Louisiana, the right of direct action shall exist whether or not the policy of insurance was written or delivered in the state of Louisiana and whether or not such policy contains a provision forbidding such direct action.

Present law (R.S. 22:333(E)) relative to foreign or alien insurers provides that transacting of business in this state constitutes a consent to being sued by the injured person or heirs in a direct action as provided in present law.

Proposed law repeals present law.

Present law (R.S. 32:295.1(E)) provides that the failure to wear a safety belt in violation of present law shall not be admitted to mitigate damages in any action to recover damages arising out of the ownership, common maintenance, or operation of a motor vehicle, and the failure to wear a safety belt in violation of present law shall not be considered evidence of comparative negligence.

Proposed law repeals present law.

Proposed law requires every motor vehicle insurer authorized to transact business in La. to make a motor vehicle policy rate filing with the Dept. of Insurance at least once every 12

months for the 36 months following the effective date of proposed law and to reduce rates when actuarially justified.

Proposed law further provides that for policies of personal private passenger automobile insurance issued or renewed one year following the effective date of the proposed law, each insurer shall file with the commissioner of insurance for approval premium rates which actuarially reflect the savings it anticipates as a result of proposed law, which is presumed to be 10% lower for each impacted coverage, when compared to the premium rates in effect for that coverage on the date of enactment of proposed law. Also provides that each such insurer shall have the right to request all or partial relief from the presumed roll-back amount of 10% on each impacted coverage, if it can demonstrate to the commissioner of insurance that it has not experienced a sufficient reduction in loss costs to actuarially justify the full amount of presumed savings of 10%.

Proposed law further provides that any filing with premium rates that provide for the 10% reduction or more for each impacted coverage shall be deemed approved, if not disapproved, 30 days after filing. Proposed law also provides that it does not prohibit an increase for any individual insurance policy premium if the increase results from an increase in the risk of loss.

Effective Jan. 1, 2021.

(Amends C.C. Arts. 3492 and 3493.10, C.C.P. Art. 1732(1), and R.S. 22:1269(B); Adds R.S. 9:2800.25; Repeals R.S. 22:333(E) and R.S. 32:295.1(E))

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill:

1. Make the two-year prescriptive period for delictual actions applicable to vehicular accidents.
2. Revise the collateral source rule by limiting a plaintiff's recovery to amounts actually paid and provide definitions.
3. Allow a party to submit evidence of insurance premiums paid.
4. Allow a party to submit evidence of amounts paid if the claimant would have submitted a claim.
5. Remove the repeal of the direct action statute with limitations.
6. Add a requirement for insurers to file with the commissioner of insurance for approval of premium rates reflecting anticipated savings.