
DIGEST

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HB 44 Engrossed

2020 First Extraordinary 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, provides for a six-person jury for certain trials, 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 provides for 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 legislation 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 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 otherwise retains the one-, two-, and three-year liberative prescriptive periods.

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 \$35,000, except for tort actions, for which the threshold is \$5,000.

Proposed law provides that if a suit for a quasi delictual or delictual action demands between \$5,000 and \$35,000 and a jury is requested by at least one party, a jury shall be selected with six jurors and one alternate and five jurors must concur to render a verdict, unless the parties stipulate otherwise.

Proposed law (R.S. 9:2800.27) provides for definitions:

- (1) "Health insurance issuer" means a health insurance coverage through a policy or certificate of insurance subject to regulation of insurance under state law, health maintenance organization, employer sponsored health plan, the office of group benefits, and an equivalent

federal or state health plan.

- (2) "Medical provider" means any health care provider, hospital, ambulance service, or their heirs or assignees.
- (3) "Cost sharing" means copayments, coinsurance, deductibles, and any other amounts which have been paid or are owed by the plaintiff.

Proposed law provides that when a plaintiff's medical expenses have been paid by a health insurance company or Medicare, plaintiff's recovery of medical expenses is limited to the amount actually paid to the health care provider by the insurer or Medicare, and not the amount billed.

Proposed law provides that in cases where a plaintiff's medical expenses are paid pursuant to the La. Workers' Compensation Law, the plaintiff's recovery of medical expenses is limited to the amount payable under the medical payments fee schedule of the La. Workers' Compensation Law.

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 by a court of competent jurisdiction or proceedings to adjudge an insured bankrupt have been commenced before 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 provides for actions against the insurer alone within the terms and limits of the policy if at least one of the following applies:

- (1) The insured has been adjudged bankrupt by a court of competent jurisdiction or proceedings to adjudge an insured bankrupt have been commenced before a court of competent jurisdiction.

- (2) The insured is insolvent or dissolved.
- (3) The cause of action is for damages resulting from an offense or quasi offense between children and parents or between married persons.
- (4) The plaintiff is seeking recovery pursuant to uninsured or underinsured policy.
- (5) The cause of action is for damages as a result of an offense or quasi offense related to asbestos exposure.
- (6) The insured is deceased.

Present law provides that a direct action may be brought in the parish in which the accident or injury occurred or in the parish in which the action could be brought against either the insured or the insurer under the general rules of venue prescribed by present law.

Proposed law provides that the direct action may be brought in the parish in which the accident or injury occurred or in the parish in which the action could be brought against the insured under the general rules of venue.

Proposed law provides that the caption of any direct action against the insurer shall not include the name of the insurer.

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 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 provides that every motor vehicle insurer authorized to transact business in the state shall make a motor vehicle policy rate filing with the Dept. of Insurance at least once every 12 months for the 36-month period following the effective date of proposed law and shall reduce rates when actuarially justified.

Proposed law further provides that for policies of 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 the proposed law, which is presumed to be 10% for each impacted coverage, when compared to the premium rates in effect for that coverage on the date of enactment of the 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.

Proposed law provides that the provisions of proposed law shall become effective on Jan. 1, 2021, and shall have prospective application only and shall not apply to a cause of action arising or action pending prior to Jan. 1, 2021.

(Amends C.C. Arts. 3492 and 3493.10, C.C.P. Art. 1732, and R.S. 22:1269(B); Adds C.C.P. Art. 1732.1 and R.S. 9:2800.27; Repeals R.S. 32:295.1(E))