

2023 Regular Session

HOUSE BILL NO. 290

BY REPRESENTATIVE GREGORY MILLER AND SENATOR FOIL

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

ATTORNEYS: Provides relative to collections in legal malpractice

1 AN ACT

2 To amend and reenact R.S. 9:5605.2, relative to legal malpractice; to provide relative to a
3 limitation of recovery; to provide relative to the burden of proof; to provide for an
4 affirmative defense; to provide for an effective date; and to provide for related
5 matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 9:5605.2 is hereby amended and reenacted to read as follows:

8 §5605.2. Collectability rule

9 In any action for damages by a client against an attorney, the ~~client's recovery~~
10 ~~against the attorney shall be limited to the amount of damages which the attorney~~
11 ~~shows by a preponderance of the evidence would have been the maximum amount~~
12 ~~of damages that the client could have collected in the client's underlying action in~~
13 ~~which he was represented by the attorney.~~ attorney shall have the right to assert as
14 an affirmative defense, in accordance with Code of Civil Procedure Article 1005,
15 that the client would have been unable to make a partial or full monetary recovery
16 in the underlying cause of action. This affirmative defense includes, by way of
17 illustration and not limitation, that the party at fault in the underlying cause of action
18 would have been unable to pay for a partial or full recovery to the client.

19 Section 2. The provisions of this Act are intended to clarify the intention of the
20 legislature that Act No. 285 of the 2022 Regular Session legislatively overruled the holding

1 that collectability of damages against the tortfeasor in an underlying lawsuit is not an
2 affirmative defense to legal malpractice action, as held in the Louisiana Supreme Court
3 decision, Ewing v. Westport Ins. Corp., 315 So.3d 175 (La. 2020), and shall be retroactive
4 to July 1, 2022.

5 Section 3. This Act shall become effective upon signature by the governor or, if not
6 signed by the governor, upon expiration of the time for bills to become law without signature
7 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
8 vetoed by the governor and subsequently approved by the legislature, this Act shall become
9 effective on the day following such approval.

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 290 Original

2023 Regular Session

Gregory Miller

Abstract: Provides that the collectability rule may be asserted as an affirmative defense.

Present law provides that the client's recovery, if shown by a preponderance of the evidence, shall be limited to the amount of damages that would have been the maximum amount the client could have collected.

Proposed law removes the provision that the client's recovery shall be limited to the amount of damages that would have been the maximum amount the client could have collected.

Proposed law provides that the collectability of damages against a tortfeasor is an affirmative defense and includes that the party at fault would have been unable to pay the client.

Proposed law is intended to clarify the intentions of the legislature that Act No. 285 of the 2022 R.S. legislatively overruled the holding that collectability of damages against the tortfeasor in an underlying lawsuit is not an affirmative defense to a legal malpractice action, as held in the La. Sup. Ct. decision, Ewing v. Westport Ins. Corp., 315 So.3d 175 (La. 2020).

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 9:5605.2)