
DIGEST

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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)