

2019 Regular Session

SENATE BILL NO. 154

BY SENATOR WARD

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

LIABILITY. Provides relative to certain civil liability damages and prescription. (8/1/19)

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AN ACT

To amend and reenact R.S. 32:291 and Civil Code Arts. 3492 and 3493, to enact Code of Evidence Art. 416, and to repeal R.S. 32:295.1(E), relative to civil liability and damages; to provide relative to certain civil liability and damages involving vehicles and highways; to provide for liability and damages; to provide for evidence; to provide for prescription; to provide for certain terms, conditions, and effects; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 32:291 is hereby amended and reenacted to read as follows:

§291. Liability for damage to highway or structure; **evidence; prescription**

A. Any person driving any vehicle, object or contrivance upon any highway or highway structure shall be liable for all damages which said highway or structure may sustain as a result of any illegal operation, driving or moving of such vehicle, object or contrivance, or as a result of operating, driving or moving any vehicle, object or contrivance weighing in excess of the maximum weight permitted in this Chapter even if authorized by a special permit issued as provided in R.S. 32:~~388~~ **385, 386, and 387.**

1 B. Whenever such driver is not the owner of ~~such~~ **the** vehicle, object or
2 contrivance but is so operating, driving or moving the same with the express or
3 implied permission of ~~said~~ **the** owner, then ~~said~~ **the** owner and driver shall ~~be jointly~~
4 ~~and severally liable~~ **have solidary liability** for any such damage.

5 **C. Evidence of liability and damage as provided in this Section shall be**
6 **admissible as authorized by the Louisiana Code of Evidence or other applicable**
7 **provision of law.**

8 **D. The prescriptive period or periods for actions under the provisions of**
9 **this Section shall be governed by the Louisiana Civil Code or other applicable**
10 **provision of law.**

11 Section 2. Civil Code Articles 3492 and 3493 are hereby amended and reenacted to
12 read as follows:

13 Art. 3492. Delictual actions

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

19 Art. 3493. Damage to immovable property; commencement and accrual of
20 prescription

21 When damage is caused to immovable property, the ~~one~~ **two** year
22 prescription commences to run from the day the owner of the immovable acquired,
23 or should have acquired, knowledge of the damage.

24 Section 3. Code of Evidence Article 416 is hereby enacted to read as follows:

25 **Art. 416. Wearing of safety belt**

26 **In any action to recover damages arising out of the ownership, common**
27 **maintenance, or operation of a motor vehicle, failure to wear a safety belt in**
28 **violation of law may be considered evidence of comparative negligence. The**
29 **admissibility of such evidence shall be determined by the court out of the**

1 **hearing of the jury.**

2 Section 4. R.S. 32:295.1(E) is hereby repealed.

The original instrument was prepared by Jerry G. Jones. The following digest, which does not constitute a part of the legislative instrument, was prepared by Xavier Alexander.

DIGEST

SB 154 Engrossed

2019 Regular Session

Ward

Present law, relative to civil liability and damages, provides that any person driving any vehicle, object, or contrivance upon any highway or highway structure shall be liable for all damages, which the highway or structure may sustain as a result of any illegal operation, driving or moving of such vehicle, object, or contrivance, or as a result of operating, driving, or moving any vehicle, object, or contrivance weighing in excess of the permitted maximum weight, even if authorized by a special permit issued as provided in R.S. 32:388.

Proposed law redesignates cross-reference concerning weight and special permits from R.S. 32:388 to R.S. 32:385-387.

Present law provides whenever such a driver causing damage is not the owner of the vehicle, object, or contrivance but is operating, driving, or moving the same with the express or implied permission of the owner, then the owner and driver shall be jointly and severally liable for any such damage.

Proposed law changes "be jointly and severally liable" to "have solidary liability".

Proposed law further provides that evidence of liability and damage shall be admissible as authorized by the Louisiana Code of Evidence or other applicable provision of law, and that the prescriptive period or periods for actions under the provisions of the proposed law shall be governed by the Louisiana Civil Code or other applicable provision of law.

Present law in Civil Code provides prescriptive period of one year for certain delictual actions. Proposed law increases time from one year to two years.

Present law provides certain requirements for wearing of safety belts.

Present law further provides that in any action to recover damages arising out of the ownership, common maintenance, or operation of a motor vehicle, failure to wear a safety belt in violation of present law shall not be considered evidence of comparative negligence. Further provides that failure to wear a safety belt in violation of present law shall not be admitted to mitigate damages. Proposed law repeals present law provisions, and adds as new Code of Evidence Article that in any action to recover damages arising out of the ownership, common maintenance, or operation of a motor vehicle, failure to wear a safety belt in violation of law may be considered evidence of comparative negligence. The admissibility of such evidence shall be determined by the court out of the hearing of the jury.

Effective August 1, 2019.

(Amends R.S. 32:291 and C.C. Arts. 3492 and 3493; adds C.E. Art. 416; repeals R.S. 32:295.1(E))

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary A to the original bill

1. Adds language relative to Civil Code and Code of Evidence.
2. Adds repeal of R.S. 32:295.1(E).