
DIGEST

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HB 9 Original

2020 Regular Session

Garofalo

Abstract: Creates the Omnibus Premium Reduction Act of 2020 which increases the general one-year prescriptive period for delictual actions 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, and repeals 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 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.

Proposed law (R.S. 9:2800.25) provides that reductions in medical bills based upon the write-offs or write-downs by insurance companies or Medicare are not collateral sources and are therefore not recoverable as damages in civil litigation.

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 healthcare provider by the insurer or Medicare, and not the amount billed.

Proposed law provides that if the plaintiff pays the medical expenses directly to the healthcare provider when health insurance is available, recovery is limited to the amount that would have been paid by the insurer or Medicare.

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

applicable, and provides that if the plaintiff pays those expenses directly to the healthcare provider, the plaintiff's recovery for medical expenses is limited to the amount that would have been paid pursuant to the Workers' Compensation Law fee schedule.

Present law (R.S. 22:1269) provides that the insolvency or bankruptcy of an insured shall not release an insurer from the payment of damages for injuries sustained or loss occasioned during the existence of a policy. Present law further provides that any judgment rendered against the insured for which the insurer is liable which has become executory shall be deemed prima facie evidence of the insolvency of the insured, and an action may thereafter be maintained within the terms and limits of the policy by the injured person or his survivors or heirs against the insurer.

Proposed law retains present law.

Present law authorizes an injured person or his survivors or heirs to sue the liability insurer either alone or jointly and in solido with the insured who caused the injury. Present law further provides that a direct action may be brought against the insurer alone if one of the following occurs:

- (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 repeals present law.

It is the intent of present law that any action brought pursuant to present law shall be subject to all of the lawful conditions of the policy or contract and the defenses which could be urged by the insurer to a direct action brought by the insured, provided the terms and conditions of the policy or contract are not in violation of the laws of this state.

Proposed law repeals present law.

It is also the intent of present law that all liability policies within their terms and limits are executed for the benefit of all injured persons and their survivors or heirs to whom the insured is liable. Present law further provides that it is the purpose of all liability policies to give protection and coverage to all insureds, whether they are named insured or additional insureds under the omnibus

clause, for any legal liability the insured may have as or for a tortfeasor within the terms and limits of the policy.

Proposed law retains present law but makes a technical change.

Present law (R.S. 22:333) provides that the transacting of business in this state by a foreign or alien insurer pursuant to a certificate of authority issued pursuant to present law shall constitute a consent to being sued by the injured person or his heirs in a direct action, whether the policy of insurance sued upon was written or delivered in the state of La. or not, and whether or not the policy contains a provision forbidding a direct action, if the accident or injury occurred within La.

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.

Effective Jan. 1, 2021.

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