

2020 First Extraordinary Session

HOUSE BILL NO. 44

BY REPRESENTATIVE GAROFALO

INSURANCE/AUTOMOBILE: Enacts the Omnibus Premium Reduction Act of 2020 (Item #40)

1 AN ACT

2 To amend and reenact Civil Code Articles 3492 and 3493.10, Code of Civil Procedure

3 Article 1732 and R.S. 22:1269(B), to enact Code of Civil Procedure Article 1732.1

4 and R.S. 9:2800.27, and to repeal R.S. 32:295.1(E), relative to liability; to provide

5 relative to civil liability and to motor vehicle liability coverage; to extend the general

6 prescriptive period for delictual actions involving motor vehicle accidents; to

7 prohibit the court from awarding a plaintiff the amount of medical expenses reduced

8 or paid by a collateral source; to provide relative to collateral source, prescription,

9 jury trials, and jury trial thresholds under certain circumstances; to provide relative

10 to the right of direct action against an insurer; to repeal provisions prohibiting certain

11 evidence regarding the failure to wear safety belts; to require certain annual rate

12 filings with the commissioner of insurance; to provide for a rate reduction under

13 certain circumstances; to provide for an effective date; and to provide for related

14 matters.

15 Be it enacted by the Legislature of Louisiana:

16 Section 1. The provisions of this Act shall be known as the "Omnibus Premium

17 Reduction Act of 2020". Whereas motor vehicle accident claims comprise a major portion

18 of the lawsuits filed in Louisiana's state courts, and whereas the enactment of civil justice

19 reforms and their general applicability have a positive effect toward the reduction of the cost

1 of motor vehicle insurance, the Omnibus Premium Reduction Act of 2020 is designed to
2 achieve a significant reduction in the premium rate of motor vehicle accidents and insurance
3 by legislating in regard not only to the specific motor vehicle accidents and insurance suits,
4 but also to civil law issues of general applicability thus correcting the imbalances and abuses
5 which are prevalent in Louisiana's current civil law and motor vehicle insurance systems,
6 thereby resulting in a direct cost savings to all citizens of the state of Louisiana.

7 Section 2. Civil Code Articles 3492 and 3493.10 are hereby amended and reenacted
8 to read as follows:

9 Art. 3492. Delictual actions

10 ~~Delictual actions~~ Except as provided in Civil Code Article 3493.10, delictual
11 actions are subject to a liberative prescription of one year. This prescription
12 commences to run from the day injury or damage is sustained. It does not run against
13 minors or interdicts in actions involving permanent disability and brought pursuant
14 to the Louisiana Products Liability Act or state law governing product liability
15 actions in effect at the time of the injury or damage.

16 * * *

17 Art. 3493.10. Delictual actions; two-year prescription; criminal act

18 Delictual actions for injury or damage arising from the operation or control
19 of any motor vehicle, aircraft, watercraft, or other means of conveyance, or those
20 which arise due to damages sustained as a result of an act defined as a crime of
21 violence under Chapter 1 of Title 14 of the Louisiana Revised Statutes of 1950,
22 except as provided in Article 3496.2, are subject to a liberative prescription of two
23 years. This prescription commences to run from the day injury or damage is
24 sustained. It does not run against minors or interdicts in actions involving permanent
25 disability and brought pursuant to the Louisiana Products Liability Act or state law
26 governing product liability actions in effect at the time of the injury or damage.

1 Section 3. Code of Civil Procedure Article 1732 is hereby amended and reenacted
2 and Code of Civil Procedure Article 1732.1 is hereby enacted to read as follows:

3 Art. 1732. Limitation upon jury trials

4 A trial by jury shall not be available in:

5 (1) A suit brought pursuant to the provisions of Chapter 3 of Title V of Book
6 III of the Civil Code, where the amount of no individual petitioner's cause of action
7 exceeds five thousand dollars exclusive of interest or costs.

8 (2) A suit, other than one brought pursuant to Chapter 3 of Title V of Book
9 III of the Civil Code, where the amount of no individual petitioner's cause of action
10 exceeds ~~fifty~~ thirty-five thousand dollars exclusive of interest and costs, except as
11 follows:

12 (a) If an individual petitioner stipulates or otherwise judicially admits sixty
13 days or more prior to trial that the amount of the individual petitioner's cause of
14 action does not exceed ~~fifty~~ thirty-five thousand dollars exclusive of interest and
15 costs, a defendant shall not be entitled to a trial by jury.

16 (b) If an individual petitioner stipulates or otherwise judicially admits for the
17 first time less than sixty days prior to trial that the amount of the individual
18 petitioner's cause of action does not exceed ~~fifty~~ thirty-five thousand dollars
19 exclusive of interest and costs, any other party may retain the right to a trial by jury
20 if that party is entitled to a trial by jury pursuant to this Article and has otherwise
21 complied with the procedural requirements for obtaining a trial by jury.

22 (c) Notwithstanding Subsubparagraphs (a) and (b) of this Subparagraph, if,
23 as a result of a compromise or dismissal of one or more claims or parties which
24 occurs less than sixty days prior to trial, an individual petitioner stipulates or
25 otherwise judicially admits that the amount of the individual petitioner's cause of
26 action does not exceed ~~fifty~~ thirty-five thousand dollars exclusive of interest and
27 costs, a defendant shall not be entitled to a trial by jury.

28 ~~(2)~~(3) A suit on an unconditional obligation to pay a specific sum of money,
29 unless the defense thereto is forgery, fraud, error, want, or failure of consideration.

1 ~~(3)~~(4) A summary, executory, probate, partition, mandamus, habeas corpus,
2 quo warranto, injunction, concursus, workers' compensation, emancipation,
3 tutorship, interdiction, curatorship, filiation, annulment of marriage, or divorce
4 proceeding.

5 ~~(4)~~(5) A proceeding to determine custody, visitation, alimony, or child
6 support.

7 ~~(5)~~(6) A proceeding to review an action by an administrative or municipal
8 body.

9 ~~(6)~~(7) All cases where a jury trial is specifically denied by law.

10 Art. 1732.1. Limitation upon jury trials; delictual and quasi-delictual actions

11 Pursuant to Article 1732, and notwithstanding the provisions of Articles 1761
12 and 1797, if a suit for a quasi delictual or delictual action demands between five
13 thousand dollars and thirty-five thousand dollars exclusive of interest and costs and
14 a jury is requested by at least one party, the following provisions apply:

15 (1) A jury shall be selected with six jurors and one alternate.

16 (2) Five jurors must concur to render a verdict, unless the parties stipulate
17 otherwise.

18 Section 4. R.S. 9:2800.27 is hereby enacted to read as follows:

19 §2800.27. Recoverable medical expenses; collateral sources; limitations

20 A. For the purpose of this Section:

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

25 (2) "Medical provider" means any health care provider, hospital, ambulance
26 service, or their heirs or assignees.

27 (3) "Cost sharing" means copayments, coinsurance, deductibles, and any
28 other amounts which have been paid or are owed by the plaintiff.

1 Section 7. Pursuant to the provisions of this Act, every motor vehicle insurer
2 authorized to transact business in the state of Louisiana shall make a motor vehicle policy
3 rate filing with the Department of Insurance at least once every twelve months for the
4 thirty-six-month period following the effective date of this Act and shall reduce rates when
5 actuarially justified.

6 Section 8. For policies of automobile insurance issued or renewed one year
7 following the effective date of this Act, each insurer shall file with the commissioner of
8 insurance for approval premium rates which actuarially reflect the savings it anticipates as
9 a result of this Act, which is presumed to be ten percent lower for each impacted coverage,
10 when compared to the premium rates in effect for that coverage on the date of enactment.
11 Each such insurer shall have the right to request all or partial relief from the presumed roll-
12 back amount of ten percent on each impacted coverage, if it can demonstrate to the
13 commissioner of insurance that it has not experienced a sufficient reduction in loss costs to
14 actuarially justify the full amount of presumed savings of ten percent. Any filing with
15 premium rates that provides for the ten percent reduction or more for each impacted
16 coverage shall be deemed approved, if not disapproved, thirty days after filing. This Section
17 does not prohibit an increase for any individual insurance policy premium if the increase
18 results from an increase in the risk of loss.

19 Section 9. This Act shall become effective on January 1, 2021, and shall have
20 prospective application only and shall not apply to a cause of action arising or action
21 pending prior to January 1, 2021.

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 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))