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**SENATE FLOOR AMENDMENTS**

2019 Regular Session

Amendments proposed by Senator Hewitt to Engrossed House Bill No. 288 by Representative Hollis

AMENDMENT NO. 1

On page 1, delete lines 2 through 6 and insert

"To amend and reenact Civil Code Article 3493.10, Code of Civil Procedure Article 1732(1), R.S. 22:1269, and R.S. 32:295.1(E), to enact R.S. 9:2800.25 and R.S. 22:2013.1, and to repeal Civil Code Article 3492 and R.S. 22:333(E), relative to insurance; to repeal the right of direct action against an insurer; to require certain annual rate filings with the commissioner of insurance; to provide relative to the administration of large deductible policies and collateral; to provide for the right of the receiver or a guaranty association to pursue collateral; to provide relative to treatment of collateral and limitation of the defenses of the insured; to provide relative to certain civil liability, jury trial procedures, and actions; to provide relative to certain evidence, prescriptive periods, and damages, including amounts reduced or paid by a collateral source; to provide for an effective date; and to provide for related matters."

AMENDMENT NO. 2

On page 1, between lines 7 and 8 insert

"Section 1. The provisions of this Act shall be known as the "Omnibus Premium Reduction Act of 2019". Whereas motor vehicle accident claims comprise a major portion of the lawsuits filed in Louisiana's state courts, and whereas the enactment of civil justice reforms and their general applicability have a positive effect toward the reduction of the cost of motor vehicle insurance, the Omnibus Premium Reduction Act of 2019 is designed to achieve a significant reduction in the premium rate of motor vehicle insurance by legislating in regard not only to specific motor vehicle accidents and insurance suits, but also to civil law issues of general applicability. A secondary purpose of the Omnibus Premium Reduction Act of 2019 is to further encourage all persons who own or operate motor vehicles on the public streets and highways of this state to comply with the Motor Vehicle Safety Responsibility Law by correcting the imbalances and abuses which are prevalent in Louisiana's current civil law and motor vehicle insurance systems thereby resulting in a direct cost savings to all citizens of the state of Louisiana.

Section 2. R.S. 9:2800.25 is hereby enacted to read as follows:

§2800.25. Recoverable medical expenses; collateral sources; limitations

A.(1) 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. In cases where a plaintiff's medical expenses have been paid by a health insurance company or Medicare, the 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.

(2) If a plaintiff does not submit medical bills to an available health insurer or Medicare for payment, plaintiff's recovery is limited to the amount that would have been paid by the insurer or Medicare had the medical bills been submitted to the insurer or Medicare for payment.

B.(1) In cases where a plaintiff's medical expenses are paid pursuant to the Workers' Compensation Law as provided in R.S. 23:1020.1 et seq., a plaintiff's

1 recovery of medical expenses is limited to the amount payable under the medical  
2 payments fee schedule of the Workers' Compensation Law.

3 (2) If a plaintiff chooses not to submit medical expenses for payment  
4 pursuant to the Workers' Compensation Law, and the medical expenses were  
5 eligible for payment under the Workers' Compensation Law, then the plaintiff's  
6 recovery of damages for medical expenses is limited to the amount that would  
7 have been payable had the medical expenses been submitted for payment under  
8 the provisions of the Workers' Compensation Law."

9 AMENDMENT NO. 3

10 On page 1, delete line 8 and insert

11 "Section 3. R.S. 22:1269 is hereby amended and reenacted, and R.S. 22:2013.1 is  
12 hereby enacted, to read as follows:

13 §1269. Liability policy; insolvency or bankruptcy of insured and inability to  
14 effect service of citation or other process; ~~direct action against insurer~~

15 A. No policy or contract of liability insurance shall be issued or delivered  
16 in this state, unless it contains provisions to the effect that the insolvency or  
17 bankruptcy of the insured shall not release the insurer from the payment of  
18 damages for injuries sustained or loss occasioned during the existence of the  
19 policy, and any judgment which may be rendered against the insured for which  
20 the insurer is liable which shall have become executory, shall be deemed prima  
21 facie evidence of the insolvency of the insured, and an action may thereafter be  
22 maintained within the terms and limits of the policy by the injured person, or his  
23 survivors, mentioned in Civil Code Art. 2315.1, or heirs against the insurer.

24 ~~B.(1) The injured person or his survivors or heirs mentioned in Subsection~~  
25 ~~A of this Section, at their option, shall have a right of direct action against the~~  
26 ~~insurer within the terms and limits of the policy; and, such action may be brought~~  
27 ~~against the insurer alone, or against both the insured and insurer jointly and in~~  
28 ~~solido, in the parish in which the accident or injury occurred or in the parish in~~  
29 ~~which an action could be brought against either the insured or the insurer under~~  
30 ~~the general rules of venue prescribed by Code of Civil Procedure Art. 42 only;~~  
31 ~~however, such action may be brought against the insurer alone only when at least~~  
32 ~~one of the following applies:~~

33 (a) ~~The insured has been adjudged bankrupt by a court of competent~~  
34 ~~jurisdiction or when proceedings to adjudge an insured bankrupt have been~~  
35 ~~commenced before a court of competent jurisdiction.~~

36 (b) ~~The insured is insolvent.~~

37 (c) ~~Service of citation or other process cannot be made on the insured.~~

38 (d) ~~When the cause of action is for damages as a result of an offense or~~  
39 ~~quasi-offense between children and their parents or between married~~  
40 ~~persons.~~

41 (e) ~~When the insurer is an uninsured motorist carrier.~~

42 (f) ~~The insured is deceased.~~

43 (2) ~~This right of direct action shall exist whether or not the policy of~~  
44 ~~insurance sued upon was written or delivered in the state of Louisiana and~~  
45 ~~whether or not such policy contains a provision forbidding such direct action,~~  
46 ~~provided the accident or injury occurred within the state of Louisiana. Nothing~~

1 contained in this Section shall be construed to affect the provisions of the policy  
2 or contract if such provisions are not in violation of the laws of this state.

3 C. It is the intent of this Section that any action brought under the  
4 provisions of this Section shall be subject to all of the lawful conditions of the  
5 policy or contract and the defenses which could be urged by the insurer to a direct  
6 action brought by the insured, provided the terms and conditions of such policy or  
7 contract are not in violation of the laws of this state.

8 D. ~~B.~~ It is also the intent of this Section that all liability policies within  
9 their terms and limits are executed for the benefit of all injured persons and their  
10 survivors or heirs to whom the insured is liable; and, that it is the purpose of all  
11 liability policies to give protection and coverage to all insureds, whether they are  
12 named insured or additional insureds under the omnibus clause, for any legal  
13 liability the insured may have as or for a tortfeasor within the terms and limits of  
14 the policy.

15 \* \* \*

16 AMENDMENT NO. 4

17 On page 6, delete line 19 and insert

18 "Section 4. R.S. 32:295.1(E) is hereby amended and reenacted to read as follows:

19 §295.1. Safety belt use; tags indicating exemption

20 \* \* \*

21 E. In any action to recover damages arising out of the ownership, common  
22 maintenance, or operation of a motor vehicle, failure to wear a safety belt in  
23 violation of this Section ~~shall not may~~ be considered as evidence of comparative  
24 ~~negligence~~ fault or to mitigate damages. The admissibility of such evidence shall  
25 be determined by the court out of the hearing of the jury. ~~Failure to wear a safety~~  
26 ~~belt in violation of this Section shall not be admitted to mitigate damages.~~

27 Section 5. Civil Code Article 3493.10 is hereby amended and reenacted to read as  
28 follows:

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

30 Delictual actions ~~which arise due to damages sustained as a result of an~~  
31 ~~act defined as a crime of violence under Chapter 1 of Title 14 of the Louisiana~~  
32 ~~Revised Statutes of 1950~~, except as provided in Article 3496.2, are subject to a  
33 liberative prescription of two years. This prescription commences to run from the  
34 day injury or damage is sustained. It does not run against minors or interdicts in  
35 actions involving permanent disability and brought pursuant to the Louisiana  
36 Products Liability Act or state law governing product liability actions in effect at  
37 the time of the injury or damage.

38 Section 6. Code of Civil Procedure Article 1732(1) is hereby amended and  
39 reenacted to read as follows:

40 Art. 1732. Limitation upon jury trials

41 A trial by jury shall not be available in:

42 (1) A suit where the amount of no individual petitioner's cause of action  
43 exceeds fifty five thousand dollars exclusive of interest and costs, except as  
44 follows:

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

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

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

17 \* \* \*

18 Section 7. Civil Code Article 3492 and R.S. 22:333(E) are hereby repealed in  
19 their entirety.

20 Section 8. Pursuant to the provisions of this Act, every motor vehicle insurer  
21 authorized to transact business in the state of Louisiana shall make a motor  
22 vehicle policy rate filing with the Department of Insurance at least once every  
23 twelve months for the thirty-six-month period following the effective date of this  
24 Act and shall reduce rates when actuarially justified.

25 Section 9. This Act shall become effective on January 1, 2020."