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HOUSE FLOOR AMENDMENTS

2020 First Extraordinary Session

Amendments proposed by Representative Nelson to Engrossed House Bill No. 43 by Representative Garofalo

AMENDMENT NO. 1

On page 1, delete lines 2 through 10 in their entirety and insert the following:

"To amend and reenact the heading of Section 1 of Chapter 4 of Title XXIV of Book III of the Civil Code, the heading of Section 1-A of Chapter 4 of Title XXIV of Book III of the Civil Code, and Civil Code Article 3493.10, Code of Civil Procedure Articles 1732(1) and 1761(A), Code of Evidence Article 411, and R.S. 22:1454(A), to enact Civil Code Article 2323(D) and Section 1 of Chapter 4 of Title XXIV of Book III of the Civil Code, to be comprised of Civil Code Articles 3492 through 3493, Code of Civil Procedure Article 1733(D), R.S. 9:2800.27, and R.S. 22:1269(B)(3) and (4), and to repeal Civil Code Article 2323(D) and Section 1 of Chapter 4 of Title XXIV of Book III of the Civil Code, Code of Civil Procedure Article 1733(D), R.S. 9:2800.27, and R.S. 22:1269(B)(3) and (4), relative to civil actions; to provide for comparative fault and the recovery of damages; to extend the prescriptive period for delictual actions; to provide relative to jury trials; to provide relative to the jury trial threshold; to provide for a six-person jury by default; to allow a party to request a twelve-person jury; to provide relative to the right of direct action against an insurer; to provide relative to certain rating standards and methods; to provide for the admissibility of evidence of liability insurance; to prohibit the jury from receiving evidence of the insurance contract in certain circumstances; to provide for recoverable medical expenses; to provide for expenses paid by a collateral source; to provide for effectiveness; and to provide for related matters."

AMENDMENT NO. 2

On page 1, delete lines 12 through 19 in their entirety and delete pages 2 through 4 in their entirety and insert the following:

"Section 1. The provisions of this Act shall be known as the "Citizens' Premium Reduction Act".

Section 2. Code of Civil Procedure Articles 1732(1) and 1761(A) are hereby amended and reenacted and Code of Civil Procedure Article 1733(D) is hereby enacted to read as follows:

Art. 1732. Limitation upon jury trials  
A trial by jury shall not be available in:  
(1) A suit, other than one brought pursuant to Chapter 3 of Title V of Book III of the Civil Code, where the amount of no individual petitioner's cause of action exceeds fifty thirty-five thousand dollars exclusive of interest and costs, except as follows:  
(a) If an individual petitioner stipulates or otherwise judicially admits sixty days or more prior to trial that the amount of the individual petitioner's

cause of action does not exceed ~~fifty~~ thirty-five thousand dollars exclusive of interest and costs, a defendant shall not be entitled to a trial by jury.

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

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

\* \* \*

Art. 1733. Demand for jury trial; bond for costs

\* \* \*

D. After a jury trial is demanded by a party, if another party requests an increase in the number of jurors from six to twelve, the requesting party shall be responsible for half of the total jury bond or deposit.

\* \* \*

Art. 1761. Procedure in general

A. In cases to be tried by jury, ~~twelve~~ six jurors summoned in accordance with law shall be chosen by lot to try the issues specified unless ~~the parties stipulate~~ a party requests that the case shall be tried by ~~six~~ twelve jurors. The method of calling and drawing by lot shall be at the discretion of the court.

\* \* \*

Section 3. The heading of Section 1-A of Chapter 4 of Title XXIV of Book III of the Civil Code and Civil Code Article 3493.10 are hereby amended and reenacted and Civil Code Article 2323(D) is hereby enacted to read as follows:

Art. 2323. Comparative fault

\* \* \*

D. Notwithstanding the provisions of Paragraph A, B, or C of this Article, a person suffering injury, death, or loss shall be barred from recovering damages if his percentage of fault is greater than the combined percentage of fault of all other persons found to have contributed to the injury, death, or loss.

\* \* \*

SECTION ~~1-A~~ 1. TWO-YEAR PRESCRIPTION

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

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

When damage is caused to immovable property, the two-year prescription commences to run from the day the owner of the immovable acquired, or should have acquired, knowledge of the damage.

Section 4. Code of Evidence Article 411 is hereby amended and reenacted to read as follows:

Art. 411. Liability insurance

~~Although a policy of insurance may be admissible, the amount of coverage under the policy shall not be communicated to the jury unless the amount of coverage is a disputed issue which the jury will decide. Evidence that a person was or was not insured against liability shall not be admissible to prove whether the person acted negligently or otherwise wrongfully. However, such evidence may be admissible for another purpose, such as proving a witness's bias or prejudice or proving agency, ownership, or control.~~

Section 5. R.S. 9:2800.27 is hereby enacted to read as follows:

§2800.27. Recoverable medical expenses; collateral sources; limitations

A. Amounts written down or discounted from billed medical expenses shall not be considered a benefit from a collateral source and shall not be recoverable as damages. Recovery for past medical expenses shall be limited to amounts actually paid or required to be paid to a healthcare provider, and not the amount billed.

B. Any party receiving a discount or write-down to billed medical expenses as a result of an insurance contract may introduce into evidence and may be reimbursed for the premiums paid by the party or their immediate family member to obtain such insurance from the date of the injury through treatment for a period not to exceed one year. However, any recovery for past premiums shall not exceed the amount written down or discounted from billed medical expenses as a result of the insurance contract.

Section 6. R.S. 22:1454(A) is hereby amended and reenacted and R.S. 22:1269(B)(3) and (4) are hereby enacted to read as follows:

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

\* \* \*

B.

\* \* \*

(3) The caption of any suit brought pursuant to this Section shall not include the name of or reference to an insurer.

(4) In an action brought pursuant to this Section, only the court may receive evidence of the insurance contract between the insurer and the insured for the purpose of establishing the right of direct action.

\* \* \*

§1454. Rating standards and methods

A. Rates shall not be inadequate or unfairly discriminatory in a competitive market. Rates shall not be excessive, inadequate, or unfairly discriminatory in a noncompetitive market. Risks may be classified using any criteria except that no risk shall be classified on the basis of race, gender of an insured over the age of twenty-five, color, creed, or national origin.

\* \* \*

Section 7. Section 1 of Chapter 4 of Title XXIV of Book III of the Civil Code is hereby repealed in its entirety.

Section 8. The heading of Section 1 of Chapter 4 of Title XXIV of Book III of the Civil Code and Civil Code Article 3493.10 are hereby amended and reenacted and Section 1 of Chapter 4 of Title XXIV of Book III of the Civil Code, comprised of Civil Code Articles 3492 through 3493, is hereby enacted to read as follows:

1                                    SECTION 1. ONE-YEAR PRESCRIPTION

2                    Art. 3492. Delictual actions

3                    Delictual actions are subject to a liberative prescription of one year.  
 4                    This prescription commences to run from the day injury or damage is  
 5                    sustained. It does not run against minors or interdicts in actions involving  
 6                    permanent disability and brought pursuant to the Louisiana Products Liability  
 7                    Act or state law governing product liability actions in effect at the time of the  
 8                    injury or damage.

9                    Art. 3493. Damage to immovable property; commencement and accrual of  
 10                    prescription

11                    When damage is caused to immovable property, the one-year  
 12                    prescription commences to run from the day the owner of the immovable  
 13                    acquired, or should have acquired, knowledge of the damage.

14                                    SECTION 1-A. TWO-YEAR PRESCRIPTION

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

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

24                    ~~When damage is caused to immovable property, the two year~~  
 25                    ~~prescription commences to run from the day the owner of the immovable~~  
 26                    ~~acquired, or should have acquired, knowledge of the damage.~~

27                    Section 9. Code of Civil Procedure Articles 1732(1) and 1761(A) are hereby  
 28                    amended and reenacted to read as follows:

29                    Art. 1732. Limitation upon jury trials

30                    A trial by jury shall not be available in:

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

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

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

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

53                    \*                    \*                    \*

54                    Art. 1761. Procedure in general

A. In cases to be tried by jury, ~~six~~ twelve jurors summoned in accordance with law shall be chosen by lot to try the issues specified unless ~~a party requests~~ the parties stipulate that the case shall be tried by ~~twelve~~ six jurors. The method of calling and drawing by lot shall be at the discretion of the court.

\* \* \*

Section 10. Code of Evidence Article 411 is hereby amended and reenacted to read as follows:

## Art. 411. Liability insurance

~~Evidence that a person was or was not insured against liability shall not be admissible to prove whether the person acted negligently or otherwise wrongfully. However, such evidence may be admissible for another purpose, such as proving a witness' bias or prejudice or proving agency, ownership, or control. Although a policy of insurance may be admissible, the amount of coverage under the policy shall not be communicated to the jury unless the amount of coverage is a disputed issue which the jury will decide.~~

Section 11. R.S. 22:1454(A) is hereby amended and reenacted to read as follows:

## §1454. Rating standards and methods

A. Rates shall not be inadequate or unfairly discriminatory in a competitive market. Rates shall not be excessive, inadequate, or unfairly discriminatory in a noncompetitive market. Risks may be classified using any criteria except that no risk shall be classified on the basis of race, gender of an insured over the age of twenty-five, color, creed, or national origin.

\* \* \*

Section 12. Civil Code Article 2323(D), Code of Civil Procedure Article 1733(D), R.S. 9:2800.27, and R.S. 22:1269(B)(3) and (4) are hereby repealed in their entirety.

Section 13. (A) On April 1 of each year through 2024, the commissioner of insurance shall report annually to the Legislature the rate change of the statewide average private passenger automobile written premium for minimum limits from April 1 of the prior year.

(B) On August 1, 2023, the commissioner of insurance shall report to the legislature the rate change of the statewide average private passenger automobile written premium for minimum limits from January 1, 2020.

(C) In calculating the rate change as provided in Subsections A and B of this Section, the commissioner of insurance shall include a measure of inflation which is based on any increase or decrease in medical expenses, wages, property damage expenses, and relevant costs and expenses over the reporting period commencing on April 1 of the prior year.

Section 14.(A) This Section and Sections 1 through 7 and 13 of this Act are effective August 1, 2020.

(B) The provisions of Section 2 of this Act shall have prospective application only and shall apply only to new causes of action that arise on or after the effective date of this Act.

(C) The provisions of Sections 8 through 12 of this Act are effective August 1, 2023, if no report required to be submitted on or before August 1, 2023, by the commissioner of insurance pursuant to Section 13 of this Act reflects that the statewide average private passenger automobile written premium for minimum limits decreased by at least fifteen percent compared to the average private passenger automobile written premium for minimum limits on January 1, 2020."