

2017 Regular Session

SENATE BILL NO. 92

BY SENATORS TARVER AND MARTINY

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

LIABILITY. Provides relative to civil actions and remedies in matters involving domestic abuse. (8/1/17)

AN ACT

To amend and reenact R.S. 9:291 and Civil Code Articles 118 and 2315.8, and to enact Civil Code Article 3496.3 and Code of Evidence Article 412.5, relative to civil actions, proceedings, and remedies; to provide relative to matters involving domestic abuse; to provide relative to suits between spouses; to provide relative to liability; to provide relative to certain remedies, prescriptive periods and evidence; to provide certain terms, conditions, procedures, and requirements; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 9:291 is hereby amended and reenacted to read as follows:

§291. Suits between spouses

A. Spouses may not sue each other except for causes of action pertaining to contracts or arising out of the provisions of Book III, Title VI of the Civil Code; for restitution of separate property; for divorce or declaration of nullity of the marriage; and for causes of action pertaining to spousal support or the support or custody of a child while the spouses are living separate and apart.

B. The interspousal immunity created by this Section shall not be

1 construed to abrogate or modify any cause of action that one spouse might have
2 against the other. The effect of this Section is to bar the right of action that one
3 spouse has against the other, and prescription is suspended as between spouses
4 during the marriage. A final and definitive judgment of divorce places former
5 spouses in the same situation with respect to each other, and any cause of action
6 by one against the other, as if no marriage had ever been contracted between
7 them.

8 Section 2. Civil Code Articles 118 and 2315.8 are hereby amended and reenacted,
9 and Civil Code Article 3496.3 is hereby enacted, to read as follows:

10 Art. 118. Other remedies **not** affected

11 ~~Failure to bring an action for divorce pursuant to Article 103(4) or (5) or final~~
12 ~~spousal support pursuant to Article 112(B) shall in no way affect the rights of the~~
13 ~~party to seek other remedies provided by law. **The right of a party to seek any**~~
14 ~~**other remedy provided by law shall not be affected by the failure to bring an**~~
15 ~~**action for divorce pursuant to Article 103(4) or (5) or for final spousal support**~~
16 ~~**pursuant to Article 112(B), or by a judgment granting or dismissing an action**~~
17 ~~**for divorce pursuant to Article 103(4) or (5) or for final spousal support**~~
18 ~~**pursuant to Article 112(B).**~~

19 * * *

20 Art. 2315.8. Liability for damages caused by domestic abuse

21 A. In addition to general and special damages, exemplary damages may be
22 awarded upon proof that the injuries on which the action is based were caused by a
23 wanton and reckless disregard for the rights and safety of a family or household
24 member, as defined in R.S. 46:2132, **or for a dating partner as defined in R.S.**
25 **46:2151,** through acts of domestic abuse resulting in serious bodily injury or severe
26 emotional and mental distress, regardless of whether the defendant was prosecuted
27 for his or her acts.

28 B. Upon motion of the defendant or upon its own motion, if the court
29 determines that any action alleging domestic abuse is frivolous or fraudulent, the

1 court shall award costs of court, reasonable attorney fees, and any other related costs
2 to the defendant and any other sanctions and relief requested pursuant to Code of
3 Civil Procedure Article 863.

4 C. For the purposes of this Article, "domestic abuse" shall be as defined
5 in R.S. 46:2132.

6 * * *

7 Art. 3496.3. Action for damages caused by domestic abuse

8 An action for damages under Article 2315.8 for an act of domestic abuse
9 is subject to a liberative prescription of three years.

10 If the victim and defendant were married at the time of the occurrence
11 of the act, this prescription commences to run from the day their judgment of
12 divorce becomes final and definitive.

13 If the victim and defendant were not married at the time of occurrence
14 of the act, this prescription commences to run from the day the injury or
15 damage is sustained.

16 Section 3. Code of Evidence Article 412.5 is hereby enacted to read as follows:

17 Art. 412.5. Evidence in domestic abuse action

18 A. In any civil action arising from an act of domestic abuse as defined in
19 R.S. 46:2132, evidence of the commission of an act of domestic abuse, domestic
20 abuse battery, domestic abuse aggravated assault, or sexually assaultive
21 behavior, may be admissible and may be considered for its bearing on any
22 matter to which it is relevant subject to the balancing test provided in Article
23 403.

24 B. In an action for damages, a party seeking to offer evidence under this
25 Article shall give reasonable notice in advance of trial of the nature of such
26 evidence.

27 C. This Article shall not be construed to limit the admission or
28 consideration of any evidence otherwise authorized by law.

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 92 Engrossed

2017 Regular Session

Tarver

Present law relative to suits between spouses provides that spouses may not sue each other except for causes of action pertaining to contracts or arising out of the provisions of Book III, Title VI of the Civil Code; for restitution of separate property; for divorce or declaration of nullity of the marriage; and for causes of action pertaining to spousal support or the support or custody of a child while the spouses are living separate and apart.

Proposed law retains present law and adds that such interspousal immunity shall not be construed to abrogate or modify any cause of action that one spouse might have against the other. The effect is to bar the right of action that one spouse has against the other, and prescription is suspended as between spouses during the marriage. A judgment of divorce places former spouses in the same situation with respect to each other, and any cause of action by one against the other, as if no marriage had ever been contracted between them.

Present law provides that failure to bring an action for divorce pursuant to Civil Code Article 103(4) or (5) or final spousal support pursuant to Article 112(B) shall in no way affect the rights of the party to seek other remedies provided by law. Proposed law revises language to provide that the right of a party to seek any other remedy provided by law shall not be affected by the failure to bring an action for divorce pursuant to Article 103(4) or (5) or for final spousal support pursuant to Article 112(B), or by a judgment granting or dismissing an action for divorce pursuant to Article 103(4) or (5) or for final spousal support pursuant to Article 112(B).

Present law in Civil Code Article 2315.8 provides liability for damages caused by domestic abuse, including the award of exemplary damages upon proof that the injuries on which the action is based were caused by a wanton and reckless disregard for the rights and safety of a family or household member. Proposed law retains present law and extends it to dating partners. Further provides that "domestic abuse" shall be as defined in R.S. 46:2132.

Proposed law further provides that an action for damages under above present law for an act of domestic abuse is subject to a liberative prescription of three years. If the victim and defendant were married at the time of occurrence of the act, this prescription commences to run from the day their judgment of divorce becomes final and definitive. If the victim and defendant were not married at the time of occurrence of the act, this prescription commences to run from the day the injury or damage is sustained.

Proposed law further adds in Code of Evidence that in any civil action arising from an act of domestic abuse as defined in R.S. 46:2132, evidence of the commission of an act of domestic abuse, domestic abuse battery, domestic abuse aggravated assault, or sexually assaultive behavior, may be admissible and may be considered for its bearing on any matter to which it is relevant subject to the balancing test provided in Article 403. In an action for damages, a party seeking to offer evidence shall give reasonable notice in advance of trial of the nature of such evidence. Further provides that proposed law shall not be construed to limit the admission or consideration of any evidence otherwise authorized by law.

Effective August 1, 2017.

(Amends R.S. 9:291 and C.C. Arts. 118 and 2315.8; adds C.C. Art. 3496.3 and C.E. Art. 412.5)

Summary of Amendments Adopted by Senate

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

1. Changes divorce judgment to final and definitive divorce judgment.
2. Changes "offender" to "defendant."