

2020 Regular Session

HOUSE BILL NO. 9

BY REPRESENTATIVE GAROFALO

INSURANCE/AUTOMOBILE: Enacts the Omnibus Premium Reduction Act of 2020

1 AN ACT

2 To amend and reenact Civil Code Article 3493.10, Code of Civil Procedure Article 1732(1),  
3 and R.S. 22:1269, to enact R.S. 9:2800.25, and to repeal Civil Code Article 3492 and  
4 R.S. 22:333(E), relative to civil liability for damages and procedures related to the  
5 recovery thereof; to extend the general prescriptive period for delictual actions; to  
6 prohibit the court from awarding a plaintiff the amount of medical expenses reduced  
7 or paid by a collateral source; to provide with respect to jury trials; to repeal the right  
8 of direct action against an insurer; to require annual rate filing with the commissioner  
9 of insurance; to provide for an effective date; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. The provisions of this Act shall be known as the "Omnibus Premium  
12 Reduction Act of 2020". Whereas motor vehicle accident claims comprise a major portion  
13 of the lawsuits filed in Louisiana's state courts, and whereas the enactment of civil justice  
14 reforms and their general applicability have a positive effect toward the reduction of the cost  
15 of motor vehicle insurance, the Omnibus Premium Reduction Act of 2020 is designed to  
16 achieve a significant reduction in the premium rate of motor vehicle insurance by legislating  
17 in regard not only to specific motor vehicle accidents and insurance suits, but also to civil  
18 law issues of general applicability. A secondary purpose of the Omnibus Premium  
19 Reduction Act of 2020 is to further encourage all persons who own or operate motor  
20 vehicles on the public streets and highways of this state to comply with the Motor Vehicle

1 Safety Responsibility Law by correcting the imbalances and abuses which are prevalent in  
2 Louisiana's current civil law and motor vehicle insurance systems thereby resulting in a  
3 direct cost savings to all citizens of the state of Louisiana.

4 Section 2. Civil Code Article 3493.10 is hereby amended and reenacted to read as  
5 follows:

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

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

15 Section 3. Code of Civil Procedure Article 1732(1) is hereby amended and reenacted  
16 to read as follows:

17 Art. 1732. Limitation upon jury trials

18 A trial by jury shall not be available in:

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

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

25 (b) If an individual petitioner stipulates or otherwise judicially admits for the  
26 first time less than sixty days prior to trial that the amount of the individual  
27 petitioner's cause of action does not exceed ~~fifty~~ five thousand dollars exclusive of  
28 interest and costs, any other party may retain the right to a trial by jury if that party

1 is entitled to a trial by jury pursuant to this Article and has otherwise complied with  
2 the procedural requirements for obtaining a trial by jury.

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

9 \* \* \*

10 Section 4. R.S. 9:2800.25 is hereby enacted to read as follows:

11 §2800.25. Recoverable medical expenses; collateral sources; limitations

12 A.(1) Reductions in medical bills based upon the write-offs or write-downs  
13 by insurance companies or Medicare are not collateral sources and are therefore not  
14 recoverable as damages in civil litigation. In cases where a plaintiff's medical  
15 expenses have been paid by a health insurance company or Medicare, the plaintiff's  
16 recovery of medical expenses is limited to the amount actually paid to the healthcare  
17 provider by the insurer or Medicare, and not the amount billed.

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

22 B.(1) In cases where a plaintiff's medical expenses are paid pursuant to the  
23 Workers' Compensation Law as provided in R.S. 23:1020.1 et seq., a plaintiff's  
24 recovery of medical expenses is limited to the amount payable under the medical  
25 payments fee schedule of the Workers' Compensation Law.

26 (2) If a plaintiff chooses not to submit medical expenses for payment  
27 pursuant to the Workers' Compensation Law, and the medical expenses were eligible  
28 for payment under the Workers' Compensation Law, then the plaintiff's recovery of  
29 damages for medical expenses is limited to the amount that would have been payable

1        had the medical expenses been submitted for payment under the provisions of the  
2        Workers' Compensation Law.

3        Section 5. R.S. 22:1269 is hereby amended and reenacted to read as follows:

4        §1269. Liability policy; insolvency or bankruptcy of insured and inability to effect  
5        service of citation or other process; ~~direct action against insurer~~

6            A. No policy or contract of liability insurance shall be issued or delivered in  
7        this state, unless it contains provisions to the effect that the insolvency or bankruptcy  
8        of the insured shall not release the insurer from the payment of damages for injuries  
9        sustained or loss occasioned during the existence of the policy, and any judgment  
10       which may be rendered against the insured for which the insurer is liable which shall  
11       have become executory, shall be deemed prima facie evidence of the insolvency of  
12       the insured, and an action may thereafter be maintained within the terms and limits  
13       of the policy by the injured person, or his survivors, mentioned in Civil Code Art.  
14       Article 2315.1, or heirs against the insurer.

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

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

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

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

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

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

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

3           ~~(2) This right of direct action shall exist whether or not the policy of~~  
4           ~~insurance sued upon was written or delivered in the state of Louisiana and whether~~  
5           ~~or not such policy contains a provision forbidding such direct action, provided the~~  
6           ~~accident or injury occurred within the state of Louisiana. Nothing contained in this~~  
7           ~~Section shall be construed to affect the provisions of the policy or contract if such~~  
8           ~~provisions are not in violation of the laws of this state.~~

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

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

20          Section 6. Civil Code Article 3492 and R.S. 22:333(E) are hereby repealed in their  
21          entirety.

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

27          Section 8. This Act shall become effective on January 1, 2021.

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**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)]

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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))