

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
20 of motor vehicle insurance, the Omnibus Premium Reduction Act of 2020 is designed to

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

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

8 Art. 3492. Delictual actions

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

15 * * *

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

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

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

28 Art. 1732. Limitation upon jury trials

29 A trial by jury shall not be available in:

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

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

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

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

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

24 ~~(2)~~(3) A suit on an unconditional obligation to pay a specific sum of money,
25 unless the defense thereto is forgery, fraud, error, want, or failure of consideration.

26 ~~(3)~~(4) A summary, executory, probate, partition, mandamus, habeas corpus,
27 quo warranto, injunction, concursus, workers' compensation, emancipation,
28 tutorship, interdiction, curatorship, filiation, annulment of marriage, or divorce
29 proceeding.

1 ~~(4)~~(5) A proceeding to determine custody, visitation, alimony, or child
2 support.

3 ~~(5)~~(6) A proceeding to review an action by an administrative or municipal
4 body.

5 ~~(6)~~(7) All cases where a jury trial is specifically denied by law.

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

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

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

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

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

15 §2800.27. Recoverable medical expenses; collateral sources; limitations; evidence

16 A. For the purpose of this Section:

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

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

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

25 B. In cases where a plaintiff's medical expenses have been paid, in whole or
26 in part, by a health insurance issuer, Medicaid, or Medicare to a contracted or
27 participating medical provider, the plaintiff's recovery of medical expenses is limited
28 to the amount actually paid to the medical provider by the health insurance issuer,

1 Medicaid, or Medicare and any applicable cost sharing amount paid or owed by the
2 plaintiff, and not the amount billed.

3 C. In cases where a plaintiff's medical expenses are paid pursuant to the
4 Louisiana Workers' Compensation Law as provided in R.S. 23:1020.1 et seq., the
5 plaintiff's recovery of medical expenses is limited to the amount payable under the
6 medical payments fee schedule of the Louisiana Workers' Compensation Law.

7 Section 5. R.S. 22:1269(B) is hereby amended and reenacted to read as follows:

8 §1269. Liability policy; insolvency or bankruptcy of insured and inability to effect
9 service of citation or other process; direct action against insurer

10 * * *

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

19 (a) The insured has been adjudged bankrupt by a court of competent
20 jurisdiction or when proceedings to adjudge an insured bankrupt have been
21 commenced before a court of competent jurisdiction.

22 (b) The insured is insolvent or dissolved.

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

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

27 (d) The plaintiff is seeking recovery pursuant to an uninsured or
28 underinsured policy.

1 (e) ~~When the insurer is an uninsured motorist carrier.~~ The cause of action is
2 for damages as a result of an offense or quasi offense related to asbestos exposure.

3 (f) The insured is deceased.

4 (2) ~~This right of direct action shall exist whether or not the policy of~~
5 ~~insurance sued upon was written or delivered in the state of Louisiana and whether~~
6 ~~or not such policy contains a provision forbidding such direct action, provided the~~
7 ~~accident or injury occurred within the state of Louisiana.~~ may be brought in the
8 parish in which the accident or injury occurred or in the parish in which an action
9 could be brought against the insured under the general rules of venue prescribed by
10 Code of Civil Procedure Article 42 only. The caption of any suit brought pursuant
11 to the provisions of this Subsection shall not include the name of the insurer.

12 Nothing contained in this Section shall be construed to affect the provisions of the
13 policy or contract if such provisions are not in violation of the laws of this state.

14 (3) When the circumstances enumerated in Paragraph (1) of this Subsection
15 do not apply, neither the injured person nor the survivors or heirs mentioned in
16 Subsection A of this Section shall have a right of direct action against the insurer.
17 The injured person or his survivor or heirs shall bring an action against the insured,
18 wherein a court of competent jurisdiction may render a finding of liability and
19 damages against the insured. Nothing contained in this Section shall be construed to
20 affect the insured's right to enforce the provisions of the policy or contract against
21 insurer.

22 * * *

23 Section 6. R.S. 32:295.1(E) is hereby repealed in its entirety.

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

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

14 Section 9. This Act shall become effective on January 1, 2021, and shall have
15 prospective application only and shall not apply to a cause of action arising or action
16 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 Original 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))