

2020 First Extraordinary Session

HOUSE BILL NO. 66

BY REPRESENTATIVE NELSON

CIVIL/ACTIONS: Enacts the Citizens' Premium Reduction Act (Item #40)

1 AN ACT

2 To amend and reenact the heading of Section 1 of Chapter 4 of Title XXIV of Book III of

3 the Civil Code, the heading of Section 1-A of Chapter 4 of Title XXIV of Book III

4 of the Civil Code, and Civil Code Article 3493.10, Code of Civil Procedure Articles

5 1732 and 1761(A), and Code of Evidence Article 411, to enact Civil Code Article

6 2323(D) and Section 1 of Chapter 4 of Title XXIV of Book III of the Civil Code, to

7 be comprised of Civil Code Articles 3492 through 3493, Code of Civil Procedure

8 Article 1733(D), R.S. 9:2800.27, and R.S. 22:1269(B)(3) and (4), and to repeal Civil

9 Code Article 2323(D) and Section 1 of Chapter 4 of Title XXIV of Book III of the

10 Civil Code, Code of Civil Procedure Article 1733(D), R.S. 9:2800.27, and R.S.

11 22:1269(B)(3) and (4), relative to civil actions; to provide for comparative fault and

12 the recovery of damages; to extend the prescriptive period for delictual actions; to

13 provide relative to jury trials; to eliminate the jury trial threshold; to provide for a

14 six-person jury by default; to allow a party to request a twelve-person jury; to

15 provide for establishing the right of direct action against an insurer; to provide for

16 the admissibility of evidence of liability insurance; to prohibit the jury from

17 receiving evidence of the insurance contract in certain circumstances; to provide for

18 recoverable medical expenses; to provide for expenses paid by a collateral source;

19 to provide for effectiveness; and to provide for related matters.

20 Be it enacted by the Legislature of Louisiana:

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

22 Reduction Act".

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

4 Art. 1732. Limitation upon jury trials

5 A trial by jury shall not be available in:

6 (1) ~~A suit where the amount of no individual petitioner's cause of action~~
7 ~~exceeds fifty thousand dollars exclusive of interest and costs, except as 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 thousand dollars exclusive of interest and costs, a~~
11 ~~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 thousand dollars exclusive of~~
15 ~~interest and costs, any other party may retain the right to a trial by jury if that party~~
16 ~~is entitled to a trial by jury pursuant to this Article and has otherwise complied with~~
17 ~~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 thousand dollars exclusive of interest and costs, a~~
23 ~~defendant shall not be entitled to a trial by jury.~~

24 (2) 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)(2) 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)~~(3) A proceeding to determine custody, visitation, alimony, or child
2 support.

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

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

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

7 * * *

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

11 * * *

12 Art. 1761. Procedure in general

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

17 * * *

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

21 Art. 2323. Comparative fault

22 * * *

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

27 * * *

1 SECTION ~~4-A~~ 1. TWO-YEAR PRESCRIPTION

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

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

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

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

16 Art. 411. Liability insurance

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

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

25 §2800.27. Recoverable medical expenses; collateral sources; limitations

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

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

8 Section 6. R.S. 22:1269(B)(3) and (4) are hereby enacted to read as follows:

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

11 * * *

12 B.

13 * * *

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

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

19 * * *

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

22 Section 8. The heading of Section 1 of Chapter 4 of Title XXIV of Book III of the
 23 Civil Code and Civil Code Article 3493.10 are hereby amended and reenacted and Section
 24 1 of Chapter 4 of Title XXIV of Book III of the Civil Code, comprised of Civil Code
 25 Articles 3492 through 3493, is hereby enacted to read as follows:

26 SECTION 1. ONE-YEAR PRESCRIPTION

27 Art. 3492. Delictual actions

28 Delictual actions are subject to a liberative prescription of one year. This
 29 prescription commences to run from the day injury or damage is sustained. It does

1 not run against minors or interdicts in actions involving permanent disability and
2 brought pursuant to the Louisiana Products Liability Act or state law governing
3 product liability actions in effect at the time of the injury or damage.

4 Art. 3493. Damage to immovable property; commencement and accrual of
5 prescription

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

9 SECTION + 1-A. TWO-YEAR PRESCRIPTION

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

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

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

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

24 Art. 1732. Limitation upon jury trials

25 A trial by jury shall not be available in:

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

28 (a) If an individual petitioner stipulates or otherwise judicially admits sixty
29 days or more prior to trial that the amount of the individual petitioner's cause of

1 action does not exceed fifty thousand dollars exclusive of interest and costs, a
2 defendant shall not be entitled to a trial by jury.

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

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

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

17 ~~(2)~~(3) A summary, executory, probate, partition, mandamus, habeas corpus,
18 quo warranto, injunction, concursus, workers' compensation, emancipation,
19 tutorship, interdiction, curatorship, filiation, annulment of marriage, or divorce
20 proceeding.

21 ~~(3)~~(4) A proceeding to determine custody, visitation, alimony, or child
22 support.

23 ~~(4)~~(5) A proceeding to review an action by an administrative or municipal
24 body.

25 ~~(5)~~(6) All cases where a jury trial is specifically denied by law.

26 * * *

27 Art. 1761. Procedure in general

28 A. In cases to be tried by jury, ~~six~~ twelve jurors summoned in accordance
29 with law shall be chosen by lot to try the issues specified unless a party requests the

1 parties stipulate that the case shall be tried by ~~twelve~~ six jurors. The method of
2 calling and drawing by lot shall be at the discretion of the court.

3 * * *

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

6 Art. 411. Liability insurance

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

14 Section 11. Civil Code Article 2323(D), Code of Civil Procedure Article 1733(D),
15 R.S. 9:2800.27, and R.S. 22:1269(B)(3) and (4) are hereby repealed in their entirety.

16 Section 12.(A) This Section and Sections 1 through 7 of this Act are effective
17 August 1, 2020.

18 (B) The provisions of Section 3 of this Act shall have prospective application only
19 and shall apply only to new causes of action that arise on or after the effective date of this
20 Act.

21 (C) The provisions of Sections 8 through 11 of this Act are effective August 1, 2023,
22 if the commissioner of insurance certifies that prior to August 1, 2023, the average motor
23 vehicle insurance rates did not decrease by at least fifteen percent, accounting for inflation,
24 compared to the average motor vehicle insurance rates on January 1, 2020.

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 66 Original

2020 First Extraordinary Session

Nelson

Abstract: Limits the recovery of damages by an injured party when his liability exceeds the liability of all other persons at fault, increases the prescriptive period for tort actions from one to two years, eliminates the jury trial threshold, creates a default six-person jury with the right to request a 12-person jury, provides for the payment of a 12-person jury bond, makes an insurance policy admissible as evidence except to prove negligence, prohibits a jury from seeing evidence of an insurance policy for purposes of establishing a direct action against an insurer, and limits the amount of recoverable past medical expenses and insurance premium payments.

Comparative Fault

Present law (C.C. Art. 2323) provides that in an action for damages, the degree or percentage of fault of all persons causing or contributing to the injury, death, or loss shall be determined. Further provides that if a person suffers an injury, death, or loss partly as the result of his own negligence, the amount of damages recoverable shall be reduced in proportion to the percentage of negligence attributable to that person. Further provides that a person's claim for recovery shall not be reduced in proportion to his own negligence if the injury, death, or loss is partly the result of an intentional act.

Proposed law retains present law and provides that 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.

Prescription

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 to a two-year prescriptive period and otherwise retains two- and three-year liberative prescriptive periods.

Jury Trials

Present law (C.C.P. Art. 1732) authorizes a civil jury trial when the amount in controversy exceeds \$50,000.

Proposed law authorizes a jury trial without regard to the amount in controversy.

Present law (C.C.P. Art. 1761) provides that in civil cases to be tried by a jury, 12 jurors shall be chosen to try issues of the case, unless the parties stipulate that the case shall be tried by six jurors.

Proposed law instead provides that six jurors shall be chosen to try issues of the case, unless a party requests that the case shall be tried by 12 jurors.

Present law (C.C.P. Art. 1733) provides that a party may request a jury trial by filing a pleading to that effect. Present law (C.C.P. Arts. 1734 and 1734.1) further provides that when a case is set for trial, the court shall fix the amount of the bond, or a deposit, to cover all costs related to the trial by jury.

Proposed law retains present law and provides that the party requesting an increase in the number of jurors from six to 12 shall be responsible for half of the total jury bond or deposit.

Evidence of Liability Insurance

Present law (C.E. Art. 411) provides that a policy of insurance may be admissible as evidence, but 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.

Proposed law repeals present law and instead provides that 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.

Present law (R.S. 22:1269(B)) provides relative to direct action against a liability insurer and provides that an injured third party has the right to take direct legal action against the insurer in certain circumstances.

Proposed law retains present law and provides that the caption of any direct action against the insurer shall not include the name of or reference to an insurer.

Proposed law further provides that in a direct action against the insurer, 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.

Collateral Source

Proposed law (R.S. 9:2800.27) provides that 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, and not the amount billed.

Proposed law further provides that 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.

Effectiveness

Effective August 1, 2020.

Becomes ineffective August 1, 2023, if the commissioner of insurance certifies that prior to August 1, 2023, the average motor vehicle insurance rates did not decrease by at least 15%, accounting for inflation, compared to the average motor vehicle insurance rates on January 1, 2020.

(Amends the heading of §1 of Ch. 4 of Title XXIV of Book III of the C.C., the heading of §1-A of Ch. 4 of Title XXIV of Book III of the C.C., and C.C. Art. 3493.10, C.C.P. Arts. 1732 and 1761(A), and C.E. Art. 411; Adds C.C. Art. 2323(D) and §1 of Ch. 4 of Title XXIV of Book III of the C.C., comprised of Arts. 3492-3493, C.C.P. Art. 1733(D), R.S.

9:2800.27, and R.S. 22:1269(B)(3) and (4); Repeals C.C. Art. 2323(D) and §1 of Ch. 4 of Title XXIV of Book III of the C.C., C.C.P. Art. 1733(D), R.S. 9:2800.27, and R.S. 22:1269(B)(3) and (4)