
DIGEST

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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))