

2022 Regular Session

SENATE BILL NO. 103

BY SENATOR FOIL

MALPRACTICE. Provides relative to legal malpractice. (7/1/22)

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AN ACT

To amend and reenact R.S. 9:5605(A) and (B), and to enact R.S. 9:5605.2, relative to legal malpractice; to provide relative to filing time periods; to provide relative to the burden of proof; to provide relative to collectability of damages; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 9:5605(A) and (B) are hereby amended and reenacted and R.S. 9:5605.2 is hereby enacted to read as follows:

§5605. Actions for legal malpractice

A.(1) No action for damages against any attorney at law duly admitted to practice in this state, any partnership of such attorneys at law, or any professional corporation, company, organization, association, enterprise, or other commercial business or professional combination authorized by the laws of this state to engage in the practice of law, whether based upon tort, or breach of contract, or otherwise, arising out of an engagement to provide legal services shall be brought unless filed in a court of competent jurisdiction and proper venue within one year from the date of the alleged act, omission, **error**, or neglect, or within one year from the date that

1 the alleged act, omission, or neglect is discovered or should have been discovered;  
 2 ~~however, even as to actions filed within one year from the date of such discovery,~~  
 3 in all events such actions shall be filed at the latest within three years from the date  
 4 of the alleged act, omission, **error**, or neglect.

5 **(2) In addition to any other requirement in this Section, if an action for**  
 6 **damages against an attorney at law duly admitted to practice in this state is filed**  
 7 **in a court of competent jurisdiction in this state, and that action is found to be**  
 8 **timely under this Subsection, then the party bringing the action for damages**  
 9 **shall prove, by a preponderance of the evidence:**

10 **(a) The engagement to provide legal services would have resulted in a**  
 11 **collectable monetary award.**

12 **(b) The value of the monetary award in the absence of the occurrence of**  
 13 **the alleged act, omission, error, or neglect by the attorney at law.**

14 B. The provisions of this Section are remedial and apply to all causes of  
 15 action without regard to the date when the alleged act, omission, or neglect occurred.  
 16 However, with respect to any alleged act, omission, **error**, or neglect occurring prior  
 17 to September 7, 1990, actions must, in all events, be filed in a court of competent  
 18 jurisdiction and proper venue on or before September 7, 1993, without regard to the  
 19 date of discovery of the alleged act, omission, **error**, or neglect. The one-year and  
 20 three-year periods of limitation provided in Subsection A of this Section are  
 21 peremptive periods within the meaning of Civil Code Article 3458 and, in  
 22 accordance with Civil Code Article 3461, may not be renounced, interrupted, or  
 23 suspended.

24 \* \* \*

25 **§5605.2. Collectability rule**

26 **In any action for damages by a client against an attorney, the client's**  
 27 **recovery against the attorney shall be limited to the amount of damages which**  
 28 **the attorney shows by a preponderance of the evidence would have been the**  
 29 **maximum amount of damages that the client could have collected in the client's**

1            **underlying action in which he was represented by the attorney.**

2            Section 2. The provisions of this Act are intended to legislatively overrule the  
3 holding that collectability of damages against the tortfeasor in an underlying lawsuit is not  
4 an affirmative defense to a legal malpractice action, as held in the Louisiana Supreme Court  
5 decision, *Ewing v. Westport Ins. Co.*, 315 So.3d 175 (La. 2020).

6            Section 3. This Act shall become effective on July 1, 2022.

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The original instrument was drafted by Whitney Kauffeld. The following digest, which constitutes no part of the legislative instrument, was prepared by Lebra Bias.

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	DIGEST	
SB 103 Engrossed	2022 Regular Session	Foil

Present law provides for the time limitations for filing a legal malpractice claim.

Proposed law retains present law and provides an additional burden on the plaintiff to prove by a preponderance of evidence: (1) that the representation by the attorney would have concluded in a collectable monetary award amount and (2) the value of that collectable award amount had the attorney not committed the alleged malpractice.

Proposed law provides that the client's recovery against the attorney is limited to the amount that would have been awarded in the client's underlying claim in which the client was represented by the attorney.

Effective July 1, 2022.

(Amends R.S. 9:5605(A) and (B); adds R.S. 9:5605.2)

Summary of Amendments Adopted by Senate

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

1. Makes technical changes.
2. Limits collectability of damages to the amount that would have been awarded in the client's underlying claim in which the client was represented by the attorney.
3. Changes effective date from August 1, 2022, to July 1, 2022.