

2022 Regular Session

SENATE BILL NO. 103

BY SENATOR FOIL

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

1 AN ACT

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

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 9:5605(A) and (B) are hereby amended and reenacted and R.S.
8 9:5605.2 is hereby enacted to read as follows:

9 §5605. Actions for legal malpractice

10 A. No action for damages against any attorney at law duly admitted to
11 practice in this state, any partnership of such attorneys at law, or any professional
12 corporation, company, organization, association, enterprise, or other commercial
13 business or professional combination authorized by the laws of this state to engage
14 in the practice of law, whether based upon tort, or breach of contract, or otherwise,
15 arising out of an engagement to provide legal services shall be brought unless filed
16 in a court of competent jurisdiction and proper venue within one year from the date
17 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 B. The provisions of this Section are remedial and apply to all causes of
6 action without regard to the date when the alleged act, omission, or neglect occurred.
7 However, with respect to any alleged act, omission, error, or neglect occurring prior
8 to September 7, 1990, actions must, in all events, be filed in a court of competent
9 jurisdiction and proper venue on or before September 7, 1993, without regard to the
10 date of discovery of the alleged act, omission, error, or neglect. The one-year and
11 three-year periods of limitation provided in Subsection A of this Section are
12 peremptive periods within the meaning of Civil Code Article 3458 and, in
13 accordance with Civil Code Article 3461, may not be renounced, interrupted, or
14 suspended.

15 * * *

16 **§5605.2. Collectability rule**

17 **In any action for damages by a client against an attorney, the client's**
18 **recovery against the attorney shall be limited to the amount of damages which**
19 **the attorney shows by a preponderance of the evidence would have been the**
20 **maximum amount of damages that the client could have collected in the client's**
21 **underlying action in which he was represented by the attorney.**

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

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

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

DIGEST

SB 103 Reengrossed

2022 Regular Session

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

Proposed law retains present law and removes the 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)

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.

Summary of Amendments Adopted by Senate

Senate Floor Amendments to engrossed bill

1. Removes the 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.