DIGEST

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HB 42 Original 2020 First Extraordinary Session Gregory Miller

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 reduced damages for amounts paid or payable from collateral sources, requires the disclosure of insurance policy limits in certain circumstances, 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.

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 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.

Jury Trials

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 $25,000, beginning Jan. 1, 2021.

Proposed law further provides that the jury trial threshold for tort actions shall be reduced to $10,000 beginning Jan. 1, 2024, if the commissioner of insurance certifies that automobile insurance rates, on average, reduced by at least 10% between Jan.1, 2021, and Jan. 1, 2022.

Rcovery of Past Medical Expenses (Collateral Source)

Proposed law (R.S. 9:2800.27) provides for definitions:

(1) "Cases" means quasi-delictual or delictual actions where a person suffers injury, death, or loss.

(2) "Contracted healthcare provider" means any healthcare provider, hospital, ambulance service, or their heirs or assignees that have entered into a contract or agreement directly with a health insurance issuer or with a health insurance issuer through a network of providers for the provision of covered healthcare services.

(3) "Cost sharing amount" shall mean any co-pay, deductible, or any other non-covered amount which the claimant or his representative owes to the contracted healthcare provider.

(4) "Health insurance issuer" means Medicare, Medicaid, the Employee Retirement Income Security Act (ERISA), and any entity that offers health insurance coverage through a policy or certificate of insurance subject to state law that regulates the business of insurance, including a health maintenance organization, federal or nonfederal governmental plan, and the Office of Group Benefits.

Proposed law provides that in cases where a claimant's medical expenses have been paid, in whole or in part, by a health insurance issuer to a contracted healthcare provider, or pursuant to the La. Workers' Compensation Law, recovery of the paid medical expenses is limited to twice the amount actually paid to the medical provider by the health insurance issuer and any cost sharing amounts which have been paid or are owed by the claimant or other payor or the amount actually billed, whichever is less.

Proposed law provides that in cases where the healthcare provider has not made a claim for payment from a health insurance issuer or has not been paid by a health insurance issuer, in whole or in part, and a claimant, the claimant's attorney, or another third party pays or agrees to pay medical expenses to a healthcare provider, then the claimant may recover the amount owed or paid, excluding any negotiated discount.

Proposed law does not apply to the right to recover damages for future medical treatment, services, surveillance, or procedures of any kind incurred after the date of entry of judgment by the court or an arbitration award or to medical malpractice cases or cases brought pursuant to the La. Governmental Claims Act.

Proposed law provides that whether any person has paid or agreed to pay, in whole or in part, any of a claimant's medical expenses, shall not be disclosed to a jury and the jury shall be informed only of the amount actually billed by a healthcare provider for a claimant's medical treatment. Proposed law further provides that if any reduction of the amount of past medical expenses awarded by the jury is required by Subsection B of this Section, this reduction shall be made by the court after trial.

Proposed law provides that in cases where a plaintiff's medical expenses incurred as a result of the

injury at issue have been paid in whole or in part by a health insurance issuer the court may award, as an item of damages to the plaintiff, the cost of procuring the health insurance policy for which the plaintiff received the benefit of coverage on the medical expenses incurred as a result of the incident at issue during the period from the date of injury until the date court renders judgment in the case. The court may award policy premiums as damages only if the amount exceeds the total amount of damages for medical expenses, and then only in lieu of damages for medical expenses.

Direct Action Against the Insurer

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 action 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) 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 plaintiff is seeking recovery pursuant to uninsured or underinsured policy.

(6) When the tortfeasor's liability insurer has reserved the right to dispute whether the policy at issue provides coverage for some or all of the claims asserted in the action, other than limits of coverage provided by the policy.

(7) When the tortfeasor's liability insurer has denied coverage to the tortfeasor for some or all of the claims asserted in the action.

(8) The cause of action is for damages as a result of an offense or quasi offense related to asbestos exposure.

(9) The insured is deceased.

Proposed law provides that in a direct action against the insurer, the insured, and not the insurer, shall be the named party in the caption.

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 retains present law.

Proposed law provides that evidence of the existence of applicable liability insurance coverage shall be admissible in a direct action against the insurer. However, the name of the insurer and the limits of the applicable insurance policy shall not be admissible.

Disclosure of Policy Limits

Proposed law requires an automobile insurer to provide liability policy limits to a third-party claimant or his attorney within 30 days of receipt of a written request from the claimant or his attorney.

Proposed law requires the insurer to disclose the following:

(1) The insurer's name.

(2) The name of each insured.

(3) An indication of coverage limits or that the insurer did not issue a policy that provides coverage for the automobile accident.

Proposed law requires a claimant or his attorney to make a written request for such disclosure. The written request must include:

(1) The specific nature of the claim being asserted.

(2) A copy of the accident report from which the claim is derived, if available.

Proposed law allows an insurer, in order to respond to a written request, to request more information if the written request by the claimant or his attorney is insufficient.

Proposed law allows an insurer to provide the declaration page for each policy that may provide coverage to comply with proposed law.

Proposed law provides that complying with proposed law does not create a waiver of defense, is not an admission of liability, and is not admissible in evidence.

Proposed law provides that the information obtained pursuant to proposed law shall remain confidential and shall be destroyed by the recipient upon final disposition of the claim.

Proposed law provides that the provisions of proposed law shall be enforced through present law.

Evidence of Failure to Wear a Safety Belt

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.

Department of Insurance

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.

Effective Date

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 1732(1), and R.S. 22:1269(B); Adds R.S. 9:2800.27 and R.S. 22:1892.2; Repeals R.S. 32:295.1(E))