

2020 First Extraordinary Session

HOUSE BILL NO. 43

BY REPRESENTATIVE GAROFALO

CIVIL/ACTIONS: Makes revisions to the Omnibus Premium Reduction Act of 2020 (Item #40)

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AN ACT

To amend and reenact Code of Civil Procedure Article 1732(1), R.S. 9:2800.25(C), and R.S. 22:1269(B)(1), to enact Code of Civil Procedure Article 1732.1, and to repeal R.S. 9:2800.25(D), relative to suits for delictual and quasi delictual actions; to provide for jury trials; to lower the jury trial threshold for certain actions; to provide for the number of jurors for certain actions; to provide for rendering a verdict; to repeal provisions relative to recovery of premiums paid; to provide for the recovery of medical expenses when paid pursuant to the Louisiana Workers' Compensation Law; to provide relative to the right of direct action against an insurer; to provide for effectiveness; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Code of Civil Procedure Article 1732(1) is hereby amended and reenacted and Code of Civil Procedure Article 1732.1 is hereby enacted to read as follows:

Art. 1732. Limitation upon jury trials

A trial by jury shall not be available in:

(1) A suit brought pursuant to the provisions of Chapter 3 of Title V of Book III of the Civil Code, where the amount of no individual petitioner's cause of action exceeds ~~ten~~ five thousand dollars exclusive of interest or costs.

\* \* \*

1 Art. 1732.1. Limitation upon jury trials; delictual and quasi delictual actions

2 Pursuant to Article 1732, and notwithstanding the provisions of Articles 1761  
3 and 1797, if a suit for a quasi delictual or delictual action demands between five  
4 thousand dollars and thirty-five thousand dollars exclusive of interest and costs and  
5 a jury is requested by at least one party, the following provisions apply:

6 (1) A jury shall be selected with six jurors and one alternate.

7 (2) Five jurors must concur to render a verdict, unless the parties stipulate  
8 otherwise.

9 Section 2. R.S. 9:2800.25(C) is hereby amended and reenacted to read as follows:

10 §2800.25. Recoverable medical expenses; collateral sources; limitations; evidence

11 \* \* \*

12 ~~C. The court shall award the plaintiff as damages one and one-half times the~~  
13 ~~amount of premiums paid for a period not to exceed one year prior to the date of the~~  
14 ~~accident or occurrence for procuring the health insurance policy providing benefits~~  
15 ~~to the plaintiff for the treatment or services received. In cases where a plaintiff's~~  
16 medical expenses are paid pursuant to the Louisiana Workers' Compensation Law  
17 as provided in R.S. 23:1020.1 et seq., the plaintiff's recovery of medical expenses is  
18 limited to the amount payable under the medical payments fee schedule of the  
19 Louisiana Workers' Compensation Law.

20 Section 3. R.S. 22:1269(B)(1) is hereby amended and reenacted to read as follows:

21 §1269. Liability policy; insolvency or bankruptcy of insured and inability to effect  
22 service of citation or other process; direct action against insurer

23 \* \* \*

24 B.(1) The injured person or his survivors or heirs mentioned in Subsection  
25 A of this Section shall have a right of direct action against the insurer within the  
26 terms and limits of the policy only when at least one of the following applies:

27 (a) The insured has been adjudged bankrupt by a court of competent  
28 jurisdiction or when proceedings to adjudge an insured bankrupt have been  
29 commenced before a court of competent jurisdiction.

1 (b) The insured is insolvent or dissolved.

2 (c) ~~Service of citation or other process cannot be made on the insured.~~

3 (d) ~~When the~~ The cause of action is for damages as a result of an offense or  
4 quasi offense between children and their parents or between married persons.

5 (e)(d) ~~When the~~ The plaintiff is seeking recovery pursuant to an uninsured  
6 or underinsured policy.

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

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

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

14 (i)(f) The insured is deceased.

15 \* \* \*

16 Section 4. R.S. 9:2800.25(D) is hereby repealed in its entirety.

17 Section 5.(A) The provisions of Section 1 of this Act that amend and reenact Code  
18 of Civil Procedure Article 1732(1) supercede the provisions of Section 3 of the Act that  
19 originated as Senate Bill 418 of the 2020 Regular Session of the Legislature of Louisiana  
20 that amend and reenact Code of Civil Procedure Article 1732(1).

21 (B) The provisions of Section 2 of this Act that amend and reenact R.S.  
22 9:2800.25(C) and the provision of Section 4 of this Act that repeals R.S. 9:2800.25(D)  
23 supercede the provisions of Section 4 of the Act that originated as Senate Bill 418 of the  
24 2020 Regular Session of the Legislature of Louisiana that enact R.S. 9:2800.25(C) and (D).

25 (C) The provisions of Section 3 of this Act that amend and reenact R.S.  
26 22:1269(B)(1) supercede the provisions of Section 5 of the Act that originated as Senate Bill  
27 418 of the 2020 Regular Session of the Legislature of Louisiana that enact R.S.  
28 22:1269(B)(1).

1 Section 6.(A) Sections 1 through 4 of this Act shall become effective when the Act  
2 that originated as Senate Bill 418 of the 2020 Regular Session of the Legislature of  
3 Louisiana becomes effective.

4 (B) Section 5 and this Section of this Act shall become effective on January 1, 2021.

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#### 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)]

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HB 43 Original

2020 First Extraordinary Session

Garofalo

**Abstract:** Makes revisions to the Omnibus Premium Reduction Act of 2020 to lower the jury trial threshold from \$10,000 to \$5,000, to require six jurors for tort actions with an amount in controversy between \$5,000 and \$35,000, to require five jurors to render a verdict, to repeal provisions relative to evidence of and the recovery of premiums paid, to provide for the recovery of medical expenses when paid pursuant to the Louisiana Workers' Compensation Law, and to limit the right of direct action against an insurer.

Present law (as provided in the Act that originated as Senate Bill 418 of the 2020 Regular Session, effective Jan. 1, 2021) authorizes a jury trial in tort actions where the amount in controversy exceeds \$10,000. Proposed law lowers the threshold to \$5,000.

Proposed law provides that if a suit for a tort action demands between \$5,000 and \$35,000 and a jury is requested by at least one party, a jury shall be selected with six jurors and one alternate, and five jurors must concur to render a verdict, unless the parties stipulate otherwise.

Present law (as provided in the Act that originated as Senate Bill 418 of the 2020 Regular Session, effective Jan. 1, 2021) provides that when a plaintiff's medical expenses have been paid by a health insurance company or Medicare, plaintiff's recovery of medical expenses is limited to the amount actually paid to the health care provider by the insurer or Medicare, and not the amount billed. Proposed law retains proposed law.

Proposed law provides that in cases where a plaintiff's medical expenses are paid pursuant to the La. Workers' Compensation Law, the plaintiff's recovery of medical expenses is limited to the amount payable under the medical payments fee schedule of the La. Workers' Compensation Law.

Present law (as provided in the Act that originated as Senate Bill 418 of the 2020 Regular Session, effective Jan. 1, 2021) limits the time period for which the court may receive evidence of the amount of insurance premiums paid and applies a multiplier of 1.5 to the amount of premiums as an award of damages.

Present law (as provided in the Act that originated as Senate Bill 418 of the 2020 Regular Session, effective Jan. 1, 2021) further provides that in an action where a person suffers injury, death, or loss, the court may receive evidence concerning any amount which has been paid or contributed as of the date it enters judgment, by or on behalf of, the claimant or members of his immediate family to secure his right to any private insurance benefit which he has received as a result of such injury or death.

Proposed law repeals present law related to evidence and award of insurance premiums paid.

Present law (as provided in the Act that originated as Senate Bill 418 of the 2020 Regular Session, effective Jan. 1, 2021) permits an 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 an 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 eliminates the right of direct action in the following instances:

- (1) Service of citation or other process cannot be made on the insured.
- (2) 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.
- (3) When the tortfeasor's liability insurer has denied coverage to the tortfeasor for some or all of the claims asserted in the action.

The provisions of proposed law supercede conflicting provisions in the Act that originated as Senate Bill 418 of the 2020 Regular Session.

Effective Jan. 1, 2021.

(Amends C.C.P. Art. 1732(1), R.S. 9:2800.25(C), and R.S. 22:1269(B)(1); Adds C.C.P. Art. 1732.1; Repeals R.S. 9:2800.25(D))