

2020 First Extraordinary Session

HOUSE BILL NO. 42

BY REPRESENTATIVE GREGORY MILLER

INSURANCE/AUTOMOBILE: Enacts the Omnibus Premium Reduction Act of 2020 (Item #40)

1 AN ACT

2 To amend and reenact Civil Code Articles 3492 and 3493.10, Code of Civil Procedure

3 Articles 1732 and 1732(1), and R.S. 22:1269(B), to enact R.S. 9:2800.27 and R.S.

4 22:1892.2, and to repeal R.S. 32:295.1(E), relative to liability; to provide relative to

5 civil liability and to motor vehicle liability coverage; to extend the general

6 prescriptive period for delictual actions involving motor vehicle accidents; to

7 prohibit the court from awarding a plaintiff the amount of medical expenses reduced

8 or paid by a collateral source; to provide relative to collateral source, prescription,

9 jury trials, and jury trial thresholds under certain circumstances; to provide relative

10 to the right of direct action against an insurer; to require disclosure of policy limits

11 to certain persons; to provide for procedure for disclosure; to provide for

12 confidentiality; to repeal provisions prohibiting certain evidence regarding the failure

13 to wear safety belts; to require certain annual rate filings with the commissioner of

14 insurance; to provide for a mandatory rate reduction under certain circumstances; to

15 provide for an effective date; and to provide for related matters.

16 Be it enacted by the Legislature of Louisiana:

17 Section 1. The provisions of this Act shall be known as the "Omnibus Premium

18 Reduction Act of 2020". Whereas motor vehicle accident claims comprise a major portion

19 of the lawsuits filed in Louisiana's state courts, and whereas the enactment of civil justice

20 reforms and their general applicability have a positive effect toward the reduction of the cost

1 of motor vehicle insurance, the Omnibus Premium Reduction Act of 2020 is designed to
2 achieve a significant reduction in the premium rate of motor vehicle accidents and insurance
3 by legislating in regard not only to the specific motor vehicle accidents and insurance suits,
4 but also to civil law issues of general applicability thus correcting the imbalances and abuses
5 which are prevalent in Louisiana's current civil law and motor vehicle insurance systems,
6 thereby resulting in a direct cost savings to all citizens of the state of Louisiana.

7 Section 2. Civil Code Articles 3492 and 3493.10 are hereby amended and reenacted
8 to read as follows:

9 Art. 3492. Delictual actions

10 ~~Delictual actions~~ Except as provided in Civil Code Article 3493.10, delictual
11 actions are subject to a liberative prescription of one year. This prescription
12 commences to run from the day injury or damage is sustained. It does not run against
13 minors or interdicts in actions involving permanent disability and brought pursuant
14 to the Louisiana Products Liability Act or state law governing product liability
15 actions in effect at the time of the injury or damage.

16 * * *

17 Art. 3493.10. Delictual actions; two-year prescription; criminal act

18 Delictual actions for injury or damage arising from the operation or control
19 of any motor vehicle, aircraft, watercraft, or other means of conveyance, or those
20 which arise due to damages sustained as a result of an act defined as a crime of
21 violence under Chapter 1 of Title 14 of the Louisiana Revised Statutes of 1950,
22 except as provided in Article 3496.2, are subject to a liberative prescription of two
23 years. This prescription commences to run from the day injury or damage is
24 sustained. It does not run against minors or interdicts in actions involving permanent
25 disability and brought pursuant to the Louisiana Products Liability Act or state law
26 governing product liability actions in effect at the time of the injury or damage.

27 Section 3. Code of Civil Procedure Article 1732 is hereby amended and reenacted
28 to read as follows:

1 Art. 1732. Limitation upon jury trials

2 A trial by jury shall not be available in:

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

6 (2) A suit, other than one brought pursuant to Chapter 3 of Title V of Book
7 III of the Civil Code, where the amount of no individual petitioner's cause of action
8 exceeds ~~twenty~~ thirty-five thousand dollars exclusive of interest and costs, except as
9 follows:

10 (a) If an individual petitioner stipulates or otherwise judicially admits sixty
11 days or more prior to trial that the amount of the individual petitioner's cause of
12 action does not exceed ~~twenty~~ thirty-five thousand dollars exclusive of interest and
13 costs, a defendant shall not be entitled to a trial by jury.

14 (b) If an individual petitioner stipulates or otherwise judicially admits for the
15 first time less than sixty days prior to trial that the amount of the individual
16 petitioner's cause of action does not exceed ~~twenty~~ thirty-five thousand dollars
17 exclusive of interest and costs, any other party may retain the right to a trial by jury
18 if that party is entitled to a trial by jury pursuant to this Article and has otherwise
19 complied with the procedural requirements for obtaining a trial by jury.

20 (c) Notwithstanding Subsubparagraphs (a) and (b) of this Subparagraph, if,
21 as a result of a compromise or dismissal of one or more claims or parties which
22 occurs less than sixty days prior to trial, an individual petitioner stipulates or
23 otherwise judicially admits that the amount of the individual petitioner's cause of
24 action does not exceed ~~twenty~~ thirty-five thousand dollars exclusive of interest and
25 costs, a defendant shall not be entitled to a trial by jury.

26 ~~(2)~~(3) A suit on an unconditional obligation to pay a specific sum of money,
27 unless the defense thereto is forgery, fraud, error, want, or failure of consideration.

28 ~~(3)~~(4) A summary, executory, probate, partition, mandamus, habeas corpus,
29 quo warranto, injunction, concursus, workers' compensation, emancipation,

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

6 B. In cases where a claimant's medical expenses have been paid, in whole
7 or in part, by a health insurance issuer to a contracted healthcare provider, or
8 pursuant to the Louisiana Workers' Compensation Law as provided in R.S. 23:1020.1
9 et seq., recovery of the paid medical expenses is limited to twice the amount actually
10 paid to the medical provider by the health insurance issuer and any cost-sharing
11 amounts which have been paid or are owed by the claimant or other payor to the
12 contracted healthcare provider or the amount actually billed, whichever is less.

13 C. In cases where the healthcare provider has not made a claim for payment
14 from a health insurance issuer or has not been paid by a health insurance issuer, in
15 whole or in part, and a claimant, the claimant's attorney, or another third party, other
16 than a health insurance issuer, pays, agrees to pay, or has the obligation to pay
17 subject to a valid lien or otherwise, medical expenses to any healthcare provider for
18 medical treatment provided to the claimant, then the claimant may recover the
19 amount owed, paid, or guaranteed to be paid to the healthcare provider, excluding
20 any negotiated discount.

21 D. The provisions of this Section are not applicable to the right to recover
22 damages for future medical treatment, services, surveillance, or procedures of any
23 kind incurred after the date of entry of judgment by the court or an arbitration award.

24 E. The provisions of this Section are not applicable to medical malpractice
25 cases brought pursuant to R.S. 40:1231.1 et seq. or R.S. 40:1237.1 et seq. or cases
26 brought pursuant to the Louisiana Governmental Claims Act, as provided in R.S.
27 13:5101 et seq.

28 F. Whether any person has paid or agreed to pay, in whole or in part, any of
29 a claimant's medical expenses, shall not be disclosed to a jury. The jury shall be

1 informed only of the total of the amount actually paid by the health insurance issuer
2 and any cost-sharing amounts which have been paid or owed by the claimant or other
3 payor for the claimant's medical treatment. If any reduction of the amount of past
4 medical expenses awarded by the jury is required by Subsection B of this Section,
5 this reduction shall be made by the court after trial.

6 G. In cases where a plaintiff's medical expenses incurred as a result of the
7 injury at issue have been paid in whole or in part by a health insurance issuer the
8 court may award, as an item of damages to the plaintiff, the cost of procuring the
9 health insurance policy for which the plaintiff received the benefit of coverage on the
10 medical expenses incurred as a result of the incident at issue during the period from
11 the date of injury until the date the court renders judgment in the case. The court
12 may award damages as provided for in this Subsection only if the damages exceed
13 the total amount of damages awarded pursuant to Subsections B and C of this
14 Section, and then only in lieu of the damages otherwise provided for in Subsections
15 B and C of this Section.

16 Section 6. R.S. 22:1269(B) is hereby amended and reenacted and R.S. 22:1892.2 is
17 hereby enacted to read as follows:

18 §1269. Liability policy; insolvency or bankruptcy of insured and inability to effect
19 service of citation or other process; direct action against insurer

20 * * *

21 B.(1) The injured person or his survivors or heirs mentioned in Subsection
22 A of this Section, ~~at their option,~~ shall have a right of direct action against the insurer
23 within the terms and limits of the policy; ~~and, such action may be brought against the~~
24 ~~insurer alone, or against both the insured and insurer jointly and in solido, in the~~
25 ~~parish in which the accident or injury occurred or in the parish in which an action~~
26 ~~could be brought against either the insured or the insurer under the general rules of~~
27 ~~venue prescribed by Code of Civil Procedure Art. 42 only; however, such action may~~
28 ~~be brought against the insurer alone~~ only when at least one of the following applies:

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

4 (b) The insured is insolvent or dissolved.

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

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

9 (e) ~~When the insurer is an uninsured motorist carrier.~~ The plaintiff is seeking
10 recovery pursuant to an uninsured or underinsured policy.

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

14 (g) The tortfeasor's liability insurer has denied coverage to the tortfeasor for
15 some or all of the claims asserted in the action.

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

18 (i) The insured is deceased.

19 (2) This ~~right of~~ direct action shall exist whether or not the policy of
20 insurance sued upon was written or delivered in the state of Louisiana and whether
21 or not such policy contains a provision forbidding such direct action, provided the
22 accident or injury occurred within the state of Louisiana. Nothing contained in this
23 Section shall be construed to affect the provisions of the policy or contract if such
24 provisions are not in violation of the laws of this state.

25 (3) The right of direct action may be brought against the insurer alone in the
26 parish in which the accident or injury occurred or in the parish in which an action
27 could be brought against either the insured or the insurer under the general rules of
28 venue prescribed by Code of Civil Procedure Article 42 only. The caption of any

1 suit brought pursuant to the provisions of this Subsection shall not include the name
2 of the insurer.

3 (4) When the circumstances enumerated in Paragraph (1) of this Subsection
4 do not apply, neither the injured person nor the survivors or heirs mentioned in
5 Subsection A of this Section shall have a right of direct action against the insurer.
6 The injured person or his survivor or heirs shall bring an action against the insured,
7 wherein a court of competent jurisdiction may render a finding of liability and
8 damages against the insured. Nothing contained in this Section shall be construed to
9 affect the insured's right to enforce the provisions of the policy or contract against
10 the insurer.

11 (5) Evidence of the existence of applicable liability insurance coverage shall
12 be admissible in an action brought against the insured or the insurer. However, the
13 name of the insurer and the limits of the applicable insurance policy shall not be
14 admissible.

15 * * *

16 §1892.2. Disclosure of policy coverage information upon written request;
17 procedure; confidentiality

18 A.(1) Every insurer providing automobile insurance coverage in this state
19 and that is or may be liable to pay all or part of a third-party claim arising out of an
20 automobile accident shall provide, within thirty days of receiving a written request
21 from the claimant or his attorney, a statement that includes each known policy of
22 motor vehicle liability insurance issued by it that may provide coverage for the
23 subject accident, including excess or umbrella insurance. The statement shall
24 include the name of the insurer, the name of each insured, and the limits of coverage,
25 or that the insurer did not issue a policy that might provide coverage for the
26 automobile accident.

27 (2)(a) The written request shall include both of the following:

28 (i) The specific nature of the claim being asserted.

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

3 (b) If the written request is made by an attorney, the request shall state that
4 the attorney is authorized to make such a request and provide the name of the
5 claimant upon whose behalf the request is made.

6 (c) The written request shall be delivered to the insurer's designated agent
7 for service of process by certified mail.

8 B. If the written request provided for in Subsection A of this Section does
9 not contain sufficient information to allow compliance with this Section, the insurer
10 upon whom the request was made shall respond to the claimant or his attorney in
11 writing, sent by certified mail to the address provided by the claimant or his attorney
12 in the original request, stating the specific additional information needed to respond
13 to the request.

14 C. An insurer that provides a copy of the declaration page of each policy that
15 may provide third-party coverage shall be in compliance with the requirements of
16 this Section.

17 D. The information provided to a claimant or his attorney as required by
18 Subsection A of this Section shall not create a waiver of any defenses to coverage
19 available to the insurer, shall not be deemed an admission of liability by the insurer
20 or its insured, and shall not be admissible in evidence.

21 E. The information provided to a claimant or his attorney as required in
22 Subsection A of this Section shall be amended upon the discovery of facts
23 inconsistent with or in addition to the information provided.

24 F. The information received by a claimant or his attorney pursuant to this
25 Section is confidential and shall not be disclosed to any outside party. Upon final
26 disposition of the claim, the claimant, or his attorney, shall destroy all information
27 received pursuant to this Section.

28 G. The provisions of this Section shall be enforced through the provisions
29 of the Louisiana Insurance Code.

1 Section 7. R.S. 32:295.1(E) is hereby repealed in its entirety.

2 Section 8. Pursuant to the provisions of this Act, every motor vehicle insurer
3 authorized to transact business in the state of Louisiana shall make a motor vehicle policy
4 rate filing with the Department of Insurance at least once every twelve months for the
5 thirty-six-month period following the effective date of this Act and shall reduce rates when
6 actuarially justified.

7 Section 9.(A) This Section and Sections 1 through 3 and 5 through 8 of this Act shall
8 become effective on January 1, 2021, shall have prospective application only, and shall not
9 apply to a cause of action arising or action pending prior to January 1, 2021.

10 (B) Section 4 of this Act shall be effective January 1, 2024, if the commissioner of
11 insurance certifies that on January 1, 2022, premium rates for automobile insurance, on
12 average, are at least ten percent lower than they were on January 1, 2021. Section 4 of this
13 Act shall have prospective application only and shall not apply to a cause of action arising
14 or action pending prior to January 1, 2024.

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)]

HB 42 Engrossed

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.

Recovery 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 copay, 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, 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 paid by the health insurance issuer and any cost-

sharing amounts which have been paid or owed for the 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 proposed law, 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.

Present law provides that the right of direct action shall exist whether or not the policy of insurance sued upon was written or delivered in La. and whether or not such policy contains a provision forbidding such direct action, provided the accident or injury occurred within La.

Proposed law retains present law.

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 an action against the insured or 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, 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. Arts. 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))

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill:

1. Make technical changes.
2. Reinstate present law allowing for a direct action against the insurer for policies issued out of state or that include provisions forbidding a direct action.
3. Provide that evidence of the existence of applicable liability insurance coverage shall be admissible in any action brought against the insured or insurer and not with limitation to direct actions alone.