

2020 Regular Session

SENATE BILL NO. 418

BY SENATOR TALBOT

LIABILITY INSURANCE. Enacts the Omnibus Premium Reduction Act of 2020. (1/1/21)

1 AN ACT
2 To amend and reenact Civil Code Articles 3492 and 3493.10, Code of Civil Procedure
3 Article 1732(1) and R.S. 22:1269 (B), to enact R.S. 9:2800.25, and to repeal R.S.
4 22:333(E) and R.S. 32:295.1(E), relative to liability; to provide relative to civil
5 liability and to motor vehicle liability coverage; to extend the general prescriptive
6 period for delictual actions involving motor vehicle accidents; to prohibit the court
7 from awarding a plaintiff the amount of medical expenses reduced or paid by a
8 collateral source; to provide relative to collateral source, prescription, jury trials, and
9 jury trial thresholds under certain circumstances; to provide relative to the right of
10 direct action against an insurer; to repeal provisions prohibiting certain evidence
11 regarding the failure to wear safety belts; to require certain annual rate filings with
12 the commissioner of insurance; to provide for a mandatory rate reduction under
13 certain circumstances; to provide for an effective date; and to provide for related
14 matters.

15 Be it enacted by the Legislature of Louisiana:

16 Section 1. The provisions of this Act shall be known as the "Omnibus Premium
17 Reduction Act of 2020". Whereas motor vehicle accident claims comprise a major portion

1 of the lawsuits filed in Louisiana's state courts, and whereas the enactment of civil justice
 2 reforms and their general applicability have a positive effect toward the reduction of the cost
 3 of motor vehicle insurance, the "Omnibus Premium Reduction Act of 2020" is designed to
 4 achieve a significant reduction in the premium rate of motor vehicle accidents and insurance
 5 by legislating in regard not only to the specific motor vehicle accidents and insurance suits,
 6 but also to civil law issues of general applicability. A second purpose of the Omnibus
 7 Premium Reduction Act of 2020 is to further encourage all persons who own or operate
 8 motor vehicles on the public streets and highways of this state to comply with the Motor
 9 Vehicle Safety Responsibility Law by correcting the imbalances and abuses which are
 10 prevalent in Louisiana's current civil law and motor vehicle insurance systems, thereby
 11 resulting in a direct cost savings to all citizens of the state of Louisiana.

12 Section 2. Civil Code Article 3492 and 3493.10 are hereby amended and reenacted
 13 to read as follows:

14 Art. 3492. Delictual actions

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

21 * * *

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

23 Delictual actions **for injury or damage arising from the operation or**
 24 **control of any motor vehicle, aircraft, watercraft, or other means of conveyance,**
 25 **or those** which arise due to damages sustained as a result of an act defined as a crime
 26 of violence under Chapter 1 of Title 14 of the Louisiana Revised Statutes of 1950,
 27 except as provided in Article 3496.2, are subject to a liberative prescription of two
 28 years. This prescription commences to run from the day injury or damage is
 29 sustained. **It does not run against minors or interdicts in actions involving**

1 **permanent disability and brought pursuant to the Louisiana Products Liability**
2 **Act or state law governing product liability actions in effect at the time of the**
3 **injury or damage.**

4 Section 3. Code of Civil Procedure Article 1732(1) is hereby amended and reenacted
5 to read as follows:

6 Art. 1732. Limitation upon jury trials

7 A trial by jury shall not be available in:

8 (1) A suit where the amount of no individual petitioner's cause of action
9 exceeds ~~fifty~~ **five** thousand dollars exclusive of interest and costs, except as 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 ~~fifty~~ **five** thousand dollars exclusive of interest and costs, a
13 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 ~~fifty~~ **five** thousand dollars exclusive of
17 interest and costs, any other party may retain the right to a trial by jury if that party
18 is entitled to a trial by jury pursuant to this Article and has otherwise complied with
19 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 ~~fifty~~ **five** thousand dollars exclusive of interest and costs, a
25 defendant shall not be entitled to a trial by jury.

26 * * *

27 Section 4. R.S. 9:2800.25 is hereby enacted to read as follows:

28 **§2800.25. Recoverable medical expenses; collateral sources; limitations;**
29 **evidence**

1 **A. For the purpose of this Section, the following terms shall mean:**

2 **(1) "Health insurance issuer" means an health insurance coverage**
3 **through a policy or certificate of insurance subject to regulation of insurance**
4 **under state law, health maintenance organization, employer sponsored health**
5 **plan, the office of group benefits, and an equivalent federal or state health plan.**

6 **(2) "Medical provider" means any healthcare provider, hospital,**
7 **ambulance service, or their heirs or assignees.**

8 **B. In cases where a plaintiff's medical expenses have been paid, in whole**
9 **or in part, by a health insurance issuer, Medicaid, or Medicare to a contracted**
10 **or participating medical provider, the plaintiff's recovery of medical expenses**
11 **is limited to the amount actually paid to the medical provider by the health**
12 **insurance issuer, Medicaid, or Medicare and any applicable cost sharing**
13 **amount, and not the amount billed.**

14 **C. In cases where a plaintiff's medical expenses are paid pursuant to the**
15 **Workers' Compensation Law as provided in R.S. 23:1020.1 et seq., a plaintiff's**
16 **recovery of medical expenses is limited to the amount payable under the**
17 **medical payments fee schedule of the Workers' Compensation Law.**

18 **D. In an action for damages where a person suffers injury, death, or loss,**
19 **the court may receive evidence concerning any amount which has been paid or**
20 **contributed as of the date it enters judgment, by or on behalf of, the claimant**
21 **or members of his immediate family to secure his right to any private insurance**
22 **benefit which he has received as a result of such injury or death.**

23 Section 5. R.S. 22:1269(B) is hereby amended and reenacted to read as follows:

24 §1269. Liability policy; insolvency or bankruptcy of insured and inability to effect
25 service of citation or other process; ~~direct action against insurer~~

26 * * *

27 B.(1) The injured person or his survivors or heirs mentioned in Subsection
28 A of this Section, ~~at their option,~~ shall have a right of direct action against the insurer
29 ~~within the terms and limits of the policy; and, such action may be brought against the~~

1 ~~insurer alone, or against both the insured and insurer jointly and in solido, in the~~
 2 ~~parish in which the accident or injury occurred or in the parish in which an action~~
 3 ~~could be brought against either the insured or the insurer under the general rules of~~
 4 ~~venue prescribed by Code of Civil Procedure Art. 42 only; however, such action may~~
 5 ~~be brought against the insurer alone only when at least one of the following applies:~~

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

9 ~~(b) The insured is insolvent.~~

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

11 ~~(d)~~**(b)** When the cause of action is for damages as a result of an offense or
 12 quasi-offense between children and their parents or between married persons.

13 ~~(e) When the insurer is an uninsured motorist carrier.~~

14 ~~(f)~~**(c)** The insured is deceased.

15 (2) This ~~right of direct action shall exist whether or not the policy of~~
 16 ~~insurance sued upon was written or delivered in the state of Louisiana and whether~~
 17 ~~or not such policy contains a provision forbidding such direct action, provided the~~
 18 ~~accident or injury occurred within the state of Louisiana.~~ **may be brought against**
 19 **the insurer alone in the parish in which the accident or injury occurred or in the**
 20 **parish in which an action could be brought against either the insured or the**
 21 **insurer under the general rules of venue prescribed in this by Code of Civil**
 22 **Procedure Article 42 only.** Nothing contained in this Section shall be construed to
 23 affect the provisions of the policy or contract if such provisions are not in violation
 24 of the laws of this state.

25 **(3) When the circumstances enumerated in Paragraph (1) of this**
 26 **Subsection do not apply, neither the injured person nor the survivors or heirs**
 27 **mentioned in Subsection A of this Section shall have a right of direct action**
 28 **against the insurer. The injured person or his survivor or heirs shall bring an**
 29 **action against the insured, wherein a court of competent jurisdiction may**

DIGEST

SB 418 Engrossed

2020 Regular Session

Talbot

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.

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 general 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 retains the liberative prescription of three years for any act of sexual assault.

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 \$5,000.

Proposed law (R.S. 9:2800.25) provides for definitions:

- (1) "Health insurance issuer" means a health insurance coverage through a policy or certificate of insurance subject to regulation of insurance under state law, health maintenance organization, employer sponsored health plan, the office of group benefits, and an equivalent federal or state health plan.
- (2) "Medical provider" means any healthcare provider, hospital, ambulance service, or their heirs or assignees.

Proposed law provides that in cases where a plaintiff's medical expenses have been paid, in whole or in part, by a health insurance issuer, Medicaid, or Medicare to a contracted or participating medical provider, the plaintiff's recovery of medical expenses is limited to the amount actually paid to the medical provider by the health insurance issuer, Medicaid, or Medicare and any applicable cost sharing amount, and not the amount billed.

Proposed law 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 healthcare provider by the insurer or Medicare, and not the amount billed.

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

Proposed law 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.

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 if at least one of the following applies:

- (1) The insured has been adjudged bankrupt or bankruptcy proceedings have commenced in a court of competent jurisdiction.
- (2) The cause of action is for damages as a result of an offense or quasi-offense between children and their parents or between married persons.
- (3) The insured is deceased.

Proposed law further provides that if none of the above circumstances are applicable, the injured person or his survivors or heir shall bring an action against the insured.

Proposed law provides that the insured's right to enforce the terms of the policy against the insurer remains unaffected.

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

Present law (R.S. 22:333(E)) relative to foreign or alien insurers provides that transacting of business in this state constitutes a consent to being sued by the injured person or heirs in a direct action as provided in present law.

Proposed law repeals this provision.

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 this provision.

Proposed law provides that pursuant to its provisions 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 the proposed law and shall reduce rates when actuarially justified.

Proposed law further provides that for policies of personal private passenger automobile insurance issued or renewed one year following the effective date of the proposed law, each insurer shall file with the commissioner of insurance for approval premium rates which actuarially reflect the savings it anticipates as a result of the proposed law, which is presumed to be 10% lower for each impacted coverage, when compared to the premium rates in effect for that coverage on the date of enactment of the proposed law. Also provides that each such insurer shall have the right to request all or partial relief from the presumed roll-back amount of 10% on each impacted coverage, if it can demonstrate to the commissioner of insurance that it has not experienced a sufficient reduction in loss costs to actuarially justify the full amount of presumed savings of 10%.

Proposed law further provides that any filing with premium rates that provide for the 10% reduction or more for each impacted coverage shall be deemed approved, if not disapproved, 30 days after filing. Proposed law also provides that it does not prohibit an increase for any individual insurance policy premium if the increase results from an increase in the risk of loss.

Proposed law provides that the provisions of proposed law regarding limitations upon jury trials shall have prospective application only and shall not apply to a cause of action arising or action pending prior to the effective date of proposed law.

Effective January 1, 2021.

(Amends C.C. Arts. 3492 and 3493.10, C.C.P. Art. 1732(1), and R.S. 22:1269(B); and adds R.S. 9:2800.25; repeals R.S. 22:333(E) and R.S. 32:295.1(E))

Summary of Amendments Adopted by Senate

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

1. Provides for technical changes.
2. Provides for definitions:
 - (1) "Health insurance issuer" means a health insurance coverage through a policy or certificate of insurance subject to regulation of insurance under state law, health maintenance organization, employer-sponsored health plan, the office of group benefits, and an equivalent federal or state health plan.
 - (2) "Medical provider" means any healthcare provider, hospital, ambulance service, or their heirs or assignees.
3. Provides for proposed law that in cases where a plaintiff's medical expenses have been paid, in whole or in part, by a health insurance issuer, Medicaid, or Medicare to a contracted or participating medical provider, the plaintiff's recovery of medical expenses is limited to the amount actually paid to the medical provider by the health insurance issuer, Medicaid, or Medicare and any applicable cost sharing amount, and not the amount billed.
3. Repeals provisions of present law (R.S. 32:295.1(E)) that provides that the failure to wear a safety belt in violation 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 shall not be considered evidence of comparative negligence.

4. Provides that the provisions of proposed law regarding limitations upon jury trials shall have prospective application only and shall not apply to a cause of action arising or action pending prior to the effective date of proposed law.