
The original instrument was prepared by Xavier I. Alexander and the following digest, which constitutes no part of the legislative instrument, was prepared by Margaret M. Corley.

SB 418 Engrossed

DIGEST
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.