

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)]

SB 418 Reengrossed

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 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 prescriptive periods.

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 \$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 health care provider, hospital, ambulance service, or their heirs or assignees.
- (3) "Cost sharing" means copayments, coinsurance, deductibles, and any other amounts which have been paid or by the plaintiff.

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 paid by the plaintiff, 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 health care 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 the following:

- (1) Any amount which has been paid or contributed from the date of injury through the date the court 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.
- (2) The amount the health insurance issuer would have paid if the claimant's medical bills would have been submitted by the claimant to this health insurance issuer or Medicare or Medicaid provider.

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 cause of action is for damages resulting from an offense or quasi offense between children and parents or between married persons.
- (3) When the plaintiff is seeking recovery pursuant to an unisured or underinsured policy.
- (4) 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 provides that the 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 the insured under the general rules of venue.

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 (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.

Proposed law shall be prospective to new causes of action filed on or after January 1, 2021.

(Amends C.C. Arts. 3492 and 3493.10, C.C.P. Art. 1732(1), and R.S. 22:1269(B); Enacts R.S. 9:2800.25; Repeals 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:
 - (a) "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.
 - (b) "Medical provider" means any health care 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.

4. 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 this Section shall not be considered evidence of comparative negligence.
5. 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.

Summary of Amendments Adopted by Senate

Senate Floor Amendments to engrossed bill

1. Provides for technical changes.
2. Provides for a definition of "cost sharing" to mean copayments, coinsurance, deductibles, and any other amounts which have been paid or are owed by the plaintiff.
3. Retains portions of present law and provides for action against the insurer alone if at least one of the following applies:
 - (a) The insured is insolvent.
 - (b) Service of citation or other process cannot be made on the insured.
4. Provides for action against the insurer alone when the plaintiff is seeking recovery pursuant to an uninsured or underinsured policy.

Summary of Amendments Adopted by House

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

1. Apply the proposed \$5,000 jury trial threshold to tort actions, only, and lowers the jury trial threshold for all other actions to \$35,000.
2. Remove from the definition of "cost sharing" amounts owed, but not paid, by the plaintiff.
3. Limit the time period for which the court may receive evidence of the amount of insurance premiums paid.
4. Allow the court to receive evidence concerning the amount the health insurer would have paid if the claimant had submitted medical bills to the insurer.
5. Remove the right of direct action against the insurer in cases where the insured is insolvent or service of process cannot be made on the insured.
6. Provide that in a direct action against the insurer, the insured shall be the named party in the caption.
7. Limit venue for direction actions brought against the insurer to the parish where the accident or injury occurred or where an action may be brought against the insured.

8. Remove the repeal of present law relative to the direct action against a foreign insurer.
9. Provide for prospective application.