

CONFERENCE COMMITTEE REPORT

SB 418

2020 Regular Session

Talbot

June 1, 2020

To the Honorable President and Members of the Senate and to the Honorable Speaker and Members of the House of Representatives.

Ladies and Gentlemen:

We, the conferees appointed to confer over the disagreement between the two houses concerning Senate Bill No. 418 by Senator Talbot, recommend the following concerning the Reengrossed bill:

1. That in the set of House Committee Amendments proposed by House Committee on Civil Law and Procedure and adopted by the House on May 26, 2020, amendments number 1 through 4 and 16 through 18 be adopted and amendments number 5 through 15, and 19 be rejected.
2. That the following amendments to the reengrossed bill be adopted:

AMENDMENT NO. 1

On page 3, delete lines 8 through 26, insert the following:

"(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 thousand dollars exclusive of interest or costs.

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

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

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

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

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

~~(3)~~**(4)** A summary, executory, probate, partition, mandamus, habeas corpus, quo warranto, injunction, concursus, workers' compensation, emancipation, tutorship, interdiction, curatorship, filiation, annulment of marriage, or divorce proceeding.

~~(4)~~**(5)** A proceeding to determine custody, visitation, alimony, or child support.

~~(5)~~**(6)** A proceeding to review an action by an administrative or municipal body.

~~(6)~~**(7)** All cases where a jury trial is specifically denied by law.

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AMENDMENT NO. 2

On page 4, delete lines 16 through 19 and insert the following:

"C. The court shall award the plaintiff as damages one and one-half times the amount of premiums paid for a period not to exceed one year prior to the date of the accident or occurrence for procuring the health insurance policy providing benefits to the plaintiff for the treatment or services received."

AMENDMENT NO. 3

On page 4, line 27, change "~~direct action against insurer~~" to "; direct action against insurer"

AMENDMENT NO. 4

On page 5, at the end of line 11, change the period "." to "**or dissolved.**"

AMENDMENT NO. 5

On page 5, between lines 17 and 18 and insert the following:

"(f) 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.

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

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

AMENDMENT NO. 6

On page 5, line 18, change "(f)" to "**(i)**"

AMENDMENT NO. 7

On page 5, line 26, after "**only.**" and before "Nothing", insert the following:

"The caption of any suit brought pursuant to the provisions of this Section shall not include the name of the insurer."

AMENDMENT NO. 8

On page 6, line 15, delete "personal private passenger"

AMENDMENT NO. 9

On page 6, delete lines 28 and 29 and delete page 7 and insert the following:

"Section 9. This Act shall become effective on January 1, 2021, and shall have prospective application only and shall not apply to a cause of action arising or action pending prior to January 1, 2021."

Respectfully submitted,

Senators:

Representatives:

Senator Kirk Talbot

Representative Gregory A. Miller

Senator Barrow Peacock

Representative Raymond E. Garofalo, Jr.

Senator Rick Ward

Representative Tanner Magee

The legislative instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Margaret M. Corley.

CONFERENCE COMMITTEE REPORT DIGEST

SB 418

2020 Regular Session

Talbot

Keyword and summary of the bill as proposed by the Conference Committee

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

Report adopts House amendments to:

1. 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.
2. Remove the repeal of present law relative to the direct action against a foreign insurer.
3. Provide for technical changes

Report rejects House amendments which would have:

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.

Report amends the bill to:

1. Apply the proposed \$10,000 jury trial threshold to tort actions, only, and lowers the jury trial threshold for all other actions to \$35,000.
2. Limit the time period for which the court may receive evidence of the amount of insurance premiums paid and applies a 1.5% multiplier to the amount of premiums as an award of damages.
3. Provide for additional rights to direct action:
 - (a) 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.
 - (b) When the tortfeasor's liability insurer has denied coverage to the tortfeasor for some or all of the claims asserted in the action.
 - (c) The cause of action is for damages as a result of an offense or quasi offense related to asbestos exposure.
4. Provide that the caption of any suit brought pursuant to the provisions of this Section shall not include the name of the insurer.

5. Provide for prospective application.
6. Provide for technical changes.

Digest of the bill as proposed by the Conference Committee

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 \$35,000, except for tort actions, for which the threshold is \$10,000.

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 are owed by the plaintiff.

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 limits the time period for which the court may receive evidence of the amount of insurance premiums paid and applies a 1.5% multiplier to the amount of premiums as an award of damages.

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 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.
- (5) 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.
- (6) When the tortfeasor's liability insurer has denied coverage to the tortfeasor for some or all of the claims asserted in the action.
- (7) The cause of action is for damages as a result of an offense or quasi offense related to asbestos exposure.
- (6) 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.

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 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 shall become effective on January 1, 2021, and shall have prospective application only and shall not apply to a cause of action arising or action pending prior to January 1, 2021.

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