DIGEST

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HB 60 Original 2020 First Extraordinary Session McFarland

Abstract: Creates the Premium Reduction Act of 2020 which reduces the threshold for a jury trial, provides for reduced damages for amounts paid or payable from collateral sources, repeals the limitation on presenting evidence of the failure to wear a safety belt, and provides relative to direct actions against an insurer.

Proposed law creates the 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 (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 $15,000.

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.

(3) "Cost sharing" means copayments, coinsurance, deductibles, and any other amounts which have been paid or are owed by the plaintiff to a medical provider.

Proposed law provides that when a plaintiff's medical expenses have been paid by a health insurance issuer, Medicaid, or Medicare, the plaintiff's recovery of medical expenses is limited to the amount actually paid to the health care provider by the insurer, Medicaid, or Medicare, and not the amount billed.

Proposed law provides that in cases where the plaintiff does not submit medical expenses for payment to any available health insurance issuer, Medicaid, or Medicare, the plaintiff's recovery of medical expenses is limited to the amount that would have been paid by the health insurance issuer,

Medicaid, or Medicare, plus any applicable cost sharing amount.

Proposed law provides that it is against the public policy of this state for a third party to pay a plaintiff's medical expenses, and to attempt to claim any right for payment of any amount of medical expenses greater than the amount paid by the third party.

Proposed law further provides that cases where a plaintiff's medical expenses are paid by a third party other than a health insurance issuer, Medicare or Medicaid, the plaintiff's recovery is limited to the amount actually paid to the medical provider, plus any cost sharing amount.

Proposed law provides that at the conclusion of any trial in which the trier of fact has awarded the plaintiff medical expenses pursuant to proposed law, upon motion by the plaintiff, the court may award an amount for a supplemental medical payment up to 50% of the amount of the medical expenses awarded by the trier of fact, but, under no circumstance, may the total award of medical expenses and supplemental medical payments exceed the amount of the medical bills.

Proposed law authorizes the court, in determining whether to award any supplemental medical payment, to consider only the cost of any medical premiums paid by or on behalf of the plaintiff in the year prior to the date of the accident or occurrence and the extent to which the plaintiff, or those acting on behalf of the plaintiff, used that health insurance for payment of medical expenses unrelated to the cause of action before the court.

Proposed law provides that in cases where a health insurance issuer has asserted a lien, or intervenes, for recovery of medical expenses paid by that health insurance issuer, the court may also consider the attorney fees incurred to recover those medical expenses and the extent to which the health insurance issuer has reduced its lien.

Proposed law provides that an award of supplemental medical expenses may only be made upon motion of the plaintiff and after a hearing that provides all parties the opportunity to present evidence of the factors that may impact the determination of an appropriate supplemental medical payment.

Proposed law provides that in any civil action which involves recovery of medical expenses by the claimant, the trier of fact shall be told only the amount of the bill that has been paid, or would have been paid if submitted to a health insurance issuer, Medicaid, or Medicare, or the amount actually paid by a third party, plus the amount of any cost sharing.

Proposed law provides that information regarding the amount billed is not relevant and prohibits the presentation of such information to the trier of fact in any of the situations provided by proposed law.

Present law (R.S. 22:1269(B)(2)) 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 retains present law.

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 provides that the caption of any direct action against the insurer shall not include the name of the insurer.

Present law (C.E. Art. 411) provides that although a policy of insurance may be admissible, the amount of coverage under the policy shall not be communicated to the jury unless the amount of coverage is a disputed issue which the jury will decide.

Proposed law retains present law and provides that at the commencement of the trial, once the judge advises the jury that one or more insurance companies are parties to the litigation, there shall be no further reference to any insurance company or the existence of any insurance policy in the presence of the jury, unless the amount of coverage is in dispute.

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.

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.

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% 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 Jan. 1, 2021, and shall have prospective application only and shall not apply to a cause of action arising or action pending prior to Jan. 1, 2021.

(Amends R.S. 22:1269(B)(2), C.C.P. Art. 1732, and C.E. Art. 411; Adds R.S. 9:2800.25; Repeals R.S. 32:295.1(E))