The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Jerry G. Jones.

DIGEST

SB 28 Original 2020 First Extraordinary Session Ward

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 $25,000, except that a suit for damages arising from an offense or quasi-offense that exceeds $15,000 may be tried by jury if a party requests a jury trial and posts a cash deposit for costs of the trial no later than 30 days after making the request. The deposit shall be sufficient to defray the pretrial costs of the jury trial through the first day of trial.

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

(1) "Health insurance issuer" means Medicare, Medicaid, an entity issuing policies under the Employee Retirement Income Security Act (ERISA), and any entity that offers health insurance coverage through a policy or certificate of insurance subject to state law that regulates the business of insurance, including a health maintenance organization, federal or nonfederal governmental plan, and the office of group benefits.

(2) "Medical provider" means any health care provider, hospital, ambulance service, or their heirs or assignees.

(3) "Contracted health care provider" means any in-network medical provider that has entered into a contract or agreement directly with a health insurance issuer or with a health insurance issuer through a network of providers for the provision of covered health care services at a pre-negotiated rate.

(4) "Case" means a quasi-delictual or delictual action where a person suffers injury, death, or loss.

(5) "Cost sharing amount" shall mean any co-pay, deductible, or any other amount paid or owed to a medical provider by or on behalf of the claimant.

Proposed law provides that in a case where a claimant's medical expenses have been paid, in whole or in part, by a health insurance issuer to a contracted health care provider, or pursuant to the Louisiana Workers' Compensation Law as provided in R.S. 23:1020.1, et seq., recovery of the medical expenses so paid is limited to two and a quarter times the amount actually paid to the medical provider by the health insurance issuer or compensation payor and any cost sharing amounts that were paid or are owed by or on behalf of the claimant, or the amount actually billed, whichever is less. In a case brought pursuant to the Louisiana medical malpractice law, R.S. 40:1231, et seq. only, where a claimant's medical expenses have been paid, in whole or in part, by a health insurance

issuer to a contracted health care provider, recovery of the medical expenses so paid is limited to two and a quarter times the amount actually paid to the medical provider by the health insurance issuer and any cost sharing amounts that were paid or are owed by or on behalf of the claimant, plus 15%, or the amount actually billed, whichever is less.

Proposed law provides that in all other cases, and for all medical expenses not actually paid by a health insurance issuer to a contracted health care provider, the claimant may recover the medical expenses billed and paid without condition or under protest, or that are owed, in the amount claimed, by or on behalf of the claimant, including but not limited to the amount secured by a contractual or statutory privilege, lien, or guarantee.

Proposed law provides that it is not applicable to the right to recover damages for future medical treatment, services, surveillance, or procedures of any kind incurred after the date of entry of judgment by the court or of an arbitration award. Also provides that it is not applicable to cases brought pursuant to the malpractice liability for state services law, R.S. 40:1237.1, or the Louisiana Governmental Claims Act, R.S. 13:5101, et seq.

Proposed law further provides that whether any person has paid or has agreed to pay, in whole or in part, any of a claimant's medical expenses, shall not be disclosed to the jury. The jury shall be informed only of the amount actually billed by medical providers for claimant's medical treatment. If any reduction of the amount of past medical expenses awarded by the jury is required by proposed law, this reduction shall be made by the court after trial.

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.

Present law further 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.

Proposed law retains present law and adds that in a direct action against an insurer pursuant to the provisions of present law that is tried by a jury, the name of the insurer shall not be disclosed to the jury.

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 its provisions 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.P. Arts. 1732 and 1733(A); adds R.S. 9:2800.25 and R.S. 22:1269(B)(3); repeals R.S. 32:295.1(E))