

**CONFERENCE COMMITTEE REPORT**

**HB 57**

**2020 First Extraordinary Session**

**Schexnayder**

June 30, 2020

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

Ladies and Gentlemen:

We, the conferees appointed to confer over the disagreement between the two houses concerning House Bill No. 57 by Representative Schexnayder, recommend the following concerning the Reengrossed bill:

1. That the set of Senate Committee Amendments by the Senate Committee on Judiciary A (#254) be rejected.
2. That the set of Senate Floor Amendments by Senator Peacock (#325) be rejected.
3. That the following amendments to the Reengrossed bill be adopted:

AMENDMENT NO. 1

On page 1, delete lines 2 and 3 in their entirety and insert the following:

"To amend and reenact Code of Civil Procedure Articles 1732, 1733(A), and 4873(1) and Code of Evidence Article 411, to enact R.S. 9:2800.27, and to repeal R.S. 32:295.1(E), relative"

AMENDMENT NO. 2

On page 1, line 4, after "threshold;" and before "to limit" insert "to provide for a jury cash deposit;"

AMENDMENT NO. 3

On page 1, line 5, after "courts;" delete the remainder of the line and delete line 6 in its entirety and insert the following:

"to provide relative to the admissibility of evidence of liability insurance; to limit the recovery of medical expenses; to provide for definitions; to provide for calculating and adjusting the award of medical expenses; to provide for evidence of recoverable medical expenses; to repeal provisions"

AMENDMENT NO. 4

On page 1, line 12, after "1732" and before "and 4873(1)" insert a comma "," and insert "1733(A),"

AMENDMENT NO. 5

On page 2, line 20, after "delictual" and before "actions" insert "or quasi-delictual"

AMENDMENT NO. 6

On page 3, delete line 4 in its entirety and insert the following:

"Art. 1733. Demand for jury trial; bond for costs

A.(1) Except as provided in Subparagraph (2) of this Paragraph, a party may obtain a trial by jury by filing a pleading demanding a trial by jury and a bond in the amount and within the time set by the court pursuant to Article 1734.

(2)(a) In a suit for damages arising from a delictual or quasi-delictual action where an individual petitioner stipulates or otherwise judicially admits that his cause of action exceeds ten thousand dollars and is less than fifty thousand dollars, a party may obtain a trial by jury by filing a pleading demanding a trial by jury and providing a cash deposit of five thousand dollars no later than sixty days after filing the request for a trial by jury. Failure to post the cash deposit as required by this Subparagraph shall constitute a waiver of the trial by jury. This cash deposit shall be subject to Article 1734.1(E).

(b) When the case is set for trial, the court may additionally provide for a supplemental bond or cash deposit in accordance with Article 1734 or 1734.1.

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AMENDMENT NO. 7

On page 3, delete lines 16 through 28 and on page 4, delete lines 1 through 7 and insert the following:

"Section 3. Code of Evidence Article 411 is hereby amended and reenacted to read as follows:

Art. 411. Liability insurance

A. 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.

B. The existence of insurance coverage shall not be communicated to the jury unless any of the following apply:

(1) A factual dispute related to an issue of coverage is an issue which the jury will decide.

(2) The existence of insurance coverage would be admissible to attack the credibility of a witness pursuant to Article 607.

(3) The cause of action is brought against the insurer pursuant to R.S. 22:1973 or against the insurer alone pursuant to R.S. 22:1269(B)(1)(a) through (f).

C. The identity of the insurer shall not be communicated to the jury unless the identity of the insurer would be admissible to attack the credibility of a witness pursuant to Article 607.

D. In all cases brought against an insurer pursuant to R.S. 22:1269 or 1973, at the opening and closing of the trial, the court shall read instructions to the jury that there is insurance coverage for the damages claimed by the plaintiff.

Section 4. R.S. 9:2800.27 is hereby enacted to read as follows:

§2800.27. Recoverable past medical expenses; collateral sources; limitations; evidence

A. For the purpose of this Section:

(1) "Health insurance issuer" means any health insurance coverage through a policy or certificate of insurance subject to regulation of insurance under state law, a health maintenance organization, an employer-sponsored health plan, the office of group benefits, or 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 claimant to a medical provider.

(4) "Contracted medical 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 healthcare services at a pre-negotiated rate, or any medical provider that has billed and received payment for covered healthcare services from Medicare when the provider is a participating provider in those programs.

(5) "Cost of procurement" means the cost paid by or on behalf of the claimant to procure the benefit paid by a health insurance issuer or Medicare and the cost of

procurement of the award of medical expenses, including but not limited to contracted attorney fees and health insurance premiums paid.

B. In cases where a claimant's medical expenses have been paid, in whole or in part, by a health insurance issuer or Medicare to a contracted medical provider, the claimant's recovery of medical expenses is limited to the amount actually paid to the contracted medical provider by the health insurance issuer or Medicare, and any applicable cost sharing amounts paid or owed by the claimant, and not the amount billed. The court shall award to the claimant forty percent of the difference between the amount billed and the amount actually paid to the contracted medical provider by a health insurance issuer or Medicare in consideration of the claimant's cost of procurement, provided that this amount shall be reduced if the defendant proves that the recovery of the cost of procurement would make the award unreasonable. The determination of this award shall be made only in accordance with the provisions of Subsection F of this Section.

C. In cases where a claimant's medical expenses have been paid, in whole or in part, by Medicaid to a medical provider, the claimant's recovery of medical expenses actually paid by Medicaid is limited to the amount actually paid to the medical provider by Medicaid, and any applicable cost sharing amounts paid or owed by the claimant, and not the amount billed.

D. The recovery of past medical expenses other than those provided by Subsection B or C of this Section shall be limited to amounts paid to a medical provider by or on behalf of the claimant, and amounts remaining owed to a medical provider, including medical expenses secured by a contractual or statutory privilege, lien, or guarantee. The determination of this award shall be made only in accordance with Subsection F of this Section.

E. In cases where a claimant's medical expenses are paid pursuant to the Louisiana Workers' Compensation Law as provided in R.S. 23:1020.1 et seq., a claimant's recovery of medical expenses is limited to the amount paid under the medical payment fee schedule of the Louisiana Workers' Compensation Law.

F. In a jury trial, only after a jury verdict is rendered may the court receive evidence related to the limitations of recoverable past medical expenses provided by Subsection B or D of this Section. The jury shall be informed only of the amount billed by a medical provider for medical treatment. Whether any person, health insurance issuer, or Medicare 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. In trial to the court alone, the court may consider such evidence.

G. This Section shall not apply in cases brought pursuant to R.S. 40:1231.1, et seq., R.S. 40:1237.1 et seq., or R.S. 13:5101 et seq."

Respectfully submitted,

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Representative Clay Schexnayder

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Senator Patrick Page Cortez

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Representative Gregory A. Miller

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Senator Barrow Peacock

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Representative John M. Stefanski

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Senator W. Jay Luneau



Present law (C.C.P. Art. 1733) provides that a party may obtain a trial by jury by filing a pleading demanding a trial by jury and a bond in the amount and within the time set by the court pursuant to present law.

Proposed law retains present law and provides that in a tort action where a petitioner stipulates or otherwise judicially admits that the amount in controversy exceeds \$10,000, but is less than \$50,000, a party requesting a jury trial shall provide a cash deposit in the amount of \$5,000.

Proposed law further provides that when the case is set for trial, the court may provide for a supplemental bond or cash deposit in accordance with present law.

### **Evidence of Liability Insurance**

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 the existence of insurance coverage shall not be communicated to the jury, unless any of the following apply:

- (1) A factual dispute related to an issue of coverage is an issue which the jury will decide.
- (2) The existence of insurance coverage would be admissible to attack the credibility of a witness pursuant to present law (C.E. Art. 607) which provides for attacking and supporting a witness' credibility.
- (3) The cause of action is brought against the insurer alone in the limited circumstances provided by present law direct action statute and bad faith insurance.

Proposed law provides that the identity of the insurer shall not be communicated to the jury unless the identity of the insurer would be admissible to attack the credibility of a witness pursuant to present law.

Proposed law provides that in all cases brought against an insurer, at the opening and closing of the trial, the court shall read instructions to the jury that there is insurance coverage for the damages claimed by the plaintiff.

### **Recoverable Past Medical Expenses (Collateral Source)**

Proposed law provides for definitions:

- (1) "Health insurance issuer" means any health insurance coverage through a policy or certificate of insurance subject to regulation of insurance under state law, a health maintenance organization, an employer-sponsored health plan, the office of group benefits, or 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 the medical provider.
- (4) "Contracted medical 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 healthcare services at a pre-negotiated rate, or any medical provider that has billed and received payment for covered healthcare services from Medicare when the provider is a participating provider in those programs.

- (5) "Cost of procurement" means the costs paid by or on behalf of the plaintiff to procure the benefit paid by a health insurance issuer or Medicare and the costs of procurement of the award of medical expenses, including but not limited to contracted attorney fees and health insurance premiums paid.

Proposed law provides that in cases where a claimant's medical expenses have been paid, in whole or in part, by a health insurance issuer or Medicare to a medical provider, the claimant's recovery of medical expenses is limited to the amount actually paid to the medical provider by the health insurance issuer or Medicare, and any applicable cost sharing amounts paid or owed by the claimant, and not the amount billed.

Proposed law provides that the court shall award forty percent of the difference between the amount billed and the amount actually paid to the contracted medical provider by a health insurance issuer or Medicare in consideration of the plaintiff's cost of procurement provided that this amount shall be excessive.

Proposed law provides that in cases where a claimant's medical expenses have been paid, in whole or in part, by Medicaid to a medical provider, the claimant's recovery of medical expenses paid by Medicaid is limited to the amount actually paid to the medical provider by Medicaid, and any applicable cost sharing amounts paid or owed by the claimant, and not the amount billed.

Proposed law provides that the recovery of any other past medical expenses shall be limited to amounts paid to a medical provider by or on behalf of the plaintiff, and amounts remaining owed to a medical provider, including medical expenses secured by a contractual or statutory privilege, lien, or guarantee.

Proposed law provides that in cases where a plaintiff's medical expenses are paid pursuant to the La. Workers' Compensation Law (LWC), a plaintiff's recovery of medical expenses is limited to the amount paid under the medical payments fee schedule of the LWC.

Proposed law provides that in a jury trial, only after a jury verdict is rendered may the court receive evidence related to the limitations of recoverable past medical expenses paid by a health insurance issuer or Medicare. The jury shall be informed only of the amount billed by a medical provider for medical treatment. Whether any person, health insurance issuer or Medicare 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. In trial to the court alone, the court may consider such evidence.

Proposed law does not apply in medical malpractice claims or in claims brought pursuant to the Governmental Claims Act.

### **Evidence of Failure to Wear a Safety Belt**

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.

### **Effective Date**

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 C.C.P. Arts. 1732, 1733(A), and 4873(1) and C.E. Art. 411; Adds R.S. 9:2800.27; Repeals R.S. 32:295.1(E))