

2025 Regular Session

HOUSE BILL NO. 440

BY REPRESENTATIVES HENRY, CARVER, DEWITT, DOMANGUE, EGAN, GALLE,  
MELERINE, AND WYBLE

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

INSURANCE CLAIMS: Provides relative to automobile liability policies and related  
medical claims

1 AN ACT

2 To amend and reenact R.S. 22:1891, relative to automobile liability insurance policies; to  
3 provide for the filing of medical claims; to require a claimant to first file with a  
4 personal coverage provider; to provide for subrogation; to provide for proceedings  
5 involving a claimant's failure to mitigate damages with use of personal insurance; to  
6 provide for prospective application; to provide for an effective date; and to provide  
7 for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 22:1891 is hereby amended and reenacted to read as follows:

10 §1891. Automobile liability ~~coverage~~, coverage; medical payments; filing and  
11 subrogation; actions of recovery

12 A. A policy of automobile liability insurance which provides for medical  
13 payments coverage shall not limit the time period during which the insured is entitled  
14 to payment or reimbursement for medical expenses incurred as a result of injuries  
15 caused by a covered accident when the injuries are diagnosed within one year of the  
16 accident and are reported to the insurer within three years of the accident.

17 B. If a person sustains any medical injury, disease, or sickness covered by  
18 an automobile liability insurance policy and the person has private health insurance  
19 coverage, Medicare coverage, or Medicaid coverage, prior to filing a liability claim

1 with the automobile insurer, the person shall file a claim for the medical injury,  
2 disease, or sickness with his private health insurer or provider of Medicare or  
3 Medicaid coverage. The private health insurer or provider of Medicare or Medicaid  
4 coverage may thereafter subrogate against the automobile liability insurer.

5 C.(1) In any action for recovery or personal injury damages contemplated  
6 by this Section or R.S. 9:2800.27, a claimant's failure to utilize available health  
7 insurance to pay for medical expenses arising from the injury or damages at issue  
8 creates a rebuttable presumption that the claimant failed to mitigate damages.

9 (2) The presumption established in this Subsection may be rebutted by the  
10 claimant through evidence showing that the failure to utilize health insurance was  
11 reasonable under the circumstances, including but not limited to the following:

12 (a) The health insurance policy's limitations or exclusions related to the  
13 treatment or services requested.

14 (b) Utilization of the claimant's health insurance would have impacted the  
15 claimant's choice of care.

16 (3) A party alleging that the claimant failed to mitigate damages due to  
17 non-utilization of health insurance has the burden of producing evidence supporting  
18 the presumption of a failure to mitigate.

19 (4)(a) If the presumption established in this Subsection is not rebutted by the  
20 claimant, the trier of fact may reduce the claimant's damage award by an amount  
21 equal to the sum that would have been paid by the claimant's available health  
22 insurance for the medical expenses incurred as a result of the injury or damages at  
23 issue.

24 (b) The reduction of damages pursuant to this Paragraph applies only to the  
25 medical expenses for which the claimant failed to use available health insurance, and  
26 the trier of fact shall determine the applicable reduction based on the evidence  
27 presented regarding the insurance coverage that was available to the claimant as  
28 contemplated in Paragraph (3) of this Subsection and R.S. 9:2800.27(D).

- 1                   (5) This Subsection does not apply in cases brought pursuant to R.S.  
 2                   40:1231.1 et seq. or 1237.1 et seq.  
 3                   Section 2. The provisions of this Act have prospective application only and do not  
 4 apply to causes of action filed prior to the effective date of this Act.  
 5                   Section 3. The provisions of this Act shall become effective on January 1, 2026.
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## 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)]

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HB 440 Original

2025 Regular Session

Henry

**Abstract:** Requires an insured claimant to first file a medical claim with his personal medical coverage provider and authorizes the provider's subrogation for the claim.

Present law prohibits insurers of automobile liability insurance policies from limiting the time period during which an insured is entitled to payment or reimbursement for medical expenses as a result of injuries caused by a covered accident. Present law applies when a policy provides coverage for medical payments and the insured's injuries are diagnosed within 1 year of the accident and reported to the insurer within 3 years of the accident.

Proposed law retains present law and provides that if a person sustains a medical injury, disease, or sickness covered by an automobile liability insurance policy and the person has private health insurance or Medicare or Medicaid coverage, the person is required to first file a medical claim with his private health insurer or Medicare or Medicaid provider.

Proposed law authorizes the person's private health insurer or Medicare or Medicaid provider to subsequently subrogate against the automobile liability insurer.

Proposed law provides that a claimant's failure to use available health insurance to pay for medical expenses for injury or damages creates a rebuttable presumption that the claimant failed to mitigate damages.

Proposed law authorizes a claimant to rebut the presumption through evidence showing that the claimant's failure to utilize health insurance was reasonable under certain circumstances.

Proposed law provides that a party alleging that the claimant failed to mitigate damages with use of health insurance has the burden of providing evidence to support the presumption of the claimant's failure to mitigate.

Proposed law provides that if the claimant does not refute the presumption, the trier of fact may reduce the claimant's damage award by an amount equal to what the claimant's available health insurance would have covered for medical expenses related to the injury or damages in question. Further provides that the reduction applies only to medical expenses for which the claimant did not utilize available health insurance. Requires the trier of fact to determine the appropriate reduction based on the evidence presented regarding the claimant's insurance coverage in application with proposed law.

Proposed law does not apply to cases brought for claims pertaining to medical malpractice (R.S. 40:1231.1 et seq.) or malpractice liability for state services (R.S. 40:1237.1 et seq.) and provides only for prospective application.

Effective January 1, 2026.

(Amends R.S. 22:1891)