

2025 Regular Session

HOUSE BILL NO. 440

BY REPRESENTATIVES HENRY, CARVER, DEWITT, DOMANGUE, EGAN,
FIRMINT, 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 a claimant's duty to mitigate damages with respect to the actions for recovery

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 provide for proceedings involving a
4 claimant's failure to mitigate damages with use of personal health insurance; to
5 provide for prospective application; to provide for an effective date; and to provide
6 for related matters.

7 Be it enacted by the Legislature of Louisiana:

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

9 §1891. Automobile liability ~~coverage~~; coverage; medical payments; actions of
10 recovery

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

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

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

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

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

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

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

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

21 (5) This Subsection does not apply in cases brought pursuant to R.S.
22 40:1231.1 et seq. or 1237.1 et seq.

23 Section 2. The provisions of this Act have prospective application only and do not
24 apply to causes of action filed prior to the effective date of this Act.

25 Section 3. The provisions of this Act shall become effective on January 1, 2026.

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)]

HB 440 Engrossed

2025 Regular Session

Henry

Abstract: Provides relative to a claimant's duty to mitigate damages with respect to the actions for recovery.

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 one year of the accident and reported to the insurer within three years of the accident.

Proposed law reduces the prescriptive period for which an insured can report covered injuries to the automobile liability insurer from three years to two years. Otherwise retains present law.

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)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Insurance to the original bill:

1. Reduce the prescriptive period for which an insured can report covered injuries to the automobile liability insurer from three years to two years.

2. Remove the requirement for an insured to first file a medical claim with private health insurance.
3. Remove authorization for the health insurer to subrogate against the automobile liability insurer.
4. Make technical changes.