
DIGEST

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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.