

Regular Session, 2014

HOUSE BILL NO. 1145

BY REPRESENTATIVE SEABAUGH

INSURANCE/AUTOMOBILE: Enacts the Omnibus Premium Reduction Act of 2014

1 AN ACT

2 To amend and reenact Code of Civil Procedure Article 1732, Code of Evidence Article 411,
3 R.S. 22:1269(B), and 32:866(A)(1), and to enact Civil Code Articles 2315(C), and
4 Code of Evidence Article 416, relative to motor vehicle liability coverage, to provide
5 that the court shall not award a plaintiff the amount of medical expenses reduced or
6 paid by a collateral source; to provide for jury trial without regard to the amount of
7 damages in a lawsuit arising from a motor vehicle accident; to provide that evidence
8 of a policy of insurance shall not be admissible to a jury; to provide for direct action
9 against an insurer in limited circumstances; to provide that an owner or operator of
10 a motor vehicle who fails to maintain compulsory motor vehicle liability security
11 shall not recover damages for bodily injury or property damage; and to provide for
12 related matters.

13 Be it enacted by the Legislature of Louisiana:

14 Section 1. The provisions of this Act shall be known as the "Omnibus Premium
15 Reduction Act of 2014". Whereas motor vehicle accident claims comprise a major portion
16 of the lawsuits filed in Louisiana's state courts, and whereas the enactment of civil justice
17 reforms and their general applicability have a positive effect toward the reduction of the cost
18 of motor vehicle insurance, the "Omnibus Premium Reduction Act of 2014" is designed to
19 achieve a significant reduction in the premium rate of motor vehicle insurance by legislating
20 in regard not only to specific motor vehicle accidents and insurance suits, but also to civil

1 law issues of general applicability. A secondary purpose of the Omnibus Premium
2 Reduction Act of 2014 is to further encourage all persons who own or operate motor
3 vehicles on the public streets and highways of this state to comply with the Motor Vehicle
4 Safety Responsibility Law by correcting the imbalances and abuses which are prevalent in
5 Louisiana's current civil law and motor vehicle insurance systems thereby resulting in a
6 direct cost savings to all citizens of the state of Louisiana.

7 Section 2. Civil Code Articles 2315(C) is hereby enacted to read as follows:

8 Art. 2315. Liability for acts causing damages

9 * * *

10 C. In any action for damages in which a person suffers injury, death, or loss,
11 the court shall not award to the plaintiff any portion of any medical expense, bill, or
12 invoice that the plaintiff is not personally obligated to pay to the provider because
13 that medical expense, bill, or invoice has been reduced or paid by a health care
14 insurer, Medicare, Medicaid, other state or federal agency or program, or by private
15 agreement.

16 * * *

17 Section 3. Code of Civil Procedure Article 1732 is hereby amended and reenacted
18 to read as follows:

19 Art. 1732. Limitation upon jury trials

20 A trial by jury shall not be available in:

21 ~~(1) A suit where the amount of no individual petitioner's cause of action~~
22 ~~exceeds fifty thousand dollars exclusive of interest and costs, except as follows:~~

23 ~~(a) If an individual petitioner stipulates or otherwise judicially admits sixty~~
24 ~~days or more prior to trial that the amount of the individual petitioner's cause of~~
25 ~~action does not exceed fifty thousand dollars exclusive of interest and costs, a~~
26 ~~defendant shall not be entitled to a trial by jury.~~

27 ~~(b) If an individual petitioner stipulates or otherwise judicially admits for the~~
28 ~~first time less than sixty days prior to trial that the amount of the individual~~
29 ~~petitioner's cause of action does not exceed fifty thousand dollars exclusive of~~

1 interest and costs, any other party may retain the right to a trial by jury if that party
2 is entitled to a trial by jury pursuant to this Article and has otherwise complied with
3 the procedural requirements for obtaining a trial by jury.

4 ~~(c)~~ Notwithstanding Subsubparagraphs (a) and (b) of this Subparagraph, if,
5 as a result of a compromise or dismissal of one or more claims or parties which
6 occurs less than sixty days prior to trial, an individual petitioner stipulates or
7 otherwise judicially admits that the amount of the individual petitioner's cause of
8 action does not exceed fifty thousand dollars exclusive of interest and costs, a
9 defendant shall not be entitled to a trial by jury.

10 ~~(2)~~(1) A suit on an unconditional obligation to pay a specific sum of money,
11 unless the defense thereto is forgery, fraud, error, want, or failure of consideration.

12 ~~(3)~~(2) A summary, executory, probate, partition, mandamus, habeas corpus,
13 quo warranto, injunction, concursus, workers' compensation, emancipation,
14 tutorship, interdiction, curatorship, filiation, annulment of marriage, or divorce
15 proceeding.

16 ~~(4)~~(3) A proceeding to determine custody, visitation, alimony, or child
17 support.

18 ~~(5)~~(4) A proceeding to review an action by an administrative or municipal
19 body.

20 ~~(6)~~(5) All cases where a jury trial is specifically denied by law.

21 Section 4. Code of Evidence Article 411 is hereby amended and reenacted and
22 Article 416 is hereby enacted to read as follows:

23 Art. 411. Liability insurance

24 ~~Although a policy of insurance may be admissible, the amount of coverage~~
25 ~~under the policy shall not be communicated to the jury unless the amount of~~
26 ~~coverage is a disputed issue which the jury will decide. Evidence of the existence~~
27 ~~of a policy of insurance shall not be admissible to a jury, directly or indirectly, in any~~
28 ~~civil proceeding with respect to a claim for damages relative to the same injury for~~
29 ~~which the policy of insurance is alleged to provide coverage, unless the existence of~~

1 a policy of insurance or the amount of coverage is a disputed issue which the jury
2 will decide.

3 * * *

4 Art. 416. Payment by collateral sources

5 In any action for damages for injury, death, or loss, evidence of paid or
6 payable amounts from any collateral source shall be admissible at a trial, hearing, or
7 other proceeding. This Article shall not apply to any expenses or costs which have
8 been paid or may be payable as workers' compensation or social security benefits or
9 on life insurance policies.

10 Section 5. R.S. 22:1269(B) is hereby amended and reenacted to read as follows:

11 §1269. Liability policy; insolvency or bankruptcy of insured and inability to effect
12 service of citation or other process; direct action against insurer

13 * * *

14 B.(1) The injured person or his survivors or heirs mentioned in Subsection
15 A of this Section, ~~at their option,~~ shall have a right of direct action against the insurer
16 ~~within the terms and limits of the policy; and, such action may be brought against the~~
17 ~~insurer alone, or against both the insured and insurer jointly and in solido, in the~~
18 ~~parish in which the accident or injury occurred or in the parish in which an action~~
19 ~~could be brought against either the insured or the insurer under the general rules of~~
20 ~~venue prescribed by Code of Civil Procedure Art. 42 only; however, such action may~~
21 ~~be brought against the insurer alone~~ only when at least one of the following applies:

22 (a) The insured has been adjudged bankrupt by a court of competent
23 jurisdiction or when proceedings to adjudge an insured bankrupt have been
24 commenced before a court of competent jurisdiction.

25 (b) ~~The insured is insolvent.~~

26 (c) ~~Service of citation or other process cannot be made on the insured.~~

27 (d) When the cause of action is for damages as a result of an offense or
28 quasi-offense between children and their parents or between married persons.

29 (e) ~~When the insurer is an uninsured motorist carrier.~~

1 ~~(f)~~(c) The insured is deceased.

2 (2) This ~~right of~~ direct action ~~shall exist whether or not the policy of~~
3 ~~insurance sued upon was written or delivered in the state of Louisiana and whether~~
4 ~~or not such policy contains a provision forbidding such direct action, provided the~~
5 ~~accident or injury occurred within the state of Louisiana~~ may be brought against the
6 insurer alone in the parish in which the accident or injury occurred or in the parish
7 in which an action could be brought against either the insured or the insurer under
8 the general rules of venue prescribed by Code of Civil Procedure Article 42 only.
9 Nothing contained in this Section shall be construed to affect the provisions of the
10 policy or contract if such provisions are not in violation of the laws of this state.

11 (3) When the circumstances enumerated in Paragraph (1) of this Subsection
12 do not apply, neither the injured person nor the survivors or heirs mentioned in
13 Subsection A of this Section shall have a right of direct action against the insurer.
14 The injured person or his survivor or heirs shall bring an action against the insured,
15 wherein a court of competent jurisdiction may render a finding of liability and
16 damages against the insured. Nothing contained in this Section shall be construed
17 to affect the insured's right to enforce the provisions of the policy or contract against
18 the insurer.

19 * * *
20 Section 6. R.S. 32:866(A)(1) is hereby amended and reenacted to read as follows:

21 §866. Compulsory motor vehicle liability security; failure to comply; limitation of
22 damages

23 A.(1) There ~~should~~ shall be no recovery for ~~the first fifteen thousand dollars~~
24 ~~of bodily injury and no recovery for the first twenty-five thousand dollars of property~~
25 ~~damage based on any cause or right of action arising out of a motor vehicle accident,~~
26 for such injury or damages occasioned by an owner or operator of a motor vehicle
27 involved in such accident who fails to own or maintain compulsory motor vehicle
28 liability security.

29 * * *

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 Section 7.(A) Every motor vehicle insurer authorized to transact business in the state
2 of Louisiana shall make an automobile policy rate filing with the commissioner of insurance
3 to reduce its combined rates for bodily injury liability and for property damage liability by
4 a minimum of five percent in each of its respective territorial service areas, based upon the
5 average rate in such area on the day prior to "rate reduction day", unless the motor vehicle
6 insurer can demonstrate at a rate hearing that such a decrease will result in inadequate rates,
7 or would result in the continuation of inadequate existing rates, for the motor vehicle insurer
8 in accordance with R.S. 22:1457 or if the provisions of Section 9(B) of this Act become
9 applicable.

10 (B) Every motor vehicle insurer authorized to transact business in the state of
11 Louisiana shall also make an automobile policy rate filing with the Louisiana Insurance
12 Rating Commission to reduce its rates for uninsured/underinsured motorist coverage, for
13 insureds who select a policy which provides economic-only uninsured motorist coverage,
14 by a minimum of five percent in each of its respective territorial service areas, based upon
15 the average rate of its uninsured/underinsured motorist coverage in such area on the day
16 prior to "rate reduction day", unless the motor vehicle insurer can demonstrate at a rate
17 hearing that such a decrease will result in inadequate rates, or would result in the
18 continuation of inadequate existing rates, for the motor vehicle insurer in accordance with
19 R.S. 22:1457 or if the provisions of Section 9(B) of this Act become applicable.

20 (C) All motor vehicle insurers who write policies shall file rates for bodily injury
21 liability, property damage liability, and uninsured motorist coverage with the commissioner
22 of insurance no later than thirty days after "rate reduction day". The rates required to be
23 filed under this Subsection shall be in accordance with R.S. 22:1457. The commissioner of
24 insurance shall conclusively act on all rate filings within ninety days of "rate reduction day".

25 (D)(1) For purposes of this Section, the savings provided hereby shall be applicable
26 to an insured only upon policy renewal or policy issuance.

27 (2) For purposes of this Act, "rate reduction day" is twenty-four months following
28 the date on which a final and definitive judgment is rendered in the declaratory judgment
29 proceeding authorized in Section 8 of this Act, or, if no suit for declaratory judgment is filed

1 prior to August 1, 2016, "rate reduction day" is August 1, 2016. The commissioner of
2 insurance shall certify and make available the official "rate reduction day". If, however, due
3 to unforeseen events or time delays which preclude the filing of rates or the acting thereon
4 by the commissioner, the commissioner may apply to the Nineteenth Judicial District Court
5 for a stay order suspending the running of all time limits or provisions which are tied to the
6 "rate reduction day" and the court, for good cause shown, shall grant such stay order.

7 Section 8. Because the legislature finds and declares that questions of law may be
8 raised by some persons with respect to the constitutionality of some of the provisions of the
9 Omnibus Premium Reduction Act, the public welfare requires that such questions of law be
10 resolved with expedition prior to such time as its provisions take effect in order to avoid
11 disruption of the orderly implementation of its provisions. Therefore, the legislature finds
12 that the remedy of declaratory judgment to determine the constitutionality of the provisions
13 of the Omnibus Premium Reduction Act should be immediately made available in order to
14 avoid confusion by the public. Therefore, any domiciliary of this state may institute an
15 action in the Nineteenth Judicial District Court seeking a declaratory judgment to determine
16 the constitutionality of the provisions of the Omnibus Premium Reduction Act. The attorney
17 general and the commissioner of insurance shall be served with a copy of the proceeding and
18 be entitled to be heard. In the interest of further expediting this procedure, the Nineteenth
19 Judicial District Court, First Circuit Court of Appeal, and Louisiana Supreme Court are
20 urged to minimize all unnecessary delays and may suspend all applicable rules of court in
21 contravention hereof and for this limited purpose.

22 Section 9.(A) If any provision or item of the Omnibus Premium Reduction Act or
23 the application thereof is held to be invalid or unconstitutional by a final and definitive
24 judgment, such invalidity shall not affect other provisions, items, or applications of the
25 Omnibus Premium Reduction Act which are not specifically declared to be invalid or
26 unconstitutional and which can be given effect without the invalid provisions, items, or
27 applications, and to this end the provisions of this Omnibus Premium Reduction Act are
28 hereby declared severable.

1 (B) If any provision or item of the Omnibus Premium Reduction Act or the
2 application thereof is held to be invalid or unconstitutional by a final and definitive
3 judgment, the mandatory percentage rate reduction provisions of Section 5 of this Act are
4 also decreed to be invalid; however, each insurer shall still make a rate filing with the
5 commissioner of insurance within thirty days of "rate reduction day" adjusting its rates to
6 reflect the actuarial value, as determined by the Department of Insurance, with respect to the
7 remaining valid and constitutional provisions of the Omnibus Premium Reduction Act.

8 Section 10.(A) Section 1 and Sections 7 through 10 of this Act shall become
9 effective upon signature by the governor or, if not signed by the governor, upon expiration
10 of the time for bills to become law without signature by the governor, as provided in Article
11 III, Section 18 of the Constitution of Louisiana. If vetoed by the governor and subsequently
12 approved by the legislature, Section 1 and Sections 5 through 8 of this Act shall become
13 effective on the day following such approval.

14 (B)(1) Sections 2, 3, 4, 5, and 6 of this Act shall become effective one hundred
15 twenty days after "rate reduction day" and shall apply to all causes of action which occur on
16 or after the effective date thereof.

17 (2) If, however, during the time prescribed in Subsection 7(C) of this Act, the
18 commissioner of insurance approves rates of insurers selling more than forty percent of the
19 automobile insurance in this state, as measured by earned premium volume for the calendar
20 year of 2015, which rates are not in compliance with the mandatory percentage rate
21 reduction provisions of Subsections 7(A) or (B) or, if applicable, the actuarial provision of
22 Section 9(B) of this Act, then Sections 2, 3,4, 5, and 6 of the Omnibus Premium Reduction
23 Act shall never take effect.

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)]

Seabaugh

HB No. 1145

Abstract: Creates the Omnibus Premium Reduction Act of 2014 which precludes anyone who does not maintain compulsory motor vehicle liability security from recovering damages resulting from the ownership or operation of a motor vehicle, provides for

reduced damages for amounts paid or payable from collateral sources, provides direct action against an insurer only in limited circumstances, and requires insurers to reduce premiums by a minimum of 5% for insurance policies covering bodily injury, property damage, and uninsured/underinsured motorist coverage.

Proposed law creates the Omnibus Premium Reduction Act of 2014 (OPRA), which has as its general purpose the reduction of the cost of motor vehicle insurance by legislating in regard to civil law and insurance policies. A general outline of the all provisions is as follows:

Section 1. General intent and purpose statement

Sections 2 and 3. Civil law and evidence

a. Comparative fault and joint liability

b. Jury trial

Sections 4, 5, and 6. Direct action and prohibition of recovery for failure to maintain required insurance

Section 7. Insurance premium rate reduction

7A. Bodily injury and property damage liability reduction

7B. Uninsured motorist (UM) reduction

Section 8. Declaratory judgment provision

Section 9. Severability clause

Section 10. Effective date provisions

Proposed law reduces the amount of damages which an injured party can recover from the tortfeasor by any amount paid or payable from the following collateral sources: (1) a health insurance program; (2) an employee wage continuation program; and (3) a disability or illness program, except workers' compensation and social security benefits. Proposed law further allows evidence of amounts paid or payable from collateral sources to be introduced into evidence.

Present law provides that every act whatever of man that causes damage to another obliges him by whose fault it happened to repair it.

Present law provides that damages may include loss of consortium, service, and society, and also include any sales taxes paid by the owner on the repair or replacement of the property damaged.

Present law provides that damages do not include costs for future medical treatment, services, surveillance, or procedures of any kind unless such treatment, services, surveillance, or procedures are directly related to a manifest physical or mental injury or disease.

Proposed law retains present law and provides that in any action for damages in which a person suffers injury, death, or loss, the court shall not award to the plaintiff any portion of any medical expense, bill, or invoice that the plaintiff is not personally obligated to pay to the provider because it has been reduced or paid by any health care insurer, Medicare, Medicaid, other state or federal agency or program, or by private agreement.

Present law allows a jury trial when the amount in controversy exceeds \$50,000.00.

Proposed law allows a jury trial regardless of the amount in controversy.

Present law prohibits the amount of coverage of a policy of insurance to be communicated to the jury unless the amount of coverage is a disputed issue.

Proposed law retains present law and prohibits evidence of the existence of a policy of insurance from being admissible unless the existence of the policy is a disputed issue.

Present law requires that a policy or contract of liability insurance provide that the insolvency or bankruptcy of the insured will not release the insurer from its duty to pay damages. Proposed law retains present law.

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. Further provides that the third party has the right to sue both the insurer and the insured jointly and in solido, or he may sue only the insurer alone if at least one of the following circumstances apply:

- (1) The insured has been adjudged bankrupt or bankruptcy proceedings have commenced in 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 as a result of an offense or quasi-offense between children and their parents or between married persons.
- (5) The insurer is an uninsured motorist carrier.
- (6) The insured is deceased.

Proposed law retains the portion of present law that allows for any additional terms in a policy which do not violate state law to remain unaffected; otherwise, limits the circumstances in which a third party may take direct action against an insurer only to the following three circumstances:

- (1) The insured has been adjudged bankrupt or bankruptcy proceedings have commenced in a court of competent jurisdiction.
- (2) The cause of action is for damages as a result of an offense or quasi-offense between children and their parents or between married persons.
- (3) The insured is deceased.

Proposed law provides that if the circumstances do not meet one of the three exceptions provided for in proposed law, the third party does not have a right of direct action against the insured. Requires that the third party sue the insured to obtain a judgment of liability and damages.

Proposed law clarifies that the insured's right to enforce the terms of the policy against the insurer remains unaffected.

Present law provides that there is no recovery for the first \$15,000.00 of bodily injury damage and the first \$25,000.00 of property damage arising out of a motor vehicle accident for an owner or operator who fails to own maintain compulsory motor vehicle liability security.

Proposed law provides that there is no recovery of either bodily injury damage or property damage arising out of a motor vehicle accident for an owner or operator who fails to own maintain compulsory motor vehicle liability security.

Proposed law (Section 7) provides a combined mandatory percentage reduction of 5% for bodily injury liability and property damage liability, unless the insurer can demonstrate at a rate hearing that such a decrease will result in inadequate rates, or the continuation of inadequate rates, or unless a part of OPRA is declared unconstitutional or otherwise invalid.

Further provides a mandatory percentage reduction of 5% for UM coverage, unless the insurer can demonstrate at a rate hearing that such a decrease will result in inadequate rates, or the continuation of inadequate rates, or unless a part of OPRA is declared unconstitutional or otherwise invalid. Regardless, Section 10(B)(2) of OPRA provides that if the commissioner of insurance approves rates of insurers selling more than 40% of the automobile insurance in this state which are not in compliance with either: (1) the mandatory percentage reduction provisions (5% bodily injury and property damage, 5% UM), or (2) the actuarial value with respect to the remaining valid and constitutional provisions of OPRA, if part of OPRA is declared to be invalid or unconstitutional, the codal provisions hereof never take effect.

Proposed law (Section 7(D)) provides that the savings provided hereby apply upon the issuance or renewal of a policy.

Proposed law (Section 8) provides that any domiciliary of this state may apply to the 19th Judicial District Court (JDC) seeking a declaratory judgment relative to the validity or constitutionality of OPRA.

Proposed law (Section 9) provides that if any provision of OPRA is declared to be invalid or unconstitutional by a final and definitive judgment, such decree does not affect the other provisions of OPRA which are not specifically declared to be invalid or unconstitutional, but the mandatory percentage rate reduction provisions are also invalid; however, each insurer must still make a rate filing with the commissioner of insurance adjusting its rates to reflect the actuarial value of the remaining valid and constitutional provisions of OPRA.

Proposed law (Section 10) provides that the effective date of Sections 1 (purpose statement), 7 (rate reduction), 8 (declaratory judgment), 9 (severability clause), and 10 (effective date) is upon signature of the governor. The effective date of Sections 2, 3, 4, 5, and 6 (codal amendments and enactments) is tied to rate reduction day. As defined in Section 7(D)(2), "rate reduction day" is the date on which a final and definitive judgment is rendered in the declaratory judgment proceeding or, if no suit for declaratory judgment is filed prior to August 1, 2016, rate reduction day is August 1, 2016. Requires that, within 30 days of rate reduction day, all motor vehicle insurers to file rates for bodily injury liability, property damage liability, and uninsured motorist (UM) coverage with the commissioner of insurance. Requires that, within 90 days of rate reduction day, requires the commissioner conclusively act on all such rate filings. Within 120 days of rate reduction day, and presuming inapplicability of Section 10(B)(2), the codal and statutory provisions of OPRA take effect and apply to all causes of action which occur on or after that date. If, however, due to unforeseen events or time delays which preclude the filing of rates or the acting thereon by the commissioner of insurance, authorizes the commissioner to, for good cause, apply to the 19th JDC for an order suspending the running of all time limits which are tied to rate reduction day.

(Amends C.C.P. Art. 1732, C.E. Art. 411, R.S. 22:1269(B), and R.S. 32:866(A)(1); Adds C.C. Art. 2315(C) and C.E. Art. 416)