
DIGEST

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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)