

2020 Regular Session

HOUSE BILL NO. 692

BY REPRESENTATIVE SEABAUGH

INSURANCE: Provides relative to the prohibition of recovery from collateral sources

1 AN ACT

2 To amend and reenact Code of Evidence Article 409 and to enact R.S. 9:2800.25, relative  
3 to collateral sources; provides for the prohibition of recovery by the plaintiff for the  
4 amount of medical expenses reduced or paid by a collateral source; defines collateral  
5 sources; provides for collateral sources to be disclosed to triers of fact; provides for  
6 recovery by the plaintiff to be limited to actual expenses incurred and future  
7 expenses reasonably certain to be incurred; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. Code of Evidence Article 409 is hereby amended and reenacted to read  
10 as follows:

11 Art. 409. Payment of medical and similar expenses

12 In a civil case, evidence of furnishing or offering or promising to pay  
13 expenses or losses occasioned by an injury to person or damage to property is not  
14 admissible to prove liability for the injury or damage nor is it admissible to mitigate,  
15 reduce, or avoid liability therefor, except as provided in R.S. 9:2800.25. This Article  
16 does not require the exclusion of such evidence when it is offered solely for another  
17 purpose, such as to enforce a contract for payment.

18 Section 2. R.S. 9:2800.25 is hereby enacted to read as follows:

19 §2800.25. Recoverable medical expenses; collateral sources; limitations

20 A. In a civil action for bodily injury, injury to property, or wrongful death,  
21 where the plaintiff seeks to recover special damages, including but not limited to the

1 costs of medical care, dental care, custodial care or rehabilitation services, loss of  
2 earnings or other economic loss, where the plaintiff receives or is entitled to receive  
3 benefits for such damages from any source other than a tortfeasor, the tortfeasor's  
4 insurer, or any uninsured or underinsured insurer of the claimant, including but not  
5 limited to health insurance, Worker's Compensation, federal, state, or local income  
6 disability, or from any other public program proving medical expenses, disability  
7 payments, or similar benefits, including Medicare and Medicaid, the plaintiff shall  
8 not be entitled to any amount which duplicates, replaces, or eliminates such benefits,  
9 and no such amount shall be included in any award recovered by the plaintiff. Any  
10 such benefit shall be disclosed to the trier of fact, and the tortfeasor, the tortfeasor's  
11 insurer, or any uninsured or underinsured insurer of the plaintiff shall be liable to the  
12 plaintiff only for the plaintiff's out-of-pocket expenses, actually incurred, after  
13 benefits are received from the provider.

14 B. The reduction referenced in Subsection A of this Section shall not be  
15 applied to the extent that any benefit received by the plaintiff is subject to a statutory  
16 or contractual right of subrogation or reimbursement in favor of the party actually  
17 making the payment and the subrogation or reimbursement right is actually asserted  
18 by the party making the payment.

19 C. The term "benefits" referenced in Subsection A of this Section shall  
20 include contractual write-offs, negotiated reductions or discounts, whether by the  
21 plaintiff, plaintiff's attorney, or a third party but shall not include the proceeds from  
22 a life insurance policy.

23 D. A plaintiff shall be considered to be entitled to receive benefits referenced  
24 in Subsection A of this Section when the plaintiff is covered by a policy of health  
25 insurance, Worker's Compensation, federal, state, or local income disability, or any  
26 other public program providing medical expenses, disability payments, or similar  
27 benefits including Medicare and Medicaid, regardless of whether any benefits have  
28 actually been received. If the plaintiff is found to be entitled to receive benefits, the

1 tortfeasor shall be liable to the plaintiff only for the plaintiff's calculated potential  
2 out-of-pocket expenses, after anticipated benefits are received from the provider.

3 E. When a claimant fails to maintain health insurance pursuant to the  
4 Affordable Care Act (42 U.S.C. 18001 et seq.) or any other state or federal law or  
5 regulation, the reduction applied to any special damages claimed as set forth in  
6 Subsection A of this Section shall be the greater of any such reduction applied by  
7 Medicare or Medicaid.

8 F. Future costs or expenses which the court finds will, with reasonable  
9 certainty, be replaced, duplicated, eliminated, or indemnified pursuant to Subsection  
10 A of this Section, shall be compensable by the plaintiff as referenced in Subsections  
11 A and D of this Section.

12 G. The provisions of this Section shall not apply to a plaintiff who self-funds  
13 the cost of any such special damage as set forth in Subsection A of this Section. It  
14 shall be the burden of the plaintiff to prove that the funding source for such special  
15 damages was available to and the property of the plaintiff prior to the transaction or  
16 occurrence of events giving rise to the claim for such damages.

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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 692 Original

2020 Regular Session

Seabaugh

**Abstract:** Provides for reduced damages for amounts paid or payable from collateral sources including national and state-funded benefits, Worker's Compensation payments, and negotiated reductions and write-offs.

Present law (C.E. 409) provides that evidence of furnishing or offering to pay expenses are not admissible to mitigate, reduce, or avoid liability.

Proposed law allows payment from collateral sources, as defined by proposed law, to be admissible.

Present law does not prohibit recovery of damages payable from collateral sources.

Proposed law (R.S. 9:2800.25) provides that the plaintiff is not entitled to any amount that duplicates, replaces, or eliminates benefits from sources other than the tortfeasor or tortfeasor's insurer.

Proposed law provides that the plaintiff is entitled to only the out-of-pocket expenses actually incurred.

Proposed law provides that collateral sources include contractual write-offs and negotiated reductions or discounts, health insurance, Worker's Compensation, and national and state-sponsored benefits.

Proposed law provides that any benefit received from collateral sources shall be disclosed to the trier of fact.

Proposed law provides that future costs and expenses shall be reduced or eliminated in accordance with proposed law.

Proposed law provides that the provisions of proposed law are not applicable to plaintiffs who self-fund.

(Amends C.E. Art. 409; Adds R.S. 9:2800.25)