

2020 First Extraordinary Session

SENATE BILL NO. 29

BY SENATOR MCMATH

LIABILITY. Provides relative to certain civil actions, civil liability, damages, and procedures. (1/1/21)

1 AN ACT  
2 To amend and reenact Code of Civil Procedure Arts. 1732 and 1733(A), to enact R.S.  
3 9:2800.25, and to repeal R.S. 32:295.1(E), relative to liability; to provide relative to  
4 civil liability and certain civil actions; to provide relative to certain jury trials, trial  
5 procedures, damages, collateral sources, and evidence; to repeal provisions  
6 prohibiting certain evidence regarding the failure to wear safety belts; to provide for  
7 an effective date; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. Code of Civil Procedure Articles 1732 and 1733(A) are hereby amended  
10 and reenacted to read as follows:

11 Art. 1732. Limitation upon jury trials

12 A trial by jury shall not be available in:

13 (1) A suit for damages arising from an offense or quasi-offense where the  
14 amount of no individual petitioner's cause of action exceeds ten thousand  
15 dollars, or where such cause of action exceeds ten thousand dollars but no cash  
16 deposit for payment of jury trial costs has been made as provided in Article  
17 1733(A).

1            ~~(2)~~ **(2)** A suit other than a suit subject to the provisions of Paragraph (1),  
2 where the amount of no individual petitioner's cause of action exceeds  ~~fifty~~  
3 **twenty-five** thousand dollars exclusive of interest and costs, except as follows:

4            (a) If an individual petitioner stipulates or otherwise judicially admits sixty  
5 days or more prior to trial that the amount of the individual petitioner's cause of  
6 action does not exceed  ~~fifty~~ **twenty-five** thousand dollars exclusive of interest and  
7 costs, a defendant shall not be entitled to a trial by jury.

8            (b) If an individual petitioner stipulates or otherwise judicially admits for the  
9 first time less than sixty days prior to trial that the amount of the individual  
10 petitioner's cause of action does not exceed  ~~fifty~~ **twenty-five** thousand dollars  
11 exclusive of interest and costs, any other party may retain the right to a trial by jury  
12 if that party is entitled to a trial by jury pursuant to this Article and has otherwise  
13 complied with the procedural requirements for obtaining a trial by jury.

14            (c) Notwithstanding Subsubparagraphs (a) and (b) of this Subparagraph, if,  
15 as a result of a compromise or dismissal of one or more claims or parties which  
16 occurs less than sixty days prior to trial, an individual petitioner stipulates or  
17 otherwise judicially admits that the amount of the individual petitioner's cause of  
18 action does not exceed  ~~fifty~~ **twenty-five** thousand dollars exclusive of interest and  
19 costs, a defendant shall not be entitled to a trial by jury.

20            ~~(2)~~**(3)** A suit on an unconditional obligation to pay a specific sum of money,  
21 unless the defense thereto is forgery, fraud, error, want, or failure of consideration.

22            ~~(3)~~**(4)** A summary, executory, probate, partition, mandamus, habeas corpus,  
23 quo warranto, injunction, concursus, workers' compensation, emancipation,  
24 tutorship, interdiction, curatorship, filiation, annulment of marriage, or divorce  
25 proceeding.

26            ~~(4)~~**(5)** A proceeding to determine custody, visitation, alimony, or child  
27 support.

28            ~~(5)~~**(6)** A proceeding to review an action by an administrative or municipal  
29 body.

1           ~~(6)~~**(7)** All cases where a jury trial is specifically denied by law.

2           Art. 1733. Demand for jury trial; bond for costs

3           A.**(1)** A party may obtain a trial by jury by filing a pleading demanding a trial  
4           by jury and a bond in the amount and within the time set by the court pursuant to  
5           Article 1734, **except as provided in Subparagraph (2) of this Paragraph.**

6           **(2) In a suit for damages arising from an offense or quasi-offense where**  
7           **the amount of an individual petitioner's cause of action exceeds ten thousand**  
8           **dollars, a party may obtain a trial by jury by filing a pleading requesting a trial**  
9           **by jury and depositing not less than twenty thousand dollars as a cash deposit**  
10           **for jury costs as required by Article 1734.1, except that such cash deposit shall**  
11           **be made no later than sixty days after the request for trial by jury. Failure to**  
12           **post the cash deposit as required by this Subparagraph shall constitute a waiver**  
13           **of the trial by jury.**

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

15           **§2800.25. Collateral source; recovery of certain expenses; evidence; definitions;**  
16                                   **limitations**

17           **A. For the purposes of this Section:**

18           **(1) "Health insurance issuer" means Medicare, Medicaid, an entity**  
19           **issuing policies under the Employee Retirement Income Security Act (ERISA),**  
20           **and any entity that offers health insurance coverage through a policy or**  
21           **certificate of insurance subject to state law that regulates the business of**  
22           **insurance, including a health maintenance organization, federal or nonfederal**  
23           **governmental plan, and the office of group benefits.**

24           **(2) "Medical provider" means any health care provider, hospital,**  
25           **ambulance service, or their heirs or assignees.**

26           **(3) "Contracted health care provider" means any in-network medical**  
27           **provider that has entered into a contract or agreement directly with a health**  
28           **insurance issuer or with a health insurance issuer through a network of**  
29           **providers for the provision of covered health care services at a pre-negotiated**

1 rate.

2 (4) "Case" means a quasi-delictual or delictual action where a person  
3 suffers injury, death, or loss.

4 (5) "Cost sharing amount" shall mean any co-pay, deductible, or any  
5 other amount paid or owed to a medical provider by or on behalf of the  
6 claimant.

7 B. In a case where a claimant's medical expenses have been paid, in  
8 whole or in part, by a health insurance issuer to a contracted health care  
9 provider, or pursuant to the Louisiana Workers' Compensation Law, recovery  
10 of the medical expenses so paid is limited to one and a quarter times the amount  
11 actually paid to the medical provider by the health insurance issuer or  
12 compensation payor and any cost sharing amounts that were paid or are owed  
13 by or on behalf of the claimant, or the amount actually billed, whichever is less.

14 In cases brought pursuant to Louisiana medical malpractice law, R.S. 40:1231.1,  
15 et seq. only, where a claimant's medical expenses have been paid, in whole or in  
16 part, by a health insurance issuer to a contracted health care provider, recovery  
17 of the medical expenses so paid is limited to one and a quarter times the amount  
18 actually paid to the medical provider by the health insurance issuer and any  
19 cost sharing amounts that were paid or are owed by or on behalf of the  
20 claimant, plus fifteen percent, or the amount actually billed, whichever is less.

21 C. In all other cases, and for all medical expenses not actually paid by a  
22 health insurance issuer to a contracted health care provider, the claimant may  
23 recover the medical expenses billed and paid without condition or under  
24 protest, or that are owed, in the amount claimed, by or on behalf of the  
25 claimant, including but not limited to the amount secured by a contractual or  
26 statutory privilege, lien, or guarantee.

27 D. The provisions of this Section are not applicable to the right to  
28 recover damages for future medical treatment, services, surveillance, or  
29 procedures of any kind.

1                    **E. The provisions of this Section are not applicable to cases brought**  
 2                    **pursuant to the malpractice liability for state services law, R.S. 40:1237.1, et**  
 3                    **seq., or the Louisiana Governmental Claims Act, R.S. 13:5101, et seq.**

4                    **F. Whether any person has paid or has agreed to pay, in whole or in**  
 5                    **part, any of a claimant's medical expenses, shall not be disclosed to the jury.**  
 6                    **The jury shall be informed only of the amount actually billed by medical**  
 7                    **providers for claimant's medical treatment. If any reduction of the amount of**  
 8                    **past medical expenses awarded by the jury is required by Subsection B of this**  
 9                    **Section, this reduction shall be made by the court after trial.**

10                  Section 3. R.S. 32:295.1(E) is hereby repealed.

11                  Section 4. The provisions of this Act shall have prospective application only and  
 12 shall not apply to a cause of action arising or action pending prior to the effective date of this  
 13 Act.

14                  Section 5. This Act shall become effective on January 1, 2021.

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The original instrument and the following digest, which constitutes no part  
 of the legislative instrument, were prepared by Jerry G. Jones.

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#### DIGEST

SB 29 Original

2020 First Extraordinary Session

McMath

Present law (C.C.P. Art. 1732) authorizes a jury trial when the amount in controversy exceeds \$50,000.

Proposed law reduces the threshold for a jury trial to \$25,000, except that a suit for damages arising from an offense or quasi-offense that exceeds \$10,000 may be tried by jury if a party requests a jury trial and posts a cash deposit of at least \$20,000 for costs of the trial no later than 60 days after making the request.

Proposed law (R.S. 9:2800.25) provides for definitions:

- (1) "Health insurance issuer" means Medicare, Medicaid, an entity issuing policies under the Employee Retirement Income Security Act (ERISA), and any entity that offers health insurance coverage through a policy or certificate of insurance subject to state law that regulates the business of insurance, including a health maintenance organization, federal or nonfederal governmental plan, and the office of group benefits.
- (2) "Medical provider" means any health care provider, hospital, ambulance service, or their heirs or assignees.
- (3) "Contracted health care provider" means any in-network medical provider that has entered into a contract or agreement directly with a health insurance issuer or with a health insurance issuer through a network of providers for the provision of covered

- health care services at a pre-negotiated rate.
- (4) "Case" means a quasi-delictual or delictual action where a person suffers injury, death, or loss.
- (5) "Cost sharing amount" shall mean any co-pay, deductible, or any other amount paid or owed to a medical provider by or on behalf of the claimant.

Proposed law provides that in a case where a claimant's medical expenses have been paid, in whole or in part, by a health insurance issuer to a contracted health care provider, or pursuant to the La. Workers' Compensation Law, recovery of the medical expenses so paid is limited to one and a quarter times the amount actually paid to the medical provider by the health insurance issuer or compensation payor and any cost sharing amounts that were paid or are owed by or on behalf of the claimant, or the amount actually billed, whichever is less. In cases brought pursuant to the Louisiana medical malpractice law, where a claimant's medical expenses have been paid, in whole or in part, by a health insurance issuer to a contracted health care provider, recovery of the medical expenses so paid is limited to one and a quarter times the amount actually paid to the medical provider by the health insurance issuer and any cost sharing amounts that were paid or are owed by or on behalf of the claimant, plus 15%, or the amount actually billed, whichever is less. In all other cases, and for all medical expenses not actually paid by a health insurance issuer to a contracted health care provider, the claimant may recover the medical expenses billed that were paid without condition or under protest or that are owed, in the amount claimed, by or on behalf of the claimant, including but not limited to any amount secured by a contractual or statutory privilege, lien, or guarantee.

Proposed law further provides that its provisions are not applicable to the right to recover damages for future medical treatment, services, surveillance, or procedures of any kind.

Proposed law also provides that its provisions are not applicable to cases brought pursuant to the malpractice liability for state services law, or the Louisiana Governmental Claims Act.

Proposed law further provides that whether any person has paid or has agreed to pay, in whole or in part, any of a claimant's medical expenses, shall not be disclosed to the jury. The jury shall be informed only of the amount actually billed by medical providers for claimant's medical treatment. If any reduction of the amount of past medical expenses awarded by the jury is required by proposed law, this reduction shall be made by the court after trial.

Present law (R.S. 32:295.1(E)) provides that the failure to wear a safety belt in violation of present law shall not be admitted to mitigate damages in any action to recover damages arising out of the ownership, common maintenance, or operation of motor vehicle, and the failure to wear a safety belt in violation of present law shall not be considered evidence of comparative negligence.

Proposed law repeals this provision.

Proposed law provides that its provisions shall have prospective application only and shall not apply to a cause of action arising or action pending prior to the effective date of proposed law.

Effective January 1, 2021.

(Amends C.C.P. Arts. 1732 and 1733(A); adds R.S. 9:2800.25; repeals R.S. 32:295.1(E))