

SENATE BILL NO. 418

BY SENATOR TALBOT AND REPRESENTATIVES AMEDEE, BACALA, BEAULLIEU, BUTLER, CARRIER, CREWS, DAVIS, DESHOTEL, DEVILLIER, DUBUISSON, ECHOLS, EDMONDS, EDMONSTON, EMERSON, FARNUM, FIRMENT, FONTENOT, FREIBERG, FRIEMAN, GADBERRY, GAROFALO, GOUDEAU, HARRIS, HENRY, HOLLIS, HORTON, HUVAL, ILLG, MIKE JOHNSON, KERNER, MACK, MCCORMICK, MCFARLAND, MCKNIGHT, MIGUEZ, MINCEY, NELSON, CHARLES OWEN, ROBERT OWEN, PRESSLY, RISER, ROMERO, SCHAMERHORN, SCHEXNAYDER, SEABAUGH, THOMAS, THOMPSON, WHEAT, WRIGHT AND ZERINGUE

1 AN ACT

2 To amend and reenact Civil Code Articles 3492 and 3493.10, Code of Civil Procedure
3 Article 1732 and R.S. 22:1269 (B), to enact R.S. 9:2800.25, and to repeal R.S.
4 32:295.1(E), relative to liability; to provide relative to civil liability and to motor
5 vehicle liability coverage; to extend the general prescriptive period for delictual
6 actions involving motor vehicle accidents; to prohibit the court from awarding a
7 plaintiff the amount of medical expenses reduced or paid by a collateral source; to
8 provide relative to collateral source, prescription, jury trials, and jury trial thresholds
9 under certain circumstances; to provide relative to the right of direct action against
10 an insurer; to repeal provisions prohibiting certain evidence regarding the failure to
11 wear safety belts; to require certain annual rate filings with the commissioner of
12 insurance; to provide for a mandatory rate reduction under certain circumstances; to
13 provide for an effective date; and to provide for related matters.

14 Be it enacted by the Legislature of Louisiana:

15 Section 1. The provisions of this Act shall be known as the "Omnibus Premium
16 Reduction Act of 2020". Whereas motor vehicle accident claims comprise a major portion
17 of the lawsuits filed in Louisiana's state courts, and whereas the enactment of civil justice
18 reforms and their general applicability have a positive effect toward the reduction of the cost

1 of motor vehicle insurance, the Omnibus Premium Reduction Act of 2020 is designed to
 2 achieve a significant reduction in the premium rate of motor vehicle accidents and insurance
 3 by legislating in regard not only to the specific motor vehicle accidents and insurance suits,
 4 but also to civil law issues of general applicability thus correcting the imbalances and abuses
 5 which are prevalent in Louisiana's current civil law and motor vehicle insurance systems,
 6 thereby resulting in a direct cost savings to all citizens of the state of Louisiana.

7 Section 2. Civil Code Article 3492 and 3493.10 are hereby amended and reenacted
 8 to read as follows:

9 Art. 3492. Delictual actions

10 ~~Delictual actions~~ **Except as provided in Civil Code Article 3493.10,**
 11 **delictual actions** are subject to a liberative prescription of one year. This
 12 prescription commences to run from the day injury or damage is sustained. It does
 13 not run against minors or interdicts in actions involving permanent disability and
 14 brought pursuant to the Louisiana Products Liability Act or state law governing
 15 product liability actions in effect at the time of the injury or damage.

16 * * *

17 Art. 3493.10. Delictual actions; two-year prescription; criminal act

18 Delictual actions **for injury or damage arising from the operation or**
 19 **control of any motor vehicle, aircraft, watercraft, or other means of conveyance,**
 20 **or those** which arise due to damages sustained as a result of an act defined as a crime
 21 of violence under Chapter 1 of Title 14 of the Louisiana Revised Statutes of 1950,
 22 except as provided in Article 3496.2, are subject to a liberative prescription of two
 23 years. This prescription commences to run from the day injury or damage is
 24 sustained. **It does not run against minors or interdicts in actions involving**
 25 **permanent disability and brought pursuant to the Louisiana Products Liability**
 26 **Act or state law governing product liability actions in effect at the time of the**
 27 **injury or damage.**

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

30 Art. 1732. Limitation upon jury trials

1 A trial by jury shall not be available in:

2 (1) A suit brought pursuant to the provisions of Chapter 3 of Title V of Book
 3 III of the Civil Code, where the amount of no individual petitioner's cause of
 4 action exceeds ten thousand dollars exclusive of interest or costs.

5 (2) A suit, other than one brought pursuant to Chapter 3 of Title V of
 6 Book III of the Civil Code, where the amount of no individual petitioner's cause of
 7 action exceeds ~~fifty~~ thirty-five thousand dollars exclusive of interest and costs,
 8 except as follows:

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

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

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

25 ~~(2)~~ (3) A suit on an unconditional obligation to pay a specific sum of money,
 26 unless the defense thereto is forgery, fraud, error, want, or failure of consideration.

27 ~~(3)~~ (4) A summary, executory, probate, partition, mandamus, habeas corpus,
 28 quo warranto, injunction, concursus, workers' compensation, emancipation,
 29 tutorship, interdiction, curatorship, filiation, annulment of marriage, or divorce
 30 proceeding.

1 ~~(4)~~(5) A proceeding to determine custody, visitation, alimony, or child
2 support.

3 ~~(5)~~(6) A proceeding to review an action by an administrative or municipal
4 body.

5 ~~(6)~~(7) All cases where a jury trial is specifically denied by law.

6 * * *

7 Section 4. R.S. 9:2800.25 is hereby enacted to read as follows:

8 **§2800.25. Recoverable medical expenses; collateral sources; limitations;**
9 **evidence**

10 **A. For the purpose of this Section:**

11 **(1) "Health insurance issuer" means any health insurance coverage**
12 **through a policy or certificate of insurance subject to regulation of insurance**
13 **under state law, health maintenance organization, employer sponsored health**
14 **plan, the office of group benefits, and an equivalent federal or state health plan.**

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

17 **(3) "Cost sharing" means copayments, coinsurance, deductibles, and any**
18 **other amounts which have been paid or are owed by the plaintiff.**

19 **B. In cases where a plaintiff's medical expenses have been paid, in whole**
20 **or in part, by a health insurance issuer, Medicaid, or Medicare to a contracted**
21 **or participating medical provider, the plaintiff's recovery of medical expenses**
22 **is limited to the amount actually paid to the medical provider by the health**
23 **insurance issuer, Medicaid, or Medicare and any applicable cost sharing**
24 **amount paid or owed by the plaintiff, and not the amount billed.**

25 **C. The court shall award the plaintiff as damages one and one-half times**
26 **the amount of premiums paid for a period not to exceed one year prior to the**
27 **date of the accident or occurrence for procuring the health insurance policy**
28 **providing benefits to the plaintiff for the treatment or services received.**

29 **D. In an action for damages where a person suffers injury, death, or loss,**
30 **the court may receive evidence concerning any amount which has been paid or**

1 contributed as of the date it enters judgment, by or on behalf of, the claimant
 2 or members of his immediate family to secure his right to any private insurance
 3 benefit which he has received as a result of such injury or death.

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

5 §1269. Liability policy; insolvency or bankruptcy of insured and inability to effect
 6 service of citation or other process; direct action against insurer

7 * * *

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

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

19 (b) The insured is insolvent or dissolved.

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

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

24 (e) ~~When the insurer is an uninsured motorist carrier.~~ When the plaintiff is
 25 seeking recovery pursuant to an uninsured or underinsured policy.

26 (f) When the tortfeasor's liability insurer has reserved the right to
 27 dispute whether the policy at issue provides coverage for some or all of the
 28 claims asserted in the action, other than limits of coverage provided by the
 29 policy.

30 (g) When the tortfeasor's liability insurer has denied coverage to the

1 tortfeasor for some or all of the claims asserted in the action.

2 (h) The cause of action is for damages as a result of an offense or quasi
 3 offense related to asbestos exposure.

4 (i) The insured is deceased.

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

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

24 * * *

25 Section 6. R.S. 32:295.1(E) is hereby repealed in its entirety.

26 Section 7. Pursuant to the provisions of this Act, every motor vehicle insurer
 27 authorized to transact business in the state of Louisiana shall make a motor vehicle policy
 28 rate filing with the Department of Insurance at least once every twelve months for the
 29 thirty-six-month period following the effective date of this Act and shall reduce rates when
 30 actuarially justified.

1 Section 8. For policies of automobile insurance issued or renewed one year following
2 the effective date of this Act, each insurer shall file with the commissioner of insurance for
3 approval premium rates which actuarially reflect the savings it anticipates as a result of this
4 Act, which is presumed to be ten percent lower for each impacted coverage, when compared
5 to the premium rates in effect for that coverage on the date of enactment. Each such insurer
6 shall have the right to request all or partial relief from the presumed roll-back amount of ten
7 percent on each impacted coverage, if it can demonstrate to the commissioner of insurance
8 that it has not experienced a sufficient reduction in loss costs to actuarially justify the full
9 amount of presumed savings of ten percent. Any filing with premium rates that provides for
10 the ten percent reduction or more for each impacted coverage shall be deemed approved, if
11 not disapproved, thirty days after filing. This Section does not prohibit an increase for any
12 individual insurance policy premium if the increase results from an increase in the risk of
13 loss.

14 Section 9. This Act shall become effective on January 1, 2021, and shall have
15 prospective application only and shall not apply to a cause of action arising or action
16 pending prior to January 1, 2021.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____