

2020 First Extraordinary Session

HOUSE BILL NO. 60

BY REPRESENTATIVES MCFARLAND AND PRESSLY

LIABILITY/CIVIL: Enacts the Premium Reduction Act of 2020 (Item #40)

1 AN ACT

2 To amend and reenact R.S. 22:1269(B)(2), Code of Civil Procedure Article 1732, and Code
3 of Evidence Article 411, to enact R.S. 9:2800.25, and to repeal R.S. 32:295.1(E),
4 relative to liability; to provide relative to civil liability and to motor vehicle liability
5 coverage; to provide relative to awarding medical expenses reduced or paid by a
6 collateral source; to provide relative to collateral source, jury trials, and jury trial
7 thresholds under certain circumstances; to provide relative to the right of direct
8 action against an insurer; to provide relative to the admissibility of certain evidence;
9 to require certain annual rate filings with the commissioner of insurance; to provide
10 for a rate reduction under certain circumstances; to provide for an effective date; and
11 to provide for related matters.

12 Be it enacted by the Legislature of Louisiana:

13 Section 1. The provisions of this Act shall be known as the "Premium Reduction Act
14 of 2020". Whereas motor vehicle accident claims comprise a major portion of the lawsuits
15 filed in Louisiana's state courts, and whereas the enactment of civil justice reforms and their
16 general applicability have a positive effect toward the reduction of the cost of motor vehicle
17 insurance, the Premium Reduction Act of 2020 is designed to achieve a significant reduction
18 in the premium rate of motor vehicle accidents and insurance by legislating in regard not
19 only to the specific motor vehicle accidents and insurance suits, but also to civil law issues
20 of general applicability thus correcting the imbalances and abuses which are prevalent in

1 Louisiana's current civil law and motor vehicle insurance systems, thereby resulting in a
2 direct cost savings to all citizens of the state of Louisiana.

3 Section 2. Code of Civil Procedure Article 1732 is hereby amended and reenacted
4 to read as follows:

5 Art. 1732. Limitation upon jury trials

6 A trial by jury shall not be available in:

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

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

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

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

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

1 ~~(2)~~(3) A suit on an unconditional obligation to pay a specific sum of money,
2 unless the defense thereto is forgery, fraud, error, want, or failure of consideration.

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

7 ~~(4)~~(5) A proceeding to determine custody, visitation, alimony, or child
8 support.

9 ~~(5)~~(6) A proceeding to review an action by an administrative or municipal
10 body.

11 ~~(6)~~(7) All cases where a jury trial is specifically denied by law.

12 Section 3. R.S. 9:2800.25 is hereby enacted to read as follows:

13 §2800.25. Recoverable medical expenses; collateral sources; limitations; evidence

14 A. For the purpose of this Section:

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

19 (2) "Medical provider" means any healthcare provider, hospital, ambulance
20 service, or their heirs or assignees.

21 (3) "Cost sharing" means copayments, coinsurance, and deductibles which
22 have been paid or are owed by the plaintiff to a medical provider.

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

1 C. In cases where the plaintiff does not submit medical expenses for payment
2 to any available health insurance issuer, Medicaid, or Medicare, the plaintiff's
3 recovery of medical expenses is limited to the amount that would have been paid by
4 the health insurance issuer, Medicaid, or Medicare, plus any applicable cost sharing
5 amount, had the medical expenses been submitted to the health insurance issuer,
6 Medicaid, or Medicare for payment.

7 D. It is against the public policy of this state for a third party to pay a
8 plaintiff's medical expenses, and to attempt to claim any right for payment of any
9 amount of medical expenses greater than the amount paid by the third party. In a
10 case where a plaintiff's medical expenses are paid by a third party other than a health
11 insurance issuer, Medicare, or Medicaid, the plaintiff's recovery is limited to the
12 amount actually paid to the medical provider, plus any cost sharing amount.

13 E.(1) At the conclusion of any trial in which the trier of fact has awarded the
14 plaintiff medical expenses pursuant to Subsection B or C of this Section, only upon
15 motion by the plaintiff, the court may award an amount for a supplemental medical
16 payment up to fifty percent of the amount of past medical expenses awarded by the
17 trier of fact, but, under no circumstance, may the total award of medical expenses
18 and supplemental medical payments exceed the amount of the medical bills.

19 (2) The factors that a judge may consider in determining whether to award
20 any supplemental medical payment include only the following:

21 (a) The cost of any health insurance premiums paid by or on behalf of the
22 plaintiff in the year prior to the date of the accident or occurrence that is the basis of
23 the litigation.

24 (b) The extent to which the plaintiff, or those acting on behalf of the
25 plaintiff, used that health insurance for payment of medical expenses unrelated to the
26 cause of action before the court.

27 (3) In cases where a health insurance issuer has asserted a lien, or intervenes,
28 for recovery of medical expenses paid by that health insurance issuer, the court may

1 also consider the attorney fees incurred to recover those medical expenses and the
2 extent to which the health insurance issuer has reduced its lien.

3 (4) An award of supplemental medical expenses may only be made after a
4 hearing that provides all parties the opportunity to present evidence of the factors
5 provided by this Section that may impact the determination of an appropriate
6 supplemental medical payment.

7 F. In any civil action that involves recovery of medical expenses by the
8 claimant, the trier of fact shall be told only the amount of the bill that has been paid,
9 or would have been paid if submitted to a health insurance issuer, Medicaid, or
10 Medicare, or the amount actually paid by a third party, plus the amount of any cost
11 sharing. Information regarding the amount billed is not relevant and shall not be
12 presented before the trier of fact in any of the situations provided by this Section.

13 G. The provisions of this Section shall apply notwithstanding the provisions
14 of Code of Evidence Article 409.

15 Section 4. R.S. 22:1269(B)(2) is hereby amended and reenacted to read as follows:

16 §1269. Liability policy; insolvency or bankruptcy of insured and inability to effect
17 service of citation or other process; direct action against insurer

18 * * *

19 B.

20 * * *

21 (2) ~~This right of direct action shall exist whether or not the policy of~~
22 ~~insurance sued upon was written or delivered in the state of Louisiana and whether~~
23 ~~or not such policy contains a provision forbidding such direct action, provided the~~
24 ~~accident or injury occurred within the state of Louisiana.~~ may be brought in the
25 parish in which the accident or injury occurred or in the parish in which an action
26 could be brought against the insured under the general rules of venue prescribed by
27 Code of Civil Procedure Article 42 only. The caption of any suit brought pursuant
28 to the provisions of this Subsection shall not include the name of the insurer.

1 Nothing contained in this Section shall be construed to affect the provisions of the
2 policy or contract if such provisions are not in violation of the laws of this state.

3 * * *

4 Section 5. Code of Evidence Article 411 is hereby amendment and reenacted to read
5 as follows:

6 Art. 411. Liability insurance

7 A. Although a policy of insurance may be admissible, the amount of
8 coverage under the policy shall not be communicated to the jury unless the amount
9 of coverage is a disputed issue which the jury will decide.

10 B. At the commencement of the trial, once the judge advises the jury that one
11 or more insurance companies are parties to the litigation, there shall be no further
12 reference to any insurance company or the existence of any insurance policy in the
13 presence of the jury, unless the amount of coverage is in dispute.

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

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

20 Section 8. For policies of automobile insurance issued or renewed one year
21 following the effective date of this Act, each insurer shall file with the commissioner of
22 insurance for approval premium rates which actuarially reflect the savings it anticipates as
23 a result of this Act, which is presumed to be ten percent lower for each impacted coverage,
24 when compared to the premium rates in effect for that coverage on the date of enactment.
25 Each such insurer shall have the right to request all or partial relief from the presumed roll-
26 back amount of ten percent on each impacted coverage, if it can demonstrate to the
27 commissioner of insurance that it has not experienced a sufficient reduction in loss costs to
28 actuarially justify the full amount of presumed savings of ten percent. Any filing with
29 premium rates that provides for the ten percent reduction or more for each impacted

1 coverage shall be deemed approved, if not disapproved, thirty days after filing. This Section
2 does not prohibit an increase for any individual insurance policy premium if the increase
3 results from an increase in the risk of loss.

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

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)]

HB 60 Engrossed

2020 First Extraordinary Session

McFarland

Abstract: Creates the Premium Reduction Act of 2020 which reduces the threshold for a jury trial, provides for reduced damages for amounts paid or payable from collateral sources, repeals the limitation on presenting evidence of the failure to wear a safety belt, and provides relative to direct actions against an insurer.

Proposed law creates the Premium Reduction Act of 2020, which has as its general purpose the reduction of the cost of motor vehicle insurance by legislation in regard to civil law and insurance policies.

Jury Trial Threshold

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 \$35,000, except for tort actions, for which the threshold is \$15,000.

Recovery of Medical Expenses (Collateral Source)

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

- (1) "Health insurance issuer" means a health insurance coverage through a policy or certificate of insurance subject to regulation of insurance under state law, health maintenance organization, employer sponsored health plan, the office of group benefits, and an equivalent federal or state health plan.
- (2) "Medical provider" means any healthcare provider, hospital, ambulance service, or their heirs or assignees.
- (3) "Cost sharing" means copayments, coinsurance, deductibles, and any other amounts which have been paid or are owed by the plaintiff to a medical provider.

Proposed law provides that when a plaintiff's medical expenses have been paid by a health insurance issuer, Medicaid, or Medicare, the plaintiff's recovery of medical expenses is limited to the amount actually paid to the health care provider by the insurer, Medicaid, or Medicare, and not the amount billed.

Proposed law provides that in cases where the plaintiff does not submit medical expenses for payment to any available health insurance issuer, Medicaid, or Medicare, the plaintiff's recovery of medical expenses is limited to the amount that would have been paid by the health insurance issuer, Medicaid, or Medicare, plus any applicable cost sharing amount.

Proposed law provides that it is against the public policy of this state for a third party to pay a plaintiff's medical expenses, and to attempt to claim any right for payment of any amount of medical expenses greater than the amount paid by the third party.

Proposed law further provides that cases where a plaintiff's medical expenses are paid by a third party other than a health insurance issuer, Medicare or Medicaid, the plaintiff's recovery is limited to the amount actually paid to the medical provider, plus any cost sharing amount.

Proposed law provides that at the conclusion of any trial in which the trier of fact has awarded the plaintiff medical expenses pursuant to proposed law, upon motion by the plaintiff, the court may award an amount for a supplemental medical payment up to 50% of the amount of the past medical expenses awarded by the trier of fact, but, under no circumstance, may the total award of medical expenses and supplemental medical payments exceed the amount of the medical bills.

Proposed law authorizes the court, in determining whether to award any supplemental medical payment, to consider only the cost of any medical premiums paid by or on behalf of the plaintiff in the year prior to the date of the accident or occurrence and the extent to which the plaintiff, or those acting on behalf of the plaintiff, used that health insurance for payment of medical expenses unrelated to the cause of action before the court.

Proposed law provides that in cases where a health insurance issuer has asserted a lien, or intervenes, for recovery of medical expenses paid by that health insurance issuer, the court may also consider the attorney fees incurred to recover those medical expenses and the extent to which the health insurance issuer has reduced its lien.

Proposed law provides that an award of supplemental medical expenses may only be made after a hearing that provides all parties the opportunity to present evidence of the factors that may impact the determination of an appropriate supplemental medical payment.

Proposed law provides that in any civil action which involves recovery of medical expenses by the claimant, the trier of fact shall be told only the amount of the bill that has been paid, or would have been paid if submitted to a health insurance issuer, Medicaid, or Medicare, or the amount actually paid by a third party, plus the amount of any cost sharing.

Proposed law provides that information regarding the amount billed is not relevant and prohibits the presentation of such information to the trier of fact in any of the situations provided by proposed law.

Present law (C.E. 409) provides that in a civil case, evidence of furnishing or offering or promising to pay expenses or losses occasioned by an injury to person or damage to property is not admissible to mitigate, reduce, or avoid liability therefor.

Proposed law retains present law but provides that proposed law applies notwithstanding present law.

Direct Action Against the Insurer

Present law (R.S. 22:1269(B)(2)) provides relative to liability policies and direct action against an insurer.

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. Provides for action against the insurer alone if at least one of the following applies:

- (1) The insured has been adjudged bankrupt by a court of competent jurisdiction or proceedings to adjudge an insured bankrupt have been commenced before 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 resulting from an offense or quasi offense between children and parents or between married persons.
- (5) The insurer is an uninsured motorist carrier.
- (6) The insured is deceased.

Proposed law retains present law.

Present law provides that a direct action may be brought in the parish in which the accident or injury occurred or in the parish in which the action could be brought against either the insured or the insurer under the general rules of venue prescribed by present law.

Proposed law retains present law and provides that the direct action may be brought in the parish in which the accident or injury occurred or in the parish in which the action could be brought against the insured under the general rules of venue.

Proposed law provides that the caption of any direct action against the insurer shall not include the name of the insurer.

Present law (C.E. Art. 411) provides that although a policy of insurance may be admissible, the amount of coverage under the policy shall not be communicated to the jury unless the amount of coverage is a disputed issue which the jury will decide.

Proposed law retains present law and provides that at the commencement of the trial, once the judge advises the jury that one or more insurance companies are parties to the litigation, there shall be no further reference to any insurance company or the existence of any insurance policy in the presence of the jury, unless the amount of coverage is in dispute.

Evidence of Failure to Wear a Safety Belt

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 present law.

Department of Insurance

Proposed law provides that every motor vehicle insurer authorized to transact business in the state shall make a motor vehicle policy rate filing with the Dept. of Insurance at least once every 12 months for the 36-month period following the effective date of proposed law and shall reduce rates when actuarially justified.

Proposed law further provides that for policies of automobile insurance issued or renewed one year following the effective date of the proposed law, each insurer shall file with the commissioner of insurance for approval premium rates which actuarially reflect the savings it anticipates as a result of the proposed law, which is presumed to be 10% for each impacted coverage, when compared to the premium rates in effect for that coverage on the date of enactment of the proposed law. Also provides that each such insurer shall have the right to request all or partial relief from the presumed roll-back amount of 10% on each impacted coverage, if it can demonstrate to the commissioner of insurance that it has not experienced a sufficient reduction in loss costs to actuarially justify the full amount of presumed savings of 10%.

Proposed law further provides that any filing with premium rates that provide for the 10% reduction or more for each impacted coverage shall be deemed approved, if not disapproved, 30 days after filing. Proposed law also provides that it does not prohibit an increase for any individual insurance policy premium if the increase results from an increase in the risk of loss.

Effective Date

Proposed law provides that the provisions of proposed law shall become effective on Jan. 1, 2021, and shall have prospective application only and shall not apply to a cause of action arising or action pending prior to Jan. 1, 2021.

(Amends R.S. 22:1269(B)(2), C.C.P. Art. 1732, and C.E. Art. 411; Adds R.S. 9:2800.25; Repeals R.S. 32:295.1(E))

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill:

1. Clarify that the motion for supplemental damages may only be made by the plaintiff and remove duplicative language to that effect.
2. Specify that supplemental damages are limited to past medical expenses.
3. Change the phrase "medical premiums" to "health insurance premiums".
4. Add language that the collateral source provision applies notwithstanding conflicting language in the Code of Evidence.