2018 Regular Session

HOUSE BILL NO. 756

BY REPRESENTATIVE DWIGHT

INSURERS/GUARANTY ASSNS: Requires exhaustion of all other available coverage

1   AN ACT

2   To amend and reenact R.S. 22:2062(A)(1) and (2), relative to claims paid by the Louisiana

3   Insurance Guaranty Association; to require the exhaustion of coverage under an

4   uninsured or underinsured motorist policy; to provide for a reduction in the amount

5   payable on a claim; to provide for applicability; to provide for an effective date; and

6   to provide for related matters.

7   Be it enacted by the Legislature of Louisiana:

8   Section 1. R.S. 22:2062(A)(1) and (2) are hereby amended and reenacted to read as

9   follows:

10   §2062. Exhaustion of other coverage

11   A.(1) Any person having a claim against an insurer shall be required first to

12   exhaust all coverage provided by any other policy ~~other than his own uninsured or~~

13   ~~underinsured motorist policy~~, including the right to a defense under the other policy,

14   if the claim under the other policy arises from the same facts, injury, or loss that gave

15   rise to the covered claim against the association. The requirement to exhaust shall

16   apply without regard to whether or not the other insurance policy is a policy written

17   by a member insurer. However, no person shall be required to exhaust any right

18   under the policy of an insolvent insurer or any right under a life insurance policy or

19   annuity.

1   (2) Any amount payable on a covered claim under this Part shall be reduced

2   by the full applicable limits stated in the other insurance policy, or by the amount of

3   the recovery under the other insurance policy as provided herein. The association

4   and the insured shall receive a full credit for the stated limits, unless the claimant

5   demonstrates that the claimant used reasonable efforts to exhaust all coverage and

6   limits applicable under the other insurance policy. If the claimant demonstrates that

7   the claimant used reasonable efforts to exhaust all coverage and limits applicable

8   under the other insurance policy, or if there are no applicable stated limits under the

9   policy, the association and the insured shall receive a full credit for the total

10   recovery.

11   (a) The credit shall be deducted from the lesser of the following:

12   (i) The association's covered claim limit.

13   (ii) The amount of the judgment or settlement of the claim.

14   (iii) The policy limits of the policy of the insolvent insurer.

15   (b) In no case, however, shall the obligation of the association exceed the

16   covered claim limit of this Part.

17   (c) The provisions of this Paragraph shall not apply to uninsured or

18   underinsured motorist policies.

19   *   *   *

20   Section 2. This Act shall become effective upon signature by the governor or, if not

21   signed by the governor, upon expiration of the time for bills to become law without signature

22   by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If

23   vetoed by the governor and subsequently approved by the legislature, this Act shall become

24   effective on the day following such approval.

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 756 Original   2018 Regular Session   Dwight

Abstract: Requires the exhaustion of coverage under an uninsured or underinsured motorist policy prior to payment by the La. Insurance Guaranty Association.

Present law establishes the La. Insurance Guaranty Association to provide for the payment of covered claims under certain insurance policies to claimants or policyholders due to the insolvency of an insurer, to provide financial assistance to member insurers under rehabilitation or liquidation, and to provide an association to assess the cost of operations among insurers.

Present law requires any person having a claim against an insurer to first exhaust all coverage provided by any other policy other than the person's own uninsured or underinsured motorist policy, including the right to a defense under the other policy, if the claim under the other policy arises from the same facts, injury, or loss that gave rise to the covered claim against the association.

Proposed law repeals the exception for the person's own uninsured or underinsured motorist policy.

Present law requires any amount payable on a covered claim to be reduced by the full applicable limits of the other insurance policy or the amount of the recovery under the other insurance policy and provides that the association and the insured shall receive a full credit for the stated limits, unless the claimant demonstrates that the claimant used reasonable efforts to exhaust all coverage and limits applicable under the other insurance policy.

Present law further provides that, if the claimant used reasonable efforts to exhaust all coverage and limits applicable under the other insurance policy, or if there are no applicable stated limits under the policy, the association and the insured shall receive a full credit for the total recovery.

Proposed law retains present law.

Present law provides that the credit shall be deducted from the lesser of the following:

(1)   The association's covered claim limit.

(2)   The amount of the judgment or settlement of the claim.

(3)   The policy limits of the policy of the insolvent insurer.

Proposed law repeals the option that the credit be deducted from the policy limits of the policy of the insolvent insurer.

Present law provides an exception for uninsured or underinsured motorist policies.

Proposed law repeals present law.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 22:2062(A)(1) and (2))

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.