

2020 First Extraordinary Session

SENATE BILL NO. 28

BY SENATOR WARD

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

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AN ACT

To amend and reenact Code of Civil Procedure Arts. 1732 and 1733(A), and the heading of R.S. 22:1269, to enact R.S. 9:2800.25 and R.S. 22:1269(B)(3), and to repeal R.S. 32:295.1(E), relative to liability; to provide relative to civil liability and certain civil actions; to provide relative to certain jury trials, trial procedures, damages, collateral sources, and evidence; to repeal provisions prohibiting certain evidence regarding the failure to wear safety belts; to provide for an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

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

Art. 1732. Limitation upon jury trials

A trial by jury shall not be available in:

(1) **A suit for damages arising from an offense or quasi-offense where the amount of no individual petitioner's cause of action exceeds fifteen thousand dollars, or where such cause of action exceeds fifteen thousand dollars but no cash deposit for payment of jury trial costs has been made as provided in**

1 **Article 1733(A).**

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

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

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

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

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

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

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

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

1 body.

2 ~~(6)~~(7) All cases where a jury trial is specifically denied by law.

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

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

7 **(2) In a suit for damages arising from an offense or quasi-offense where**
8 **the amount of an individual petitioner's cause of action exceeds fifteen thousand**
9 **dollars, a party may obtain a trial by jury by filing a pleading requesting a trial**
10 **by jury and providing a cash deposit for costs as required by Article 1734.1,**
11 **except that such cash deposit shall be made no later than thirty days after the**
12 **request for trial by jury. The deposit shall be sufficient to defray the pretrial**
13 **costs of the jury trial through the first day of trial. Failure to post the cash**
14 **deposit as required by this Subparagraph shall constitute a waiver of the trial**
15 **by jury.**

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

17 **§2800.25. Collateral source; recovery of certain expenses; evidence; definitions;**

18 **limitations**

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

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

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

28 **(3) "Contracted health care provider" means any in-network medical**
29 **provider that has entered into a contract or agreement directly with a health**

1 insurance issuer or with a health insurance issuer through a network of
2 providers for the provision of covered health care services at a pre-negotiated
3 rate.

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

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

9 B. In a case where a claimant's medical expenses have been paid, in
10 whole or in part, by a health insurance issuer to a contracted health care
11 provider, or pursuant to the Louisiana Workers' Compensation Law as
12 provided in R.S. 23:1020.1, et seq., recovery of the medical expenses so paid is
13 limited to two and a quarter times the amount actually paid to the medical
14 provider by the health insurance issuer or compensation payor and any cost
15 sharing amounts that were paid or are owed by or on behalf of the claimant, or
16 the amount actually billed, whichever is less. In a case brought pursuant to the
17 Louisiana medical malpractice law, R.S. 40:1231.1, et seq. only, where a
18 claimant's medical expenses have been paid, in whole or in part, by a health
19 insurance issuer to a contracted health care provider, recovery of the medical
20 expenses so paid is limited to two and a quarter times the amount actually paid
21 to the medical provider by the health insurance issuer and any cost sharing
22 amounts that were paid or are owed by or on behalf of the claimant, plus fifteen
23 percent, or the amount actually billed, whichever is less.

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

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

DIGEST

SB 28 Original

2020 First Extraordinary Session

Ward

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 \$15,000 may be tried by jury if a party requests a jury trial and posts a cash deposit for costs of the trial no later than 30 days after making the request. The deposit shall be sufficient to defray the pretrial costs of the jury trial through the first day of trial.

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 Louisiana Workers' Compensation Law as provided in R.S. 23:1020.1, et seq., recovery of the medical expenses so paid is limited to two 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 a case brought pursuant to the Louisiana medical malpractice law, R.S. 40:1231, et seq. only, 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 two 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.

Proposed law provides that 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 and 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 the amount secured by a contractual or statutory privilege, lien, or guarantee.

Proposed law provides that it is not applicable to the right to recover damages for future medical treatment, services, surveillance, or procedures of any kind incurred after the date of entry of judgment by the court or of an arbitration award. Also provides that it is not applicable to cases brought pursuant to the malpractice liability for state services law, R.S. 40:1237.1, or the Louisiana Governmental Claims Act, R.S. 13:5101, et seq.

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. 22:1269 (B)) 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.

Present law further provides that, if the accident or injury occurred within the state of Louisiana, the right of direct action shall exist whether or not the policy of insurance was written or delivered in the state of Louisiana and whether or not such policy contains a provision forbidding such direct action.

Proposed law retains present law and adds that in a direct action against an insurer pursuant to the provisions of present law that is tried by a jury, the name of the insurer shall not be disclosed to the jury.

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 and R.S. 22:1269(B)(3);
repeals R.S. 32:295.1(E))