

2020 Regular Session

SENATE BILL NO. 471

BY SENATOR ROBERT MILLS AND REPRESENTATIVE MCFARLAND

AUTOMOBILE INSURANCE. Provides for the Louisiana Timber Transportation and Safety Act. (8/1/20)

1 AN ACT
2 To enact R.S. 3:21 and Part III-A of Chapter 28 of Title 3 of the Louisiana Revised Statutes
3 to 1950, to be comprised of R.S. 3:4331 through 4341, relative to forestry; to provide
4 for the Louisiana Timber Transportation and Safety Act; to provide for legislative
5 intent; to provide for definitions; to provide for exclusivity of remedy; to provide for
6 limitation on recovery; to provide for medical care and related benefits; to provide
7 for lost wages; to provide for attorney fees; to provide for the Louisiana Timber
8 Transportation and Safety Fund; to provide for investment of the moneys in the fund;
9 to provide for an annual surcharge; to provide for qualifications and requirements for
10 participation in the fund; to provide for liability insurance coverage; to provide for
11 self-insured funds; to provide for duties of insurers and insurance agents; to provide
12 for the filing of a claim; to provide for mediation; to provide for expedited
13 mediation; to provide for mediators; to provide for the payment of mediators; to
14 provide for settlement offers; to provide for the Louisiana Timber Transportation and
15 Safety Oversight Board; to provide for safety educational programs; and to provide
16 for related matters.

17 Be it enacted by the Legislature of Louisiana:

1 Section 1. R.S. 3:21 and Part III-A of Chapter 28 of Title 3 of the Louisiana Revised
2 Statutes to 1950, to be comprised of R.S. 3:4331 through 4341, are hereby enacted to read
3 as follows:

4 **§21. Powers and duties of the commissioner; timber transportation**

5 **A. The commissioner of the Department of Agriculture and Forestry has**
6 **the duty and authority to protect, advance, and promote conservation of the**
7 **Louisiana timber industry.**

8 **B. The commissioner shall implement the provisions of the Louisiana**
9 **Timber Transportation and Safety Act, provided for in Part III-A of Chapter**
10 **28 of Title 3 of the Louisiana Revised Statutes to 1950.**

11 * * *

12 **PART III-A. LOUISIANA TIMBER TRANSPORTATION AND SAFETY ACT**

13 **§4331. Legislative intent; definitions**

14 **A. The legislature finds and declares all of the following:**

15 **(1) Timber has traditionally been a cornerstone of rural Louisiana,**
16 **where logging and wood products companies are often the largest employers in**
17 **rural towns. In many rural parishes, the forestry sector represents the largest**
18 **part of the economic base.**

19 **(2) The preservation and maintenance of a viable timber industry is**
20 **critical to the well-being of the economy of rural Louisiana.**

21 **B. As used in this Part, the following terms shall have the following**
22 **meanings:**

23 **(1) "Board" means the Louisiana Timber Transportation and Safety**
24 **Oversight Board.**

25 **(2) "Claimant" means a plaintiff or a person who is injured in an**
26 **accident with a commercial vehicle owned or operated by a defendant timber**
27 **transportation operator or who has a tort claim against a defendant timber**
28 **transportation operator pursuant to this Part.**

29 **(3) "Commissioner" means the commissioner of the Department of**

1 Agriculture and Forestry, unless otherwise indicated.

2 (4) "Medical care and related benefits" for the purpose of this Section
3 means all of the following:

4 (a) All reasonable medical, surgical, hospitalization, physical
5 rehabilitation, medications, prosthetic devices, and other similar materials
6 reasonably necessary in the provision of such services which is due the claimant
7 as a result of a compensable injury incurred in an auto accident with a timber
8 transportation vehicle which is covered by this Part.

9 (b) "Medical care and related benefits" as used in this Section shall not
10 be construed to mean non-essential specialty items or devices of convenience.

11 (5) "Timber transportation operator" means a person who owns or
12 operates a timber transportation vehicle.

13 (6) "Timber transportation vehicle" means a commercial vehicle used
14 to collect and transport timber.

15 §4332. Qualifications for timber transportation operator

16 In order for a timber transportation operator to be qualified pursuant
17 to this Section and authorized to participate in the fund, he shall meet all of the
18 following conditions:

19 (1) Cause to be filed with the commissioner proof of insurance coverage
20 or, if self-insured, proof of financial responsibility as provided by R.S. 3:4322.5.

21 (2) Pay the surcharge assessed by the commissioner on all qualified
22 timber transportation operators in accordance with R.S. 3:4322.5.

23 (3) Meet the requirements for participation in the fund as provided for
24 in R.S. 3:4322.10.

25 §4333. Timber transportation operator; exclusivity of remedy; limitation of
26 recovery

27 A.(1) Notwithstanding any provision of law to the contrary, no action for
28 damages which occurs on or after January 1, 2021, may be maintained against
29 a qualified timber transportation operator except as provided for in this Part.

1 **(2) The provisions of this Part shall serve as exclusive remedy for any**
2 **actions related to damages in tort or for any injury associated with a timber**
3 **transportation vehicle operated by a timber transportation operator who is**
4 **qualified pursuant to this Part.**

5 **B. The provisions of the Part shall apply and shall be effective as they,**
6 **relate to a qualified timber transportation operator upon acceptance of proof**
7 **of insurance coverage or financial responsibility by the commissioner pursuant**
8 **to R.S. 3:4322.5; however, the effective date and time shall be that date and time**
9 **that the insurer accepts payment of the surcharge.**

10 **C.(1) The total amount recoverable for all general damages for personal**
11 **injury claims for injuries to or death of an injured person, exclusive of medical**
12 **care and lost wages as provided in R.S. 3:4322.4, shall not exceed five hundred**
13 **thousand dollars plus interest and costs.**

14 **(2)(a) A timber transportation operator qualified under this Part is not**
15 **liable for general damages in an amount in excess of five hundred thousand**
16 **dollars plus interest thereon accruing on or after January 1, 2021, and costs**
17 **specifically provided for by this Paragraph for all general damages claims**
18 **because of injuries to or death of any one claimant.**

19 **(b) The sole cost for which a qualified timber transportation operator**
20 **qualified under this Part may be assessed by a trial court shall be limited to the**
21 **claimant's cost incurred prior to the rendering of a final judgment against the**
22 **timber transportation operator, after a trial on a liability claim, and subject to**
23 **any settlement offer made pursuant to R.S. 3:4322.8.**

24 **D.(1) Financial responsibility of a qualified timber transportation**
25 **operator under this Section may be established only by filing with the**
26 **commissioner proof that he is insured by a policy of automobile liability**
27 **insurance in the amount of at least five hundred thousand dollars per person**
28 **per claim plus any, additional required coverage amount, pursuant to R.S.**
29 **3:4322.10, is reasonable to cover the risk associated with medical expenses and**

1 lost wages provided for in R.S. 3:4322.4, with qualification under this Section
2 taking effect when either of the following occurs:

3 (a) When the timber transportation operator obtains a policy of liability
4 insurance in the same form as the policy of automobile liability insurance.

5 (b) If self-insured, when the timber transportation operator provides
6 proof of financial responsibility by depositing with the board five hundred
7 thousand dollars in money or represented by irrevocable letters of credit,
8 federally insured certificates of deposit, bonds, securities, cash values of
9 insurance, or any other security approved by the commissioner as well as the
10 amount required by the board to provide coverage for the lost wages and
11 medical expenses for a claimant required by R.S. 3:4322.10. In the event any
12 portion of said amount is seized pursuant to the judicial process, the self-
13 insured health care provider shall have five days to deposit with the board the
14 amounts so seized.

15 (2) The timber transportation operator's failure to timely file with the
16 commissioner the required insurance policy or, if self-insured, post said
17 amounts with the board shall terminate his enrollment in the Louisiana Timber
18 Transportation and Safety Fund.

19 §4334. Medical care and related benefits; lost wages; attorney fees

20 A. In addition to awards for damages for which the defendant is liable
21 pursuant to R.S. 3:4322.3, the claimant is entitled to receive medical expenses
22 and related benefits and lost wages as a result of an accident or injury subject
23 to the provisions of this Part. Such medical expenses and related benefits and
24 lost wages shall be subject to the provisions of this Section.

25 B. As it relates to awards for medical expenses which are due and owing
26 the claimant the following shall apply:

27 (1) Reductions in medical bills based upon the write-offs or write-downs
28 by insurance companies or Medicare are not collateral sources and are not
29 recoverable as damages in civil litigation. In cases where a claimant's medical

1 expenses have been paid by a health insurance company or Medicare, the
2 claimant's recovery of medical expenses is limited to the amount actually paid
3 to the healthcare provider by the insurer or Medicare, and not the amount
4 billed.

5 (2) In cases where a claimant's medical expenses are paid pursuant to the
6 Workers' Compensation Law as provided in R.S. 23:1020.1 et seq. a claimant's
7 recovery of medical expenses is limited to the amount payable under the
8 medical payments fee schedule of the Workers' Compensation Law.

9 (3) If a claimant chooses not to submit medical expenses for payment
10 pursuant to the Workers' Compensation Law, and the medical expenses were
11 eligible for payment under the Workers' Compensation Law, then the
12 claimant's recovery of damages for medical expenses is limited to the amount
13 that would have been payable had the medical expenses been submitted for
14 payment under the provisions of the Workers' Compensation Law.

15 (4) In an action for damages where a person suffers injury, death, or loss,
16 the court may receive evidence concerning any amount which has been paid or
17 contributed as of the date it enters judgment, by or on behalf of, the claimant
18 or members of his immediate family to secure his right to any private insurance
19 benefit which he has received as a result of such injury or death.

20 C.(1) Lost wages shall include only actual lost wages which are owed but
21 were not paid by the employer to the claimant and shall not include sick leave
22 days or other compensatory leave where the claimant was actually paid by his
23 employer.

24 (2) Any future lost wages award shall not include possible bonuses or
25 other speculative enhancements to wages.

26 D. Payments for future medical care and related benefits and future lost
27 wages may be paid, at the option of the insurer, through an annuity or other
28 security device which makes monthly payment to the claimant and such annuity
29 or security device shall be approved by the court.

1 E. Nothing in this Section shall be construed to prevent a claimant and
2 insurer from entering into a settlement agreement whereby future medical care
3 and related benefits and future lost wages shall be provided for a limited period
4 of time only or to a limited degree.

5 F. The claimant may employ an attorney to represent him with regard
6 to the provisions of this Part; however, attorney fees of the attorney who
7 renders services for a claimant pursuant to this Part shall not exceed twenty
8 percent of the amount recovered and such fees shall be approved by a court of
9 competent jurisdiction and proper venue.

10 §4335. Louisiana Timber Transportation and Safety Fund

11 A.(1) All funds collected pursuant to the provisions hereof shall be
12 considered self-generated revenues, promptly deposited into a fund designated
13 as the "Louisiana Timber Transportation and Safety Fund". The Louisiana
14 Timber Transportation and Safety Oversight Board is established and
15 authorized pursuant to R.S. 3:4322.9. Neither the fund nor the board shall be
16 a budget unit of the state. The assets of the fund shall not be state property,
17 subject to appropriation by the legislature, or required to be deposited in the
18 state treasury. The state recognizes and acknowledges that the fund and any
19 income from it are not public monies, but rather are private monies which shall
20 be held in trust as a private custodial fund by the board for the use, benefit, and
21 protection of the timber industry, and all of such funds and income earned from
22 investing the private monies comprising the corpus of this fund shall be subject
23 to use and disposition only as provided by this Part.

24 (2) The Louisiana Timber Transportation and Safety Fund may invest,
25 in accordance with this Paragraph, any portion of the private monies
26 comprising the corpus of the fund, as determined by the board. The board may
27 enter into a cooperative endeavor agreement whereby the state treasurer may
28 be authorized to invest a portion of the private monies comprising the corpus
29 of the fund, as determined by the board.

1 (a) If the board decides to invest the monies, it shall do so in accordance
2 with the provisions of Subparagraphs (b) and (c) of this Paragraph.

3 (b) The prudent-man rule shall require each fiduciary of the fund and
4 each board member acting collectively on behalf of the board to act with the
5 care, skill, prudence, and diligence under the circumstances prevailing that a
6 prudent institutional investor acting in a like capacity and familiar with such
7 matters would use in the conduct of an enterprise of a like character and with
8 like aims.

9 (c) This standard requires the exercise of reasonable care, skill, and
10 caution, and is to be applied to investments not in isolation, but in the context
11 of the portfolio, and as part of an overall investment strategy, which shall
12 include an asset allocation study and plan for implementation thereof,
13 incorporating risk and return objectives reasonably suitable to that trust. The
14 asset allocation study and implementation plan shall include the examination
15 of market value risk, credit risk, interest rate risk, inflation risk, counterparty
16 risk, and concentration risk. The investment policy of the board shall preserve
17 and enhance principal over the long term and provide adequate liquidity and
18 cash flow for the payment of obligations pursuant to this Part. The investments
19 shall be diversified to minimize the risk of significant losses unless it is clearly
20 prudent not to do so.

21 (3) The fund shall be exempt from participation in and shall not join or
22 contribute financially to or be entitled to the protection of any plan, pool,
23 association, or guaranty fund or insolvency fund.

24 (4) Neither the fund nor the board may rely on the full faith and credit
25 of this state for payment of legal obligations.

26 (5) The fund and the board shall not be entitled to an appropriation of
27 state general funds without a specific appropriation approved by the legislature.

28 (6) Notwithstanding any provision of law to the contrary, in the event the
29 fund is dissolved or liquidated, any remaining balance after all amounts due

1 under this Part and all amounts due any other person for administrative or
2 operating expenses have been paid from the fund shall be returned in a pro rata
3 amount to the participants in the fund.

4 B.(1) To provide monies for the fund, an annual surcharge shall be levied
5 on all Louisiana timber transportation operators qualified under the provisions
6 of this Part in an amount set by the commissioner after consultation with the
7 board.

8 (2) The board shall cause to be prepared an annual actuarial study of the
9 fund by a qualified competent actuary.

10 (3)(a) The surcharge rates shall be determined by the commissioner
11 based upon actuarial principles and reports, experience, and prudent judgment
12 after consultation with the board.

13 (b) The board shall give written or electronic notice of the meeting at
14 least fifteen days in advance of and provide an opportunity for public comment
15 at the meeting before recommending surcharge rates to the commissioner.

16 C.(1) Such surcharge shall be due and payable to the fund within thirty
17 days after the premiums for automobile liability insurance have been received
18 by the insurer, agent of the insurer, risk manager, self-insured fund, or surplus
19 line agent from the timber transportation operator.

20 (2) It shall be the duty of the insurer, agent of the insurer, self-insured
21 fund, risk manager, or surplus line agent to remit the surcharge to the fund
22 within thirty days of the date of payment by the timber transportation operator.
23 Failure of the insurer, agent of the insurer, self-insured fund, risk manager, or
24 surplus line agent to remit payment within thirty days may subject the insurer,
25 agent of the insurer, self-insured fund, risk manager, or surplus line agent to a
26 penalty, the amount of which will be set by the commissioner on an annual
27 basis, not to exceed a total of twelve percent of the annual surcharge. Upon the
28 failure of the insurer, agent of the insurer, self-insured fund, risk manager, or
29 surplus line agent to remit as provided herein, the board is authorized to

1 institute legal proceedings if necessary to collect the surcharge, any penalty
2 amount to be assessed, legal interest, and all reasonable attorney fees.

3 D. If the annual surcharge is not paid within the time limit above, upon
4 written notice of such nonpayment given by the board concurrently to the
5 commissioner of insurance and the insurer, risk manager, self-insured fund, or
6 surplus line agent, the certificate of authority of the insurer, self-insured fund,
7 risk manager, or surplus line agent shall be suspended until the annual
8 surcharge is paid.

9 E.(1) All expenses of collecting, protecting, and administering the fund
10 shall be paid from the fund.

11 (2) The functions of collecting, administering, and protecting the fund,
12 including all matters relating to recommending surcharge rates, the evaluating
13 and settlement of claims, and relating to the defense of the fund shall be carried
14 out by the board.

15 F. The expenses of the mediation provided for in R.S. 3:4322.6 shall be
16 paid from the fund.

17 §4336. Filing a claim; mediation

18 A.(1)(a) All liability claims for damages against a qualified timber
19 transportation operator covered by this Part, other than claims validly agreed
20 for submission to a lawfully binding arbitration procedure, shall be submitted
21 for mediation to the commissioner as provided for in this Section.

22 (b) A request for mediation shall contain, at a minimum, all of the
23 following:

24 (i) A request for a mediator.

25 (ii) The name of the claimant for whom, or on whose behalf, the request
26 for mediation is being filed.

27 (iii) The names of the defendant timber transportation operator and his
28 insurer, if it is known.

29 (iv) The date of the alleged accident or incident.

1 (v) A brief description of the alleged accident or incident.

2 (vi) A brief description of the alleged injuries.

3 (c) A claimant shall have forty-five days from the date of receipt by the
4 claimant of the confirmation of receipt of the request for mediation in
5 accordance with Subparagraph (3)(a) of this Subsection to pay to the
6 commissioner a filing fee in an amount set by the commissioner, not to exceed
7 one hundred dollars, per named defendant qualified under this Part. The
8 commissioner shall promptly deposit the fees into the fund.

9 (d) Such filing fee may be waived only upon receipt of an in forma
10 pauperis order issued in accordance with Code of Civil Procedure Article 5181
11 et seq. by a district court in a venue in which the claim for damages could
12 properly be brought upon the conclusion of the mediation process.

13 (e) Failure to comply with the provisions of Subparagraph (c) or (d) of
14 this Paragraph within the specified forty-five day time frame in Subparagraph
15 (c) of this Paragraph shall render the request for mediation invalid and without
16 effect. Such an invalid request for review of a claim shall not suspend time
17 within which suit must be instituted in Subparagraph (2)(a) of this Subsection.

18 (f) All funds generated by such filing fees shall be private monies and
19 shall be applied by the board to the costs incurred by the commissioner in
20 administering the claims process.

21 (2)(a) The filing of the request for a mediation of claim shall suspend the
22 time within which suit must be instituted, in accordance with this Part, under
23 the following:

24 (i) Until ninety days following notification, by certified mail, as provided
25 in Subsection J of this Section, to the claimant or his attorney of the issuance of
26 the certificate of completed mediation, in the case of those timber transportation
27 operators covered by this Part.

28 (ii) In case of a timber transportation operator against whom a claim has
29 been filed under the provisions of this Part, but who has not qualified under this

1 Part, until ninety days following notification by certified mail to the claimant
2 or his attorney by the commissioner that the timber transportation operator is
3 not covered by this Part.

4 (b) The filing of a request for mediation of a claim shall suspend the
5 running of prescription against all joint and solidary obligors and all joint
6 tortfeasors to the same extent that prescription is suspended against the party
7 or parties that are the subject of the request for mediation. Filing a request for
8 mediation as required by this Section with any agency or entity other than the
9 commissioner shall not suspend or interrupt the running of prescription.

10 (c)(i) The request for mediation of a claim under this Section shall be
11 deemed filed on the date the request is:

12 (aa) Sent, if the request is electronically sent by facsimile transmission
13 or other authorized means, as provided by R.S. 9:2615(A), to the commissioner.

14 (bb) Mailed, if the request is delivered by certified or registered mail to
15 the commissioner.

16 (cc) Received, if the request is delivered to the commissioner by any
17 means other than as provided by Subitem (aa) or (bb) of this Item.

18 (ii) Upon receipt, the request shall be stamped with the filing date and
19 certified by the commissioner. Filing of the request shall be complete only upon
20 timely compliance with the provisions of Subparagraph (1)(c) or (d) of this
21 Subsection. Upon receipt of any request, the commissioner shall forward a copy
22 of the request to the board within five days of receipt.

23 (d) A mediator shall be appointed within one year from the date the
24 request for mediation of claim was filed.

25 (3) It shall be the duty of the commissioner within fifteen days of the
26 receipt of the claim to:

27 (a) Confirm to the claimant by certified mail, return receipt requested,
28 that the filing has been officially received and whether or not the named
29 defendant or defendants have qualified under this Part.

1 **(b) In the confirmation to the claimant pursuant to Subparagraph (a) of**
2 **this Paragraph, notify the claimant of the amount of the filing fee due and the**
3 **time frame within which such fee is due to the commissioner, and that upon**
4 **failure to comply with the provisions of Subparagraph (1)(c) or (d) of this**
5 **Subsection, the request for mediation of a claim is invalid and without effect**
6 **and that the request shall not suspend the time within which suit must be**
7 **instituted in Subparagraph (2)(a) of this Subsection.**

8 **(c) Notify all named defendants by certified mail, return receipt**
9 **requested, whether or not qualified under the provisions of this Part, that a**
10 **filing has been made against them and request made for mediation of the claim**
11 **and forward a copy of the proposed complaint to each named defendant at his**
12 **last and usual place of residence or his office.**

13 **(4) The commissioner shall notify the claimant and all named defendants**
14 **by certified mail, return receipt requested, of any of the following information:**

15 **(a) The date of receipt of the filing fee.**

16 **(b) That no filing fee was due because the claimant timely provided the**
17 **order set forth in Subparagraph (1)(d) of this Subsection.**

18 **(c) That the claimant has timely complied with the provisions of**
19 **Subparagraph (1)(d) of this Subsection.**

20 **(d) That the required filing fee was not timely paid pursuant to**
21 **Subparagraph (1)(c) of this Subsection.**

22 **(5) In the event that the commissioner is unable to determine after forty-**
23 **five days from the date of mailing of the notification, whether notification by**
24 **certified mail, return receipt requested, provided for in Paragraphs (3) and (4)**
25 **of this Subsection has been received by the claimant, or the notification is not**
26 **claimed or is returned undeliverable, the commissioner shall provide such**
27 **notification by regular first class mail, which date of mailing shall have the**
28 **effect of receipt of notice by certified mail for purposes of Subparagraphs (1)(c)**
29 **and (d) of this Subsection.**

1 **(6) In the event the commissioner receives a filing fee that was not timely**
2 **paid pursuant to Subparagraph (1)(c) of this Subsection, then the commissioner**
3 **shall return or refund the amount of the filing fee to the claimant within thirty**
4 **days of the date the commissioner receives the untimely filing fee.**

5 **B.(1)(a)(i) No action against a timber transportation operator covered**
6 **by this Part or his insurer may be commenced in any court before the**
7 **claimant's proposed complaint has been presented to the commissioner for**
8 **mediation established pursuant to this Section.**

9 **(ii) A certificate of enrollment issued by the commissioner shall be**
10 **admitted in evidence in all applicable proceedings and shall thereby establish**
11 **that the timber transportation operator is qualified under this Part.**

12 **(b) However, with respect to an auto accident which occurs with a timber**
13 **transportation vehicle on or after January 1, 2021, if a mediation is not**
14 **conducted within twelve months after the date of notification of the selection of**
15 **the mediator pursuant to Paragraph D.(1) of this Section, suit may be instituted**
16 **against a timber transportation operator covered by this Part; however, any**
17 **party may petition a court of competent jurisdiction for an order extending the**
18 **twelve-month period provided in this Subsection for good cause shown or the**
19 **parties may all agree to extend the twelve-month period for an additional**
20 **amount of time. After the twelve-month period provided for in this Subsection,**
21 **any court-ordered extension, or any agreement to an extension, the mediation**
22 **established to mediate the claimant's complaint shall be dissolved without the**
23 **necessity of obtaining a court order of dissolution.**

24 **(c) By agreement of all parties, the use of the mediation may be waived.**

25 **(2)(a) A timber transportation operator, against whom a claim has been**
26 **filed under the provisions of this Part, may raise preemptory exceptions**
27 **pursuant to Code of Civil Procedure Article 927 in a court of competent**
28 **jurisdiction and proper venue at any time without need for completion of the**
29 **mediation process.**

1 **(b) If the court finds that the claim had prescribed or otherwise was**
2 **preempted prior to being filed, the mediation shall be dissolved upon the**
3 **judgment becoming final. If the court grants peremptory exception of no right**
4 **of action as to all claimants, the mediation shall be dissolved upon the judgment**
5 **becoming final. If the court grants the peremptory exception of no right of**
6 **action as to fewer than all claimants, any claimant as to whom the court granted**
7 **the peremptory exception of no right of action shall be prohibited from**
8 **participating in the process as a claimant.**

9 **(3)(a) A claimant under this Part may file a motion for summary**
10 **judgment on the issue of liability pursuant to Code of Civil Procedure Article.**
11 **966 without need for completion of the mediation process.**

12 **(b) If the claimant seeks a ruling from the court regarding the issue of**
13 **liability, the defendant timber transportation operator or his insurer may**
14 **petition the court for a ruling on the percentage of fault for which the defendant**
15 **is liable.**

16 **C. Ninety days after the notification to all parties by certified mail by the**
17 **commissioner or ninety days after the expiration of any court-ordered extension**
18 **or agreement for an extension, as authorized by Paragraph (1) of Subsection B,**
19 **the suspension of the running of prescription with respect to a qualified timber**
20 **transportation operator shall cease.**

21 **D. The parties subject to the provisions of the Part shall submit to**
22 **mediation with a mediator at a place and time agreeable to the parties.**

23 **(1) The mediator shall be qualified to engage in alternative dispute**
24 **resolution pursuant to the Louisiana Mediation Act, R.S. 9:4101 et.seq. The**
25 **parties may agree on the mediator.**

26 **(2) If no attorney for or representative of any timber transportation**
27 **operator named in the complaint has made an appearance in the proceedings**
28 **or made written contact with the attorney for the claimant within forty-five**
29 **days of the date of receipt of the notification to the timber transportation**

1 operators or the insurer that the required filing fee has been received by the
2 commissioner as required by Subparagraph (A)(1)(c) of this Section, the
3 attorney for the claimant may file suit against the timber transportation
4 operator.

5 (3) If no agreement can be reached, then the mediator shall be selected
6 in the following manner:

7 (a) The commissioner shall contact the Louisiana State Bar Association,
8 Alternative Dispute Resolution Section, for a list of five names at random from
9 the list of attorneys who are on the approved register for mediators pursuant
10 to R.S. 9:4106, who reside or maintain an office in the parish which would be
11 the proper venue for the action in a court of law. If five mediators cannot be
12 found in the parish of proper venue, then mediators from the parishes
13 surrounding the parish of proper venue will be included. After selection of the
14 attorney names, the Louisiana State Bar Association, Alternative Dispute
15 Resolution Section shall notify the commissioner of the names so selected. The
16 commissioner notify the parties of the attorney names from which the parties
17 may choose the mediator within five days. If no agreement can be reached
18 within five days, the parties shall immediately initiate a procedure of selecting
19 the mediator by each striking two names alternately, with the claimant striking
20 first and advising the timber transportation operator of the name of the
21 attorney so stricken; thereafter, the claimant shall alternately strike until both
22 sides have stricken two names and the remaining name shall be the mediator.

23 (i) If the claimant fails to participate in the striking process, the
24 defendant may file a rule to show cause in a court of competent jurisdiction and
25 venue as to why the claimant's case should not be dismissed with prejudice for
26 failure to participate in good faith with the mediation process.

27 (ii) If the defendant fails to participate in the striking process, the
28 commissioner will dissolve the mediation process and the claimant may file suit
29 against the defendant in a court of competent jurisdiction and venue within the

1 ninety day period provided for in Paragraph (A)(2) of this Section.

2 (b) After the striking, the commissioner shall notify the attorney and all
3 other parties of the name of the selected mediator.

4 (4) The mediator shall establish a reasonable schedule for submission of
5 evidence but must allow sufficient time for the parties to make full and
6 adequate presentation of related facts to the mediator and to the other parties.

7 (5) The party aggrieved by the alleged failure or refusal of another to
8 perform according to the provisions of this Section may petition any district
9 court of proper venue over the parties for an order directing that the parties
10 comply with the provisions of the Louisiana Timber and Transportation and
11 Safety Act.

12 E.(1) The evidence to be presented to the mediator shall be promptly
13 submitted by the respective parties in written form only.

14 (2) The evidence may consist of the accident report, any medical
15 evidence, medical charts, x-rays, lab tests, excerpts of treatises, depositions of
16 witnesses including parties, interrogatories, affidavits, reports of experts,
17 evidence of lost wages, and a position paper submitted by or on behalf of each
18 party.

19 (3) Depositions of the parties and witnesses may be taken prior to the
20 convening of the mediation.

21 (4) Upon request of any party, the clerk of any district court shall issue
22 subpoenas and subpoenas duces tecum in aid of the taking of depositions and
23 the production of documentary evidence for inspection or copying or both.

24 F. Either party, after submission of all evidence and upon ten days'
25 notice to the other side, shall have the right to convene the mediation at a time
26 and place agreeable to the parties and the mediators.

27 G.(1) The mediator's sole duty is to assist the parties in amicably
28 resolving their disputes without litigation.

29 (2) The mediator shall be subject to the standards of conduct of mediator

1 provided for in R.S. 9:4107.

2 (3) The mediator's fee shall be no greater than the applicable hourly fee
3 set by the attorney general's maximum hourly fee rate schedule which is
4 applicable to attorneys who perform duties for state agencies.

5 H. Once the mediation is completed, the commissioner shall issue a
6 certificate of a completed mediation.

7 I. Legal interest shall accrue from the date of filing of the complaint with
8 the commissioner on a judgment rendered by a court in a suit for damages
9 brought after compliance with this Part.

10 J.(1) No party may petition a court for a second order extending the
11 additional extension period provided in Subparagraph (B)(1)(b) of this Section.
12 If a mediation does not take place within the twelve-month period established
13 in this Subsection or any extension ordered by the court, suit may be instituted
14 against the timber transportation operator.

15 (2) In accordance with Subparagraph (B)(1)(b) of this Section, after the
16 twelve-month period or the extension provided for in that Subparagraph, the
17 mediation shall be dissolved without the necessity of obtaining a court order of
18 dissolution.

19 (3) In accordance with Paragraph (B)(3) of this Section, ninety days after
20 the notification to all parties by certified mail by the commissioner of the
21 disolution of the mediation, the suspension of the running of prescription with
22 respect to a qualified timber transportation operator shall cease.

23 §4337. Expedited mediation

24 A. By agreement of all parties and upon written request to the
25 commissioner, an expedited mediation may be implemented. The expedited
26 process shall be governed by other provisions of this Section.

27 B.(1) Within thirty days of the parties' written request for an expedited
28 mediation, the claimant shall provide all defendants with a list of the names and
29 addresses of all known health care providers, including individuals and entities,

1 who have treated the patient before and after the date of the alleged accident to
2 and including the date that the list is provided. The claimant shall make a good
3 faith effort to identify the treating health care providers.

4 (2) The claimant shall execute and provide all defendants with a HIPAA
5 Compliant Authorization form to permit the defendants to obtain the medical
6 records.

7 (3) An order to protect the medical records may be sought as provided
8 in Code of Civil Procedure Article 1426 or the HIPAA regulations at 45 CFR
9 164.512(e) in a court of competent jurisdiction and proper venue.

10 (4) If an authorization is not provided or a protective order is not
11 obtained within thirty days following the written request by the parties to the
12 commissioner for an expedited mediation process, the mediation shall lose its
13 expedited status and no longer be governed by the provisions of this Subsection.
14 The commissioner shall provide notice of such to all parties by registered or
15 certified mail.

16 (5)(a) The evidence to be considered at the mediation shall be promptly
17 submitted by the respective parties in written form only, according to the
18 schedule established by the mediator.

19 (b) The evidence may consist only of the accident report, medical charts,
20 x-rays or other film studies, lab tests, other diagnostic or medical tests, evidence
21 of lost wages, and a position paper submitted by or on behalf of each party.

22 (c) Neither interrogatories to nor depositions of the parties and witnesses
23 may be taken prior to the convening of the expedited mediation.

24 (d) No party shall be permitted to request the clerk of any district court
25 to issue subpoenas and subpoenas duces tecum in aid of the taking of
26 depositions and the production of documentary evidence. However, if a copy of
27 the medical record is not produced by a health care provider within a
28 reasonable period of time, not to exceed fifteen days, following a health care
29 provider's receipt of a medical authorization executed by the claimant pursuant

1 to Paragraph (3) of this Subsection, then the party who forwarded the
2 authorization to the health care provider may request the clerk of any district
3 court to issue subpoenas and subpoenas duces tecum in aid of the production of
4 the medical records.

5 (6) The mediator, after submission of all evidence and upon ten days'
6 notice, shall convene the parties for a mediation at a time and place agreeable
7 to the parties, but in no event shall the mediation be conducted later than twelve
8 months from the date of notification of the selection of the mediator by the
9 commissioner and all other parties.

10 §4338. Settlement offer

11 A.(1) If no agreement has been reached by the parties to settle the case
12 at the end of the mediation, any party may, without any admission of liability,
13 serve upon an adverse party an offer of settlement for the purpose of settling all
14 of the claims between them. The offer shall be in writing and state the total
15 amount of money of the settlement offer and specify whether that amount is
16 inclusive or exclusive of costs, interest, attorney fees, and any other amount
17 which may be awarded pursuant to statute or rule. The offer shall be witnessed
18 in writing by the mediator.

19 (2) Unless accepted, a settlement offer shall remain confidential between
20 the offeror and offeree.

21 (3) If the adverse party does not accept the offer at the mediation, the
22 offer of settlement shall be deemed withdrawn and evidence of the settlement
23 offer shall not be admissible except in a proceeding to determine costs pursuant
24 to this Section.

25 B. If the final judgment obtained by the claimant-offeree is no greater
26 than the amount of the settlement offer made by the defendant-offeror or if the
27 final judgment obtained against the defendant-offeree is no greater than the
28 amount of the settlement offer made by the claimant-offeror, the offeree must
29 pay the offeror's costs, including attorney fees, incurred after the mediation in

1 which the settlement offer was made, as fixed by the court.

2 C. The fact that an offer was made but not accepted does not preclude
3 a subsequent offer or a counter offer. When the liability of one party to another
4 has been determined by verdict, order, or judgment, but the amount or extent
5 of the damages remains to be determined by future proceedings, either party
6 may make a settlement offer, which shall have the same effect as an offer made
7 at mediation, if it is served within a reasonable time not less than thirty days
8 before the start of hearings to determine the amount or extent of damages.

9 D. For purposes of comparing the amount of money offered in the
10 settlement offer to the final judgment obtained, which judgment shall take into
11 account any additur or remittitur, the final judgment obtained shall not include
12 any amounts attributable to costs, interest, or attorney fees, or to any other
13 amount which may be awarded pursuant to statute or rule, unless such amount
14 was expressly included in the settlement offer.

15 §4339. Louisiana Timber Transportation and Safety Oversight Board

16 A. There is hereby established the Louisiana Timber Transportation and
17 Safety Oversight Board within the office of the commissioner.

18 B. The powers and duties of the board shall be as follows:

19 (1) To advise the commissioner of the Department of Agriculture and
20 Forestry as to the surcharge on timber transportation operators after
21 conducting a public hearing as provided in R.S. 3:4335.

22 (2) To advise the commissioner of the Department of Agriculture and
23 Forestry as it relates to the amount coverage that is reasonable and actuarially
24 sound for providing coverage for lost wages and medical expenses pursuant to
25 the R.S. 3:4335.

26 (3) To manage the investments of the Louisiana Timber Transportation
27 and Safety Fund pursuant to R.S. 3:4335

28 (4) To establish safety training programs in cooperation with the
29 Louisiana Community and Technical College System and other educational

1 entities for propose of training timber transportation operators. Such safety
2 programs shall be operated for the following purposes:

3 (a) To improve the driving and safety skills of the operator, thereby
4 reducing the number of accidents involving timber transportation vehicles.

5 (b) To mitigate the severity of auto accidents involving timber
6 transportation operators.

7 (5) To perform all necessary duties and obligations assigned to the board
8 pursuant to this Part.

9 C. The board shall consist of the following members:

10 (1) The commissioner or his designee, who shall serve as chairman of the
11 board.

12 (2) The chairman of the Louisiana Forestry Commission or his designee.

13 (3) One member shall be an actuary who is appointed by the
14 commissioner of the Department of Insurance.

15 (4) One member shall be appointed by the Louisiana Forestry
16 Association.

17 (5) One member shall be appointed by the Louisiana Logger's
18 Association.

19 (6) One member shall be appointed by the Independent Insurance
20 Agents & Brokers of Louisiana.

21 (7) One member shall be appointed by the American Property and
22 Casualty Insurance Association.

23 (8) One representative from the Louisiana House of Representatives
24 appointed by the speaker.

25 (9) One senator from the Louisiana Senate appointed by the president.

26 (10) One member shall be appointed by the president of the Louisiana
27 Community and Technical College System from among his staff with expertise
28 in safety education programs for commercial vehicles who shall serve in an
29 advisory capacity to the board and be a non-voting member.

1 D.(1) The board shall meet annually, or more often if called to meet by
2 the chairman, or on petition to the chairman by four members of the board.

3 (2) Board meetings shall be held at the offices of the commissioner or
4 elsewhere as the board may elect from time to time.

5 E. The board members shall receive no salary or per diem, but shall be
6 reimbursed for actual and reasonable expenses incurred in attendance upon
7 meetings or other work undertaken at the direction of the board.

8 §4340. Requirements for participation in the fund

9 A. The board shall meet and make recommendations to the
10 commissioner regarding the requirements for timber transportation operators
11 to participate in the Timber Transportation and Safety Fund related to their
12 respective timber transportation vehicles. Those qualifications and
13 requirements shall include the following:

14 (1) Educational requirements for timber transportation operators
15 related to defensive driving courses or safety educational programs.

16 (2) Requirements for certain equipment to be installed on timber
17 transportation vehicles which shall include the following:

18 (a) Global satellite positioning equipment.

19 (b) Cameras.

20 (c) Scales which weigh the load of timber being transported.

21 (d) Mandatory hands-free devices for cell phone use.

22 B. The board shall advise the commissioner of the Department of
23 Agriculture and Forestry as it relates to the requirements for the amount
24 coverage that is reasonable and actuarially sound for providing coverage for
25 lost wages and medical expenses pursuant to the R.S. 3:4334. The amount of
26 medical expense and lost wage coverages shall be in an amount that is deemed
27 actuarially sound by the commissioner of the Department of Insurance.

28 C. The commissioner shall consult with and receive advice from the
29 board and shall promulgate rules that set forth requirements, provided for in

1 **this Section, for participation by timber transportation operators in the Timber**
 2 **Transportation and Safety Fund related to their respective timber**
 3 **transportation vehicles.**

4 **§4341. Self-insured funds**

5 **A. Louisiana Forestry Association or the Louisiana Logger's Association,**
 6 **either together or separately, may establish a self-insured fund for the purpose**
 7 **of providing liability insurance by making application to and fulfilling the**
 8 **requirements set forth by the commissioner of the Department of Insurance in**
 9 **order to provide coverage for timber transportation operators who would**
 10 **thereby meet the financial responsibility requirements set forth in R.S. 3:4332.**

11 **B. Louisiana Forestry Association or the Louisiana Logger's Association**
 12 **may negotiate with a commercial liability insurer or insurers in order to offer**
 13 **favorable premium rates to their members in order for those members to meet**
 14 **the financial responsibility requirements set forth in R.S. 3:4332.**

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Carla S. Roberts.

DIGEST

SB 471 Original

2020 Regular Session

Robert Mills

Present law provides that the commissioner of the Department of Agriculture and Forestry has certain powers and duties related to the promotion and regulation of agriculture and forestry.

Proposed law maintains present law but provides that the commissioner also has the duty and authority to protect, advance, and promote conservation of the La. timber industry.

Proposed law further provides that the commissioner will implement the provisions of the La. Timber Transportation and Safety Act provided for in proposed law.

Proposed law provides for legislative intent as follow:

- (1) Timber has traditionally been a cornerstone of rural La., where logging and wood products companies are often the largest employers in rural towns. In many rural parishes, the forestry sector represents the largest part of the economic base.
- (2) The preservation and maintenance of a viable timber industry is critical to the well-being of the economy of rural La.

Proposed law provides for the following definitions:

- (1) "Board" means the La. Timber Transportation and Safety Oversight Board.

- (2) "Claimant" means a plaintiff or a person who is injured in an accident with a commercial vehicle owned or operated by a defendant timber transportation operator or who has a tort claim against a defendant timber transportation operator.
- (3) "Commissioner" means the commissioner of the Department of Agriculture and Forestry, unless otherwise stated.
- (4) "Medical care and related benefits" means all reasonable medical, surgical, hospitalization, physical rehabilitation, medications, prosthetic devices, and other similar materials reasonably necessary in the provision of such services which is due the claimant as a result of a compensable injury incurred in an auto accident with a timber transportation vehicle but does not include non-essential specialty items or devices of convenience.
- (5) "Timber transportation operator" means a person who owns or operates a timber transportation vehicle that transports timber to a timber processing facility.
- (6) "Timber transportation vehicle" means a commercial vehicle used to collect and transport timber.

Proposed law provides that in order for a timber transportation operator to be qualified and authorized to participate in the fund, he will meet all of the following conditions:

- (1) Provide to the commissioner of insurance coverage or, if self-insured, proof of financial responsibility, in an amount no less than \$500,000, plus extra coverage in amount determined by the commissioner, in consultation with the board, to be reasonable to provide insurance coverage for the claimant's lost wages and medical expenses.
- (2) Pay the surcharge assessed by the commissioner on all qualified timber transportation operators which is set by the commissioner in consultation with the board.
- (3) Meet the safety requirements qualifications for the timber transportation operators and meet the vehicle requirements for participation in the fund that are proposed by the board and promulgated by the commissioner.

Proposed law provides that, notwithstanding anything to the contrary, no action for damages which occurs on or after January 1, 2021, may be maintained against a qualified timber transportation operator except as provided for in proposed law. Proposed law further provides that, the provisions of proposed law will serve as exclusive remedy for any actions related to damages in tort or for any injury associated with a timber transportation vehicle operated by a timber transportation operator who is qualified pursuant to proposed law.

Proposed law provides that coverage under proposed law will apply and will be effective as it relates to a qualified timber transportation operator upon acceptance of proof of insurance coverage or financial responsibility by the commissioner; however, the effective date and time will be that date and time that the insurer accepts payment of the surcharge.

Proposed law provides that the total amount recoverable for all general damages for personal injury claims for injuries to or death of an injured person, exclusive of medical care and lost wages, will not exceed \$500,000 plus interest and cost.

Proposed law provides that a timber transportation operator qualified under proposed law is not liable for general damages in an amount in excess of \$500,000 plus interest and costs thereon accruing on or after January 1, 2021, for all general damages claims because of injuries to or death of any one claimant. Proposed law further provides that the sole cost for which a qualified timber transportation operator qualified under proposed law may be

assessed by a trial court will be limited to the claimant's cost incurred prior to the rendering of a final judgment against the timber transportation operator, after a trial on a liability claim, and subject to any settlement offer made pursuant to proposed law.

Proposed law provides that financial responsibility of a qualified timber transportation operator may be established only by filing with the commissioner proof that he is insured by a policy of automobile liability insurance in the amount of at least \$500,000 per person per claim plus whatever additional coverage amount is determined by the board as reasonable to cover the risk associated with medical expenses and lost wages provided for in proposed law. Proposed law further provides in the event that the insured is self-insured, proof of financial responsibility takes place by depositing with the board whatever amount is necessary to provide coverage for medical expenses and lost wages and \$500,000 in money or represented by irrevocable letters of credit, federally insured certificates of deposit, bonds, securities, cash values of insurance, or any other security approved by the commissioner. In the event any portion of said amount is seized pursuant to the judicial process, the self-insured health care provider will have five days to deposit with the board the amounts so seized. The timber transporter operator's failure to timely post said amounts with the board will terminate his enrollment in the La. Timber Transportation and Safety Fund.

Proposed law provides that, in addition to awards for general damages for which the defendant is liable, the claimant is entitled to receive medical expenses and related benefits and lost wages as provided for in proposed law.

Proposed law provides that, as it relates to awards for medical expenses which are due and owing the claimant, the following will apply:

- (1) Reductions in medical bills based upon the write-offs or write-downs by insurance companies or Medicare are not collateral sources and are not recoverable as damages in civil litigation. In cases where a claimant's medical expenses have been paid by a health insurance company or Medicare, the claimant's recovery of medical expenses is limited to the amount actually paid to the healthcare provider by the insurer or Medicare, and not the amount billed.
- (2) In cases where a claimant's medical expenses are paid pursuant to the Workers' Compensation Law as provided in present law, a claimant's recovery of medical expenses is limited to the amount payable under the medical payments fee schedule of the Workers' Compensation Law. If a claimant chooses not to submit medical expenses for payment pursuant to the Workers' Compensation Law, and the medical expenses were eligible for payment under the Workers' Compensation Law, then the claimant's recovery of damages for medical expenses is limited to the amount that would have been payable had the medical expenses been submitted for payment under the provisions of the Workers' Compensation Law.
- (3) In an action for damages where a person suffers injury, death, or loss, the court may receive evidence concerning any amount which has been paid or contributed as of the date it enters judgment, by or on behalf of, the claimant or members of his immediate family to secure his right to any private insurance benefit which he has received as a result of such injury or death.

Proposed law provides that lost wages will include only actual lost wages which are owed but were not paid by the employer to the claimant and will not include sick leave days or other compensatory leave where the claimant was actually paid by his employer. Proposed law further provides that any future lost wages award will not include possible bonuses or other speculative enhancements to wages.

Proposed law provides that, payments for future medical care and related benefits and future lost wages may be paid, at the option of the insurer, through an annuity or other security

device which makes monthly payment to the claimant and such annuity or security device will be approved by the court.

Proposed law provides that nothing in proposed law will be construed to prevent a claimant and insurer from entering into a settlement agreement whereby future medical care and related benefits and future lost wages will be provided for a limited period of time only or to a limited degree.

Proposed law provides that, the claimant may employ an attorney to represent him with regard to the provisions of proposed law; however, attorney fees of the attorney who renders services to a claimant for such services may not exceed 20% of the amount recovered and such fees will be approved by a court of competent jurisdiction and proper venue.

Proposed law provides that all funds collected pursuant to the provisions of proposed law will be considered self-generated revenues, promptly deposited into a fund designated as the "La. Timber Transportation and Safety Fund".

Proposed law provides for the La. Timber Transportation and Safety Oversight Board, established and authorized pursuant to proposed law. Neither the fund nor the board will be a budget unit of the state. The assets of the fund will not be state property, subject to appropriation by the legislature, or required to be deposited in the state treasury. The state recognizes and acknowledges that the fund and any income from it are not public monies, but rather are private monies which will be held in trust as a private custodial fund by the board for the use, benefit, and protection of the timber industry, and all of such funds and income earned from investing the private monies comprising the corpus of this fund will be subject to use and disposition only as provided by proposed law.

Proposed law provides that the La. Timber Transportation and Safety Fund may invest, any portion of the private monies comprising the corpus of the fund, as determined by the board. The board may enter into a cooperative endeavor agreement whereby the state treasurer may be authorized to invest a portion of the private monies comprising the corpus of the fund, as determined by the board. If the board decides to invest the monies, it will do so in accordance with the prudent-man rule requiring each board member acting collectively on behalf of the board to act with the care, skill, prudence, and diligence under the circumstances prevailing that a prudent institutional investor acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

Proposed law provides that the fund will be exempt from participation in and will not join or contribute financially to or be entitled to the protection of any plan, pool, association, or guaranty fund or insolvency fund.

Proposed law provides that neither the fund nor the board may rely on the full faith and credit of this state for payment of legal obligations.

Proposed law provides that, in the event the fund is dissolved or liquidated, any remaining balance after all amounts due under proposed law are paid and all amounts due any other person for administrative or operating expenses have been paid from the fund, will be returned in a pro rata amount to the participants in the fund.

Proposed law provides that to provide monies for the fund, an annual surcharge will be levied on all La. timber transportation operators qualified under proposed law in an amount set by the commissioner after consultation with the board. Proposed law further provides that the board will cause to be prepared an annual actuarial study of the fund by a qualified competent actuary. Proposed law provides that the surcharge rates will be determined by the commissioner based upon actuarial principles and reports, experience, and prudent judgment after consultation with the board. Proposed law provides that the board will give written or electronic notice of the meeting at least 15 days in advance and provide an opportunity for

public comment at the meeting before recommending surcharge rates to the commissioner.

Proposed law provides that such surcharge will be due and payable to the fund within 30 days after the premiums for automobile liability insurance have been received by the insurer, agent of the insurer, risk manager, self-insured fund, or surplus line agent from the timber transportation operator.

Proposed law provides that it will be the duty of the insurer, agent of the insurer, self-insured fund, risk manager, or surplus line agent to remit the surcharge to the fund within 30 days of the date of payment by the timber transportation operator. Failure of the insurer, agent of the insurer, self-insured fund, risk manager, or surplus line agent to remit payment within 30 days may subject the insurer, agent of the insurer, self-insured fund, risk manager, or surplus line agent to a penalty, the amount of which will be set by the commissioner on an annual basis, not to exceed a total of 12% of the annual surcharge. Upon the failure of the insurer, agent of the insurer, self-insured fund, risk manager, or surplus line agent to remit as provided herein, the board is authorized to institute legal proceedings if necessary to collect the surcharge, any penalty amount to be assessed, legal interest, and all reasonable attorney fees.

Proposed law provides that all expenses of collecting, protecting, and administering the fund will be paid from the fund.

Proposed law provides that, if the annual surcharge is not paid within the 30-day time period, upon written notice of such nonpayment given by the board concurrently to the commissioner of insurance and the insurer, risk manager, self-insured fund, or surplus line agent, the certificate of authority of the insurer, self-insured fund, risk manager, or surplus line agent will be suspended until the annual surcharge is paid.

Proposed law provides that the functions of collecting, administering, and protecting the fund, including all matters relating to recommending surcharge rates, the evaluating and settlement of claims, and relating to the defense of the fund, will be carried out by the board.

Proposed law provides that all liability claims for damages against a qualified timber transportation operator covered by proposed law, other than claims validly agreed for submission to a lawfully binding arbitration procedure, will be submitted for mediation as provided for in proposed law.

Proposed law provides that a request for mediation will contain, at a minimum, all of the following:

- (1) A request for a mediator.
- (2) The name of the claimant for whom, or on whose behalf, the request for mediation is being filed.
- (3) The names of the defendant timber transportation operator and his insurer, if it is known.
- (4) The date of the alleged accident or incident.
- (5) A brief description of the alleged accident or incident.
- (6) A brief description of the alleged injuries.

Proposed law provides that a claimant will have 45 days from the date of receipt by the claimant of the confirmation of receipt of the request for mediation to pay to the commissioner a filing fee in an amount set by the commissioner, not to exceed \$100, per named defendant qualified under proposed law and the commissioner will promptly deposit

the fees into the fund. Proposed law, however, provides that the filing fee may be waived upon receipt of an in forma pauperis order issued in accordance with present law by a district court in a venue in which the claim for damages could properly be brought upon the conclusion of the mediation process.

Proposed law provides that failure to pay the filing fee or provide an in forma pauperis order within the 45-day time frame will render the request for mediation invalid and without effect. Such an invalid request for review of a claim will not suspend time within which suit must be instituted under proposed law.

Proposed law provides that all funds generated by the filing fees will be private monies and will be applied by the board to the costs incurred by the commissioner in administering the claims process.

Proposed law provides that the filing of the request for a mediation of claim will suspend the time within which suit must be instituted, in accordance with proposed law until 90 days following notification, by certified mail, to the claimant or his attorney of the issuance of the certificate of completed mediation, in the case of those timber transportation operators covered by proposed law. In the case of a timber transportation operator against who is not qualified under proposed law, the suit must be filed within 90 days following notification by certified mail to the claimant or his attorney by the commissioner that the timber transportation operator is not covered by proposed law.

Proposed law provides that filing a request for mediation of a claim will suspend the running of prescription against all joint and solidary obligors, and all joint tortfeasors, including but not limited to the same extent that prescription is suspended against the party or parties that are the subject of the request for mediation.

Proposed law provides that filing a request for mediation with any state or local agency or entity other than the commissioner of agriculture and forestry will not suspend or interrupt the running of prescription.

Proposed law provides that the request for mediation of a claim under proposed law will be deemed filed on the date the request is:

- (1) Sent, if the request is electronically sent by facsimile transmission to the commissioner.
- (2) Mailed, if the request is delivered by certified or registered mail to the commissioner.
- (3) Received, if the request is delivered to the commissioner by any other means.
- (4) Upon receipt, the request will be stamped with the filing date and certified by the commissioner. The request will only be deemed filed if the filing fee or the in forma pauperis order is timely filed.

Proposed law provides that a mediator will be appointed within one year from the date the request for mediation of claim was filed.

Proposed law provides that it will be the duty of the commissioner within 15 days of the receipt of the claim to:

- (1) Confirm to the claimant by certified mail, return receipt requested, that the filing has been officially received and whether or not the named defendant or defendants have qualified under proposed law and notify the claimant of the amount of the filing fee due and the time frame within which such fee is due to the commissioner, and that upon failure to pay the filing fee or file an in forma pauperis order, the request for mediation of a claim is invalid and without effect and that the request will not

suspend the time within which suit must be instituted.

- (2) Notify all named defendants by certified mail, return receipt requested, whether or not qualified under proposed law, that a filing has been made against them and request made for mediation of the claim and forward a copy of the proposed complaint to each named defendant at his last and usual place of residence or his office.

Proposed law provides that the commissioner will notify the claimant and all named defendants by certified mail, return receipt requested, of any of the following information:

- (1) The date of receipt of the filing fee.
- (2) That no filing was due because the claimant timely provided the order of in forma pauperis.
- (3) That the claimant filed an order of in forma pauperis in lieu of the filing fee.
- (4) That the required filing fee was not timely paid.

Proposed law provides that, in the event that the commissioner is unable to determine after 45 days from the date of mailing of the notification, whether notification by certified mail, return receipt requested, has been received by the claimant, or the notification is not claimed or is returned undeliverable, the commissioner will provide such notification by regular first class mail, which date of mailing will have the effect of receipt of notice by certified mail.

Proposed law provides that, in the event the commissioner receives a filing fee that was not timely paid, then the commissioner will return or refund the amount of the filing fee to the claimant within 30 days of the date the commissioner received the untimely filing fee.

Proposed law provides that no action against a timber transportation operator covered by proposed law, or his insurer, may be commenced in any court before the claimant's proposed complaint has been presented to the commissioner for mediation before a mediator selected pursuant to proposed law. Proposed law provides that a certificate of completion issued by the commissioner will be admitted in evidence in all applicable proceedings.

Proposed law provides that, with respect to an auto accident which occurs with a timber transportation vehicle on or after January 1, 2021, if a mediation is not conducted within 12 months after the date of notification of the selection of the mediator, suit may be instituted against a timber transportation operator. Proposed law provides, however, that any party may petition a court of competent jurisdiction for an order extending the 12-month period for good cause shown or the parties may all agree to extend the 12-month period deadline for an additional amount of time. After the 12-month period, any court-ordered extension, or any agreed to extension, the mediation established to mediate the claimant's complaint will be dissolved without the necessity of obtaining a court order of dissolution.

Proposed law provides that, by agreement of all parties, the use of the mediation may be waived.

Proposed law provides that a timber transportation operator against whom a claim has been filed may raise peremptory exceptions pursuant to present law in a court of competent jurisdiction and proper venue at any time without need for completion of the mediation process. Proposed law provides that, if the court finds that the claim had prescribed or otherwise was preempted prior to being filed, the mediation will be dissolved upon the judgment becoming final. If the court grants a the peremptory exception of no right of action as to all claimants, the mediation will be dissolved upon the judgment becoming final. Proposed law further provides that, if the court grants the peremptory exception to fewer than all claimants, the claimants as to whom the court granted the peremptory exception of

no right of action will be prohibited from participating in the process as a claimant.

Proposed law provides that a claimant may file a motion for summary judgment on the issue of liability pursuant to present law without need for completion of the mediation process. Proposed law further provides that, if the claimant seeks a ruling from the court regarding the issue of liability, the defendant timber transportation operator, or his insurer, may petition the court for a ruling on the percentage of fault for which the defendant is liable.

Proposed law provides that 90 days after the notification to all parties by certified mail by the commissioner or 90 days after the expiration of any court-ordered extension or agreement for an extension, the suspension of the running of prescription with respect to a qualified timber transportation operator will cease.

Proposed law provides that the parties will submit to mediation with a mediator at a place and time agreeable to the parties.

Proposed law provides that the mediator will be qualified to engage in alternative dispute resolution pursuant to present law. The parties may agree on the mediator.

Proposed law provides that, if no attorney for or representative of any timber transportation operator named in the complaint has made an appearance in the proceedings or made written contact with the attorney for the claimant within 45 days of the date of receipt of the notification to the timber transportation operators or the insurer that the required filing fee has been received by the commissioner, the attorney for the claimant may file suit against the timber transportation operator.

Proposed law provides that, if no agreement can be reached, then the mediator will be selected in the following manner:

- (1) The commissioner will contact the La. State Bar Association, Alternative Dispute Resolution Section, for a list of five names at random from the list of attorneys who are on the approved register for mediators and who reside or maintain an office in the parish which would be the proper venue for the action in a court of law. If five mediators cannot be found in the parish of proper venue, then a request will be made for all the parishes surrounding the parish of proper venue. Once the selection of the attorney names has been determined, the La. State Bar Association, Alternative Dispute Resolution Section will notify the commissioner of the names so selected.
- (2) The commissioner will notify the parties of the attorney names from which the parties may choose the mediator within five days. If no agreement can be reached within five days, the parties will immediately initiate a procedure of selecting the mediator by each striking two names alternately, with the claimant striking first and advising the timber transportation operator of the name of the attorney so stricken; thereafter, the claimant will alternately strike until both sides have stricken two names and the remaining name will be the mediator.

Proposed law provides that, if the claimant fails to participate in the striking process, the defendant may file a rule to show cause in a court of competent jurisdiction why the claimant's case should not be dismissed with prejudice for failure to participate in good faith with the mediation process. Proposed law also provides that, if the defendant fails to participate in the striking process, the mediation proceeding will be dissolved and the claimant may file suit against the defendant in court.

Proposed law provides that, after the striking, the commissioner will notify the attorney and all other parties of the name of the selected mediator.

Proposed law provides that the mediator will establish a reasonable schedule for submission of evidence but must allow sufficient time for the parties to make full and adequate

presentation of related facts to the mediator and to the other parties.

Proposed law provides that anyone who is aggrieved by the alleged failure or refusal of another to perform according to the provisions of proposed law may petition any district court of proper venue over the parties for an order directing that the parties comply with the provisions of proposed law.

Proposed law provides that the evidence to be presented to the mediator will be promptly submitted by the respective parties in written form only. Proposed law further provides that the evidence may consist of the accident report, any medical evidence, medical charts, x-rays, lab tests, excerpts of treatises, depositions of witnesses including parties, interrogatories, affidavits, reports of experts, evidence of lost wages, and a position paper submitted by or on behalf of each party.

Proposed law provides that depositions of the parties and witnesses may be taken prior to the convening of the mediation. Proposed law further provides that, upon request of any party, the clerk of any district court will issue subpoenas and subpoenas duces tecum in aid of the taking of depositions and the production of documentary evidence for inspection and/or copying.

Proposed law provides that either party, after submission of all evidence and upon 10 days' notice to the other side, will have the right to convene the mediation at a time and place agreeable to the parties and the mediators.

Proposed law provides that the mediator's sole duty is to assist the parties in amicably resolving their disputes without litigation. Proposed law further provides that the mediator will be subject to the standards of conduct of mediators provided for in present law.

Proposed law provides that the mediator's fee will be no greater than the applicable hourly fees set by the attorney general maximum hourly rate schedule which is applicable to attorneys who perform duties for state agencies.

Proposed law provides that once the mediation is completed, the commissioner will issue a certificate of a completed mediation.

Proposed law provides that legal interest will accrue from the date of filing of the complaint with the commissioner on a judgment rendered by a court in a suit for damages brought after compliance with proposed law.

Proposed law provides that no party may petition a court for a second order extending the additional extension period and if a mediation does not take place within the 12-month period or any extension ordered by the court, suit may be instituted against the timber transportation operator.

Proposed law provides that, after the twelve-month period or the extension, the mediation will be dissolved without the necessity of obtaining a court order of dissolution.

Proposed law provides that 90 days after the notification to all parties by certified mail by the commissioner of the dissolution of the mediation, the suspension of the running of prescription with respect to a qualified timber transportation operator will cease.

Proposed law provides that the expenses of the mediation are provided for from the fund.

Proposed law provides for an expedited mediation process where, by agreement of all parties and upon written request to the commissioner, an expedited mediation may be implemented. Proposed law, as it relates to an expedited mediation, provides as follows:

- (1) Within 30 days of the parties' written request for an expedited mediation, the

claimant will provide all defendants with a list of the names and addresses of all known health care providers, including individuals and entities, who have treated the patient before and after the date of the alleged accident to and including the date that the list is provided. The claimant will execute and provide all defendants with a HIPAA Compliant Authorization form to permit the defendants to obtain the medical records or receive a court order to protect the records.

- (2) If an authorization is not provided or a protective order is not obtained within 30 days following the written request by the parties to the commissioner for an expedited mediation process, the mediation will lose its expedited status.
- (3) The evidence to be considered at the mediation will be promptly submitted by the respective parties in written form only, according to the schedule established by the mediator. The evidence may consist only of the accident report, medical charts, x-rays or other film studies, lab tests, other diagnostic or medical tests, evidence of lost wages, and a position paper submitted by or on behalf of each party.
- (4) Neither interrogatories to nor depositions of the parties and witnesses may be taken prior to the convening of the expedited mediation.
- (5) The mediator, after submission of all evidence and upon 10 days notice, will convene the parties for a mediation at a time and place agreeable to the parties, but in no event will the mediation be conducted later than 12 months from the date of notification of the selection of the mediator by the commissioner and all other parties.

Proposed law provides that, if no agreement to settle the case has been reached at the end of the mediation, any party may, without any admission of liability, serve upon an adverse party an offer of settlement for the purpose of settling all of the claims between them. The offer will be in writing and state the total amount of money of the settlement offer and specify whether that amount is inclusive or exclusive of costs, interest, attorney fees, and any other amount which may be awarded pursuant to statute or rule. The offer will be witnessed in writing by the mediator.

Proposed law provides that, unless accepted, a settlement offer will remain confidential between the offeror and offeree. Proposed law further provides that, if the adverse party does not accept the offer at the mediation, the offer of settlement will be deemed withdrawn and evidence of the settlement offer will not be admissible except in a proceeding to determine costs in court.

Proposed law provides that, if the judgment obtained by the claimant-offeree in court is no greater than the amount of the settlement offer made by the defendant-offeree or if the final judgment obtained against the defendant-offeree is no greater than the amount of the settlement offer made by the claimant-offeree, the offeree must pay the offeror's costs, including attorney fees, incurred after the mediation in which the settlement offer was made, as fixed by the court.

Proposed law provides that the fact that an offer is made but not accepted does not preclude a subsequent offer or a counter offer. When the liability of one party to another has been determined by verdict, order, or judgment, but the amount or extent of the damages remains to be determined by future proceedings, either party may make a settlement offer, which will have the same effect as an offer made at mediation if it is served within a reasonable time not less than 30 days before the start of hearings to determine the amount or extent of damages.

Proposed law establishes the La. Timber Transportation and Safety Oversight Board within the office of the commissioner. The board has the following powers and duties:

- (1) To advise the commissioner of the Dept. of Agriculture and Forestry as to the surcharge on timber transportation operator after conducting a public hearing.
- (2) Perform all necessary duties and obligations assigned to the board pursuant to proposed law.
- (3) To manage the investments of the La. Timber Transportation and Safety Fund.
- (4) To establish safety training programs in cooperation with the La. Community and Technical College System and other educational entities for propose of training timber transportation operators. Such safety programs will be operated for the following purposes:
 - (a) To improve the driving and safety skills of the operator, thereby reducing the number of accidents involving timber transportation vehicles.
 - (b) To mitigate the severity of auto accidents involving timber transportation operators.

Proposed law provides that the La. Timber Transportation and Safety Oversight Board will consist of the following members:

- (1) The commissioner or his designee, who will serve as chairman of the board.
- (2) The chairman of the La. Forestry Commission or his designee.
- (3) One member will be an actuary who is appointed by the commissioner of the Department of Insurance.
- (4) One member will be appointed by the La. Forestry Association.
- (5) One member will be appointed by the La. Logger's Association.
- (6) One member will be appointed by the Independent Insurance Agents & Brokers of La.
- (7) One member will be appointed by the American Property and Casualty Insurance Association.
- (8) One representative from the La. House of Representatives appointed by the speaker.
- (9) One senator from the La. Senate appointed by the president.
- (10) One member will be appointed by the president of the La. Community and Technical College System from among his staff with expertise in safety education programs for commercial vehicles who will serve in an advisory capacity to the board and be a non-voting member.

Proposed law provides that the board will meet annually, or more often if called to meet by the chairman, or on petition to the chairman by four members of the board and the meetings will take place at the offices of the commissioner or elsewhere as the board may elect from time to time.

Proposed law provides that the board members will receive no salary or per diem, but will be reimbursed for actual and reasonable expenses incurred in attendance upon meetings or other works undertaken at the direction of the board.

Proposed law provides that the board will meet and make recommendations to the

commissioner and the commissioner will promulgate rules regarding the qualifications and requirements for timber transportation operators to participate in the fund related to their respective timber transportation vehicles. Those qualifications and requirements will include the following:

- (1) Educational qualifications for timber transportation operators related to defensive driving courses or safety educational programs.
- (2) Requirements for certain equipment to be installed on timber transportation vehicles which will include the following:
 - (a) Global satellite positioning equipment.
 - (b) Cameras.
 - (c) Scales which weigh the load of timber being transported.
 - (d) Mandatory hands-free devices for cell phone use.

Proposed law provides that the board shall advise the commissioner of the Dept. of Agriculture and Forestry as it relates to the requirements for the amount coverage that is reasonable and actuarially sound for providing coverage for lost wages and medical expenses. The amount of medical expense and lost wage coverages shall be in an amount that is deemed actuarially sound by the commissioner of the Dept. of Insurance

Proposed law provides that the La. Forestry Association or the La. Logger's Association, either together or separately, may establish a self-insured fund for the purpose of providing liability insurance by making application to and fulfilling the requirements set forth by the commissioner of the Dept. of Insurance in order to provide coverage for timber transportation operators who would thereby meet the financial responsibility requirements set forth in proposed law.

Proposed law provides that the La. Forestry Association or the La. Logger's Association may negotiate with a commercial liability insurer or insurers in order to offer favorable premium rates to their members in order for those members to meet the financial responsibility requirements set forth in proposed law.

Effective August 1, 2020.

(Adds R.S. 3:21 and R.S. 3:4331 through 4341)