

2020 First Extraordinary Session

HOUSE BILL NO. 57

BY REPRESENTATIVE SCHEXNAYDER AND SENATOR CORTEZ AND REPRESENTATIVES ADAMS, AMEDEE, BACALA, BAGLEY, BEAULLIEU, BISHOP, BUTLER, CARRIER, CORMIER, CREWS, DAVIS, DEVILLIER, DESHOTEL, DUBUISSON, ECHOLS, EDMONDS, EMERSON, FARNUM, FIRMENT, FONTENOT, FREEMAN, FREIBERG, FRIEMAN, GADBERRY, GAROFALO, GOUDEAU, HARRIS, HENRY, HODGES, HORTON, HUVAL, ILLG, IVEY, MIKE JOHNSON, TRAVIS JOHNSON, KERNER, MACK, MCCORMICK, MCFARLAND, MCKNIGHT, MCMAHEN, MIGUEZ, GREGORY MILLER, MOORE, NELSON, CHARLES OWEN, ROBERT OWEN, PRESSLY, ROMERO, SCHAMERHORN, SEABAUGH, SELDERS, ST. BLANC, STEFANSKI, THOMAS, THOMPSON, TURNER, WHEAT, WHITE, WRIGHT, ZERINGUE, AND RISER

1 AN ACT

2 To amend and reenact Code of Civil Procedure Articles 1732, 1733(A), and 4873(1) and
3 Code of Evidence Article 411, to enact R.S. 9:2800.27, and to repeal R.S.
4 32:295.1(E), relative to civil actions; to lower the jury trial threshold; to provide for
5 a jury cash deposit; to limit the transfer of cases from courts of limited jurisdiction
6 to district courts; to provide relative to the admissibility of evidence of liability
7 insurance; to limit the recovery of medical expenses; to provide for definitions; to
8 provide for calculating and adjusting the award of medical expenses; to provide for
9 evidence of recoverable medical expenses; to repeal provisions prohibiting certain
10 evidence regarding the failure to wear safety belts; to provide for an effective date;
11 and to provide for related matters.

12 Be it enacted by the Legislature of Louisiana:

13 Section 1. The provisions of this Act shall be known as the "Civil Justice Reform
14 Act of 2020".

15 Section 2. Code of Civil Procedure Articles 1732, 1733(A), and 4873(1) are hereby
16 amended and reenacted to read as follows:

1 Art. 1732. Limitation upon jury trials

2 A trial by jury shall not be available in:

3 (1) A suit where the amount of no individual petitioner's cause of action
 4 exceeds ~~ffty~~ ten 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 ~~ffty~~ ten thousand dollars exclusive of interest and costs, a
 8 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 ~~ffty~~ ten thousand dollars exclusive of
 12 interest and costs, any other party may retain the right to a trial by jury if that party
 13 is entitled to a trial by jury pursuant to this Article and has otherwise complied with
 14 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 ~~ffty~~ ten thousand dollars exclusive of interest and costs, a
 20 defendant shall not be entitled to a trial by jury.

21 (2)(a) A suit commenced in a parish or city court, wherein the individual
 22 petitioner stipulates or otherwise judicially admits that the amount of the individual
 23 petitioner's cause of action does not exceed the amount in dispute to which the
 24 jurisdiction of the court is limited by Articles 4842 and 4843, exclusive of interest,
 25 penalties, attorney fees, and costs.

26 (b) The provisions of this Paragraph shall not apply to delictual or quasi-
 27 delictual actions, which shall be governed by the provisions of Paragraph (1) of this
 28 Article.

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

1 ~~(3)~~ (4) A summary, executory, probate, partition, mandamus, habeas corpus,
2 quo warranto, injunction, concursus, workers' compensation, emancipation,
3 tutorship, interdiction, curatorship, filiation, annulment of marriage, or divorce
4 proceeding.

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

7 ~~(5)~~ (6) A proceeding to review an action by an administrative or municipal
8 body.

9 ~~(6)~~ (7) All cases where a jury trial is specifically denied by law.

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

11 A.(1) Except as provided in Subparagraph (2) of this Paragraph, a ~~A~~ party
12 may obtain a trial by jury by filing a pleading demanding a trial by jury and a bond
13 in the amount and within the time set by the court pursuant to Article 1734.

14 (2)(a) In a suit for damages arising from a delictual or quasi-delictual action
15 where an individual petitioner stipulates or otherwise judicially admits that his cause
16 of action exceeds ten thousand dollars and is less than fifty thousand dollars, a party
17 may obtain a trial by jury by filing a pleading demanding a trial by jury and
18 providing a cash deposit of five thousand dollars no later than sixty days after filing
19 the request for a trial by jury. Failure to post the cash deposit as required by this
20 Subparagraph shall constitute a waiver of the trial by jury. This cash deposit shall be
21 subject to Article 1734.1(E).

22 (b) When the case is set for trial, the court may additionally provide for a
23 supplemental bond or cash deposit in accordance with Article 1734 or 1734.1.

24 * * *

25 Art. 4873. Transfer to district court; procedure; contest; effect

26 A party entitled thereto under the provisions of Article 4872 may transfer the
27 action to the district court in the following manner:

28 (1) Within the delay allowed for answer in the trial court of the limited
29 jurisdiction, or within ten days after answer has been filed, he shall file a motion to
30 transfer with the clerk of the court in which the suit is pending. The motion shall

1 include a declaration that the matter is one to which defendant would have been
2 entitled to trial by jury if commenced in district court, and that defendant desires
3 trialby jury. If a party fails to file a motion to transfer within the delays required by
4 this Paragraph, the matter shall not be transferred.

5 * * *

6 Section 3. Code of Evidence Article 411 is hereby amended and reenacted to read
7 as follows:

8 Art. 411. Liability insurance

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

12 B. The existence of insurance coverage shall not be communicated to the
13 jury unless any of the following apply:

14 (1) A factual dispute related to an issue of coverage is an issue which the jury
15 will decide.

16 (2) The existence of insurance coverage would be admissible to attack the
17 credibility of a witness pursuant to Article 607.

18 (3) The cause of action is brought against the insurer pursuant to R.S.
19 22:1973 or against the insurer alone pursuant to R.S. 22:1269(B)(1)(a) through (f).

20 C. The identity of the insurer shall not be communicated to the jury unless
21 the identity of the insurer would be admissible to attack the credibility of a witness
22 pursuant to Article 607.

23 D. In all cases brought against an insurer pursuant to R.S. 22:1269 or 1973,
24 at the opening and closing of the trial, the court shall read instructions to the jury that
25 there is insurance coverage for the damages claimed by the plaintiff.

26 Section 4. R.S. 9:2800.27 is hereby enacted to read as follows:

1 §2800.27. Recoverable past medical expenses; collateral sources; limitations;
 2 evidence

3 A. For the purpose of this Section:

4 (1) "Health insurance issuer" means any health insurance coverage through
 5 a policy or certificate of insurance subject to regulation of insurance under state law,
 6 a health maintenance organization, an employer-sponsored health plan, the Office
 7 of Group Benefits, or an equivalent federal or state health plan.

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

10 (3) "Cost sharing" means copayments, coinsurance, deductibles, and any
 11 other amounts which have been paid or are owed by the claimant to a medical
 12 provider.

13 (4) "Contracted medical provider" means any in-network medical provider
 14 that has entered into a contract or agreement directly with a health insurance issuer
 15 or with a health insurance issuer through a network of providers for the provision of
 16 covered healthcare services at a pre-negotiated rate, or any medical provider that has
 17 billed and received payment for covered healthcare services from Medicare when the
 18 provider is a participating provider in those programs.

19 (5) "Cost of procurement" means the cost paid by or on behalf of the claimant
 20 to procure the benefit paid by a health insurance issuer or Medicare and the cost of
 21 procurement of the award of medical expenses, including but not limited to
 22 contracted attorney fees and health insurance premiums paid.

23 B. In cases where a claimant's medical expenses have been paid, in whole
 24 or in part, by a health insurance issuer or Medicare to a contracted medical provider,
 25 the claimant's recovery of medical expenses is limited to the amount actually paid
 26 to the contracted medical provider by the health insurance issuer or Medicare, and
 27 any applicable cost sharing amounts paid or owed by the claimant, and not the
 28 amount billed. The court shall award to the claimant forty percent of the difference
 29 between the amount billed and the amount actually paid to the contracted medical
 30 provider by a health insurance issuer or Medicare in consideration of the claimant's

1 cost of procurement, provided that this amount shall be reduced if the defendant
2 proves that the recovery of the cost of procurement would make the award
3 unreasonable. The determination of this award shall be made only in accordance with
4 the provisions of Subsection F of this Section.

5 C. In cases where a claimant's medical expenses have been paid, in whole
6 or in part, by Medicaid to a medical provider, the claimant's recovery of medical
7 expenses actually paid by Medicaid is limited to the amount actually paid to the
8 medical provider by Medicaid, and any applicable cost sharing amounts paid or
9 owed by the claimant, and not the amount billed.

10 D. The recovery of past medical expenses other than those provided by
11 Subsection B or C of this Section shall be limited to amounts paid to a medical
12 provider by or on behalf of the claimant, and amounts remaining owed to a medical
13 provider, including medical expenses secured by a contractual or statutory privilege,
14 lien, or guarantee. The determination of this award shall be made only in accordance
15 with Subsection F of this Section.

16 E. In cases where a claimant's medical expenses are paid pursuant to the
17 Louisiana Workers' Compensation Law as provided in R.S. 23:1020.1 et seq., a
18 claimant's recovery of medical expenses is limited to the amount paid under the
19 medical payment fee schedule of the Louisiana Workers' Compensation Law.

20 F. In a jury trial, only after a jury verdict is rendered may the court receive
21 evidence related to the limitations of recoverable past medical expenses provided by
22 Subsection B or D of this Section. The jury shall be informed only of the amount
23 billed by a medical provider for medical treatment. Whether any person, health
24 insurance issuer, or Medicare has paid or has agreed to pay, in whole or in part, any
25 of a claimant's medical expenses, shall not be disclosed to the jury. In trial to the
26 court alone, the court may consider such evidence.

27 G. This Section shall not apply in cases brought pursuant to R.S. 40:1231.1
28 et seq., R.S. 40:1237.1 et seq., or R.S. 13:5101 et seq.

29 Section 5. R.S. 32:295.1(E) is hereby repealed in its entirety.

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

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____