

LEGISLATIVE FISCAL OFFICE
Fiscal Note



Fiscal Note On: **HB 44** HLS 201ES 100
 Bill Text Version: **REENGROSSED**
 Opp. Chamb. Action:
 Proposed Amd.:
 Sub. Bill For.:

Date: June 24, 2020 4:04 PM	Author: GAROFALO
Dept./Agy.: Supreme Court/ORM/OGB/Judicial Districts	Analyst: Rebecca Robinson
Subject: Omnibus Premium Reduction Act of 2020	

INSURANCE/AUTOMOBILE RE SEE FISC NOTE GF EX Page 1 of 2
 Enacts the Omnibus Premium Reduction Act of 2020 (Item #40)

Proposed legislation provides for a two year prescription period for delictual actions for injury or damages arising from the operation or control of a motor vehicle. Proposes to lower the jury threshold for a jury trial to \$35,000, except for tort actions, for which the threshold is \$5,000. Proposes to limit the recovery of the plaintiff's medical expenses to the amount actually paid to the medical provider by the health insurance issuer, Medicaid, Medicare, or the Louisiana Workers' Compensation Law. Proposes to provide a direct action against an insurer when 1) the insured has been adjudged bankrupt; 2) the insured is insolvent; 3) damages result from an offense between children and parents or between married persons; 4) plaintiff is seeking recovery under an uninsured or underinsured policy; 5) damages related to asbestos exposure; or 6) the insured is deceased. Proposes to repeal R.S. 32:295.1(E) in its entirety which will allow the failure to wear a safety belt to be used as evidence of comparative negligence in lawsuits concerning motor vehicle accidents; and will be allowed as evidence to mitigate damages. Effective January 1, 2021.

EXPENDITURES	<u>2020-21</u>	<u>2021-22</u>	<u>2022-23</u>	<u>2023-24</u>	<u>2024-25</u>	<u>5 -YEAR TOTAL</u>
State Gen. Fd.	SEE BELOW					
Agy. Self-Gen.	\$0	\$0	\$0	\$0	\$0	\$0
Ded./Other	\$0	\$0	\$0	\$0	\$0	\$0
Federal Funds	\$0	\$0	\$0	\$0	\$0	\$0
Local Funds	SEE BELOW					
Annual Total						
REVENUES	<u>2020-21</u>	<u>2021-22</u>	<u>2022-23</u>	<u>2023-24</u>	<u>2024-25</u>	<u>5 -YEAR TOTAL</u>
State Gen. Fd.	\$0	\$0	\$0	\$0	\$0	\$0
Agy. Self-Gen.	\$0	\$0	\$0	\$0	\$0	\$0
Ded./Other	\$0	\$0	\$0	\$0	\$0	\$0
Federal Funds	\$0	\$0	\$0	\$0	\$0	\$0
Local Funds	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	\$0
Annual Total	\$0	\$0	\$0	\$0	\$0	\$0

EXPENDITURE EXPLANATION

The net impact to the state is indeterminable. There will be an increase in expenditures to the Attorney General (AG) and the local Clerks of Court as a result of the lower jury threshold. There will be an indeterminable impact for the Office of Risk Management (ORM), the Louisiana Supreme Court, (LSC), and the Office of Group Benefits (OGB) due to the combined changes.

ORM reports an indeterminable impact to the Office of Risk Management (ORM) as a result in the change in prescription period. ORM indicates that often the first time they receive knowledge of a claim is when a lawsuit is filed. Currently, in such a case, up to a year has elapsed since the time of the incident. Under the proposed legislation, up to two years could elapse before ORM is notified of an incident. This extension of time adversely affects ORM and its ability to effectively and timely investigate claims against the State and impairs ORM's ability to identify and secure/preserve relevant evidence and witness testimony. The delay in investigating claims may lead to ORM having to compromise certain claims that it otherwise would have been able to defend. However, the extension of the prescription period is for those suits involving motor vehicle accidents, where there is often a police report available as evidence of an accident. Obtaining such evidence reduces ORM's concern relative to collection of evidence; however, the fiscal impact to ORM is indeterminable.

ORM reports an indeterminable impact associated with the lowering of the jury threshold as it is unknown whether this would lead to an increase or decrease in jury trials; and/or an increase or decrease in settlements. ORM indicates that the prevailing opinion is that defendants experience a greater opportunity for a fair trial before a jury. Thus, the expansion of the availability of jury trials may lead to more settlement of cases involving significant injuries, possibly lowering the expenditures of ORM. However, the lowering of the jury threshold could lead to an increase in jury trials actually conducted, which would increase the expenditures of ORM due to increased attorney's fees and associated litigation costs. Therefore, any expenditure increase or decrease to ORM is indeterminable at this time.

[CONTINUED ON PAGE 2]

REVENUE EXPLANATION

There is no anticipated direct material effect on governmental revenues as a result of this measure.

<p><u>Senate</u></p> <p><input type="checkbox"/> 13.5.1 >= \$100,000 Annual Fiscal Cost {S & H}</p> <p><input type="checkbox"/> 13.5.2 >= \$500,000 Annual Tax or Fee Change {S & H}</p>	<p><u>House</u></p> <p><input type="checkbox"/> 6.8(F)(1) >= \$100,000 SGF Fiscal Cost {H & S}</p> <p><input type="checkbox"/> 6.8(G) >= \$500,000 Tax or Fee Increase or a Net Fee Decrease {S}</p>	
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Evan Brasseaux
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Staff Director

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CONTINUED EXPLANATION from page one:

[CONTINUED FROM PAGE 1]

There will be an indeterminable impact to ORM for potential and future claims payments related to motor vehicle accidents. ORM could not provide the number of pending cases involving safety belts by the time of this writing. The number of claims involving safety belt usage which may be filed in the future is also unknown. The proposed legislation would allow a party involved in a motor vehicle claim/lawsuit to present evidence of the injured person's failure to wear a safety belt in a motor vehicle accident as a contributory factor in the injuries suffered by the injured person. Such evidence may reduce the damages paid to an injured person. However, the proposed legislation does not require that the failure to wear a safety belt be admitted into evidence. Judges will still have the discretion over which evidence is presented to the trier of fact. Therefore, any expenditure decrease is indeterminable. LSU's Office of Risk Management and local governmental agencies will experience the same indeterminable impact.

The AG's office reports there will be an increase in expenditures as a result of the reduction of the jury threshold and the extension of the prescription period. The AG indicates that virtually all of their cases would be eligible for a jury trial with the reduction in the jury threshold; and that they will also see an increase in jury trials as a result of the extension of the prescription period. As a result, the AG anticipates a need for increased staffing levels: a total of 12 attorneys, 6 paralegals, and 6 secretaries (with associated operating expenses and acquisitions) for a total of \$2.45M annually. It is unknown how many cases will actually qualify for a jury trial; how many will actually go to trial; and the extent to which it increases the AG's workload. The LFO recognizes a potential workload adjustment for the AG as a result of the lower jury threshold; however, the LFO is unable to substantiate the level of resources needed by the AG's office. Further, the AG's office did not provide any information on how the additional staff needed due to the change in prescription period was derived.

Based on information received from the LSC, district judges anticipate the lowered jury trial threshold will result in increased requests for jury trials, which are docketed in a limited manner. As a result, the increased demand for jury trials may lead to a delay in trials and backlogged dockets, potentially necessitating more judgeships which would require funding via the SGF. However, because the extent to which there will be additional trials as a result of the proposed law is indeterminable, the overall effect it will have on dockets, and the prospective need for additional judgeships is similarly indeterminable. The Louisiana Supreme Court reports an indeterminable impact as a result of the change in the prescription period as they cannot determine whether the extension will increase or decrease the number of trials.

There will be an indeterminable impact to OGB as a result of the proposed changes to the collateral source rule. In CY19, OGB had 926 subrogation cases; the total amount paid in claims was \$5.7M and the total amount recovered through subrogation was \$3.7M (65%). OGB anticipates that it will be more difficult to settle subrogation cases if the legislation limits the amount recovered for medical bills. There will be less room for negotiation and there is a potential to reduce the amount recoverable by OGB.

The Clerks of Court report an increase in expenditures as a result of the lowering of the jury threshold. The Clerks of Court expect an increase in jury trial requests and associated increase in costs, especially when any governmental entity requests a jury trial (as they are not required to post a jury bond). In that instance, the Clerks of Court will bear the cost of jury trials which are funded through self-generated revenues. The Clerks of Court will likely raise court costs on all cases to cover the additional costs associated with jury trials.

Senate Dual Referral Rules
 13.5.1 >= \$100,000 Annual Fiscal Cost {S & H}
 13.5.2 >= \$500,000 Annual Tax or Fee Change {S & H}

House
 6.8(F)(1) >= \$100,000 SGF Fiscal Cost {H & S}
 6.8(G) >= \$500,000 Tax or Fee Increase or a Net Fee Decrease {S}

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