



July 1, 2024

## ***Recent Louisiana Legislative Changes Affecting Insurers, Tort Claims***

*By: Megan Peterson*

Our legislative session adjourned recently with several measures passed that affect handling of claims and lawsuits in Louisiana. Below follows a summary of some notable changes (or attempted changes) to our law in the most recent session. This does not cover all the changes and is intended to represent those that most often affect our clients and casualty practice.

### ***Two Year Prescriptive Period (Statute of Limitations)***

Tort or personal injury claims in Louisiana have long been governed by a one-year prescriptive period, or statute of limitations. However, [HB 315, Act 423](#) lengthens the time frame to two years for all personal injury claims, except for products liability claims, which remain governed by the one-year rule. The time frame is calculated from the date the injury is sustained. The law takes effect for claims that arise on July 1, 2024 or later.

### ***Direct Action Statute and Suits Against Insurers***

Historically, Louisiana has allowed “direct actions” against insurers for more than coverage or bad faith claims. [HB 337, Act 275](#) essentially revokes the direct-action statute and insurers can no longer be named as a defendant in a lawsuit, absent specific exceptional circumstances, such as uninsured motorist claims; insured insolvency, bankruptcy, or death; inability to perfect service against the insured; or establishing coverage under a denial or reservation of rights.

For those instances in which an insurer can be named a defendant, [HB 88, Act 595](#) removes the ability to file a lawsuit against an out-of-state insurer in East Baton Rouge Parish and instead subjects the claim to the ordinary venue rules.

### ***Third Party Funding Disclosures***

[SB 355, Act 765](#) creates La R.S. § 9:3580.10 et seq, known as the laws on “Transparency and Limitations on Foreign Third-Party Litigation Funding.” The new law concerns litigation funding agreements where a person or entity advances funds to defray the costs of litigating a matter or a negative outcome in the case and the payment of which is contingent on the outcome of the matter. In instances where a litigation funding or financing agreement is in place, the entity cannot dictate any decisions on the matter and the agreement is discoverable in the litigation.

For any non-domestic entity whose contract is contingent on the outcome of the litigation, the law has mandatory disclosure requirements to the state attorney general and prohibits certain terms in such agreement for contingent outcomes. The law takes effect on August 1, 2024.

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### ***Offers of Judgment***

An offer of judgment is a tool for advancing settlement offers or demands where, if the outcome of the case is more favorable for the party sending the offer than the offer as made, then the sending party can recoup certain costs incurred after the offer was sent. Existing law allows the defendant to recover costs if the final judgment is less than their offer of judgment by 25% or more; the same is true for the plaintiff's demand if the verdict is more favorable to the plaintiff by at least 25% more than the demand. [SB 84, Act 502](#) adjusts the law slightly to allow defendants to recover costs for offers of judgment based on either the 25% rule or on a defense verdict, regardless of the percentage.

### ***Limitation of Liability for Nonuse of Optional Commercial Motor Vehicle Equipment***

[HB 785, Act 490](#) creates La. R.S. § 9:2791.1 which limits liability for operators of commercial motor vehicles (CMV) who elect not to install optional equipment. Optional equipment is defined as any equipment or component part that was not required by the Federal Motor Vehicle Safety Standards at the time of the CMV manufacture or sale, whichever is later. The law specifically indicates that there is no duty to install optional equipment, excludes from evidence the absence of any optional equipment in an effort to establish negligence, and prohibits causes of actions against owners or operators of CMVs for failing to install such optional equipment. However, the law does not apply to accidents after the owner or operator fails to comply with a law concerning mandatory recall.

### ***Statewide Electronic Filing and Remote Access Requirement***

Louisiana has sixty-four (64) parishes, and each one has its own system for court filings and access to court records. As it currently stands, there is no centralized electronic filing or court record system in Louisiana. [HB 380, Act 694](#) institutes a requirement that every district clerk of court put in place an electronic filing and remote access system by January 1, 2026. The bill was sent to the Governor on June 4, 2024 but thirty days lapsed without a veto and thus the legislation is considered finalized.

### ***Collateral Source Measure Vetoed by Governor***

Louisiana is a pure collateral source state, meaning that a plaintiff is permitted to recover the full billed amount of medical expenses, as opposed to the lesser paid amount. Thus, if private health insurance or Medicare is utilized to pay the medical expenses, the plaintiff is allowed to recover the amounts charged by the medical providers, instead of what insurance paid. However, if the plaintiff is a Medicaid recipient, their recovery is limited to the amount paid by Medicaid.

The current law, in [La. R.S. § 9:2800.27](#), provides that for medical expenses covered by Medicare or private health insurance, the plaintiff's recovery is calculated by the amounts paid by the insurer and forty percent (40%) of the difference between the paid and billed amounts, representative of the cost of procurement.

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[HB 423](#) proposed changes to this law that reduced the percentage difference to 30%, made the award discretionary instead of mandatory, and removed from the law a prohibition against presenting the difference to the jury. Although the bill passed through the legislature, the Governor recently vetoed the bill. Proponents of the bill have issued statements indicating that they intend to continue fighting for reform in this area and for introduction of a similar bill in the next legislative session.

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