

LOUISIANA LEGISLATURE ENACTS CIVIL JUSTICE REFORM ACT OF 2020

July 2020

Louisiana businesses and insurers have long complained that procedural rules governing civil litigation in the state make it too easy—and too lucrative—to file lawsuits for minor auto accidents and injuries. The result, they say, is a state saddled with some of the highest automobile insurance rates in the country, a disproportionate number of frivolous lawsuits and an overall higher cost of doing business. In response, and after grappling for years over workable tort reform measures, the Louisiana Legislature recently passed the **Civil Justice Reform Act of 2020** (“the Act”).

Key provisions of the Act, which will become effective on January 1, 2021, and apply only to causes of action arising on or after that date, include the following:

- **Jury threshold reduced from \$50,000 to \$10,000** | Whereas the majority of states have no case value threshold for jury trials, Louisiana currently has the highest in the country at \$50,000. The Act reduces that threshold to \$10,000, allowing exponentially more cases to be decided by juries.
- **\$5,000 cash bond required for juries where plaintiff stipulates to damages of more than \$10,000 but less than \$50,000** | In cases where a plaintiff stipulates to damages of more than \$10,000 but less than \$50,000, a request for jury trial must be accompanied by a \$5,000 cash deposit. Failure to post the deposit within 60 days of the request *constitutes a waiver of the trial by jury*.
- **Existence of insurance coverage not admissible unless the insurer is a defendant** | Previously, insurance policies (but not policy limits) could be introduced to juries, arguably leading to higher awards. The Act revises the **Louisiana Code of Evidence** such that the existence of insurance coverage is inadmissible except in direct action or bad faith actions against insurers or where coverage is in dispute.
- **“Collateral source” rule modified; recoverable medical expenses limited** | To combat the windfall realized by Louisiana plaintiffs who historically have recovered the amount *billed* by their providers for medical expenses, the Act limits a prevailing plaintiff’s recovery to the amount actually *paid* to the provider, plus any cost sharing amounts paid by the plaintiff, i.e., copayments, deductibles, etc. In addition, prevailing plaintiffs will receive a “cost of procurement” award for health insurance premiums, contracted attorney fees, etc. equal to 40 percent of the difference between the amount billed and the

amount paid to plaintiff's medical providers, unless the defendant proves it to be unreasonable. The court will hear such arguments and make the necessary calculations only after the verdict is rendered. The jury will not hear evidence of collateral source payments.

- **Plaintiff's failure to wear a seatbelt can be used against her** | Evidence that a plaintiff was not wearing a seatbelt at the time of the underlying accident may be treated as evidence of her comparative negligence and considered a mitigating factor with respect to her damages. Previously, such evidence and conclusions were not permitted.

Previous versions of the Act, which included provisions that extended the prescriptive period (statute of limitations) for automobile suits from one to two years, eliminated direct actions against insurers, and mandated premium reductions for Louisiana policyholders, were met with legislative and gubernatorial resistance. So, while the Act in its current form may be less transformative than what business owners and insurers had hoped, it does at least include several steps in the right direction.

The foregoing summary is offered as a starting point for discussion and consideration but is by no means exhaustive. If you have questions about the Civil Justice Reform Act of 2020 or its impact on your business, please contact **Erin Lorio**.

Erin F. Lorio is an attorney in Litchfield Cavo's Mandeville, Louisiana office. She specializes in commercial, transactional and civil defense litigation. Erin has defended national and international corporations, small business owners and insurance carriers throughout Louisiana in state and federal courts. Erin also has extensive experience advising business startups, drafting operating and partnership agreements, and employment and commercial contracts. She also counsels individuals on wills and estate planning matters.

Litchfield Cavo operates out of 22 offices, serving clients in more than 35 states nationwide.

AZ – Phoenix | **CA** – Los Angeles area | **CT** – Hartford area | **FL** – Ft. Lauderdale | **FL** – Tampa
GA – Atlanta | **IL** – Chicago | **IN** – Highland | **LA** – New Orleans area | **MA** – Boston area
MO – St. Louis | **NJ** – Cherry Hill | **NV** – Las Vegas | **NY** – New York | **PA** – Philadelphia
PA – Pittsburgh | **RI** – Providence | **TX** – Dallas-Ft. Worth | **TX** – Houston | **UT** – Salt Lake City
WI – Milwaukee | **WV** – Barboursville