

# **Louisiana High Auto Rates Task Force**

**2018 Senate Concurrent Resolution No. 55**

**2018 House Concurrent Resolution No. 47**

## **Report of the Actuarial Subcommittee**

**February 19, 2019**

## INTRODUCTION

Senate Concurrent Resolution No. 55 (“SCR 55”) and House Concurrent Resolution No. 47 (“HCR 47”) passed in the 2018 Regular Louisiana Legislative Session and requested the Department of Insurance (“Department”) assemble a Task Force to address the high automobile rates in Louisiana and submit a report of its findings and recommendations to the Senate and House Insurance Committees by March 1, 2019. The complete text of SCR 55 and HCR 47 is in Appendix A.

The Task Force created an Actuarial Subcommittee (“Subcommittee”) to review proposed legislative reforms and to estimate whether there would be a savings, if the reform were legislated. This is the report of the Actuaries.

## EXECUTIVE SUMMARY

The Task Force identified several reforms for the Subcommittee to review. These proposed reforms and Actuarial Subcommittee findings were, briefly:

1. Reduce the **civil trial jury threshold** from \$50,000.

Finding: While this reform is challenging to cost, the Actuarial Subcommittee felt the savings would be the result of behavioral changes, would occur over time, and may result in a small savings up to 0.5%, to bodily injury and uninsured motorist coverages only, if the jury threshold was reduced to \$0.

2. Extend the **prescriptive period** from one to two years.

Finding: Extending the prescriptive period could result in decreased costs, if doing so allows more time to investigate and settle claims before an action is brought. There was no available historical experience to quantify the affect extending the prescriptive period to two years would have on liability claim costs.

3. Create a **Future Medical Care Fund**.

Finding: Though the Actuarial Subcommittee felt that there might be a small cost savings to bodily injury coverages, there was insufficient detail and no historical experience to determine the affect a future medical care fund would have on claim costs.

4. **Limit general damages** to \$500,000.

Finding: For personal automobile insurance so few policies are written at bodily injury limits above \$500,000 that the consensus was there would be very little cost savings caused by limiting general damages to \$500,000.

Finding: For commercial vehicle insurance, the Actuarial Subcommittee felt there could be a cost savings to bodily injury coverage but the Subcommittee did not have reliable historical experience to quantify the size of savings caused by limiting general damages to \$500,000.

5. **Limit the special verdict form** to one line for all special and general damages.

Finding: The Actuarial Subcommittee could not cost this proposed reform but speculated there could be liability cost savings, although likely negligible.

6. Revise the **Collateral Source Rule** to allow consideration of collateral sources of recovery.

Finding: The Actuarial Subcommittee expects the proposed reform could save up to 1% of bodily injury and uninsured motorist coverage costs.

7. Limit recovery of general damages and property damages for **distracted drivers**.

Finding: The Actuarial Subcommittee could not cost this proposed reform but felt it might result in a small savings to liability coverages, if it changed driver behavior to be less distracted.

8. Permit evidence of **seat belt use** for comparative negligence and limit recovery of damages.

Finding: The Actuarial Subcommittee agreed this proposed reform could reduce bodily injury coverage costs by up to 5%.

9. Prohibit **evidence of an insurance policy** from the jury.

Finding: The Actuarial Subcommittee felt this proposed reform would be beneficial but could not calculate the cost savings. If direct action against the insurer were no longer allowed, there would probably be a measurable savings to bodily injury and property damage coverages.

10. Further **restrict recoveries for uninsured** owner or operator of a motor vehicle.

Finding: The Actuarial Subcommittee estimated that the effect on bodily injury coverage cost would be up to a 2% savings.

Each of these reforms and corresponding actuarial findings are discussed in more detail in the following sections.

## ACTUARIAL SUBCOMMITTEE

The Actuarial Subcommittee consists of the following individuals (lead contact at each company):

- Richard Piazza, MAAA, ACAS, Chair, Department of Insurance
- Steve Harr, MAAA, FCAS, FCIA, State Farm Mutual Auto Insurance Company
- Roman Svirsky, MAAA, FCAS, Government Employees Insurance Company
- Kellen Miller, MAAA, FCAS, Allstate Insurance Company
- Jovana Evans, MBA, Liberty Mutual Insurance Company

The charge of the Actuarial Subcommittee was to cost as many reform proposals passed down from the Task Force as were possible within the time and resource constraints allotted. The Subcommittee took on the following goals during

## RELIANCE AND LIMITATIONS

The Actuarial Subcommittee identified a number of caveats to be considered when reviewing the estimated cost savings presented in this report. In no particular order of priority, these are:

1. Estimated savings are based on analysis of private passenger automobile experience only. The Actuarial Subcommittee did not have enough commercial experience or resources to cost commercial as well.

2. Estimated savings associated with an individual reforms contained in this report cannot be added and expected to produce an accurate estimate for a package of proposals. A package of reforms should be separately evaluated to remove dependencies across reforms. It is important to recognize that a package of reforms may result in complex inter-dependencies that could lessen or enhance the savings potential of individual reforms.
3. Policyholders may not realize the full impact of the estimated savings as the estimates are based on historical data.
  - The estimated average savings presented in this report assumes that the automobile rates are adequate and do not need to be adjusted due to changing market conditions and influences. To the extent that an insurer needs to adjust rates due to ongoing cost drivers, e.g., inflation driven costs, observed estimated savings could be more or less than the estimated average savings.
  - The savings estimated in this report are for the statewide, average policyholder. The savings a specific policyholder may realize is dependent on the policyholder's risk characteristics and could be more or less than a statewide average estimate.
4. The source of information underlying estimated savings was from the participating Actuarial Subcommittee companies. The source of information and estimates of each company was derived independently by each Actuarial Subcommittee member. The experience underlying the estimates of each company was not shared amongst the Actuarial Subcommittee members.
5. The experience of Actuarial Subcommittee companies participating in the reform savings estimates, though reasonably reflecting the statewide average situation, may not reflect the experience of other companies writing automobile insurance in Louisiana. A Louisiana insurer may have experience and rate needs that differ from those of the Actuarial Subcommittee.
6. Estimates for some proposed reforms were not possible due to the lack of quantifiable experience.
7. No estimate was made for a proposed reform that relied primarily on behavior modification to achieve the expected savings. Actuarial Subcommittee estimates are based on actual or observed behavior exhibited by insureds, insurers, regulators, law enforcement and judicial personnel affecting the current Louisiana insurance system. Faced with changes to the Louisiana insurance system causing behavioral change could have a material impact on savings brought about by a proposed reform but the Actuarial Subcommittee could not reliably estimate the impact such behavioral change would have on insurance premiums.
8. Estimated savings are presented as ranges using percentages. The savings reflect the typical Louisiana policy, whether single- or multi-car.
9. Though this Actuarial Subcommittee report reflects a consensus opinion of the Subcommittee members, it may be prudent for the Task Force to seek an independent, outside actuarial opinion. An independent opinion may be particularly useful for reform proposals that are controversial or which require a significant degree of behavior modification for savings to be realized.

## **ACTUARIAL COSTING OF PROPOSED REFORMS**

### **1. Reduce the civil trial jury threshold from \$50,000.**

#### **Current law:**

Art. 1732 controls when a jury trial is available:

- (1) A suit where the amount of no individual petitioner's cause of action exceeds fifty thousand dollars (\$50,000) exclusive of interest and costs ...

#### **The proposed reform:**

Lower the \$50,000 threshold to:

- a) \$30,000; or
- b) \$15,000; or
- c) \$0

#### **Actuarial Subcommittee findings:**

Lowering the \$50,000 jury trial threshold may be beneficial. While this reform is challenging to cost, the Actuarial Subcommittee felt that the impact of this change on litigation tactics and processes could be beneficial and accordingly lower system costs. However, the Actuarial Subcommittee felt the changes would be behavioral and would occur over time.

There was much uncertainty on whether average jury awards would actually be less than average bench awards. The Actuarial Subcommittee found little credible experience readily available, in either Louisiana or other states, to quantify the potential savings due to a change in the jury trial threshold. It is noted that a limitation on the size of potential savings would be limited because very few claims actually go to trial. Nonetheless, the Actuarial Subcommittee felt a small premium savings up to 0.5% might be realized if the threshold was reduced to \$0 or a premium savings up to 0.25% if the threshold was reduced to \$15,000. These savings affect bodily injury and uninsured motorist coverages only. The estimated savings are dependent on an assumption that the average size of an award determined by a jury would be lower than comparable awards determined by a judge.

## **2. Extend the prescriptive period from one to two years.**

### **Current Law:**

La. C.C. Art. 3492 controls prescription:

Delictual actions are subject to a liberative prescription of one year. This prescription commences to run from the day injury or damage is sustained. It does not run against minors or interdicts in actions involving permanent disability and brought pursuant to the Louisiana Products Liability Act or state law governing product liability actions in effect at the time of the injury or damage.

### **The proposed reform:**

Change the liberative prescription from one year to two years.

### **Actuarial Subcommittee findings:**

Extending the prescriptive period could result in decreased costs, if doing so allows more time to investigate and settle claims before an action is brought. The Actuarial Subcommittee had no experience, in Louisiana or other states, to quantify the affect extending the prescriptive period from one to two years would have on an average liability claim. There was much uncertainty among the Actuarial Subcommittee as to the affect a longer prescriptive period might have on the cost of claims. It was felt likely that the average cost of a claim might even increase rather than decrease. For example, a longer time to treat/rehabilitate an injured claimant, the difficulty containing the scene of an accident, and the difficulty retaining witnesses as time passes could all drive the average cost and expense to settle claims higher.

As with other proposed reforms, this item should not be considered in a vacuum, and any positive or negative outcomes would be dependent upon behavioral changes that could not be quantified prospectively.

### **3. Create a Future Medical Care Fund.**

#### **Current Law:**

Current law provides for the payment of a lump sum of future medical damages.

#### **The proposed reform:**

Create a future medical care fund and payment system similar to the Future Medical Care Fund as provided in La. R.S. 13:5106(B)(3)(c) which states:

In any suit for personal injury against the state or a state agency wherein the court pursuant to judgment determines that the claimant is entitled to medical care and related benefits that may be incurred subsequent to judgment, all such medical care and related benefits incurred subsequent to judgment shall be paid from the Future Medical Care Fund as provided in La. R.S. 39:1533.2. Medical care and related benefits shall be paid directly to the provider as they are incurred. Nothing in this Subparagraph shall be construed to prevent the parties from entering into a settlement or compromise at any time whereby medical care and related benefits shall be provided but with the requirement that they shall be paid in accordance with this Subparagraph.

#### **Actuarial Subcommittee findings:**

The Actuarial Subcommittee found the proposed reform to be lacking important details making it difficult to cost. Important details needed to estimate the effect on automobile premiums of this proposed reform include, cost to administer the fund, who manages the fund, cost associated with setting dedicated capital aside in the fund, and security of the fund deposits. Further, the Actuarial Subcommittee had no experience to base an actuarial costing on. Though the Actuarial Subcommittee could not cost this proposed reform, the consensus was that the proposed reform might result in a small cost savings to bodily injury coverages, dependent on the details of the future medical care fund structure.

#### **4. Limit general damages to \$500,000.**

**Current Law:**

Current law provides no limit on general (i.e., noneconomic) damages.

**The proposed reform:**

Limit general damages to a maximum of \$500,000 in a manner similar to La. R.S. 13:5106(B)(1):

The total liability of the state and political subdivisions for all damages for personal injury to any one person, including all claims and derivative claims, exclusive of property damages, medical care and related benefits and loss of earnings, and loss of future earnings, as provided in this Section, shall not exceed five hundred thousand dollars (\$500,000), regardless of the number of suits filed or claims made for the personal injury to that person.

**Actuarial Subcommittee findings:**

For this reform, the Actuarial Subcommittee considered private passenger and commercial vehicle insurance separately.

The Actuarial Subcommittee determined that a \$500,000 limit on general damages would have zero to very small effect on private passenger bodily injury premiums. In order to have general damages over \$500,000, the total claim settlement would probably be at or above \$1 million. The Actuarial Subcommittee found no (or very few) private passenger claims that settled for \$500,000 or more, let alone for \$500,000 in general damages.

The Actuarial Subcommittee did not comprise companies that had sufficient experience for commercial vehicles that carried \$1 million (or higher) bodily injury limits and could not cost the impact this proposed reform would have on commercial vehicle premiums. Though the Actuarial Subcommittee could not cost this proposed reform, the Subcommittee felt the proposed reform could lower the size of some commercial claim settlements and, thus, could result in a savings to commercial vehicle bodily injury claims, particularly for insurers that specialize in large truck insurance.

The Actuarial Subcommittee suggests that, if there is interest in estimating the impact this proposed reform might have on the bodily injury premiums for large commercial vehicles, the Task Force consider undertaking further research into this reform. Specifically, the Task Force should discuss the potential savings with insurers that specialize in commercial vehicles that carry bodily injury limits of \$1 million or higher.



## **5. Limit the special verdict form to one line for all special and general damages.**

### **Current Law:**

Special verdict instructions are covered by La. C.C.P. Art. 1812(C):

C. In cases to recover damages for injury, death, or loss, the court at the request of any party shall submit to the jury special written questions inquiring as to:

\* \* \* \* \*

(4) The total amount of special damages and the total amount of general damages sustained as a result of the injury, death, or loss, expressed in dollars, and, if appropriate, the total amount of exemplary damages to be awarded.

### **The proposed reform:**

Limit the special verdict’s form to one line for all special damages and general damages by amending La. C.C.P. Art. 1812(C)(4) as follows:

The total amount of special damages and the total amount of general damages sustained as a result of the injury, death, or loss, expressed in dollars, and, if appropriate, the total amount of exemplary damages to be awarded. However, no jury special verdict form shall contain more than one written finding inclusive of all general damages, if any, for each plaintiff.

### **Actuarial Subcommittee findings:**

To cost this proposed reform requires quantifying a change in how a judge or jury behaves. The Actuarial Subcommittee could not cost this proposed reform but speculated the liability savings would be negligible.

## **6. Revise the Collateral Source Rule to allow consideration of collateral sources of recovery.**

### **Current Law:**

Louisiana has a collateral source rule, established in case law, which prohibits the reduction of damages based on collateral sources of recovery with some limited jurisprudential exceptions. Today, the prevailing expression of the Collateral Source Rule, and its meaning, is found in *Bozeman v. State*, 2003-1016 (La. 7/2/04), 879 So.2d 692. There, the Louisiana Supreme Court stated, “Under the collateral source rule, a tortfeasor may not benefit, and an injured plaintiff’s tort recovery may not be reduced, because of monies received by the plaintiff from sources independent of the tortfeasor’s procurement or contribution.” *Id.* at 693.

### **The proposed reform:**

Enact the following collateral source rule by reenacting La. R.S. 9:2800.25 as follows:

§2800.25. Recoverable medical expenses; collateral sources; limitations

A. Reductions in medical bills based upon the write-offs or write-downs by insurance companies or Medicare are not collateral sources and are therefore not recoverable as damages in civil litigation. In cases where a plaintiff's medical expenses have been paid by a health insurance company or Medicare, the plaintiff'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.

B. If a plaintiff does not submit medical bills to an available health insurer or Medicare for payment, plaintiff's recovery is limited to the amount that would have been paid by the insurer or Medicare had the medical bills been submitted to the insurer or Medicare for payment.

C. In cases where a plaintiff's medical expenses are paid pursuant to the Workers' Compensation Law as provided in La. R.S. 23:1020.1 et seq., a plaintiff's recovery of medical expenses is limited to the amount payable under the medical payments fee schedule of the Workers' Compensation Law.

D. If a plaintiff 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 plaintiff'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.

### **Actuarial Subcommittee findings:**

The Actuarial Subcommittee agreed that this reform would be beneficial and lower prospective costs. There was limited data available for actuarial review and claim adjuster expertise was relied on to estimate the savings for this proposed reform. The Actuarial Subcommittee expects this proposed reform could save up to 1% of bodily injury and uninsured motorist coverage costs. Identification of phantom medical charges are key to realizing any savings. Billing differences need to be transparent and may need a requirement that only usual and customary charges are paid.

## 7. Limit recovery of general damages and property damages for distracted drivers.

### Current Law:

Louisiana currently prohibits the use of hand-held personal electronics devices under certain circumstances under La. R.S. 32:300.5 et seq.:

§300.5. Use of certain wireless telecommunications devices for text messaging and social networking prohibited

A.(1) Except as provided in Subsection B of this Section, no person shall operate any motor vehicle upon any public road or highway of this state while using a wireless telecommunications device to write, send, or read a text-based communication. For purposes of this Section, a person shall not be deemed to be writing, reading, or sending a text message if the person reads, selects, or enters a telephone number or name in a wireless telecommunications device for the purpose of making a telephone call.

(2) No person shall operate any motor vehicle upon any public road or highway of this state while using a wireless telecommunications device to access, read, or post to a social networking site.

(3)(a) "Wireless telecommunications device" means a cellular telephone, a text-messaging device, a personal digital assistant, a stand alone computer, or any other substantially similar wireless device that is readily removable from the vehicle and is used to write, send, or read text or data through manual input. A "wireless telecommunications device" shall not include any device or component that is permanently affixed to a motor vehicle. It does not include citizens band radios, citizens band radio hybrids, commercial two-way radio communication devices, two-way radio transmitters or receivers used by licensees of the Federal Communication Commission in the Amateur Radio Service, or electronic communication devices with a push-to-talk function.

(b) "Write, send, or read a text-based communication" means using a wireless telecommunications device to manually communicate with any person by using a text-based communication referred to as a text message, instant message, or electronic mail.

(c) "Access, read, or post to a social networking site" means using a wireless telecommunications device to access, read, or post on such device to any web-based service that allows individuals to construct a profile within a bounded system, articulate a list of other users with whom they share a connection, and communicate with other members of the site.

B. The provisions of Paragraph (A)(1) of this Section shall not apply to the following:

(1) Any law enforcement officer, firefighter, or operator of an authorized emergency vehicle while engaged in the actual performance of his official duties.

(2) An operator of a moving motor vehicle using a wireless telecommunications device to:

(a) Report illegal activity.

(b) Summon medical or other emergency help.

(c) Prevent injury to a person or property.

(d) Relay information between a transit or for-hire operator and that operator's dispatcher, in which the device is permanently affixed to the vehicle.

(e) Navigate using a global positioning system.

(3) A physician or other health care provider using a wireless telecommunications device to communicate with a hospital, health clinic or the office of the physician, or to otherwise provide for the health care of an individual or medical emergency through a text-based communication.

C.(1) The first violation of the provisions of this Section shall be punishable by a fine of not more than five hundred dollars.

(2) Each subsequent violation shall be punishable by a fine of not more than one thousand dollars.

(3) If the person is involved in a crash at the time of violation, then the fine shall be equal to double the amount of the standard fine imposed in this Subsection and the law enforcement officer investigating the crash shall indicate on the written accident form that the person was using a wireless telecommunications device at the time of the crash.

(4) Any violation of this Section shall constitute a moving violation.

#### §300.6. Use of wireless telecommunications devices by certain drivers prohibited; exceptions

A.(1)(a) Except in a driver emergency and as provided in Subsection B of this Section, no person who holds a Class "E" learner's license or intermediate license shall operate a motor vehicle on any public road or highway of this state while using any wireless telecommunications device to engage in a call, unless the wireless telecommunications device is a hands-free wireless telephone.

(b) "Engage in a call" means talking or listening on a wireless telecommunications device.

(c) "Hands-free wireless telephone" means a wireless telecommunications device that has an internal feature or function, or that is equipped with an attachment or addition, whether or not permanently part of such telephone, by which a user engages in a conversation without the use of either hand, provided, however, this definition shall not preclude the use of either hand to activate, deactivate, or initiate a function of the telephone.

(2) Any violation of this Section shall constitute a moving violation. A law enforcement officer shall enforce the provisions of this Section only as a secondary action when the officer detains a driver for an alleged violation of another provision of this Chapter.

B. The provisions of this Section shall not apply to a person holding a Class "E" learner's license or intermediate license who uses a wireless telecommunications device to do any of the following:

(1) Report a traffic crash, medical emergency, or serious road hazard.

(2) Report a situation in which the person believes his or her personal safety is in jeopardy.

(3) Report or avert the perpetration or potential perpetration of a criminal act against the driver or another person.

(4) Engage in a call while the motor vehicle is lawfully parked.

C.(1) A first violation of the provisions of this Section shall be punishable by a fine of not more than five hundred dollars.

(2) Each subsequent violation shall be punishable by a fine of not more than one thousand dollars.

(3) If the person is involved in a crash at the time of violation, then the fine shall be equal to double the amount of the standard fine imposed in this Subsection and the law enforcement officer investigating the crash shall indicate on the written accident form that the person was using a wireless telecommunications device at the time of the crash.

§300.7. Use of certain wireless telecommunications devices by minors while driving prohibited; exceptions

A. As used in this Section, the following terms shall have the meanings ascribed to them as follows:

(1) "Engage in a call" means talking or listening on a cellular telephone.

(2) "Wireless telecommunications device" means any type of instrument, device, or machine that is capable of transmitting or receiving telephonic, electronic, radio, text, or data communications, including but not limited to a cellular telephone, a text-messaging device, a personal digital assistant, a computer, or any other similar wireless device that is designed to engage in a call or communicate text or data. It does not include citizens band radios, citizens band radio hybrids, commercial two-way radio communication devices, or electronic communication devices with a push-to-talk function.

(3) "Write, send or read a text-based communication" means to use a wireless telecommunications device to communicate by using a text-based communication referred to as a text message, instant message, or electronic mail.

B. Except in a driver emergency as provided in Subsection C of this Section, no person who is seventeen years of age or younger shall operate a motor vehicle on any public road or highway in this state while using any wireless telecommunications device to engage in a call or write, send or read a text-based communication. Such device shall not include citizens band radios, citizens band radio hybrids, commercial two-way radio communication devices, or electronic communication devices with a push-to-talk function.

C. The provisions of this Section shall not apply to a person who uses a wireless telecommunications device to do any of the following:

(1) Report a traffic crash, medical emergency, or serious road hazard.

(2) Report a situation in which the person believes his personal safety is in jeopardy.

(3) Report or avert the perpetration or potential perpetration of a criminal act against the driver or another person.

(4) Engage in a call or write, send or read a text-based communication while the motor vehicle is lawfully parked.

D. Any violation of this Section shall constitute a moving violation.

E.(1)(a) A first violation of the provisions of this Section shall be punishable by a fine of not more than two hundred fifty dollars.

(b) Each subsequent violation shall be punishable by a fine of not more than five hundred dollars and a suspension of driver's license for a sixty-day period.

(c) If the person is involved in a crash at the time of violation, then the law enforcement officer investigating the crash shall indicate on the written accident report that the person was using a wireless telecommunications device and the fine shall be equal to double the amount of the standard fine imposed in this Subsection.

(2) It shall be an affirmative defense against an alleged violation for the person to produce documentary or other evidence that the wireless telecommunications device that is the basis of the alleged violation was used for emergency purposes as provided in Subsection C of this Section.

§300.8. Use of wireless telecommunications devices in school zones prohibited; exceptions

A. As used in this Section, the following terms shall have the meanings ascribed to them in this Section, unless the context clearly indicates a different meaning:

(1) "Access, read, or post to a social networking site" means using a wireless telecommunications device to access, read, or post on such device to any web-based service that allows individuals to construct a profile within a bounded system, articulate a list of other users with whom they share a connection, and communicate with other members of the site.

(2) "Engage in a call" means talking or listening on a wireless telecommunications device.

(3) "Wireless telecommunications device" means a cellular telephone, a text-messaging device, a personal digital assistant, a stand-alone computer, or any other substantially similar wireless device that is readily removable from the vehicle and is used to write, send, or read text or data through manual input. A "wireless telecommunications device" shall not include any device or component that is permanently affixed to a motor vehicle. It does not include a hands-free wireless telephone, an electronic communication device used hands-free, citizens band radios, citizens band radio hybrids, commercial two-way radio communications devices, two-way radio transmitters or receivers used by licensees of the Federal Communication Commission in the Amateur Radio Service, or electronic communication devices with a push-to-talk function.

(4) "Write, send, or read a text-based communication" means using a wireless telecommunications device to manually communicate with any person by using a text-based communication including but not limited to a text message, instant message, or electronic mail.

B. Except as provided in Subsection C of this Section, no person shall operate any wireless telecommunications device while operating a motor vehicle upon any public road or highway during the posted hours within a school zone on such public road or highway. Operating a wireless telecommunications device shall include:

(1) Engaging in a call.

(2) Writing, sending, or reading a text-based communication.

(3) Accessing, reading, or posting to a social networking site.

C. The provisions of Subsection B of this Section shall not apply to a person who uses a wireless telecommunications device and does any of the following:

(1) Reports a traffic collision, medical emergency, or serious road hazard.

(2) Reports a situation in which the person believes his personal safety is in jeopardy.

(3) Reports or averts the perpetration or potential perpetration of a criminal act against the driver or another person.

(4) Operates a wireless telecommunications device while the motor vehicle is lawfully parked.

(5) Uses a wireless telecommunications device in an official capacity as an operator of an authorized emergency vehicle.

D.(1) Any violation of this Section shall constitute a moving violation.

(2)(a) The first violation of the provisions of this Section shall be punishable by a fine of not more than five hundred dollars.

(b) Each subsequent violation shall be punishable by a fine of not more than one thousand dollars and a suspension of driver's license for a sixty-day period.

(c) If a person is involved in a collision at the time of the violation, then the fine shall be equal to double the amount of the standard fine imposed in this Subsection and the law enforcement officer investigating the collision shall indicate on the written accident report that the person was using a wireless telecommunications device at the time of the collision.

(3) It shall be an affirmative defense against an alleged violation for the person to produce documentary or other evidence that the wireless telecommunications device that is the basis of the alleged violation was used for emergency purposes as provided in Subsection C of this Section.

E. The provisions of this Section shall only apply within a school zone upon a public road or highway during posted hours when signs are located in a visible manner in each direction that indicate the use of a hand-held wireless communications device is prohibited while operating a motor vehicle.

**The proposed reform:**

Replace La. R.S. 32:300.5 through 300.8 with the following (based on HB 619 Reengrossed, 2018 Regular Session):

§300.5. Use of wireless telecommunications devices prohibited; exceptions

A. As used in this Section, the following terms shall have the meanings ascribed to them in this Section, unless the context clearly indicates a different meaning:

(1) "Access, read, or post to a social networking site" means using a wireless telecommunications device to access, read, view, communicate, post, or transmit electronic data, including text, video, or

photographs from or to any web-based service that allows individuals to construct a profile within a bounded system, articulate a list of other users with whom they share a connection, and communicate with other members of the site.

(2) "Engage in a call" means talking or listening during a voice transmission on a wireless telecommunications device or manually entering names or phone numbers to initiate a call.

(3) "Wireless telecommunications device" means a cellular telephone, a text-messaging device, a personal digital assistant, a stand-alone computer, or any other substantially similar wireless device that is readily removable from the vehicle and is used to write, access, send, read, view, communicate, post, or transmit audio, or electronic data, including text, video, or photographs through manual input. "Wireless telecommunications device" shall not mean any device or component that is permanently affixed to a motor vehicle, including those that provide a hands-free capability for a wireless telecommunications device, a portable hands-free wireless telephone, an electronic communication device used hands-free, an electronic communication device used with a wired or wireless headset or through a short-range wireless interconnection, citizens band radios, citizens band radio hybrids, commercial two-way radio communications devices, two-way radio transmitters or receivers used by licensees of the Federal Communication Commission in the Amateur Radio Service, or electronic communication devices with a push-to-talk function.

(4) "Write, send, or read a text-based communication" means using a wireless telecommunications device to manually communicate with any person by using a text-based communication including but not limited to a text message, instant message, or electronic mail

B.(1) Except as provided in Subsection C of this Section, no person shall operate any wireless telecommunications device while operating a motor vehicle upon any public road or highway.

(2) Operating a wireless telecommunications device shall include:

(a) Engaging in a call.

(b) Writing, sending, or reading a text-based communication.

(c) Accessing, reading, or posting to a social networking site.

(d) Accessing, viewing, posting, editing, or creating a video, photograph, or other image.

(e) Accessing, reading, viewing, composing, browsing, transmitting, saving, or retrieving electronic data from any application or other media.

(f) Using any other application or feature of a wireless telecommunications device by making manual entries of letters, numbers, symbols, commands, or any combination thereof.

(g) Holding a wireless telecommunications device in either or both hands.

C.(1) The provisions of Subsection B of this Section shall not apply to any of the following persons while they are performing their official duties:

(a) A law enforcement officer.

(b) A firefighter.



(c) An operator of an authorized emergency vehicle.

(2) The provisions of Subsection B of this Section shall not apply to a person who uses a wireless telecommunications device to do any of the following:

(a) Report a traffic collision, medical emergency, other emergency, or serious road hazard.

(b) Report a situation in which the person believes that an individual is in jeopardy of serious injury or death.

(c) Relay information between a transit or for-hire operator, including transportation network company driver, and that operator's dispatcher, in which the device is affixed to the vehicle.

(d) Navigate using a global positioning system.

(e) Operate a wireless telecommunications device while the motor vehicle is stationary or lawfully parked.

D.(1) Any person who violates this Section shall be subject to the following penalties:

(a) The first violation of the provisions of this Section shall be punishable by a fine of not more than one hundred twenty-five dollars.

(b) The second violation shall be punishable by a fine of not more than two hundred fifty dollars.

(c) Any subsequent violation shall be punishable by a fine of not more than two hundred fifty dollars and suspension of the violator's driver's license for a fifteen day period.

(d) If the operator of a motor vehicle is involved in a crash at the time of the violation, the fine shall be equal to double the amount of the standard fine imposed in this Subsection. The law enforcement officer investigating the collision shall indicate on the written accident report that the person was using a wireless telecommunications device at the time of the collision.

(e) If the operator of a motor vehicle is involved in a motor vehicle accident at the time of the violation and if the operator is adjudicated to be more than fifty percent at fault for causing or contributing to the injury, death or loss, there shall be no recovery for any general damages and no recovery for property damages based on any cause or right of action arising out of a motor vehicle accident for such injury or damages.

(2) Use of a wireless telecommunications device for any of the purposes provided for in Subsection C of this Section shall be an affirmative defense to a violation of this Section and the alleged violator may produce documentary or other evidence.

E. Probable cause for violation of this Section shall be based solely upon a law enforcement officer's clear and unobstructed view of a person using wireless telecommunications device as prohibited by this Section. A law enforcement officer shall not search or inspect a motor vehicle, its contents, the driver, or a passenger solely because of a violation of this Section.

Section 3. La. R.S. 32:300.6, 300.7, and 300.8 are hereby repealed in their entirety.

**Actuarial Subcommittee findings:**

The Actuarial Subcommittee could not cost this proposed reform but felt it might result in a small savings to liability coverages, if it changed driver behavior to be less distracted. This reform would only save costs when the distracted driver was more than 50% at fault and would have a claim against a third party for damages. It would be difficult to identify distracted cell phone use and that usage must be documented in police reports. The language of the proposed reform goes even further and requires a police officer must witness the cell phone use to be reported as distracted driving. Self-reporting would probably not improve documented cell phone usage. If police observation was not required and cell phone records could be introduced as evidence, there may be a small cost savings; in this case, it is estimated there may be a savings up to 0.5% on liability coverages.

It is noted that exceptions for TNC/for-hire and GPS use may limit any potential savings, as cell phone use will still be allowable in those scenarios.

## **8. Permit evidence of seat belt use for comparative negligence and limit recovery of damages.**

### **Current Law:**

La. R.S. 32:295.1(E) does not allow seat belt usage to be considered or admitted as evidence:

In any action to recover damages arising out of the ownership, common maintenance, or operation of a motor vehicle, failure to wear a safety belt in violation of this Section shall not be considered evidence of comparative negligence. Failure to wear a safety belt in violation of this Section shall not be admitted to mitigate damages.

### **The proposed reform:**

Enact the following statutory limitation of the seatbelt evidence source rule (based on HB 700 Reengrossed, 2018 Regular Session).

Be it enacted by the Legislature of Louisiana:

Section 1. La. R.S. 32:295.1(E) is hereby amended and reenacted to read as follows:

In any action to recover damages arising out of the ownership, common maintenance, operation or occupancy of a motor vehicle, except when the operator or passenger of the motor vehicle is under the age of sixteen years, failure to wear a safety belt in violation of this Section may be considered evidence of comparative negligence and damages, except when the tortfeasor is charged with a violation of La. R.S. 14:98 or an ordinance of a political subdivision prohibiting operation of any vehicle or means of transportation or conveyance while intoxicated, impaired, or while under the influence of alcohol, drugs, or any controlled dangerous substance.

(2) There shall be no recovery for the first fifteen thousand dollars of special damages and no recovery for any general damages based on any cause or right of action arising out of a motor vehicle accident, for such injury or damages occasioned by an operator or occupant of a motor vehicle involved in such accident who fails to wear a safety belt in violation of this Section.

### **Actuarial Subcommittee findings:**

Savings could be up to 5% for bodily injury coverages. The key to cost savings of this proposed reform is simply the identification of whether the operator/occupant was wearing a seat belt at the time of an accident, i.e., either the operator/occupant was or was not wearing a seat belt. The savings would be much less if this proposed reform required an evaluation of whether the same injuries would have occurred with or without seat belt use.

Personal responsibility behavior that leads someone to not wear a seatbelt may also be correlated with driving uninsured. Therefore, there may be overlap with this proposed reform's savings and savings associated with reform #10, No Play, No Pay.

## 9. Prohibit evidence of an insurance policy from the jury.

### Current Law:

La. R.S. 22:1269(B)(1) provides an injured person, or his/her survivors or heirs, a right of direct action against the insurer, alone or against both the insured and insurer jointly and in solido. As a result, plaintiffs may introduce to the jury evidence of the existence of a policy of insurance for the loss, as well as the name of the insurance company that issued the policy.

It should be noted that La. C.E. Art. 411 does not allow the amount of coverage under a policy to be communicated:

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

### The proposed reform:

Prohibit evidence of an insurance policy from the jury and determine the impact on premiums by replacing La. C.E. Art. 411 with the following:

(A) The existence of a policy of insurance shall not be admissible, directly or indirectly, in any civil proceeding with respect to a claim for damages relative to the same injury for which the policy of insurance is alleged to provide coverage, unless the existence of a policy of insurance or the amount of coverage is a disputed issue which the jury will decide.

(B) In any civil proceeding involving an insurance company which issued a policy of insurance to a party to the suit, evidence of the existence of any such insurance company, including but not limited to reference to the name of the company or the retention of counsel by the company, shall not be admissible.

### Actuarial Subcommittee findings:

The Actuarial Subcommittee found this proposed reform would probably be beneficial but not produce meaningful cost savings. There are ways to learn that an insurance policy/company is behind the defendant. A long-term paradigm shift is needed for real savings to be realized, i.e., claimant versus the big, bad insurance company rather than the at-fault party. In addition, very few claims make it to the lawsuit phase and, therefore, to the jury.

The direct action statute [La. R.S. 22:1269(B)(1)] still applies and companies can still be brought to court in solido. If direct action against the insurer were not allowed, the Actuarial Subcommittee believes there would be a measurable savings to bodily injury and property damage coverages.

## **10. Further restrict recoveries for uninsured owner or operator of a motor vehicle (No Play, No Pay).**

### **Current Law:**

La. R.S. 32:866 disallows recovery of the first \$15,000 of bodily injury damages and the first \$25,000 of property damages.

A.(1) There shall be no recovery for the first fifteen thousand dollars of bodily injury and no recovery for the first twenty-five thousand dollars of property damage based on any cause or right of action arising out of a motor vehicle accident, for such injury or damages occasioned by an owner or operator of a motor vehicle involved in such accident who fails to own or maintain compulsory motor vehicle liability security.

(2) For purposes of this Section, the meaning of "bodily injury" and "property damage" is governed by the applicable motor vehicle liability insurance policy or, in the event of security other than an insurance policy, the meaning of such terms is that which is commonly ascribed thereto.

### **The proposed reform:**

The proposed reform would further restrict recoveries for an uninsured owner or operator of a motor vehicle by replacing La. R.S. 32:866(A)(1) and (2) with the following:

A. There shall be no recovery for the first fifteen thousand dollars of bodily injury special damages, no recovery for any bodily injury general damages, and no recovery for the first twenty-five thousand dollars of property damage based on any cause or right of action arising out of a motor vehicle accident, for such injury or damages occasioned by an owner or operator of a motor vehicle involved in such accident who fails to own or maintain compulsory motor vehicle liability security.

### **Actuarial Subcommittee findings:**

The Actuarial Subcommittee agreed there would be a measurable savings to bodily injury coverage. It is estimated that the effect on bodily injury coverage premium would be up to 2%.

Personal responsibility behavior that leads someone to drive uninsured may also be correlated with not wearing a seatbelt. Therefore, there may be overlap with this proposed reform's savings and savings associated with reform #8, Evidence of Seat Belt Use.

## APPENDIX A

2018 Regular Session

ENROLLED

SENATE CONCURRENT RESOLUTION NO. 55

BY SENATOR BISHOP

A CONCURRENT RESOLUTION

To urge and request the Louisiana Department of Insurance to assemble a task force to address the high automobile insurance rates in the state.

WHEREAS, Louisiana is the second most expensive state for automobile insurance in the nation; and

WHEREAS, in the past two years, five companies have left the state due to the unprofitability of the automobile insurance industry; and

WHEREAS, fourteen percent of Louisiana drivers do not have insurance and forty percent of drivers only have the bare minimum policy; and

WHEREAS, major metropolitan areas, such as New Orleans and Baton Rouge, have considerably higher automobile insurance rates than other less populated areas in the state.

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby urge and request the Louisiana Department of Insurance to assemble a task force to address the high automobile insurance rates in the state and submit a report with findings and recommendations to the senate and house committees on insurance by March 1, 2019.

BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the Louisiana Department of Insurance.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

## **APPENDIX A (continued)**

ENROLLED

2018 Regular Session

HOUSE CONCURRENT RESOLUTION NO. 47

BY REPRESENTATIVES TALBOT, ANDERS, GLOVER, AND THIBAUT

A CONCURRENT RESOLUTION

To urge and request the Department of Insurance to assemble a task force to address the high automobile insurance rates in the state.

WHEREAS, Louisiana is the second most expensive state for automobile insurance in the nation; and

WHEREAS, in the past two years, five companies have left the state due to the unprofitability of the automobile insurance industry; and

WHEREAS, fourteen percent of Louisiana drivers do not have insurance and forty percent of drivers have only the bare minimum policy; and

WHEREAS, major metropolitan areas, such as New Orleans and Baton Rouge, have considerably higher automobile insurance rates than other less populated areas in the state.

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby urge and request the Department of Insurance to assemble a task force to address the high automobile insurance rates in the state and submit a report with findings and recommendations to the Senate and House committees on insurance by March 1, 2019.

BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the Department of Insurance.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE