

## **2020 IS THE YEAR FOR LAWSUIT REFORM**

### **Relief is Critical for Louisiana Employers and Households**

### **IN FOCUS: AUTO INSURANCE**

Louisiana's economy is our top challenge. More than 50,000 people have moved out of Louisiana since July 2016, as job growth persistently lags the nation. Fundamental reform is necessary for Louisiana to grow the economy competitively with other states. This could not be more evident or necessary than in the legal arena, where experts perennially rate Louisiana among the bottom states.

#### **The Impact of High Costs**

Excessive litigation affects the economy in numerous ways, but first and foremost, by increasing the costs of living and business. The US Chamber of Commerce estimates excessive tort costs in Louisiana amounted to more than \$7 billion in 2016 – equivalent to more than \$4,000 for every Louisiana household and nearly three percent of the state's GDP – the #5 highest in the nation.

Laws favorable to plaintiffs are out of line with other states and have “a dramatic and negative impact on Louisiana's auto insurance market,” according to the Louisiana Property and Casualty Insurance Commission. With the second highest rates in the nation, the average Louisiana citizen pays \$2,298 a year while the average American pays \$1,457, and rates have increased nearly 53 percent since 2011.

Transportation is a major challenge for job seekers and workers, and the high cost of auto insurance requires an unnecessarily difficult choice for some – drive illegally without insurance, do without other necessities, or rely on others. Proportionally affecting working families most, the high rate represents 4.9 percent of median income in Louisiana. In states such as Alabama, Arkansas, and Mississippi, auto insurance rates represent a much smaller share of household income: 2.8 percent, 3.6 percent, and 3.4 percent respectively. To take the example further, the average family in Alabama pays almost half the amount of an average family in Louisiana – representing \$1,000 difference in one year or about six times the average Earned Income Tax Credit awarded annually.

#### **The Opposition's Arguments**

Those who support the status quo in the legal system argue there are other reasons for the high auto insurance premiums in Louisiana: uninsured motorists, unsafe roads, or distracted driving. In fact:

- Thirteen percent of Louisiana's motorists are uninsured, ranking the state #20. Our neighbors with much lower rates in Arkansas and Mississippi have a much higher share of uninsured drivers: 17 percent and 24 percent respectively. Data shows there is very little correlation between rates and uninsured motorists.
- Louisiana ranks #2 for “worst roads,” yet South Carolina ranks #1 with an auto insurance rate that is 60 percent lower than Louisiana at \$1,433. Data shows only a slight correlation between better-ranked roads and lower rates.
- The fatality rate on Louisiana is tragically ranked #11 nationally. However, Mississippi is ranked #1 with an average insurance premium of only \$1,409. Data shows only a slight correlation between lower fatality rates and lower premiums.

Neither are insurance companies “cashing in” in Louisiana. In fact, over a ten-year period, insurance company profitability in Louisiana was 2.2 percent – the second worst in the nation. Data actually demonstrates that a competitive market brings both lower premiums and higher profitability.

## The Real Reasons Behind High Costs

In short, the driver of costly insurance premiums for Louisiana families is excessive and frivolous litigation, which is where Louisiana is an outlier compared to other states:

- The Louisiana bodily injury claim rate is almost twice the national average, even as the property damage claim rate is in line with the national average.
- The average costs for bodily injury claims in Louisiana are \$11,687 compared to the national average of \$7,500.
- Finally, Louisiana claimants with bodily injuries were then 60 percent more likely to file lawsuits than people in other states.

It is simple. The costs of litigation must be borne by all policyholders, and the high premiums are a direct result of these high costs. Changing the formula or rate-setting methodologies will do nothing to lower the overall costs – simply shift the burden from one policyholder to another. The costs of litigation must still be paid.

## How to Fix It

It is Louisiana's laws that make it easy to recover damages through lawsuits, particularly in personal and commercial auto cases. This is why it is so important for the Legislature to bring the statutes in line with other states, removing incentives to file lawsuits and injecting fairness and transparency into the judicial process.

- **Increase Citizen Access to Courts:** Civil jury trials in Louisiana are prohibited unless the lawsuit is for at least \$50,000, even while 48 states have a threshold of \$5,000 or less. More than half of all claims in Louisiana are under \$50,000, allowing personal injury lawyers to go "judge shopping" for a favorable venue. Many insurance companies then opt to save time and money by settling most cases rather than go before a judge that is known to be favorable to plaintiffs.
- **Allow Seat Belt Evidence:** Seat belt usage is currently hidden from juries according to state law, even though unbelted occupants typically have medical costs three times higher than belted motorists.
- **Tell the Truth about Medical Costs:** There is a judicially created rule that prohibits evidence of what was actually paid by a plaintiff in medical bills and allows only evidence of full-price or "sticker price" medical bills, without regard to contractual adjustments for health insurance or limits on reimbursement established by public payors such as Medicaid. These true costs are hidden from judges and juries when they are deciding a personal injury lawsuit, promoting windfalls that far exceed the actual cost paid for care.
- **File Suits Against a Defendant, Not All Policyholders:** Louisiana is one of only three states where a plaintiff can sue both the individual and their insurance company, a practice known as "direct action." More expensive verdicts are rendered when juries incorrectly perceive the costs will be borne by a large corporation rather than the defendant. However, the truth is these costs are ultimately borne by all policyholders.

State laws have led to the current auto insurance crisis in access and affordability. **And state laws can fix it.**

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