

2024 Regular Session

SENATE BILL NO. 250

BY SENATOR ALLAIN

CIVIL PROCEDURE. Provides for no right of direct action against insurer. (8/1/24)

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AN ACT

To amend and reenact R.S. 22:1269, relative to liability; to provide relative to civil liability and to motor vehicle liability coverage; to provide relative to the right of direct action against an insurer; to provide with respect to circumstances in which an action may be brought against the insurer; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 22:1269 is hereby amended and reenacted to read as follows:

§1269. Liability policy; insolvency or bankruptcy of insured and inability to effect service of citation or other process; direct action against insurer

A. No policy or contract of liability insurance shall be issued or delivered in this state, unless it contains provisions to the effect that the insolvency or bankruptcy of the insured shall not release the insurer from the payment of damages for injuries sustained or loss occasioned during the existence of the policy, and any judgment which may be rendered against the insured for which the insurer is liable which shall have become executory, shall be deemed prima facie evidence of the insolvency of the insured, and an action may thereafter be maintained within the terms and limits of the policy by the injured person, or his survivors, ~~mentioned in~~ **pursuant to** Civil

1 Code Art. 2315.1, or heirs against the insurer.

2 B.~~(1)~~ The injured person or his survivors or heirs **mentioned provided for**
3 in Subsection A of this Section, at their option, shall have a **no** right of direct action
4 against the insurer ~~within the terms and limits of the policy; and, such action may be~~
5 ~~brought against the insurer alone, or against both the insured and insurer jointly and~~
6 ~~in solido, in the parish in which the accident or injury occurred or in the parish in~~
7 ~~which an action could be brought against either the insured or the insurer under the~~
8 ~~general rules of venue prescribed by Code of Civil Procedure Art. 42 only; however,~~
9 ~~such action may be brought against the insurer alone only when unless at least one~~
10 of the following applies:

11 ~~(a)~~**(1)** The insured has been adjudged bankrupt by a court of competent
12 jurisdiction or when proceedings to adjudge an insured bankrupt have been
13 commenced before a court of competent jurisdiction.

14 ~~(b)~~**(2)** The insured is insolvent.

15 ~~(c)~~**(3)** Service of citation or other process ~~cannot be made on the insured~~ **has**
16 **been attempted unsuccessfully.**

17 ~~(d)~~**(4)** When the cause of action is for damages as a result of an offense or
18 quasi-offense between children and their parents or between married persons.

19 ~~(e)~~**(5)** When the insurer is an uninsured motorist carrier.

20 ~~(f)~~**(6)** The insured is deceased.

21 **(7) When the insurer is defending the lawsuit under a reservation of**
22 **rights, or the insurer denies coverage to the insured.**

23 ~~(2) This right of direct action shall exist whether or not the policy of~~
24 ~~insurance sued upon was written or delivered in the state of Louisiana and whether~~
25 ~~or not such policy contains a provision forbidding such direct action, provided the~~
26 ~~accident or injury occurred within the state of Louisiana. Nothing contained in this~~
27 ~~Section shall be construed to affect the provisions of the policy or contract if such~~
28 ~~provisions are not in violation of the laws of this state.~~

29 C. ~~It is the intent of this Section that any action brought under the provisions~~

1 of this Section shall be subject to all of the lawful conditions of the policy or contract
 2 and the defenses which could be urged by the insurer to a direct action brought by
 3 the insured, provided the terms and conditions of such policy or contract are not in
 4 violation of the laws of this state. **The purpose of all liability policies is to provide**
 5 **protection and coverage to all insured whether the insured is a named insured**
 6 **or an additional insured under the omnibus clause, for all legal liability the**
 7 **insured may have within the terms and limits of the policy.**

8 D. It is also the intent of this Section that all liability policies within their
 9 terms and limits are executed for the benefit of all injured persons and their survivors
 10 or heirs to whom the insured is liable; and, that it is the purpose of all liability
 11 policies to give protection and coverage to all insureds, whether they are named
 12 insured or additional insureds under the omnibus clause, for any legal liability the
 13 insured may have as or for a tortfeasor within the terms and limits of the policy.

The original instrument and the following digest, which constitutes no part
 of the legislative instrument, were prepared by Hanna Gettys.

DIGEST

SB 250 Original

2024 Regular Session

Allain

Present law (R.S. 22:1269(B)) provides relative to liability policies and direct action against an insurer.

Present law provides that an injured third party has the right to take direct legal action against the insurer if that right is provided for within the terms and limits of the policy. Provides for action against the insurer alone if at least one of the following applies:

- (1) The insured has been adjudged bankrupt by a court of competent jurisdiction or proceedings to adjudge an insured bankrupt have been commenced before a court of competent jurisdiction.
- (2) The insured is insolvent.
- (3) Service of citation or other process cannot be made on the insured.
- (4) The cause of action is for damages resulting from an offense or quasi offense between children and parents or between married persons.
- (5) The insurer is an uninsured motorist carrier.
- (6) The insured is deceased.

Proposed law provides for no right of direct action against the insurer unless at least one of the following applies:

- (1) The insured has been adjudged bankrupt by a court of competent jurisdiction or proceedings to adjudge an insured bankrupt have been commenced before a court of competent jurisdiction.
- (2) The insured is insolvent.
- (3) Service of citation or other process has been attempted unsuccessfully.
- (4) The cause of action is for damages resulting from an offense or quasi offense between children and parents or between married persons.
- (5) When the insurer is an uninsured motorist carrier.
- (6) The insured is deceased.
- (7) When the insurer is defending the lawsuit under a reservation of rights, or the insurer denies coverage to the insured.

Present law provides that this right of direct action shall exist whether or not the policy of insurance sued upon was written or delivered in the state of La. and whether or not such policy contains a provision forbidding such direct action, provided the accident or injury occurred within the state of La. Present law shall not be construed to affect the provisions of the policy or contract if such provisions are not in violation of the laws of this state. Proposed law deletes present law.

Present law provides that any action brought under present law shall be subject to all of the lawful conditions of the policy or contract and the defenses which could be urged by the insurer to a direct action brought by the insured, provided the terms and conditions of such policy or contract are not in violation of the laws of this state. Proposed law deletes present law.

Present law provides that all liability policies within their terms and limits are executed for the benefit of all injured persons and their survivors or heirs to whom the insured is liable; and, that it is the purpose of all liability policies to give protection and coverage to all insureds, whether they are named insured or additional insureds under the omnibus clause, for any legal liability the insured may have as or for a tortfeasor within the terms and limits of the policy.

Proposed law deletes the provision of present law that provides all liability policies within their terms and limits are executed for the benefit of all injured persons and their survivors or heirs to whom the insured is liable.

Proposed law retains present law and clarifies that the purpose of all liability policies is to provide protection and coverage to all insured whether the insured is a named insured or an additional insured under the omnibus clause, for all legal liability the insured may have within the terms and limits of the policy.

Effective August 1, 2024.

(Amends R.S. 22:1269)