

2024 Regular Session

HOUSE BILL NO. 337

BY REPRESENTATIVE MCFARLAND

CIVIL/ACTIONS: Provides relative to direct action against an insurer

1 AN ACT

2 To amend and reenact R.S. 22:1269(B)(1) and (D) and to enact R.S. 22:1269(B)(3), relative
3 to direct actions against an insurer; to provide for direct action against the insured;
4 to provide for direct action against the insurer in limited circumstances; to provide
5 relative to case captions and disclosures to jurors; to provide for intent; and to
6 provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 22:1269(B)(1) and (D) are hereby amended and reenacted and R.S.
9 22:1269(B)(3) is hereby enacted to read as follows:

10 §1269. Liability policy; insolvency or bankruptcy of insured and inability to effect
11 service of citation or other process; direct action against insurer

12 * * *

13 B.(1) The injured person or, if deceased, the persons identified in Civil Code
14 Arts. 2315.1 and 2315.2, ~~or his survivors or heirs mentioned in Subsection A of this~~
15 ~~Section, at their option,~~ shall have a right of direct action against the insurer within
16 the terms and limits of the policy; ~~and, such action may be brought against the~~
17 ~~insurer alone, or against both the insured and insurer jointly and in solido,~~ in the
18 parish in which the accident or injury occurred or in the parish in which an action
19 could be brought against either the insured or the insurer under pursuant to the
20 general rules of venue prescribed by Code of Civil Procedure Art. 42, ~~only, however,~~

1 ~~such action may be brought against the insurer alone only when at least one of the~~
2 ~~following applies~~ Such action shall first be filed against the insured as defendant.
3 If the action cannot proceed due to any of the following circumstances, the action
4 may be brought directly against the insurer:

5 (a) The insured ~~has been adjudged bankrupt by~~ files for bankruptcy in a court
6 of competent jurisdiction or when proceedings to adjudge an insured bankrupt have
7 been commenced before a court of competent jurisdiction.

8 (b) The insured is insolvent.

9 (c) Service of citation or other process ~~cannot be made on the insured~~ has
10 been attempted without success.

11 (d) When the cause of action is for damages as a result of an offense or
12 quasi-offense between children and their parents or between married persons.

13 (e) When the insurer is an uninsured motorist carrier.

14 (f) The insured is deceased.

15 (g) When the insurer is defending the lawsuit under a reservation of rights,
16 or the insurer denies coverage to the insured.

17 * * *

18 (3)(a) An insurer shall not be included in the caption of any action brought
19 against the insurer pursuant to this Section. The action shall instead be captioned
20 only against the insured defendant or other noninsurance defendants.

21 (b) A court shall not disclose the existence of insurance coverage to the jury
22 or mention such coverage in the jury's presence unless otherwise expressly provided
23 for by law.

24 (c) A court may dismiss the action of any insured or other defendant if the
25 action cannot proceed due to any of the circumstances in Paragraph (2) of this
26 Subsection.

27 * * *

28 ~~D. It is also the intent of this Section that all liability policies within their~~
29 ~~terms and limits are executed for the benefit of all injured persons and their survivors~~

1 ~~or heirs to whom the insured is liable; and, that it is the purpose of all liability~~
2 ~~policies to give protection and coverage to all insureds, whether they are named~~
3 ~~insured or additional insureds under the omnibus clause, for any legal liability the~~
4 ~~insured may have as or for a tortfeasor within the terms and limits of the policy.~~

5 The legislature finds that the purpose of all liability policies is to provide
6 protection and coverage to all insureds, whether the insured is a named insured or an
7 additional insured under the omnibus clause, for all legal liability the insured may
8 have within the terms and limits of the policy.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 337 Engrossed

2024 Regular Session

McFarland

Abstract: Provides that in direct action cases, an action is filed against the insured first and may be filed directly against the insurer under limited circumstances.

Present law (R.S. 22:1269(B)(1)) provides that the injured person or his survivors or heirs, at their option, have a right of direct action and such action may be brought against the insurer alone or against both the insured and insurer jointly and in solido under the general rules of venue prescribed by C.C.P. Art. 42. Authorizes an injured person to bring action against the insurer alone only when at least one of the following applies:

- (1) The insured has been adjudged bankrupt by a court of competent jurisdiction or when 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) When the cause of action is for damages as a result of an offense or quasi-offense between children and their parents or between married persons.
- (5) When the insurer is an uninsured motorist carrier.
- (6) The insured is deceased.

Proposed law (R.S. 22:1269(B)(1)) amends present law to provide that the injured person, or if deceased, persons listed in present law (Civil Code Arts. 2315.1 and 2315.2), have the right to file a survival or wrongful death claim as a direct action. Requires the injured person to first file such action directly against the insured. Authorizes an injured person to bring action against the insurer alone only if the action cannot proceed against the insured for one of the following reasons:

- (1) The insured files for bankruptcy in a court of competent jurisdiction or when 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 without success.
- (4) When the cause of action is for damages as a result of an offense or quasi-offense between children and their 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.

Proposed law prohibits the name of an insurer from inclusion in the caption of an action brought against the insurer. Further requires the action to be captioned only against the insured defendant or other noninsurance defendants.

Proposed law prohibits a court from disclosing the existence of insurance coverage to a jury or mentioning coverage in the jury's presence, unless otherwise expressly provided by law.

Proposed law authorizes a court to dismiss the action of any insured or other defendant if the action cannot proceed due to the insured's insolvency or other circumstances described in present and proposed law (R.S. 22:1269(B)(1)).

Present law provides that it is the intent of present law 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 present law and provides that the purpose of all liability policies is to provide protection and coverage to all insureds, 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.

(Amends R.S. 22:1269(B)(1) and (D); Adds R.S. 22:1269(B)(3))

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Insurance to the original bill:

1. Reference persons listed in present law (Civil Code Arts. 2315.1 and 2315.2) who can file a survival or wrongful death action against an insured or insurer.
2. Change present law language from an insured being adjudged bankrupt to an insured who files for bankruptcy.
3. Prohibit the name of an insurer from inclusion in the caption of an action brought against the insurer. Further requires the action to be captioned only against the insured defendant or other defendants.

4. Prohibit a court from disclosing the existence of insurance coverage to a jury or mentioning coverage in the jury's presence, unless otherwise expressly provided for by law.
5. Authorize a court to dismiss the action of any insured or other defendant if the action cannot proceed due to the insured's insolvency or other circumstances described in present and proposed law (R.S. 22:1269(B)(1)).
6. Make technical changes.