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## DIGEST

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HB 337 Reengrossed

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 provides that the filing of an action against an insured interrupts prescription for all insurers whose policies provide coverage for the claims asserted in the action.

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.

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) and (4))

#### 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.

The House Floor Amendments to the engrossed bill:

1. Add that the filing of an action against an insured interrupts prescription for all insurers whose policies provide coverage for the claims asserted in the action.
2. Expressly prohibit a court from mentioning the existence of insurance coverage in a jury's presence.
3. Make technical changes.