

2024 Regular Session

HOUSE BILL NO. 337

BY REPRESENTATIVES MCFARLAND, AMEDEE, BERAULT, BILLINGS, BUTLER, CARRIER, CARVER, COX, DAVIS, DEWITT, DICKERSON, EGAN, EMERSON, FIRMENT, MELERINE, OWEN, SCHAMERHORN, WILDER, AND WYBLE AND SENATORS BASS, CLOUD, EDMONDS, FESI, HENRY, MIGUEZ, SEABAUGH, STINE, AND WOMACK

1 AN ACT

2 To amend and reenact R.S. 22:1269(B)(1) and (D), to enact R.S. 22:1269(B)(3) and (4), (E),
3 and (F), and to repeal Code of Evidence Art. 411(D), relative to direct actions against
4 an insurer; to provide for direct action against the insured; to provide for direct
5 action against the insurer in limited circumstances; to provide relative to case
6 captions and disclosures to jurors; to provide for intent; and to provide for related
7 matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 22:1269(B)(1) and (D) are hereby amended and reenacted and R.S.
10 22:1269(B)(3) and (4), (E), and (F) are hereby enacted to read as follows:

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

13 * * *

14 B.(1) The injured person or, if deceased, the persons identified in Civil Code
15 Arts. 2315.1 and 2315.2, his survivors or heirs mentioned in Subsection A of this
16 Section, at their option, shall have a no right of direct action against the insurer
17 unless at least one of the following applies: within the terms and limits of the policy;
18 and, such action may be brought against the insurer alone, or against both the insured
19 and insurer jointly and in solido, in the parish in which the accident or injury
20 occurred or in the parish in which an action could be brought against either the

1 insured or the insurer under the general rules of venue prescribed by Code of Civil
2 Procedure Art. 42 only; however, such action may be brought against the insurer
3 alone only when at least one of the following applies:

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

7 (b) The insured is insolvent.

8 (c) Service of citation or other process ~~cannot be made on the insured~~ has
9 been attempted without success or the insured defendant refuses to answer or
10 otherwise defend the action within one hundred eighty days of service.

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, but only for the purpose of establishing
17 coverage.

18 * * *

19 (3) The filing of an action against the insured shall interrupt prescription as
20 to all insurers whose policies provide coverage for the claims asserted in the action.

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

24 (b) A court shall not disclose the existence of insurance coverage to the jury
25 or mention such coverage in the jury's presence unless required by Code of Evidence
26 Article 411.

27 (c) A court may dismiss the action against any insured or other defendant if
28 the action cannot proceed due to any of the circumstances in Paragraph (2) of this
29 Subsection.

30 * * *

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

7 (1)(a) In those instances where direct action is not otherwise authorized by
8 law, at the time a judgment is to be entered, or a settlement is reached during the
9 pendency of litigation, a liability insurer may be joined on motion of any party as a
10 party defendant for the purposes of entering final judgment or enforcing the
11 settlement.

12 (b) The provisions of Subparagraph (a) of this Paragraph are subject to the
13 terms and limits of the policy and do not apply if the insurer timely denied coverage
14 or reserved rights under the provisions of Subsection E of this Section unless there
15 has been an adjudication in favor of coverage.

16 (c) Subject to the provisions of this Subsection, any judgment entered against
17 an insured shall also be rendered against any nonparty insurer that is joined post-
18 verdict pursuant to this Subsection. If a judgment is reversed or remanded on appeal,
19 the insurer's presence shall not be disclosed to the jury in a subsequent trial.

20 (2)(a) With the first responsive pleading filed on behalf of the insured
21 defendant, counsel for the insured defendant who is authorized by an insurer shall
22 certify to the plaintiff the name and address of any insurers for whom he is
23 authorized to confirm that they waive any further notice related to the cause of action
24 other than that provided to the counsel for the insured. The insurer is deemed to
25 have all notice provided to the counsel for the insured who has entered this waiver
26 unless it provides written notice to the parties instructing notice be additionally sent
27 to another counsel. If an insurer has waived notice of the cause of action pursuant
28 to this Subparagraph, then an order to join the defendant post-verdict may be issued
29 ex parte when filed.

1 (b) Notice of the commencement of a civil action may be provided by
2 plaintiff or its counsel to the nonparty insurer by service of the citation on the
3 nonparty insurer by any method of service on a defendant provided by law. Any
4 copy of a motion to join the insurer post-verdict transmitted pursuant to this
5 Subparagraph may be granted in chambers fifteen days following service pursuant
6 to this Subparagraph unless a contradictory hearing is requested prior to that date.

7 E. In addition to any other restriction provided by law, a liability insurer
8 denying coverage shall do the following:

9 (1) Within ninety days after the liability insurer makes a determination of the
10 existence of a coverage defense, but in no case later than thirty days before trial,
11 provide written notice of reservation of rights to assert a coverage defense to the
12 named insured by United States postal proof of mailing, registered or certified mail,
13 or other similar tracking method used or approved by the United State Postal Service
14 or commercial courier sent to the last known address of the insured or by hand
15 delivery.

16 (2) Within sixty days of the later of compliance with Paragraph (1) of this
17 Subsection and after receipt or waiver of notice pursuant to Paragraph (D)(2) of this
18 Section, but in no case later than thirty days before trial, the insured shall give notice
19 to all counsel of record in a cause of action against the insured that a reservation of
20 rights has been issued and also give notice to its named insurer in the same manner
21 as provided for in Paragraph (1) of this Subsection that either:

22 (a) The insurer refuses to defend the insured.

23 (b) The insurer provides independent counsel at the expense of the insurer.

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

28 Section 2. Code of Evidence Art. 411(D) is hereby repealed.

1 Section 3. The Louisiana State Law Institute is hereby authorized and directed to
 2 change the reference in Code of Evidence Art. 411(B) from R.S. 22:1269(B)(1)(a) through
 3 (f) to R.S. 22:1269(B)(1)(a) through (g).

4 Section 4. Nothing in this Act shall prevent a plaintiff from resolving a claim of
 5 coverage against one insurer while preserving a claim against another insurer of the same
 6 defendant in the same cause of action, as contemplated by Gasquet vs. Commercial Union
 7 Insurance Company, 391 So. 2d 466 (La. 1981) and its progeny.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____