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## DIGEST

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HB 266 Original

2020 Regular Session

Seabaugh

**Abstract:** Limits an injured third party's right of direct action against an insurer to certain exceptions; in the absence of these exceptions, the injured third party must take legal action against the insured party.

Present law provides that a policy or contract of liability insurance must provide that the insolvency or bankruptcy of the insured will not release the insurer from its duty to pay for damages.

Proposed law retains present law.

Present law provides that an injured third party has the right to take direct legal action against the insurer if that right is provided within the terms and limits of the policy. The third party has the right to sue both the insurer and the insured jointly and in solido, or he may sue the insurer alone if at least one of the following circumstances apply:

- (1) The insured has been adjudged bankrupt or bankruptcy proceedings have commenced in 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 as a result of an offense or quasi offense between children and their parents or between married persons.
- (5) The insurer is an uninsured motorist carrier.
- (6) The insured is deceased.

Proposed law retains the portion of present law that allows for any additional terms in a policy which do not violate state law to remain unaffected; otherwise, limits the circumstance in which a third party may take direct action against an insurer only to the following three circumstances:

- (1) The insured has been adjudged bankrupt or bankruptcy proceedings have commenced in a court of competent jurisdiction.
- (2) 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.

(3) The insured is deceased.

Proposed law provides that if circumstances do not meet one of the exceptions provided by present law, the third party does not have a right of direct action against the insured. The third party must sue the insured to obtain a judgment of liability and damages.

Proposed law clarifies that the insured's right to enforce the terms of the policy against the insurer remains unaffected.

(Amends R.S. 22:1269(B))