

## HOUSE SUMMARY OF SENATE AMENDMENTS

HB 337

2024 Regular Session

McFarland

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

### Synopsis of Senate Amendments

1. Clarifies when there is a right of direct action against an insurer.
2. Specifies that the right of direct action may exist if the insured defendant receives service of process but refuses to answer or otherwise defend the action within 180 days of service.
3. Prohibits a court from disclosing the existence of insurance coverage to a jury unless required in present and proposed law (C.E. Art. 411).
4. Authorizes an insurer to be joined to an action by motion of any party for the purposes of entering final judgment or enforcing a settlement.
5. Provides for insurers' reservation of rights and related notice requirements. Further provides for responsive pleadings and the joining of insurers post verdict.
6. Provides that proposed law does not prevent a plaintiff from resolving a claim of coverage against one insurer while preserving a claim against another insurer of the same defendant in a cause of action.

### Digest of Bill as Finally Passed by Senate

Present law 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 amends present law to provide that the injured person or, if deceased, persons listed in present law, have no right to file a survival or wrongful death claim as a direct action against an insurer unless one of the following applies:

- (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, but only for the purpose of establishing coverage.

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 noninsured defendants.

Present law (C.E. Art. 411(D)) requires the court to provide certain instructions to the jury regarding insurance. Proposed law repeals present law.

Proposed law prohibits a court from disclosing the existence of insurance coverage to a jury or mentioning coverage in the jury's presence unless required in present and proposed law (C.E. Art. 411).

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.

In certain instances, proposed law authorizes an insurer to be joined on motion of any party as a defendant for the purposes of entering final judgment or enforcing a settlement. Provides that the joining of an insurer defendant is subject to the terms and limits of the policy. Further provides that proposed law does not apply if the insurer timely denied coverage or reserved rights, unless there has been an adjudication in favor of coverage.

Proposed law requires a judgment entered against an insured to also be rendered against any nonparty insurer that is joined post verdict.

Proposed law prohibits disclosure of an insurer to the jury in a subsequent trial that results from a reversed or remanded judgment.

Proposed law provides that when an insured defendant files the first responsive pleading, counsel for the defendant is required to certify to the plaintiff the name and address of any additional insurers who waive any further notice related to the cause of action.

Proposed law deems that an insurer has provided all notice regarding insurers who have entered a waiver unless the insured provides written notice to the parties instructing notice to be additionally sent to another counsel. Further provides that if an insurer waives notice of a cause of action, the order to join the defendant post verdict may be issued ex parte.

Proposed law authorizes notice of the commencement of a civil action to be provided by the plaintiff or counsel to a nonparty insurer by service of citation through any method of service provided by law.

Proposed law authorizes any copy of a motion to join the insurer post verdict to be granted in chambers within 15 days following service, unless a contradictory hearing is requested.

Proposed law requires an insurer that denies coverage to do the following:

- (1) Provide written notice of reservation of rights to assert a coverage defense to the named insured at his last known address by U.S. postal mail or other similar tracking method, commercial courier, or by hand delivery, within 90 days after the liability insurer makes a determination of the existence of a coverage defense, but not later than 30 days before trial.
- (2) Provide notice to all counsel of record in a cause of action against the insured that a reservation of rights has been issued, and provide such notice within 60 days of sending the notice of reservation of rights, but not later than 30 days before trial.

Present law provides that the intent of present law is for all liability policies within their terms and limits to be 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 the 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.

Proposed law does not prevent a plaintiff from resolving a claim of coverage against one insurer while preserving a claim against another insurer of the same defendant in the cause of action.

(Amends R.S. 22:1269(B)(1) and (D); Adds R.S. 22:1269(B)(3) and (4), (E), and (F); Repeals C.E. Art. 411(D))