

Regular Session, 2014

HOUSE BILL NO. 532

BY REPRESENTATIVE SEABAUGH

INSURANCE/LIABILITY: Provides relative to direct actions by third parties against insurers

1 AN ACT

2 To amend and reenact R.S. 22:1269(B), relative to actions initiated against motor vehicle  
3 liability insurers by third parties; to limit the circumstances in which a third party  
4 may take direct action against an insurer; and to provide for related matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. R.S. 22:1269(B) is hereby amended and reenacted to read as follows:

7 §1269. Liability policy; insolvency or bankruptcy of insured and inability to effect  
8 service of citation or other process; direct action against insurer

9 \* \* \*

10 B.(1) The injured person or his survivors or heirs mentioned in Subsection  
11 A of this Section, ~~at their option,~~ shall have a right of direct action against the insurer  
12 ~~within the terms and limits of the policy; and, such action may be brought against the~~  
13 ~~insurer alone, or against both the insured and insurer jointly and in solido, in the~~  
14 ~~parish in which the accident or injury occurred or in the parish in which an action~~  
15 ~~could be brought against either the insured or the insurer under the general rules of~~  
16 ~~venue prescribed by Code of Civil Procedure Art. 42 only; however, such action may~~  
17 ~~be brought against the insurer alone~~ only when at least one of the following applies:

18 (a) The insured has been adjudged bankrupt by a court of competent  
19 jurisdiction or when proceedings to adjudge an insured bankrupt have been  
20 commenced before a court of competent jurisdiction.

1 (b) ~~The insured is insolvent.~~

2 ~~(c) Service of citation or other process cannot be made on the insured.~~

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

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

6 ~~(f)~~(c) The insured is deceased.

7 (2) This ~~right of~~ direct action ~~shall exist whether or not the policy of~~  
8 ~~insurance sued upon was written or delivered in the state of Louisiana and whether~~  
9 ~~or not such policy contains a provision forbidding such direct action, provided the~~  
10 ~~accident or injury occurred within the state of Louisiana~~ may be brought against the  
11 insurer alone in the parish in which the accident or injury occurred or in the parish  
12 in which an action could be brought against either the insured or the insurer under  
13 the general rules of venue prescribed by Code of Civil Procedure Article 42 only.

14 Nothing contained in this Section shall be construed to affect the provisions of the  
15 policy or contract if such provisions are not in violation of the laws of this state.

16 (3) When the circumstances enumerated in Paragraph (1) of this Subsection  
17 do not apply, neither the injured person nor the survivors or heirs mentioned in  
18 Subsection A of this Section shall have a right of direct action against the insurer.  
19 The injured person or his survivor or heirs shall bring an action against the insured,  
20 wherein a court of competent jurisdiction may render a finding of liability and  
21 damages against the insured. Nothing contained in this Section shall be construed  
22 to affect the insured's right to enforce the provisions of the policy or contract against  
23 the insurer.

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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)]

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Seabaugh

HB No. 532

**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 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 for 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 only 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 circumstances 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 the circumstances do not meet one of the three exceptions provided for in proposed 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))