

## SENATE SUMMARY OF HOUSE AMENDMENTS

SB 131

2021 Regular Session

Robert Mills

**KEYWORD AND SUMMARY AS RETURNED TO THE SENATE**

LIABILITY. Prohibits insurance companies from including defense costs within the limits of liability except under certain circumstances. (8/1/21)

**SUMMARY OF HOUSE AMENDMENTS TO THE SENATE BILL**

1. Removes commissioner's discretion to issue waivers for certain types of insurance.
2. Adds the following types of insurance for which waivers are to be granted:
  - (a) Information security and privacy liability.
  - (b) Patent defense or other intellectual property infringement liability.
  - (c) Commercial liability coverages sold in combination.
3. Changes "cyber and technical liability insurance" to "cyber risk insurance"
4. Specifies that the notice requirement applies to any insurance policy or contract that requires a waiver as provided in proposed law.
5. Makes technical amendments.

**DIGEST OF THE SENATE BILL AS RETURNED TO THE SENATE**

SB 131 Reengrossed

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Proposed law prohibits reduction of the liability limits contained in a policy or contract of insurance issued to an authorized insurer due to the expenses of defense in a suit under the policy unless the commissioner of insurance executes a written waiver authorizing the reduction.

Proposed law applies to the following types of insurance:

- (1) All personal lines.
- (2) Medical malpractice.
- (3) Commercial vehicle.
- (4) Commercial general liability.

Proposed law requires waiver of the prohibition for the following types of insurance:

- (1) Professional liability other than medical malpractice.
- (2) Directors' and officers' liability.
- (3) Errors and omissions liability.
- (4) Pollution liability.
- (5) Employment practices liability.
- (6) Cyber risk liability.

- (7) Commercial multiple peril liability.
- (8) Information security and privacy liability.
- (9) Patent defense or other intellectual property infringement liability.
- (10) Commercial liability coverages sold in combination.

Authorizes waiver of other types of insurance not listed in proposed law upon consideration by the commissioner of insurance of the level of market competition, the nature and design of the product, the availability of insurance coverage, and other relevant factors.

Proposed law requires that every policy or contract for which a waiver is executed be subject to the following requirements:

- (1) Expenses used to reduce the liability limits not include overhead costs, adjusting expenses, or other expenses incurred by the insurer in the ordinary course of business.
- (2) Expenses used to reduce the liability limits only include reasonable attorney fees and expenses directly connected to the insurer's defense of a specific liability claim on behalf of an insured and other litigation expenses directly arising from the defense of the claim.
- (3) Expenses are not to exhaust the entire amount of liability coverage.

Proposed law authorizes the commissioner to:

- (1) Limit the amount of defense expenses used to reduce the liability limits or establish a minimum amount of liability coverage from which defense expenses cannot be deducted.
- (2) Limit or define the amount of expenses that reduce the liability limits for all or specific type of insurance coverage.

Proposed law provides that any insurance policy or contract that requires a waiver as provided in proposed law shall include a separate notice or inclusion on the declaration page stating that the policy or contract includes defense expenses which may be deducted from the liability limits. Requires that notice be prominently printed or stamped in bold on the policy or contract and shall not be less than a 10-pt. type.

Effective August 1, 2021.

(Adds R.S. 22:1272)

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