

SENATE BILL NO. 428

BY SENATOR ROBERT MILLS

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AN ACT

To amend and reenact R.S. 22:1272, relative to liability limits; to prohibit the reduction of policy limits based on expenses of defense; to provide for waivers; to provide for which expenses qualify as expenses of defense; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 22:1272 is hereby amended and reenacted to read as follows:

§1272. Defense costs; prohibition; waiver

A. The liability limits contained in a policy or contract of insurance issued by an authorized insurer shall not be reduced by the expenses of defense in a suit under the policy unless **waived by** the commissioner ~~executes a written waiver~~, as provided in Paragraph (B)(2) or (3) of this Section, ~~to authorize the policy liability limits to be reduced by the defense expenses.~~

B.(1) The **commissioner shall not waive the** prohibition ~~contained in~~ Subsection A of this Section ~~shall apply to~~ **for any of** the following types of insurance coverage:

(a) All personal lines.

(b) Medical malpractice.

~~(c) Commercial vehicle.~~

~~(d) Commercial general liability.~~

(2) The prohibition contained in Subsection A of this Section shall be waived by the commissioner for the following types of insurance coverage:

(a) Professional liability other than medical malpractice.

(b) Directors' and officers' liability.

(c) Errors and omissions liability.

1 (d) Pollution liability.

2 (e) Employment practices liability.

3 (f) Cyber risk liability.

4 (g) Information security and privacy liability.

5 (h) Patent defense or other intellectual property infringement liability.

6 (i) Commercial liability coverages sold in combination.

7 (3) The commissioner may waive the prohibition contained in Subsection  
8 A of this Section ~~may be waived by the commissioner for other~~ types of insurance  
9 coverage, except those not listed in Paragraph (1) of this Subsection; upon  
10 consideration by the commissioner of the customs of the industry and the interests  
11 of the particular insured level of market competition, the nature and design of the  
12 ~~product, the availability of insurance coverage, and other relevant factors.~~

13 C. ~~Every policy or contract for which a waiver is executed by the~~  
14 ~~commissioner pursuant to this Section shall be subject to the following requirements:~~

15 (1) ~~Defense expenses used to reduce the liability limits on the policy or~~  
16 ~~contract shall not include overhead costs, adjusting expenses, or other expenses~~  
17 ~~incurred by the insurer in the ordinary course of business.~~

18 (2) ~~Defense expenses used to reduce the liability limits shall~~ **Expenses of**  
19 **defense may** include only reasonable attorney fees and expenses directly connected  
20 to the insurer's defense of a specific liability claim on behalf of an insured and any  
21 other litigation expenses directly arising from the defense of a specific liability  
22 claim. **Expenses of defense shall not include overhead, unallocated loss**  
23 **adjustment expenses, or other unallocated expenses incurred by the insurer in**  
24 **the ordinary course of business.**

25 (3) ~~The inclusion of defense expenses shall not exhaust the entire amount of~~  
26 ~~liability coverage.~~

27 D. ~~The commissioner is authorized to do any of the following:~~

28 (1) ~~Limit the amount of defense expenses used to reduce the liability limits~~  
29 ~~or establish a minimum amount of liability coverage from which defense expenses~~  
30 ~~shall not be deducted.~~

1                   ~~(2) Limit or define the amount of expenses that reduce the liability limits for~~  
2                   ~~all or specific type of insurance coverage.~~

3                   E. Any policy or contract of insurance containing terms that require a waiver  
4                   pursuant to this Section shall include a separate notice or inclusion on the declaration  
5                   page stating that the insurance policy or contract includes defense expenses which  
6                   may be deducted from the liability limits of the policy. This notice shall be  
7                   prominently printed or stamped in bold on the policy or contract and shall not be less  
8                   than a ten-point type.

9                   Section 2. This Act shall become effective upon signature by the governor or, if not  
10                  signed by the governor, upon expiration of the time for bills to become law without signature  
11                  by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
12                  vetoed by the governor and subsequently approved by the legislature, this Act shall become  
13                  effective on the day following such approval.

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PRESIDENT OF THE SENATE

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_