

2020 Regular Session

SENATE BILL NO. 119

BY SENATOR ROBERT MILLS

LIABILITY. Prohibits insurers from reducing the limits of property and casualty insurance policies to fund defense costs. (8/1/20)

1 AN ACT  
2 To enact R.S. 22:1272, relative to property and casualty insurance; to provide relative to  
3 defense costs; to prohibit inclusion of defense costs in insurance contracts under  
4 certain circumstances; to provide for waivers; to provide for an effective date; and  
5 to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 22:1272 is hereby enacted to read as follows:

8 **§1272. Defense costs; prohibition; waiver**

9 **A. No policy or contract of insurance shall include defense costs that**  
10 **would reduce the limit of liability set forth in the policy or contract unless**  
11 **waived by the commissioner as provided in this Subsection.**

12 **(1) The commissioner shall not waive the prohibition in this Subsection**  
13 **for the following types of insurance coverage:**

14 **(a) All personal lines.**

15 **(b) Medical malpractice.**

16 **(c) Commercial vehicle.**

17 **(d) Commercial general liability.**

1                   **(2) The commissioner may waive the prohibition in this Subsection for**  
2 **the following types of insurance coverage:**

3                   **(a) Professional liability other than medical malpractice.**

4                   **(b) Directors' and officers' liability.**

5                   **(c) Errors and omissions liability.**

6                   **(d) Pollution liability.**

7                   **(e) Employment practices liability.**

8                   **(f) Cyber and technical liability.**

9                   **(3) The commissioner may waive the prohibition in this Subsection for**  
10 **other types of insurance, except those listed in Paragraph (1) of this Subsection,**  
11 **after a consideration of the level of market competition, the nature and design**  
12 **of the product, the availability of insurance coverage, and other relevant**  
13 **factors.**

14                   **B. Any policy or contract of insurance issued pursuant to a waiver shall**  
15 **be subject to the following requirements:**

16                   **(1) Defense costs that reduce the limit of liability shall not include**  
17 **overhead costs, adjusting expenses, or other expenses incurred by the insurer**  
18 **in the ordinary course of business.**

19                   **(2) Defense costs that reduce the limit of liability shall include only**  
20 **reasonable attorney fees and expenses directly connected to the insurer's**  
21 **defense of a specific liability claim on behalf of an insured and any other**  
22 **litigation expenses directly arising from the defense of a specific liability claim.**

23                   **(3) The inclusion of defense costs in the limit of liability shall not exhaust**  
24 **the entire amount of liability coverage.**

25                   **C. The commissioner may do any of the following:**

26                   **(1) Limit the amount of the defense costs that reduce the limit of liability**  
27 **or set a minimum amount of liability coverage from which defense costs shall**  
28 **not be deducted.**

29                   **(2) The commissioner may further limit or define the term "defense**

1           costs that reduce the limit of liability" for all or specific types of insurance  
 2           coverage.

3           D. Any policy or contract of insurance shall include a separate notice or  
 4           inclusion on the declaration page stating that the insurance policy or contract  
 5           includes defense costs within the limit of liability. The notice shall be  
 6           prominently printed or stamped in bold on the policy or contract and shall not  
 7           be less than ten-point type.

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The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Carla S. Roberts.

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	DIGEST	
SB 119 Original	2020 Regular Session	Robert Mills

Proposed law prohibits a policy or contract of insurance from including defense costs that would reduce the limit of liability set forth in the policy or contract unless waived by the commissioner.

Proposed law mandates that the commissioner shall not waive the prohibition in proposed law for certain types of insurance coverage, including personal lines, medical malpractice, commercial vehicle, and commercial general liability.

Proposed law allows the commissioner to waive the prohibition in proposed law for certain types of insurance coverage, including professional liability other than medical malpractice, directors' and officers' liability, errors and omissions liability, pollution liability, employment practices liability, and cyber and technical liability. Allows the commissioner to waive the prohibition in proposed law for other types of insurance, except those in the mandatory list, after a consideration of the level of market competition, the nature and design of the product, the availability of insurance coverage, and other relevant factors.

Proposed law places limitations on any policy or contract of insurance issued pursuant to a waiver.

Proposed law specifies that defense costs that reduce the limit of liability shall include only expenses directly related to the insurer's defense of a specific claim such as reasonable attorney fees and litigation expenses. Proposed law further specifies that defense costs that reduce the limit of liability shall not include overhead costs, adjusting expenses, or other expenses incurred in the ordinary course of business.

Proposed law requires any policy or contract of insurance to include a conspicuous notice on the policy declaration page indicating that the insurance policy or contract includes defense costs within the limit of liability.

Effective August 1, 2020.

(Adds R.S. 22:1272)