

SENATE BILL NO. 131

BY SENATOR ROBERT MILLS

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

AN ACT

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

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 22:1272 is hereby enacted 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 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 prohibition contained in Subsection A of this Section shall apply to 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.**

1                    (c) Errors and omissions liability.

2                    (d) Pollution liability.

3                    (e) Employment practices liability.

4                    (f) Cyber risk liability.

5                    (g) Information security and privacy liability.

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

7                    (i) Commercial liability coverages sold in combination.

8                    (3) The prohibition contained in Subsection A of this Section may be  
9 waived by the commissioner for other types of insurance, except those listed in  
10 Paragraph (1) of this Subsection, upon consideration by the commissioner of the  
11 level of market competition, the nature and design of the product, the  
12 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  
15 requirements:

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

19                    (2) Defense expenses used to reduce the liability limits 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 expenses shall not exhaust the entire amount  
24 of liability coverage.

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

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

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

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

\_\_\_\_\_  
PRESIDENT OF THE SENATE

\_\_\_\_\_  
SPEAKER OF THE HOUSE OF REPRESENTATIVES

\_\_\_\_\_  
GOVERNOR OF THE STATE OF LOUISIANA

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