SLS 22RS-1191 **ENGROSSED**

2022 Regular Session

SENATE BILL NO. 428

BY SENATOR ROBERT MILLS

INSURANCE POLICIES. Prohibits the reduction of policy limits based on defense expenses. (gov sig)

| 1 | AN ACT |
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| 2 | To amend and reenact R.S. 22:1272, relative to liability limits; to prohibit the reduction of |
| 3 | policy limits based on expenses of defense; to provide for waivers; to provide for |
| 4 | which expenses qualify as expenses of defense; and to provide for related matters. |
| 5 | Be it enacted by the Legislature of Louisiana: |
| 6 | Section 1. R.S. 22:1272 is hereby amended and reenacted to read as follows: |
| 7 | §1272. Defense costs; prohibition; waiver |
| 8 | A. The liability limits contained in a policy or contract of insurance issued |
| 9 | by an authorized insurer shall not be reduced by the expenses of defense in a suit |
| 10 | under the policy unless waived the commissioner executes a written waiver, as |
| 11 | provided in Paragraph (B)(2) or (3) of this Section, to authorize the policy liability |
| 12 | limits to be reduced by the defense expenses. |
| 13 | B.(1) The commissioner shall not waive the prohibition contained in |
| 14 | Subsection A of this Section shall apply to for any of the following types of |
| 15 | insurance coverage: |
| 16 | (a) All personal lines. |
| 17 | (b) Medical malpractice. |

| 1 | (c) Commercial vehicle. |
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| 2 | (d) Commercial general liability. |
| 3 | (2) The prohibition contained in Subsection A of this Section shall be waived |
| 4 | by the commissioner for the following types of insurance coverage: |
| 5 | (a) Professional liability other than medical malpractice. |
| 6 | (b) Directors' and officers' liability. |
| 7 | (c) Errors and omissions liability. |
| 8 | (d) Pollution liability. |
| 9 | (e) Employment practices liability. |
| 10 | (f) Cyber risk liability. |
| 11 | (g) Information security and privacy liability. |
| 12 | (h) Patent defense or other intellectual property infringement liability. |
| 13 | (i) Commercial liability coverages sold in combination. |
| 14 | (3) The commissioner may waive the prohibition contained in Subsection |
| 15 | A of this Section may be waived by the commissioner for other types of insurance |
| 16 | coverage, except those not listed in Paragraph (1) of this Subsection, upon |
| 17 | consideration by the commissioner of the customs of the industry and the interests |
| 18 | of the particular insured level of market competition, the nature and design of the |
| 19 | product, the availability of insurance coverage, and other relevant factors. |
| 20 | C. Every policy or contract for which a waiver is executed by the |
| 21 | commissioner pursuant to this Section shall be subject to the following requirements: |
| 22 | (1) Defense expenses used to reduce the liability limits on the policy or |
| 23 | contract shall not include overhead costs, adjusting expenses, or other expenses |
| 24 | incurred by the insurer in the ordinary course of business. |
| 25 | (2) Defense expenses used to reduce the liability limits shall Expenses of |
| 26 | defense may include only reasonable attorney fees and expenses directly connected |
| 27 | to the insurer's defense of a specific liability claim on behalf of an insured and any |
| 28 | other litigation expenses directly arising from the defense of a specific liability |
| 29 | claim. Expenses of defense shall not include overhead, unallocated loss |

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adjustment expenses, or other unallocated expenses incurred by the insurer in

2 the ordinary course of business. 3 (3) The inclusion of defense expenses shall not exhaust the entire amount of 4 liability coverage. 5 D. The commissioner is authorized to do any of the following: (1) Limit the amount of defense expenses used to reduce the liability limits 6 or establish a minimum amount of liability coverage from which defense expenses 7 8 shall not be deducted. 9 (2) Limit or define the amount of expenses that reduce the liability limits for 10 all or specific type of insurance coverage. 11 E. Any policy or contract of insurance containing terms that require a waiver 12 pursuant to this Section shall include a separate notice or inclusion on the declaration 13 page stating that the insurance policy or contract includes defense expenses which may be deducted from the liability limits of the policy. This notice shall be 14 prominently printed or stamped in bold on the policy or contract and shall not be less 15 16 than a ten-point type. Section 2. This Act shall become effective upon signature by the governor or, if not 17 signed by the governor, upon expiration of the time for bills to become law without signature 18 19 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If 20 vetoed by the governor and subsequently approved by the legislature, this Act shall become 21 effective on the day following such approval. The original instrument was prepared by Carla S. Roberts. The following digest, which does not constitute a part of the legislative instrument, was prepared by Beth O'Quin.

> DIGEST 2022 Regular Session

Robert Mills

SB 428 Engrossed

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Present law prohibits reduction of the liability limits contained in a policy or contract of

commissioner of insurance executes a written waiver authorizing the reduction.

<u>Proposed law</u> removes the commissioner's requirement to execute a written waiver to prohibit the reduction of liability limits, but authorizes the commissioner to waive the prohibition to the reduction of the liability limits contained in a policy or contract due to the

insurance due to the expenses of defense in a suit under the policy or contract unless the

prohibit the reduction of liability limits, but authorizes the commissioner to waive the prohibition to the reduction of the liability limits contained in a policy or contract due to the expenses of defense in a suit under a policy or contract.

<u>Present law</u> the prohibition applies to all personal lines, medical malpractice, commercial vehicle, and commercial general liability.

<u>Proposed law prohibits</u> the commissioner from waiving the prohibition for all personal lines and medical malpractice and removes the prohibition for commercial vehicle and commercial general liability.

<u>Present law</u> authorizes waiver of the prohibition for certain types of insurance and requires the commissioner to waive the prohibition for certain types of insurance.

Proposed law removes present law.

<u>Present law</u> authorizes waiver of other types of insurance not listed in law upon consideration by the commissioner of the level of market competition, the nature and design of the product, the availability of insurance coverage, and other relevant factors.

<u>Proposed law</u> retains <u>present law</u> but authorizes the commissioner to waive the prohibition provided in law except for certain insurance types after he considers the customs of the industry and the interest of the particular insured.

<u>Present law</u> requires that every policy or contract for which a waiver is executed is subject to the following requirements:

- (1) Expenses used to reduce the liability limits did 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 to 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.

<u>Proposed law</u> removes the executed waiver requirement by the commissioner and adds reasonable attorney fees that are directly connected to the insurer's defense can be defense expenses, and prohibits the defense expenses for overhead, unallocated loss, adjustment expenses, or other unallocated expenses incurred by the insurer in the ordinary course of business.

<u>Present law</u> authorizes the commissioner to limit the amount of defense expenses used to reduce the liability limits or establish a minimum of liability coverage from which defense expenses cannot be deducted, and to limit or define the amount of expenses that reduce the liability limits for all or specific types of insurance coverage.

Proposed law removes present law.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 22:1272)

Summary of Amendments Adopted by Senate

$\frac{Committee\ Amendments\ Proposed\ by\ Senate\ Committee\ on\ Insurance\ to\ the\ original}{bill}$

1. Adds the commissioner can waive the prohibition to the reduction of the liability limits contained in a policy or contract due to the expenses of

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defense in a suit under a policy or contract.

- 2. Prohibits the commissioner from waiving the prohibition on all personal lines and medical malpractice.
- 3. Authorizes the commissioner can waive the prohibition provided in law upon considering the customs of the industry and the interest of the particular insured.
- 4. Adds attorney fees can be included as a defense expense.
- 5. Prohibits overhead, unallocated loss, adjustment expenses, or other allocated expenses in the ordinary course of business to be considered a defense of expenses.