

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

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.~~

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~~



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

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

Present law 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.

Present law 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.

Proposed law retains present law 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.

Present law 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.

Proposed law 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.

Present law 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

##### 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

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.