SENATE BILL NO. 428

BY SENATOR ROBERT MILLS

 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 matter 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 issue by an authorized insurer shall not be reduced by the expenses of defense in a su under the policy unless <u>waived by</u> the commissioner executes a written waiver; 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 <u>commissioner shall not waive the</u> prohibition contained 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 general liability: 	1	AN ACT
 which expenses qualify as expenses of defense; and to provide for related matter 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 issue by an authorized insurer shall not be reduced by the expenses of defense in a su under the policy unless <u>waived by</u> the commissioner executes a written waiver; provided in Paragraph (B)(2) or (3) of this Section, to authorize the policy liabili limits to be reduced by the defense expenses. B.(1) The <u>commissioner shall not waive the</u> prohibition contained Subsection A of this Section shall apply to <u>for any of</u> 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 waive (a) Professional line in Subsection A of this Section shall be waive (b) Directors' and officers' liability. 	2	To amend and reenact R.S. 22:1272, relative to liability limits; to prohibit the reduction of
 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 issue by an authorized insurer shall not be reduced by the expenses of defense in a su under the policy unless <u>waived by</u> the commissioner executes a written waiver; provided in Paragraph (B)(2) or (3) of this Section, to authorize the policy liabilit limits to be reduced by the defense expenses. B.(1) The <u>commissioner shall not waive the</u> prohibition contained Subsection A of this Section shall apply to <u>for any of</u> the following types of insurance coverage: (a) All personal lines. (b) Medical malpractice. (c) Commercial vehicle: (d) Commercial general liability. (a) Professioner for the following types of insurance coverage: (a) Professional liability other than medical malpractice. (b) Directors' and officers' liability. 	3	policy limits based on expenses of defense; to provide for waivers; to provide for
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 issue 9 by an authorized insurer shall not be reduced by the expenses of defense in a su 10 under the policy unless waived by 11 provided in Paragraph (B)(2) or (3) of this Section, to authorize the policy liabili 12 limits to be reduced by the defense expenses. 13 B.(1) The commissioner shall not waive the prohibition contained 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. 18 (c) Commercial general liability: 20 (2) The prohibition contained in Subsection A of this Section shall be waive 21 by the commissioner for the following types of insurance coverage: 22 (a) Professional liability other than medical malpractice. 23 (b) Directors' and officers' liability.	4	which expenses qualify as expenses of defense; and to provide for related matters.
7 §1272. Defense costs; prohibition; waiver 8 A. The liability limits contained in a policy or contract of insurance issue 9 by an authorized insurer shall not be reduced by the expenses of defense in a su 10 under the policy unless waived by 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 14 Subsection A of this Section shall apply to for any of the following types of insurance coverage: 16 (a) All personal lines. 17 (b) Medical malpractice. 18 (c) Commercial general liability. 20 (2) The prohibition contained in Subsection A of this Section shall be waive 21 by the commissioner for the following types of insurance coverage: 22 (a) Professional liability other than medical malpractice. 23 (b) Directors' and officers' liability.	5	Be it enacted by the Legislature of Louisiana:
8 A. The liability limits contained in a policy or contract of insurance issue 9 by an authorized insurer shall not be reduced by the expenses of defense in a su 10 under the policy unless waived by 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 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. 18 (c) Commercial vehicle: 19 (d) Commercial general liability: 20 (2) The prohibition contained in Subsection A of this Section shall be waive 21 by the commissioner for the following types of insurance coverage: 22 (a) Professional liability other than medical malpractice. 23 (b) Directors' and officers' liability.	6	Section 1. R.S. 22:1272 is hereby amended and reenacted to read as follows:
9 by an authorized insurer shall not be reduced by the expenses of defense in a su 10 under the policy unless waived by the commissioner executes a written waiver, i 11 provided in Paragraph (B)(2) or (3) of this Section, to authorize the policy liabili 12 limits to be reduced by the defense expenses. 13 B.(1) The commissioner shall not waive the prohibition contained 14 Subsection A of this Section shall apply to for any of the following types of insurance coverage: 16 (a) All personal lines. 17 (b) Medical malpractice. 18 (c) Commercial vehicle: 19 (d) Commercial general liability: 20 (2) The prohibition contained in Subsection A of this Section shall be waive 21 by the commissioner for the following types of insurance coverage: 22 (a) Professional liability other than medical malpractice. 23 (b) Directors' and officers' liability.	7	§1272. Defense costs; prohibition; waiver
10 under the policy unless waived by the commissioner executes a written waiver; 11 provided in Paragraph (B)(2) or (3) of this Section, to authorize the policy liabili 12 limits to be reduced by the defense expenses. 13 B.(1) The commissioner shall not waive the prohibition contained 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. 18 (c) Commercial vehicle: 19 (d) Commercial general liability: 20 (2) The prohibition contained in Subsection A of this Section shall be waive 21 by the commissioner for the following types of insurance coverage: 22 (a) Professional liability other than medical malpractice. 23 (b) Directors' and officers' liability.	8	A. The liability limits contained in a policy or contract of insurance issued
11 provided in Paragraph (B)(2) or (3) of this Section, to authorize the policy liabili 12 limits to be reduced by the defense expenses. 13 B.(1) The commissioner shall not waive the prohibition contained 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. 18 (c) Commercial vehicle: 19 (d) Commercial general liability. 20 (2) The prohibition contained in Subsection A of this Section shall be waive 21 by the commissioner for the following types of insurance coverage: 22 (a) Professional liability other than medical malpractice. 23 (b) Directors' and officers' liability.	9	by an authorized insurer shall not be reduced by the expenses of defense in a suit
12 limits to be reduced by the defense expenses. 13 B.(1) The commissioner shall not waive the prohibition contained 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. 18 (c) Commercial vehicle: 19 (d) Commercial general liability. 20 (2) The prohibition contained in Subsection A of this Section shall be waive 21 by the commissioner for the following types of insurance coverage: 22 (a) Professional liability other than medical malpractice. 23 (b) Directors' and officers' liability.	10	under the policy unless waived by the commissioner executes a written waiver, as
13 B.(1) The commissioner shall not waive the prohibition contained 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. 18 (c) Commercial vehicle: 19 (d) Commercial general liability. 20 (2) The prohibition contained in Subsection A of this Section shall be waive 21 by the commissioner for the following types of insurance coverage: 22 (a) Professional liability other than medical malpractice. 23 (b) Directors' and officers' liability.	11	provided in Paragraph (B)(2) or (3) of this Section, to authorize the policy liability
14 Subsection A of this Section shall apply to for any of the following types of insurance coverage: 15 insurance coverage: 16 (a) All personal lines. 17 (b) Medical malpractice. 18 (c) Commercial vehicle: 19 (d) Commercial general liability: 20 (2) The prohibition contained in Subsection A of this Section shall be waived 21 by the commissioner for the following types of insurance coverage: 22 (a) Professional liability other than medical malpractice. 23 (b) Directors' and officers' liability.	12	limits to be reduced by the defense expenses.
 15 insurance coverage: 16 (a) All personal lines. 17 (b) Medical malpractice. 18 (c) Commercial vehicle: 19 (d) Commercial general liability: 20 (2) The prohibition contained in Subsection A of this Section shall be waived 21 by the commissioner for the following types of insurance coverage: 22 (a) Professional liability other than medical malpractice. 23 (b) Directors' and officers' liability. 	13	B.(1) The commissioner shall not waive the prohibition contained in
16(a) All personal lines.17(b) Medical malpractice.18(c) Commercial vehicle.19(d) Commercial general liability.20(2) The prohibition contained in Subsection A of this Section shall be waived21by the commissioner for the following types of insurance coverage:22(a) Professional liability other than medical malpractice.23(b) Directors' and officers' liability.	14	Subsection A of this Section shall apply to for any of the following types of
 17 (b) Medical malpractice. 18 (c) Commercial vehicle. 19 (d) Commercial general liability. 20 (2) The prohibition contained in Subsection A of this Section shall be waived 21 by the commissioner for the following types of insurance coverage: 22 (a) Professional liability other than medical malpractice. 23 (b) Directors' and officers' liability. 	15	insurance coverage:
 (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. 	16	(a) All personal lines.
 19 (d) Commercial general liability. 20 (2) The prohibition contained in Subsection A of this Section shall be waive 21 by the commissioner for the following types of insurance coverage: 22 (a) Professional liability other than medical malpractice. 23 (b) Directors' and officers' liability. 	17	(b) Medical malpractice.
 (2) The prohibition contained in Subsection A of this Section shall be waive by the commissioner for the following types of insurance coverage: (a) Professional liability other than medical malpractice. (b) Directors' and officers' liability. 	18	(c) Commercial vehicle.
 by the commissioner for the following types of insurance coverage: (a) Professional liability other than medical malpractice. (b) Directors' and officers' liability. 	19	(d) Commercial general liability.
 (a) Professional liability other than medical malpractice. (b) Directors' and officers' liability. 	20	(2) The prohibition contained in Subsection A of this Section shall be waived
23 (b) Directors' and officers' liability.	21	by the commissioner for the following types of insurance coverage:
	22	(a) Professional liability other than medical malpractice.
24 (c) Errors and omissions liability.	23	(b) Directors' and officers' liability.
	24	(c) Errors and omissions liability.

Page 1 of 3 Coding: Words which are struck through are deletions from existing law; words in **boldface type and underscored** are additions.

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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.

Page 2 of 3 Coding: Words which are struck through are deletions from existing law; words in **boldface type and underscored** are additions.

SB NO. 428

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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.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____