

2021 Regular Session

SENATE BILL NO. 131

BY SENATOR ROBERT MILLS

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

LIABILITY. Prohibits insurance companies from including defense costs within the limits of liability except under certain circumstances. (8/1/21)

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. The liability limits contained in a policy or contract of insurance shall**  
10 **not be reduced by the expenses of defense in a suit under the policy unless the**  
11 **commissioner of insurance executes a written waiver, as provided in Paragraph**  
12 **(B)(2) or (3) of this Section, to authorize the policy liability limits to be reduced**  
13 **by the defense expenses.**

14 **B.(1) The prohibition contained in Subsection A of this Section shall**  
15 **apply to the following types of 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 may be  
4 waived 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 and technical liability.

11                   (3) The prohibition contained in Subsection A of this Section may be  
12 waived by the commissioner for other types of insurance, except those listed in  
13 Paragraph (B)(1) of this Section, upon consideration by the commissioner of the  
14 level of market competition, the nature and design of the product, the  
15 availability of insurance coverage, and other relevant factors.

16                   C. Every policy or contract for which a waiver is executed by the  
17 commissioner pursuant to this Section shall be subject to the following  
18 requirements:

19                   (a) Defense expenses used to reduce the liability limits on the policy or  
20 contract shall not include overhead costs, adjusting expenses, or other expenses  
21 incurred by the insurer in the ordinary course of business.

22                   (b) Defense expenses used to reduce the liability limits shall include only  
23 reasonable attorney fees and expenses directly connected to the insurer's  
24 defense of a specific liability claim on behalf of an insured and any other  
25 litigation expenses directly arising from the defense of a specific liability claim.

26                   (c) The inclusion of defense expenses shall not exhaust the entire amount  
27 of liability coverage.

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

29                   (a) Limit the amount of defense expenses used to reduce the liability

1 limits or establish a minimum amount of liability coverage from which defense  
 2 expenses shall not be deducted.

3 (b) Limit or define the amount of expenses that reduce the liability limits  
 4 for all or specific type of insurance coverage.

5 E. Any policy or contract of insurance shall include a separate notice or  
 6 inclusion on the declaration page stating that the insurance policy or contract  
 7 includes defense expenses which may be deducted from the liability limits of the  
 8 policy. This notice shall be prominently printed or stamped in bold on the policy  
 9 or contract and shall not be less than a ten-point type.

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 Thomas L. Tyler.

## DIGEST

SB 131 Engrossed

2021 Regular Session

Robert Mills

Proposed law prohibits reduction of the liability limits contained in a policy or contract of insurance due to the expenses of defense in a suit under the policy unless the commissioner of insurance executes a written waiver authorizing the reduction.

Proposed law applies to the following types of insurance:

- (1) All personal lines.
- (2) Medical malpractice.
- (3) Commercial vehicle.
- (4) Commercial general liability.

Proposed law authorizes waiver of the prohibition for the following types of insurance:

- (1) Professional liability other than medical malpractice.
- (2) Directors' and officers' liability.
- (3) Errors and omissions liability.
- (4) Pollution liability.
- (5) Employment practices liability.
- (6) Cyber and technical liability.

Authorizes waiver of other types of insurance not listed in proposed law upon consideration by the commissioner of insurance of the level of market competition, the nature and design of the product, the availability of insurance coverage, and other relevant factors.

Proposed law requires that every policy or contract for which a waiver is executed be subject to the following requirements:

- (1) Expenses used to reduce the liability limits 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 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 authorizes the commissioner to:

- (1) Limit the amount of defense expenses used to reduce the liability limits or establish a minimum amount of liability coverage from which defense expenses cannot be deducted.
- (2) Limit or define the amount of expenses that reduce the liability limits for all or specific type of insurance coverage.

Requires that each policy or contract include a separate notice or inclusion on the declaration page stating that the policy or contract includes defense expenses which may be deducted from the liability limits. Requires that notice prominently printed or stamped in bold on the policy or contract and shall not be less than a 10-pt. type.

Effective August 1, 2021.

(Adds R.S. 22:1272)

#### Summary of Amendments Adopted by Senate

##### Committee Amendments Proposed by Senate Committee on Insurance to the original bill

1. Technical amendment