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HOUSE FLOOR AMENDMENTS

2022 Regular Session

Amendments proposed by Representative Seabaugh to Engrossed House Bill No. 967 by Representative Seabaugh

1 AMENDMENT NO. 1

2 On page1, delete lines 2 and 3 in their entirety and insert in lieu thereof the following:

3 "To amend and reenact R.S. 22:1272, relative to liability limits; to prohibit
 4 the reduction of policy limits based on expenses of defense; to provide for waivers;
 5 to provide for which expenses qualify as expenses of defense; to provide for an
 6 effective date; and to provide for related matters."

7 AMENDMENT NO. 2

8 On page 1, delete line 5 in its entirety and insert in lieu thereof the following:

9 "Section 1. R.S. 22:1272 is hereby amended and reenacted to read as follows:

10 §1272. Defense costs; prohibition; waiver

11 A. The liability limits contained in a policy or contract of insurance issued
 12 by an authorized insurer shall not be reduced by the expenses of defense in a suit
 13 under the policy unless waived by the commissioner ~~executes a written waiver~~, as
 14 provided in Paragraph (B)(2) ~~or (3)~~ of this Section, ~~to authorize the policy liability~~
 15 ~~limits to be reduced by the defense expenses.~~

16 B.(1) The commissioner shall not waive the prohibition contained in
 17 Subsection A of this Section ~~shall apply to~~ for any of the following types of
 18 insurance coverage:

- 19 (a) All personal lines.
- 20 (b) Medical malpractice.
- 21 (c) Commercial vehicle.
- 22 (d) Commercial general liability.

23 ~~(2) The prohibition contained in Subsection A of this Section shall be waived~~
 24 ~~by the commissioner for the following types of insurance coverage:~~

- 25 ~~(a) Professional liability other than medical malpractice.~~
- 26 ~~(b) Directors' and officers' liability.~~
- 27 ~~(c) Errors and omissions liability.~~
- 28 ~~(d) Pollution liability.~~
- 29 ~~(e) Employment practices liability.~~
- 30 ~~(f) Cyber risk liability.~~
- 31 ~~(g) Information security and privacy liability.~~
- 32 ~~(h) Patent defense or other intellectual property infringement liability.~~
- 33 ~~(i) Commercial liability coverages sold in combination.~~

34 ~~(3) The commissioner may waive the prohibition contained~~ in Subsection A
 35 of this Section ~~may be waived by the commissioner~~ for other types of insurance;
 36 ~~except those~~ coverage not listed in Paragraph (1) of this Subsection; upon
 37 consideration by the commissioner of the level of market competition, the nature and
 38 design of the product, the availability of insurance coverage, and other relevant
 39 factors customs of the industry and the interests of the particular insured.

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

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

4 ~~(2) Defense expenses used to reduce the liability limits shall~~ Expenses of
5 defense may include only reasonable attorney fees and expenses directly connected
6 to the insurer's defense of a specific liability claim on behalf of an insured and any
7 other litigation expenses directly arising from the defense of a specific liability
8 claim. Expenses of defense shall not include overhead, unallocated loss adjustment
9 expenses, or other unallocated expenses incurred by the insurer in the ordinary
10 course of business.

11 ~~(3) The inclusion of defense expenses shall not exhaust the entire amount of~~
12 ~~liability coverage.~~

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

14 ~~(1) Limit the amount of defense expenses used to reduce the liability limits~~
15 ~~or establish a minimum amount of liability coverage from which defense expenses~~
16 ~~shall not be deducted.~~

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

19 E. Any policy or contract of insurance containing terms that require a waiver
20 pursuant to this Section shall include a separate notice or inclusion on the declaration
21 page stating that the insurance policy or contract includes defense expenses which
22 may be deducted from the liability limits of the policy. This notice shall be
23 prominently printed or stamped in bold on the policy or contract and shall not be less
24 than a ten-point type."