

2022 Regular Session

HOUSE BILL NO. 967

BY REPRESENTATIVE SEABAUGH

INSURANCE/POLICIES: Repeals a prohibition on reducing liability limits for certain costs

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; 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 amended and reenacted to read as follows:

8 §1272. Defense costs; prohibition; waiver

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

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

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

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

3 ~~(a) Professional liability other than medical malpractice.~~

4 ~~(b) Directors' and officers' liability.~~

5 ~~(c) Errors and omissions liability.~~

6 ~~(d) Pollution liability.~~

7 ~~(e) Employment practices liability.~~

8 ~~(f) Cyber risk liability.~~

9 ~~(g) Information security and privacy liability.~~

10 ~~(h) Patent defense or other intellectual property infringement liability.~~

11 ~~(i) Commercial liability coverages sold in combination.~~

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

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

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

23 ~~(2) Defense expenses used to reduce the liability limits shall Expenses of~~
24 ~~defense may include only reasonable attorney fees and expenses directly connected~~
25 ~~to the insurer's defense of a specific liability claim on behalf of an insured and any~~
26 ~~other litigation expenses directly arising from the defense of a specific liability~~
27 ~~claim. Expenses of defense shall not include overhead, unallocated loss adjustment~~
28 ~~expenses, or other unallocated expenses incurred by the insurer in the ordinary~~
29 ~~course of business.~~

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

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

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

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

9 ~~E.~~ Any policy or contract of insurance containing terms that require a waiver
10 pursuant to this Section shall include a separate notice or inclusion on the declaration
11 page stating that the insurance policy or contract includes defense expenses which
12 may be deducted from the liability limits of the policy. This notice shall be
13 prominently printed or stamped in bold on the policy or contract and shall not be less
14 than a ten-point type.

15 Section 2. This Act shall become effective upon signature by the governor or, if not
16 signed by the governor, upon expiration of the time for bills to become law without signature
17 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
18 vetoed by the governor and subsequently approved by the legislature, this Act shall become
19 effective on the day following such approval.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 967 Reengrossed

2022 Regular Session

Seabaugh

Abstract: Repeals a prohibition on reducing liability limits for certain costs.

Present law provides that liability limits contained in a policy or contract of insurance issued by an authorized insurer shall not be reduced by the expenses of defense in a suit under the policy, unless waived by the commissioner.

Present law provides that the prohibition on reducing liability limits in present law does not apply to personal lines, medical malpractice insurance, commercial vehicle insurance, or commercial general liability insurance.

Proposed law provides that the commissioner shall not waive the prohibition on reducing liability limits for personal lines, medical malpractice insurance, commercial vehicle insurance, or commercial general liability insurance.

Present law provides that the prohibition on reducing liability limits in present law shall be waived by the commissioner for insurance policies covering professional liability other than medical malpractice, directors' and officers' liability, errors and omissions liability, pollution liability, employment practices liability, cyber risk liability, information security and privacy liability, patent defense or other intellectual property infringement liability, and commercial liability coverages sold in combination.

Proposed law repeals present law.

Present law provides that the prohibition on reducing liability limits in present law may be waived by the commissioner for other types of insurance, 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 repeals present law and provides that the commissioner may waive the prohibition provided in present law for types of insurance other than personal lines, medical malpractice insurance, commercial vehicle insurance, and commercial general liability insurance upon consideration of the customs of the industry and the interests of the particular insured.

Present law provides that every policy or contract for which a waiver is executed by the commissioner pursuant to present law shall be subject to the following requirements:

- (1) Defense expenses used to reduce the liability limits on the policy or contract shall not include overhead costs, adjusting expenses, or other expenses incurred by the insurer in the ordinary course of business.
- (2) Defense expenses used to reduce the liability limits shall include only reasonable attorney fees and expenses directly connected to the insurer's defense of a specific liability claim on behalf of an insured and any other litigation expenses directly arising from the defense of a specific liability claim.
- (3) The inclusion of defense expenses shall not exhaust the entire amount of liability coverage.

Proposed law repeals present law and provides that expenses of defense may include only reasonable attorney fees and expenses directly connected to the insurer's defense of a specific liability claim.

Present law provides that the commissioner may limit the amount of defense expenses used to reduce the liability limits or establish a minimum amount of liability coverage from which defense expenses shall not be deducted and provides that the commissioner may limit or define the amount of expenses that reduce the liability limits for all or specific type of insurance coverage.

Proposed law repeal present law.

Present law provides that any policy or contract of insurance containing terms that require a waiver pursuant to present law shall include a separate notice or inclusion on the declaration page stating that the insurance policy or contract includes defense expenses which may be deducted from the liability limits of the policy. Present law provides that this notice shall be prominently printed or stamped in bold on the policy or contract and shall not be less than a ten-point type.

Proposed law retains present law.

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

(Amends R.S. 22:1272)

Summary of Amendments Adopted by House

The House Floor Amendments to the original bill:

1. Provide types of insurance for which the commissioner shall not provide a waiver, relative to the prohibition in present law.
2. Provide that the commissioner may waive the prohibition in present law for certain types of insurance upon consideration of certain factors.
3. Remove certain requirements for policies for which the commissioner grants a waiver.
4. Provide certain costs that shall not be included in an insurer's expenses of defense.
5. Remove certain discretionary authority of the commissioner related to the limitation of defense expenses.