

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 by** 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~~

1 **adjustment expenses, or other unallocated expenses incurred by the insurer in**
 2 **the ordinary course of business.**

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

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

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

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

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

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

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 LG Sullivan.

DIGEST

SB 428 Reengrossed 2022 Regular Session Robert Mills

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

Proposed law removes the requirement that the commissioner's waiver be in writing. Authorizes the commissioner to 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.

Present law 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. Removes application of the prohibition for commercial vehicle and commercial general liability.

Present law requires the commissioner to waive the prohibition for certain types of insurance.

Proposed law removes the required waiver.

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

Proposed law authorizes the commissioner to waive the prohibition for insurance types not listed in present law after he considers the customs of the industry and the interests of the particular insured.

Present law subjects every policy or contract for which a waiver is executed to the following requirements:

- (1) Expenses used to reduce the liability limits shall 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 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 other litigation expenses directly arising from the defense of the claim.
- (3) Expenses shall not exhaust the entire amount of liability coverage.

Proposed law specifies that defense expenses may include only reasonable attorney fees directly connected to the insurer's defense to the list of allowable defense expenses. Prohibits overhead, unallocated loss, adjustment expenses, or other unallocated expenses incurred by the insurer in the ordinary course of business from being included as defense expenses.

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 shall not 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.

Summary of Amendments Adopted by Senate

Senate Floor Amendments to engrossed bill

1. Make technical changes.