
 DIGEST

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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 and 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 prohibits reducing liability limits based on expenses of defense for 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 and removes 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 retains present law.

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 repeals 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.

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Insurance to the reengrossed bill:

1. Restore present law (R.S. 22:1272(B)(2) and (3))
2. Restore a provision in present law (R.S. 22:1272(A)) providing for the power of the commissioner to waive the prohibition on reducing liability limits based on expenses of defense in certain circumstances.
3. Make technical changes.