

Regular Session, 2014

HOUSE BILL NO. 665

BY REPRESENTATIVE SEABAUGH

INSURANCE: Relative to liability limits

1 AN ACT

2 To enact R.S. 22:1272, relative to liability limits; to provide that property and casualty
3 insurance policies may not reduce the limits of liability by the cost of defense; and
4 to provide for related matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. R.S. 22:1272 is hereby enacted to read as follows:

7 §1272. Defense costs within the limit of liability; prohibition; waiver

8 A.(1) No policy or contract of insurance issued by an authorized insurer shall
9 include defense costs that reduce the limit of liability set forth in the policy or
10 contract unless waived by the commissioner as provided in this Subsection.

11 (2) The commissioner shall not waive the prohibition in this Subsection for
12 the following types of insurance coverage:

13 (a) All personal lines.

14 (b) Medical malpractice.

15 (3) The commissioner may waive the prohibition in this Subsection for the
16 following types of insurance coverage:

17 (a) Professional liability other than medical malpractice.

18 (b) Directors' and officers' liability.

19 (c) Errors and omissions liability.

20 (d) Pollution liability.

1 (e) Employment practices liability.

2 (f) Cyber and technical liability.

3 (4) The commissioner may waive the prohibition in this Subsection for other
4 types of insurance, except those listed in Paragraph (2) of this Subsection, after a
5 consideration of relevant factors, including but not limited to the level of market
6 competition, the nature and design of the product, and the availability of insurance
7 coverage.

8 B. Any policy or contract of insurance issued by an authorized insurer
9 pursuant to a waiver is subject to the following requirements:

10 (1) Defense costs that reduce the limit of liability shall only include
11 reasonable attorney's fees and expenses directly connected to the insurer's defense
12 of a specific liability claim on behalf of an insured and any other litigation expenses
13 directly arising from the defense of a specific liability claim. Defense costs shall not
14 include overhead costs, adjusting expenses, or other expenses incurred by the insurer
15 in the ordinary course of business. The commissioner may further define or limit
16 defense costs for all or specific types of insurance coverage by issuing rules and
17 regulations pursuant to the Administrative Procedure Act.

18 (2) The inclusion of defense costs in the limit of liability shall not exhaust
19 the entire amount of liability coverage. The commissioner may limit the amount of
20 defense costs that reduce the limit of liability or set a minimum amount of liability
21 coverage from which defense costs shall not be deducted.

22 (3) Any policy or contract of insurance shall include a conspicuous notice
23 indicating in bold print that the contract contains defense costs within the limit of
24 liability.

25 C. This Section shall not apply to "surplus lines insurance" as defined in R.S.
26 22:46.

27 D. The commissioner may issue rules and regulations pursuant to the
28 Administrative Procedure Act to implement this Section.

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)]

Seabaugh

HB No. 665

Abstract: Prohibits insurers from reducing the limits of liability in an insurance policy by the cost of defense.

Proposed law prohibits insurers from issuing a liability policy that includes reducing the policy's limits of liability by the cost to defend a claim.

Proposed law prevents the commissioner of insurance from waiving the prohibition for all personal lines, and medical malpractice insurance, but allows the commissioner to waive the prohibition for other types of coverage.

Proposed law provides the requirements for any policy or contract of insurance issued pursuant to a waiver.

Proposed law authorizes the commissioner of insurance to promulgate rules in accordance with the APA.

(Adds R.S. 22:1272)

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Insurance to the original bill.

1. Clarified that the insurance policy must be issued by an authorized insurer.
2. Deleted commercial vehicle and commercial general liability from the types of insurance for which the commissioner may not waive the prohibitions enacted by proposed law.
3. Deleted authority of commissioner of insurance to prescribe the form, content and placement of the notice that the insurance contract contain defense costs within the limit of liability.
4. Clarified that proposed law shall not apply to "surplus lines insurance".
5. Made technical changes.