



March 25, 2025

Representative Joseph J. Solomon, Jr.
Chair, House Committee On Corporations
Rhode Island State House
Providence, RI 02903

Re: House 5812 – An Act Relating To Insurance – Liability Insurance

Dear Mr. Chairman:

This statement in opposition to House 5812 is submitted by the American Property Casualty Insurance Association (APCIA).¹ This bill would eliminate the use of defense within limits policies in Rhode Island.

Defense within limits (DWL) policies provide insureds with a product they want—one that provides a defense against claims that also has affordable premiums. Under DWL policies, the amount spent on legal defense reduces the amount available to pay a claim. “For example, if a policy provides \$1 million in limits, but defense expenses total \$300,000, only \$700,000 in limits will remain available to pay any settlement or judgment.”² That caps exposure for the insurer, encourages settlements, and allows for lower premiums.

DWL policies are a well-established product primarily used by sophisticated insureds to address commercial risks such as error or omission, employment practices, Director and Officer coverages, and in recent years, cyber risk. Many of these policies are used in surplus or specialty lines. H.5812 would ban those products, damaging the Rhode Island insurance market, limiting insureds’ choices, and increasing their costs.

Without DWL, the insured maintains the full policy limit (the \$1 million from the example above) regardless of litigation costs. That increases exposure for insurers and costs for consumers. Based on limited publicly available information, commercial liability policies typically charge 5% to 15% higher for defense outside limits policies compared with DWL, which aligns with industry data showing legal defense is 10% to 20% of indemnity and defense costs.³

In Rhode Island, professional liability coverages, such as Lawyers Error and Omissions (E&O) Insurance, Employment Practice Liability (EPLI), Agent E&O, as well as Excess Liability, and Cyber are just a few of the products that could be impacted. These types of policies are often purchased in large part to provide defense or, in the case of Cyber, response costs, and as such these costs are a driver of the cost of these policies.

¹ Representing nearly 65% of the U.S. property casualty insurance market, APCIA promotes and protects the viability of private competition for the benefit of consumers and insurers. Several APCIA members are located in Rhode Island and many more do business here. Together, APCIA members write almost 73% of the personal lines insurance and 71% of the commercial multi-peril insurance, including over 68% of the medical professional liability insurance, sold in the state.

² <https://www.bradley.com/insights/publications/2025/01/exploring-nevadas-defense-within-limits-laws>

³ <https://www.perrknicht.com/2023/09/27/nevada-defense-within-limits-action-required/>

Rhode Island is already one of a handful of states that limits use of DWL. The Department of Business Regulation prohibits DWL policies, allowing them only by exception in certain situations and requiring specific acknowledgement by the consumer.⁴ This requirement has been in their filing guidelines for many years. It serves as an important consumer protection and has worked well in the many years it has been in place.

DWL policies serve an important role in this state's insurance marketplace. They are a cost-effective and flexible choice for some sophisticated insureds. Banning them, as H.5812 would do, limits flexibility, will disrupt the marketplace, and will make some coverages both harder to find and more expensive.

For all of these reasons, APCIA urges the committee to hold H.5812 for further study.

Very truly yours,



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⁴ "Defense costs within limits: The Department does not allow defense costs or claims expenses within the limits of liability. In some cases, an exception may be allowed if the insured is made aware of the reduction in coverage by signing an acknowledging endorsement, form, or letter."
https://dbr.ri.gov/sites/g/files/xkgbur696/files/documents/divisions/insurance/property_casualty/PC_Rate_Rule_and_Form_Requirements_SERFF.pdf