

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SECOND LEGISLATURE

Legislative Document

No. 1322

H. P. 972

House of Representatives, February 19, 1965

Referred to Committee on Business Legislation. Sent up for concurrence and ordered printed.

JEROME G. PLANTE, Clerk

Presented by Mr. Starbird of Kingman by request.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-FIVE

AN ACT Relating to Optional Provisions in Individual Accident and Health Insurance Policies.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. R. S., T. 24, § 803, sub-§ 2, ¶ B, sub-¶ (3), repealed and replaced. Subparagraph (3) of paragraph B of subsection 2 of section 803 of Title 24 of the Revised Statutes is repealed and the following enacted in place thereof:

‘(3) A provision as follows:

OVERINSURANCE. If an accident or sickness or accident and sickness policy or policies previously issued by the insurer to the insured be in force concurrently herewith, making the aggregate indemnity for (insert type of coverage or coverages) in excess of \$. (insert maximum limit of indemnity or indemnities) the excess shall be void and all premiums paid for such excess shall be returned to the insured or to his estate. (or, in lieu thereof:)

Insurance effective at any one time on the insured under this policy and a like policy or policies in this insurer is limited to the one policy elected by the insured, his beneficiary or his estate, as the case may be, and the insurer will return all premiums paid for all other such policies.’

Sec. 2. R. S., T. 24, § 803, sub-§ 2, ¶ B, sub-¶ (4) repealed and replaced. Subparagraph (4) of paragraph B of subsection 2 of section 803 of Title 24 of the Revised Statutes is repealed and the following enacted in place thereof:

‘(4) A provision as follows:

OVERINSURANCE. If, with respect to a person covered under this policy,

benefits for allowable expense incurred during a claim determination period under this policy together with benefits for allowable expense during such period under all other valid coverage (without giving effect to this provision or to any "overinsurance provision" applying to such other valid coverage), exceed the total of such person's allowable expense during such period, this insurer shall be liable only for such proportionate amount of the benefits for allowable expense under this policy during such period as

- (a) the total allowable expense during such period bears to
- (b) the total amount of benefits payable during such period for such expense under this policy and all other valid coverage (without giving effect to this provision or to any "overinsurance provision" applying to such other valid coverage)

less in both (a) and (b) any amount of benefits for allowable expense payable under other valid coverage which does not contain an "overinsurance provision". In no event shall this provision operate to increase the amount of benefits for allowable expense payable under this policy with respect to a person covered under this policy above the amount which would have been paid in the absence of this provision. This insurer may pay benefits to any insurer providing other valid coverage in the event of overpayment by such insurer. Any such payment shall discharge the liability of this insurer as fully as if the payment had been made directly to the insured, his assignee or his beneficiary. In the event that this insurer pays benefits to the insured, his assignee or his beneficiary, in excess of the amount which would have been payable if the existence of other valid coverage had been disclosed, this insurer shall have a right of action against the insured, his assignee or his beneficiary, to recover the amount which would not have been paid had there been a disclosure of the existence of the other valid coverage. The amount of other valid coverage which is on a provision of service basis shall be computed as the amount the services rendered would have cost in the absence of such coverage.

For purposes of this provision:

- (a) "allowable expense" means 110% of any necessary, reasonable and customary item of expense which is covered, in whole or in part, as a hospital, surgical, medical or major medical expense under this policy or under any other valid coverage.
- (b) "claim determination period" with respect to any covered person means the initial period of (insert period of not less than thirty days) and each successive period of a like number of days, during which allowable expense covered under this policy is incurred on account of such person. The first such period begins on the date when the first such expense is incurred, and successive periods shall begin when such expense is incurred after expiration of a prior period.

(or, in lieu thereof:)

"claim determination period" with respect to any covered person means each (insert calendar or policy period of not less than a

month) during which allowable expense covered under this policy is incurred on account of such person.

(c) "overinsurance provision" means this provision and any other provision which may reduce an insurer's liability because of the existence of benefits under other valid coverage.

INSTRUCTIONS. The foregoing policy provision may be inserted in all policies providing hospital, surgical, medical or major medical benefits. The insurer may make this provision applicable to either or both other valid coverage with other insurers and other valid coverage with the same insurer. The insurer shall include in this provision a definition of "other valid coverage" approved as to form by the commissioner. Such term may include hospital, surgical, medical or major medical benefits provided by group, blanket or franchise coverage, individual and family-type coverage, Blue Cross-Blue Shield coverage and other prepayment plans, group practice and individual practice plans, uninsured benefits provided by labor-management trusteed plans, or union welfare plans, or by employer or employee benefit organizations, benefits provided under governmental programs, workmen's compensation insurance or any coverage required or provided by any other statute, and medical payments under automobile liability and personal liability policies. Other valid coverage shall not include payments made under third party liability coverage as a result of a determination of negligence, but an insurer may at its option include a subrogation clause in its policy. The insurer may require, as part of the proof of claim, the information necessary to administer this provision.'

Sec. 3. R. S., T. 24, § 803, sub-§ 2, ¶ B, sub-¶ (5), repealed. Subparagraph (5) of paragraph B of subsection 2 of section 803 of Title 24 of the Revised Statutes is repealed.

Sec. 4. R. S., T. 24, § 803, sub-§ 2, ¶ B, sub-¶ (6), repealed and replaced. Subparagraph (6) of paragraph B of subsection 2 of section 803 of Title 24 of the Revised Statutes is repealed and the following enacted in place thereof:

'(6) A provision as follows:

OVERINSURANCE. After the loss-of-time benefit of this policy has been payable for 90 days, such benefit will be adjusted, as provided below, if the total amount of unadjusted loss-of-time benefits provided in all valid loss-of-time coverage upon the insured should exceed % of the insured's earned income; provided, however, that if the information contained in the application discloses that the total amount of loss-of-time benefits under this policy and under all other valid loss-of-time coverage expected to be effective upon the insured in accordance with the application for this policy exceeded % of the insured's earned income at the time of such application, such higher percentage will be used in place of %. Such adjusted loss-of-time benefit under this policy for any month shall be only such proportion of the loss-of-time benefit otherwise payable under this policy as

(a) the product of the insured's earned income and % (or, if higher, the alternative percentage described at the end of the first sentence of this provision)

bears to

(b) the total amount of loss-of-time benefits payable for such month under this policy and all other valid loss-of-time coverage on the insured (without giving effect to the "overinsurance provision" in this or any other coverage)

less in both (a) and (b) any amount of loss-of-time benefits payable under other valid loss-of-time coverage which does not contain an "overinsurance provision". In making such computation, all benefits and earnings shall be converted to a consistent (insert "weekly" if the loss-of-time benefit of this policy is payable weekly, "monthly" if such benefit is payable monthly, etc.) basis. If the numerator of the foregoing ratio is zero or is negative, no benefit shall be payable under this policy. In no event shall this provision operate to reduce the total combined amount of loss-of-time benefits for such month payable under this policy and all other valid loss-of-time coverage below the lesser of \$300 and the total combined amount of loss-of-time benefits determined without giving effect to any "overinsurance provision", nor operate to increase the amount of benefits payable under this policy above the amount which would have been paid in the absence of this provision, nor take into account or operate to reduce any benefit other than the loss-of-time benefit.

For purposes of this provision:

(a) "earned income", except where otherwise specified, means the greater of the monthly earnings of the insured at the time disability commences and his average monthly earnings for a period of two years immediately preceding the commencement of such disability, and shall not include any investment income or any other income not derived from the insured's vocational activities.

(b) "overinsurance provision" shall include this provision and any other provision with respect to any loss-of-time coverage which may have the effect of reducing an insurer's liability if the total amount of loss-of-time benefits under all coverage exceeds a stated relationship to the insured's earnings.

INSTRUCTIONS. The foregoing provision may be included only in a policy which provides a loss-of-time benefit which may be payable for at least 52 weeks, which is issued on the basis of selective underwriting of each individual application, and for which the application includes a question designed to elicit information necessary either to determine the ratio of the total loss-of-time benefits of the insured to the insured's earned income or to determine that such ratio does not exceed the percentage of earnings, not less than 60%, selected by the insurer and inserted in lieu of the blank factor above. The insurer may require, as part of the proof of claim, the information necessary to administer this provision. If the application indicates that other loss-of-time coverage is to be discontinued, the amount of such other coverage shall be excluded in computing the alternative percentage in the first sentence of the overinsurance provision. The policy shall include a definition of "valid loss-of-time coverage", approved as to form by the commissioner, which definition may include coverage provided by governmental agencies and by organizations subject to regulation by insurance law and by in-

insurance authorities of this or any other state of the United States or of any other country or subdivision thereof, coverage provided for such insured pursuant to any disability benefits statute or any workmen's compensation or employer's liability statute, benefits provided by labor-management trusteeed plans or union welfare plans or by employer or employee benefit organizations, or by salary continuance or pension programs, and any other coverage the inclusion of which may be approved by the commissioners.'

Sec. 5. Effective date. This Act shall take effect on January 1, 1966. A policy, rider or endorsement which could have been lawfully used or delivered or issued for delivery to any person in this State immediately before the effective date of this Act may be used or delivered or issued for delivery to any such person during 5 years after the effective date of this Act.