

UNIFORM INDIVIDUAL ACCIDENT AND SICKNESS POLICY PROVISION LAW

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Section 1. Definition of Accident and Sickness Insurance Policy

The term “policy of accident and sickness insurance” as used herein includes any policy or contract covering the kind or kinds of insurance described in [insert here the section of law authorizing accident and sickness insurance].

Drafting Note: If the insurance law of the state in which this draft is proposed for enactment does not have a section specifically authorizing the various types of insurance which may be written, this section should be modified to define accident and sickness insurance as “insurance against loss resulting from sickness or from bodily injury or death by accident, or both.”

Section 2. Form of Policy

- A. No policy of accident and sickness insurance shall be delivered or issued for delivery to any person in this state unless:
- (1) The entire money and other considerations therefor are expressed therein; and
 - (2) The time at which the insurance takes effect and terminates is expressed therein; and
 - (3) It purports to insure only one person, except that a policy may insure, originally or by subsequent amendment, upon the application of an adult member of a family who shall be deemed the policyholder, any two (2) or more eligible members of that family, including husband, wife, dependent children or any children under a specified age which shall not exceed nineteen (19) years and any other person dependent upon the policyholder; and

Drafting Note: In states having community property systems derived from the civil law it is suggested that in the foregoing subparagraph the words “an adult member” be replaced with “the head.”

- (4) The style, arrangement and over-all appearance of the policy give no undue prominence to any portion of the text, and unless every printed portion of the text of the policy and of any endorsements or attached papers is plainly printed in light-faced type of a style in general use, the size of which shall be uniform and not less than ten point with a lower-case unspaced alphabet length not less than one hundred and twenty point (the “text” shall include all printed matter except the name and address of the insurer, name or title of the policy, the brief description if any, and captions and subcaptions); and
- (5) The exceptions and reductions of indemnity are set forth in the policy and, except those which are set forth in Section 3 of this Act, are printed, at the insurer's option, either included with the benefit provision to which they apply, or under an appropriate caption such as “Exceptions,” or “Exceptions and Reductions,” provided that if an exception or reduction specifically applies only to a particular benefit of the policy, a statement of such exception or reduction shall be included with the benefit provision to which it applies; and

- (6) Each form, including riders and endorsements, shall be identified by a form number in the lower left-hand corner of the first page; and
- (7) It contains no provision purporting to make any portion of the charter, rules, constitution, or bylaws of the insurer a part of the policy unless the portion is set forth in full in the policy, except in the case of the incorporation of, or reference to, a statement of rates or classification of risks, or short-rate table filed with the Commissioner.

Drafting Note: Insert the title of the chief insurance regulatory official wherever the term “commissioner” appears.

- B. If any policy is issued by an insurer domiciled in this state for delivery to a person residing in another state, and if the official having responsibility for the administration of the insurance laws of the other state shall have advised the Commissioner that the policy is not subject to approval or disapproval by the official, the Commissioner may by ruling require that the policy meet the standards set forth in Subsection A of this section and in Section 3.

Section 3. Accident and Sickness Policy Provisions

- A. Required Provisions.

Except as provided in Subsection C, each policy delivered or issued for delivery to any person in this state shall contain the provisions specified in this subsection in the words in which the same appear in this section; provided, however, that the insurer may, at its option, substitute for one or more such provisions corresponding provisions of different wording approved by the Commissioner which are in each instance not less favorable in any respect to the insured or the beneficiary. Such provisions shall be preceded individually by the caption appearing in this subsection or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the Commissioner may approve.

- (1) A provision as follows:

Entire Contract; Changes: This policy, including the endorsements and the attached papers, if any, constitutes the entire contract of insurance. No change in this policy shall be valid until approved by an executive officer of the insurer and unless such approval be endorsed hereon or attached hereto. No agent has authority to change this policy or to waive any of its provisions.

Drafting Note: When enacted in states which prohibit amendment of a policy form by means other than attached printed rider upon a separate piece of paper the new law should contain (but not as a required policy provision) an added section defining “endorsement” in such a manner as to make the new law consistent with current statutes.

- (2) A provision as follows:

Time Limit on Certain Defenses:

- (a) After three (3) years from the date of issue of this policy no misstatements, except fraudulent misstatements, made by the applicant in the application for the policy shall be used to void the policy or to deny a claim for loss incurred or disability (as defined in the policy) commencing after the expiration of the three-year period.

Drafting Note: The foregoing policy provision shall not be so construed as to affect any legal requirement for avoidance of a policy or denial of a claim during the initial three-year period, nor to limit the application of Sections 3B(1), (2), (3), (4) and (5) in the event of misstatement with respect to age or occupation or other insurance.

Drafting Note: A policy which the insured has the right to continue in force subject to its terms by the timely payment of premium until at least age 50 or, in the case of a policy issued after age 44, for at least five years from its date of issue, may contain in lieu of the foregoing the following provision (from which the clause in parentheses may be omitted at the insurer's option) under the caption “Incontestable:”

After this policy has been in force for a period of three (3) years during the lifetime of the insured (excluding any period during which the insured is disabled), it shall become incontestable as to the statements contained in the application.

- (b) No claim for loss incurred or disability (as defined in the policy) commencing after three (3) years from the date of issue of this policy shall be reduced or denied on the ground that a disease or physical condition not excluded from coverage by name or specific description effective on the date of loss had existed prior to the effective date of coverage of this policy.
- (3) A provision as follows:

Grace Period: A grace period of [insert a number not less than 7 for weekly premium policies, 10 for monthly premium policies and 31 for all other policies] days will be granted for the payment of each premium falling due after the first premium, during which grace period the policy shall continue in force.

Drafting Note: A policy in which the insurer reserves the right to refuse renewal shall have, at the beginning of the above provision:

Unless not less than thirty (30) days prior to the premium due date the insurer has delivered to the insured or has mailed to his last address, as shown by the records of the insurer written notice of its intention not to renew this policy beyond the period for which the premium has been accepted;

- (4) A provision as follows:

Renewal: Each policy in which the insurer reserves the right to refuse renewal on an individual basis shall provide, in substance, in a provision thereof or in an endorsement thereon or in a rider attached thereto, that subject to the right to terminate the policy upon non-payment of premium when due, the right to refuse renewal shall not be exercised before the renewal date occurring on, or after and nearest each anniversary, or in the case of lapse and reinstatement at the renewal date occurring on, or after and nearest each anniversary of the last reinstatement, and that any refusal of renewal shall be without prejudice to any claim originating while the policy is in force. The preceding sentence shall not apply to accident insurance only policies.

- (5) A provision as follows:

Reinstatement: If any renewal premium be not paid within the time granted the insured for payment, a subsequent acceptance of premium by the insurer or by any agent duly authorized by the insurer to accept such premium, without requiring in connection therewith an application for reinstatement, shall reinstate the policy; provided, however that if the insurer or such agent requires an application for reinstatement and issues a conditional receipt for the premium tendered, the policy will be reinstated upon approval of the application by the insurer or, lacking such approval, upon the forty-fifth day following the date of the conditional receipt unless the insurer has previously notified the insured in writing of its disapproval of the application. The reinstated policy shall cover only loss resulting from such accidental injury as may be sustained after the date of reinstatement and loss due to such sickness as may begin more than ten (10) days after that date. In all other respects the insured and insurer shall have the same rights as they had under the policy immediately before the due date of the defaulted premium, subject to the provisions of any rider which may be attached in connection with the reinstatement. Any premium accepted in connection with a reinstatement shall be applied to a period for which premium has not been previously paid, but not to any period more than sixty (60) days prior to the date of reinstatement.

Drafting Note: The last sentence of the above provision may be omitted from any policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums until at least age 50 or, in the case of a policy issued after age 44, for at least five years from its date of issue.

Drafting Note: For a statement of interpretation of this provision. See 1963 NAIC Proceedings II 514-517.

- (6) A provision as follows:

Notice of Claim: Written notice of claim must be given to the insurer within twenty (20) days after the occurrence or commencement of any loss covered by the policy, or as soon thereafter as is reasonably possible. Notice given by or on behalf of the insured or the beneficiary to the insurer at [insert the location of such office as the insurer may designate for the purpose], or to any authorized agent of the insurer, with information sufficient to identify the insured, shall be deemed notice to the insurer.

Drafting Note: In a policy providing a loss-of-time benefit which may be payable for at least two years, an insurer may at its option insert the following between the first and second sentences of the above provision:

Subject to the qualifications set forth below, if the insured suffers loss of time on account of disability for which indemnity may be payable for at least two (2) years, he shall, at least once in every six (6) months after having given notice of claim, give to the insurer notice of continuance of said disability, except in the event of legal incapacity. The period of six (6) months following any filing of proof by the insured or any payment by the insurer on account of such claim or any denial of liability in whole or in part by the insurer shall be excluded in applying this provision. Delay in the giving of notice shall not impair the insured's right to any indemnity which would otherwise have accrued during the period of six (6) months preceding the date on which notice is actually given.

- (7) A provision as follows:

Claim Forms: The insurer, upon receipt of a notice of claim, will furnish to the claimant such forms as are usually furnished by it for filing proof of loss. If forms are not furnished within fifteen (15) days after the giving of notice the claimant shall be deemed to have complied with the requirements of this policy as to proof of loss upon submitting, within the time fixed in the policy for filing proofs of loss, written proof covering the occurrence, the character and the extent of the loss for which claim is made.

- (8) A provision as follows:

Proofs of Loss: Written proof of loss must be furnished to the insurer at its office in case of claim for loss for which this policy provides any periodic payment contingent upon continuing loss within ninety (90) days after the termination of the period for which the insurer is liable and in case of claim for any other loss within ninety (90) days after the date of the loss. Failure to furnish proof within the time required shall not invalidate nor reduce any claim if it was not reasonably possible to give proof within that time, provided such proof is furnished as soon as reasonably possible and in no event, except in the absence of legal capacity, later than one year from the time proof is otherwise required.

- (9) A provision as follows:

Time of Payment of Claims: Indemnities payable under this policy for any loss other than loss for which this policy provides any periodic payment will be paid immediately upon receipt of due written proof of loss. Subject to due written proof of loss, all accrued indemnities for loss for which this policy provides periodic payment will be paid [insert period for payment which must not be less frequently than monthly] and any balance remaining unpaid upon the termination of liability will be paid immediately upon receipt of due written proof.

- (10) A provision as follows:

Payment of Claims: Indemnity for loss of life will be payable in accordance with the beneficiary designation and the provisions respecting such payment which may be prescribed herein and effective at the time of payment. If no such designation or provision is then effective, the indemnity shall be payable to the estate of the insured. Any other accrued indemnities unpaid at the insured's death may, at the option of the insurer, be paid either to the beneficiary or to the estate. All other indemnities will be payable to the insured.

Drafting Note: The following provisions, or either of them, may be included with the foregoing provision at the option of the insurer:

If any indemnity of this policy shall be payable to the estate of the insured, or to an insured or beneficiary who is a minor or otherwise not competent to give a valid release; the insurer may pay such indemnity, up to an amount not exceeding \$[insert an amount which shall not exceed \$1000], to any relative by blood or connection by marriage of the insured or beneficiary who is deemed by the insurer to be equitably entitled thereto. Any payment made by the insurer in good faith pursuant to this provision shall fully discharge the insurer to the extent of the payment.

Subject to any written direction of the insured in the application or otherwise, all or a portion of any indemnities provided by this policy on account of hospital, nursing, medical or surgical services may, at the insurer's option and unless the insured requests otherwise in writing not later than the time of filing proofs of loss, be paid directly to the hospital or person rendering such services; but it is not required that the service be rendered by a particular hospital or person.

- (11) A provision as follows:

Physical Examinations and Autopsy: The insurer at its own expense shall have the right and opportunity to examine the person of the insured when and as often as it may reasonably require during the pendency of a claim hereunder and to make an autopsy in case of death where it is not forbidden by law.

- (12) A provision as follows:

Legal Actions: No action at law or in equity shall be brought to recover on this policy prior to the expiration of sixty (60) days after written proof of loss has been furnished in accordance with the requirements of this policy. No such action shall be brought after the expiration of three (3) years after the time written proof of loss is required to be furnished.

- (13) A provision as follows:

Change of Beneficiary: Unless the insured makes an irrevocable designation of beneficiary, the right to change of beneficiary is reserved to the insured and the consent of the beneficiary or beneficiaries shall not be requisite to surrender or assignment of this policy or to any change of beneficiary or beneficiaries, or to any other changes in this policy.

Drafting Note: The first clause of this provision, relating to the irrevocable designation of beneficiary, may be omitted at the insurer's option.

B. Other Provisions

Except as provided in Subsection C, no policy delivered or issued for delivery to any person in this state shall contain provisions respecting the matters set forth below unless such provisions are in the words in which the same appear in this section; provided, however, that the insurer may, at its option, use in lieu of any such provision a corresponding provision of different wording approved by the Commissioner which is not less favorable in any respect to the insured or the beneficiary. Any such provision contained in the policy shall be preceded individually by the appropriate caption appearing in this subsection or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the Commissioner may approve.

- (1) A provision as follows:

Change of Occupation: If the insured is injured or contract sickness after having changed his occupation to one classified by the insurer as more hazardous than that stated in this policy or while doing for compensation anything pertaining to an occupation so classified, the insurer will pay only such portion of the indemnities provided in this policy as the premium paid would have purchased at the rates and within the limits fixed by the insurer for the more hazardous occupation. If the insured changes his occupation to one classified by the insurer as less hazardous than that stated in this policy, the insurer, upon receipt of proof of change of occupation, will reduce the premium rate accordingly, and will return the excess pro-rata unearned premium from the date of change of occupation or from the policy anniversary date immediately preceding receipt of proof, whichever is the more recent. In applying this provision, the classification of occupational risk and the premium rates shall be such as have been last filed by the insurer prior to the occurrence of the loss for which the insurer is liable or prior to date of proof of change in occupation with the state official having supervision of insurance in the state where the insured resided at the time this policy was issued; but if such filing was not required, then the classification of occupational risk and the premium rates shall be those last made effective by the insurer in such state prior to the occurrence of the loss or prior to the date of proof of change in occupation.

- (2) A provision as follows:

Misstatement of Age: If the age of the insured has been misstated, all amounts payable under this policy shall be such as the premium paid would have purchased at the correct age.

- (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.

- (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 the person's allowable expense during the period, this insurer shall be liable only for the proportionate amount of the benefits for allowable expense under this policy during the period as the total allowable expense during such period bears to the total amount of benefits payable during the period for expense under this policy and all other valid coverage (without giving effect to this provision or to any overinsurance provision applying to the other valid coverage) less 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 percent 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 30 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 period begins on the date when the first expense is incurred, and successive periods shall begin when 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.

Drafting Note: The foregoing policy provision may be inserted in all (guaranteed renewable and non-cancellable as well as guaranteed renewable) policies providing hospital, surgical, medical or major medical benefits. The insurer may make this provision applicable to either or both (a) other valid coverage with other insurers and, (b) except for individual policies individually underwritten, 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. The 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 trustee 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.

- (5) A provision as follows:

Overinsurance: After the loss-of-time benefit of this policy has been payable for ninety (90) days, the 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 [insert amount] percent 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 [insert amount] percent of the insured's earned income at the time of such application, the higher percentage will be used in place of [insert amount] percent. The 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 (i) the product of the insured's earned income and [insert amount] percent (or, if higher, the alternative percentage described at the end of the first sentence of this provision) bears to (ii) 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 (i) and (ii) any amount of loss-of-time benefits payable under other valid loss-of-time coverage which does not contain an overinsurance provision. In making the 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 the 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 less of \$300 and the total combined amount of loss-of-time benefits determined without giving effect to any overinsurance provision, or 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, or 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 (2) years immediately preceding the commencement of 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.

Drafting Note: The foregoing provision may be included only in a policy which provides a loss-of-time benefit which may be payable for at least fifty-two 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 or the insured to the insured's earned income or to determine that such ratio does not exceed the percentage of earnings, not less than sixty percent, 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 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 trustee 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 Commissioner.

- (6) A provision as follows:

Unpaid Premium: Upon the payment of a claim under this policy, any premium then due and unpaid or covered by any note or written order may be deducted therefrom.

- (7) A provision as follows:

Conformity with State Statutes: Any provision of this policy which, on its effective date, is in conflict with the statutes of the state in which the insured resides on such date is hereby amended to conform to the minimum requirements of such statutes.

- (8) A provision as follows:

Illegal Occupation: The insurer shall not be liable for any loss to which a contributing cause was the insured's commission of or attempt to commit a felony or to which a contributing cause was the insured's being engaged in an illegal occupation.

- (9) (a) A provision as follows:

Intoxicants and Narcotics: The insurer shall not be liable for any loss sustained or contracted in consequence of the insured's being intoxicated or under the influence of any narcotic unless administered on the advice of a physician.

- (b) This provision may not be used with respect to a medical expense policy.

- (c) For purposes of this provision, “medical expense policy” means an accident and sickness insurance policy that provides hospital, medical and surgical expense coverage.

Drafting Note: Paragraphs (9) and (10) are suggested for states which desire such provisions.

C. Inapplicable or Inconsistent Provisions

If any provision of this section is in whole or in part inapplicable to or inconsistent with the coverage provided by a particular form of policy the insurer, with the approval of the Commissioner, shall omit from such policy any inapplicable provision or part of a provision, and shall modify any inconsistent provision or part of the provision in such manner as to make the provision as contained in the policy consistent with the coverage provided by the policy.

D. Order of Certain Policy Provisions

The provisions which are the subject of Subsections A and B of this section, or any corresponding provisions which are used in lieu thereof in accordance with such subsections, shall be printed in the consecutive order of the provisions in such subsections or, at the option of the insurer, any such provisions may appear as a unit in any part of the policy, with other provisions to which it may be logically related, provided the resulting policy shall not be in whole or in part unintelligible, uncertain, ambiguous, abstruse, or likely to mislead a person to whom the policy is offered, delivered or issued.

E. Third Party Ownership

The word “insured,” as used in this Act, shall not be construed as preventing a person other than the insured with a proper insurable interest from making application for and owning a policy covering the insured or from being entitled under such a policy to any indemnities, benefits and rights provided therein.

F. Requirements of Other Jurisdictions

- (1) Any policy of a foreign or alien insurer, when delivered or issued for delivery to any person in this state, may contain any provision which is not less favorable to the insured or the beneficiary than the provisions of this Act and which is prescribed or required by the law of the state under which the insurer is organized.
- (2) Any policy of a domestic insurer may, when issued for delivery in any other state or country, contain any provision permitted or required by the laws of such other state or country.

G. Filing Procedure

The Commissioner may make such reasonable rules and regulations concerning the procedure for the filing or submission of policies subject to this Act as are necessary, proper or advisable to the administration of this Act. This provision shall not abridge any other authority granted the Commissioner by law.

Section 4. Conforming to Statute

A. Other Policy Provisions

No policy which is not subject to Section 3 of this Act shall make a policy, or any portion thereof, less favorable in any respect to the insured or the beneficiary than the provisions thereof which are subject to this Act.

B. Policy Conflicting with this Act

A policy delivered or issued for delivery to any person in this state in violation of this Act shall be held valid but shall be construed as provided in this Act. When any provision in a policy subject to this Act is in conflict with any provision of this Act, the rights, duties and obligations of the insurer, the insured and the beneficiary shall be governed by the provisions of this Act.

Section 5. Application

- A. The insured shall not be bound by any statement made in an application for a policy unless a copy of the application is attached to or endorsed on the policy when issued as a part thereof. If any such policy delivered or issued for delivery to any person in this state shall be reinstated or renewed, and the insured or the beneficiary or assignee of the policy shall make written request to the insurer for a copy of the application, if any, for such reinstatement or renewal, the insurer shall within fifteen (15) days after the receipt of the request at its home office or any branch office of the insurer, deliver or mail to the person making the request, a copy of the application. If the copy shall not be so delivered or mailed, the insurer shall be precluded from introducing the application as evidence in any action or proceeding based upon or involving the policy or its reinstatement or renewal.
- B. No alteration of any written application for any such policy shall be made by any person other than the applicant without his written consent, except that insertions may be made by the insurer, for administrative purposes only, in such manner as to indicate clearly that such insertions are not to be ascribed to the applicant.
- C. The falsity of any statement in the application for any policy covered by this Act may not bar the right to recovery thereunder unless such false statement materially affected either the acceptance of the risk or the hazard assumed by the insurer.

Drafting Note: Section 5, or any subsection thereof, is suggested for use in states which have no comparable statutes relating to the application.

Section 6. Notice, Waiver

The acknowledgment by any insurer of the receipt of notice given under any policy covered by this Act, or the furnishing of forms for filing proofs of loss, or the acceptance of such proofs, or the investigation of any claim thereunder shall not operate as a waiver of any of the rights of the insurer in defense of any claim arising under such policy.

Section 7. Age Limit

If any policy contains a provision establishing, as an age limit or otherwise, a date after which the coverage provided by the policy will not be effective, and if such date falls within a period for which premium is accepted by the insurer or if the insurer accepts a premium after such date, the coverage provided by the policy will continue in force subject to any right of cancellation until the end of the period for which premium has been accepted. In the event the age of the insured has been misstated and if, according to the correct age of the insured, the coverage provided by the policy would not have become effective, or would have ceased prior to the acceptance of such premium or premiums, then the liability of the insurer shall be limited to the refund, upon request, of all premiums paid for the period not covered by the policy.

Section 8. Non-Application to Certain Policies

Nothing in this Act shall apply to or affect:

- A. Any policy of workmen's compensation insurance or any policy of liability insurance with or without supplementary expense coverage therein; or
- B. Any policy or contract of reinsurance; or
- C. Any blanket or group policy of insurance; or
- D. Life insurance, endowment or annuity contracts, or contracts supplemental thereto which contain only such provisions relating to accident and sickness insurance as:
 - (a) Provide additional benefits in case of death or dismemberment or loss of sight by accident, or as
 - (b) Operate to safeguard such contracts against lapse, or to give a special surrender value or special benefit or an annuity in the event that the insured or annuitant shall become totally and permanently disabled, as defined by the contract or supplemental contract.

Drafting Note: This provision may, if desired, be modified in individual states so as to be consistent with current statutes of such states.

Section 9. Violation

Any person, partnership or corporation willfully violating any provision of this Act or order of the Commissioner made in accordance with this Act, shall forfeit to the people of the state a sum not to exceed \$[insert amount] for each violation, which may be recovered by a civil action. The Commissioner may also suspend or revoke the license of an insurer or agent for any willful violation.

Drafting Note: This provision is to be used only in those states which do not have similar legislation now in effect.

Section 10. Judicial Review

Any order or decision of the Commissioner under this Act shall be subject to review by appeal (writ of certiorari) to the [insert title] Court at the instance of any party in interest. The filing of the appeal (petition for such writ) shall operate as a stay of any such order or decision until the Court directs otherwise. The Court may review all the facts and, in disposing of the issue before it, may modify, affirm or reverse the order or decision of the Commissioner in whole or in part.

Drafting Note: This provision is to be used only in those states which do not have similar legislation now in effect.

Section 11. Repeal of Inconsistent Acts

Note: This section should contain suitable language to repeal acts or parts of acts presently enacted and inconsistent with this Act. The repealing section should contain an appropriate exception with regard to Section 12 of this Act.

Section 12. Effective Date of Act

This Act shall take effect on the [insert day] of [insert month], 19 [insert year]. 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 five (5) years after the effective date of this Act.

APPENDIX A

PROPOSED REGULATION REGARDING OVERINSURANCE PROVISIONS

Each individual health insurance policy, delivered or issued for delivery in this State on or after [insert effective date], which contains the overinsurance provisions authorized in [insert reference to statutory section which contains Section 3B(4) of the Uniform Individual Accident and Sickness Policy Provisions Law] or [insert reference to statutory section which contains Section 3B(5) of the Uniform Individual Accident and Sickness Policy Provisions Law] or, at the option of the insurer, the application for such policy, shall contain, or have attached to or be stamped or endorsed to add, a statement to the effect that benefits under the policy are subject to reduction if the insured has benefits under any other coverage of the type described in the overinsurance provision causing overinsurance as defined in such provision. If the insurer elects to include such statement in the policy, rather than in the application, the policy shall also contain, or have attached to or be stamped or endorsed to add, an additional statement to the effect that during a period of ten (10) days from the date the policy is delivered to the policyholder, it may be surrendered to the insurer together with a written request for cancellation of the policy and in such event the insurer will refund any premium paid therefor including any policy fees or other charges.

Chronological Summary of Action (all references are to the Proceedings of the NAIC)

1950 Proc. 398, 399-413, 414 (adopted).

1956 Proc. II 289-290, 315 (amended).

1964 Proc. I 91, 95, 98-101, 115 (amended).

2001 Proc. Ist Quarter 18, 97-98, 106-107, 178 (amended).

See Also:

1979 Proc. I 375 (UPPL restated in simplified language) (P. 185-1).