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INSURANCE CODE - INS

DIVISION 2. CLASSES OF INSURANCE [1880 - 12880.8] (*Division 2 enacted by Stats. 1935, Ch. 145.*)

PART 2. LIFE AND DISABILITY INSURANCE [10110 - 11549] (*Part 2 enacted by Stats. 1935, Ch. 145.*)

CHAPTER 4. Standard Provisions in Disability Policies [10270 - 10402.1] (*Chapter 4 enacted by Stats. 1935, Ch. 145.*)

ARTICLE 5. Optional Standard Provisions and Special Provisions—Uniform Provisions [10369.1 - 10369.12] (*Heading of Article 5 renumbered from Article 5a by Stats. 1980, Ch. 676, Sec. 196.*)

10369.1. Except as provided in Section 10323, no disability policy delivered or issued for delivery to any person in this State shall contain provisions respecting the matters set forth in Sections 10369.2 to 10369.12, inclusive, unless such provisions are in the words in which the same appear in such sections; 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 each of such sections or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the commissioner may approve.

(*Added by Stats. 1951, Ch. 570.*)

10369.2. A disability policy may contain a provision in the form set forth herein.

Change of Occupation: If the insured be 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 such 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 such 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 such 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.

(*Added by Stats. 1951, Ch. 570.*)

10369.3. A disability policy may contain a provision in the form set forth herein.

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.

(*Added by Stats. 1951, Ch. 570.*)

10369.4. A disability policy may contain a provision which shall, at the option of the insurer, be in one of the two forms set forth herein. If Form A is used, there shall be inserted in the first blank the type of coverage or coverages and in the second blank the maximum limit of indemnity or indemnities.

Form A.

Other Insurance in This Insurer: 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 ____ in excess of \$____, the excess

insurance shall be void and all premiums paid for such excess shall be returned to the insured or to his estate.

Form B.

Other Insurance in This Insurer: Insurance effective at any one time on the insured under a like policy or policies in this insurer is limited to the one such 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.

(Added by Stats. 1951, Ch. 570.)

10369.5. A disability policy may contain a provision in the form set forth in this section. If the provision also contains the provision set forth in Section 10369.6, there shall be added to its caption the phrase, “*** expense incurred benefits.” The insurer may, at its option, include in this provision a definition of “other valid coverage,” approved as to form by the commissioner. The definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, or by hospital or medical service organizations, and to any other coverage, the inclusion of which may be approved by the commissioner. In the absence of that definition, the terms shall not include group insurance, automobile medical payments insurance, or coverage provided by hospital or medical service organizations or by union welfare plans or employer or employee benefit organizations. For the purpose of applying this policy provision with respect to any insured, any amount of benefit provided for the insured pursuant to any compulsory benefit statute, including any workers’ compensation or employers’ liability statute, whether provided by a governmental agency or otherwise, shall in all cases be deemed to be “other valid coverage” of which the insurer has had notice. In applying this provision, no third party liability coverage shall be included as “other valid coverage.”

Insurance With Other Insurers: If there is other valid coverage, not with this insurer, providing benefits for the same loss on a provision of service basis or on an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability under any expense incurred coverage of this policy shall be for the proportion of the loss as the amount which would otherwise have been payable under this policy plus the total of the like amounts under all the other valid coverages for the same loss of which this insurer had notice bears to the total like amounts under all valid coverages for the loss, and for the return of the portion of the premiums paid as shall exceed the pro-rata portion for the amount so determined. For the purpose of applying this provision when other coverage is on a provision of service basis, the “like amount” of the other coverage shall be taken as the amount which the services rendered would have cost in the absence of the coverage.

(Amended by Stats. 1988, Ch. 160, Sec. 119.)

10369.6. A disability policy may contain a provision in the form set forth in this section. If the provision is included in a policy which also contains the provision set forth in Section 10369.5, there shall be added to its caption the phrase, “*** other benefits.” The insurer may, at its option, include in this provision a definition of “other valid coverage,” approved as to form by the commissioner. The definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, and to any other coverage the inclusion of which may be approved by the commissioner. In the absence of that definition the terms shall not include group insurance, or benefits provided by union welfare plans or by employer or employee benefit organizations. For the purpose of applying this policy provision with respect to any insured, any amount of benefit provided for the insured pursuant to any compulsory benefit statute, including any workers’ compensation or employers’ liability statute, whether provided by a governmental agency or otherwise, shall in all cases be deemed to be “other valid coverage” of which the insurer has had notice. In applying this provision, no third party liability coverage shall be included as “other valid coverage.”

Insurance With Other Insurers: If there is other valid coverage, not with this insurer, providing benefits for the same loss on other than an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability for the benefits under this policy shall be for the proportion of the indemnities otherwise provided under this policy for the loss as the like indemnities of which the insurer had notice, including the indemnities under this policy, bear to the total amount of all like indemnities for the loss, and for the return of the portion of the premium paid as shall exceed the pro rata portion for the indemnities thus determined.

(Amended by Stats. 1988, Ch. 160, Sec. 120.)

10369.7. A noncancellable disability policy may contain a provision in the form set forth herein. The insurer may, at its option, include in this provision a definition of “valid loss of time coverage,” approved as to form by the commissioner, which definition shall be limited in subject matter to coverage provided by governmental agencies or by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, or to any other coverage the inclusion of which may be approved by the commissioner or any combination of such coverages. In the absence of such definition such term shall not include any coverage provided for such insured pursuant to any compulsory benefit statute (including any workmen’s compensation or employers’ liability statute), or benefits provided by union welfare plans or by employer or employee benefit organizations.

Relation of Earnings to Insurance: If the total monthly amount of loss of time benefits promised for the same loss under all valid loss of time coverage upon the insured, whether payable on a weekly or monthly basis, shall exceed the monthly earnings of the insured at the time disability commenced or his average monthly earnings for the period of two years immediately preceding a disability for which claim is made, whichever is the greater, the insurer will be liable only for such proportionate amount of such benefits under this policy as the amount of such monthly earnings or such average monthly earnings of the insured bears to the total amount of monthly benefits for the same loss under all such coverage upon the insured at the time such disability commences and for the return of such part of the premiums paid during such two years as shall exceed the pro-rata amount of the premiums for the benefits actually paid hereunder; but this shall not operate to reduce the total monthly amount of benefits payable under all such coverage upon the insured below the sum of two hundred dollars (\$200) or the sum of the monthly benefits specified in such coverages, whichever is the lesser, nor shall it operate to reduce benefits other than those payable for loss of time.

(Added by Stats. 1951, Ch. 570.)

10369.8. A disability policy may contain a provision in the form set forth herein.

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.

(Added by Stats. 1951, Ch. 570.)

10369.9. A disability policy may contain a provision in the form set forth herein.

Cancellation: The insurer may cancel this policy at any time by written notice delivered to the insured, or mailed to his last address as shown by the records of the insurer, stating when, not less than five days thereafter, such cancellation shall be effective; and after the policy has been continued beyond its original term the insured may cancel this policy at any time by written notice delivered or mailed to the insurer, effective upon receipt or on such later date as may be specified in such notice. In the event of cancellation, the insurer will return promptly the unearned portion of any premium paid. If the insured cancels, the earned premium shall be computed by the use of the short-rate table last filed with the state official having supervision of insurance in the state where the insured resided when the policy was issued. If the insurer cancels, the earned premium shall be computed pro rata. Cancellation shall be without prejudice to any claim originating prior to the effective date of cancellation.

(Added by Stats. 1951, Ch. 570.)

10369.10. A disability policy may contain a provision in the form set forth herein.

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.

(Added by Stats. 1951, Ch. 570.)

10369.11. A disability policy may contain a provision in the form set forth herein.

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.

(Added by Stats. 1951, Ch. 570.)

10369.12. (a) A disability policy may contain a provision in the form set forth herein.

Intoxicants and controlled substances: 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 controlled substance unless administered on the advice of a physician.

(b) Subdivision (a) shall not apply to a health insurance policy.

(Amended by Stats. 2008, Ch. 630, Sec. 1. Effective January 1, 2009.)