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HOUSE BILL NO. 1196

Offered January 14, 2004

Prefiled January 14, 2004

A BILL to amend and reenact § 38.2-3504 of the Code of Virginia, relating to individual accident and sickness insurance policies; intoxicants and narcotics.

Patron—Scott, J.M.

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That § 38.2-3504 of the Code of Virginia is amended and reenacted as follows:

§ 38.2-3504. Other provisions.

Except as provided in § 38.2-3505, no individual accident and sickness insurance policy delivered or issued for delivery in this Commonwealth shall contain provisions respecting the matters set forth below unless such provisions use the same words which appear in this section. Provisions 1 through 7, 8 a, and 9 through 11 shall apply to all such policies that are issued for delivery or delivered in this Commonwealth prior to January 1, 2001. Provisions 1 through 7, 8 b, and 9 through 11 shall apply to all such policies that are issued for delivery, delivered, renewed, or extended in this Commonwealth on or after January 1, 2001. *Policies issued for delivery, delivered, renewed, or extended in the Commonwealth on or after July 1, 2004, providing hospital, medical, surgical, or major medical expense coverage on an expense incurred basis, shall be prohibited from including provision 11. Such policies shall not contain any exclusion prohibiting coverage as the result of impairment due to intoxicants or narcotics.*

The insurer may use a corresponding provision of different wording approved by the Commission that is not less favorable in any respect to the Insured or the beneficiary. Any such provision shall be preceded individually by the appropriate caption OTHER PROVISIONS or by such appropriate individual or group captions or subcaptions as the Commission may approve.

1. Provision 1:

CHANGE OF OCCUPATION: If the Insured is injured or contracts sickness after having changed his occupation to one classified by the Company as more hazardous than that stated in this policy or while doing for compensation anything pertaining to an occupation so classified, the Company will pay only the 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 Company for the more hazardous occupation. If the Insured changes his occupation to one classified by the Company as less hazardous than that stated in this policy, the Company, upon receipt of proof of the 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 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 Company prior to the occurrence of the loss for which the Company is liable or prior to the date of proof of change in occupation with the state insurance supervisory official in the state where the Insured resided at the time this policy was issued; but if the filing was not required, then the classification of occupational risk and the premium rates shall be those last made effective by the Company in the state prior to the occurrence of the loss or prior to the date of proof of change in occupation.

2. Provision 2:

MISSTATEMENT OF AGE: If the Insured's age has been misstated, the benefits will be those the premium paid would have purchased at the correct age.

3. Provision 3:

OTHER INSURANCE IN THIS COMPANY: If an accident or sickness or accident and sickness policy or policies previously issued by the Company to the Insured is 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 insurance shall be void and all premiums paid for such excess shall be returned to the Insured or to his estate.

Instead of Provision 3, the following provision may be used:

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

4. Provision 4:

59 INSURANCE WITH OTHER COMPANIES: If there is other valid coverage, not with this Company,
60 providing benefits for the same loss on a provision of service basis or on an expense incurred basis and
61 of which this Company has not been given written notice prior to the occurrence or commencement of
62 loss, the only liability under any expense incurred coverage of this policy shall be for such proportion of
63 the loss as the amount which would otherwise have been payable under this policy plus the total of the
64 like amounts under all such other valid coverages for the same loss of which this Company had notice
65 bears to the total like amounts under all valid coverages for such loss, and for the return of such portion
66 of the premiums paid as shall exceed the pro rata portion for the amount so determined. For the purpose
67 of applying this provision when other coverage is on a provision of service basis, the "like amount" of
68 such other coverage shall be taken as the amount which the services rendered would have cost in the
69 absence of such coverage.

70 If Provision 4 is included in a policy that also contains Provision 5, the phrase "EXPENSE
71 INCURRED BENEFITS" shall be added to the caption of Provision 4. The insurer may include in this
72 provision a definition of "other valid coverage," approved by the Commission. The definition shall be
73 limited in subject matter to coverage provided by organizations subject to regulation by insurance law or
74 by insurance authorities of this Commonwealth or any other jurisdiction of the United States or Canada,
75 and by hospital or medical service organizations, and to any other coverage the inclusion of which may
76 be approved by the Commission. In the absence of such definition the term shall not include group
77 insurance, automobile medical payments insurance, or coverage provided by hospital or medical service
78 organizations, by union welfare plans, or employer or employee benefit organizations.

79 For the purpose of applying Provision 4, any amount of benefit provided for such insured pursuant to
80 any compulsory benefit statute, including any workers' compensation or employer's liability statute,
81 whether provided by a governmental agency or otherwise, shall in all cases be deemed to be "other valid
82 coverage" of which the company has had notice. In applying Provision 4 no third party liability
83 coverage shall be included as "other valid coverage."

84 5. Provision 5:

85 INSURANCE WITH OTHER COMPANIES: If there is other valid coverage, not with this Company,
86 providing benefits for the same loss on other than an expense incurred basis and of which this Company
87 has not been given written notice prior to the occurrence or commencement of loss, the only liability for
88 such benefits under this policy shall be for such proportion of the indemnities otherwise provided under
89 this policy for such loss as the like indemnities of which the Company had notice, including the
90 indemnities under this policy, bear to the total amount of all like indemnities for such loss, and for the
91 return of such portion of the premium paid as shall exceed the pro rata portion for the indemnities thus
92 determined.

93 If Provision 5 is included in a policy that also contains Provision 4, the phrase "OTHER BENEFITS"
94 shall be added to the caption of Provision 5. The insurer may include in this provision a definition of
95 "other valid coverage," approved by the Commission. The definition shall be limited in subject matter to
96 coverage provided by organizations subject to regulation by insurance law or by insurance authorities of
97 this Commonwealth or any other jurisdiction of the United States or Canada, and to any other coverage
98 approved by the Commission. In the absence of such definition the term shall not include group
99 insurance, or benefits provided by union welfare plans or by employer or employee benefit
100 organizations. For the purpose of applying Provision 5, any amount of benefit provided for the insured
101 pursuant to any compulsory benefit statute, including any workers' compensation or employer's liability
102 statute, whether provided by a governmental agency or otherwise, shall in all cases be deemed to be
103 "other valid coverage" of which the Company has had notice. In applying Provision 5 no third party
104 liability coverage shall be included as "other valid coverage."

105 6. Provision 6:

106 RELATION OF EARNINGS TO INSURANCE: If the total monthly amount of loss of time benefits
107 promised for the same loss under all valid loss of time coverage upon the Insured, whether payable on a
108 weekly or monthly basis, shall exceed the monthly earnings of the Insured at the time disability
109 commenced or his average monthly earnings for the period of two years immediately preceding a
110 disability for which a claim is made, whichever is greater, the Company will be liable only for the
111 proportionate amount of the benefits under this policy as the amount of the monthly earnings or the
112 average monthly earnings of the Insured bears to the total amount of monthly benefits for the same loss
113 under all the coverage upon the insured at the time the disability commences and for the return of the
114 part of the premiums paid during such two years that exceeds the pro rata amount of the premiums for
115 the benefits actually paid hereunder; but this shall not operate to reduce the total monthly amount of
116 benefits payable under all the coverage upon the Insured below the sum of \$200 or the sum of the
117 monthly benefits specified in the coverages, whichever is less, nor shall it operate to reduce benefits
118 other than those payable for loss of time.

119 Provision 6 may be inserted only in a policy that the insured has the right to continue in force
120 subject to its terms by the timely payment of premiums (i) until at least age 50 or (ii) for a policy

issued after age 44, for at least five years from its date of issue. The insurer may include in this provision a definition of "valid loss of time coverage" approved by the Commission. The 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 Commonwealth or any other jurisdiction of the United States or Canada, or to any other coverage the inclusion of which may be approved by the Commission or any combination of coverages. In the absence of such definition the term shall not include any coverage provided for the Insured pursuant to any compulsory benefit statute, including any workers' compensation or employer's liability statute, or benefits provided by union welfare plans or by employer or employee benefit organizations.

7. Provision 7:

UNPAID PREMIUM: When a claim is paid, any premium due and unpaid may be deducted from the claim payment.

8. Provision 8 a:

CANCELLATION BY COMPANY: The Company 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 Company, stating when, no less than days thereafter, the 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 Company effective upon receipt or on such later date as may be specified in the notice. In the event of cancellation, the Company 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 insurance supervisory official in the state where the Insured resided when the policy was issued. If the Company 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.

Provision 8 b:

CANCELLATION BY COMPANY: The Company 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 Company, stating when, no less than _____ days thereafter, the cancellation shall be effective. In the event of cancellation, the Company will return promptly the unearned portion of any premium paid. The earned premium shall be computed pro rata. Cancellation shall be without prejudice to any claim originating prior to the effective date of cancellation.

In Provisions 8 a and 8 b, a number no less than "7" for weekly premium policies, "10" for monthly premium policies and "31" for all other policies shall be inserted between the words "than" and "days."

9. Provision 9:

CONFORMITY WITH STATE STATUTES: Any provision of this policy that on its effective date is in conflict with the laws of the state in which the Insured resides on that date is hereby amended to conform to the minimum requirements of the laws.

10. Provision 10:

ILLEGAL OCCUPATION: The Company will not be liable for any loss that results from the Insured's committing or attempting to commit a felony or from the Insured's engaging in an illegal occupation.

11. Provision 11:

INTOXICANTS AND NARCOTICS: The Company will not be liable for any loss resulting from the Insured's being drunk, or under the influence of any narcotic unless taken on the advice of a physician.