

SENATE No. 766

By Mr. Moore, a petition (accompanied by bill, Senate, No. 766) of Richard T. Moore, Philip Travis and Emile J. Goguen for legislation relative to disability insurance policies and loss-of-time coverage. Insurance.

The Commonwealth of Massachusetts

In the Year Two Thousand and One.

AN ACT RELATIVE TO DISABILITY INSURANCE.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Section 108 of Chapter 175 of the General Laws, as appearing
2 in the 1996 Official Edition, is hereby amended by striking the
3 text of paragraph 3(b)(6) in its entirety and inserting in place
4 thereof, the following:—

5 Overinsurance: After the loss-of-time benefit of this policy has
6 been payable for 90 days, the benefit shall be adjusted, provided
7 that the total amount of unadjusted loss-of-time benefits provided
8 in all valid loss-of-time coverages exceeds the “earnings replace-
9 ment percent” of the insured’s “earned income”. The adjusted
10 loss-of-time benefit under this policy for any month shall be
11 determined by multiplying the unadjusted benefit by a factor
12 determined by multiplying the “earnings replacement percent” by
13 “earned income” divided by all unadjusted “valid loss of time
14 coverage” including the unadjusted benefit under this policy. In
15 making the computation, all benefits and earnings shall be con-
16 verted to a consistent [insert “weekly” if the loss-of-time benefit
17 of this policy is payable weekly, or “monthly” if the benefit is
18 payable monthly, etc.] basis. In no event shall this provision
19 operate.

20 (i) to reduce the total combined amount of loss-of-time benefits
21 for the month payable under this policy and all other “valid loss-
22 of-time coverage” below the lesser of three hundred dollars

23 (\$300) or the total combined amount of loss-of-time benefits
24 determined without giving effect to any overinsurance provision,

25 (ii) to increase the amount of benefits payable under this policy
26 above the amount which would have been paid in the absence of
27 this provision,

28 (iii) to take into account or operate to reduce any benefit other
29 than the loss-of-time benefit, or

30 (iv) to reduce the unadjusted loss-of-time benefit if the insured
31 has suffered a "catastrophic disability."

32 For the purposes of the overinsurance provision, the policy
33 shall also include the following definitions:

34 (1) "Earned income", except where otherwise specified, means
35 the greater of the monthly earnings of the insured at the time dis-
36 ability commences or his or her average monthly earnings for a
37 period of two years immediately preceding the commencement of
38 disability. It shall not include any investment income or any other
39 income not derived from the insured's vocational activities.

40 (2) "Earnings Replacement Percent" means the greater of

41 (i) sixty percent (60%), or

42 (ii) the total amount of loss-of-time benefits under this policy
43 and all other "valid loss-of-time coverage" the insured possesses
44 and that is expected to be effective at time of claim divided by the
45 insured's earned income at the time of application.

46 This percent is shown on the policy schedule.

47 (3) "Catastrophic Disability" means that the insured has a total
48 and permanent loss of speech, hearing in both ears, the sight of
49 both eyes, the use of both legs, the use of both arms, or the use of
50 one arm and one leg.

51 The above policy provision (6) may be inserted only in a policy
52 providing loss-of-time coverage. This provision may be inserted
53 only in a policy which provides a loss-of-time benefit which may
54 be payable for at least 52 weeks and which the insured has the
55 right to continue in force, subject to its terms by the timely pay-
56 ment of premiums until at least age fifty (50) or in the case of a
57 policy issued after age forty-four (44), for at least five (5) years
58 after its date of issue. Such policy must be issued on the basis of
59 selective underwriting of each individual application, and for
60 which the application includes a question designed to obtain infor-
61 mation needed to determine the "earnings replacement percent" as

62 defined. Such percent must be inserted in the policy. If the appli-
63 cation indicates that other loss-of-time coverage is to be discon-
64 tinued, the amount of that other coverage shall be excluded in
65 computing the “earnings replacement percent” for the overinsur-
66 ance provision. The insurer may require, as part of the proof of
67 the claim, the information necessary to administer this provision.
68 The policy shall include a definition of “valid loss-of-time cov-
69 erage” approved as to form by the commissioner, which definition
70 may include coverage on the insured provided by governmental
71 agencies and by organizations subject to regulation by insurance
72 law and by insurance authorities of this or any other state of the
73 United States or of any other country or subdivision thereof, cov-
74 erage provided for the insured pursuant to any disability benefits
75 statute or any workers, compensation or employer’s liability
76 statute, benefits provided by labor-management trustee plans or
77 union welfare plans or by salary continuance or pension programs,
78 and any other coverage the inclusion of which may be approved
79 by the commissioner.

80 If the above provision (6) results in a material reduction of ben-
81 efits otherwise payable to an insured under the policy, the insurer
82 shall refund to the insured, for the period two years preceding the
83 disability for which a claim is made, any premium unearned on
84 the policy by reason of that reduction of coverage. A material
85 reduction of benefits shall be a reduction that results in unearned
86 premium of five dollars (\$5) or more as specified by the insurer.

