

304.17-240 Relation of earnings to insurance.

(1) There may be a provision as follows:

"After the loss-of-time benefit of this policy has been payable for ninety (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 the 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 of the overinsurance provision in this or any other coverage) less in both paragraphs (a) and (b) of this subsection 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 (0) or is negative, no benefit shall be payable under this policy. In no event shall this provision
 1. 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 three hundred dollars (\$300) and the total combined amount of loss-of-time benefits determined without giving effect to any 'overinsurance provision' nor
 2. 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
 3. Take into account or operate to reduce any benefit other than the loss-of-time benefit.
- (c) For purposes of this provision:
 1. 'Earned income,' except where otherwise specified, means the greater of the monthly earnings of the insured at the time disability commences and his or her average monthly earnings for a period of two (2) 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.

2. '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."
- (2) 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 (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 sixty percent (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 regulations by insurance law and by insurance authorities of this or any other state of the United States or any other country or subdivision thereof, coverage provided for such insured pursuant to any disability benefits statute or any workers' compensation or employer's liability statute, benefits provided by labor-management trusteed 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.
- (3) If by application of any of the foregoing provisions the insurer effects a material reduction of benefits otherwise payable under the policy, the insurer shall refund to the insured any premium unearned on the policy by reason of such reduction of coverage during the policy year current and that next preceding at the time the loss commenced, subject to the insurer's right to provide in the policy that no such reduction of benefits or refund will be made unless the unearned premium to be so refunded amounts to five dollars (\$5) or such larger sum as the insurer may so specify.

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History: Amended 2010 Ky. Acts ch. 24, sec. 1206, effective July 15, 2010. -- Created 1970 Ky. Acts ch. 301, subtit. 17, sec. 24, effective June 18, 1970.