

AMENDED IN ASSEMBLY APRIL 22, 2002

AMENDED IN ASSEMBLY APRIL 4, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 2778

Introduced by Assembly Member Calderon

February 25, 2002

An act to amend Section 10506 of, and to add Section 10290.5 to, the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 2778, as amended, Calderon. Insurance.

Existing law provides for the regulation of insurers by the Insurance Commissioner. Existing law prohibits the issuance or delivery to a person of a disability insurance policy until 30 days after filing a copy of the policy form with the commissioner unless the commissioner gives written approval prior to that time. Existing law also prohibits the issuance by an insurer of contracts for variable life insurance benefits until a showing has been made to the commissioner indicating that the insurer's condition or method of operation in connection with the contracts is not hazardous to the public or the insurer's policyholders.

This bill would enact alternative provisions that require the filing of group and individual disability income insurance forms, contracts, and policies with the commissioner but authorize an insurer to use those forms, contracts, and policies immediately. The bill would give the commissioner 90 days to approve or disapprove those forms, contracts, and policies or they would be deemed approved. The bill would also require an insurer to notify the commissioner at any time it implements

a material change to *investment options in a* ~~a previously approved~~ policy or contract providing for variable life insurance benefits but authorizes an insurer to make those changes without the commissioner’s prior approval *or acknowledgement*.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. It is the intent of the Legislature to provide for~~
2 ~~the fair and efficient review by the California Department of~~
3 ~~Insurance of insurance forms, policies, and contracts. Expeditious~~
4 ~~review is necessary for insurance markets that provide valuable~~
5 ~~and innovative products to the consuming public at affordable~~
6 ~~premium levels and provide maximum benefits and returns on~~
7 ~~funds invested for retirement needs. Expeditious approvals should~~
8 ~~be provided only in strict accordance with statutory requirements,~~
9 ~~consistent with uniformity of treatment in other states and with the~~
10 ~~highest standards of consumer protection. By allowing the free~~
11 ~~flow of needed insurance products it is expected that markets, job~~
12 ~~creation, and the California economy will be benefited.~~

13 ~~SEC. 2. Section 10290.5 is added to the Insurance Code, to~~
14 ~~read:~~

15 ~~10290.5. As an alternative to Section 10290, the following~~
16 ~~filing procedures are established in order to promote a more~~
17 ~~efficient process for review and approval of group and individual~~
18 ~~disability income insurance forms in California and to ensure a~~
19 ~~more timely method of delivering group and individual disability~~
20 ~~income policy forms to California consumers:~~

21 ~~(a) All filings of group and individual disability income~~
22 ~~insurance forms, contracts, and policies shall be made with the~~
23 ~~department prior to any issuance, delivery, or use of those forms,~~
24 ~~contracts, or policies in the state of California.~~

25 ~~(b) An insurer may immediately issue, deliver, and use those~~
26 ~~forms, contracts, or policies, provided the filing pursuant to~~
27 ~~subdivision (a) is accompanied by a certification on behalf of the~~
28 ~~filing insurer, signed by either an attorney licensed to practice law~~
29 ~~in this state, an actuary familiar with the requirements of~~
30 ~~California law and the applicable rules and regulations, or the chief~~



1 executive officer of the filing insurer or a person designated by that
2 officer.

3 ~~(c) The certification required by subdivision (b) shall state that~~
4 ~~it is made on behalf of the insurer, that the insurer is bound by the~~
5 ~~representations made in the certification and that the person~~
6 ~~certifying has reviewed the filing and that the filing is, to the best~~
7 ~~of that individual's knowledge, information and belief, in~~
8 ~~compliance with the provisions of California law and the adopted~~
9 ~~rules and regulations applicable to the policy, contract,~~
10 ~~application, rider, endorsement, or other form being filed.~~

11 ~~(d) At the expiration of 90 days, after receipt by the department~~
12 ~~of a form, contract, or policy filed pursuant to subdivision (a), the~~
13 ~~form, contract, or policy shall be deemed approved by the~~
14 ~~department unless prior to that time it has been affirmatively~~
15 ~~approved or disapproved by a written order of the commissioner~~
16 ~~or the insurer has requested in writing that the approval period be~~
17 ~~extended for an additional period not to exceed 45 days. The~~
18 ~~request for an extension by an insurer shall be considered granted~~
19 ~~upon being received by the department. On the expiration of the~~
20 ~~extension, the form shall be deemed approved unless the~~
21 ~~commissioner has taken affirmative action to either approve or~~
22 ~~disapprove the form before the expiration of the extension.~~

23 ~~If the policy, contract, or form is affirmatively disapproved by~~
24 ~~the commissioner, the insurer, upon receiving written notice~~
25 ~~thereof, shall cease issuing or using the policy, contract, or form~~
26 ~~if the insurer has in fact issued, delivered, or used the form,~~
27 ~~contract, or policy in this state.~~

28 ~~(e) If a contract, policy, or form is filed with the commissioner~~
29 ~~pursuant to this section is used, issued, or delivered prior to either~~
30 ~~the affirmative or statutory deemed approval established by this~~
31 ~~section, and if corrections are required to be made before the~~
32 ~~commissioner will approve the contract, policy, or form in order~~
33 ~~to bring it into compliance with the provisions of California law~~
34 ~~and the applicable rules and regulations, the commissioner may~~
35 ~~order the insurer to correct the contract, policy, or form previously~~
36 ~~issued, delivered, or used, by endorsement or rider.~~

37 ~~SEC. 3.~~

38 *SECTION 1.* Section 10506 of the Insurance Code is amended
39 to read:



1 10506. (a) Any domestic life insurance company may, after
2 adoption of a resolution by its board of directors, allocate to one
3 or more separate accounts, in accordance with the terms of a
4 written agreement, any amounts which are paid to the company in
5 connection with a pension, retirement, retirement medical
6 benefits, or profit-sharing plan, or program for one or more
7 persons, or with an individual or group variable life insurance
8 policy, and which are to be, or may be, applied in payment or in
9 making provision for payment of proceeds or benefits under the
10 company's policies, contracts, or agreements of retirement
11 benefits, and other benefits incidental thereto, in fixed or variable
12 dollar amounts, or both. The income, if any, and gains or losses,
13 realized or unrealized, on each account shall be credited to or
14 charged against the amount allocated to the account in accordance
15 with the agreement, without regard to the other income, gains or
16 losses of the company. The amounts allocated to the accounts and
17 accumulations thereon, by any life insurance company shall be
18 invested and reinvested as specified in the policy, contract, or
19 agreement without regard to any requirements or limitations
20 prescribed by the laws of this state governing the investments of
21 insurance companies, provided that the amounts allocated to
22 separate accounts for which the insurer has issued guarantees of
23 benefits as to dollar amount and duration or of funds as to all or part
24 of the principal amount thereof or stated rate of interest, and the
25 accumulations thereon pursuant to Section 10506.4, shall be
26 invested in the types of investments permitted to life insurance
27 companies for investments held in the insurer's general account as
28 described in Article 3 (commencing with Section 1170), Article 4
29 (commencing with Section 1190), and Article 4.6 (commencing
30 with Section 1211) of Chapter 2 of Part 2 of Division 1 (excluding
31 Section 1212 thereof), except that the approved method of
32 operations and applicable policy, contract, or agreement
33 provisions shall govern the amount of these investments held in the
34 separate account. However, with regard to variable life insurance
35 separate accounts and accumulations thereon, the separate
36 accounts shall have sufficient net investment income and readily
37 marketable assets to meet anticipated obligations under policies
38 funded by the account. The limitations contained in Sections
39 1192.4 and 1198 are not applicable to these investments. These
40 investments shall not be included in determining the propriety of



1 other investments of the company. The liability of the company
2 with respect thereto, but only to the extent prescribed in the
3 agreement, shall be shown on the statement of the company in the
4 manner prescribed by the commissioner. Amounts allocated by an
5 insurance company to separate accounts in the exercise of the
6 power granted by this section shall be owned by the company, but
7 shall not be chargeable with liabilities arising out of any other
8 business the company may conduct except and to the extent
9 provided in the policy, contract, or agreement. The company shall
10 not hold itself out to be a trustee in respect to these amounts.

11 (b) In addition to amounts otherwise allocated to separate
12 accounts, a domestic life insurer may allocate to the account or
13 accounts amounts which otherwise would be subject to investment
14 in accordance with Article 4 (commencing with Section 1190) of
15 Chapter 2 of Part 2 of Division 1. The aggregate of these additional
16 amounts shall not, however, exceed 1 percent of its admitted assets
17 as of the preceding December 31, or 5 percent of the excess of its
18 admitted assets over its liabilities and required reserves as of the
19 preceding December 31, whichever is the smaller. The company
20 shall be entitled to withdraw at any time, in whole or in part, its
21 participation in any separate account to which funds have been
22 allocated as provided in this subdivision and to receive, upon
23 withdrawal, its proportionate share of the value of the assets of the
24 separate account at the time of withdrawal.

25 (c) In addition to the allocations to separate accounts provided
26 for in subdivision (a), a domestic insurer may, at the request of a
27 policyholder or contractholder or the beneficiary of a policy or
28 contract, allocate to any ~~such~~ separate account or accounts death
29 payments, proceeds of matured endowments, dividends, or
30 surrender values.

31 (d) Except as otherwise provided in Section 10506.4, or with
32 the approval of the commissioner, and under ~~such~~ conditions as to
33 investments and other matters as he or she may prescribe, which
34 shall recognize the guaranteed nature of the benefits provided,
35 reserves for (1) benefits guaranteed as to dollar amount and
36 duration and (2) funds guaranteed as to principal amount or stated
37 rate of interest, shall not be maintained in a separate account that,
38 as provided under applicable policy, contract, or agreement, is or
39 is not chargeable with liabilities arising out of any other business
40 the company may conduct.



1 (e) Unless otherwise approved by the commissioner, assets
2 allocated to a separate account shall be valued at their market
3 value, or at amortized cost if it approximates market value within
4 the limits and constraints imposed by the United States Securities
5 and Exchange Commission, on the date of valuation, or, if there
6 is no readily available market, then as provided under the terms of
7 the contract or the rules or other written agreement applicable to
8 the separate account. Unless otherwise approved by the
9 commissioner, the portion of any of the assets of the separate
10 account equal to the company's reserve liability, with regard to the
11 guaranteed benefits and funds referred to in subdivision (d), shall
12 be valued in accordance with the rules otherwise applicable to the
13 company's assets.

14 (f) (1) Except as provided in paragraph (2) of subdivision (f),
15 a sale, exchange, or other transfer of assets may not be made by a
16 company between any of its separate accounts, or between any
17 other of its investment accounts and one or more of its separate
18 accounts unless, in case of a transfer into a separate account, the
19 transfer is made solely to establish the account or to support the
20 operation of the contracts with respect to the separate account to
21 which the transfer is made, and unless the transfer, whether into or
22 from a separate account is made (1) by a transfer of cash, or (2) by
23 a transfer of securities having a readily determinable market value,
24 and the transfer of securities is approved by the commissioner. The
25 commissioner may approve other transfers among the accounts if,
26 in his or her opinion, the transfer would not be inequitable.

27 (2) Transfers from an insurer's general account to one or more
28 of its separate accounts to establish and maintain reserves for the
29 guarantees authorized by Section 10506.4 shall only be made in
30 cash in accordance with methods of operations approved pursuant
31 to subdivision (c) of Section 10506.4. A transfer shall not operate
32 to increase the amounts permitted to be allocated by an insurer to
33 the separate accounts pursuant to this subdivision or by
34 subdivision (b) of Section 10506, and the provisions of that
35 subdivision shall not limit these transfers.

36 (g) Any domestic life insurance company which establishes
37 one or more separate accounts pursuant to this section may provide
38 for special voting rights and procedures for participants in the
39 separate account relating to investment policy, investment
40 advisory services, and selection of certified public accountants in



1 relation to the administration of the assets in any ~~the~~ separate
2 account. The voting rights shall be in addition to, and shall not
3 affect, voting rights of mutual insurers.

4 (h) The purpose and intent of this section is to permit the
5 issuance and delivery of policies or contracts, in connection with
6 a pension, retirement, retirement medical benefits, or
7 profit-sharing plan, or program for one or more persons, or
8 policies of variable life insurance, providing for the payment of
9 benefits in fixed or variable amounts, or both, and the
10 establishment of separate accounts by domestic companies for the
11 administration of and investments under these agreements. To
12 protect the public and policyholders located in this state from
13 hazardous operation by domestic and foreign companies, and to
14 further the purpose and provision of this section, no domestic or
15 foreign life insurance company shall undertake the issuance of any
16 contract providing for variable benefits until the company has
17 satisfied the commissioner that its condition or method of
18 operation in connection with the issuance of these contracts shall
19 not be such as would render its operation hazardous to the public
20 or its policyholders in this state and, in the case of a foreign or alien
21 insurer, that it meets the conditions prescribed in Section 716, for
22 the issuance of a certificate of authority. In determining the
23 qualification of a company requesting authority to issue contracts
24 providing for variable benefits within this state the commissioner
25 shall consider among other things, (1) the history of the company;
26 (2) the character, responsibility, and general fitness of the officers
27 and directors of the company; (3) the regulation of a foreign
28 company by its state of domicile; (4) the adequacy of the
29 investment management which the company is providing; and (5)
30 the company's arrangements for the supervision of the marketing
31 of the contracts. An insurer that has ~~demonstrated to~~ *satisfied* the
32 commissioner that its condition or method of operation would not
33 render its operation hazardous to the public or its policyholders
34 shall notify the commissioner at any time it implements a material
35 change ~~to a previously approved~~ *respecting the investment options*
36 *available or to be available with a policy or contract providing*
37 *variable benefits.* The notification shall be accompanied by a
38 certification signed by an executive officer having responsibility
39 for contracts providing variable benefits ~~demonstrating~~ *stating*
40 that the change complies with relevant statutes and regulations.



1 The commissioner may review the notification to ensure the
2 continued qualification of the insurer to issue and deliver those
3 policies and contracts. The commissioner may make reasonable
4 rules and regulations as he or she considers necessary, proper, and
5 advisable concerning the issuance and delivery of these policies
6 and contracts and the payment of benefits thereunder and the
7 manner in which the separate accounts shall be administered and
8 which types of policies and contracts, if any, shall be subject to his
9 or her approval prior to issue. Notification of a *any* material
10 change, ~~including, but not limited to, the addition of mutual fund~~
11 ~~investment options to a previously approved policy or contract~~
12 ~~providing variable benefits~~ shall not be subject to the
13 commissioner's approval *or acknowledgement* prior to
14 implementation.

15 However, no company may provide variable benefits in its
16 contracts unless it is an admitted insurer having and maintaining
17 a combined capital and surplus of at least ten million dollars
18 (\$10,000,000).

19 (i) (1) Any contract providing benefits payable in variable
20 amounts delivered or issued for delivery in this state on or after the
21 effective date of the amendments to this section enacted at the 1971
22 Regular Session of the Legislature shall contain a statement of the
23 essential features of the procedures to be followed by an insurance
24 company in determining the dollar amount of these variable
25 benefits. Any contract under which the benefits vary to reflect
26 investment experience, including a group contract and any
27 certificate in evidence of variable benefits issued thereunder, shall
28 state that the dollar amount shall so vary, and shall contain on its
29 first page a statement to the effect that the benefits thereunder are
30 on a variable basis. Except for Article 3a (commencing with
31 Section 10159.1) of Chapter 1 of Part 2 of Division 2, in the case
32 of a variable life insurance policy, and except as otherwise
33 provided in this section, all pertinent provisions of this code shall
34 apply to separate accounts and contracts relating thereto. Any
35 variable life insurance contract, delivered or issued for delivery in
36 this state on or after the effective date of the amendments to this
37 section enacted at the 1992 Regular Session of the Legislature,
38 shall contain such nonforfeiture provisions as are appropriate to
39 such a contract.



1 (2) The reserve liability for variable contracts shall be
2 established in accordance with actuarial procedures that recognize
3 the variable nature of the benefits provided and any mortality
4 guarantees.

5 (j) No insurer shall issue anywhere any group variable life
6 insurance policy for which the master contractholder or any
7 covered party is an individual residing in this state or is a
8 corporation, association, trust, or other legal entity that is either
9 domiciled in or has its principal place of business in this state,
10 unless the insurer has become qualified to issue variable life
11 insurance policies and its group master policy form together with
12 all forms of certificates or notices thereunder have been approved
13 by the commissioner. Group variable life insurance policies shall
14 be issued only to groups referred to in Chapter 2 (commencing
15 with Section 10200) of Part 2 of Division 2.

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