

AMENDED IN SENATE AUGUST 7, 2002

AMENDED IN SENATE JUNE 26, 2002

AMENDED IN ASSEMBLY MAY 13, 2002

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

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An act to amend ~~Section~~ *Sections 1749.01 and 10506* of the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 2778, as amended, Calderon. Insurance.

(1) Existing law provides for the regulation of insurers by the Insurance Commissioner. Existing law *requires licensed life agents and applicants for licensure as a life agent to meet certain education standards unless they are limited by the terms of a written agreement with an insurer to transact only specified life insurance policies or annuities having an initial face value of \$10,000 or less that are designated by the purchaser for the payment of funeral and burial expenses.*

*This bill would instead require that the face value of those life insurance policies and annuities be \$15,000 or less.*

(2) Existing law 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 require an insurer to notify the commissioner at any time it implements a material change to mutual funds underlying the variable contract separate account in a policy or contract providing for variable life insurance benefits but would authorize an insurer to make those changes without the commissioner’s prior approval or acknowledgment.

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 that insurers  
 2 authorized to issue policies and contracts providing variable  
 3 benefits be permitted to implement changes to the mutual funds  
 4 underlying variable contract separate accounts without being  
 5 subject to the Insurance Commissioner’s approval or  
 6 acknowledgment prior to implementation.

7 SEC. 2. Section 1749.01 of the Insurance Code is amended to  
 8 read:

9 1749.01. Sections 1749 and 1749.3 shall not apply to a life  
 10 agent who is limited by the terms of a written agreement with the  
 11 insurer, which filed on that life agent’s behalf a notice of  
 12 appointment with the commissioner, to transact only specific life  
 13 insurance policies or annuities having an initial face amount of ~~ten~~  
 14 *fifteen* thousand dollars (~~\$10,000~~) (\$15,000) or less that are  
 15 designated by the purchaser for the payment of funeral and burial  
 16 expenses. The commissioner may require the insurer appointing  
 17 those life agents to certify as to the limitations of the agents’  
 18 representation.

19 SEC. 3. Section 10506 of the Insurance Code is amended to  
 20 read:

21 10506. (a) Any domestic life insurance company may, after  
 22 adoption of a resolution by its board of directors, allocate to one  
 23 or more separate accounts, in accordance with the terms of a  
 24 written agreement, any amounts which are paid to the company in



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



1 insurance company to separate accounts in the exercise of the  
2 power granted by this section shall be owned by the company, but  
3 shall not be chargeable with liabilities arising out of any other  
4 business the company may conduct except and to the extent  
5 provided in the policy, contract, or agreement. The company shall  
6 not hold itself out to be a trustee in respect to these amounts.

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

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

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

37 (e) Unless otherwise approved by the commissioner, assets  
38 allocated to a separate account shall be valued at their market  
39 value, or at amortized cost if it approximates market value within  
40 the limits and constraints imposed by the United States Securities



1 and Exchange Commission, on the date of valuation, or, if there  
2 is no readily available market, then as provided under the terms of  
3 the contract or the rules or other written agreement applicable to  
4 the separate account. Unless otherwise approved by the  
5 commissioner, the portion of any of the assets of the separate  
6 account equal to the company's reserve liability, with regard to the  
7 guaranteed benefits and funds referred to in subdivision (d), shall  
8 be valued in accordance with the rules otherwise applicable to the  
9 company's assets.

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

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

32 (g) Any domestic life insurance company which establishes  
33 one or more separate accounts pursuant to this section may provide  
34 for special voting rights and procedures for participants in the  
35 separate account relating to investment policy, investment  
36 advisory services, and selection of certified public accountants in  
37 relation to the administration of the assets in any separate account.  
38 The voting rights shall be in addition to, and shall not affect, voting  
39 rights of mutual insurers.



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



1 having responsibility for contracts providing variable benefits  
2 stating that the change complies with relevant statutes and  
3 regulations. The commissioner may review the notification to  
4 ensure the continued qualification of the insurer to issue and  
5 deliver those policies and contracts. The commissioner may make  
6 reasonable rules and regulations as he or she considers necessary,  
7 proper, and advisable concerning the issuance and delivery of  
8 these policies and contracts and the payment of benefits thereunder  
9 and the manner in which the separate accounts shall be  
10 administered and which types of policies and contracts, if any,  
11 shall be subject to his or her approval prior to issue. Notification  
12 of any material change shall not be subject to the commissioner's  
13 approval or acknowledgment prior to implementation. The  
14 commissioner shall promulgate on an emergency basis, and in  
15 accordance with the rulemaking provisions of the Administrative  
16 Procedure Act (Chapter 3.5 (commencing with Section 11340) of  
17 Part 1 of Division 3 of Title 2 of the Government Code), a  
18 regulation superseding Insurance Department Bulletin 97-2 that  
19 shall become effective January 1, 2003. Until promulgation of the  
20 regulation, the commissioner and insurers may continue to rely  
21 upon Insurance Department Bulletin 97-2, except that the  
22 commissioner's approval or acknowledgment prior to  
23 implementation of a change to a mutual fund underlying a variable  
24 contract separate account shall not be required on or after January  
25 1, 2003.

26 However, no company may provide variable benefits in its  
27 contracts unless it is an admitted insurer having and maintaining  
28 a combined capital and surplus of at least ten million dollars  
29 (\$10,000,000).

30 For purposes of this section, "affiliated company" has the same  
31 meaning given in paragraph (1) of subsection (g) of Section 6701  
32 of Title 15 of the United States Code.

33 (i) (1) Any contract providing benefits payable in variable  
34 amounts delivered or issued for delivery in this state on or after the  
35 effective date of the amendments to this section enacted at the 1971  
36 Regular Session of the Legislature shall contain a statement of the  
37 essential features of the procedures to be followed by an insurance  
38 company in determining the dollar amount of these variable  
39 benefits. Any contract under which the benefits vary to reflect  
40 investment experience, including a group contract and any



1 certificate in evidence of variable benefits issued thereunder, shall  
2 state that the dollar amount shall so vary, and shall contain on its  
3 first page a statement to the effect that the benefits thereunder are  
4 on a variable basis. Except for Article 3a (commencing with  
5 Section 10159.1) of Chapter 1 of Part 2 of Division 2, in the case  
6 of a variable life insurance policy, and except as otherwise  
7 provided in this section, all pertinent provisions of this code shall  
8 apply to separate accounts and contracts relating thereto. Any  
9 variable life insurance contract, delivered or issued for delivery in  
10 this state on or after the effective date of the amendments to this  
11 section enacted at the 1992 Regular Session of the Legislature,  
12 shall contain such nonforfeiture provisions as are appropriate to  
13 such a contract.

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

18 (j) No insurer shall issue anywhere any group variable life  
19 insurance policy for which the master contractholder or any  
20 covered party is an individual residing in this state or is a  
21 corporation, association, trust, or other legal entity that is either  
22 domiciled in or has its principal place of business in this state,  
23 unless the insurer has become qualified to issue variable life  
24 insurance policies and its group master policy form together with  
25 all forms of certificates or notices thereunder have been approved  
26 by the commissioner. Group variable life insurance policies shall  
27 be issued only to groups referred to in Chapter 2 (commencing  
28 with Section 10200) of Part 2 of Division 2.

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