

AMENDED IN SENATE MARCH 31, 2011

SENATE BILL

No. 621

Introduced by Senator Calderon

February 18, 2011

An act to amend Section 10291.5 of, and to add Section 10116.2 to, the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 621, as amended, Calderon. Insurance: life: disability: discretionary clauses.

Existing law generally regulates life and disability insurance policies, and requires the Insurance Commissioner to disapprove any disability policy for issuance or delivery in this state in specified circumstances.

This bill would provide that if a policy, contract, certificate, or agreement offered, issued, delivered, or renewed, whether or not in California, that provides or funds life insurance or disability insurance coverage for any California resident contains a provision that reserves discretionary authority to the insurer, or an agent of the insurer, to determine eligibility for benefits or coverage, to interpret the terms of the policy, contract, certificate, or agreement, or to provide standards of interpretation or review that are inconsistent with the laws of this state, that provision would be void and unenforceable. The bill would define the term "discretionary authority" for these purposes.

The bill would also require the commissioner to disapprove any disability policy that contains a provision of this type.

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. Section 10116.2 is added to the Insurance Code,
2 to read:

3 10116.2. (a) If a policy, contract, certificate, or agreement
4 offered, issued, delivered, or renewed, whether or not in California,
5 that provides or funds life insurance or disability insurance
6 coverage for any California resident contains a provision that
7 reserves discretionary authority to the insurer, or an agent of the
8 insurer, to determine eligibility for benefits or coverage, to interpret
9 the terms of the policy, contract, certificate, or agreement, or to
10 provide standards of interpretation or review that are inconsistent
11 with the laws of this state, that provision is void and unenforceable.

12 (b) For purposes of this section, “renewed” means continued in
13 force on or after the policy’s anniversary date.

14 (c) For purposes of this section, the term “discretionary
15 authority” means a policy provision that has the effect of conferring
16 discretion on an insurer or other claim administrator to determine
17 entitlement to benefits or interpret policy language that, in turn,
18 could lead to a deferential standard of review by any reviewing
19 court.

20 (d) Nothing in this section prohibits an insurer from including
21 a provision in a contract that informs an insured that as part of its
22 routine operations the insurer applies the terms of its contracts for
23 making decisions, including making determinations regarding
24 eligibility, receipt of benefits and claims, or explaining policies,
25 procedures, and processes, so long as the provision could not give
26 rise to a deferential standard of review by any reviewing court.

27 SEC. 2. Section 10291.5 of the Insurance Code is amended to
28 read:

29 10291.5. (a) The purpose of this section is to achieve both of
30 the following:

31 (1) Prevent, in respect to disability insurance, fraud, unfair trade
32 practices, and insurance economically unsound to the insured.

33 (2) ~~Assure~~ Ensure that the language of all insurance policies
34 can be readily understood and interpreted.

35 (b) The commissioner shall not approve any disability policy
36 for issuance or delivery in this state in any of the following
37 circumstances:

1 (1) If the commissioner finds that it contains any provision, or
2 has any label, description of its contents, title, heading, backing,
3 or other indication of its provisions that is unintelligible, uncertain,
4 ambiguous, or abstruse, or likely to mislead a person to whom the
5 policy is offered, delivered, or issued.

6 (2) If it contains any provision for payment at a rate, or in an
7 amount, other than the product of rate times the periods for which
8 payments are promised, for loss caused by particular event or
9 events, as distinguished from character of physical injury or illness
10 of the insured, more than triple the lowest rate, or amount, promised
11 in the policy for the same loss caused by any other event or events,
12 loss caused by sickness, loss caused by accident, and different
13 degrees of disability each being considered, for the purpose of this
14 paragraph, a different loss; or if it contains any provision for
15 payment for any confining loss of time at a rate more than six times
16 the least rate payable for any partial loss of time or more than twice
17 the least rate payable for any nonconfining total loss of time; or if
18 it contains any provision for payment for any nonconfining total
19 loss of time at a rate more than three times the least rate payable
20 for any partial loss of time.

21 (3) If it contains any provision for payment for disability caused
22 by particular event or events, as distinguished from character of
23 physical injury or illness of the insured, payable for a term more
24 than twice the least term of payment provided by the policy for
25 the same degree of disability caused by any other event or events;
26 or if it contains any benefit for total nonconfining disability payable
27 for lifetime or for more than 12 months and any benefit for partial
28 disability, unless the benefit for partial disability is payable for at
29 least three months; or if it contains any benefit for total confining
30 disability payable for lifetime or for more than 12 months, unless
31 it also contains benefit for total nonconfining disability caused by
32 the same event or events payable for at least three months, and, if
33 it also contains any benefit for partial disability, unless the benefit
34 for partial disability is payable for at least three months. The
35 provisions of this paragraph shall apply separately to accident
36 benefits and to sickness benefits.

37 (4) If it contains provision or provisions that would have the
38 effect, upon any termination of the policy, of reducing or ending
39 the liability as the insurer would have, but for the termination, for
40 loss of time resulting from accident occurring while the policy is

1 in force or for loss of time commencing while the policy is in force
2 and resulting from sickness contracted while the policy is in force
3 or for other losses resulting from accident occurring or sickness
4 contracted while the policy is in force, and also contains provision
5 or provisions reserving to the insurer the right to cancel or refuse
6 to renew the policy, unless it also contains other provision or
7 provisions the effect of which is that termination of the policy as
8 the result of the exercise by the insurer of that right shall not reduce
9 or end the liability in respect to the hereinafter specified losses as
10 the insurer would have had under the policy, including its other
11 limitations, conditions, reductions, and restrictions, had the policy
12 not been so terminated.

13 The specified losses referred to in the preceding paragraph are:

14 (i) Loss of time which commences while the policy is in force
15 and results from sickness contracted while the policy is in force.

16 (ii) Loss of time that commences within 20 days following and
17 results from accident occurring while the policy is in force.

18 (iii) Losses that result from accident occurring or sickness
19 contracted while the policy is in force and arise out of the care or
20 treatment of illness or injury and that occur within 90 days from
21 the termination of the policy or during a period of continuous
22 compensable loss or losses which period commences prior to the
23 end of the 90 days.

24 (iv) Losses other than those specified in clause (i), (ii), or (iii)
25 of this paragraph that result from an accident occurring or sickness
26 contracted while the policy is in force and the losses occur within
27 90 days following the accident or the contraction of the sickness.

28 (5) If by any caption, label, title, or description of contents the
29 policy states, implies, or infers without reasonable qualification
30 that it provides loss of time indemnity for lifetime, or for any period
31 of more than two years, if the loss of time indemnity is made
32 payable only when house confined or only under special
33 contingencies not applicable to other total loss of time indemnity.

34 (6) If it contains any benefit for total confining disability payable
35 only upon condition that the confinement be of an abnormally
36 restricted nature unless the caption of the part containing that
37 benefit is accurately descriptive of the nature of the confinement
38 required and unless, if the policy has a description of contents,
39 label, or title, at least one of them contain reference to the nature
40 of the confinement required.

1 (7) (A) If, irrespective of the premium charged therefor, any
2 benefit of the policy is, or the benefits of the policy as a whole are,
3 not sufficient to be of real economic value to the insured.

4 (B) In determining whether benefits are of real economic value
5 to the insured, the commissioner shall not differentiate between
6 insureds of the same or similar economic or occupational classes
7 and shall give due consideration to all of the following:

8 (i) The right of insurers to exercise sound underwriting judgment
9 in the selection and amounts of risks.

10 (ii) Amount of benefit, length of time of benefit, nature or extent
11 of benefit, or any combination of those factors.

12 (iii) The relative value in purchasing power of the benefit or
13 benefits.

14 (iv) Differences in insurance issued on an industrial or other
15 special basis.

16 (C) To be of real economic value, it shall not be necessary that
17 any benefit or benefits cover the full amount of any loss that might
18 be suffered by reason of the occurrence of any hazard or event
19 insured against.

20 (8) If it substitutes a specified indemnity upon the occurrence
21 of accidental death for any benefit of the policy, other than a
22 specified indemnity for dismemberment, which would accrue prior
23 to the time of that death or if it contains any provision which has
24 the effect, other than at the election of the insured exercisable
25 within not less than 20 days in the case of benefits specifically
26 limited to the loss by removal of one or more fingers or one or
27 more toes or within not less than 90 days in all other cases, of
28 doing any of the following:

29 (A) Of substituting, upon the occurrence of the loss of both
30 hands, both feet, one hand and one foot, the sight of both eyes or
31 the sight of one eye and the loss of one hand or one foot, some
32 specified indemnity for any or all benefits under the policy unless
33 the indemnity so specified is equal to or greater than the total of
34 the benefit or benefits for which the specified indemnity is
35 substituted and which, assuming in all cases that the insured would
36 continue to live, could possibly accrue within four years from the
37 date of such dismemberment under all other provisions of the
38 policy applicable to the particular event or events, as distinguished
39 from character of physical injury or illness, causing the
40 dismemberment.

1 (B) Of substituting, upon the occurrence of any other
2 dismemberment some specified indemnity for any or all benefits
3 under the policy unless the indemnity so specified is equal to or
4 greater than one-fourth of the total of the benefit or benefits for
5 which the specified indemnity is substituted and which, assuming
6 in all cases that the insured would continue to live, could possibly
7 accrue within four years from the date of the dismemberment under
8 all other provisions of the policy applicable to the particular event
9 or events, as distinguished from character of physical injury or
10 illness, causing the dismemberment.

11 (C) Of substituting a specified indemnity upon the occurrence
12 of any dismemberment for any benefit of the policy that would
13 accrue prior to the time of dismemberment.

14 As used in this section, loss of a hand shall be severance at or
15 above the wrist joint, loss of a foot shall be severance at or above
16 the ankle joint, loss of an eye shall be the irrecoverable loss of the
17 entire sight thereof, loss of a finger shall mean at least one entire
18 phalanx thereof and loss of a toe the entire toe.

19 (9) If it contains a provision, other than as provided in Section
20 10369.3, reducing any original benefit more than 50 percent on
21 account of age of the insured.

22 (10) If the insuring clause or clauses contain no reference to the
23 exceptions, limitations, and reductions, if any, or no specific
24 reference to, or brief statement of, each abnormally restrictive
25 exception, limitation, or reduction.

26 (11) If it contains benefit or benefits for loss or losses from
27 specified diseases only unless:

28 (A) All of the diseases so specified in each provision granting
29 the benefits fall within some general classification based upon the
30 following:

31 (i) The part or system of the human body principally subject to
32 all of those diseases.

33 (ii) The similarity in nature or cause of those diseases.

34 (iii) In case of diseases of an unusually serious nature and
35 protracted course of treatment, the common characteristics of all
36 of those diseases with respect to severity of affliction and cost of
37 treatment.

38 (B) The policy is entitled and each provision granting the
39 benefits is separately captioned in clearly understandable words
40 so as to accurately describe the classification of diseases covered

1 and expressly point out, when that is the case, that not all diseases
2 of the classification are covered.

3 (12) If it does not contain a provision for a grace period of at
4 least the number of days specified below for the payment of each
5 premium falling due after the first premium, during which grace
6 period the policy shall continue in force provided, that the grace
7 period to be included in the policy shall be not less than seven days
8 for policies providing for weekly payment of premium, not less
9 than 10 days for policies providing for monthly payment of
10 premium and not less than 31 days for all other policies.

11 (13) Commencing January 1, 2012, if it includes a provision
12 that reserves discretionary authority, as defined by Section 10116.2,
13 to the insurer, or an agent of the insurer, to determine eligibility
14 for benefits or coverage, to interpret the terms of the policy, or to
15 provide standards of interpretation or review that are inconsistent
16 with the laws of this state.

17 (14) If it fails to conform in any respect with any law of this
18 state.

19 (c) The commissioner shall not approve any disability policy
20 covering hospital, medical, or surgical expenses unless the
21 commissioner finds that the application conforms to both of the
22 following requirements:

23 (1) All applications for disability insurance covering hospital,
24 medical, or surgical expenses, except that which is guaranteed
25 issue, which include questions relating to medical conditions, shall
26 contain clear and unambiguous questions designed to ascertain the
27 health condition or history of the applicant.

28 (2) The application questions designed to ascertain the health
29 condition or history of the applicant shall be based on medical
30 information that is reasonable and necessary for medical
31 underwriting purposes. The application shall include a prominently
32 displayed notice that states:

33
34 “California law prohibits an HIV test from being required or
35 used by health insurance companies as a condition of obtaining
36 health insurance coverage.”
37

38 (d) Nothing in this section authorizes the commissioner to
39 establish or require a single or standard application form for
40 application questions.

1 (e) The commissioner may, from time to time as conditions
2 warrant, after notice and hearing, adopt reasonable rules and
3 regulations, and amendments and additions thereto, as are necessary
4 or convenient, to establish, in advance of the submission of
5 policies, the standard or standards conforming to subdivision (b),
6 by which he or she shall disapprove or withdraw approval of any
7 disability policy.

8 In adopting those rules and regulations the commissioner shall
9 give consideration to the criteria herein established and to the
10 desirability of approving for use in policies in this state uniform
11 provisions, nationwide or otherwise, and is hereby granted the
12 authority to consult with insurance authorities of any other state
13 and their representatives individually or by way of convention or
14 committee, to seek agreement upon those provisions.

15 Any such rule or regulation shall be adopted in accordance with
16 the procedure provided in Chapter 3.5 (commencing with Section
17 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

18 (f) The commissioner may withdraw approval of filing of any
19 policy or other document or matter required to be approved by the
20 commissioner, or filed with him or her, by this chapter when the
21 commissioner would be authorized to disapprove or refuse filing
22 of the same if originally submitted at the time of the action of
23 withdrawal.

24 The withdrawal shall be in writing and shall specify the reasons.
25 An insurer adversely affected by ~~any such~~ *the* withdrawal may,
26 within a period of 30 days following mailing or delivery of the
27 writing containing the withdrawal, by written request secure a
28 hearing to determine whether the withdrawal should be annulled,
29 modified, or confirmed. Unless, at any time, it is mutually agreed
30 to the contrary, a hearing shall be granted and commenced within
31 30 days following filing of the request and shall proceed with
32 reasonable dispatch to determination. Unless the commissioner in
33 writing in the withdrawal, or subsequent thereto, grants an
34 extension, the withdrawal shall, in the absence of a request, be
35 effective, prospectively and not retroactively, on the 91st day
36 following the mailing or delivery of the withdrawal, and, if request
37 for the hearing is filed, on the 91st day following mailing or
38 delivery of written notice of the commissioner's determination.

1 (g) No proceeding under this section is subject to Chapter 5
2 (commencing with Section 11500) of Part 1 of Division 3 of Title
3 2 of the Government Code.

4 (h) Except as provided in subdivision (k), any action taken by
5 the commissioner under this section is subject to review by the
6 courts of this state and proceedings on review shall be in
7 accordance with the Code of Civil Procedure.

8 Notwithstanding any other provision of law to the contrary,
9 petition for a review may be filed at any time before the effective
10 date of the action taken by the commissioner. No action of the
11 commissioner shall become effective before the expiration of 20
12 days after written notice and a copy thereof are mailed or delivered
13 to the person adversely affected, and any action so submitted for
14 review shall not become effective for a further period of 15 days
15 after the filing of the petition in court. The court may stay the
16 effectiveness thereof for a longer period.

17 (i) This section shall be liberally construed to effectuate the
18 purpose and intentions herein stated; but shall not be construed to
19 grant the commissioner power to fix or regulate rates for disability
20 insurance or prescribe a standard form of disability policy, except
21 that the commissioner shall prescribe a standard supplementary
22 disclosure form for presentation with all disability insurance
23 policies, pursuant to Section 10603.

24 (j) This section shall be effective on and after July 1, 1950, as
25 to all policies thereafter submitted and on and after January 1,
26 1951, the commissioner may withdraw approval pursuant to
27 subdivision (d) of any policy thereafter issued or delivered in this
28 state irrespective of when its form may have been submitted or
29 approved, and prior to those dates the provisions of law in effect
30 on January 1, 1949, shall apply to those policies.

31 (k) Any policy issued by an insurer to an insured on a form
32 approved by the commissioner, and in accordance with the
33 conditions, if any, contained in the approval, at a time when that
34 approval is outstanding shall, as between the insurer and the
35 insured, or any person claiming under the policy, be conclusively
36 presumed to comply with, and conform to, this section.