

AMENDED IN ASSEMBLY JUNE 16, 2011

AMENDED IN SENATE MARCH 31, 2011

**SENATE BILL**

**No. 621**

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**Introduced by Senator Calderon**

February 18, 2011

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An act to ~~amend Section 10291.5 of, and to add Section 10116.2 to,~~  
*add Section 10110.6 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 authorize the commissioner to adopt regulations to implement these provisions.*

~~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 10110.6 is added to the Insurance Code,  
 2     to read:  
 3     10110.6. (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  
 9     interpret the terms of the policy, contract, certificate, or agreement,  
 10    or to provide standards of interpretation or review that are  
 11    inconsistent with the laws of this state, that provision is void and  
 12    unenforceable.  
 13    (b) For purposes of this section, “renewed” means continued  
 14    in force on or after the policy’s anniversary date.  
 15    (c) For purposes of this section, the term “discretionary  
 16    authority” means a policy provision that has the effect of  
 17    conferring discretion on an insurer or other claim administrator  
 18    to determine entitlement to benefits or interpret policy language  
 19    that, in turn, could lead to a deferential standard of review by any  
 20    reviewing court.  
 21    (d) Nothing in this section prohibits an insurer from including  
 22    a provision in a contract that informs an insured that as part of  
 23    its routine operations the insurer applies the terms of its contracts  
 24    for making decisions, including making determinations regarding  
 25    eligibility, receipt of benefits and claims, or explaining policies,  
 26    procedures, and processes, so long as the provision could not give  
 27    rise to a deferential standard of review by any reviewing court.  
 28    (e) This section applies to both group and individual products.  
 29    (f) The commissioner may adopt regulations to implement this  
 30    section.  
 31    (g) This section is self-executing. If a life insurance or disability  
 32    insurance policy, contract, certificate, or agreement contains a  
 33    provision rendered void and unenforceable by this section, the  
 34    parties to the policy, contract, certificate, or agreement and the  
 35    courts shall treat that provision as void and unenforceable.

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) Ensure that the language of all insurance policies can be  
34 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:

38 (1) If the commissioner finds that it contains any provision, or  
39 has any label, description of its contents, title, heading, backing,  
40 or other indication of its provisions that is unintelligible, uncertain,

1 ambiguous, or abstruse, or likely to mislead a person to whom the  
2 policy is offered, delivered, or issued.

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

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

34 ~~(4) If it contains provision or provisions that would have the  
35 effect, upon any termination of the policy, of reducing or ending  
36 the liability as the insurer would have, but for the termination, for  
37 loss of time resulting from accident occurring while the policy is  
38 in force or for loss of time commencing while the policy is in force  
39 and resulting from sickness contracted while the policy is in force  
40 or for other losses resulting from accident occurring or sickness~~

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

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

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

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

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

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

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

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

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

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

5     ~~(i) The right of insurers to exercise sound underwriting judgment~~  
6     ~~in the selection and amounts of risks.~~

7     ~~(ii) Amount of benefit, length of time of benefit, nature or extent~~  
8     ~~of benefit, or any combination of those factors.~~

9     ~~(iii) The relative value in purchasing power of the benefit or~~  
10    ~~benefits.~~

11    ~~(iv) Differences in insurance issued on an industrial or other~~  
12    ~~special basis.~~

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

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

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

38    ~~(B) Of substituting, upon the occurrence of any other~~  
39    ~~dismemberment some specified indemnity for any or all benefits~~  
40    ~~under the policy unless the indemnity so specified is equal to or~~

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

8 (C) ~~Of substituting a specified indemnity upon the occurrence~~  
9 ~~of any dismemberment for any benefit of the policy that would~~  
10 ~~accrue prior to the time of dismemberment.~~

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

16 (9) ~~If it contains a provision, other than as provided in Section~~  
17 ~~10369.3, reducing any original benefit more than 50 percent on~~  
18 ~~account of age of the insured.~~

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

23 (11) ~~If it contains benefit or benefits for loss or losses from~~  
24 ~~specified diseases only unless:~~

25 (A) ~~All of the diseases so specified in each provision granting~~  
26 ~~the benefits fall within some general classification based upon the~~  
27 ~~following:~~

28 (i) ~~The part or system of the human body principally subject to~~  
29 ~~all of those diseases.~~

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

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

35 (B) ~~The policy is entitled and each provision granting the~~  
36 ~~benefits is separately captioned in clearly understandable words~~  
37 ~~so as to accurately describe the classification of diseases covered~~  
38 ~~and expressly point out, when that is the case, that not all diseases~~  
39 ~~of the classification are covered.~~

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

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

15     ~~(14) If it fails to conform in any respect with any law of this~~  
16 ~~state.~~

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

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

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

31     ~~—~~  
32     ~~“California law prohibits an HIV test from being required or~~  
33 ~~used by health insurance companies as a condition of obtaining~~  
34 ~~health insurance coverage.”~~

35     ~~—~~  
36     ~~(d) Nothing in this section authorizes the commissioner to~~  
37 ~~establish or require a single or standard application form for~~  
38 ~~application questions.~~

39     ~~(e) The commissioner may, from time to time as conditions~~  
40 ~~warrant, after notice and hearing, adopt reasonable rules and~~

1 regulations, and amendments and additions thereto, as are necessary  
2 or convenient, to establish, in advance of the submission of  
3 policies, the standard or standards conforming to subdivision (b),  
4 by which he or she shall disapprove or withdraw approval of any  
5 disability policy.

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

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

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

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

37 (g) No proceeding under this section is subject to Chapter 5  
38 (commencing with Section 11500) of Part 1 of Division 3 of Title  
39 2 of the Government Code.

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

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

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

21 ~~(j) This section shall be effective on and after July 1, 1950, as~~  
22 ~~to all policies thereafter submitted and on and after January 1,~~  
23 ~~1951, the commissioner may withdraw approval pursuant to~~  
24 ~~subdivision (d) of any policy thereafter issued or delivered in this~~  
25 ~~state irrespective of when its form may have been submitted or~~  
26 ~~approved, and prior to those dates the provisions of law in effect~~  
27 ~~on January 1, 1949, shall apply to those policies.~~

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