

Senate Bill No. 621

Passed the Senate September 6, 2011

Secretary of the Senate

Passed the Assembly August 25, 2011

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2011, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Section 10110.6 to the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

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

Existing law generally regulates life and disability insurance policies.

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 Insurance Commissioner to adopt regulations reasonably necessary to implement these provisions.

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

SECTION 1. Section 10110.6 is added to the Insurance Code, to read:

10110.6. (a) 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 is void and unenforceable.

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

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

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

(e) This section applies to both group and individual products.

(f) The commissioner may adopt regulations reasonably necessary to implement the provisions of this section.

(g) This section is self-executing. If a life insurance or disability insurance policy, contract, certificate, or agreement contains a provision rendered void and unenforceable by this section, the parties to the policy, contract, certificate, or agreement and the courts shall treat that provision as void and unenforceable.

Approved _____, 2011

Governor