

AMENDED IN ASSEMBLY JUNE 21, 2012

AMENDED IN SENATE MARCH 26, 2012

SENATE BILL

No. 1212

Introduced by Senator Calderon

February 22, 2012

An act to ~~amend~~ *add* Section ~~10110.1~~ of 10271.2 to the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 1212, as amended, Calderon. Insurance.

Existing law governs the business of insurance, and defines various types of insurance for these purposes, including life insurance and disability insurance. Existing law generally makes the requirements imposed on disability insurance contracts inapplicable to life insurance, endowment, and annuity contracts, or supplemental contracts thereto, that provide additional benefits in case of death or dismemberment or loss of sight by accident, operate to safeguard contracts against lapse, or give a special surrender value, a special benefit, or an annuity if the insured or annuitant becomes totally or permanently disabled.

This bill would specify that the term "special benefit" for purposes of those provisions includes an accelerated death benefit if some of all of the death benefit of a life insurance contract is paid to the insured upon the occurrence of certain qualifying events, including if the insured requires continuous confinement in an eligible institution.

Existing law requires supplemental contracts or, if a supplemental contract is an integral part of a life insurance contract, life insurance contracts to be submitted for approval by the Insurance Commissioner before the contracts are delivered or issued for delivery in this state.

This bill would require a life insurance contract or supplemental contract that includes an accelerated death benefit that is submitted for approval by the Insurance Commissioner to be submitted for approval with specified additional information, including a statement of the types of policy forms with which the benefit will be offered.

~~Existing law provides that an individual has an unlimited insurable interest in his or her own life, health, and bodily safety and may lawfully take out a policy of insurance on his or her own life, health, or bodily safety and have the policy made payable to whomsoever he or she pleases, regardless of whether the beneficiary designated has an insurable interest, as specified:~~

~~Existing law defines “stranger-originated life insurance,” also referred to as “STOLI,” as an act, practice, or arrangement to initiate the issuance of a life insurance policy in this state for the benefit of a third-party investor who, at the time of policy origination, has no insurable interest, under the laws of this state, in the life of the insured.~~

~~This bill would exclude “stranger-originated life insurance” from the provision authorizing an individual to lawfully take out a policy of insurance on his or her own life, health, or bodily safety and have the policy made payable to whomsoever he or she pleases, regardless of whether the beneficiary designated has an insurable interest.~~

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

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

1 SECTION 1. Section 10271.2 is added to the Insurance Code,
2 to read:

3 10271.2. (a) The term “special benefit,” as used in this
4 chapter, includes an accelerated death benefit if some or all of the
5 death benefit of a life insurance contract is paid to the insured
6 upon the occurrence of any of the following qualifying events:

7 (1) The insured develops a medical condition that is reasonably
8 expected to result in a drastically limited life span, as defined in
9 the contract or supplemental contract, but not defined in a way to
10 require a life span of less than six months but not providing benefits
11 for a life span of more than 24 months.

12 (2) The insured requires continuous confinement in an eligible
13 institution, as defined in the contract or supplemental contract,
14 and is expected to remain there for the rest of his or her life.

1 (3) *The insured requires extraordinary medical intervention,*
2 *such as a major organ transplant or continuous artificial life*
3 *support, without which he or she would die.*

4 (4) *The insured has a medical condition that, in the absence of*
5 *extensive or extraordinary medical treatment, would result in a*
6 *drastically reduced life span.*

7 (5) *The insured has a chronic illness, defined in the contract or*
8 *supplemental contract as a permanent inability to perform, without*
9 *substantial assistance from another individual, more than three*
10 *out of six activities of daily living, or permanent severe cognitive*
11 *impairment or similar forms of dementia.*

12 (b) *A life insurance contract or supplemental contract submitted*
13 *for approval of the commissioner pursuant to Section 10292 shall*
14 *be submitted with the following additional information if the*
15 *contract includes an accelerated death benefit:*

16 (1) *A statement of the types of policy forms with which this*
17 *benefit will be offered, any underwriting restrictions involving*
18 *face amount or age, and whether the benefit is intended for use*
19 *with new issues or in force business.*

20 (2) *A specimen issue of the statement regarding the effect of*
21 *accelerated death benefit payment on other benefit provisions, to*
22 *be provided to the owner prior to, or concurrent with, the election*
23 *of the accelerated death benefit option, and an explanation of how*
24 *and when the statement will be provided. The statement shall*
25 *demonstrate the effect of the acceleration of the death benefit on*
26 *the policy cash value, death benefit, premium, cost of insurance*
27 *charges, and loans and liens, as applicable. The statement shall*
28 *be based only on guaranteed values. The statement shall also*
29 *include a disclosure that receipt of an accelerated death benefit*
30 *may affect eligibility for Medicaid or other governmental benefits*
31 *or entitlements and may have tax consequences.*

32 (3) *An actuarial memorandum prepared, dated, and signed by*
33 *the member of the American Academy of Actuaries that includes*
34 *the following information:*

35 (A) *A description of the accelerated death benefit, including the*
36 *effects of payment of the accelerated death benefit on all policy*
37 *benefits, premium payments, cost of insurance rates, and values,*
38 *including any outstanding loan, if applicable, for all types of forms*
39 *with which the accelerated death benefit will be used.*

1 (B) A description of, and justification for, expense charges
2 associated with the accelerated death benefit and the maximum
3 expense charges.

4 (C) A description of the interest rate or interest rate
5 methodology used in any present value calculation or in accruing
6 interest on the amount of the accelerated death benefit, which shall
7 not exceed the greater of: (i) The current yield on 90-day treasury
8 bills, or (ii) A variable rate determined in accordance with the
9 National Association of Insurance Commissioners (NAIC) Model
10 Policy Loan Interest Rate Bill No. 590.

11 (D) A description of the mortality basis and methodology,
12 including the period of time applicable to any mortality discount,
13 used in any present value calculation of the accelerated death
14 benefit.

15 (E) A description of the mortality and morbidity basis and
16 methodology used in the determination of any separate premium
17 or costs of insurance for the accelerated death benefit.

18 (F) The formula used to determine the accelerated death benefit,
19 including any limitations on the amount of the benefit, and the
20 formula used to determine the postacceleration premium.

21 (G) A sample calculation of the accelerated death benefit. If the
22 policy contains a loan provision, the example shall assume that
23 there is an outstanding loan at date of acceleration. All policy
24 benefits, premium payments, cost of insurance charges and values,
25 including the outstanding loan, if applicable, immediately before
26 and immediately after acceleration shall be shown in the example.

27 (H) If an accelerated death benefit may be paid in installments,
28 the basis used in the calculation of the minimum periodic payment
29 for the payment period and a sample calculation of a minimum
30 periodic payment, and the basis used and a sample calculation of
31 the lump sum payable if the insured dies before all periodic
32 payments for the payment period are made.

33 (I) For any accelerated death benefit of the type other than a
34 terminal illness, a certification that the value and premium of the
35 accelerated death benefit is incidental to the life coverage.

36 ~~SECTION 1. Section 10110.1 of the Insurance Code is~~
37 ~~amended to read:~~

38 ~~10110.1. (a) An insurable interest, with reference to life and~~
39 ~~disability insurance, is an interest based upon a reasonable~~
40 ~~expectation of pecuniary advantage through the continued life,~~

1 health, or bodily safety of another person and consequent loss by
2 reason of that person's death or disability or a substantial interest
3 engendered by love and affection in the case of individuals closely
4 related by blood or law.

5 (b) ~~An individual has an unlimited insurable interest in his or
6 her own life, health, and bodily safety and may lawfully take out
7 a policy of insurance on his or her own life, health, or bodily safety
8 and have the policy made payable to whomsoever he or she pleases,
9 regardless of whether the beneficiary designated has an insurable
10 interest, except for a policy that qualifies as "stranger-originated
11 life insurance" as defined in Section 10113.1.~~

12 (e) ~~Except as provided in Section 10110.4, an employer has an
13 insurable interest, as referred to in subdivision (a), in the life or
14 physical or mental ability of any of its directors, officers, or
15 employees or the directors, officers, or employees of any of its
16 subsidiaries or any other person whose death or physical or mental
17 disability might cause financial loss to the employer; or, pursuant
18 to any contractual arrangement with any shareholder concerning
19 the reacquisition of shares owned by the shareholder at the time
20 of his or her death or disability, on the life or physical or mental
21 ability of that shareholder for the purpose of carrying out the
22 contractual arrangement; or, pursuant to any contract obligating
23 the employer as part of compensation arrangements or pursuant
24 to a contract obligating the employer as guarantor or surety, on
25 the life of the principal obligor. The trustee of an employer or
26 trustee of a pension, welfare benefit plan, or trust established by
27 an employer providing life, health, disability, retirement, or similar
28 benefits to employees and retired employees of the employer or
29 its affiliates and acting in a fiduciary capacity with respect to those
30 employees, retired employees, or their dependents or beneficiaries
31 has an insurable interest in the lives of employees and retired
32 employees for whom those benefits are to be provided. The
33 employer shall obtain the written consent of the individual being
34 insured.~~

35 (d) ~~Trusts and special purpose entities that are used to apply for
36 and initiate the issuance of policies of insurance for investors,
37 where one or more beneficiaries of those trusts or special purpose
38 entities do not have an insurable interest in the life of the insured,
39 violate the insurable interest laws and the prohibition against
40 wagering on life.~~

- 1 ~~(e) Any device, scheme, or artifice designed to give the~~
2 ~~appearance of an insurable interest where there is no legitimate~~
3 ~~insurable interest violates the insurable interest laws.~~
- 4 ~~(f) An insurable interest shall be required to exist at the time~~
5 ~~the contract of life or disability insurance becomes effective, but~~
6 ~~need not exist at the time the loss occurs.~~
- 7 ~~(g) Any contract of life or disability insurance procured or~~
8 ~~caused to be procured upon another individual is void unless the~~
9 ~~person applying for the insurance has an insurable interest in the~~
10 ~~individual insured at the time of the application.~~
- 11 ~~(h) Notwithstanding subdivisions (a), (f), and (g), a charitable~~
12 ~~organization that meets the requirements of Section 214 or 23701d~~
13 ~~of the Revenue and Taxation Code may effectuate life or disability~~
14 ~~insurance on an insured who consents to the issuance of that~~
15 ~~insurance.~~
- 16 ~~(i) This section shall not be interpreted to define all instances~~
17 ~~in which an insurable interest exists.~~