

AMENDED IN ASSEMBLY JUNE 21, 2012

AMENDED IN SENATE APRIL 17, 2012

AMENDED IN SENATE MARCH 29, 2012

**SENATE BILL**

**No. 1449**

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**Introduced by Senator Calderon**

February 24, 2012

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An act to amend Sections 10271 and 10292 of, and to add Sections 101.5 and 101.6 to Section 10271.5 to, the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 1449, as amended, Calderon. Life insurance and annuities.

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 and permanently disabled.*

~~This bill would provide that a life insurance policy that includes accelerated payment of part or all of the death benefits, a waiver of a premium benefit, or a waiver of surrender charges, as specified, or an annuity that includes a waiver of surrender charges, shall be deemed to be life insurance or annuity coverage, as applicable and shall not be subject to provisions governing disability, health, or long-term care insurance, unless those provisions also apply to life insurance or~~

~~annuities, as applicable.~~ *instead make those provisions inapplicable to provisions and supplemental contracts that operate to safeguard against lapse, or give a special surrender value, benefit, or annuity, if the owner, insured, annuitant, or beneficiary meets certain benefit triggers. The bill would specify that the provisions or supplemental contracts that operate to safeguard life insurance contracts against lapse include a waiver of a premium benefit or monthly deduction benefit when the insured becomes totally disabled, as specified, and would define the term “special surrender value” for purposes of those provisions. The bill would require those provisions and supplemental contracts to contain certain provisions, including information on giving notice of a claim.*

*Existing law requires a supplemental contract described above, or, if the supplemental contract is an integral part of a contract of life insurance the entire contract, to be submitted to the Insurance Commissioner for approval, and prohibits the commissioner from approving a contract under certain circumstances, including if the contract contains any provision that is likely to mislead a person to whom the policy is offered, delivered, or issued.*

*This bill would require, if a supplemental contract is an integral part of an annuity contract, the entire contract to be submitted to the commissioner for approval. The bill would also prohibit the commissioner from approving a contract or supplemental contract if it contains any provision that the products constitute long-term care or disability insurance or provide long-term care coverage or disability benefits.*

*The bill would require the Department of Insurance, by January 1, 2014, to submit a report to the Legislature on the number and type of contracts and supplemental contracts approved or disapproved by the commissioner pursuant to the bill’s provisions.*

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 of the Insurance Code is amended
- 2     to read:
- 3     10271. (a) Except as ~~provided set forth in Section 10292~~ this
- 4     section, this chapter shall not apply to, or in any way affect,
- 5     provisions in life insurance, endowment, or annuity contracts, or

1 ~~contracts supplemental thereto which contain only such provisions~~  
2 ~~relating to disability insurance as (a), that provide additional~~  
3 ~~benefits in case of death or dismemberment or loss of sight by~~  
4 ~~accident, or as (b) that operate to safeguard such those contracts~~  
5 ~~against lapse, as described in subdivision (a) of Section 10271.5,~~  
6 ~~or to give a special surrender value, or as defined in subdivision~~  
7 ~~(b) of Section 10271.5, a special benefit, or an annuity, in the event~~  
8 ~~that the owner, insured or, annuitant shall become totally and~~  
9 ~~permanently disabled as defined by the contract or supplemental~~  
10 ~~contract, or beneficiary, as applicable, meets the benefit triggers~~  
11 ~~specified in the life insurance or annuity contract or a rider,~~  
12 ~~amendment, or endorsement attached to the contract.~~

13 *(b) (1) A provision or supplemental contract described in*  
14 *subdivision (a) shall contain all of the provisions set forth in*  
15 *paragraph (2). However, an insurer, at its option, may substitute*  
16 *for one or more of the provisions a corresponding provision of*  
17 *different wording approved by the commissioner that is not less*  
18 *favorable in any respect to the insurer or the beneficiary.*

19 *(2) The provisions required to be included in a provision or*  
20 *supplemental contract pursuant to this subdivision shall be in the*  
21 *following form:*

22  
23 *ENTIRE CONTRACT: CHANGES: This provision or*  
24 *supplemental contract, including any endorsement and attached*  
25 *papers, constitutes the entire provision or supplemental contract.*  
26 *No change in the provision or supplemental contract shall be valid*  
27 *until approved by an executive officer of the insurer that is*  
28 *endorsed on or attached to the contract. No agent has authority*  
29 *to change the provision or supplemental contract or to waive any*  
30 *of its provisions.*

31 *REINSTATEMENT: If there is a separate premium charged for*  
32 *the provision or supplemental contract, and if that premium is not*  
33 *paid on time, and if the insurer or its agent subsequently accepts*  
34 *the premium, the insurer shall, without requiring an application*  
35 *for reinstatement, reinstate the provision or supplemental contract.*

36 *NOTICE OF CLAIM: Written notice of claim must be given to*  
37 *the insurer within 20 days after an occurrence covered by the*  
38 *provision or supplemental contract, or commencement of any loss*  
39 *covered by the provision or supplemental contract, or as soon*  
40 *thereafter as is reasonably possible. Notice given by or on behalf*

1 of the insured or the beneficiary to the insurer at  
2 [address/telephone number], or to any authorized agent of the  
3 insurer, with information sufficient to identify the insured, shall  
4 be deemed notice to the insurer.

5 *CLAIM FORMS:* The insurer, upon receipt of a notice of claim,  
6 will furnish to the claimant such forms as are usually furnished  
7 by it for filing a proof of occurrence or a proof of loss. If the forms  
8 are not furnished within 15 days after giving notice, the claimant  
9 shall be deemed to have complied with the requirements of this  
10 policy as to proof of occurrence or proof of loss upon submitting,  
11 within the time fixed in the policy for filing proof of occurrence or  
12 proof of loss, written proof covering the character and the extent  
13 of the occurrence or loss.

14 *PROOF OF LOSS:* Written proof of occurrence or proof of loss  
15 must be furnished to the insurer at its office in case of claim for  
16 occurrence or loss for which this provision or supplemental  
17 contract provides a benefit within 90 days after the termination  
18 of the period for which the insurer is liable, and, in the case of  
19 claim for any other occurrence or loss, within 90 days after the  
20 date of the occurrence or loss. Failure to furnish proof within the  
21 time required shall not invalidate or reduce the claim if it was not  
22 reasonably possible to give proof within the time, provided proof  
23 is furnished as soon as reasonably possible and, except in the  
24 absence of legal capacity, no later than one year from the time  
25 proof is otherwise required.

26 *PHYSICAL EXAMINATIONS:* The insurer, at its own expense,  
27 shall have the right and opportunity to examine the person of the  
28 insured when and as often as the insurer may reasonably require  
29 during the pendency of a claim.  
30

31 (c) The commissioner shall review contracts and supplemental  
32 contracts to ensure that the language can be readily understood  
33 and interpreted, and shall not approve any contract or  
34 supplemental contract for insurance or delivery in this state if the  
35 commissioner finds that the contract or supplemental contract  
36 does any of the following:

37 (1) Contains any provision, label, description of its contents,  
38 title, heading, backing, or other indication of its provisions that  
39 is unintelligible, uncertain, ambiguous, or abstruse, or likely to

1 *mislead a person to whom the contract or supplemental contract*  
2 *is offered, delivered, or issued.*

3 *(2) Constitutes fraud, unfair trade practices, and insurance*  
4 *economically unsound to the owner, insured, annuitant, or*  
5 *beneficiary, as applicable.*

6 *(3) Contains any provision, label, description of its contents,*  
7 *title, heading, backing, or other indication of its provisions that*  
8 *the products constitute long-term care or disability insurance or*  
9 *provide long-term care coverage or disability benefits.*

10 *(d) If the commissioner notifies the insurer, in writing, that the*  
11 *filed form does not comply with the requirements of law and*  
12 *specifies the reasons for his or her opinion, it is unlawful for an*  
13 *insurer to issue any policy in that form.*

14 *SEC. 2. Section 10271.5 is added to the Insurance Code, to*  
15 *read:*

16 *10271.5. (a) (1) Provisions or supplemental contracts that*  
17 *operate to safeguard life insurance contracts against lapse include,*  
18 *but are not limited to, a waiver of premium benefit or a waiver of*  
19 *monthly deduction benefit, as applicable, in which the insurer*  
20 *waives the premium or monthly deduction for a life insurance*  
21 *contract when the insured becomes totally disabled, as defined in*  
22 *the contract or supplemental contract, and where the waiver*  
23 *continues until the end of the insured's disability, or until the*  
24 *attainment of an age established by the insurer.*

25 *(2) For purposes of this subdivision, total disability shall not*  
26 *be less favorable to the insured than the following:*

27 *(A) During the first 24 months of total disability, the insured is*  
28 *unable to perform with reasonable continuity the substantial and*  
29 *material duties of his or her job due to sickness or bodily injury.*

30 *(B) After the first 24 months of total disability, the insured, due*  
31 *to sickness or bodily injury, is unable to engage with reasonable*  
32 *continuity in any other job in which he or she could reasonably*  
33 *be expected to perform satisfactorily in light of his or her age,*  
34 *education, training, experience, station in life, or physical and*  
35 *mental capacity.*

36 *(3) The definition of total disability may also include*  
37 *presumptive total disability, such as the insured's total and*  
38 *permanent loss of sight of both eyes, hearing of both ears, speech,*  
39 *the use of both hands, both feet, or one hand and one foot.*

1 (4) The total disability shall be required to continue for a  
2 consecutive period of time specified in the contract or supplemental  
3 contract.

4 (5) The insurer may provide exclusions based on injuries or  
5 illness that were intentionally self-inflicted or the product of  
6 reckless or illegal conduct.

7 (6) The waiver of premium or monthly deduction benefit shall  
8 continue for the period specified in the contract or supplemental  
9 contract, but shall not be less favorable to the insured than the  
10 following:

11 (A) If the insured's total disability begins before the insured  
12 attains 60 years of age, the company shall waive all premiums or  
13 monthly deductions due for the period of the total disability, and  
14 if the total disability extends to the insured's attainment of 65 years  
15 of age, the company shall waive all further premiums or monthly  
16 deductions due.

17 (B) If the insured's total disability begins after the age specified  
18 in subparagraph (A), the company shall waive all premiums or  
19 monthly deductions due for the period that the insured continues  
20 to be totally disabled up to 65 years of age.

21 (b) "Special surrender value" includes a "waiver of surrender  
22 charge benefit" wherein the insurer waives the surrender charge  
23 usually charged for a withdrawal of funds from the cash value of  
24 a life insurance contract or the account value of an annuity  
25 contract if the owner, insured, annuitant, or beneficiary, as  
26 applicable, meets any of the following criteria:

27 (1) Develops any medical condition where the annuitant or  
28 policy owner's life expectancy is expected to be less than or equal  
29 to a limited period of time that shall not be restricted to a period  
30 of less than six months.

31 (2) Is receiving, as prescribed by a physician and surgeon,  
32 registered nurse, or licensed social worker, home care or  
33 community-based services, as defined in subdivision (a) of Section  
34 10232.9, or is confined in a skilled nursing facility, convalescent  
35 nursing home, or extended care facility, which shall not be defined  
36 more restrictively than as in the Medicare Program, or is confined  
37 in a residential care facility or residential care facility for the  
38 elderly, as defined in Section 1569.2 of the Health and Safety Code.  
39 Out-of-state providers of services shall be defined as comparable  
40 in licensure and staffing requirements to California providers.

1 (3) *Has a medical condition that may reduce his or her life*  
2 *expectancy.*

3 (4) *Becomes confined in an eligible institution, as defined in*  
4 *the contract or supplemental contract, because he or she needs*  
5 *extraordinary medical intervention.*

6 (5) *Is totally disabled and unable to perform any work for pay*  
7 *or profit for a period of time specified in the contract or*  
8 *supplemental contract.*

9 (6) *Is disabled and is prevented from engaging in the substantial*  
10 *and material duties of an occupation for which she or he becomes*  
11 *qualified by reason of education or training or for a period*  
12 *specified in the contract, not to exceed 12 months.*

13 (7) *Has a chronic illness, defined as a permanent inability to*  
14 *perform a specified number of activities of daily living, or has a*  
15 *permanent severe cognitive impairment or a similar form of*  
16 *dementia.*

17 (8) *Has become involuntarily or voluntarily unemployed.*

18 (d) *The department shall report to the Legislature by January*  
19 *1, 2014, the number and type of contracts and supplemental*  
20 *contracts approved or disapproved under this section. The report*  
21 *shall include, by category of policy and the feature involved, a*  
22 *statement of the reasons for disapproval. The report shall not*  
23 *include the identity of any insurer, specific contract language, or*  
24 *any proprietary language.*

25 (e) (1) *The requirement for submitting a report imposed under*  
26 *subdivision (d) is inoperative on January 1, 2018, pursuant to*  
27 *Section 10231.5 of the Government Code.*

28 (2) *The report submitted pursuant to subdivision (d) shall*  
29 *comply with Section 9795 of the Government Code.*

30 SEC. 3. *Section 10292 of the Insurance Code is amended to*  
31 *read:*

32 10292. (a) ~~A supplemental contract of the kind mentioned in~~  
33 ~~described in Section 10271 shall not be delivered or issued for~~  
34 ~~delivery to any person in this-State state until a copy of the form~~  
35 ~~thereof is submitted to, and approved by, the commissioner. If~~  
36 ~~such the supplemental contract is an integral part of a contract of~~  
37 ~~life insurance or annuity, the entire contract shall be submitted to~~  
38 ~~the commissioner, but his power of approval or disapproval is~~  
39 ~~limited to the supplemental portion described in such section and~~

1 ~~such any other portions as that~~ relate to ~~such the~~ supplemental  
2 portion. ~~The~~

3 (b) ~~The~~ commissioner may ~~make adopt~~ reasonable rules and  
4 regulations concerning the provisions in such contracts and their  
5 submission to and approval by him as are necessary, advisable or  
6 convenient to enforce the standards set forth in this chapter found  
7 by him to be applicable to any such supplemental contract;  
8 provided, however, that none of the standards set forth in Section  
9 10291.5 except those in subsections (a) and (b)(1) thereof, shall  
10 be deemed applicable to such supplemental contract *to administer*  
11 *and carry out the purposes of Sections 10271 and 10271.5, and*  
12 *this section.*

13 SECTION 1. ~~Section 101.5 is added to the Insurance Code, to~~  
14 ~~read:~~

15 101.5. ~~If a policy of life insurance includes any of the following~~  
16 ~~provisions, the policy shall be deemed to be life insurance and~~  
17 ~~shall not be subject to provisions governing disability, health, or~~  
18 ~~long-term care insurance unless those provisions also apply to life~~  
19 ~~insurance:~~

20 (a) ~~Accelerated payment of part or all of the death benefits if~~  
21 ~~an insured becomes confined in an eligible institution; needs~~  
22 ~~extraordinary medical intervention; has a medical condition that,~~  
23 ~~in the absence of extensive or extraordinary medical treatment,~~  
24 ~~would result in a drastically reduced life span; is unable to perform~~  
25 ~~a specified number of activities of daily living; or is cognitively~~  
26 ~~impaired.~~

27 (b) ~~Waiver of premium benefit until the end of disability of the~~  
28 ~~insured or the attainment of an age as established by the insurer.~~

29 (c) ~~Waiver of surrender charges if the insured has been~~  
30 ~~diagnosed with a limited life expectancy, is receiving care from a~~  
31 ~~health care facility, has a medical condition that may reduce his~~  
32 ~~or her life expectancy, is disabled and unable to perform tasks of~~  
33 ~~daily living or be employed, or is cognitively impaired.~~

34 SEC. 2. ~~Section 101.6 is added to the Insurance Code, to read:~~

35 101.6. ~~If an annuity includes a waiver of surrender charges for~~  
36 ~~an annuitant or beneficiary who is diagnosed with a limited life~~  
37 ~~expectancy, is receiving care from a health care facility, has a~~  
38 ~~medical condition that may reduce his or her life expectancy, is~~  
39 ~~disabled and unable to perform tasks of daily living or be~~  
40 ~~employed, or is cognitively impaired, the annuity shall be deemed~~

- 1 ~~to be annuity coverage and shall not be subject to provisions~~
- 2 ~~governing disability, long-term care, and health insurance, unless~~
- 3 ~~those provisions also apply to annuities.~~

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