

AMENDED IN ASSEMBLY AUGUST 6, 2012

AMENDED IN ASSEMBLY JUNE 21, 2012

AMENDED IN SENATE APRIL 17, 2012

AMENDED IN SENATE MARCH 29, 2012

SENATE BILL

No. 1449

Introduced by Senator Calderon

February 24, 2012

An act to amend Sections *10110.5*, 10271, and 10292 of, and to add Section ~~10271.5~~ *10271.1* 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 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, or 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~~ *are defined as* 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~~” *benefit*” 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. *The bill would authorize a contract or supplemental contract issued by an admitted life and disability insurer to contain a provision for a waiver of a special surrender benefit for a life insurance or annuity contract in the event of voluntary or involuntary unemployment of the owner, insured, or annuitant.*

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 specify that a provision or supplemental contract that operates to safeguard a life insurance contract from lapse or includes a special surrender benefit shall be considered an integral part of a contract and would require the insurer to submit, for information purposes, a sample copy of the life insurance or annuity contract with which the supplemental contract will be used in order to facilitate the review of the supplemental contract.* 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~~ *prohibit a provision or supplemental contract that contains any title, description, or any other indication that would describe or imply that the policy or supplemental contract provides long-term care coverage, and would require a provision or supplemental contract to specify any applicable exclusions, which the bill would limit, as provided.*

~~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: yes.
State-mandated local program: no.

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

1 **SECTION 1.** *Section 10110.5 of the Insurance Code is amended*
2 *to read:*

3 10110.5. (a) A policy or endorsement issued by an admitted
4 life and disability insurer may contain a provision for a waiver of
5 premium payments in the event of involuntary unemployment of
6 the insured. Insurers issuing policies or endorsements which
7 contain that provision shall establish any additional reserves and
8 file any additional financial reports that the commissioner may
9 require.

10 (b) *A contract or supplemental contract issued by an admitted*
11 *life and disability insurer may contain a provision for a waiver of*
12 *special surrender benefit for a life insurance or annuity contract*
13 *in the event of voluntary or involuntary unemployment of the*
14 *owner, insured, or annuitant, as applicable. Insurers issuing*
15 *contracts or supplemental contracts which contain that provision*
16 *shall establish any additional reserves and file any additional*
17 *financial reports that the commissioner may require.*

18 **SECTION 1.**

19 **SEC. 2.** *Section 10271 of the Insurance Code is amended to*
20 *read:*

21 10271. (a) Except as set forth in this section, this chapter shall
22 not apply to, or in any way affect, provisions in life insurance,
23 endowment, or annuity contracts, or contracts supplemental thereto,
24 that provide additional benefits in case of death or dismemberment
25 or loss of sight by accident, or that operate to safeguard those
26 contracts against lapse, as described in subdivision (a) of Section
27 ~~10271.5~~ 10271.1, or give a special surrender ~~value~~ benefit, as
28 defined in subdivision (b) of Section ~~10271.5~~ 10271.1, or a special
29 benefit, ~~or an annuity,~~ in the event that the owner, insured, or
30 annuitant, ~~or beneficiary,~~ as applicable, meets the benefit triggers
31 specified in the life insurance or annuity contract ~~or a rider,~~
32 ~~amendment, or endorsement attached to the supplemental contract.~~

33 (b) (1) A provision or supplemental contract described in
34 subdivision (a) shall contain all of the provisions set forth in
35 paragraph (2). However, an insurer, at its option, may substitute
36 for one or more of the provisions a corresponding provision of
37 different wording approved by the commissioner that is not less
38 favorable in any respect to the ~~insurer or the beneficiary~~ owner,

1 *insured, or annuitant, as applicable. The provisions required by*
2 *paragraph (2) shall be preceded individually by the appropriate*
3 *caption as provided in subparagraph (D) of paragraph (2), or, at*
4 *the option of the insurer, by the appropriate individual or group*
5 *captions or subcaptions as the commissioner may approve.*

6 ~~(2) The provisions required to be included in a provision or~~
7 ~~supplemental contract pursuant to this subdivision shall be in the~~
8 ~~following form:~~

9

10 ~~ENTIRE CONTRACT: CHANGES: This provision or~~
11 ~~supplemental contract, including any endorsement and attached~~
12 ~~papers, constitutes the entire provision or supplemental contract.~~
13 ~~No change in the provision or supplemental contract shall be valid~~
14 ~~until approved by an executive officer of the insurer that is~~
15 ~~endorsed on or attached to the contract. No agent has authority to~~
16 ~~change the provision or supplemental contract or to waive any of~~
17 ~~its provisions.~~

18 ~~REINSTATEMENT: If there is a separate premium charged for~~
19 ~~the provision or supplemental contract, and if that premium is not~~
20 ~~paid on time, and if the insurer or its agent subsequently accepts~~
21 ~~the premium, the insurer shall, without requiring an application~~
22 ~~for reinstatement, reinstate the provision or supplemental contract.~~

23 ~~(2) With respect to the benefit standards described in~~
24 ~~subdivisions (a) and (b) of Section 10271.1, the following~~
25 ~~requirements apply to the supplemental contracts with these~~
26 ~~benefits:~~

27

28 ~~(A) Either the contract or supplemental contract shall provide~~
29 ~~that the contract and the supplemental contract constitute the~~
30 ~~entire insurance or annuity contract consistent with paragraph~~
31 ~~(7) of subdivision (c) of Section 2534.3 of Title 10 of the California~~
32 ~~Code of Regulations, and shall also provide that no agent has the~~
33 ~~authority to change the contract or to waive any of its provisions.~~
34 ~~This requirement applies without regard to whether the contract~~
35 ~~is a variable or nonvariable contract, or a group or individual~~
36 ~~contract.~~

37 ~~(B) Either the contract or supplemental contract shall provide~~
38 ~~for reinstatement consistent with paragraph (3) of subdivision (c)~~
39 ~~of Section 2534.3 of Title 10 of the California Code of Regulations.~~
40 ~~This requirement applies without regard to whether the contract~~

1 *is a variable or nonvariable contract, or a group or individual*
2 *contract.*

3 (C) *Supplemental contracts subject to underwriting shall include*
4 *an incontestability statement that provides that the insurer shall*
5 *not contest the supplemental contract after it has been in force*
6 *during the lifetime of the insured for two years from its date of*
7 *issue, and may only be contested based on a statement made in*
8 *the application for the supplemental contract, if the statement is*
9 *attached to the contract. The statement upon which the contest is*
10 *made shall be material to the risk accepted or the hazard assumed*
11 *by the insurer.*

12 (D) *A provision or supplemental contract described in*
13 *subdivision (a) shall include:*

14 **NOTICE**

15 (i) ~~NOTICE OF CLAIM: Written~~ *The insurer may require*
16 *written notice of claim must be given to the insurer within no less*
17 *than 20 days after an occurrence covered by the provision or*
18 *supplemental contract, or commencement of any loss covered by*
19 *the provision or supplemental contract, or as soon thereafter as is*
20 *reasonably possible. Notice given by or on behalf of the insured*
21 *or the beneficiary, as applicable to the insurer at [address/telephone*
22 *number] the insurer's address or telephone number, or to any*
23 *authorized agent of the insurer, with information sufficient to*
24 *identify the insured, shall be deemed notice to the insurer.*

25 **CLAIM**

26 (ii) *CLAIM FORMS: The insurer, upon receipt of a notice of*
27 *claim, will shall furnish to the claimant such forms as are usually*
28 *furnished by it for filing a proof of occurrence or a proof of loss.*
29 *If the forms are not furnished within 15 days after giving notice,*
30 *the claimant shall be deemed to have complied with the*
31 *requirements of this policy the provision or supplemental contract*
32 *as to proof of occurrence or proof of loss upon submitting, within*
33 *the time fixed in the policy provision or supplemental contract for*
34 *filing proof of occurrence or proof of loss, written proof covering*
35 *the character and the extent of the occurrence or loss.*

36 **PROOF**

37 (iii) ~~PROOF OF LOSS: Written~~ *The insurer may require that*
38 *the insured provide written proof of occurrence or proof of loss*
39 *must be furnished to the insurer at its office in case of claim for*
40 *occurrence or loss for which this provision or supplemental contract*

1 provides a benefit within *no less than* 90 days after the termination
 2 of the period for which the insurer is liable, and, in the case of
 3 claim for any other occurrence or loss, within 90 days after the
 4 date of the occurrence or loss. Failure to furnish proof within the
 5 time required shall not invalidate or reduce the claim if it was not
 6 reasonably possible to give proof within the time, provided proof
 7 is furnished as soon as reasonably possible and, except in the
 8 absence of legal capacity, no later than one year from the time
 9 proof is otherwise required.

10 **PHYSICAL**

11 (iv) *PHYSICAL EXAMINATIONS*: The insurer, at its own
 12 expense, shall have the right and opportunity to examine the person
 13 of the insured when and as often as the insurer may reasonably
 14 require during the pendency of a claim.

15
 16 (c) The commissioner shall review contracts and supplemental
 17 contracts to ensure that the language can be readily understood
 18 and interpreted, and shall not approve any contract or supplemental
 19 contract for insurance or delivery in this state if the commissioner
 20 finds that the contract or supplemental contract does any of the
 21 following:

22 (1) Contains any provision, label, description of its contents,
 23 title, heading, backing, or other indication of its provisions that is
 24 unintelligible, uncertain, ambiguous, or abstruse, or likely to
 25 mislead a person to whom the contract or supplemental contract
 26 is offered, delivered, or issued.

27 (2) Constitutes fraud, unfair trade practices, and insurance
 28 economically unsound to the owner, insured, *or* annuitant, ~~or~~
 29 beneficiary, as applicable.

30 ~~(3) Contains any provision, label, description of its contents,
 31 title, heading, backing, or other indication of its provisions that
 32 the products constitute long-term care or disability insurance or
 33 provide long-term care coverage or disability benefits.~~

34 (d) *A provision or supplemental contract described in*
 35 *subdivision (a) shall not contain any title, description, or any other*
 36 *indication that would describe or imply that the policy or*
 37 *supplemental contract provides long-term care coverage.*

38 (e) *Commencing two years from the date of the issuance of the*
 39 *provision or supplemental contract, no claim for loss incurred or*
 40 *disability, as defined in the provision or supplemental contract,*

1 *may be reduced or denied on the grounds that a disease or physical*
2 *condition not excluded from coverage by name or specific*
3 *description effective on the date of loss had existed prior to the*
4 *effective date on the coverage of the provision or supplemental*
5 *contract.*

6 *(f) With regard to benefits set forth in Section 10271.1, the*
7 *provisions and supplemental contracts shall specify any applicable*
8 *exclusions, which shall be limited to the following:*

9 *(1) Total disability caused or substantially contributed to by*
10 *any attempt at suicide or intentionally self-inflicted injury, while*
11 *sane or insane.*

12 *(2) Total disability caused or substantially contributed to by*
13 *war or an act of war, as defined in the exclusion provisions of the*
14 *contract.*

15 *(3) Total disability caused or substantially contributed to by*
16 *active participation in a riot, insurrection, or terrorist activity.*

17 *(4) Total disability caused or substantially contributed to by*
18 *committing or attempting to commit a felony.*

19 *(5) Total disability caused or substantially contributed to by*
20 *voluntary intake of either:*

21 *(A) Any drug, unless prescribed or administered by a physician*
22 *and taken in accordance with the physician's instructions.*

23 *(B) Poison, gas, or fumes, unless they are the direct result of*
24 *an occupational accident.*

25 *(6) Total disability occurring after the policy anniversary or*
26 *supplemental contract anniversary, as applicable and as defined*
27 *in the policy or supplemental contract, on which the insured attains*
28 *a specified age of no less than 65.*

29 *(7) Total disability in consequence of the insured being*
30 *intoxicated, as defined by the jurisdiction where the total disability*
31 *occurred.*

32 *(8) Total disability caused or materially contributed to by*
33 *engaging in an illegal occupation.*

34 ~~(d)~~

35 *(g) If the commissioner notifies the insurer, in writing, that the*
36 *filed form does not comply with the requirements of law and*
37 *specifies the reasons for his or her opinion, it is unlawful for an*
38 *insurer to issue any policy in that form.*

1 ~~SEC. 2.~~

2 ~~SEC. 3.~~ Section ~~10271.5~~ *10271.1* is added to the Insurance
3 Code, to read:

4 ~~10271.5.~~

5 ~~10271.1.~~ (a) (1) Provisions or supplemental contracts that
6 operate to safeguard life insurance contracts against lapse ~~include,~~
7 ~~but are not limited to,~~ *are defined as* a waiver of premium benefit
8 or a waiver of monthly deduction benefit, as applicable, in which
9 the insurer waives the premium or monthly deduction for a life
10 insurance contract when the insured becomes totally disabled, as
11 defined in the contract or supplemental contract, and where the
12 waiver continues until the end of the insured’s disability, or until
13 the attainment of an age established by the insurer.

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

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

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

25 (3) The definition of total disability may also include
26 presumptive total disability, such as the insured’s total and
27 permanent loss of sight of both eyes, hearing of both ears, speech,
28 the use of both hands, both feet, or one hand and one foot.

29 ~~(4) The total disability shall be required to continue for a~~
30 ~~consecutive period of time specified in the contract or supplemental~~
31 ~~contract.~~

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

35 ~~(4) The insurer may require total disability to continue for an~~
36 ~~uninterrupted period of time specified in the contract or~~
37 ~~supplemental contract, or the insurer may allow separate periods~~
38 ~~of disability to be combined.~~

39 ~~(6)~~

1 (5) The waiver of premium or monthly deduction benefit shall
2 continue for the period specified in the contract or supplemental
3 contract, but shall not be less favorable to the insured than the
4 following:

5 (A) If the insured's total disability begins before the insured
6 attains 60 years of age, the ~~company~~ insurer shall waive all
7 premiums or monthly deductions due for the period of the total
8 disability, and if the total disability extends to the insured's
9 attainment of 65 years of age, the ~~company~~ insurer shall waive all
10 further premiums or monthly deductions due.

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

15 (b) ~~“Special surrender value” includes benefit~~ *“waiver of surrender charge benefit”* is defined as a
16 “waiver of surrender charge benefit” wherein the insurer waives
17 the surrender charge usually charged for a withdrawal of funds
18 from the cash value of a life insurance contract or the account
19 value of an annuity contract if the owner, insured, *or annuitant,* ~~or~~
20 ~~beneficiary,~~ as applicable, meets any of the following criteria:

21 (1) Develops any medical condition where the ~~annuitant or~~
22 ~~policy owner's owner's, insured's, or annuitant's~~ life expectancy
23 is expected to be less than or equal to a limited period of time that
24 shall not be restricted to a period of less than ~~six~~ 12 months *or*
25 *greater than 24 months.*

26 (2) Is receiving, as prescribed by a physician and surgeon,
27 registered nurse, or licensed social worker, home care or
28 community-based services, as defined in subdivision (a) of Section
29 10232.9, or is confined in a skilled nursing facility, convalescent
30 nursing home, or extended care facility, which shall not be defined
31 more restrictively than as in the Medicare Program, or is confined
32 in a residential care facility or residential care facility for the
33 elderly, as defined in ~~Section 1569.2~~ of the Health and Safety
34 Code. Out-of-state providers of services shall be defined as
35 comparable in licensure and staffing requirements to California
36 providers.

37 (3) ~~Has a medical condition that may reduce his or her life~~
38 ~~expectancy.~~

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

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

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

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

15 *(3) Has any medical condition that would, in the absence of*
16 *treatment, result in death within a limited period of time, as defined*
17 *in the provision or supplemental contract, but that shall not be*
18 *restricted to a period of less than six months.*

19 *(4) Is totally disabled, as follows:*

20 *(A) During the first 24 months of total disability, the owner,*
21 *insured, or annuitant, as applicable, is unable to perform with*
22 *reasonable continuity the substantial and material duties of his or*
23 *her job due to sickness or bodily injury.*

24 *(B) After the first 24 months of total disability, the owner,*
25 *insured, or annuitant, as applicable, due to sickness or bodily*
26 *injury, is unable to engage with reasonable continuity in any other*
27 *job in which he or she could reasonably be expected to perform*
28 *satisfactorily in light of his or her age, education, training,*
29 *experience, station in life, or physical and mental capacity.*

30 *(C) The definition of total disability may also include*
31 *presumptive total disability, such as the insured's total and*
32 *permanent loss of sight of both eyes, hearing of both ears, speech,*
33 *the use of both hands, both feet, or one hand and one foot.*

34 *(D) The insurer may require the total disability to continue for*
35 *an uninterrupted period of time specified in the contract or*
36 *supplemental contract, or the insurer may allow separate periods*
37 *of disability to be combined.*

38 *(5) Has a chronic illness as defined pursuant to either*
39 *subparagraph (A) or (B):*

40 *(A) Either of the following:*

1 (i) Impairment in performing two out of seven activities of daily
2 living, as set forth in subdivisions (a) and (g) of Section 10232.8,
3 meaning the insured needs human assistance, or needs continual
4 substantial supervision.

5 (ii) The insured has an impairment of cognitive ability, meaning
6 a deterioration or loss of intellectual capacity due to mental illness
7 or disease, including Alzheimer's disease or related illnesses, that
8 requires continual supervision to protect oneself or others.

9 (B) Either of the following:

10 (i) Impairment in performing two out of six activities of daily
11 living as described in subdivisions (b), (d), (e), and (f) of Section
12 10232.8 due to a loss of functional capacity to perform the activity.

13 (ii) Impairment of cognitive ability, meaning the insured needs
14 substantial supervision due to severe cognitive impairment, as
15 described in subdivision (b) of Section 10232.8.

16 (8)

17 (6) 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.~~

31 *SEC. 4.* Section 10292 of the Insurance Code is amended to
32 read:

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

1 **(b)** *A supplemental contract described in Section 10271.1 shall*
2 *be considered an integral part of a contract for purposes of this*
3 *section. To facilitate the review of a supplemental contract, the*
4 *insurer shall submit, for informational purposes, a sample copy*
5 *of the life insurance or annuity contract with which the*
6 *supplemental contract will be used. To facilitate the location of*
7 *the required provisions as stated in paragraph (2) of subdivision*
8 *(b) of Section 10271, the insurer shall provide the sample copy*
9 *page reference for the provisions that appear in the contract.*

10 ~~(b)~~
11 **(c)** The commissioner may adopt reasonable rules and
12 regulations as are necessary to administer and carry out the
13 purposes of Sections 10271 and 10271.5, and this section.