

AMENDED IN ASSEMBLY JUNE 27, 2012

AMENDED IN SENATE MAY 10, 2012

AMENDED IN SENATE MAY 2, 2012

SENATE BILL

No. 1451

Introduced by Senator Calderon

February 24, 2012

An act to amend Sections 11162 and 11163 of, and to add Section 11163.5-10271.2 to, the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 1451, as amended, Calderon. ~~Insurance: fraternal benefit societies: loans.~~ *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 governs the organization of fraternal benefit societies, which, among other characteristics, are nonprofit, incorporated societies, orders, or supreme lodges, without capital stock, conducted solely for the benefit of members and their beneficiaries, have a representative form of government, and make provision for the payment of benefits. Existing law authorizes these entities to provide all forms of life and disability insurance, except as specified. Existing law makes it a felony for any officer, director, agent, or employee of any fraternal benefit society to borrow funds of the society, to become endorser or surety for loans by the society to others, or to be obligor for moneys borrowed or loaned by the society. Existing law also makes it a felony for an officer, trustee, agent, or employee of a fraternal benefit society to ask, receive, or consent or agree to receive anything of value for procuring or endeavoring to procure a loan to any person from the trust funds of, or funds belonging to, a fraternal benefit society.~~

~~This bill would except from these prohibitions, loans made by a fraternal benefit society to a member of the society under certain conditions and loans made to a life licensee, as defined, appointed by the fraternal benefit society, under specified conditions, including that the loan is not made to an officer or director of the society, that the loan is secured and contains a repayment provision in accordance with the industry custom and practice of life insurers for loans to life licensees, and that no officer, director, agent, or employee of the society, other than the life licensee, receives consideration due to the making of the loan. The bill would provide that the loan is to enable the licensee to, among other things, lease an office and pay for other expenses related to selling the society's certificates. The bill would also specify that the loan may be based on a good faith estimate of expenses or reimbursements, but may not cover expenses incurred or estimated to be incurred after 180 days from the date the licensee is appointed, as specified.~~

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.*

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

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

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

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

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

34 (2) *A specimen issue of the statement regarding the effect of*
35 *accelerated death benefit payment on other benefit provisions, to*
36 *be provided to the owner prior to, or concurrent with, the election*
37 *of the accelerated death benefit option, and an explanation of how*
38 *and when the statement will be provided. The statement shall*

1 demonstrate the effect of the acceleration of the death benefit on
2 the policy cash value, death benefit, premium, cost of insurance
3 charges, and loans and liens, as applicable. The statement shall
4 be based only on guaranteed values. The statement shall also
5 include a disclosure that receipt of an accelerated death benefit
6 may affect eligibility for Medicaid or other governmental benefits
7 or entitlements and may have tax consequences.

8 (3) An actuarial memorandum prepared, dated, and signed by
9 a member of the American Academy of Actuaries that includes the
10 following information:

11 (A) A description of the accelerated death benefit, including the
12 effects of payment of the accelerated death benefit on all policy
13 benefits, premium payments, cost of insurance rates, and values,
14 including any outstanding loan, if applicable, for all types of forms
15 with which the accelerated death benefit will be used.

16 (B) A description of, and justification for, expense charges
17 associated with the accelerated death benefit and the maximum
18 expense charges.

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

26 (D) A description of the mortality basis and methodology,
27 including the period of time applicable to any mortality discount,
28 used in any present value calculation of the accelerated death
29 benefit.

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

33 (F) The formula used to determine the accelerated death benefit,
34 including any limitations on the amount of the benefit, and the
35 formula used to determine the postacceleration premium.

36 (G) A sample calculation of the accelerated death benefit. If the
37 policy contains a loan provision, the example shall assume that
38 there is an outstanding loan at date of acceleration. All policy
39 benefits, premium payments, cost of insurance charges and values,

1 *including the outstanding loan, if applicable, immediately before*
2 *and immediately after acceleration shall be shown in the example.*

3 *(H) If an accelerated death benefit may be paid in installments,*
4 *the basis used in the calculation of the minimum periodic payment*
5 *for the payment period and a sample calculation of a minimum*
6 *periodic payment, and the basis used and a sample calculation of*
7 *the lump sum payable if the insured dies before all periodic*
8 *payments for the payment period are made.*

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

12 ~~SECTION 1. Section 11162 of the Insurance Code is amended~~
13 ~~to read:~~

14 ~~11162. Except as provided in Section 11163.5, it is a felony,~~
15 ~~punishable by imprisonment pursuant to subdivision (h) of Section~~
16 ~~1170 of the Penal Code, for any officer, director, agent or employee~~
17 ~~of any fraternal benefit society to, directly or indirectly, for himself~~
18 ~~or as partner or agent of others:~~

19 ~~(a) Borrow any of the funds of such society.~~

20 ~~(b) Become endorser or surety for loans by the society to others.~~

21 ~~(c) In any manner be obligor for moneys borrowed or loaned~~
22 ~~by such society.~~

23 ~~SEC. 2. Section 11163 of the Insurance Code is amended to~~
24 ~~read:~~

25 ~~11163. Except as provided in Section 11163.5, it is a felony,~~
26 ~~punishable by imprisonment pursuant to subdivision (h) of Section~~
27 ~~1170 of the Penal Code, for any officer, trustee, agent or employee~~
28 ~~of a fraternal benefit society to ask, receive, or consent or agree~~
29 ~~to receive anything of value for procuring or endeavoring to~~
30 ~~procure a loan to any person from the trust funds of, or funds~~
31 ~~belonging to, a fraternal benefit society.~~

32 ~~SEC. 3. Section 11163.5 is added to the Insurance Code, to~~
33 ~~read:~~

34 ~~11163.5. Sections 11162 and 11163 shall not prohibit the~~
35 ~~following:~~

36 ~~(a) A loan by a fraternal benefit society to a member made under~~
37 ~~the provisions of a certificate form available to members of the~~
38 ~~society in the ordinary course of the society's business.~~

- 1 ~~(b) A loan to a life licensee, as defined in Section 1626,~~
2 ~~appointed by the fraternal benefit society pursuant to Section 1704,~~
3 ~~if all of the following apply:~~
- 4 ~~(1) The loan is not made, directly or indirectly, to an officer or~~
5 ~~director of the society.~~
- 6 ~~(2) The loan is secured and contains a repayment provision in~~
7 ~~accordance with the industry custom and practice of life insurers~~
8 ~~for loans to life licensees.~~
- 9 ~~(3) No officer, director, agent, or employee of the society, other~~
10 ~~than the life licensee, receives any consideration due to the making~~
11 ~~of the loan.~~
- 12 ~~(4) The loan is to enable the licensee to lease an office, lease or~~
13 ~~purchase office equipment or supplies, or pay for other expenses~~
14 ~~related to selling the society's certificates. The amount of the loan~~
15 ~~may be based on a good faith estimate of expenses, reimbursement~~
16 ~~of expenses, or a combination of these methods. The loan may not~~
17 ~~cover expenses incurred or estimated to be incurred after 180 days~~
18 ~~from the date the licensee is appointed pursuant to Section 1704.~~