

AMENDED IN SENATE MAY 1, 2013  
AMENDED IN SENATE APRIL 1, 2013

**SENATE BILL**

**No. 281**

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**Introduced by Senator Calderon**

February 14, 2013

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An act to amend Sections 10271.1 and 10292 of the Insurance Code, relating to life insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 281, as amended, Calderon. Life 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, *or* that operate to safeguard contracts against lapse, or give a special surrender benefit, or a special benefit, as specified.

This bill would specify that the term “special benefit” for purposes of those provisions means an accelerated death benefit that is added to a life insurance contract to provide for the advance payment of any part of the death proceeds to the insured upon the occurrence of certain qualifying events, including if the insured requires continuous confinement in an eligible institution and is expected to remain there for the rest of his or her life. *The bill would require that any life insurance provision or supplemental contract that provides for a special benefit comply with specified requirements, including, but not limited to, that the provision or supplemental contract specify that the*

*accelerated death benefit is fixed at the time the insurer approves the request for the benefit, and that the provision or supplemental contract is prohibited from restricting the use of the proceeds of the accelerated death benefit.*

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 and 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.

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 10271.1 of the Insurance Code is  
2 amended to read:

3 10271.1. (a) (1) Provisions or supplemental contracts that  
4 operate to safeguard life insurance contracts against lapse are  
5 defined as a waiver of premium benefit or a waiver of monthly  
6 deduction benefit, as applicable, in which the insurer waives the  
7 premium or monthly deduction for a life insurance contract when  
8 the insured becomes totally disabled, as defined in the contract or  
9 supplemental contract, and where the waiver continues until the  
10 end of the insured's disability, or until the attainment of an age  
11 established by the insurer.

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

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

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

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

5 (4) The insurer may require total disability to continue for an  
6 uninterrupted period of time specified in the contract or  
7 supplemental contract, or the insurer may allow separate periods  
8 of disability to be combined.

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

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

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

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

29 (1) Develops any medical condition where the owner's,  
30 insured's, or annuitant's life expectancy is expected to be less than  
31 or equal to a limited period of time that shall not be restricted to  
32 a period of less than 12 months or greater than 24 months.

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

1 as comparable in licensure and staffing requirements to California  
2 providers.

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

7 (4) Is totally disabled, as follows:

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

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

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

22 (D) The insurer may require the total disability to continue for  
23 an uninterrupted period of time specified in the contract or  
24 supplemental contract, or the insurer may allow separate periods  
25 of disability to be combined.

26 (5) Has a chronic illness as defined pursuant to either  
27 subparagraph (A) or (B):

28 (A) Either of the following:

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

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

37 (B) Either of the following:

38 (i) Impairment in performing two out of six activities of daily  
39 living as described in subdivisions (b), (d), (e), and (f) of Section  
40 10232.8 due to a loss of functional capacity to perform the activity.

1 (ii) Impairment of cognitive ability, meaning the insured needs  
2 substantial supervision due to severe cognitive impairment, as  
3 described in subdivisions (b) and (e) of Section 10232.8.

4 (6) Has become involuntarily or voluntarily unemployed.

5 (c) (1) “Special benefit,” as used in this chapter, means an  
6 accelerated death benefit that is added to a life insurance policy  
7 to provide for the advance payment of any part of the death  
8 proceeds payable upon the occurrence of a qualifying event.

9 (2) For the purposes of this section, “qualifying event” means  
10 any one of the following:

11 (A) A medical condition that is reasonably expected to result  
12 in a drastically limited life span for the insured.

13 (B) A medical condition that requires extraordinary medical  
14 intervention, such as major organ transplant or continuous artificial  
15 life support, without which the insured would die.

16 (C) A condition that usually requires continuous confinement  
17 in a qualified institution and the insured is expected to remain there  
18 for the rest of his or her life.

19 (D) A specified medical condition that, in the absence of  
20 extensive or extraordinary medical treatment, would result in a  
21 drastically limited life.

22 (E) ~~A chronic illness or permanent severe cognitive impairment~~  
23 ~~and similar forms of dementia.~~ *A chronic illness, defined as either*  
24 *of the following:*

25 (i) *Impairment in performing two out of six activities of daily*  
26 *living as described in subdivisions (b), (d), (e), and (f) of Section*  
27 *10232.8 due to a loss of functional capacity to perform the activity.*

28 (ii) *Impairment of cognitive ability, meaning the insured needs*  
29 *substantial supervision due to severe cognitive impairment, as*  
30 *described in subdivisions (b) and (e) of Section 10232.8.*

31 (3) *Any life insurance provision or supplemental contract that*  
32 *provides a special benefit as defined in paragraph (1) shall comply*  
33 *with all of the following:*

34 (A) *The provision or supplemental contract shall specify that*  
35 *the accelerated death benefit is fixed at the time the insurer*  
36 *approves the request for the accelerated death benefit.*

37 (B) *The provision or supplemental contract shall specify that*  
38 *the payment of the accelerated death benefit is not conditioned on*  
39 *the receipt of long-term care or medical services.*

1 (C) *The provision or supplemental contract shall include the*  
2 *option to take the accelerated death benefit in a lump sum on the*  
3 *occurrence of a single qualifying event and may include an option*  
4 *to receive the benefit in periodic payments for a certain period*  
5 *only. Periodic payments shall not be based on the continued*  
6 *survival or institutional confinement of the insured.*

7 (D) *The provision or supplemental contract shall not restrict*  
8 *the use of the proceeds of the accelerated death benefit.*

9 (E) *The provision or supplemental contract shall specify that*  
10 *the payment of the accelerated death benefit is due immediately*  
11 *upon receipt of the due written proof of eligibility.*

12 ~~(3)~~

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

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

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

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

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

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

4 (iii) 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 (iv) 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 (v) 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 (vi) 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 (vii) A sample calculation of the accelerated death benefit. If  
22 the policy contains a loan provision, the example shall assume that  
23 there is an outstanding loan on the 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 (viii) 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 (ix) 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 SEC. 2. Section 10292 of the Insurance Code is amended to  
37 read:

38 10292. (a) A supplemental contract described in Section 10271  
39 shall not be delivered or issued for delivery to any person in this  
40 state until a copy of the form thereof is submitted to, and approved

1 by, the commissioner. If the supplemental contract is an integral  
2 part of a contract of life insurance or annuity, the entire contract  
3 shall be submitted to the commissioner, but his or her power of  
4 approval or disapproval is limited to the supplemental portion and  
5 any other portions that relate to the supplemental portion.

6 (b) A supplemental contract described in Section 10271.1 shall  
7 be considered an integral part of a contract for purposes of this  
8 section. To facilitate the review of a supplemental contract, the  
9 insurer shall submit, for informational purposes, a sample copy of  
10 the life insurance or annuity contract with which the supplemental  
11 contract will be used. To facilitate the location of the required  
12 provisions as stated in paragraph (2) of subdivision (b) of Section  
13 10271, the insurer shall provide the sample copy page reference  
14 for the provisions that appear in the contract.

15 (c) The commissioner may adopt reasonable rules and  
16 regulations as are necessary to administer and carry out the  
17 purposes of Sections 10271 and 10271.1, and this section.

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