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AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 281

Introduced by Senator Calderon

(Coauthor: Senator Gaines)

(Coauthors: Assembly Members Cooley and Hagman)

February 14, 2013

An act to amend Sections 10110.5, 10232.8, 10271.1, and 10292 of, to add Article 2.1 (commencing with Section 10295) to Chapter 4 of Part 2 of Division 2 of, and to repeal and add Section 10271 of, the Insurance Code, relating to life insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 281, as amended, Calderon. Life insurance: accelerated death benefits.

Existing law governs the business of insurance, and defines various types of insurance for these purposes, including life insurance and disability insurance. Existing law, except as provided, 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. Existing law also provides the language required

as part of a provision or supplemental contract governed by these provisions.

This bill would delete the term “special benefit” and replace it with the defined term “accelerated death benefit.” The bill would generally revise the phrase “provision or supplemental contract” and replace it with the term “supplemental benefit,” as defined. The bill would also revise and recast the required language of the provision or supplemental contract, as prescribed.

Existing law requires a licensed health care practitioner, independent of the insurer, to certify that an insured meets the definition of a “chronically ill individual,” as specified by federal law, for purposes of establishing eligibility for benefits under a long-term care policy or certificate that provides home care benefits.

This bill would prohibit an insurer, for purposes of long-term care insurance, from imposing a certification requirement of longer than 90 days.

Existing law authorizes the Insurance Commissioner to adopt reasonable rules and regulations necessary to administer and carry out the purposes of certain provisions relating to the required language in a provision or supplemental contract.

This bill would extend that authorization for the commissioner to adopt reasonable rules and regulations to those provisions relating to supplemental benefits that operate to safeguard life insurance contracts against lapse when the insured becomes totally disabled and those life insurance contracts with an accelerated death benefit.

Existing law authorizes provisions or supplemental contracts that operate to safeguard life insurance contracts against lapse, in which the insurer waives the premium or monthly deduction for a life insurance contract when the insured becomes totally disabled, and where the waiver continues until the end of the insured’s disability, or until the attainment of an age established by the insurer.

This bill would delete the provision regarding attainment of age and would instead authorize the waiver of premiums to continue for a period of time specified in the supplemental benefit. The bill would define “accelerated death benefit” as a policy provision, endorsement, or rider added to a life insurance policy that provides for the advance payment of any part of the death proceeds, payable upon the occurrence of a qualifying event, as defined. The bill would require a life insurance policy with an accelerated death benefit provision to comply with and, if applicable, explain specified requirements, including payment of

benefits, commissioner approval of forms and disclosures, and a free look period, and would place limits on advertising and marketing. The bill would prohibit an insurer, broker, agent, or other person from causing a policyholder to unnecessarily replace a long-term care insurance policy with an accelerated death benefit policy, and provide certain notices when a life insurance policy or long-term care insurance policy would be replaced. ~~The bill would also provide that an insurer that fails to conform to the requirements of the above provisions would be subject to the provisions of existing law that provide for the imposition of a civil penalty against any person who engages in any unfair method of competition or any unfair or deceptive act or practice in the business of insurance, as provided.~~ The bill would prohibit accelerated death benefits from limiting or excluding coverage by type of illness, treatment, medical condition, or accident, except as specified.

This bill would also provide that an insurer that fails to conform to the requirements of the above provisions would be subject to the provisions of existing law that provide for the imposition of a penalty against any person who engages in any unfair method of competition or any unfair or deceptive act or practice in the business of insurance, as provided, including civil penalties as well as a misdemeanor for an insurer intentionally advertising insurance that it will not sell. Because the bill would create a new crime, it would impose a state-mandated local program.

~~The~~

This bill would authorize the commissioner to disapprove any advertising that does not meet the requirements of these provisions, as specified. The bill would also require a policy, certificate, rider, or endorsement to include a provision giving the policyholder or certificate holder the right to appeal to the insurer a decision regarding benefit eligibility.

This bill would delete obsolete provisions and make conforming changes.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. Section 10110.5 of the Insurance Code is
2 amended 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 containing
7 that provision shall establish any additional reserves and file any
8 additional financial reports that the commissioner may require.

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

17 *SEC. 2. Section 10232.8 of the Insurance Code is amended to*
18 *read:*

19 10232.8. (a) In every long-term care policy or certificate that
20 is not intended to be a federally qualified long-term care insurance
21 contract and provides home care benefits, the threshold establishing
22 eligibility for home care benefits shall be at least as permissive as
23 a provision that the insured will qualify if either one of two criteria
24 are met:

25 (1) Impairment in two out of seven activities of daily living.

26 (2) Impairment of cognitive ability.

27 The policy or certificate may provide for lesser but not greater
28 eligibility criteria. The commissioner, at his or her discretion, may
29 approve other criteria or combinations of criteria to be substituted,
30 if the insurer demonstrates that the interest of the insured is better
31 served.

32 “Activities of daily living” in every policy or certificate that is
33 not intended to be a federally qualified long-term care insurance
34 contract and provides home care benefits shall include eating,
35 bathing, dressing, ambulating, transferring, toileting, and
36 continence; “impairment” means that the insured needs human
37 assistance, or needs continual substantial supervision; and
38 “impairment of cognitive ability” means deterioration or loss of

1 intellectual capacity due to organic mental disease, including
2 Alzheimer’s disease or related illnesses, that requires continual
3 supervision to protect oneself or others.

4 (b) In every long-term care policy approved or certificate issued
5 after the effective date of the act adding this section, that is
6 intended to be a federally qualified long-term care insurance
7 contract as described in subdivision (a) of Section 10232.1, the
8 threshold establishing eligibility for home care benefits shall
9 provide that a chronically ill insured will qualify if either one of
10 two criteria are met or if a third criterion, as provided by this
11 subdivision, is met:

12 (1) Impairment in two out of six activities of daily living.

13 (2) Impairment of cognitive ability.

14 Other criteria shall be used in establishing eligibility for benefits
15 if federal law or regulations allow other types of disability to be
16 used applicable to eligibility for benefits under a long-term care
17 insurance policy. If federal law or regulations allow other types
18 of disability to be used, the commissioner shall promulgate
19 emergency regulations to add those other criteria as a third
20 threshold to establish eligibility for benefits. Insurers shall submit
21 policies for approval within 60 days of the effective date of the
22 regulations. With respect to policies previously approved, the
23 department is authorized to review only the changes made to the
24 policy. All new policies approved and certificates issued after the
25 effective date of the regulation shall include the third criterion. No
26 policy shall be sold that does not include the third criterion after
27 one year beyond the effective date of the regulations. An insured
28 meeting this third criterion shall be eligible for benefits regardless
29 of whether the individual meets the impairment requirements in
30 paragraph (1) or (2) regarding activities of daily living and
31 cognitive ability.

32 (c) A licensed health care practitioner, independent of the
33 insurer, shall certify that the insured meets the definition of
34 “chronically ill individual” as defined under Public Law 104-191.
35 *For the purposes of long-term care insurance as defined in Section*
36 *10231.2, an insurer shall not impose a certification requirement*
37 *of longer than 90 days.* If a health care practitioner makes a
38 determination, pursuant to this section, that an insured does not
39 meet the definition of “chronically ill individual,” the insurer shall
40 notify the insured that the insured shall be entitled to a second

1 assessment by a licensed health care practitioner, upon request,
2 who shall personally examine the insured. The requirement for a
3 second assessment shall not apply if the initial assessment was
4 performed by a practitioner who otherwise meets the requirements
5 of this section and who personally examined the insured. The
6 assessments conducted pursuant to this section shall be performed
7 promptly with the certification completed as quickly as possible
8 to ensure that an insured's benefits are not delayed. The written
9 certification shall be renewed every 12 months. A licensed health
10 care practitioner shall develop a written plan of care after
11 personally examining the insured. The costs to have a licensed
12 health care practitioner certify that an insured meets, or continues
13 to meet, the definition of "chronically ill individual," or to prepare
14 written plans of care shall not count against the lifetime maximum
15 of the policy or certificate. In order to be considered "independent
16 of the insurer," a licensed health care practitioner shall not be an
17 employee of the insurer and shall not be compensated in any
18 manner that is linked to the outcome of the certification. It is the
19 intent of this subdivision that the practitioner's assessments be
20 unhindered by financial considerations. This subdivision shall
21 apply only to a policy or certificate intended to be a federally
22 qualified long-term care insurance contract.

23 (d) "Activities of daily living" in every policy or certificate
24 intended to be a federally qualified long-term care insurance
25 contract as provided by Public Law 104-191 shall include eating,
26 bathing, dressing, transferring, toileting, and continence;
27 "impairment in activities of daily living" means the insured needs
28 "substantial assistance" either in the form of "hands-on assistance"
29 or "standby assistance," due to a loss of functional capacity to
30 perform the activity; "impairment of cognitive ability" means the
31 insured needs substantial supervision due to severe cognitive
32 impairment; "licensed health care practitioner" means a physician,
33 registered nurse, licensed social worker, or other individual whom
34 the United States Secretary of the Treasury may prescribe by
35 regulation; and "plan of care" means a written description of the
36 insured's needs and a specification of the type, frequency, and
37 providers of all formal and informal long-term care services
38 required by the insured, and the cost, if any.

39 (e) Until the time that these definitions may be superseded by
40 federal law or regulation, the terms "substantial assistance,"

1 “hands-on assistance,” “standby assistance,” “severe cognitive
2 impairment,” and “substantial supervision” shall be defined
3 according to the safe-harbor definitions contained in Internal
4 Revenue Service Notice 97-31, issued May 6, 1997.

5 (f) The definitions of “activities of daily living” to be used in
6 policies and certificates that are intended to be federally qualified
7 long-term care insurance shall be the following until the time that
8 these definitions may be superseded by federal law or regulations:

9 (1) Eating, which shall mean feeding oneself by getting food in
10 the body from a receptacle (such as a plate, cup, or table) or by a
11 feeding tube or intravenously.

12 (2) Bathing, which shall mean washing oneself by sponge bath
13 or in either a tub or shower, including the act of getting into or out
14 of a tub or shower.

15 (3) Continence, which shall mean the ability to maintain control
16 of bowel and bladder function; or when unable to maintain control
17 of bowel or bladder function, the ability to perform associated
18 personal hygiene (including caring for a catheter or colostomy
19 bag).

20 (4) Dressing, which shall mean putting on and taking off all
21 items of clothing and any necessary braces, fasteners, or artificial
22 limbs.

23 (5) Toileting, which shall mean getting to and from the toilet,
24 getting on or off the toilet, and performing associated personal
25 hygiene.

26 (6) Transferring, which shall mean the ability to move into or
27 out of bed, a chair or wheelchair.

28 The commissioner may approve the use of definitions of
29 “activities of daily living” that differ from the verbatim definitions
30 of this subdivision if these definitions would result in more policy
31 or certificate holders qualifying for long-term care benefits than
32 would occur by the use of the verbatim definitions of this
33 subdivision. In addition, the following definitions may be used
34 without the approval of the commissioner: (1) the verbatim
35 definitions of eating, bathing, dressing, toileting, transferring, and
36 continence in subdivision (g); or (2) the verbatim definitions of
37 eating, bathing, dressing, toileting, and continence in this
38 subdivision and a substitute, verbatim definition of “transferring”
39 as follows: “transferring,” which shall mean the ability to move
40 into and out of a bed, a chair, or wheelchair, or ability to walk or

1 move around inside or outside the home, regardless of the use of
2 a cane, crutches, or braces.

3 The definitions to be used in policies and certificates for
4 impairment in activities of daily living, “impairment in cognitive
5 ability,” and any third eligibility criterion adopted by regulation
6 pursuant to subdivision (b) shall be the verbatim definitions of
7 these benefit eligibility triggers allowed by federal regulations. In
8 addition to the verbatim definitions, the commissioner may approve
9 additional descriptive language to be added to the definitions, if
10 the additional language is (1) warranted based on federal or state
11 laws, federal or state regulations, or other relevant federal decision,
12 and (2) strictly limited to that language which is necessary to ensure
13 that the definitions required by this section are not misleading to
14 the insured.

15 (g) The definitions of “activities of daily living” to be used
16 verbatim in policies and certificates that are not intended to qualify
17 for favorable tax treatment under Public Law 104-191 shall be the
18 following:

19 (1) Eating, which shall mean reaching for, picking up, and
20 grasping a utensil and cup; getting food on a utensil, and bringing
21 food, utensil, and cup to mouth; manipulating food on plate; and
22 cleaning face and hands as necessary following meals.

23 (2) Bathing, which shall mean cleaning the body using a tub,
24 shower, or sponge bath, including getting a basin of water,
25 managing faucets, getting in and out of tub or shower, and reaching
26 head and body parts for soaping, rinsing, and drying.

27 (3) Dressing, which shall mean putting on, taking off, fastening,
28 and unfastening garments and undergarments and special devices
29 such as back or leg braces, corsets, elastic stockings or garments,
30 and artificial limbs or splints.

31 (4) Toileting, which shall mean getting on and off a toilet or
32 commode and emptying a commode, managing clothing and wiping
33 and cleaning the body after toileting, and using and emptying a
34 bedpan and urinal.

35 (5) Transferring, which shall mean moving from one sitting or
36 lying position to another sitting or lying position; for example,
37 from bed to or from a wheelchair or sofa, coming to a standing
38 position, or repositioning to promote circulation and prevent skin
39 breakdown.

1 (6) Contenance, which shall mean the ability to control bowel
2 and bladder as well as use ostomy or catheter receptacles, and
3 apply diapers and disposable barrier pads.

4 (7) Ambulating, which shall mean walking or moving around
5 inside or outside the home regardless of the use of a cane, crutches,
6 or braces.

7 ~~SEC. 2.~~

8 *SEC. 3.* Section 10271 of the Insurance Code is repealed.

9 ~~SEC. 3.~~

10 *SEC. 4.* Section 10271 is added to the Insurance Code, to read:

11 10271. (a) Except as set forth in this section, this chapter shall
12 not apply to, or in any way affect, provisions in life insurance,
13 endowment, or annuity contracts, or contracts supplemental thereto,
14 that provide additional benefits in case of death or dismemberment
15 or loss of sight by accident, or that operate to safeguard those
16 contracts against lapse, as described in subdivision (a) of Section
17 10271.1, or give a special surrender benefit, as defined in
18 subdivision (b) of Section 10271.1, or an accelerated death benefit
19 as defined in Article 2.1 (commencing with Section 10295), in the
20 event that the owner, insured, or annuitant, as applicable, meets
21 the benefit triggers specified in the life insurance or annuity
22 contract or supplemental contract.

23 (b) For the purposes of this section, the term “supplemental
24 benefit” means a rider to or provision in a life insurance policy,
25 certificate, or annuity contract that provides a benefit as set forth
26 in subdivision (a).

27 (c) A supplemental benefit described in subdivision (a) shall
28 contain all of the following provisions. However, an insurer, at its
29 option, may substitute for one or more of the provisions a
30 corresponding provision of different wording approved by the
31 commissioner that is not less favorable in any respect to the owner,
32 insured, or annuitant, as applicable. The required provisions shall
33 be preceded individually by the appropriate caption, or, at the
34 option of the insurer, by the appropriate individual or group
35 captions or subcaptions as the commissioner may approve.

36 (1) A life insurance policy or annuity contract that contains a
37 supplemental benefit shall provide that the contract, supplemental
38 contract, and any papers attached thereto by the insurer, including
39 the application if attached, constitute the entire insurance or annuity
40 contract and shall also provide that no agent has the authority to

1 change the contract or to waive any of its provisions. This provision
2 shall be preceded individually by a caption stating “ENTIRE
3 CONTRACT; CHANGES:” or other appropriate caption as the
4 commissioner may approve.

5 (2) ~~Reinstatement of a~~ *The supplemental benefit shall provide*
6 *that reinstatement of the supplemental benefit shall be on the same*
7 *or more favorable terms as those in reinstatement of the underlying*
8 *life insurance policy or annuity contract.* ~~In all other respects,~~
9 *Following reinstatement,* the insured and insurer shall have the
10 same rights under reinstatement as they had under the supplemental
11 benefit immediately before the due date of the defaulted premium,
12 subject to any provisions endorsed in the rider or endorsement or
13 attached to the rider or endorsement in connection with the
14 reinstatement. This reinstatement provision shall be preceded
15 individually by a caption stating “REINSTATEMENT:” or other
16 appropriate caption as the commissioner may approve.

17 (3) A supplemental benefit subject to underwriting shall include
18 an incontestability statement that provides that the insurer shall
19 not contest the supplemental benefit after it has been in force during
20 the lifetime of the insured for two years from its date of issue, and
21 that the supplemental benefit may only be contested based on a
22 statement made in the application for the supplemental benefit, if
23 the statement is attached to the contract and if the statement was
24 material to the risk accepted or the hazard assumed by the insurer.
25 This provision shall be preceded individually by a caption stating
26 “INCONTESTABILITY:” or other appropriate caption as the
27 commissioner may approve.

28 (4) The supplemental benefit shall provide either that the insurer
29 may accept written notice of claim at any time or that the insurer
30 may require that written notice of claim be submitted by a due date
31 that is no less than 20 days after an occurrence covered by the
32 supplemental benefit, or commencement of any loss covered by
33 the supplemental benefit, or as soon after the due date as is
34 reasonably possible. Notice given by or on behalf of the insured
35 or the beneficiary, as applicable, to the insurer at the insurer’s
36 address or telephone number, or to any authorized agent of the
37 insurer, with information sufficient to identify the insured, shall
38 be deemed notice to the insurer. This provision shall be preceded
39 individually by a caption stating “NOTICE OF CLAIM:” or other
40 appropriate caption as the commissioner may approve.

1 (5) The supplemental benefit shall provide that the insurer, upon
2 receipt of a notice of claim, shall furnish to the claimant those
3 forms as are usually furnished by it for filing a proof of occurrence
4 or a proof of loss. If the forms are not furnished within 15 days
5 after giving notice, the claimant shall be deemed to have complied
6 with the requirements of the supplemental benefit as to proof of
7 occurrence or proof of loss upon submitting, within the time fixed
8 by the supplemental benefit for filing proof of occurrence or proof
9 of loss, written proof covering the character and the extent of the
10 occurrence or loss. This provision shall be preceded individually
11 by a caption stating "CLAIM FORMS:" or other appropriate
12 caption as the commissioner may approve.

13 (6) The supplemental benefit shall provide that the insurer may
14 require that the insured provide written proof of occurrence or
15 proof of loss no less than 90 days after the termination of the period
16 for which the insurer is liable, and, in the case of claim for any
17 other occurrence or loss, within 90 days after the date of the
18 occurrence or loss. Failure to furnish proof within the time required
19 shall not invalidate or reduce the claim if it was not reasonably
20 possible to give proof within the time, provided proof is furnished
21 as soon as reasonably possible and, except in the absence of legal
22 capacity, no later than one year from the time proof is otherwise
23 required. This provision shall be preceded individually by a caption
24 stating "PROOF OF LOSS:" or other appropriate caption as the
25 commissioner may approve.

26 (7) The supplemental benefit shall provide that the insurer, at
27 its own expense, shall have the right and opportunity to examine
28 the person of the insured when and as often as the insurer may
29 reasonably require during the pendency of a claim and to make an
30 autopsy in case of death where it is not forbidden by law. This
31 provision shall be preceded individually by a caption stating
32 "PHYSICAL EXAMINATIONS:" or other appropriate caption
33 as the commissioner may approve.

34 (d) The commissioner shall not approve any contract or
35 supplemental contract for insurance or delivery in this state if the
36 commissioner finds that the contract or supplemental contract does
37 any of the following:

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

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

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

6 (3) Contains any actuarial information that is ~~significantly~~
7 *materially* incomplete, incorrect, or inadequate.

8 (e) A supplemental benefit described in subdivision (a) shall
9 not contain any title, description, or any other indication that would
10 describe or imply that the supplemental benefit provides long-term
11 care coverage.

12 (f) Commencing two years from the date of the issuance of the
13 supplemental benefit, no claim for loss incurred or disability, as
14 defined by the supplemental benefit, may be reduced or denied on
15 the grounds that a disease or physical condition not excluded from
16 coverage by name or specific description effective on the date of
17 loss had existed prior to the effective date on the coverage of the
18 supplemental benefit.

19 (g) With regard to supplemental benefits set forth in subdivision
20 (a), the supplemental benefit shall specify any applicable
21 exclusions, which shall be limited to the following:

22 (1) Condition or loss caused or substantially contributed to by
23 any attempt at suicide or intentionally self-inflicted injury, while
24 sane or insane.

25 (2) Condition or loss caused or substantially contributed to by
26 war or an act of war, as defined in the exclusion provisions of the
27 contract.

28 (3) Condition or loss caused or substantially contributed to by
29 active participation in a riot, insurrection, or terrorist activity.

30 (4) Condition or loss caused or substantially contributed to by
31 committing or attempting to commit a felony.

32 (5) Condition or loss caused or substantially contributed to by
33 voluntary intake of either:

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

36 (B) Poison, gas, or fumes, unless they are the direct result of an
37 occupational accident.

38 (6) Condition or loss in consequence of the insured being
39 intoxicated, as defined by the jurisdiction where the condition or
40 loss occurred.

1 (7) Condition or loss caused or substantially contributed to by
2 engaging in an illegal occupation.

3 (h) If the commissioner notifies the insurer, in writing, that the
4 filed form or actuarial information does not comply with the
5 requirements of law and specifies the reasons for his or her opinion,
6 it is unlawful for an insurer to issue any policy in that form.

7 ~~SEC. 4.~~

8 *SEC. 5.* Section 10271.1 of the Insurance Code is amended to
9 read:

10 10271.1. (a) (1) Supplemental benefits that operate to
11 safeguard life insurance contracts against lapse are defined as a
12 waiver of premium benefit or a waiver of monthly deduction
13 benefit, as applicable, in which the insurer waives the premium or
14 monthly deduction for a life insurance contract when the insured
15 becomes totally disabled, as defined by the supplemental benefit,
16 and where the waiver continues until the end of the insured's
17 disability, or for the period specified by the supplemental benefit,
18 consistent with paragraph (5).

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

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

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

30 (3) 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 (4) The insurer may require total disability to continue for an
35 uninterrupted period of time specified by the supplemental benefit,
36 or the insurer may allow separate periods of disability to be
37 combined.

38 (5) The waiver of premium or monthly deduction benefit shall
39 continue for the period specified by the supplemental benefit, but
40 shall not be less favorable to the insured than the following:

1 (A) If the insured's total disability begins before the insured
2 attains 60 years of age, the insurer shall waive all premiums or
3 monthly deductions due for the period of the total disability, and
4 if the total disability extends to the insured's attainment of 65 years
5 of age, the insurer shall waive all further premiums or monthly
6 deductions due.

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

11 (6) In addition to the permissible exclusions listed in subdivision
12 (g) of Section 10271, the insurer may exclude a ~~condition or loss~~
13 *total disability* occurring after the policy anniversary or
14 supplemental contract anniversary, as applicable and as defined
15 by the supplemental benefit, on which the insured attains a
16 specified age of no less than 65 years.

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

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

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

37 (3) Has any medical condition that would, in the absence of
38 treatment, result in death within a limited period of time, as defined
39 by the supplemental benefit, but that shall not be restricted to a
40 period of less than six months.

1 (4) Is totally disabled, as follows:

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

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

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

16 (D) The insurer may require the total disability to continue for
17 an uninterrupted period of time specified by the supplemental
18 benefit, or the insurer may allow separate periods of disability to
19 be combined.

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

22 (A) Either of the following:

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

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

31 (B) Either of the following:

32 (i) Impairment in performing two out of six activities of daily
33 living as described in subdivisions (b), (d), (e), and (f) of Section
34 10232.8 due to a loss of functional capacity to perform the activity.

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

38 (6) Has become involuntarily or voluntarily unemployed.

39 (c) The term "supplemental benefit" means a rider to or
40 provision in a life insurance policy, certificate, or annuity contract

1 that provides a benefit as set forth in subdivision (a) of Section
 2 10271.

3 ~~SEC. 5.~~

4 *SEC. 6.* Section 10292 of the Insurance Code is amended to
 5 read:

6 10292. (a) A supplemental benefit described in subdivision
 7 (a) of Section 10271 shall not be delivered or issued for delivery
 8 to any person in this state until a copy of the form thereof is
 9 submitted to, and approved by, the commissioner. If the
 10 supplemental benefit is an integral part of a contract of life
 11 insurance or annuity, the entire contract shall be submitted to the
 12 commissioner, but his or her power of approval or disapproval,
 13 unless it is otherwise authorized, is limited to the supplemental
 14 portion and any other portions that relate to the supplemental
 15 portion.

16 (b) A supplemental benefit described in subdivision (a) of
 17 ~~Section 10271.1 and Article 2.1 (commencing with Section 10295)~~
 18 *10271* shall be considered an integral part of a contract for purposes
 19 of this section. To facilitate the review of a supplemental benefit,
 20 the insurer shall submit, for informational purposes, a sample copy
 21 of the life insurance or annuity contract with which the
 22 supplemental benefit will be used. To facilitate the location of the
 23 required provisions as stated in subdivision (c) of Section 10271,
 24 the insurer shall provide the sample copy page reference for the
 25 provisions that appear in the contract.

26 (c) The commissioner may adopt reasonable rules and
 27 regulations as are necessary to administer and carry out the
 28 purposes of Sections 10271 and 10271.1, Article 2.1 (commencing
 29 with Section 10295), and this section.

30 ~~SEC. 6.~~

31 *SEC. 7.* Article 2.1 (commencing with Section 10295) is added
 32 to Chapter 4 of Part 2 of Division 2 of the Insurance Code, to read:

33
 34 Article 2.1. Accelerated Death Benefits

35
 36 10295. (a) An accelerated death benefit, as described in this
 37 section, shall not be offered, sold, issued, or marketed as health,
 38 accident, or long-term care insurance. An accelerated death benefit
 39 shall not reimburse or provide specific coverage for any health,
 40 accident, or long-term care insurance benefits.

1 (b) (1) For the purposes of this article, an “accelerated death
2 benefit” means a provision, endorsement, or rider added to a life
3 insurance policy that provides for the advance payment of any part
4 of the death proceeds, payable upon the occurrence of a qualifying
5 event in accordance with Section 10295.1.

6 (2) For the purposes of this article, “qualifying event” means
7 that subparagraph (A) or (B) applies.

8 (A) The insured has a medical condition that would, in the
9 absence of treatment, result in death within a limited period of
10 time, as defined by the supplemental benefit, but that shall not be
11 restricted to a period of less than six months.

12 (B) (i) The insured has a chronic illness as defined in
13 subparagraph (B) of paragraph (5) of subdivision (b) of Section
14 10271.1.

15 ~~(ii) For purposes of determining whether this subparagraph~~
16 ~~applies, For policies intended to be federally tax qualified, the~~
17 ~~insurer may also shall~~ require that a licensed health care
18 practitioner, independent of the insurer, certifies that the insured
19 meets the definition of “chronically ill individual” as defined under
20 the federal Health Insurance Portability and Accountability Act
21 (Public Law 104-191).

22 ~~(iii) Nothing in this subdivision shall preclude an insurer from~~
23 ~~requiring certification that the chronic illness is expected to be~~
24 ~~permanent.~~

25 *(I) If a health care practitioner makes a determination, pursuant*
26 *to this clause, that an insured does not meet the definition of*
27 *“chronically ill individual,” the insurer shall notify the insured*
28 *that the insured shall be entitled to a second assessment by a*
29 *licensed health care practitioner, upon request, who shall*
30 *personally examine the insured. The requirement for a second*
31 *assessment shall not apply if the initial assessment was performed*
32 *by a practitioner who otherwise meets the requirements of this*
33 *clause and who personally examined the insured.*

34 *(II) The assessments conducted pursuant to this clause shall be*
35 *performed promptly with the certification completed as quickly as*
36 *possible to ensure that an insured’s benefits are not delayed. The*
37 *written certification shall be renewed every 12 months.*

38 *(III) The costs to have a licensed health care practitioner certify*
39 *that an insured meets, or continues to meet, the definition of*

1 “chronically ill individual,” shall not count against the lifetime
2 maximum of the policy or certificate.

3 (IV) In order to be considered “independent of the insurer,” a
4 licensed health care practitioner shall not be an employee of the
5 insurer and shall not be compensated in any manner that is linked
6 to the outcome of the certification.

7 (V) It is the intent of the Legislature this clause, that in enacting
8 the practitioner’s assessments be unhindered by financial
9 considerations.

10 (VI) This clause shall apply only to a policy or certificate
11 intended to be federally tax qualified.

12 (3) For the purposes of this article, “applicant” means any of
13 the following:

14 (A) In the case of an individual life insurance policy with an
15 accelerated death benefit, the person who seeks to contract for
16 benefits.

17 (B) (i) In the case of a group life insurance policy with an
18 accelerated death benefit, the proposed certificate holder.

19 (ii) “Certificate” means any certificate issued under a group life
20 insurance policy that includes an accelerated death benefit.

21 (4) For the purposes of this article, the term “supplemental
22 benefit” means a rider to or provision in a life insurance policy,
23 certificate, or annuity contract that provides a benefit as set forth
24 in subdivision (a) of Section 10271.

25 (c) A life insurance policy that accelerates death benefits if the
26 insured is chronically ill and requires that the insured receives
27 long-term care services described in Section 10231.2, shall not be
28 considered an accelerated death benefit for the purposes of this
29 article.

30 (d) Nothing in this subdivision shall be construed as prohibiting
31 an insurer from including other riders to a life insurance policy,
32 such as a terminal illness rider, that are not be subject to this article.

33 10295.1. (a) An accelerated death benefit as defined in
34 paragraph (1) of subdivision (b) of Section 10295 shall comply
35 with, and, if applicable, and shall explain all of, the following:

36 (1) That the accelerated death benefit is fixed at the time the
37 insurer approves the request for the accelerated death benefit.

38 (2) That the payment of the accelerated death benefit is not
39 conditioned on the receipt of long-term care or medical services.

1 (3) That the *insured shall have the* option to take the accelerated
2 death benefit in a lump sum on the occurrence of a qualifying event
3 , as well as an option to receive the benefit in periodic payments
4 is provided for a certain period only.

5 (4) That ~~there will be no restrictions on the use of the proceeds~~
6 ~~of the accelerated death benefit.~~ *the accelerated death benefit may*
7 *not restrict the insured's use of the proceeds.*

8 (5) That the payment of the accelerated death benefit is due
9 immediately upon receipt of the due written proof of eligibility.

10 (6) That, prior to the payment of the accelerated death benefit,
11 the insurer is required to obtain from an assignee or irrevocable
12 beneficiary, if any, a signed acknowledgment of concurrence for
13 payout. If the insurer making the accelerated death benefit is itself
14 the assignee under the policy, the acknowledgment is not required.

15 (7) That if any death benefit remains after payment of an
16 accelerated death benefit, the accidental death benefit provision,
17 if any, in the policy shall not be affected by the payment of the
18 accelerated death benefit.

19 (b) The accelerated death benefit shall also provide for all of
20 the following:

21 (1) A maximum amount that may be accelerated.

22 (2) An explanation ~~of whether~~ *that* the insured may accelerate
23 more than once on a qualifying event up to the maximum amount.

24 (3) An explanation ~~of whether~~ *that* the insured may accelerate
25 on more than one of the qualifying events specified in the
26 supplemental provision up to the maximum amount.

27 (4) A statement that the policy, rider, endorsement, or certificate
28 pays proceeds *that are or are not* intended for favorable tax
29 treatment under Section 101(g) of the Internal Revenue Code (26
30 U.S.C. Sec. 101(g)), if applicable.

31 (c) The insurer shall advise the policyholder or certificate holder
32 that there may be tax consequences of accepting an amount above
33 the amount that would be tax qualified under the Internal Revenue
34 Code.

35 (d) The accelerated death benefit shall not contain any
36 preexisting condition limitation and shall not contain any
37 requirement that acceleration be conditioned on a prior
38 hospitalization or institutionalization.

39 (e) The accelerated death benefit shall contain an explanation
40 of how the insured will pay for the accelerated death benefit,

1 whether by paying a portion of the premium for the life insurance
2 policy, by paying a fee at the time of the acceleration, by paying
3 the cost of insurance charge, or by paying the administrative
4 expense charge, together with an illustration. If there is a premium
5 or cost of insurance charge, or a charge imposed upon the
6 acceleration, a generic illustration numerically demonstrating any
7 effect of the payment of a benefit on the policy's cash value,
8 accumulation account, death benefit, premium, policy loans, and
9 policy liens shall suffice for this purpose.

10 (f) (1) Every accelerated death benefit that pays proceeds
11 intended for favorable tax treatment under Section 101(g) of the
12 Internal Revenue Code (26 U.S.C. Sec. 101(g)) shall be identified
13 as such by prominently displaying and printing that intention on
14 page one of the accelerated benefit policy provision, rider,
15 endorsement, or certificate.

16 (2) *Every accelerated death benefit that pays proceeds that are*
17 *not intended for favorable tax treatment under Section 101(g) of*
18 *the Internal Revenue Code (26 U.S.C. Sec. 101(g)), shall be*
19 *identified as such by prominently displaying and printing that*
20 *intention on page one of the accelerated death benefit policy*
21 *provision, rider, endorsement, or certificate.*

22 10295.2. A life insurance contract with an accelerated death
23 benefit *or an accelerated death benefit in the form of a rider or*
24 *endorsement* shall be submitted for the approval of the
25 commissioner in the same manner as required under Section 10292
26 and shall be submitted with the following additional information:

27 (a) The term "accelerated death benefit" shall be included in
28 the descriptive title of the filing.

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

34 (c) *An insurer that requires certification that a chronic illness*
35 *is expected to last longer than 90 days shall include in its filing a*
36 *legal memorandum from outside tax counsel that the certification*
37 *would allow for preferable tax treatment under Section 101(g) of*
38 *the Internal Revenue Code (26 U.S.C. Sec. 101(g)).*

39 10295.3. (a) A written disclosure, as set forth below, shall be
40 included with the filing for the commissioner's approval, and shall

1 be given to each applicant. The same written disclosure shall be
2 attached to the policy or certificate delivered to the insured.

3 (b) The required written disclosure shall be in the following
4 form:

5 “IMPORTANT NOTICE TO APPLICANT/BUYER
6 REGARDING ACCELERATED DEATH BENEFITS”

7 ~~(A) Description of the accelerated death benefit.~~

8 ~~(B) Explanation of the qualifying event or events.~~

9 ~~(C) Explanation of any effect of the payment of an accelerated
10 death benefit on the life insurance policy’s cash value,
11 accumulation account, death benefit, premium, policy loans, and
12 policy liens.~~

13 ~~(D) Explanation of how the insured will be paying for this
14 supplemental accelerated death benefit, by paying a portion of the
15 premium for the life insurance policy, by paying a fee at the time
16 of the acceleration, by paying the cost of insurance charge, or by
17 paying the administrative expense charge, together with an
18 illustration. If there is a premium or cost of insurance charge, or
19 charge imposed upon acceleration, a generic illustration
20 numerically demonstrating any effect of the payment of a benefit
21 on the policy’s cash value, accumulation account, death benefit,
22 premium, policy loans, and policy liens shall suffice for this
23 purpose.~~

24 ~~(E) Explanation of whether the portion of the premium on the
25 life insurance policy attributed to the accelerated death benefit will
26 ever increase, and if so, how.~~

27 ~~(F) Explanation of how acceleration affects the premium for
28 the life insurance policy or certificate and the effect on the premium
29 for the accelerated death benefit.~~

30 ~~(G) Explanation of whether the insured may accelerate more
31 than one time within the stated maximum and whether there is any
32 restriction as to accelerating based on more than one qualifying
33 event.~~

34 ~~(e) The disclosure shall also contain this language, verbatim:~~

35 “The benefits provided by this accelerated death benefit are not
36 intended to provide, and will never provide, long-term care
37 insurance, nursing home insurance, or home care insurance. If you
38 are interested in long-term care or nursing home or home care
39 insurance, you should consult with an insurance agent licensed to
40 sell that insurance, inquire with the insurance company offering

1 the accelerated death benefits, or visit the California Department
2 of Insurance Internet Web site (www.insurance.ca.gov) section
3 regarding long-term care insurance.

4 *If you choose to accelerate a portion of your death benefit, doing*
5 *so will reduce the amount that your beneficiary will receive upon*
6 *your death.*

7 Receipt of accelerated death benefits may be taxable. Prior to
8 electing to buy the accelerated death benefit, you should seek
9 assistance from a qualified tax adviser.

10 Receipt of accelerated death benefits may affect eligibility for
11 public assistance programs, such as Medi-Cal or Medicaid. Prior
12 to electing to buy the accelerated death benefit, you should consult
13 with the appropriate social services agency concerning how receipt
14 of accelerated death benefits may affect that eligibility.”

15 (d)

16 (c) In the case of agent-solicited life insurance, the agent shall
17 provide the disclosure form to the applicant prior to, or
18 concurrently with, the application. Acknowledgment of the
19 applicant’s receipt of the disclosure shall be signed by the applicant
20 and the writing agent.

21 (e)

22 (d) In the case of a solicitation by direct response methods, the
23 insurer shall provide the disclosure form to the applicant together
24 with the application. A notice that a full premium refund shall be
25 provided to the insured if the policy is returned to the company
26 within the free look period, pursuant to Section 10295.8.

27 (f)

28 (e) In the case of group insurance policies, the disclosure form
29 shall be delivered together with the application for the certificate,
30 or with the certificate of coverage or any related document
31 furnished by the insurer for the certificate holder.

32 10295.4. An insurer shall file with the commissioner an
33 actuarial memorandum prepared, dated, and signed by a member
34 of the American Academy of Actuaries that includes all of the
35 following information:

36 (a) A description of the accelerated death benefit, including the
37 effects of payment of the accelerated death benefit on all life
38 insurance policy benefits and any subsequent accelerated death
39 benefits, premium payments, cost of insurance rates, and values,

1 including any outstanding loan, if applicable, for all types of forms
2 with which the accelerated death benefit will be used.

3 (b) A description of, and justification for, expense charges
4 associated with the accelerated death benefit and the maximum
5 expense charges.

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

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

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

20 (f) The formula used to determine the accelerated death benefit,
21 including any limitations on the amount of the benefit, and the
22 formula used to determine the postacceleration premium for the
23 accelerated death benefit as well as the life insurance policy.

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

31 (h) If an accelerated death benefit will be paid in installments,
32 the actuarial memorandum shall explain the basis used in the
33 calculation of the minimum periodic payment for the payment
34 period and a sample calculation of a minimum periodic payment,
35 and the basis used, and a sample calculation of the lump sum
36 payable if the insured dies before all periodic payments for the
37 payment period are made.

38 (i) *(1)* For any accelerated death benefit of the type other than
39 a terminal illness, *subject to this article*, a certification that the
40 value and premium of the accelerated death benefit is 10 percent

1 or less of the total value of the benefits over the life of the policy.
2 These values shall be measured as of the date of issue.

3 (2) *The certification shall be in the following form:*

4
5 “I, _____ of _____
6 am a Member in good standing of the American Academy of
7 Actuaries and am qualified to provide this Certification with
8 respect to the accelerated death benefit described in the Actuarial
9 Memorandum to which this Certification is attached.

10 *I certify that:*

11 (1) *The value of the benefits provided, on an aggregated basis,*
12 *in respect of the filed accelerated death benefit, determined*
13 *according to the formula below applied over a range of*
14 *underwriting classes and plans at which the benefit is being made*
15 *available, is not in any case greater than 10%.*

16 $(NSP2 - NSP1) / NSP1$

17 *Where:*

18 (a) *NSP1 and NSP2 are determined using an effective annual*
19 *interest rate of 6%.*

20 (b) *NSP1 is the net single premium for the base policy benefits*
21 *assuming there is no accelerated death benefit.*

22 (c) *NSP2 is the net single premium for the base policy benefits*
23 *assuming that the full death benefit is paid at time of death or the*
24 *occurrence of the non-death accelerated death benefit trigger.*

25 (2) *In developing the assumptions, other than the interest*
26 *assumption, used in calculating NSP1 and NSP2, I have complied*
27 *with all applicable laws, regulations, and Actuarial Standards of*
28 *Practice (ASOPs). The assumptions used represent anticipated*
29 *experience factors, as defined in actuarial literature and by*
30 *generally accepted actuarial practice.*

31 (3) *The assumptions, other than the interest assumption, used*
32 *in calculating NSP1 and NSP2 will be reviewed at least annually*
33 *by the Company to ensure that the value of the accelerated death*
34 *benefit provided, as defined in (1) above, continues to be incidental.*
35 *If, after such review and while this accelerated death benefit is*
36 *being actively issued, the value of the benefits provided by this*
37 *benefit are no longer incidental based on then current anticipated*
38 *experience factors, the Company will discontinue offering the*
39 *accelerated death benefit which is no longer incidental.*

1 (4) *If a separate premium or cost of insurance (COI) charge is*
2 *being charged for the accelerated death benefit provided, the ratio*
3 *of the present value of the accelerated death benefit premiums or*
4 *COI charges over the life of the policy to the present value of the*
5 *policy premiums or COI charges exclusive of any riders, does not*
6 *exceed 10%. The present values in this item (4) are determined*
7 *using an effective annual interest rate of 6%.”*

8
9 10295.5. (a) Applications, if any, or forms supporting an
10 application, if any, for accelerated death benefits shall contain
11 clear, unambiguous, short, and simple questions designed to
12 ascertain the health condition of the applicant. Each question shall
13 contain only one health status inquiry and shall require only a
14 “yes” or “no” answer, except that the application may include a
15 request for the name of any prescribed medication and the name
16 of the prescribing physician. If the application requests the name
17 of any prescribed medication or the prescribing physician, then
18 any mistake or omission shall not be used as a basis for the denial
19 of a claim or the rescission of the accelerated death benefit or life
20 insurance policy or certificate.

21 (b) The following warning shall be printed conspicuously and
22 in close conjunction with the applicant’s signature block:

23
24 “Caution: If your answers on this application are misstated or
25 untrue, the insurer may have the right to deny benefits or rescind
26 your accelerated death benefit coverage.”

27
28 (c) If an insurer does not complete medical underwriting for the
29 accelerated death benefit separate from underwriting for the life
30 insurance policy and resolve all reasonable questions arising from
31 information submitted on or with an application before issuing the
32 accelerated death benefit, then the insurer may only rescind the
33 accelerated death benefit or life insurance policy or certificate or
34 deny an otherwise valid claim upon clear and convincing evidence
35 of fraud or material misrepresentation of the risk by the applicant.
36 The evidence shall do all of the following:

- 37 (1) Pertain to the condition for which benefits are sought.
38 (2) Involve a chronic condition or involve dates of treatment
39 before the date of application.
40 (3) Be material to the acceptance for coverage.

1 (d) An accelerated death benefit may not be field issued.

2 (e) The contestability period for a life insurance policy or
3 certificate that contains an accelerated death benefit shall comply
4 with paragraph (3) of subdivision (c) of Section 10271.

5 (f) A copy of the completed application shall be delivered to
6 the insured at the time of delivery of the life insurance policy or
7 certificate that contains an accelerated death benefit.

8 10295.6. (a) When a policyholder or certificate holder requests
9 an acceleration of death benefits, the insurer shall send a statement
10 to the policyholder or certificate holder and irrevocable beneficiary
11 showing any effect that the payment of the accelerated death benefit
12 would have on the policy's cash value, accumulation account,
13 death benefit, premium, policy loans, and policy liens. The
14 statement shall disclose that receipt of accelerated death benefit
15 payments may adversely affect the recipient's eligibility for
16 Medicaid or other government benefits or entitlements. In addition,
17 receipt of an accelerated death benefit payment may be taxable
18 and assistance should be sought from a personal tax adviser. When
19 a previous disclosure statement becomes invalid as a result of an
20 acceleration of the death benefit, the insurer shall send a revised
21 disclosure statement to the policyholder or certificate holder and
22 irrevocable beneficiary.

23 (b) The accelerated death benefit shall be effective ~~for other~~
24 ~~qualifying events~~ not more than 30 days following the effective
25 date of the policy, provision, rider, endorsement, or certificate.

26 ~~(e) The insurer may offer a waiver of premium for the~~
27 ~~accelerated death benefit provision in the absence of a regular~~
28 ~~waiver of premium provision being in effect. At the time the benefit~~
29 ~~is claimed, the insurer shall explain any continuing premium~~
30 ~~requirement to keep the policy in force.~~

31 *(c) If the insurer charges a separate premium for the*
32 *accelerated death benefit, then the insurer may also offer a waiver*
33 *of premium benefit as defined in subdivision (a) of Section 10271.1.*
34 *At the time the waiver of the accelerated death benefit premium*
35 *benefit is claimed, the insurer shall explain any continuing*
36 *premium requirement to keep the underlying policy in force.*

37 (d) An insurer shall not unfairly discriminate among insureds
38 with different qualifying events covered under the policy or among
39 insureds with similar qualifying events covered under the policy.
40 An insurer shall not apply further conditions on the payment of

1 the accelerated death benefits other than those conditions specified
2 in the ~~unrestricted~~ accelerated death benefit.

3 (e) The insurer shall provide the policyholder or certificate
4 holder with a report, at least monthly, of any accelerated death
5 benefits paid out during the prior month, an explanation of any
6 changes to the policy or certificate, death benefits, and cash values
7 on account of the benefits being paid out, and the amount of the
8 remaining benefits that can be accelerated at the end of the prior
9 month. The insurer may use a calendar month or policy or
10 certificate month.

11 ~~(f) The policy or certificate may provide that any option
12 otherwise available to the insured to accelerate less than all of the
13 remaining death benefit on account of a terminal illness diagnosis
14 shall be suspended while the death benefit is being so accelerated
15 in accordance with the requirements of this article.~~

16 ~~(g)~~

17 (f) The conversion benefit available to group certificate holders
18 on termination of employment pursuant to paragraph (2) of
19 subdivision (a) of Section 10209 shall include a benefit comparable
20 to the accelerated death benefit. This requirement may be satisfied
21 by a ~~separate~~ *an individual* policy or certificate. This requirement,
22 subject to the approval of the commissioner, may be satisfied by
23 arrangement with another insurer to provide the required coverage.

24 ~~(h)~~

25 (g) When payment of an accelerated death benefit results in a
26 pro rata reduction in cash value, the payment may be applied
27 toward repaying a portion of the loan equal to a pro rata portion
28 of any outstanding policy loans if disclosure of the effect of
29 acceleration upon any remaining death benefit, cash value or
30 accumulation account, policy loan, and premium payments,
31 including a statement of the possibility of termination of any
32 remaining death benefit, is provided to the policyholder or
33 certificate holder. The policyholder or certificate holder shall
34 provide written consent authorizing any other arrangement for the
35 repayment of outstanding policy loans.

36 10295.7. (a) The insurer may require a premium charge or
37 cost of insurance charge for the accelerated death benefit. This
38 charge shall be based on sound actuarial principles. In the case of
39 group insurance, the additional cost may also be reflected in the
40 experience rating.

1 (b) (1) The insurer may pay a present value of the face amount.
2 The calculation shall be based on any applicable actuarial discount
3 appropriate to the policy design. The interest rate or interest rate
4 methodology used in the calculation shall be based on sound
5 actuarial principles and disclosed in the contract or actuarial
6 memorandum required in Section 10295.4. The maximum interest
7 rate used shall be no greater than the greater of one of the
8 following:

9 (A) The current yield on 90-day treasury bills.

10 (B) The current maximum statutory adjustable policy loan
11 interest rate.

12 (2) The interest rate accrued on the portion of the lien that is
13 equal in amount to the cash value of the life insurance policy at
14 the time of the supplemental benefit acceleration shall be not more
15 than the policy loan interest rate stated in the contract.

16 (c) (1) Except as provided in paragraph (2), when an accelerated
17 death benefit is payable, there shall not be more than a pro rata
18 reduction in the cash value based on the percentage of death
19 benefits accelerated to produce the accelerated death benefit
20 payment.

21 (2) Alternatively, the payment of accelerated death benefits,
22 any administrative expense charges, any future premiums, and any
23 accrued interest can be considered a lien against the death benefit
24 of the life insurance policy and access to the cash value of the life
25 insurance policy may be restricted to any excess of the cash value
26 over the sum of any other outstanding loans and the lien. Future
27 access to additional policy loans may also be limited to any excess
28 of the cash value over the sum of the lien and any other outstanding
29 policy loans.

30 (d) When payment of an accelerated death benefit results in a
31 pro rata reduction in the cash value of the life insurance policy,
32 the payment shall not be applied toward repaying an amount greater
33 than a pro rata portion of any outstanding policy loans.

34 10295.8. (a) ~~If an accelerated death benefit is incorporated~~
35 ~~into the terms of the policy or certificate, an applicant for a policy~~
36 ~~or a certificate~~ *An applicant for an accelerated death benefit* shall
37 have the right to return the accelerated death benefit policy or
38 certificate by first-class United States mail within 30 days of its
39 delivery and to have the premium refunded if, after examination
40 of the policy or certificate, the applicant is not satisfied for any

1 reason. If the accelerated death benefit is purchased as an
2 endorsement or rider at the same time as the base life insurance
3 policy, then the endorsement or rider may be returned within 30
4 days. The underlying life insurance policy shall be otherwise
5 subject to this code.

6 (b) The return of a life insurance policy or certificate that
7 contains an accelerated death benefit, or the return of an accelerated
8 death benefit rider or endorsement, shall void the life insurance
9 policy or certificate, or rider or endorsement from the beginning,
10 and the parties shall be in the same position as if no policy,
11 certificate, rider, or endorsement had been issued. All premiums
12 paid and any policy fee paid for the accelerated death benefit shall
13 be fully refunded directly to the applicant by the insurer within 30
14 days after the policy, rider, endorsement, or certificate is returned.

15 (c) Policies, certificates, riders, or endorsements to which this
16 section applies shall have a notice prominently printed , or attached
17 thereto, stating in substance the conditions described in
18 subdivisions (a) and (b).

19 10295.9. (a) Application forms for accelerated death benefits
20 shall include a question designed to elicit information as to whether
21 ~~the proposed insurance policy~~ *accelerated death benefit* is intended
22 to replace any long-term care insurance presently in force. A
23 supplementary application or other form to be signed by the
24 applicant containing that question may be used.

25 (b) (1) An insurer, broker, agent, or other person shall not cause
26 a policyholder to replace a long-term care insurance policy
27 unnecessarily. This section shall not be construed to allow an
28 insurer, broker, agent, or other person to cause a policyholder to
29 replace a long-term care insurance policy or life insurance policy
30 subject to this section that will result in a decrease in benefits and
31 an increase in premium.

32 (2) It shall be presumed that any third or greater policy sold to
33 a policyholder in any 12-month period is unnecessary within the
34 meaning of this section. This section shall not apply to those
35 instances in which a policy is replaced solely for the purpose of
36 consolidating policies with a single insurer.

37 (c) Upon determining that a sale will involve a replacement of
38 a life insurance policy subject to this section or replacement of a
39 long-term care insurance policy, an ~~insurer,~~ *insurer* or its agent
40 shall furnish the applicant, prior to issuance or delivery of a policy,

1 certificate, rider, or endorsement, a notice regarding replacement
2 of life insurance that includes an accelerated death benefit, or
3 long-term care insurance coverage with a life insurance policy or
4 certificate that contains an accelerated death benefit. One copy of
5 this notice shall be retained by the applicant and an additional copy
6 signed by the applicant shall be retained by the insurer. The
7 required notice shall be provided in the following form:

8

9 ~~“NOTICE TO PERSONS APPLYING TO REPLACE~~
10 ~~EXISTING APPLICANT REGARDING REPLACEMENT OF~~
11 ~~LONG-TERM CARE INSURANCE OR REPLACE EXISTING~~
12 ~~LIFE INSURANCE INCLUDING ACCELERATED DEATH~~
13 ~~BENEFITS~~

14 According to (your application) (information you have
15 furnished), you intend to lapse or otherwise terminate existing life
16 insurance or long-term care insurance and replace it with a life
17 insurance policy with an accelerated death benefit to be issued by
18 (company name) Insurance Company. Your new accelerated death
19 benefit coverage provides 30 days within which you may decide,
20 without cost, whether you desire to keep the coverage. Please note
21 that your underlying life insurance policy may only provide for a
22 10-day period during which you may decide, without cost, whether
23 you will keep the coverage. For your own information and
24 protection, you should be aware of, and seriously consider, certain
25 factors that may affect the insurance protection available to you
26 under the new coverage.

27 This accelerated death benefit is NOT Nursing Home, Home
28 Care, or Long-Term Care Insurance, and it is not intended or
29 designed to eliminate your need for that coverage. There are no
30 restrictions or limitations on the use of the accelerated death benefit
31 proceeds.

32 If you want long-term care insurance, you should consult with
33 an insurance agent licensed to sell that insurance, inquire with the
34 insurance company offering the accelerated death benefits, or visit
35 the California Department of Insurance Internet Web site
36 (www.insurance.ca.gov) that provides information regarding
37 long-term care insurance.

38 If you want to replace existing coverage with life insurance that
39 includes an accelerated death benefit, you should note the
40 following:

1 (1) Receipt of accelerated death benefits may be taxable. Prior
2 to electing to buy the accelerated death benefit, policyholders or
3 certificate holders should seek assistance from a qualified tax
4 adviser.

5 (2) Receipt of accelerated death benefits may affect eligibility
6 for public assistance programs, such as Medi-Cal or Medicaid.
7 Prior to electing to buy the accelerated death benefit, the
8 applicant/buyer should consult with the appropriate social services
9 agency concerning how receipt of accelerated death benefits may
10 affect that eligibility.

11 You may wish to secure the advice of your present insurer or its
12 agent regarding the proposed replacement of your present coverage.
13 This is not only your right, but it is also in your best interest to
14 make sure you understand all the relevant factors involved in
15 replacing your present coverage.

16 If, after due consideration, you still wish to terminate your
17 present coverage and replace it with new coverage, be certain to
18 truthfully and completely answer all questions on the application
19 concerning your medical health history. Failure to include all
20 material medical information on an application may provide a
21 basis for the company to deny any future claims and to refund your
22 premium as though your coverage had never been in force. After
23 the application has been completed and before you sign it, reread
24 it carefully to be certain that all the information has been properly
25 recorded.

26 The above "Notice to Applicant" was delivered to me on:
27 (Date)
28 (Applicant's Signature)"
29

30 (d) The replacement notice shall include the following statement
31 except when the replacement coverage is group insurance:
32

33 "COMPARISON TO YOUR CURRENT COVERAGE: I have
34 reviewed your current coverage . To the best of my knowledge,
35 the replacement of insurance involved in this transaction materially
36 improves your position for the following reasons:

- 37 Additional or different benefits
- 38 (please specify) _____.
- 39 No change in benefits, but lower premiums.
- 40 Fewer benefits and lower premiums.

1 ~~Life insurance feature not available in long-term care~~
 2 ~~insurance (please specify).~~
 3 ~~Other (please specify) _____.~~
 4 (Signature of Agent and Name of Insurer)
 5 (Signature of Applicant)
 6 (Date)
 7

8 (e) In recommending the purchase or replacement of any policy
 9 or certificate issued under this section, an agent shall make
 10 reasonable efforts to determine the appropriateness of a
 11 recommended purchase or replacement.

12 (f) The replacing policy or certificate shall not contain a
 13 provision establishing a new waiting period in the event existing
 14 coverage is converted to, or replaced by, a new or other form within
 15 the same insurer, except with respect to an increase in benefits
 16 voluntarily selected by the insured individual or group
 17 policyholder.

18 10295.10. ~~With regard to an accelerated death benefit, an An~~
 19 insurer may not:

20 (a) Cancel, nonrenew, or otherwise terminate an accelerated
 21 death benefit on the grounds of the age or the deterioration of the
 22 mental or physical health of the insured individual or certificate
 23 holder.

24 (b) Terminate a policy, certificate, or rider, or contain a
 25 provision that allows the premium for an in-force policy, certificate,
 26 or rider, to be increased due to the divorce of a policyholder or
 27 certificate holder.

28 10295.11. (a) An accelerated death benefit shall not be
 29 advertised or marketed as long-term care insurance, nursing home
 30 insurance, or home care insurance. Any advertisement, description,
 31 comparison, marketing material, or illustration shall state in bold
 32 type:

33 “This is a life insurance benefit that also gives you the option to
 34 accelerate some or all of the death benefit in the event that you
 35 meet the criteria for a qualifying event described in the policy.
 36 This policy or certificate does not provide long-term care insurance
 37 subject to California long-term care insurance law. This policy or
 38 certificate is not a California Partnership for Long-Term Care
 39 program policy. This policy or certificate is not a Medicare
 40 supplement (policy or certificate).”

1 An insurer shall also include in any advertisement or marketing
2 materials for these insurance policies all of the following:

3 (1) A statement that the policy or certificate pays proceeds that
4 are *or are not* intended ~~for to receive~~ favorable tax treatment under
5 Section 101(g) of the Internal Revenue Code (26 U.S.C. Sec.
6 ~~101(g)), if applicable 101(g)).~~

7 (2) A description of the accelerated death benefits provided by
8 the policy, including a description of the acceleration of the death
9 benefit to pay an unrestricted cash benefit when the insured has
10 become chronically ill or otherwise eligible for benefits from a
11 qualified event.

12 (3) A comparison between the benefits provided by life
13 insurance policies, riders, or endorsements that contain accelerated
14 death benefits and the benefits provided by long-term care
15 insurance.

16 ~~(4) The statement in paragraph (1) of subdivision (a) may only
17 appear in an advertisement, description comparison, illustration,
18 or marketing material for policies or certificates that accelerate
19 death benefits pursuant to Section 10295 if the policy pays proceeds
20 that are intended for favorable tax treatment under Section 101(g)
21 of the Internal Revenue Code (26 U.S.C. Sec. 101(g)).~~

22 (b) Advertising for term life insurance policies or certificates
23 that contain an accelerated death benefit to be attached to an
24 existing term life policy shall include a *prominent* statement that
25 the accelerated death benefit will terminate with the policy.

26 (c) On or after January 1, 2014, every insurer offering
27 accelerated death benefits shall file with the commissioner copies
28 of all printed advertising for accelerated death benefits that the
29 insurer proposes to disseminate in the state prior to use of that
30 material. The commissioner shall have the authority to disapprove
31 any advertising that does not meet the requirements of this code.
32 If the commissioner disapproves the advertising, the insurer shall
33 not use and shall stop using the disapproved advertising. Nothing
34 in this subdivision shall be construed as requiring prior approval
35 of advertising prior to dissemination in this state.

36 10295.12. (a) Insurers shall ensure that agents offering,
37 marketing, or selling accelerated *death* benefits on their behalf are
38 able to describe the differences between benefits provided under
39 an accelerated *death* benefit and benefits provided under long-term
40 care insurance. ~~Completion insurance, as follows:~~

1 (1) *The difference between the benefits afforded to an insured*
2 *through an accelerated death benefit and a long-term care*
3 *insurance policy or rider.*

4 (2) *The differences between benefit eligibility criteria.*

5 (3) *Whether an elimination period applies to either an*
6 *accelerated death benefit or long-term care insurance and a*
7 *description of the elimination period.*

8 (4) *The benefits under the accelerated death benefit or long-term*
9 *care insurance if benefits are never needed.*

10 (5) *The benefits under the accelerated death benefit or long-term*
11 *insurance if benefits are needed.*

12 (6) *Restrictions on benefit amounts.*

13 (7) *Tax treatment of benefits.*

14 (8) *Income and death benefit considerations.*

15 (b) *Completion of California agent education or continuing*
16 *education for long-term care insurance shall be deemed to have*
17 ~~met~~ *meet the requirements of this section.*

18 10295.13. In addition to other unfair trade practices described
19 in this code, the following acts and practices in the sale of insurance
20 under this article are prohibited:

21 (a) *Twisting.* Knowingly making any misleading representation
22 or incomplete or fraudulent comparison of any insurance policies
23 or insurers for the purpose of inducing, or tending to induce, any
24 person to lapse, forfeit, surrender, terminate, retain, pledge, assign,
25 borrow on or convert any insurance policy, or to take out a policy
26 of insurance with another insurer.

27 (b) *High pressure tactics.* Employing any method of marketing
28 having the effect of, or tending to, induce the purchase of insurance
29 through force, fright, threat, whether explicit or implied, or undue
30 pressure to purchase or recommend the purchase of insurance.

31 (c) *Cold lead advertising.* Making use directly or indirectly of
32 any method of marketing that fails to disclose in a conspicuous
33 manner that a purpose of the method of marketing is solicitation
34 of insurance and that contact will be made by an insurance agent
35 or insurance company.

36 ~~10295.14. An individual accelerated death benefit shall not be~~
37 ~~issued unless it meets the requirements of Section 10113.72~~
38 ~~regarding unintentional lapse.~~

39 10295.14. (a) *Accelerated death benefits shall comply with*
40 *the provisions in Sections 10113.71 and 10113.72.*

1 (b) Every insurer offering term life insurance with accelerated
2 death benefits or any rider that provides for accelerated death
3 benefits described in Section 10295 shall also offer a waiver of
4 premium benefit for the life insurance premium and any premium
5 charged for the accelerated death benefit as described in Section
6 10271.1.

7 (c) Every insurer offering a cash value life insurance policy or
8 rider offering accelerated death benefits described in Section
9 10295 shall disclose all premium default protection options in the
10 policy and at the time of the application, including waiver of
11 premium options available under Section 10271.1 and automatic
12 premium loans.

13 10295.15. (a) Except at the request of the policyholder or
14 contract holder, all accelerated death benefit provisions or
15 supplemental contracts shall be renewable for the life of the
16 underlying life insurance policy, provided the premiums are timely
17 paid. The statement shall be prominently displayed on the first
18 page of the accelerated death benefit policy or rider.

19 (b) Term life insurance policies shall also include a *prominent*
20 statement *on page one* that the accelerated death benefit terminates
21 with the policy.

22 10295.16. Termination of ~~the an~~ accelerated death benefit
23 ~~provision shall be without~~ *not* prejudice to ~~any the~~ *the* payment of
24 ~~benefits payable for any claim if the claim began while~~ *qualifying*
25 ~~event that occurred while the accelerated death benefit provision~~
26 ~~was in force and continues without interruption after termination.~~
27 *force.*

28 10295.17. An insurer that fails to conform to the requirements
29 provided under this article shall be subject to Article 6.5
30 (commencing with Section 790) of Chapter 1 of Part 2 of Division
31 1.

32 ~~(b) A violation of this article is not subject to subdivision (d)~~
33 ~~of Section 790.036.~~

34 10295.18. Accelerated death benefits shall not limit or exclude
35 coverage by type of illness, treatment, medical condition, or
36 accident, except under the circumstances described in paragraphs
37 (1) to (4), inclusive, of subdivision (g) of Section 10271.

38 10295.19. A policy, certificate, rider, or endorsement shall
39 include a provision giving the policyholder or certificate holder

1 the right to appeal to the insurer a decision regarding benefit
2 eligibility.

3 *SEC. 8. No reimbursement is required by this act pursuant to*
4 *Section 6 of Article XIII B of the California Constitution because*
5 *the only costs that may be incurred by a local agency or school*
6 *district will be incurred because this act creates a new crime or*
7 *infraction, eliminates a crime or infraction, or changes the penalty*
8 *for a crime or infraction, within the meaning of Section 17556 of*
9 *the Government Code, or changes the definition of a crime within*
10 *the meaning of Section 6 of Article XIII B of the California*
11 *Constitution.*