

AMENDED IN ASSEMBLY SEPTEMBER 6, 2013

AMENDED IN ASSEMBLY SEPTEMBER 3, 2013

AMENDED IN ASSEMBLY AUGUST 5, 2013

AMENDED IN ASSEMBLY JULY 3, 2013

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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 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.

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: 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:

1 10110.5. (a) A policy or endorsement issued by an admitted
2 life and disability insurer may contain a provision for a waiver of
3 premium payments in the event of involuntary unemployment of
4 the insured. Insurers issuing policies or endorsements containing
5 that provision shall establish any additional reserves and file any
6 additional financial reports that the commissioner may require.

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

15 SEC. 2. Section 10232.8 of the Insurance Code is amended to
16 read:

17 10232.8. (a) In every long-term care policy or certificate that
18 is not intended to be a federally qualified long-term care insurance
19 contract and provides home care benefits, the threshold establishing
20 eligibility for home care benefits shall be at least as permissive as
21 a provision that the insured will qualify if either one of two criteria
22 are met:

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

24 (2) Impairment of cognitive ability.

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

30 “Activities of daily living” in every policy or certificate that is
31 not intended to be a federally qualified long-term care insurance
32 contract and provides home care benefits shall include eating,
33 bathing, dressing, ambulating, transferring, toileting, and
34 continence; “impairment” means that the insured needs human
35 assistance, or needs continual substantial supervision; and
36 “impairment of cognitive ability” means deterioration or loss of
37 intellectual capacity due to organic mental disease, including
38 Alzheimer’s disease or related illnesses, that requires continual
39 supervision to protect oneself or others.

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

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

10 (2) Impairment of cognitive ability.

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

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

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

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

36 (e) Until the time that these definitions may be superseded by
37 federal law or regulation, the terms "substantial assistance,"
38 "hands-on assistance," "standby assistance," "severe cognitive
39 impairment," and "substantial supervision" shall be defined

1 according to the safe-harbor definitions contained in Internal
2 Revenue Service Notice 97-31, issued May 6, 1997.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (6) Continence, which shall mean the ability to control bowel
39 and bladder as well as use ostomy or catheter receptacles, and
40 apply diapers and disposable barrier pads.

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

4 SEC. 3. Section 10271 of the Insurance Code is repealed.

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

6 10271. (a) Except as set forth in this section, this chapter shall
7 not apply to, or in any way affect, provisions in life insurance,
8 endowment, or annuity contracts, or contracts supplemental thereto,
9 that provide additional benefits in case of death or dismemberment
10 or loss of sight by accident, or that operate to safeguard those
11 contracts against lapse, as described in subdivision (a) of Section
12 10271.1, or give a special surrender benefit, as defined in
13 subdivision (b) of Section 10271.1, or an accelerated death benefit
14 as defined in Article 2.1 (commencing with Section 10295), in the
15 event that the owner, insured, or annuitant, as applicable, meets
16 the benefit triggers specified in the life insurance or annuity
17 contract or supplemental contract.

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

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

31 (1) A life insurance policy or annuity contract that contains a
32 supplemental benefit shall provide that the contract, supplemental
33 contract, and any papers attached thereto by the insurer, including
34 the application if attached, constitute the entire insurance or annuity
35 contract and shall also provide that no agent has the authority to
36 change the contract or to waive any of its provisions. This provision
37 shall be preceded individually by a caption stating “ENTIRE
38 CONTRACT; CHANGES:” or other appropriate caption as the
39 commissioner may approve.

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

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

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

37 (5) The supplemental benefit shall provide that the insurer, upon
38 receipt of a notice of claim, shall furnish to the claimant those
39 forms as are usually furnished by it for filing a proof of occurrence
40 or a proof of loss. If the forms are not furnished within 15 days

1 after giving notice, the claimant shall be deemed to have complied
2 with the requirements of the supplemental benefit as to proof of
3 occurrence or proof of loss upon submitting, within the time fixed
4 by the supplemental benefit for filing proof of occurrence or proof
5 of loss, written proof covering the character and the extent of the
6 occurrence or loss. This provision shall be preceded individually
7 by a caption stating “CLAIM FORMS:” or other appropriate
8 caption as the commissioner may approve.

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

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

30 (d) The commissioner shall not approve any contract or
31 supplemental contract for insurance or delivery in this state if the
32 commissioner finds that the contract or supplemental contract does
33 any of the following:

34 (1) Contains any provision, label, description of its contents,
35 title, heading, backing, or other indication of its provisions that is
36 unintelligible, uncertain, ambiguous, or abstruse, or likely to
37 mislead a person to whom the supplemental benefit is offered,
38 delivered, or issued.

- 1 (2) Constitutes fraud, unfair trade practices, or insurance
2 economically unsound to the owner, insured, or annuitant, as
3 applicable.
- 4 (3) Contains any actuarial information that is materially
5 incomplete, incorrect, or inadequate.
- 6 (e) A supplemental benefit described in subdivision (a) shall
7 not contain any title, description, or any other indication that would
8 describe or imply that the supplemental benefit provides long-term
9 care coverage.
- 10 (f) Commencing two years from the date of the issuance of the
11 supplemental benefit, no claim for loss incurred or disability, as
12 defined by the supplemental benefit, may be reduced or denied on
13 the grounds that a disease or physical condition not excluded from
14 coverage by name or specific description effective on the date of
15 loss had existed prior to the effective date on the coverage of the
16 supplemental benefit.
- 17 (g) With regard to supplemental benefits set forth in subdivision
18 (a), the supplemental benefit shall specify any applicable
19 exclusions, which shall be limited to the following:
 - 20 (1) Condition or loss caused or substantially contributed to by
21 any attempt at suicide or intentionally self-inflicted injury, while
22 sane or insane.
 - 23 (2) Condition or loss caused or substantially contributed to by
24 war or an act of war, as defined in the exclusion provisions of the
25 contract.
 - 26 (3) Condition or loss caused or substantially contributed to by
27 active participation in a riot, insurrection, or terrorist activity.
 - 28 (4) Condition or loss caused or substantially contributed to by
29 committing or attempting to commit a felony.
 - 30 (5) Condition or loss caused or substantially contributed to by
31 voluntary intake of either:
 - 32 (A) Any drug, unless prescribed or administered by a physician
33 and taken in accordance with the physician's instructions.
 - 34 (B) Poison, gas, or fumes, unless they are the direct result of an
35 occupational accident.
 - 36 (6) Condition or loss in consequence of the insured being
37 intoxicated, as defined by the jurisdiction where the condition or
38 loss occurred.
 - 39 (7) Condition or loss caused or substantially contributed to by
40 engaging in an illegal occupation.

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

5 SEC. 5. Section 10271.1 of the Insurance Code is amended to
6 read:

7 10271.1. (a) (1) Supplemental benefits that operate to
8 safeguard life insurance contracts against lapse are defined as a
9 waiver of premium benefit or a waiver of monthly deduction
10 benefit, as applicable, in which the insurer waives the premium or
11 monthly deduction for a life insurance contract when the insured
12 becomes totally disabled, as defined by the supplemental benefit,
13 and where the waiver continues until the end of the insured's
14 disability, or for the period specified by the supplemental benefit,
15 consistent with paragraph (5).

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

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

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

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

31 (4) The insurer may require total disability to continue for an
32 uninterrupted period of time specified by the supplemental benefit,
33 or the insurer may allow separate periods of disability to be
34 combined.

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

38 (A) If the insured's total disability begins before the insured
39 attains 60 years of age, the insurer shall waive all premiums or
40 monthly deductions due for the period of the total disability, and

1 if the total disability extends to the insured's attainment of 65 years
2 of age, the insurer shall waive all further premiums or monthly
3 deductions due.

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

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

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

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

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

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

38 (4) Is totally disabled, as follows:

39 (A) During the first 24 months of total disability, the owner,
40 insured, or annuitant, as applicable, is unable to perform with

1 reasonable continuity the substantial and material duties of his or
2 her job due to sickness or bodily injury.

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

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

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

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

19 (A) Either of the following:

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

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

28 (B) Either of the following:

29 (i) Impairment in performing two out of six activities of daily
30 living as described in subdivisions (b), (d), (e), and (f) of Section
31 10232.8 due to a loss of functional capacity to perform the activity.

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

35 (6) Has become involuntarily or voluntarily unemployed.

36 (c) The term "supplemental benefit" means a rider to or
37 provision in a life insurance policy, certificate, or annuity contract
38 that provides a benefit as set forth in subdivision (a) of Section
39 10271.

1 SEC. 6. Section 10292 of the Insurance Code is amended to
2 read:

3 10292. (a) A supplemental benefit described in subdivision
4 (a) of Section 10271 shall not be delivered or issued for delivery
5 to any person in this state until a copy of the form thereof is
6 submitted to, and approved by, the commissioner. If the
7 supplemental benefit is an integral part of a contract of life
8 insurance or annuity, the entire contract shall be submitted to the
9 commissioner, but his or her power of approval or disapproval,
10 unless it is otherwise authorized, is limited to the supplemental
11 portion and any other portions that relate to the supplemental
12 portion.

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

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

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

28
29 Article 2.1. Accelerated Death Benefits

30
31 10295. (a) An accelerated death benefit, as described in this
32 section, shall not be offered, sold, issued, or marketed as health,
33 accident, or long-term care insurance. An accelerated death benefit
34 shall not reimburse or provide specific coverage for any health,
35 accident, or long-term care insurance benefits.

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

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

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

7 (B) (i) The insured has a chronic illness as defined in
8 subparagraph (B) of paragraph (5) of subdivision (b) of Section
9 10271.1.

10 (ii) For policies intended to be federally tax qualified, the insurer
11 shall require that a licensed health care practitioner, independent
12 of the insurer, certifies that the insured meets the definition of
13 “chronically ill individual” as defined under the federal Health
14 Insurance Portability and Accountability Act (Public Law 104-191).

15 (I) If a health care practitioner makes a determination, pursuant
16 to this clause, that an insured does not meet the definition of
17 “chronically ill individual,” the insurer shall notify the insured that
18 the insured shall be entitled to a second assessment by a licensed
19 health care practitioner, upon request, who shall personally examine
20 the insured. The requirement for a second assessment shall not
21 apply if the initial assessment was performed by a practitioner who
22 otherwise meets the requirements of this clause and who personally
23 examined the insured.

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

28 (III) The costs to have a licensed health care practitioner certify
29 that an insured meets, or continues to meet, the definition of
30 “chronically ill individual,” shall not count against the lifetime
31 maximum of the policy or certificate.

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

36 (V) It is the intent of the Legislature ~~this clause, that in enacting~~
37 *in enacting this clause that* the practitioner’s assessments be
38 unhindered by financial considerations.

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

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

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

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

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

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

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

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

22 10295.1. (a) An accelerated death benefit as defined in
23 paragraph (1) of subdivision (b) of Section 10295 shall comply
24 with, and shall explain all of, the following:

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

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

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

33 (4) That the accelerated death benefit may not restrict the
34 insured’s use of the proceeds.

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

37 (6) That, prior to the payment of the accelerated death benefit,
38 the insurer is required to obtain from an assignee or irrevocable
39 beneficiary, if any, a signed acknowledgment of concurrence for

1 payout. If the insurer making the accelerated death benefit is itself
2 the assignee under the policy, the acknowledgment is not required.

3 (7) That if any death benefit remains after payment of an
4 accelerated death benefit, the accidental death benefit provision,
5 if any, in the policy shall not be affected by the payment of the
6 accelerated death benefit.

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

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

10 (2) An explanation that the insured may accelerate more than
11 once on a qualifying event up to the maximum amount.

12 (3) An explanation that the insured may accelerate on more than
13 one of the qualifying events specified in the supplemental provision
14 up to the maximum amount.

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

19 (c) The insurer shall advise the policyholder or certificate holder
20 that there may be tax consequences of accepting an amount above
21 the amount that would be tax qualified under the Internal Revenue
22 Code.

23 (d) The accelerated death benefit shall not contain any
24 preexisting condition limitation and shall not contain any
25 requirement that acceleration be conditioned on a prior
26 hospitalization or institutionalization.

27 (e) The accelerated death benefit shall contain an explanation
28 of how the insured will pay for the accelerated death benefit,
29 whether by paying a portion of the premium for the life insurance
30 policy, by paying a fee at the time of the acceleration, by paying
31 the cost of insurance charge, or by paying the administrative
32 expense charge, together with an illustration. If there is a premium
33 or cost of insurance charge, or a charge imposed upon the
34 acceleration, a generic illustration numerically demonstrating any
35 effect of the payment of a benefit on the policy's cash value,
36 accumulation account, death benefit, premium, policy loans, and
37 policy liens shall suffice for this purpose.

38 (f) (1) Every accelerated death benefit that pays proceeds
39 intended for favorable tax treatment under Section 101(g) of the
40 Internal Revenue Code (26 U.S.C. Sec. 101(g)) shall be identified

1 as such by prominently displaying and printing that intention on
2 page one of the accelerated benefit policy provision, rider,
3 endorsement, or certificate.

4 (2) Every accelerated death benefit that pays proceeds that are
5 not intended for favorable tax treatment under Section 101(g) of
6 the Internal Revenue Code (26 U.S.C. Sec. ~~101(g)~~, 101(g)) shall
7 be identified as such by prominently displaying and printing that
8 intention on page one of the accelerated death benefit policy
9 provision, rider, endorsement, or certificate.

10 10295.2. A life insurance contract with an accelerated death
11 benefit or an accelerated death benefit in the form of a rider or
12 endorsement shall be submitted for the approval of the
13 commissioner in the same manner as required under Section 10292
14 and shall be submitted with the following additional information:

15 (a) The term “accelerated death benefit” shall be included in
16 the descriptive title of the filing.

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

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

27 10295.3. (a) A written disclosure, as set forth below, shall be
28 included with the filing for the commissioner’s approval, and shall
29 be given to each applicant. The same written disclosure shall be
30 attached to the policy or certificate delivered to the insured.

31 (b) The required written disclosure shall be in the following
32 form:

33 “IMPORTANT NOTICE TO APPLICANT/BUYER
34 REGARDING ACCELERATED DEATH BENEFITS”

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

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

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

29 10295.4. An insurer shall file with the commissioner an
30 actuarial memorandum prepared, dated, and signed by a member
31 of the American Academy of Actuaries that includes all of the
32 following information:

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

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

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

11 (d) 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 (e) 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 (f) 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 for the
21 accelerated death benefit as well as the life insurance policy.

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

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

36 (i) (1) For any accelerated death benefit subject to this article,
37 a certification that the value and premium of the accelerated death
38 benefit is 10 percent or less of the total value of the benefits over
39 the life of the policy. These values shall be measured as of the date
40 of issue.

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

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

8 I certify that:

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

14 $(NSP2 - NSP1) / NSP1$

15 Where:

16 (a) NSP1 and NSP2 are determined using an effective annual
17 interest rate of 6%.

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

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

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

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

38 (4) If a separate premium or cost of insurance (COI) charge is
39 being charged for the accelerated death benefit provided, the ratio
40 of the present value of the accelerated death benefit premiums or

1 COI charges over the life of the policy to the present value of the
2 policy premiums or COI charges exclusive of any riders, does not
3 exceed 10%. The present values in this item (4) are determined
4 using an effective annual interest rate of 6%.”
5

6 10295.5. (a) Applications, if any, or forms supporting an
7 application, if any, for accelerated death benefits shall contain
8 clear, unambiguous, short, and simple questions designed to
9 ascertain the health condition of the applicant. Each question shall
10 contain only one health status inquiry and shall require only a
11 “yes” or “no” answer, except that the application may include a
12 request for the name of any prescribed medication and the name
13 of the prescribing physician. If the application requests the name
14 of any prescribed medication or the prescribing physician, then
15 any mistake or omission shall not be used as a basis for the denial
16 of a claim or the rescission of the accelerated death benefit or life
17 insurance policy or certificate.

18 (b) The following warning shall be printed conspicuously and
19 in close conjunction with the applicant’s signature block:
20

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

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

- 34 (1) Pertain to the condition for which benefits are sought.
35 (2) Involve a chronic condition or involve dates of treatment
36 before the date of application.
37 (3) Be material to the acceptance for coverage.
38 (d) An accelerated death benefit may not be field issued.

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

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

7 10295.6. (a) When a policyholder or certificate holder requests
8 an acceleration of death benefits, the insurer shall send a statement
9 to the policyholder or certificate holder and irrevocable beneficiary
10 showing any effect that the payment of the accelerated death benefit
11 would have on the policy's cash value, accumulation account,
12 death benefit, premium, policy loans, and policy liens. The
13 statement shall disclose that receipt of accelerated death benefit
14 payments may adversely affect the recipient's eligibility for
15 Medicaid or other government benefits or entitlements. In addition,
16 receipt of an accelerated death benefit payment may be taxable
17 and assistance should be sought from a personal tax adviser. When
18 a previous disclosure statement becomes invalid as a result of an
19 acceleration of the death benefit, the insurer shall send a revised
20 disclosure statement to the policyholder or certificate holder and
21 irrevocable beneficiary.

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

25 (c) If the insurer charges a separate premium for the accelerated
26 death benefit, then the insurer may also offer a waiver of premium
27 benefit as defined in subdivision (a) of Section 10271.1. At the
28 time the waiver of the accelerated death benefit premium benefit
29 is claimed, the insurer shall explain any continuing premium
30 requirement to keep the underlying policy in force.

31 (d) An insurer shall not unfairly discriminate among insureds
32 with different qualifying events covered under the policy or among
33 insureds with similar qualifying events covered under the policy.
34 An insurer shall not apply further conditions on the payment of
35 the accelerated death benefits other than those conditions specified
36 in the accelerated death benefit.

37 (e) The insurer shall provide the policyholder or certificate
38 holder with a report, at least monthly, of any accelerated death
39 benefits paid out during the prior month, an explanation of any
40 changes to the policy or certificate, death benefits, and cash values

1 on account of the benefits being paid out, and the amount of the
2 remaining benefits that can be accelerated at the end of the prior
3 month. The insurer may use a calendar month or policy or
4 certificate month.

5 (f) The conversion benefit available to group certificate holders
6 on termination of employment pursuant to paragraph (2) of
7 subdivision (a) of Section 10209 shall include a benefit comparable
8 to the accelerated death benefit. This requirement may be satisfied
9 by an individual policy or certificate. This requirement, subject to
10 the approval of the commissioner, may be satisfied by arrangement
11 with another insurer to provide the required coverage.

12 (g) When payment of an accelerated death benefit results in a
13 pro rata reduction in cash value, the payment may be applied
14 toward repaying a portion of the loan equal to a pro rata portion
15 of any outstanding policy loans if disclosure of the effect of
16 acceleration upon any remaining death benefit, cash value or
17 accumulation account, policy loan, and premium payments,
18 including a statement of the possibility of termination of any
19 remaining death benefit, is provided to the policyholder or
20 certificate holder. The policyholder or certificate holder shall
21 provide written consent authorizing any other arrangement for the
22 repayment of outstanding policy loans.

23 10295.7. (a) The insurer may require a premium charge or
24 cost of insurance charge for the accelerated death benefit. This
25 charge shall be based on sound actuarial principles. In the case of
26 group insurance, the additional cost may also be reflected in the
27 experience rating.

28 (b) (1) The insurer may pay a present value of the face amount.
29 The calculation shall be based on any applicable actuarial discount
30 appropriate to the policy design. The interest rate or interest rate
31 methodology used in the calculation shall be based on sound
32 actuarial principles and disclosed in the contract or actuarial
33 memorandum required in Section 10295.4. The maximum interest
34 rate used shall be no greater than the greater of one of the
35 following:

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

37 (B) The current maximum statutory adjustable policy loan
38 interest rate.

39 (2) The interest rate accrued on the portion of the lien that is
40 equal in amount to the cash value of the life insurance policy at

1 the time of the supplemental benefit acceleration shall be not more
2 than the policy loan interest rate stated in the contract.

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

8 (2) Alternatively, the payment of accelerated death benefits,
9 any administrative expense charges, any future premiums, and any
10 accrued interest can be considered a lien against the death benefit
11 of the life insurance policy and access to the cash value of the life
12 insurance policy may be restricted to any excess of the cash value
13 over the sum of any other outstanding loans and the lien. Future
14 access to additional policy loans may also be limited to any excess
15 of the cash value over the sum of the lien and any other outstanding
16 policy loans.

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

21 10295.8. (a) An applicant for an accelerated death benefit shall
22 have the right to return the accelerated death benefit policy or
23 certificate by first-class United States mail within 30 days of its
24 delivery and to have the premium refunded if, after examination
25 of the policy or certificate, the applicant is not satisfied for any
26 reason. If the accelerated death benefit is purchased as an
27 endorsement or rider at the same time as the base life insurance
28 policy, then the endorsement or rider may be returned within 30
29 days. The underlying life insurance policy shall be otherwise
30 subject to this code.

31 (b) The return of a life insurance policy or certificate that
32 contains an accelerated death benefit, or the return of an accelerated
33 death benefit rider or endorsement, shall void the life insurance
34 ~~policy or certificate, or rider or endorsement~~ *policy, certificate,*
35 *rider, or endorsement* from the beginning, and the parties shall be
36 in the same position as if no policy, certificate, rider, or
37 endorsement had been issued. All premiums paid and any policy
38 fee paid for the accelerated death benefit shall be fully refunded
39 directly to the applicant by the insurer within 30 days after the
40 policy, rider, endorsement, or certificate is returned.

1 (c) Policies, certificates, riders, or endorsements to which this
2 section applies shall have a notice prominently ~~printed~~, *printed*,
3 or attached thereto, stating in substance the conditions described
4 in subdivisions (a) and (b).

5 10295.9. (a) Application forms for accelerated death benefits
6 shall include a question designed to elicit information as to whether
7 the accelerated death benefit is intended to replace any long-term
8 care insurance presently in force. A supplementary application or
9 other form to be signed by the applicant containing that question
10 may be used.

11 (b) (1) An insurer, broker, agent, or other person shall not cause
12 a policyholder to replace a long-term care insurance policy
13 unnecessarily. This section shall not be construed to allow an
14 insurer, broker, agent, or other person to cause a policyholder to
15 replace a long-term care insurance policy or life insurance policy
16 subject to this section that will result in a decrease in benefits and
17 an increase in premium.

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

23 (c) Upon determining that a sale will involve a replacement of
24 a life insurance policy subject to this section or replacement of a
25 long-term care insurance policy, an insurer or its agent shall furnish
26 the applicant, prior to issuance or delivery of a policy, certificate,
27 rider, or endorsement, a notice regarding replacement of life
28 insurance that includes an accelerated death benefit, or long-term
29 care insurance coverage with a life insurance policy or certificate
30 that contains an accelerated death benefit. One copy of this notice
31 shall be retained by the applicant and an additional copy signed
32 by the applicant shall be retained by the insurer. The required
33 notice shall be provided in the following form:

34
35 “NOTICE TO APPLICANT REGARDING REPLACEMENT
36 OF LONG-TERM CARE INSURANCE OR LIFE INSURANCE
37 INCLUDING ACCELERATED DEATH BENEFITS

38 According to (your application) (information you have
39 furnished), you intend to lapse or otherwise terminate existing life
40 insurance or long-term care insurance and replace it with a life

1 insurance policy with an accelerated death benefit to be issued by
2 (company name) Insurance Company. Your new accelerated death
3 benefit coverage provides 30 days within which you may decide,
4 without cost, whether you desire to keep the coverage. Please note
5 that your underlying life insurance policy may only provide for a
6 10-day period during which you may decide, without cost, whether
7 you will keep the coverage. For your own information and
8 protection, you should be aware of, and seriously consider, certain
9 factors that may affect the insurance protection available to you
10 under the new coverage.

11 This accelerated death benefit is NOT Nursing Home, Home
12 Care, or Long-Term Care Insurance, and it is not intended or
13 designed to eliminate your need for that coverage. There are no
14 restrictions or limitations on the use of the accelerated death benefit
15 proceeds.

16 If you want long-term care insurance, you should consult with
17 an insurance agent licensed to sell that insurance, inquire with the
18 insurance company offering the accelerated death benefits, or visit
19 the California Department of Insurance Internet Web site
20 (www.insurance.ca.gov) that provides information regarding
21 long-term care insurance.

22 If you want to replace existing coverage with life insurance that
23 includes an accelerated death benefit, you should note the
24 following:

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

29 (2) Receipt of accelerated death benefits may affect eligibility
30 for public assistance programs, such as Medi-Cal or Medicaid.
31 Prior to electing to buy the accelerated death benefit, the
32 applicant/buyer should consult with the appropriate social services
33 agency concerning how receipt of accelerated death benefits may
34 affect that eligibility.

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

1 If, after due consideration, you still wish to terminate your
 2 present coverage and replace it with new coverage, be certain to
 3 truthfully and completely answer all questions on the application
 4 concerning your medical health history. Failure to include all
 5 material medical information on an application may provide a
 6 basis for the company to deny any future claims and to refund your
 7 premium as though your coverage had never been in force. After
 8 the application has been completed and before you sign it, reread
 9 it carefully to be certain that all the information has been properly
 10 recorded.

11 The above “Notice to Applicant” was delivered to me on:

12 (Date)

13 (Applicant’s Signature)”

14

15 (d) The replacement notice shall include the following statement
 16 except when the replacement coverage is group insurance:

17

18 “COMPARISON TO YOUR CURRENT COVERAGE: I have
 19 reviewed your current coverage . To the best of my knowledge,
 20 the replacement of insurance involved in this transaction materially
 21 improves your position for the following reasons:

22 ___ Additional or different benefits

23 (please specify) _____.

24 ___ No change in benefits, but lower premiums.

25 ___ Fewer benefits and lower premiums.

26 ___ Other (please specify) _____.

27 (Signature of Agent and Name of Insurer)

28 (Signature of Applicant)

29 (Date)

30

31 (e) In recommending the purchase or replacement of any policy
 32 or certificate issued under this section, an agent shall make
 33 reasonable efforts to determine the appropriateness of a
 34 recommended purchase or replacement.

35 (f) The replacing policy or certificate shall not contain a
 36 provision establishing a new waiting period in the event existing
 37 coverage is converted to, or replaced by, a new or other form within
 38 the same insurer, except with respect to an increase in benefits
 39 voluntarily selected by the insured individual or group
 40 policyholder.

1 10295.10. An insurer may not:

2 (a) Cancel, nonrenew, or otherwise terminate an accelerated
3 death benefit on the grounds of the age or the deterioration of the
4 mental or physical health of the insured individual or certificate
5 holder.

6 (b) Terminate a policy, certificate, or rider, or contain a
7 provision that allows the premium for an in-force policy, certificate,
8 or rider, to be increased due to the divorce of a policyholder or
9 certificate holder.

10 10295.11. (a) An accelerated death benefit shall not be
11 advertised or marketed as long-term care insurance, nursing home
12 insurance, or home care insurance. Any advertisement, description,
13 comparison, marketing material, or illustration shall state in bold
14 type:

15 “This is a life insurance benefit that also gives you the option to
16 accelerate some or all of the death benefit in the event that you
17 meet the criteria for a qualifying event described in the policy.
18 This policy or certificate does not provide long-term care insurance
19 subject to California long-term care insurance law. This policy or
20 certificate is not a California Partnership for Long-Term Care
21 program policy. This policy or certificate is not a Medicare
22 supplement (policy or certificate).”

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

25 (1) A statement that the policy or certificate pays proceeds that
26 are or are not intended to receive favorable tax treatment under
27 Section 101(g) of the Internal Revenue Code (26 U.S.C. Sec.
28 101(g)).

29 (2) A description of the accelerated death benefits provided by
30 the policy, including a description of the acceleration of the death
31 benefit to pay an unrestricted cash benefit when the insured has
32 become chronically ill or otherwise eligible for benefits from a
33 qualified event.

34 (3) A comparison between the benefits provided by life
35 insurance policies, riders, or endorsements that contain accelerated
36 death benefits and the benefits provided by long-term care
37 insurance.

38 (b) Advertising for term life insurance policies or certificates
39 that contain an accelerated death benefit to be attached to an

1 existing term life policy shall include a prominent statement that
2 the accelerated death benefit will terminate with the policy.

3 (c) On or after January 1, 2014, every insurer offering
4 accelerated death benefits shall file with the commissioner copies
5 of all printed advertising for accelerated death benefits that the
6 insurer proposes to disseminate in the state prior to use of that
7 material. The commissioner shall have the authority to disapprove
8 any advertising that does not meet the requirements of this code.
9 If the commissioner disapproves the advertising, the insurer shall
10 not use and shall stop using the disapproved advertising. Nothing
11 in this subdivision shall be construed as requiring prior approval
12 of advertising prior to dissemination in this state.

13 10295.12. (a) Insurers shall ensure that agents offering,
14 marketing, or selling accelerated death benefits on their behalf are
15 able to describe the differences between benefits provided under
16 an accelerated death benefit and benefits provided under long-term
17 care insurance, as follows:

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

21 (2) The differences between benefit eligibility criteria.

22 (3) Whether an elimination period applies to either an
23 accelerated death benefit or long-term care insurance and a
24 description of the elimination period.

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

27 (5) The benefits under the accelerated death benefit or long-term
28 insurance if benefits are needed.

29 (6) Restrictions on benefit amounts.

30 (7) Tax treatment of benefits.

31 (8) Income and death benefit considerations.

32 (b) Completion of California agent education or continuing
33 education for long-term care insurance shall meet the requirements
34 of this section.

35 10295.13. In addition to other unfair trade practices described
36 in this code, the following acts and practices in the sale of insurance
37 under this article are prohibited:

38 (a) Twisting. Knowingly making any misleading representation
39 or incomplete or fraudulent comparison of any insurance policies
40 or insurers for the purpose of inducing, or tending to induce, any

1 person to lapse, forfeit, surrender, terminate, retain, pledge, assign,
2 borrow on or convert any insurance policy, or to take out a policy
3 of insurance with another insurer.

4 (b) High pressure tactics. Employing any method of marketing
5 having the effect of, or tending to, induce the purchase of insurance
6 through force, fright, threat, whether explicit or implied, or undue
7 pressure to purchase or recommend the purchase of insurance.

8 (c) Cold lead advertising. Making use directly or indirectly of
9 any method of marketing that fails to disclose in a conspicuous
10 manner that a purpose of the method of marketing is solicitation
11 of insurance and that contact will be made by an insurance agent
12 or insurance company.

13 10295.14. (a) Accelerated death benefits shall comply with
14 the provisions in Sections 10113.71 and 10113.72.

15 (b) Every insurer offering term life insurance with accelerated
16 death benefits or any rider that provides for accelerated death
17 benefits described in Section 10295 shall also offer a waiver of
18 premium benefit for the life insurance premium and any premium
19 charged for the accelerated death benefit as described in Section
20 10271.1.

21 (c) Every insurer offering a cash value life insurance policy or
22 rider offering accelerated death benefits described in Section 10295
23 shall disclose all premium default protection options in the policy
24 and at the time of the application, including waiver of premium
25 options available under Section 10271.1 and automatic premium
26 loans.

27 10295.15. (a) Except at the request of the policyholder or
28 contract holder, all accelerated death benefit provisions or
29 supplemental contracts shall be renewable for the life of the
30 underlying life insurance policy, provided the premiums are timely
31 paid. The statement shall be prominently displayed on the first
32 page of the accelerated death benefit policy or rider.

33 (b) Term life insurance policies shall also include a prominent
34 statement on page one that the accelerated death benefit terminates
35 with the policy.

36 10295.16. Termination of an accelerated death benefit shall
37 not prejudice the payment of benefits for any qualifying event that
38 occurred while the accelerated death benefit was in force.

39 10295.17. An insurer that fails to conform to the requirements
40 provided under this article shall be subject to Article 6.5

1 (commencing with Section 790) of Chapter 1 of Part 2 of Division
2 1.

3 10295.18. Accelerated death benefits shall not limit or exclude
4 coverage by type of illness, treatment, medical condition, or
5 accident, except under the circumstances described in paragraphs
6 (1) to (4), inclusive, of subdivision (g) of Section 10271.

7 10295.19. A policy, certificate, rider, or endorsement shall
8 include a provision giving the policyholder or certificate holder
9 the right to appeal to the insurer a decision regarding benefit
10 eligibility.

11 SEC. 8. No reimbursement is required by this act pursuant to
12 Section 6 of Article XIII B of the California Constitution because
13 the only costs that may be incurred by a local agency or school
14 district will be incurred because this act creates a new crime or
15 infraction, eliminates a crime or infraction, or changes the penalty
16 for a crime or infraction, within the meaning of Section 17556 of
17 the Government Code, or changes the definition of a crime within
18 the meaning of Section 6 of Article XIII B of the California
19 Constitution.