

AMENDED IN ASSEMBLY JUNE 28, 2012

AMENDED IN ASSEMBLY JUNE 21, 2012

AMENDED IN SENATE MARCH 26, 2012

SENATE BILL

No. 1212

Introduced by Senator Calderon

February 22, 2012

An act to *amend Sections 38.5, 663, 678, 678.1, and 10086 of, and to add Section 10271.2 to, the Insurance Code, relating to insurance.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1212, as amended, Calderon. Insurance.

Existing

(1) *Existing* law governs the business of insurance, and defines various types of insurance for these purposes, including life insurance and disability insurance. Existing law generally makes the requirements imposed on disability insurance contracts inapplicable to life insurance, endowment, and annuity contracts, or supplemental contracts thereto, that provide additional benefits in case of death or dismemberment or loss of sight by accident, operate to safeguard contracts against lapse, or give a special surrender value, a special benefit, or an annuity if the insured or annuitant becomes totally or permanently disabled.

This bill would specify that the term “special benefit” for purposes of those provisions includes an accelerated death benefit if some of all of the death benefit of a life insurance contract is paid to the insured upon the occurrence of certain qualifying events, including if the insured requires continuous confinement in an eligible institution.

Existing

(2) *Existing law* requires supplemental contracts or, if a supplemental contract is an integral part of a life insurance contract, life insurance contracts to be submitted for approval by the Insurance Commissioner before the contracts are delivered or issued for delivery in this state.

This bill would require a life insurance contract or supplemental contract that includes an accelerated death benefit that is submitted for approval by the Insurance Commissioner to be submitted for approval with specified additional information, including a statement of the types of policy forms with which the benefit will be offered.

(3) *Existing law* authorizes the electronic transmission of any written notice required to be given or mailed to any person by an insurer relating to any insurance on risks or on operations in this state, as specified.

This bill would provide that if any provision of the Insurance Code expressly authorizes electronic transmission, that provision shall govern over any conflicting state law. The bill would also authorize offers of renewal of automobile, property, or commercial insurance, as well as certain liability insurance, and any offer of coverage or renewal and any disclosure of earthquake coverage, to be provided electronically, as specified.

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

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

1 SECTION 1. Section 38.5 of the Insurance Code is amended
2 to read:
3 38.5. (a) Any written notice required to be given or mailed
4 to any person by an insurer relating to any insurance on risks or
5 on operations in this state not excepted by Section 1851 from the
6 coverage of Chapter 9 (commencing with Section 1850.4) of Part
7 2 of Division 1 of this code may, if not excluded by subdivision
8 (b) or (c) of Section 1633.3 of the Civil Code, be provided by
9 electronic transmission pursuant to Title 2.5 (commencing with
10 Section 1633.1) of Part 2 of Division 3 of the Civil Code, if each
11 party has agreed to conduct the transaction by electronic means
12 pursuant to Section 1633.5 of the Civil Code. The affidavit of the
13 person who initiated the electronic transmission, stating the facts
14 of that transmission into an information processing system outside
15 of the control of the sender or of any person that sent the electronic

record on behalf of the sender, is prima facie evidence that the notice was transmitted and shall be sufficient proof of notice. Any notice provided by electronic transmission shall be treated as if mailed or given for the purposes of any provision of this code, except as provided by subdivision (g) of Section 1633.15 of the Civil Code. The insurance company shall maintain a system for confirming that any notice or document that is to be provided by electronic means has been sent in a manner consistent with Section 1633.15 of the Civil Code. A valid electronic signature shall be sufficient for any provision of law requiring a written signature. The insurance company shall retain a copy of the confirmation and electronic signature, when either is required, with the policy information so that they are retrievable upon request by the Department of Insurance while the policy is in force and for five years thereafter.

(b) Notwithstanding subdivision (a), if any provision of this code expressly authorizes electronic transmission, that specific provision authorizing electronic transmission shall govern over any conflicting state law.

SEC. 2. Section 663 of the Insurance Code is amended to read:

663. (a) Before policy expiration, an insurer shall deliver to or mail to the named insured, at the address shown on the policy, one of the following:

(1) At least 20 days before expiration, a written or verbal offer of renewal of the policy, contingent upon payment of premium as stated in the offer.

(2) At least 30 days before expiration, a written notice of nonrenewal of the policy, including the statement required by Section 666.

(b) (1) An insurer that delivers a verbal offer to renew that is declined by an insured shall, at least 20 days before expiration of the policy, deliver to or mail to the named insured, at the address shown on the policy, a written confirmation of the offer and rejection.

(2) An insurer that attempts to satisfy subdivision (a) with a verbal offer to renew, but is unable to contact the named insured directly at least 20 days before policy expiration, shall, at least 20 days before policy expiration, deliver to or mail to the named insured, at the address shown on the policy, a written offer to renew

1 the policy, contingent upon payment of premium as stated in the
2 offer.

3 (c) In the event that an insurer fails to give the named insured
4 either an offer of renewal or notice of nonrenewal as required by
5 this section, the existing policy, with no change in its terms and
6 conditions, shall remain in effect for 30 days from the date that
7 either the offer to renew or the notice of nonrenewal is delivered
8 or mailed to the named insured. A notice to this effect shall be
9 provided by the insurer to the named insured with the policy or
10 the notice of renewal or nonrenewal. Notwithstanding the failure
11 of an insurer to comply with this section, the policy shall terminate
12 on the effective date of any other replacement or succeeding
13 automobile insurance policy procured by the insured, or his agent
14 or broker, with respect to any automobile designated in both
15 policies.

16 (d) The insurer shall not be required to notify the named insured,
17 or any other insured, of nonrenewal of the policy if the insurer has
18 mailed or delivered a notice of expiration or cancellation, on or
19 prior to the 30th day preceding expiration of the policy period.

20 (e) *Notwithstanding any provision to the contrary, the offer of*
21 *renewal pursuant to this section may be provided electronically.*

22 *SEC. 3. Section 678 of the Insurance Code is amended to read:*

23 678. (a) At least 45 days prior to policy expiration, an insurer
24 shall deliver to the named insured or mail to the named insured at
25 the address shown in the policy, either of the following:

26 (1) An offer of renewal of the policy contingent upon payment
27 of premium as stated in the offer, stating each of the following:

28 (A) Any reduction of limits or elimination of coverage.

29 (B) The telephone number of the insurer's representatives who
30 handle consumer inquiries or complaints. The telephone number
31 shall be displayed prominently in a font size consistent with the
32 other text of the renewal offer.

33 (2) A notice of nonrenewal of the policy. That notice shall
34 contain each of the following:

35 (A) The reason or reasons for the nonrenewal.

36 (B) The telephone number of the insurer's representatives who
37 handle consumer inquiries or complaints. The telephone number
38 shall be displayed prominently in a font size consistent with the
39 other text of the notice of nonrenewal.

1 (C) A brief statement indicating that if the consumer has
2 contacted the insurer to discuss the nonrenewal and remains
3 unsatisfied, he or she may have the matter reviewed by the
4 department. The statement shall include the telephone number of
5 the unit within the department that responds to consumer inquiries
6 and complaints.

7 (b) In the event an insurer fails to give the named insured either
8 an offer of renewal or notice of nonrenewal as required by this
9 section, the existing policy, with no change in its terms and
10 conditions, shall remain in effect for 45 days from the date that
11 either the offer to renew or the notice of nonrenewal is delivered
12 or mailed to the named insured. A notice to this effect shall be
13 provided by the insurer to the named insured with the policy or
14 the notice of renewal or nonrenewal.

15 (c) Any policy written for a term of less than one year shall be
16 considered as if written for a term of one year. Any policy written
17 for a term longer than one year, or any policy with no fixed
18 expiration date, shall be considered as if written for successive
19 policy periods or terms of one year.

20 (d) This section applies only to policies of insurance specified
21 in Section 675.

22 (e) *Notwithstanding any other law to the contrary, the offer of*
23 *renewal pursuant to this section may be provided electronically.*

24 *SEC. 4. Section 678.1 of the Insurance Code is amended to*
25 *read:*

26 678.1. (a) This section applies only to policies of insurance
27 of commercial insurance that are subject to Sections 675.5 and
28 676.6.

29 (b) A notice of nonrenewal shall be in writing and shall be
30 delivered or mailed to the producer of record and to the named
31 insured at the mailing address shown on the policy. Subdivision
32 (a) of Section 1013 of the Code of Civil Procedure shall be
33 applicable if the notice is mailed.

34 (c) An insurer, at least 60 days, but not more than 120 days, in
35 advance of the end of the policy period, shall give notice of
36 nonrenewal, and the reasons for the nonrenewal, if the insurer
37 intends not to renew the policy, or to condition renewal upon
38 reduction of limits, elimination of coverages, increase in
39 deductibles, or increase of more than 25 percent in the rate upon
40 which the premium is based.

1 (d) If an insurer fails to give timely notice required by
2 subdivision (c), the policy of insurance shall be continued, with
3 no change in its terms or conditions, for a period of 60 days after
4 the insurer gives the notice.

5 (e) With respect to policies defined in subdivision (b) of Section
6 676.6, in addition to the bases for conditional renewal set forth in
7 subdivision (c), an insurer may also condition renewal upon
8 requirements relating to the underlying policy or policies. If the
9 requirements are not satisfied as of (1) the expiration date of the
10 policy, or (2) 30 days after mailing or delivery of such notice,
11 whichever is later, the conditional renewal notice shall be treated
12 as an effective notice of nonrenewal, provided the insurer has sent
13 written confirmation to the first named insured and the producer
14 of record that the conditions were not met and that coverage ceased
15 at the expiration date shown in the expiring policy.

16 (f) A notice of nonrenewal shall not be required in any of the
17 following situations.

18 (1) The transfer of, or renewal of, a policy without a change in
19 its terms or conditions or the rate on which the premium is based
20 between insurers that are members of the same insurance group.

21 (2) The policy has been extended for 90 days or less, if the
22 notice required in subdivision (c) has been given prior to the
23 extension.

24 (3) The named insured has obtained replacement coverage or
25 has agreed, in writing, within 60 days of the termination of the
26 policy, to obtain that coverage.

27 (4) The policy is for a period of no more than 60 days and the
28 insured is notified at the time of issuance that it may not be
29 renewed.

30 (5) The named insured requests a change in the terms or
31 conditions or risks covered by the policy within 60 days prior to
32 the end of the policy period.

33 (6) The insurer has made a written offer to the insured, within
34 the time period specified in subdivision (c), to renew the policy
35 under changed terms or conditions or at a changed premium rate.
36 As used herein, “terms or conditions” includes, but is not limited
37 to, a reduction in limits, elimination of coverages, or an increase
38 in deductibles.

1 (g) *Notwithstanding any other law to the contrary, the offer of*
2 *renewal or conditional renewal pursuant to this section may be*
3 *provided electronically.*

4 SEC. 5. *Section 10086 of the Insurance Code is amended to*
5 *read:*

6 10086. (a) If an offer of earthquake coverage is accepted, the
7 coverage shall be continued at the applicable rates and conditions
8 for the policy term, provided the policy of residential property
9 insurance is not terminated by the named insured or insurer.

10 (1) At any renewal, an insurer may modify the terms and
11 conditions of an existing policy, rider, or endorsement providing
12 coverage against loss or damage caused by the peril of earthquake
13 if the modified terms and conditions provide the minimum
14 coverages required by Section 10089.

15 (2) An insurer that modifies the terms and conditions of an
16 existing policy, rider, or endorsement shall provide the insured
17 with the renewal notice in a stand-alone disclosure document
18 stating the changes in the terms and conditions of the insured's
19 existing policy, rider, or endorsement. Proof of mailing of the
20 disclosure document by first-class mail to a named insured at the
21 mailing address shown on the policy or application creates a
22 conclusive presumption that the disclosure document was provided.
23 The disclosure shall include the following statement in 14-point
24 boldface type:

25 THE COVERAGE IN THE POLICY WE ARE OFFERING
26 YOU WITH THIS RENEWAL HAS BEEN REDUCED, AND
27 SUBSTANTIALLY DIFFERS FROM THE COVERAGES
28 PROVIDED BY YOUR HOMEOWNERS' POLICY.
29 INSURANCE COMPANIES ARE ALLOWED TO RENEW
30 EARTHQUAKE INSURANCE POLICIES WITH COVERAGE
31 THAT IS REDUCED FROM THE COVERAGE YOU
32 PREVIOUSLY PURCHASED. YOU MAY REQUEST A
33 SAMPLE COPY OF THIS NEW POLICY TO REVIEW PRIOR
34 TO MAKING A DECISION TO ACCEPT THIS RENEWAL,
35 AND WE WILL MAIL OR DELIVER IT TO YOU WITHIN 14
36 DAYS OF YOUR REQUEST. A REQUEST FOR THE SAMPLE
37 COPY SHALL NOT CHANGE OR EXTEND THE POLICY
38 EXPIRATION DATE SPECIFIED IN THE RENEWAL NOTICE.
39 A SUMMARY OF THE CHANGES IS INCLUDED WITH THIS
40 NOTICE.

1 The commissioner shall approve the form of the summary at the
2 time he or she approves the policy. The summary shall include the
3 information contained in subdivision (a) of Section 10083, and
4 may be included with the renewal notice in standard type.

5 The commissioner may approve substantially similar disclosure
6 forms if necessary to accurately disclose relevant information to
7 the policyholder. The commissioner may also approve disclosure
8 forms substantially similar to the disclosure statement required by
9 Section 10083 if necessary to accurately disclose relevant
10 information to the policyholder.

11 (3) If the earthquake coverage is provided by a policy issued
12 by the California Earthquake Authority, the following disclosure
13 shall be provided in 14-point boldface type:

14
15 CALIFORNIA EARTHQUAKE AUTHORITY POLICY
16 DISCLOSURE
17

18 THIS POLICY IS BEING PURCHASED FROM THE
19 CALIFORNIA EARTHQUAKE AUTHORITY (“CEA”). THE
20 COVERAGE IN THIS CEA POLICY SUBSTANTIALLY
21 DIFFERS FROM THE COVERAGES PROVIDED IN YOUR
22 HOMEOWNER’S POLICY. THE CEA IS NOT PART OF OR
23 ASSOCIATED WITH YOUR HOMEOWNER’S INSURANCE
24 COMPANY. IF LOSSES AS A RESULT OF AN EARTHQUAKE
25 OR A SERIES OF EARTHQUAKES EXCEED THE
26 AVAILABLE RESOURCES OF THE CEA, THIS POLICY IS
27 NOT COVERED BY THE CALIFORNIA INSURANCE
28 GUARANTY ASSOCIATION. THEREFORE, THE
29 CALIFORNIA INSURANCE GUARANTY ASSOCIATION
30 WILL NOT PAY YOUR CLAIMS OR PROTECT YOUR
31 ASSETS IF THE CEA BECOMES INSOLVENT AND IS
32 UNABLE TO MAKE PAYMENTS AS PROMISED. IN
33 ADDITION, YOUR CEA POLICY MAY BE SUBJECT TO
34 FUTURE SURCHARGES OF THE POLICY PREMIUM IN
35 CERTAIN CASES WHERE AN EARTHQUAKE OR SERIES
36 OF EARTHQUAKES HAS EXCEEDED AVAILABLE
37 RESOURCES TO PAY CLAIMS. IN THAT CASE, THIS
38 MEANS THAT IN ADDITION TO THE ANNUAL PREMIUM,
39 YOU MAY BE CHARGED UP TO AN ADDITIONAL 20% OF
40 THE PREMIUM.

(b) If the offer is not accepted, the insurer or any affiliated insurer shall be required on an every other year basis to offer earthquake coverage in connection with any continuation, renewal, or reinstatement of the policy following any lapse thereof, or with respect to any other policy that extends, changes, supersedes, or replaces the policy of residential property insurance.

(c) Nothing in this section shall preclude the named insured from terminating the earthquake coverage at any time.

(d) Notwithstanding any other law to the contrary, any offer of coverage or renewal or any disclosure pursuant to this section may be provided electronically.

~~SECTION 1.~~

SEC. 6. Section 10271.2 is added to the Insurance Code, to read:

10271.2. (a) The term “special benefit,” as used in this chapter, includes an accelerated death benefit if some or all of the death benefit of a life insurance contract is paid to the insured upon the occurrence of any of the following qualifying events:

(1) The insured develops a medical condition that is reasonably expected to result in a drastically limited life span, as defined in the contract or supplemental contract, but not defined in a way to require a life span of less than six months but not providing benefits for a life span of more than 24 months.

(2) The insured requires continuous confinement in an eligible institution, as defined in the contract or supplemental contract, and is expected to remain there for the rest of his or her life.

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

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

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

(b) A life insurance contract or supplemental contract submitted for approval of the commissioner pursuant to Section 10292 shall

1 be submitted with the following additional information if the
2 contract includes an accelerated death benefit:

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

7 (2) A specimen issue of the statement regarding the effect of
8 accelerated death benefit payment on other benefit provisions, to
9 be provided to the owner prior to, or concurrent with, the election
10 of the accelerated death benefit option, and an explanation of how
11 and when the statement will be provided. The statement shall
12 demonstrate the effect of the acceleration of the death benefit on
13 the policy cash value, death benefit, premium, cost of insurance
14 charges, and loans and liens, as applicable. The statement shall be
15 based only on guaranteed values. The statement shall also include
16 a disclosure that receipt of an accelerated death benefit may affect
17 eligibility for Medicaid or other governmental benefits or
18 entitlements and may have tax consequences.

19 (3) An actuarial memorandum prepared, dated, and signed by
20 the member of the American Academy of Actuaries that includes
21 the following information:

22 (A) A description of the accelerated death benefit, including
23 the effects of payment of the accelerated death benefit on all policy
24 benefits, premium payments, cost of insurance rates, and values,
25 including any outstanding loan, if applicable, for all types of forms
26 with which the accelerated death benefit will be used.

27 (B) A description of, and justification for, expense charges
28 associated with the accelerated death benefit and the maximum
29 expense charges.

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

37 (D) A description of the mortality basis and methodology,
38 including the period of time applicable to any mortality discount,
39 used in any present value calculation of the accelerated death
40 benefit.

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

4 (F) The formula used to determine the accelerated death benefit,
5 including any limitations on the amount of the benefit, and the
6 formula used to determine the postacceleration premium.

7 (G) A sample calculation of the accelerated death benefit. If the
8 policy contains a loan provision, the example shall assume that
9 there is an outstanding loan at date of acceleration. All policy
10 benefits, premium payments, cost of insurance charges and values,
11 including the outstanding loan, if applicable, immediately before
12 and immediately after acceleration shall be shown in the example.

13 (H) If an accelerated death benefit may be paid in installments,
14 the basis used in the calculation of the minimum periodic payment
15 for the payment period and a sample calculation of a minimum
16 periodic payment, and the basis used and a sample calculation of
17 the lump sum payable if the insured dies before all periodic
18 payments for the payment period are made.

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