

AMENDED IN ASSEMBLY JULY 3, 2013

AMENDED IN SENATE MAY 1, 2013

AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 281

Introduced by Senator Calderon

February 14, 2013

An act to amend Sections 10110.5, 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.~~ *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 ~~generally, 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 specify that the term "special benefit" for purposes of those provisions means an accelerated death benefit that is added to a life insurance contract to provide for the advance payment of any part~~

~~of the death proceeds to the insured upon the occurrence of certain qualifying events, including if the insured requires continuous confinement in an eligible institution and is expected to remain there for the rest of his or her life. The bill would require that any life insurance provision or supplemental contract that provides for a special benefit comply with specified requirements, including, but not limited to, that the provision or supplemental contract specify that the accelerated death benefit is fixed at the time the insurer approves the request for the benefit, and that the provision or supplemental contract is prohibited from restricting the use of the proceeds of the accelerated death benefit.~~

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

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

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.” The bill would also revise and recast the required language of the provision or supplemental contract, as prescribed.

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 added to a life insurance policy to provide for the advance payment of any part of the death proceeds, payable upon the occurrence of a single qualifying event, as defined. The bill would require a life insurance policy with an accelerated death benefit provision to comply with 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 policy with an accelerated death benefit policy, and provide certain notices when a life insurance policy or long-term care insurance policy would be replaced. The bill would also provide that an insurer that fails to conform to the requirements of the above provisions would be subject to the provisions of existing law that provide for the imposition of a civil penalty against any person who engages in any unfair method of competition or any unfair or deceptive act or practice in the business of insurance, as provided.

This bill would delete obsolete provisions and make conforming changes.

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 10110.5 of the Insurance Code is amended*
2 *to read:*
3 10110.5. (a) A policy or endorsement issued by an admitted
4 life and disability insurer may contain a provision for a waiver of
5 premium payments in the event of involuntary unemployment of
6 the insured. Insurers issuing policies or endorsements ~~which~~
7 ~~contain~~ *containing* that provision shall establish any additional
8 reserves and file any additional financial reports that the
9 commissioner may require.
10 (b) A contract or supplemental contract issued by an admitted
11 life and disability insurer may contain a provision for a waiver of

1 special surrender *charge* benefit for a life insurance or annuity
2 contract in the event of voluntary or involuntary unemployment
3 of the owner, insured, or annuitant, as applicable. Insurers issuing
4 contracts or supplemental contracts ~~which contain~~ *containing* that
5 provision shall establish any additional reserves and file any
6 additional financial reports that the commissioner may require.

7 *SEC. 2. Section 10271 of the Insurance Code is repealed.*

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

19 ~~(b) (1) A provision or supplemental contract described in~~
20 ~~subdivision (a) shall contain all of the provisions set forth in~~
21 ~~paragraph (2). However, an insurer, at its option, may substitute~~
22 ~~for one or more of the provisions a corresponding provision of~~
23 ~~different wording approved by the commissioner that is not less~~
24 ~~favorable in any respect to the owner, insured, or annuitant, as~~
25 ~~applicable. The provisions required by paragraph (2) shall be~~
26 ~~preceded individually by the appropriate caption, or, at the option~~
27 ~~of the insurer, by the appropriate individual or group captions or~~
28 ~~subcaptions as the commissioner may approve.~~

29 ~~(2) With respect to the benefit standards described in~~
30 ~~subdivisions (a) and (b) of Section 10271.1, the following~~
31 ~~requirements apply to the supplemental contracts with these~~
32 ~~benefits:~~

33 ~~(A) Either the contract or supplemental contract shall provide~~
34 ~~that the contract and the supplemental contract constitute the entire~~
35 ~~insurance or annuity contract consistent with paragraph (7) of~~
36 ~~subdivision (c) of Section 2534.3 of Title 10 of the California Code~~
37 ~~of Regulations, and shall also provide that no agent has the~~
38 ~~authority to change the contract or to waive any of its provisions.~~
39 ~~This requirement applies without regard to whether the contract~~
40 ~~is a variable or nonvariable contract, or a group or individual~~

1 contract. This provision shall be preceded individually by a caption
2 stating “ENTIRE CONTRACT; CHANGES:” or other appropriate
3 caption as the commissioner may approve.

4 (B) ~~Either the contract or supplemental contract shall provide~~
5 ~~for reinstatement consistent with paragraph (3) of subdivision (c)~~
6 ~~of Section 2534.3 of Title 10 of the California Code of Regulations.~~
7 ~~This requirement applies without regard to whether the contract~~
8 ~~is a variable or nonvariable contract, or a group or individual~~
9 ~~contract. This provision shall be preceded individually by a caption~~
10 ~~stating “REINSTATEMENT:” or other appropriate caption as the~~
11 ~~commissioner may approve.~~

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

23 (D) ~~A provision or supplemental contract described in~~
24 ~~subdivision (a) shall also include:~~

25 (i) ~~NOTICE OF CLAIM: The insurer may require written notice~~
26 ~~of claim no less than 20 days after an occurrence covered by the~~
27 ~~provision or supplemental contract, or commencement of any loss~~
28 ~~covered by the provision or supplemental contract. Notice given~~
29 ~~by or on behalf of the insured or the beneficiary, as applicable to~~
30 ~~the insurer at the insurer’s address or telephone number, or to any~~
31 ~~authorized agent of the insurer, with information sufficient to~~
32 ~~identify the insured, shall be deemed notice to the insurer.~~

33 (ii) ~~CLAIM FORMS: The insurer, upon receipt of a notice of~~
34 ~~claim, shall furnish to the claimant such forms as are usually~~
35 ~~furnished by it for filing a proof of occurrence or a proof of loss.~~
36 ~~If the forms are not furnished within 15 days after giving notice,~~
37 ~~the claimant shall be deemed to have complied with the~~
38 ~~requirements of the provision or supplemental contract as to proof~~
39 ~~of occurrence or proof of loss upon submitting, within the time~~
40 ~~fixed in the provision or supplemental contract for filing proof of~~

1 occurrence or proof of loss, written proof covering the character
2 and the extent of the occurrence or loss.

3 (iii) ~~PROOF OF LOSS:~~ The insurer may require that the insured
4 provide written proof of occurrence or proof of loss no less than
5 90 days after the termination of the period for which the insurer
6 is liable, and, in the case of claim for any other occurrence or loss,
7 within 90 days after the date of the occurrence or loss. Failure to
8 furnish proof within the time required shall not invalidate or reduce
9 the claim if it was not reasonably possible to give proof within the
10 time, provided proof is furnished as soon as reasonably possible
11 and, except in the absence of legal capacity, no later than one year
12 from the time proof is otherwise required.

13 (iv) ~~PHYSICAL EXAMINATIONS:~~ The insurer, at its own
14 expense, shall have the right and opportunity to examine the person
15 of the insured when and as often as the insurer may reasonably
16 require during the pendency of a claim.

17 (e) ~~The commissioner shall review contracts and supplemental~~
18 ~~contracts to ensure that the language can be readily understood~~
19 ~~and interpreted, and shall not approve any contract or supplemental~~
20 ~~contract for insurance or delivery in this state if the commissioner~~
21 ~~finds that the contract or supplemental contract does any of the~~
22 ~~following:~~

23 (1) ~~Contains any provision, label, description of its contents,~~
24 ~~title, heading, backing, or other indication of its provisions that is~~
25 ~~unintelligible, uncertain, ambiguous, or abstruse, or likely to~~
26 ~~mislead a person to whom the contract or supplemental contract~~
27 ~~is offered, delivered, or issued.~~

28 (2) ~~Constitutes fraud, unfair trade practices, and insurance~~
29 ~~economically unsound to the owner, insured, or annuitant, as~~
30 ~~applicable.~~

31 (d) ~~A provision or supplemental contract described in~~
32 ~~subdivision (a) shall not contain any title, description, or any other~~
33 ~~indication that would describe or imply that the policy or~~
34 ~~supplemental contract provides long-term care coverage.~~

35 (e) ~~Commencing two years from the date of the issuance of the~~
36 ~~provision or supplemental contract, no claim for loss incurred or~~
37 ~~disability, as defined in the provision or supplemental contract,~~
38 ~~may be reduced or denied on the grounds that a disease or physical~~
39 ~~condition not excluded from coverage by name or specific~~
40 ~~description effective on the date of loss had existed prior to the~~

1 ~~effective date on the coverage of the provision or supplemental~~
2 ~~contract.~~

3 ~~(f) With regard to benefits set forth in Section 10271.1, the~~
4 ~~provisions and supplemental contracts shall specify any applicable~~
5 ~~exclusions, which shall be limited to the following:~~

6 ~~(1) Total disability caused or substantially contributed to by any~~
7 ~~attempt at suicide or intentionally self-inflicted injury, while sane~~
8 ~~or insane.~~

9 ~~(2) Total disability caused or substantially contributed to by~~
10 ~~war or an act of war, as defined in the exclusion provisions of the~~
11 ~~contract.~~

12 ~~(3) Total disability caused or substantially contributed to by~~
13 ~~active participation in a riot, insurrection, or terrorist activity.~~

14 ~~(4) Total disability caused or substantially contributed to by~~
15 ~~committing or attempting to commit a felony.~~

16 ~~(5) Total disability caused or substantially contributed to by~~
17 ~~voluntary intake of either:~~

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

20 ~~(B) Poison, gas, or fumes, unless they are the direct result of an~~
21 ~~occupational accident.~~

22 ~~(6) Total disability occurring after the policy anniversary or~~
23 ~~supplemental contract anniversary, as applicable and as defined~~
24 ~~in the policy or supplemental contract, on which the insured attains~~
25 ~~a specified age of no less than 65.~~

26 ~~(7) Total disability in consequence of the insured being~~
27 ~~intoxicated, as defined by the jurisdiction where the total disability~~
28 ~~occurred.~~

29 ~~(8) Total disability caused or materially contributed to by~~
30 ~~engaging in an illegal occupation.~~

31 ~~(g) If the commissioner notifies the insurer, in writing, that the~~
32 ~~filed form does not comply with the requirements of law and~~
33 ~~specifies the reasons for his or her opinion, it is unlawful for an~~
34 ~~insurer to issue any policy in that form.~~

35 *SEC. 3. Section 10271 is added to the Insurance Code, to read:*

36 *10271. (a) Except as set forth in this section, this chapter shall*
37 *not apply to, or in any way affect, provisions in life insurance,*
38 *endowment, or annuity contracts, or contracts supplemental*
39 *thereto, that provide additional benefits in case of death or*
40 *dismemberment or loss of sight by accident, or that operate to*

1 *safeguard those contracts against lapse, as described in subdivision*
2 *(a) of Section 10271.1, or give a special surrender benefit, as*
3 *defined in subdivision (b) of Section 10271.1, or an accelerated*
4 *death benefit as defined in Article 2.1 (commencing with Section*
5 *10295), in the event that the owner, insured, or annuitant, as*
6 *applicable, meets the benefit triggers specified in the life insurance*
7 *or annuity contract or supplemental contract.*

8 *(b) A supplemental benefit described in subdivision (a) shall*
9 *contain all of the following provisions. However, an insurer, at*
10 *its option, may substitute for one or more of the provisions a*
11 *corresponding provision of different wording approved by the*
12 *commissioner that is not less favorable in any respect to the owner,*
13 *insured, or annuitant, as applicable. The required provisions shall*
14 *be preceded individually by the appropriate caption, or, at the*
15 *option of the insurer, by the appropriate individual or group*
16 *captions or subcaptions as the commissioner may approve.*

17 *(1) The supplemental benefit shall provide that the contract,*
18 *supplemental contract, and any papers attached thereto by the*
19 *insurer, including the application if attached, constitute the entire*
20 *insurance or annuity contract and shall also provide that no agent*
21 *has the authority to change the contract or to waive any of its*
22 *provisions. This provision shall be preceded individually by a*
23 *caption stating “ENTIRE CONTRACT; CHANGES:” or other*
24 *appropriate caption as the commissioner may approve.*

25 *(2) The supplemental benefit shall provide for reinstatement*
26 *consistent with paragraph (3) of subdivision (c) of Section 2534.3*
27 *of Title 10 of the California Code of Regulations. This requirement*
28 *applies without regard to whether the contract is a variable or*
29 *nonvariable contract, or a group or individual contract. This*
30 *provision shall be preceded individually by a caption stating*
31 *“REINSTATEMENT:” or other appropriate caption as the*
32 *commissioner may approve.*

33 *(3) A supplemental benefit subject to underwriting shall include*
34 *an incontestability statement that provides that the insurer shall*
35 *not contest the supplemental benefit after it has been in force*
36 *during the lifetime of the insured for two years from its date of*
37 *issue, and that the supplemental benefit may only be contested*
38 *based on a statement made in the application for the supplemental*
39 *contract, if the statement is attached to the contract and if the*
40 *statement was material to the risk accepted or the hazard assumed*

1 *by the insurer. This provision shall be preceded individually by a*
2 *caption stating “INCONTESTABILITY:” or other appropriate*
3 *caption as the commissioner may approve.*

4 *(4) The supplemental benefit shall provide either that the insurer*
5 *may accept written notice of claim at any time or that the insurer*
6 *may require that written notice of claim be submitted by a due*
7 *date that is no less than 20 days after an occurrence covered by*
8 *the supplemental benefit, or commencement of any loss covered*
9 *by the supplemental benefit, or as soon after the due date as is*
10 *reasonably possible. Notice given by or on behalf of the insured*
11 *or the beneficiary, as applicable to the insurer at the insurer’s*
12 *address or telephone number, or to any authorized agent of the*
13 *insurer, with information sufficient to identify the insured, shall*
14 *be deemed notice to the insurer. This provision shall be preceded*
15 *individually by a caption stating “NOTICE OF CLAIM:” or other*
16 *appropriate caption as the commissioner may approve.*

17 *(5) The supplemental benefit shall provide that the insurer, upon*
18 *receipt of a notice of claim, shall furnish to the claimant those*
19 *forms as are usually furnished by it for filing a proof of occurrence*
20 *or a proof of loss. If the forms are not furnished within 15 days*
21 *after giving notice, the claimant shall be deemed to have complied*
22 *with the requirements of the supplemental benefit as to proof of*
23 *occurrence or proof of loss upon submitting, within the time fixed*
24 *by the supplemental benefit for filing proof of occurrence or proof*
25 *of loss, written proof covering the character and the extent of the*
26 *occurrence or loss. This provision shall be preceded individually*
27 *by a caption stating “CLAIM FORMS:” or other appropriate*
28 *caption as the commissioner may approve.*

29 *(6) The supplemental benefit shall provide that the insurer may*
30 *require that the insured provide written proof of occurrence or*
31 *proof of loss no less than 90 days after the termination of the period*
32 *for which the insurer is liable, and, in the case of claim for any*
33 *other occurrence or loss, within 90 days after the date of the*
34 *occurrence or loss. Failure to furnish proof within the time*
35 *required shall not invalidate or reduce the claim if it was not*
36 *reasonably possible to give proof within the time, provided proof*
37 *is furnished as soon as reasonably possible and, except in the*
38 *absence of legal capacity, no later than one year from the time*
39 *proof is otherwise required. This provision shall be preceded*

1 individually by a caption stating “PROOF OF LOSS:” or other
2 appropriate caption as the commissioner may approve.

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

11 (c) The commissioner shall not approve any contract or
12 supplemental contract for insurance or delivery in this state if the
13 commissioner finds that the contract or supplemental contract
14 does any of the following:

15 (1) Contains any provision, label, description of its contents,
16 title, heading, backing, or other indication of its provisions that
17 is unintelligible, uncertain, ambiguous, or abstruse, or likely to
18 mislead a person to whom the supplemental benefit is offered,
19 delivered, or issued.

20 (2) Constitutes fraud, unfair trade practices, or insurance
21 economically unsound to the owner, insured, or annuitant, as
22 applicable.

23 (d) A provision or supplemental contract described in
24 subdivision (a) shall not contain any title, description, or any other
25 indication that would describe or imply that the supplemental
26 benefit provides long-term care coverage.

27 (e) Commencing two years from the date of the issuance of the
28 supplemental benefit, no claim for loss incurred or disability, as
29 defined by the supplemental benefit, may be reduced or denied on
30 the grounds that a disease or physical condition not excluded from
31 coverage by name or specific description effective on the date of
32 loss had existed prior to the effective date on the coverage of the
33 supplemental benefit.

34 (f) With regard to supplemental benefits set forth in Section
35 10271.1, the supplemental benefit shall specify any applicable
36 exclusions, which shall be limited to the following:

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

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

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

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

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

10 (A) Any drug, unless prescribed or administered by a physician
11 and taken in accordance with the physician’s instructions.

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

14 (6) Condition or loss occurring after the policy anniversary or
15 supplemental contract anniversary, as applicable and as defined
16 by the supplemental benefit, on which the insured attains a
17 specified age of no less than 65 years.

18 (7) Condition or loss in consequence of the insured being
19 intoxicated, as defined by the jurisdiction where the condition or
20 loss occurred.

21 (8) Condition or loss caused or materially contributed to by
22 engaging in an illegal occupation.

23 (g) If the commissioner notifies the insurer, in writing, that the
24 filed form does not comply with the requirements of law and
25 specifies the reasons for his or her opinion, it is unlawful for an
26 insurer to issue any policy in that form.

27 **SECTION 4.**

28 *SEC. 4.* Section 10271.1 of the Insurance Code is amended to
29 read:

30 10271.1. (a) (1) ~~Provisions or supplemental contracts~~
31 *Supplemental benefits* that operate to safeguard life insurance
32 contracts against lapse are defined as a waiver of premium benefit
33 or a waiver of monthly deduction benefit, as applicable, in which
34 the insurer waives the premium or monthly deduction for a life
35 insurance contract when the insured becomes totally disabled, as
36 ~~defined in the contract or supplemental contract by the~~
37 *supplemental benefit*, and where the waiver continues until the end
38 of the insured’s disability, or ~~until the attainment of an age~~
39 ~~established by the insurer for the period specified by the~~
40 *supplemental benefit, consistent with paragraph (5).*

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

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

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

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

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

20 (5) The waiver of premium or monthly deduction benefit shall
21 continue for the period specified ~~in the contract or supplemental~~
22 ~~contract~~ *by the supplemental benefit*, but shall not be less favorable
23 to the insured than the following:

24 (A) If the insured's total disability begins before the insured
25 attains 60 years of age, the insurer shall waive all premiums or
26 monthly deductions due for the period of the total disability, and
27 if the total disability extends to the insured's attainment of 65 years
28 of age, the insurer shall waive all further premiums or monthly
29 deductions due.

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

34 (b) "Special surrender benefit" is defined as a "waiver of
35 surrender charge benefit" wherein the insurer waives the surrender
36 charge usually charged for a withdrawal of funds from the cash
37 value of a life insurance contract or the account value of an annuity
38 contract if the owner, insured, or annuitant, as applicable, meets
39 any of the following criteria:

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

5 (2) Is receiving, as prescribed by a physician, registered nurse,
6 or licensed social worker, home care or community-based services,
7 as defined in subdivision (a) of Section 10232.9, or is confined in
8 a skilled nursing facility, convalescent nursing home, or extended
9 care facility, which shall not be defined more restrictively than as
10 in the Medicare program, or is confined in a residential care facility
11 or residential care facility for the elderly, as defined in the Health
12 and Safety Code. Out-of-state providers of services shall be defined
13 as comparable in licensure and staffing requirements to California
14 providers.

15 (3) Has any medical condition that would, in the absence of
16 treatment, result in death within a limited period of time, as defined
17 ~~in the provision or supplemental contract,~~ *by the supplemental*
18 *benefit*, but that shall not be restricted to a period of less than six
19 months.

20 (4) Is totally disabled, as follows:

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

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

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

35 (D) The insurer may require the total disability to continue for
36 an uninterrupted period of time specified ~~in the contract or~~
37 ~~supplemental contract~~ *by the supplemental benefit*, or the insurer
38 may allow separate periods of disability to be combined.

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

- 1 (A) Either of the following:
- 2 (i) Impairment in performing two out of seven activities of daily
- 3 living, as set forth in subdivisions (a) and (g) of Section 10232.8,
- 4 meaning the insured needs human assistance, or needs continual
- 5 substantial supervision.
- 6 (ii) The insured has an impairment of cognitive ability, meaning
- 7 a deterioration or loss of intellectual capacity due to mental illness
- 8 or disease, including Alzheimer’s disease or related illnesses, that
- 9 requires continual supervision to protect oneself or others.
- 10 (B) Either of the following:
- 11 (i) Impairment in performing two out of six activities of daily
- 12 living as described in subdivisions (b), (d), (e), and (f) of Section
- 13 10232.8 due to a loss of functional capacity to perform the activity.
- 14 (ii) Impairment of cognitive ability, meaning the insured needs
- 15 substantial supervision due to severe cognitive impairment, as
- 16 described in subdivisions (b) and (e) of Section 10232.8.
- 17 (6) Has become involuntarily or voluntarily unemployed.
- 18 ~~(e) (1) “Special benefit,” as used in this chapter, means an~~
- 19 ~~accelerated death benefit that is added to a life insurance policy~~
- 20 ~~to provide for the advance payment of any part of the death~~
- 21 ~~proceeds payable upon the occurrence of a qualifying event.~~
- 22 ~~(2) For the purposes of this section, “qualifying event” means~~
- 23 ~~any one of the following:~~
- 24 ~~(A) A medical condition that is reasonably expected to result~~
- 25 ~~in a drastically limited life span for the insured.~~
- 26 ~~(B) A medical condition that requires extraordinary medical~~
- 27 ~~intervention, such as major organ transplant or continuous artificial~~
- 28 ~~life support, without which the insured would die.~~
- 29 ~~(C) A condition that usually requires continuous confinement~~
- 30 ~~in a qualified institution and the insured is expected to remain there~~
- 31 ~~for the rest of his or her life.~~
- 32 ~~(D) A specified medical condition that, in the absence of~~
- 33 ~~extensive or extraordinary medical treatment, would result in a~~
- 34 ~~drastically limited life.~~
- 35 ~~(E) A chronic illness, defined as either of the following:~~
- 36 ~~(i) Impairment in performing two out of six activities of daily~~
- 37 ~~living as described in subdivisions (b), (d), (e), and (f) of Section~~
- 38 ~~10232.8 due to a loss of functional capacity to perform the activity.~~

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

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

7 (A) The provision or supplemental contract shall specify that
8 the accelerated death benefit is fixed at the time the insurer
9 approves the request for the accelerated death benefit.

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

13 (C) The provision or supplemental contract shall include the
14 option to take the accelerated death benefit in a lump sum on the
15 occurrence of a single qualifying event and may include an option
16 to receive the benefit in periodic payments for a certain period
17 only. Periodic payments shall not be based on the continued
18 survival or institutional confinement of the insured.

19 (D) The provision or supplemental contract shall not restrict the
20 use of the proceeds of the accelerated death benefit.

21 (E) The provision or supplemental contract shall specify that
22 the payment of the accelerated death benefit is due immediately
23 upon receipt of the due written proof of eligibility.

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

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

32 (B) A specimen issue of the statement regarding the effect of
33 the accelerated death benefit payment on other benefit provisions,
34 to be provided to the owner prior to, or concurrent with, the election
35 of the accelerated death benefit option, and an explanation of how
36 and when the statement will be provided. The statement shall
37 demonstrate the effect of the acceleration of the death benefit on
38 the policy cash value, death benefit, premium, cost of insurance
39 charges, and loans and liens, as applicable. The statement shall be
40 based only on guaranteed values. The statement shall also include

1 a disclosure that receipt of an accelerated death benefit may affect
2 eligibility for Medicaid or other governmental benefits or
3 entitlements and may have tax consequences.

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

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

12 (ii) A description of, and justification for, expense charges
13 associated with the accelerated death benefit and the maximum
14 expense charges.

15 (iii) A description of the interest rate or interest rate
16 methodology used in any present value calculation or in accruing
17 interest on the amount of the accelerated death benefit, which shall
18 not exceed the greater of: (I) the current yield on 90-day Treasury
19 bills, or (II) a variable rate determined in accordance with the
20 National Association of Insurance Commissioners (NAIC) Model
21 Policy Loan Interest Rate Bill No. 590.

22 (iv) A description of the mortality basis and methodology,
23 including the period of time applicable to any mortality discount,
24 used in any present value calculation of the accelerated death
25 benefit.

26 (v) A description of the mortality and morbidity basis and
27 methodology used in the determination of any separate premium
28 or costs of insurance for the accelerated death benefit.

29 (vi) The formula used to determine the accelerated death benefit,
30 including any limitations on the amount of the benefit, and the
31 formula used to determine the postacceleration premium.

32 (vii) A sample calculation of the accelerated death benefit. If
33 the policy contains a loan provision, the example shall assume that
34 there is an outstanding loan on the date of acceleration. All policy
35 benefits, premium payments, cost of insurance charges and values,
36 including the outstanding loan, if applicable, immediately before
37 and immediately after acceleration shall be shown in the example.

38 (viii) If an accelerated death benefit may be paid in installments,
39 the basis used in the calculation of the minimum periodic payment
40 for the payment period and a sample calculation of a minimum

1 ~~periodic payment, and the basis used and a sample calculation of~~
2 ~~the lump sum payable if the insured dies before all periodic~~
3 ~~payments for the payment period are made.~~

4 ~~(ix) For any accelerated death benefit of the type other than a~~
5 ~~terminal illness, a certification that the value and premium of the~~
6 ~~accelerated death benefit is incidental to the life coverage.~~

7 ~~SEC. 2.~~

8 *SEC. 5.* Section 10292 of the Insurance Code is amended to
9 read:

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

19 (b) A supplemental contract described in Section 10271.1 *and*
20 *Article 2.1 (commencing with Section 10295)* shall be considered
21 an integral part of a contract for purposes of this section. To
22 facilitate the review of a supplemental contract, the insurer shall
23 submit, for informational purposes, a sample copy of the life
24 insurance or annuity contract with which the supplemental contract
25 will be used. To facilitate the location of the required provisions
26 as stated in paragraph (2) of subdivision (b) of Section 10271, the
27 insurer shall provide the sample copy page reference for the
28 provisions that appear in the contract.

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

33 *SEC. 6. Article 2.1 (commencing with Section 10295) is added*
34 *to Chapter 4 of Part 2 of Division 2 of the Insurance Code, to*
35 *read:*

36
37 *Article 2.1. Accelerated Death Benefits*

38
39 *10295. (a) It is the intent of the Legislature that an accelerated*
40 *death benefit, as described in this section, shall not be offered,*

1 sold, issued, or marketed as health, accident, or long-term care
2 insurance. It is further the intent of the Legislature that an
3 accelerated death benefit not reimburse or provide specific
4 coverage for any health, accident, or long-term care insurance
5 benefits.

6 (b) For the purposes of this article, an “accelerated death
7 benefit” means a policy added to a life insurance policy to provide
8 for the advance payment of any part of the death proceeds, payable
9 upon the occurrence of a single qualifying event.

10 (1) For the purposes of this article, “qualifying event” means
11 any of the following:

12 (A) Developing any medical condition where the insured’s life
13 expectancy is expected to be less than, or equal to, a limited period
14 of time that shall not be restricted to a period of less than 12
15 months or greater than 24 months. If an insurer wishes to add
16 additional qualifying events, it may do so as long as the events are
17 one or more of the following:

18 (i) A medical condition that would, in the absence of treatment,
19 result in death within a limited period of time, as defined by the
20 supplemental benefit, but that shall not be restricted to a period
21 of less than six months.

22 (ii) A chronic illness as defined in subparagraph (B) of
23 paragraph (5) of subdivision (b) of Section 10271.1.

24 (B) Other qualifying events that the commissioner shall approve
25 for a particular filing.

26 (C) For accelerated death benefits intended to be tax qualified
27 under Section 101(g) of the Internal Revenue Code (26 U.S.C. Sec.
28 101(g)), the insurer may also require that a licensed health care
29 practitioner, independent of the insurer, certifies that the insured
30 meets the definition of “chronically ill individual” as defined under
31 the Health Insurance Portability and Accountability Act (Public
32 Law 104-191).

33 (2) For the purposes of this article, “policy” means any policy,
34 provision, contract, rider, supplemental contract, or endorsement
35 for accelerated death benefits delivered or issued for delivery in
36 this state by an insurer, fraternal benefit society, or any similar
37 organization regulated by the commissioner.

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

1 (A) *In the case of an individual accelerated death benefit policy,*
2 *the person who seeks to contract for benefits.*

3 (B) (i) *In the case of a group accelerated death benefit policy,*
4 *the proposed certificate holder.*

5 (ii) *“Certificate” means any certificate issued under a group*
6 *life insurance policy that includes an accelerated death benefit or*
7 *supplemental benefit.*

8 (c) *Accelerated death benefit policies are primarily mortality*
9 *risks rather than morbidity risks. The benefits are life insurance*
10 *benefits subject to provisions of this code relating to life insurance*
11 *products.*

12 (d) *A life insurance policy that accelerates death benefits to*
13 *cover long-term care benefits and services, under Section 10231.2,*
14 *shall not be considered an accelerated death benefit for the*
15 *purposes of this article.*

16 10295.1. *A life insurance policy or certificate that provides an*
17 *accelerated death benefit as defined in subdivision (b) of Section*
18 *10295 shall comply with all of the following:*

19 (a) *The policy or certificate shall specify that the accelerated*
20 *death benefit is fixed at the time the insurer approves the request*
21 *for the accelerated death benefit.*

22 (b) *The policy or certificate shall specify that the payment of*
23 *the accelerated death benefit is not conditioned on the receipt of*
24 *long-term care or medical services.*

25 (c) *The policy or certificate shall include the option to take the*
26 *accelerated death benefit in a lump sum on the occurrence of a*
27 *single qualifying event and may include an option to receive the*
28 *benefit in periodic payments for a certain period only. Periodic*
29 *payments shall not be based on the continued survival or*
30 *institutional confinement of the insured.*

31 (d) *The policy or certificate shall not restrict the use of the*
32 *proceeds of the accelerated death benefit.*

33 (e) *The policy or certificate shall specify that the payment of*
34 *the accelerated death benefit is due immediately upon receipt of*
35 *the due written proof of eligibility.*

36 (f) *Prior to the payment of the accelerated death benefit, the*
37 *insurer is required to obtain from an assignee or irrevocable*
38 *beneficiary, if any, a signed acknowledgment of concurrence for*
39 *payout. If the insurer making the accelerated death benefit is itself*
40 *the assignee under the policy, the acknowledgment is not required.*

1 (g) If any death benefit remains after payment of an accelerated
2 death benefit, the accidental death benefit provision, if any, in the
3 policy shall not be affected by the payment of the accelerated death
4 benefit.

5 (h) The policy or certificate shall provide for a maximum amount
6 that may be accelerated.

7 (i) The policy or certificate may pay a daily per diem benefit
8 without regard to the amount of expenses the insured incurs for
9 qualified long-term care services. The insurer shall advise the
10 policyholder or certificate holder that there may be tax
11 consequences of accepting an amount above the amount that would
12 be tax-qualified under the Internal Revenue Code.

13 (j) The policy or certificate shall not have long-term care benefit
14 or service-related features, such as the use of preexisting condition
15 limitations, or the requirement that benefits be conditioned on a
16 prior hospitalization or institutionalization.

17 10295.2. A life insurance contract or supplemental contract
18 submitted for the approval of the commissioner pursuant to Section
19 10292 shall be submitted with the following additional information
20 if the contract includes an accelerated death benefit:

21 (a) The term “accelerated death benefit” shall be included in
22 the descriptive title.

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

27 (c) Information consistent with the filing requirements in
28 subdivision (b) of Section 10292.

29 (d) A written disclosure, including, but not necessarily limited
30 to, a brief description of the accelerated death benefit and
31 definitions of the conditions or occurrences triggering payment of
32 the benefits, shall be given to the applicant. The description shall
33 include an explanation of any effect of the payment of a benefit on
34 the policy’s cash value, accumulation account, death benefit,
35 premium, policy loans, and policy liens.

36 (1) The written disclosure shall also include a statement that
37 accelerated death benefits are not intended to replace long-term
38 care benefits, and that the receipt of an accelerated death benefit
39 may affect eligibility for Medicaid or other governmental benefits
40 or entitlements and may have tax consequences.

1 (2) *The required notice shall be provided in the following form:*

2
3 **“IMPORTANT NOTICE TO APPLICANT/BUYER REGARDING**
4 **ACCELERATED DEATH BENEFITS**

5 *The benefits provided by this (provision/supplemental contract)*
6 *are not intended to provide, and will never provide, long-term care*
7 *insurance, nursing home insurance, or home care insurance. If an*
8 *applicant/buyer wants that insurance, the applicant/buyer should*
9 *consult with an insurance agent licensed to sell that insurance,*
10 *inquire with the insurance company offering the accelerated death*
11 *benefits, or visit the California Department of Insurance Internet*
12 *Web site (www.insurance.ca.gov) that provides information*
13 *regarding long-term care insurance.*

14 *Receipt of accelerated death benefits may be taxable. Prior to*
15 *electing to buy the accelerated death benefit, policyholders or*
16 *certificate holders should seek assistance from a qualified tax*
17 *adviser.*

18 *Receipt of accelerated death benefits may affect eligibility for*
19 *public assistance programs, such as Medi-Cal or Medicaid. Prior*
20 *to electing to buy the accelerated death benefit, the applicant/buyer*
21 *should consult with the appropriate social services agency*
22 *concerning how receipt of accelerated death benefits may affect*
23 *that eligibility.”*

24
25 (3) *In the case of agent-solicited life insurance, the agent shall*
26 *provide the disclosure form to the applicant prior to, or*
27 *concurrently with, the application. Acknowledgment of the*
28 *disclosure shall be signed by the applicant and the writing agent.*

29 (4) *In the case of a solicitation by direct response methods, the*
30 *insurer shall provide the disclosure form to the applicant at the*
31 *time the policy is delivered, with a notice that a full premium refund*
32 *shall be provided to the insured if the policy is returned to the*
33 *company within the free look period, pursuant to Section 10295.6.*

34 (5) *In the case of group insurance policies, the disclosure form*
35 *shall be contained as part of the certificate of coverage or any*
36 *related document furnished by the insurer for the certificate holder.*

37 (e) *If there is a premium or cost of insurance charge, the insurer*
38 *shall give the applicant a generic illustration numerically*
39 *demonstrating any effect of the payment of a benefit on the policy’s*

1 cash value, accumulation account, death benefit, premium, policy
2 loans, and policy liens.

3 (1) In the case of agent-solicited life insurance, the agent shall
4 provide the illustration to the applicant prior to, or concurrently
5 with, the application.

6 (2) In the case of a solicitation by direct response methods, the
7 insurer shall provide the illustration to the applicant at the time
8 the policy is delivered.

9 (3) In the case of group life insurance policies, the disclosure
10 form shall be contained as part of the certificate of coverage or
11 any related document furnished by the insurer for the certificate
12 holder.

13 (f) An insurer with financing options other than through present
14 value or a lien approach shall disclose to the policyholder any
15 premium or cost of insurance charge for the accelerated death
16 benefit. If the certificate is required to pay any additional premium
17 or cost of insurance charge, that charge shall be shown on the
18 specifications page.

19 (g) The insurer shall disclose to the policyholder any
20 administrative expense charge.

21 (h) An insurer shall file with the commissioner an actuarial
22 memorandum prepared, dated, and signed by a member of the
23 American Academy of Actuaries that includes all of the following
24 information:

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

30 (2) A description of, and justification for, expense charges
31 associated with the accelerated death benefit and the maximum
32 expense charges.

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

1 (4) A description of the mortality basis and methodology,
2 including the period of time applicable to any mortality discount,
3 used in any present value calculation of the accelerated death
4 benefit.

5 (5) A description of the mortality and morbidity basis and
6 methodology used in the determination of any separate premium
7 or costs of insurance for the accelerated death benefit.

8 (6) The formula used to determine the accelerated death benefit,
9 including any limitations on the amount of the benefit, and the
10 formula used to determine the postacceleration premium.

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

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

23 (9) For any accelerated death benefit of the type other than a
24 terminal illness, a certification that the value and premium of the
25 accelerated death benefit is 10 percent or less of the total value
26 of the benefits over the life of the policy. These values shall be
27 measured as of the date of issue.

28 10295.3. (a) All applications for accelerated death benefit
29 provisions or supplemental contracts shall contain clear,
30 unambiguous, short, and simple questions designed to ascertain
31 the health condition of the applicant. Each question shall contain
32 only one health status inquiry and shall require only a “yes” or
33 “no” answer, except that the application may include a request
34 for the name of any prescribed medication and the name of the
35 prescribing physician. If the application requests the name of any
36 prescribed medication or the prescribing physician, then any
37 mistake or omission shall not be used as a basis for the denial of
38 a claim or the rescission of a policy or certificate.

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

1

2 *“Caution: If your answers on this application are misstated or*
3 *untrue, the insurer may have the right to deny benefits or rescind*
4 *your coverage.”*

5

6 *(c) If an insurer does not complete medical underwriting and*
7 *resolve all reasonable questions arising from information submitted*
8 *on or with an application before issuing the policy or certificate,*
9 *then the insurer may only rescind the policy or certificate or deny*
10 *an otherwise valid claim upon clear and convincing evidence of*
11 *fraud or material misrepresentation of the risk by the applicant.*
12 *The evidence shall do all of the following:*

13 *(1) Pertain to the condition for which benefits are sought.*

14 *(2) Involve a chronic condition or involve dates of treatment*
15 *before the date of application.*

16 *(3) Be material to the acceptance for coverage.*

17 *(d) The contestability period for an individual policy or*
18 *certificate shall comply with subparagraph (C) of paragraph (2)*
19 *of subdivision (b) of Section 10271.*

20 *(e) A copy of the completed application shall be delivered to*
21 *the insured at the time of delivery of the policy or certificate.*

22 10295.4. *(a) When a policyholder or certificate holder requests*
23 *an acceleration of death benefits, the insurer shall send a statement*
24 *to the policyholder or certificate holder and irrevocable beneficiary*
25 *showing any effect that the payment of the accelerated death benefit*
26 *would have on the policy’s cash value, accumulation account,*
27 *death benefit, premium, policy loans, and policy liens. The*
28 *statement shall disclose that receipt of accelerated death benefit*
29 *payments may adversely affect the recipient’s eligibility for*
30 *Medicaid or other government benefits or entitlements. In addition,*
31 *receipt of an accelerated death benefit payment may be taxable*
32 *and assistance should be sought from a personal tax adviser. When*
33 *a previous disclosure statement becomes invalid as a result of an*
34 *acceleration of the death benefit, the insurer shall send a revised*
35 *disclosure statement to the policyholder or certificate holder and*
36 *irrevocable beneficiary.*

37 *(b) The accelerated death benefit provision shall be effective*
38 *for terminal illness on the effective date of the policy or*
39 *supplemental contract. The accelerated death benefit provision*

1 shall be effective for other qualifying events not more than 30 days
2 following the effective date of the policy or supplemental contract.

3 (c) The insurer may offer a waiver of premium for the
4 accelerated death benefit provision in the absence of a regular
5 waiver of premium provision being in effect. At the time the benefit
6 is claimed, the insurer shall explain any continuing premium
7 requirement to keep the policy in force.

8 (d) An insurer shall not unfairly discriminate among insureds
9 with differing qualifying events covered under the policy or among
10 insureds with similar qualifying events covered under the policy.
11 An insurer shall not apply further conditions on the payment of
12 the accelerated death benefits other than those conditions specified
13 in the policy or supplemental contract.

14 (e) The insurer shall provide the policyholder or certificate
15 holder with a report, at least monthly, of any benefits paid out
16 during the prior month, an explanation of any changes to the policy
17 or certificate, death benefits, and cash values on account of the
18 benefits being paid out, and the amount of the remaining benefits
19 that can be accelerated at the end of the prior month. A calendar
20 month or policy or certificate month may be utilized.

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

26 (g) The conversion benefit available to group certificate holders
27 on termination of employment pursuant to paragraph (2) of
28 subdivision (a) of Section 10209 shall include a benefit comparable
29 to the accelerated death benefit. This requirement may be satisfied
30 by a separate policy or certificate. This requirement, subject to
31 the approval of the commissioner, may be satisfied by arrangement
32 with another insurer to provide the required coverage.

33 (h) When payment of an accelerated death benefit results in a
34 pro rata reduction in cash value, the payment may be applied
35 toward repaying a portion of loan equal to a pro rata portion of
36 any outstanding policy loans if disclosure of the effect of
37 acceleration upon any remaining death benefit, cash value or
38 accumulation account, policy loan, and premium payments,
39 including a statement of the possibility of termination of any
40 remaining death benefit, is provided to the policyholder or

1 *certificate holder. The policyholder or certificate holder shall*
2 *provide written consent authorizing any other arrangement for*
3 *the repayment of outstanding policy loans.*

4 *10295.5. (a) The insurer may require a premium charge or*
5 *cost of insurance charge for the accelerated death benefit. This*
6 *charge shall be based on sound actuarial principles. In the case*
7 *of group insurance, the additional cost may also be reflected in*
8 *the experience rating.*

9 *(b) (1) The insurer may pay a present value of the face amount.*
10 *The calculation shall be based on any applicable actuarial discount*
11 *appropriate to the policy design. The interest rate or interest rate*
12 *methodology used in the calculation shall be based on sound*
13 *actuarial principles and disclosed in the contract or actuarial*
14 *memorandum. The maximum interest rate used shall be no greater*
15 *than the greater of one of the following:*

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

17 *(B) The current maximum statutory adjustable policy loan*
18 *interest rate.*

19 *(2) The interest rate accrued on the portion of the lien that is*
20 *equal in amount to the cash value of the contract at the time of the*
21 *benefit acceleration shall be not more than the policy loan interest*
22 *rate stated in the contract.*

23 *(c) (1) Except as provided in paragraph (2), when an*
24 *accelerated death benefit is payable, there shall not be more than*
25 *a pro rata reduction in the cash value based on the percentage of*
26 *death benefits accelerated to produce the accelerated death benefit*
27 *payment.*

28 *(2) Alternatively, the payment of accelerated death benefits,*
29 *any administrative expense charges, any future premiums, and*
30 *any accrued interest can be considered a lien against the death*
31 *benefit of the policy or supplemental contract and the access to*
32 *the cash value may be restricted to any excess of the cash value*
33 *over the sum of any other outstanding loans and the lien. Future*
34 *access to additional policy loans may also be limited to any excess*
35 *of the cash value over the sum of the lien and any other outstanding*
36 *policy loans.*

37 *(d) When payment of an accelerated death benefit results in a*
38 *pro rata reduction in the cash value, the payment shall not be*
39 *applied toward repaying an amount greater than a pro rata portion*
40 *of any outstanding policy loans.*

1 10295.6. (a) *If an accelerated death benefit is incorporated*
2 *into the terms of the policy or certificate, an applicant for a policy*
3 *or a certificate shall have the right to return the policy or*
4 *certificate by first-class United States mail within 30 days of its*
5 *delivery and to have the premium refunded if, after examination*
6 *of the policy or certificate, the applicant is not satisfied for any*
7 *reason. If the benefit is purchased as a supplemental contract at*
8 *the same time as the base policy, then the supplemental contract*
9 *may be returned within 30 days. The underlying life insurance*
10 *policy shall be otherwise subject to this code.*

11 (b) *The return of a policy or certificate shall void the policy or*
12 *certificate from the beginning and the parties shall be in the same*
13 *position as if no policy, certificate, or contract had been issued.*
14 *All premiums paid and any policy fee paid for the policy shall be*
15 *fully refunded directly to the applicant by the insurer within 30*
16 *days after the policy or certificate is returned.*

17 (c) *Policies or certificates to which this section applies shall*
18 *have a notice prominently printed on the first page of the policy*
19 *or certificate, or attached thereto, stating in substance the*
20 *conditions described in subdivisions (a) and (b).*

21 10295.7. (a) (1) *Application forms shall include a question*
22 *designed to elicit information as to whether the proposed insurance*
23 *policy is intended to replace any long-term care insurance*
24 *presently in force. A supplementary application or other form to*
25 *be signed by the applicant containing that question may be used.*

26 (2) *An insurer that determines that the policy is intended to*
27 *replace a similar life policy without a benefit subject to this section*
28 *shall follow the procedures in Article 8 (commencing with Section*
29 *10509) of Chapter 5.*

30 (b) *An insurer, broker, agent, or other person shall not cause*
31 *a policyholder to replace a long-term care insurance policy*
32 *unnecessarily. This section shall not be construed to allow an*
33 *insurer, broker, agent, or other person to cause a policyholder to*
34 *replace a long-term care insurance policy or life insurance policy*
35 *subject to this section that will result in a decrease in benefits and*
36 *an increase in premium.*

37 (1) *For the purposes of this section, “benefits” includes any*
38 *term of a life insurance policy, including the availability of*
39 *obtaining the benefit in a lump sum, the potential for a remaining*

1 *death benefit, or any other favorable characteristic not otherwise*
 2 *available in a long-term care policy.*

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

8 *(c) Upon determining that a sale does involve replacement of*
 9 *a life insurance policy subject to this section or of a long-term*
 10 *care policy, an insurer, other than an insurer using direct response*
 11 *solicitation methods, or its agent shall furnish the applicant, prior*
 12 *to issuance or delivery of a policy or certificate, a notice regarding*
 13 *replacement of life insurance or long-term care insurance coverage*
 14 *with a life insurance policy with an accelerated death benefit,*
 15 *health insurance, or long-term care insurance coverage. One copy*
 16 *of this notice shall be retained by the applicant and an additional*
 17 *copy signed by the applicant shall be retained by the insurer. The*
 18 *required notice shall be provided in the following form:*

19
 20 **“NOTICE TO APPLICANT REGARDING REPLACEMENT OF**
 21 **LIFE INSURANCE OR LONG-TERM CARE INSURANCE**

22 *According to (your application) (information you have*
 23 *furnished), you intend to lapse or otherwise terminate existing life*
 24 *insurance or long-term care insurance and replace it with a life*
 25 *insurance policy with an accelerated death benefit to be issued by*
 26 *(company name) Insurance Company. Your new coverage provides*
 27 *thirty (30) days within which you may decide, without cost, whether*
 28 *you desire to keep the coverage. For your own information and*
 29 *protection, you should be aware of, and seriously consider, certain*
 30 *factors that may affect the insurance protection available to you*
 31 *under the new coverage.*

32 *This Accelerated Death Benefit is NOT Nursing Home, Home*
 33 *Care, or Long-Term Care Insurance, and it is not intended or*
 34 *designed to eliminate your need for that coverage. There are no*
 35 *restrictions or limitations on the use of the Accelerated Death*
 36 *Benefit proceeds.*

37 *If you want that kind of insurance, you should consult with an*
 38 *insurance agent licensed to sell that insurance, inquire with the*
 39 *insurance company offering the accelerated death benefits, or visit*
 40 *the California Department of Insurance Internet Web site*

1 (www.insurance.ca.gov) that provides information regarding
2 long-term care insurance.

3 Receipt of accelerated death benefits may be taxable. Prior to
4 electing to buy the accelerated death benefit, policy owners or
5 certificate holders should seek assistance from a qualified tax
6 adviser.

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

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

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

28 The above "Notice to Applicant" was delivered to me on:

29 (Date)

30 (Applicant's Signature)"

31

32 (d) For group coverage not subject to the 30-day return
33 provision of Section 10295.6, the notice shall be modified to reflect
34 the appropriate time period in which the policy may be returned
35 and premium refunded.

36 (e) The replacement notice shall include the following statement
37 except when the replacement coverage is group insurance:

38

39 **COMPARISON TO YOUR CURRENT COVERAGE:** I have
40 reviewed your current coverage for the purposes of estate planning

1 *for the need for terminal illness/chronic illness coverage. To the*
 2 *best of my knowledge, the replacement of insurance involved in*
 3 *this transaction materially improves your position for the following*
 4 *reasons:*

- 5 *_____ Additional or different benefits*
 6 *(please specify) _____.*
- 7 *_____ No change in benefits, but lower premiums.*
- 8 *_____ Fewer benefits and lower premiums.*
- 9 *_____ Life insurance feature not available in long-term care*
 10 *insurance (please specify)*
- 11 *_____ Other (please specify) _____.*
 12 *(Signature of Agent and Name of Insurer)*
 13 *(Signature of Applicant)*
 14 *(Date)*

15
 16 *(f) Insurers using direct response solicitation methods shall*
 17 *deliver a notice regarding replacement of life or long-term care*
 18 *coverage to the applicant upon issuance of the policy or certificate.*
 19 *The required notice shall be provided in the following form:*

20
 21 **“NOTICE TO APPLICANT REGARDING REPLACEMENT OF**
 22 **LIFE INSURANCE OR LONG-TERM CARE INSURANCE**

23 *According to (your application) (information you have*
 24 *furnished), you intend to lapse or otherwise terminate existing life*
 25 *insurance or long-term care insurance and replace it with a life*
 26 *insurance policy with an accelerated death benefit to be issued by*
 27 *(company name) Insurance Company. Your new coverage provides*
 28 *thirty (30) days within which you may decide, without cost, whether*
 29 *you desire to keep the coverage. For your own information and*
 30 *protection, you should be aware of and seriously consider certain*
 31 *factors that may affect the insurance protection available to you*
 32 *under the new coverage.*

33 *This Accelerated Death Benefit is NOT Nursing Home, Home*
 34 *Care, or Long-Term Care Insurance, and it is not intended or*
 35 *designed to eliminate your need for that coverage. There are no*
 36 *restrictions or limitations on the use of the Accelerated Death*
 37 *Benefit proceeds.*

38 *If you want that kind of insurance, you should consult with an*
 39 *insurance agent licensed to sell that insurance, inquire with the*
 40 *insurance company offering the accelerated death benefits, or visit*

1 *the California Department of Insurance Internet Web site*
2 *(www.insurance.ca.gov) that provides information regarding*
3 *long-term care insurance.*

4 *Receipt of accelerated death benefits may be taxable. Prior to*
5 *electing to buy the accelerated death benefit, policy owners or*
6 *certificate holders should seek assistance from a qualified tax*
7 *adviser.*

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

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

19 *(2) (To be included only if the application is attached to the*
20 *policy or certificate.) If, after due consideration, you still wish to*
21 *terminate your present coverage and replace it with new coverage,*
22 *read the copy of the application attached to your new coverage*
23 *and be sure that all questions are answered fully and correctly.*
24 *Omissions or misstatements in the application may cause an*
25 *otherwise valid claim to be denied. Carefully check the application*
26 *and write to (company name and address) within thirty (30) days*
27 *if any information is not correct and complete, or if any past*
28 *medical history has been left out of the application.*

29 *(Company Name)”*
30

31 *(g) For group coverage not subject to the 30-day return*
32 *provision of Section 10295.6, the notice shall be modified to reflect*
33 *the appropriate time period in which the policy may be returned*
34 *and premium refunded.*

35 *(h) If a group policy is replaced by another group policy issued*
36 *to the same policyholder, the succeeding insurer shall offer*
37 *coverage consistent with subdivision (g) of Section 10295.4.*

38 *(i) In recommending the purchase or replacement of any policy*
39 *or certificate issued under this section, an agent shall make*

1 reasonable efforts to determine the appropriateness of a
2 recommended purchase or replacement.

3 (j) The replacing policy or certificate shall not contain a
4 provision establishing a new waiting period in the event existing
5 coverage is converted to, or replaced by, a new or other form
6 within the same insurer, except with respect to an increase in
7 benefits voluntarily selected by the insured individual or group
8 policyholder.

9 10295.8. (a) An accelerated death benefit policy shall not be
10 advertised or marketed as long-term care insurance, nursing home
11 insurance, or home care insurance. Any advertisement, description,
12 comparison, marketing material, or illustration shall state in bold
13 that: “This product is a life insurance policy that accelerates the
14 death benefit for qualified chronic illness or other qualified events
15 and is not insurance providing long-term care insurance subject
16 to the minimum requirements of California Law, does not qualify
17 for the California Partnership for Long-Term Care program, and
18 is not a Medicare supplement (policy or certificate).” An insurer
19 shall include in any advertisement or marketing materials for these
20 insurance policies all of the following:

21 (1) A statement that the policy or certificate is intended to be a
22 tax-qualified insurance contract under Section 7702(b) of the
23 Internal Revenue Code (26 U.S.C. 7702(b)), if applicable.

24 (2) A description of the benefits provided by the policy, including
25 a description of the acceleration of the death benefit to pay an
26 unrestricted cash benefit when the insured has become chronically
27 ill or otherwise eligible for benefits from a qualified event.

28 (3) A comparison between the benefits provided by these policies
29 and the benefits provided by long-term care insurance.

30 (b) The statement in paragraph (1) of subdivision (a) may only
31 appear in an advertisement, description comparison, illustration,
32 or marketing material for policies or certificates that accelerate
33 death benefits pursuant to Section 10295 if the policy or certificate
34 is a tax-qualified insurance contract under Section 7702(b) of the
35 Internal Revenue Code (26 U.S.C. 7702(b)).

36 10295.9. The following acts and practices in the sale of
37 insurance 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 *10295.10. An individual accelerated death benefit policy or*
14 *certificate shall not be issued unless it meets the requirements of*
15 *Section 10113.72 regarding unintentional lapse.*

16 *10295.11. (a) Except at the request of the policyholder or*
17 *contract holder, all accelerated death benefit provisions or*
18 *supplemental contracts shall be renewable for the life of the*
19 *underlying life insurance policy.*

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

22 *10295.12. Termination of the accelerated death benefit*
23 *provision shall be without prejudice to any benefits payable for*
24 *any claim if the claim began while the accelerated death benefit*
25 *provision was in force and continues without interruption after*
26 *termination. An extension of benefits beyond the period the*
27 *insurance was in force may be limited to the duration of the benefit*
28 *period, if any, or to payment of the maximum benefits and may be*
29 *subject to any policy waiting period, and all other applicable*
30 *provisions of the insurance policy.*

31 *10295.13. (a) Except as described in subdivision (b), an*
32 *insurer that fails to conform to the requirements provided under*
33 *this article shall be subject to Article 6.5 (commencing with Section*
34 *790) of Chapter 1 of Part 2 of Division 1.*

35 *(b) A violation of this article is not subject to subdivision (d) of*
36 *Section 790.036.*

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