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**SFA****BILL ANALYSIS**

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Senate Bill 116 (as introduced 1-29-03)  
Sponsor: Senator Gerald Van Woerkom  
Committee: Banking and Financial Institutions

Date Completed: 3-20-03

## **CONTENT**

**The bill would amend the Insurance Code to regulate the payment of "accelerated benefits"; that is, the payment of a reduced death benefit during the life of an insured individual upon the occurrence of a qualifying event. The bill would do the following:**

- **Delete a provision under which life insurers may prepay not more than 25% of a death benefit.**
- **Require insurers to obtain an "acknowledgment of concurrence" from an assignee or irrevocable beneficiary before paying an accelerated benefit.**
- **Require insurers to provide certain disclosures and information to applicants, policy-owners, certificate-holders, and beneficiaries.**

### Life Insurance

The Code states that life insurance includes insurance upon the lives of people that prepays in a lump sum not more than 25% of the death benefit based on one or more of the following medical conditions, if considered to be life threatening or of a catastrophic nature: malignant tumors; conditions requiring organ transplantation; coronary artery disease resulting in acute infarction or requiring surgery; permanent neurological deficit resulting from cerebral vascular accident; endstage renal failure; and/or other medical conditions that the Commissioner of the Office of Financial and Insurance Services finds, after an opportunity for an administrative hearing, to be either life threatening or of a catastrophic nature.

The bill would delete that provision. The bill specifies that life insurance would include

insurance upon the lives of people that prepays the death benefit.

### Accelerated Benefits & Qualifying Events

Under the bill, "accelerated benefits" would mean "benefits payable under a life insurance contract to a policy-owner or certificate-owner, during the lifetime of the insured, in anticipation of death or upon the occurrence of specified life-threatening or catastrophic conditions as defined by the policy or rider that reduce the death benefit otherwise payable under the life insurance contract and that are payable upon the occurrence of a single qualifying event that results in the payment of a benefit amount fixed at the time of acceleration".

The bill would define "qualifying event" as one or more of the following: a medical condition that requires extraordinary intervention including, major organ transplant, or continuous artificial life support, without which the insured would die; a condition that usually requires continuous confinement in an eligible institution if the insured is expected to remain there for the rest of his or her life; a medical condition that would, in the absence of extensive or extraordinary medical treatment, result in a drastically limited life span, including coronary artery disease resulting in acute infarction or requiring surgery, permanent neurological deficit resulting from cerebral vascular accident, endstage renal failure, or acquired immune deficiency syndrome; or other medical conditions or qualifying events that the Commissioner approved for a particular filing.

### Mortality Risks

The bill specifies that an accelerated benefit

rider and a life insurance policy with accelerated benefit provisions would be primarily mortality risks rather than morbidity risks; would be life insurance benefits subject to Chapters 40 and 44 of the Code; would have to provide the option to take the benefit as a lump sum and not as an annuity contingent upon the life of the insured; and could not restrict the use of the proceeds.

If any death benefit remained after payment of an accelerated benefit, an accelerated benefit rider or policy provisions could not affect the accidental death benefit payment provision, if any, by the payment of the accelerated benefit. The rider or provisions also would have to include the terminology "accelerated benefit" in the descriptive title and could not be described or marketed as long-term care benefits.

(Chapters 40 and 44 of the Code deal with life insurance policies and annuity contracts and group life insurance, respectively.)

#### Signed Acknowledgment

The bill would require an insurer to obtain from an assignee or irrevocable beneficiary a signed acknowledgment of concurrence for payout prior to the payment of an accelerated benefit, unless the insurer making the accelerated benefit were the assignee under the policy.

#### Disclosure Statement

At the time of application and when the accelerated benefit payment request was submitted, an insurer would have to provide a disclosure statement that the receipt of the accelerated benefits could be taxable and that assistance should be sought from a personal tax advisor. The insurer would have to display the disclosure statement prominently on the first page of the policy or rider and any other related documents. If a policy-holder or certificate-holder requested an acceleration, the insurer would have to send to the policy-owner or certificate-holder and irrevocable beneficiary a statement showing any effect that the payment of the accelerated benefit would have on the policy's cash value, accumulation account, death benefit, premium, policy loans, and policy liens. The statement would have to disclose that receipt of the payment could adversely affect the

recipient's eligibility for Medicaid and other government benefits and could be taxable, and that assistance should be sought from a personal tax advisor. The insurer would have to send a revised disclosure statement if a previous statement became invalid as a result of an acceleration of the death benefit. If the insurer agreed to accelerate death benefits, the insurer also would have to issue an amended schedule page to the policyholder to reflect, or notify the certificate-holder of, any new, reduced in-force face amount of the contract.

An applicant would have to be given a written disclosure, including a brief description of the accelerated benefits and definitions of the conditions or occurrences triggering payment of the benefits. The description would have to include an explanation of any effect of the payment of a benefit on the policy's cash value, accumulation account, death benefit, premium, policy loans, and policy liens. For agent-solicited insurance, the agent would have to give the disclosure form to the applicant before or at the time of the application, and the applicant and writing agent would have to sign acknowledgment of the disclosure. For a solicitation by direct response methods, the insurer would have to provide the disclosure form to the applicant when the policy was delivered, with a notice that a full premium refund would be received if the policy were returned to the company within the free look period. For group insurance policies, the disclosure form would have to be contained as part of the certificate of coverage or any related document furnished by the insurer for the certificate-holder.

#### Premium or Cost of Insurance Charge

If there were a premium or cost of insurance charge, an insurer would be required to provide an applicant with a generic illustration numerically demonstrating any effect of the payment of a benefit on the policy's cash value, accumulation account, death benefit, premium, policy loans, and policy liens. For agent solicited insurance, solicitation by direct response methods, and group insurance policies, the illustration would have to be given to the applicant as described above.

#### Disclosure of Additional Charges

If an insurer had financing options other than

paying a present value of the face amount, the insurer would have to disclose to a policy-owner any premium or cost of insurance charge for the accelerated benefit, and make a reasonable effort to assure that a certificate-owner was aware of any additional premium or cost if the certificate-holder were required to pay a charge. Upon request by the Commissioner, the insurer would have to furnish an actuarial demonstration disclosing the method of arriving at its cost.

Additionally, the bill would require an insurer to disclose to a policy-owner any administrative expense charge, and make a reasonable effort to assure that a certificate-owner was aware of the charge, if the certificate-holder had to pay it.

#### Financing Options

The insurer of an accelerated benefit rider or life insurance policy with accelerated benefit provisions could do any of the following:

- Require a premium charge or cost of insurance charge for the accelerated benefit based on sound actuarial principles. For group insurance, the additional cost also could be reflected in the experience rating.
- Pay a present value of the face amount. The calculation would have to be based on any applicable actuarial discount appropriate to the policy design.
- Accrue an interest charge on the amount of the accelerated benefits. The interest rate accrued on the portion of the lien that is equal in amount to the cash value of the contract at the time of the benefit acceleration could not be more than the policy loan interest rate stated in the contract.

For either of the last two options, the interest rate or interest rate methodology would have to be based on sound actuarial principles and disclosed in the contract or actuarial memorandum. The maximum interest rate used could not exceed the greater of the current yield on 90-day Treasury bills or the current maximum statutory adjustable policy loan interest rate stated in the contract.

#### Pro Rata Reduction

If an accelerated benefit were payable, there could not be more than a pro rata reduction in

the cash value based on the percentage of death benefits accelerated to produce the accelerated benefit payment. Alternatively, the payment of accelerated benefits and any administrative expense charges, future premiums, and accrued interest could be considered a lien against the death benefit of the policy and access to the cash value could be restricted to any excess of the cash value over the sum of any other outstanding loans and the lien. Future access to additional policy loans could be limited to any excess of the cash value over the sum of the lien and any other outstanding policy loans.

If payment of an accelerated benefit resulted in a pro rata reduction in the cash value, the payment could not be applied toward repaying an amount greater than a pro rata portion of any outstanding policy loans.

#### Actuarial Memorandum

For an accelerated benefit rider or life insurance with accelerated benefit provisions, a qualified actuary would have to describe the accelerated benefits, the risks, the expected costs, and the calculation of statutory reserves in an actuarial memorandum. The insurer would have to maintain in its files descriptions of the basis and procedures used to calculate benefits payable, and make the memorandum and the descriptions available for examination by the Commissioner upon request.

#### Policy Reserves

The bill would require policy reserves to be determined in accordance with Section 834 of the Code (which provides for the valuation of life insurance policies using methods approved by or rules promulgated by the Commissioner). All valuation assumptions would have to be determined as appropriate for statutory valuation purposes by a member in good standing of the American Academy of Actuaries, who would have to follow both actuarial standards and certification for sufficient reserves. The bill states that reserves in the aggregate should be sufficient to cover policies upon which no claim had yet arisen and policies upon which an accelerated claim had arisen. Additional reserves would not need to be established for policies and certificates that provided actuarially equivalent benefits. Policy liens and policy loans, including accrued interest, would represent

assets of the insurer for statutory reporting purposes. For a policy on which the policy lien exceeded the policy's statutory reserve liability, the excess would have to be held as a nonadmitted asset.

#### Other Provisions

The bill provides that an accelerated benefit provision would be effective on the effective date of the policy or rider for accidents, or not more than 30 days after the effective date of the policy or rider for illness.

An insurer could offer a waiver of premium for an accelerated benefit provision in the absence of a regular waiver of premium provision being in effect. At the time the benefit was claimed, the insurer would have to explain any continuing premium requirement to keep the policy in force.

An insurer would be prohibited from unfairly discriminating among insureds with differing qualifying events covered under a policy or among insureds with similar qualifying events covered under a policy. An insurer also could not apply further conditions on the payment of accelerated benefits other than those specified in a policy or rider.

MCL 500.602 et al.

Legislative Analyst: Julie Koval

#### **FISCAL IMPACT**

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Maria Tyszkiewicz

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.