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House Bill 4907 (as passed by the House)
Sponsor: Representative John Stahl
House Committee: Insurance
Senate Committee: Banking and Financial Institutions

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CONTENT

The bill would amend Chapter 6 (Kinds of Insurance...) of the Insurance Code to regulate accelerated benefits in life insurance policies. The bill would do all of the following:

- Delete a provision that limits prepaid death benefits to a lump sum of not more than 25% of the benefits.**
- Establish requirements for an accelerated benefit rider and a life insurance policy with accelerated benefit provisions.**
- Require insurers offering accelerated benefits to make certain disclosures regarding the possible taxable status and other effects of accelerated benefit payments.**
- Require an insurer to give an insured or applicant for accelerated benefit coverage information regarding premiums and other costs of the insurance.**
- Regulate the pay-out of accelerated benefits, including the effects of policy loans and liens on the payment of benefits.**
- Specify requirements for the determination of policy reserves.**

Terms

"Accelerated benefits" would mean "benefits payable under a life insurance contract to a policyowner or certificateholder during the lifetime of the insured, in anticipation of death or upon the occurrence of specified life-threatening or catastrophic conditions as defined in 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 result in the payment of a benefit amount fixed at the time of acceleration".

"Qualifying event" would mean one or more of the following:

- A medical condition that results in a drastically limited life span as specified in the contract.
- A medical condition that requires or has required extraordinary medical 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, as defined in the contract, if the insured is expected to remain there for the rest of his or her life.
- A medical condition that, in the absence of extensive or extraordinary medical treatment, would result in a drastically limited life span, including coronary artery disease resulting in an acute infarction or requiring surgery, permanent neurological deficit resulting from cerebral vascular accident, end-stage renal failure, acquired immune deficiency syndrome (AIDS), or other medical conditions that the Insurance Commissioner has approved for any particular filing.
- Other qualifying events that the Commissioner approves for a particular filing.

The definition of "life" insurance under Chapter 6 includes insurance on the life of a person that prepays in a lump sum not more than 25% of the death benefit based on one or more medical conditions specified in the Code, if a condition is considered to be life-threatening or of a catastrophic nature. Under the bill, life insurance would include insurance that prepays the death benefit; the bill would delete reference to a lump sum of not more than 25%, and reference to particular medical conditions.

Rider & Policy Requirements

Under the bill, an accelerated benefit rider and a life insurance policy with accelerated benefit provisions primarily would be mortality risks, rather than morbidity risks and would be life insurance benefits subject to Chapters 40 and 44 of the Code. (Chapter 40 deals with life insurance policies and annuity contracts, other than industrial or group life insurance, and Chapter 44 regulates group life insurance.) The following also would apply to an accelerated benefit rider and a life insurance policy with accelerated benefit provisions:

- It 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.
- It could have no restrictions on the use of the proceeds.
- If any death benefit remained after payment of an accelerated benefit, it could not affect the accidental death benefit provision, if any, by the payment of the accelerated benefits.
- It would have to include the term "accelerated benefit" in its descriptive title and could not be described or marketed as long-term care insurance or as providing long-term care benefits.

Except as otherwise provided in the bill, an insurer offering an accelerated benefit rider or life insurance policy with accelerated benefit provisions would have to obtain a signed acknowledgment of concurrence for pay-out from an assignee or irrevocable beneficiary before the accelerated benefits were paid. If the insurer itself were the assignee under the policy, an acknowledgment would not be required.

An accelerated benefit provision would be effective on the policy's or rider's effective date for accidents or not more than 30 days after the policy's or rider's effective date for illness.

An insurer offering accelerated benefits could not unfairly discriminate among either insureds with differing qualifying events covered under the policy or insureds with similar qualifying events covered under the policy. An insurer could not apply further conditions on the payment of accelerated benefits other than those specified in the policy or rider.

Disclosures

An insurer offering accelerated benefits would have to provide a disclosure statement that the accelerated benefits could be taxable and that assistance should be sought from a personal tax advisor. The disclosure statement also would have to be displayed prominently on the first page of the policy or rider and any other related documents. The insurer would have to make the disclosure at the time of application and when the accelerated benefit payment request was submitted.

If a policy-owner or certificate-holder of an accelerated benefit rider or life insurance policy with accelerated benefit provisions requested an acceleration, the insurer would have to send to him or her, and to an irrevocable beneficiary, a statement showing any effect that the payment 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 receiving accelerated benefit payments could adversely affect the recipient's eligibility for Medicaid or other governmental benefits or entitlements, the payments could be taxable, and assistance should be sought from

a personal tax advisor. If a previous disclosure statement became invalid because of an acceleration of the death benefit, the insurer would have to send a revised disclosure statement to the policy-owner or certificate-holder and irrevocable beneficiary. If the insurer agreed to accelerate death benefits, the insurer would have to issue an amended schedule page to the policy-holder to reflect any new, reduced in-force face amount of the contract or would have to notify a certificate-holder under a group policy of any such change.

A written disclosure, including a brief description of the accelerated benefit and definitions of the conditions or occurrences triggering payment of the benefits, would have to be given to an applicant for an accelerated benefit rider or life insurance policy with accelerated benefit provisions. 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 provide the disclosure form before or at the time of application. The applicant would have to sign an acknowledgment of the disclosure. For a solicitation by direct response methods, the insurer would have to provide the disclosure form 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 included as part of the certificate of coverage or of any related document furnished by the insurer for the certificate-holder.

Premium or Cost of Insurance; Disclosures

An insurer offering accelerated benefits could require a premium charge or cost of insurance charge for accelerated benefits, if based on sound actuarial principles. For group insurance, the additional cost also could be reflected in the experience rating.

If there were a premium or cost of insurance charge, the insurer would have to give an applicant for accelerated benefits a generic illustration that numerically demonstrated 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 provide the illustration before or at the time of application. For a solicitation by direct response methods, the insurer would have to provide the illustration when the policy was delivered. For group insurance policies, the disclosure form would have to be included as part of the certificate of coverage or of any related document furnished by the insurer for the certificate-holder.

If an insurer offering accelerated benefits had financing options other than paying the 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. The insurer would have to make a reasonable effort to assure that the certificate-holder was aware of any additional premium or cost of insurance charge if he or she were required to pay a charge. Upon request of the Commissioner of the Office of Financial and Insurance Services, an insurer would have to furnish an actuarial demonstration disclosing the method of arriving at its cost for the accelerated benefit.

An insurer offering accelerated benefits would have to disclose to a policy-owner any administrative expense charge, and make a reasonable effort to assure that a certificate-holder was aware of any administrative expense charge, if he or she were required to pay it.

An insurer offering accelerated benefits could offer a waiver of premium for the accelerated benefit provision, if a regular waiver of premium provision were not 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 offering accelerated benefits could pay a present value of the face amount (based on any applicable actuarial discount appropriate to the policy design) and could accrue an interest charge on the amount of the accelerated benefits. In either case, the interest rate or interest rate methodology used in the calculation would have to be based on sound actuarial principles and disclosed in the contract or actuarial memorandum. The maximum interest rate used could not be more than the current yield on 90-day Treasury bills or the current maximum statutory adjustable policy loan interest rate, whichever was greater. The interest rate accrued on the portion of a lien that equaled the cash value of the contract at the time of the benefit acceleration, could not exceed the policy loan interest rate stated in the contract.

Payout of Accelerated Benefits

Except as otherwise provided in the bill, if an accelerated benefit were payable, there could be no 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, any administrative expense charges, any future premiums, and any accrued interest could be considered a lien against the death benefit and the 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.

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

Policy Reserves

If accelerated benefits were provided, policy reserves would have to be determined in accordance with requirements of the Code. All valuation assumptions used in constructing the reserves would have to be determined as appropriate for statutory valuation purposes by a member in good standing of the American Academy of Actuaries. The actuary would have to follow both actuarial standards and certification for good and sufficient reserves. The bill specifies 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. For policies and certificates that provided actuarially equivalent benefits, additional reserves would not have to be established. Policy liens and policy loans, including accrued interest, would represent the assets of the insurer for statutory reporting purposes. If a policy lien exceeded the policy's statutory reserve liability, the excess would have to be held as a nonadmitted asset.

MCL 500.602 et al.

Legislative Analyst: Patrick Affholter

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.