
SENATE COMMITTEE ON INSURANCE

Senator Susan Rubio, Chair

2019 - 2020 Regular

Bill No: SB 1255 **Hearing Date:** May 14, 2020
Author: Committee on Insurance
Version: February 21, 2020 Introduced
Urgency: No **Fiscal:** Yes
Consultant: Brian Flemmer

SUBJECT: Insurance

DIGEST: Provides procedural flexibility to the California Department of Insurance (CDI) when holding a hearing to suspend or revoke a license for alleged misconduct against seniors; clarifies when a life insurer can restrict access to policy withdrawals; cleans up ambiguity in CDI's licensing statutes; and makes other technical, nonsubstantive changes.

ANALYSIS:

Existing law:

- 1) Authorizes the Insurance Commissioner to deny an application for an agent or broker license, or revoke an existing license, if the applicant or licenseholder has engaged in specified activities.
- 2) For allegations of misconduct perpetrated against a person age 65 or over, existing law requires a hearing to suspend or revoke a license, registration, or certificate of authority, be held within 90 days after CDI receives a notice of defense, unless a continuance is granted.
- 3) Prohibits a life insurance policy issued on or after January 1, 2021, that contains long-term care benefits and permits policy loans or cash withdrawals from prohibiting or limiting a loan or withdrawal while the insured receives payment of long-term care benefits, but authorizes the policy to limit future access to policy loans based on the remaining cash value of the policy.

This bill:

- 1) Authorizes a hearing to suspend or revoke a license, registration, or certificate of authority for alleged misconduct perpetrated against a person age 65 or over to be set on the earliest available date if the Office of Administrative Hearings cannot accommodate the hearing within 90 days.
- 2) Authorizes future access to cash withdrawals to be limited to the remaining cash value of the policy.
- 3) Makes various technical, nonsubstantive changes.

Background

Under existing law, CDI can take disciplinary action against an applicant or licensee if they are convicted of a misdemeanor listed in the Insurance Code and other laws, as specified. However, a few relevant statutes refer to these types of misdemeanors as “denounced” by the insurance laws. This term is ambiguous and implies that some misdemeanors are worse than others. This bill would remove the ambiguity attached to the word “denounced” and make the law clearer by using the word “specified”, similar to its use in other Insurance Code sections.

CIC 1738.5 was written as a tool for CDI to use to be able to bring cases involving senior victims to hearing earlier than otherwise occurs. This is due to the myriad of issues that surround a case involving senior victims including the potential death of the victims, memory issues, and availability of witnesses (who are often times themselves seniors) among other concerns. The code states that a hearing “shall” be conducted within 90 days if the case involves allegations of a senior victim. As currently worded, a licensee accused of wrongdoing against a senior may try to seek dismissal merely because the case was not brought to hearing in 90 days.

This proposal clarifies that the 90-day timeframe is at the “request of the Department” ensuring that cases that are not requested to be heard in 90 days continue to progress through the normal administrative hearing process. This gives CDI the ability to use the expedited hearing time frame for senior cases if necessary and eliminates the potential that cases involving seniors will be dismissed if the case is not filed in 90 days.

AB 1209 (Nazarian) of 2019 restricted a life insurer’s ability to limit policyholders’ access to policy loans and cash withdrawals. This proposal fixes wording inadvertently left out of Insurance Code section 10235.45(a)(1) regarding cash withdrawals which was correctly included in (a)(2) of the same section.

Suggested Amendments

In addition to the following, the Committee recommends several technical amendments.

- 1) Existing law requires CDI maintain certain records in its office in San Francisco. CDI has recently moved its office to Oakland; we propose an amendment to clarify this office is in the San Francisco Bay Area.
- 2) Due to the on-going COVID-19 pandemic, the unprecedented nature of this legislative session, and the health risks members and the participating public take with each bill presentation, the committee recommends amendments that would add in its entirety the contents of the May 11, 2020 version of SB 961 (Gonzalez), an unopposed bill previously scheduled to be heard at the same hearing as this bill. These amendments would prohibit life and disability income insurers from denying an application based solely on HIV status, allow insurers to test for HIV after obtaining written informed consent, and conduct a traditional medical underwriting for HIV positive applicants. Additionally, the bill provides civil and criminal penalties for negligent, willful or malicious disclosure of HIV test results.

For more information, please see the Committee’s analysis prepared for the May 11, 2020 version of SB 961.

Related/Prior Legislation

AB 1209 (Nazarian, Chapter 625, Statutes of 2019) Requires a life insurance policy issued on or after January 1, 2021, that contains long-term care (LTC) benefits ("hybrid policies") and permits policy loans or cash withdrawals to not prohibit or limit a loan or withdrawal while the insured receives payment of LTC benefits, except as specified. Authorizes the payment of an accelerated death benefit for LTC to be applied toward repayment of a pro rata portion of an outstanding policy loan if the payment results in a pro rata reduction in the cash value of the life insurance policy. Requires an insurer to provide a statement to a policyholder or certificate holder at least 30 days before the first payment and no later than 30 days after every payment of an accelerated death benefit for LTC that includes specified information, including an explanation of policy changes that would or did occur due to the payment.

AB 3305 (Johnston, Chapter 1279, Statutes of 1988) Allowed life and disability income insurers to summarily deny applicants coverage on the basis of HIV positive test results.

ARGUMENTS IN SUPPORT:

In support of SB 1255, Insurance Commissioner Ricardo Lara writes, "This bill remedies issues identified by the Department of Insurance staff to clarify and cleanup obsolete and superseded code sections."

In support of SB 961, Insurance Commissioner Ricardo Lara writes, "In the late 1980's, when existing HIV underwriting laws were enacted, treatment and services for someone who tested HIV positive was severely limited, which significantly reduced their life expectancy. Additionally, therapies were largely ineffective, highly expensive, and came with severe side effects causing many people living with HIV and AIDS to bypass treatment all together. Today, with the access to quality health care, advancements in HIV testing and treatment technology, and continued education on the stigma of HIV, a person who learns they are HIV positive today and undergoes and maintains therapies can live a long, healthy life. Largely, HIV status is treated by medical professionals like any other treatable chronic condition such as cancer and multiple sclerosis."

SUPPORT:

California Department of Insurance

OPPOSITION:

None received

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