

AMENDED IN ASSEMBLY JUNE 18, 1998

**SENATE BILL**

**No. 1718**

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**Introduced by Senator Calderon**

February 17, 1998

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An act to amend ~~Section 10509.6~~ *Sections 10509.6 and 10541* of the Insurance Code, relating to life insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 1718, as amended, Calderon. Life insurance.

Existing law provides that every life insurer that uses an agent shall, among other things, when a replacement of insurance is involved, provide a notice delivered with the policy that the applicant has a right to an unconditional refund of all premiums, which right may be exercised within 20 days of the date of delivery of the policy. Existing law contains other provisions applicable to variable annuity contracts, variable life insurance contracts, and modified guaranteed contracts, that authorize the return of the contract during the cancellation period.

This bill would add the latter provision to the previous provisions requiring the applicant to be given notice of a right to an unconditional refund, and would change the 20-day period for the exercise of the right to obtain a refund to a 30-day period.

*Existing law permits certain insurers to issue funding agreements and provides that this authorization does not affect the priority of claims against insolvent insurers.*

*This bill would correct a cross-reference relating to this priority of claims.*

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

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

1 SECTION 1. Section 10509.6 of the Insurance Code is  
 2 amended to read:  
 3 10509.6. Every life insurer that uses an agent in a life  
 4 insurance or annuity sale shall do the following:  
 5 (a) Require with, or as part of each completed  
 6 application for life insurance or annuity, a statement  
 7 signed by the agent as to whether he or she knows  
 8 replacement is or may be involved in the transaction.  
 9 (b) Where a replacement is involved:  
 10 (1) Require from the agent with the application for life  
 11 insurance or annuity: (i) a list of all of the applicant's  
 12 existing life insurance or annuity to be replaced, and (ii)  
 13 a copy of the replacement notice provided the applicant  
 14 pursuant to Section 10509.4. The existing life insurance or  
 15 annuity shall be identified by name of insurer, insured,  
 16 and contract number. If a number has not been assigned  
 17 by the existing insurer, alternative identification, such as  
 18 an application or receipt number shall be listed.  
 19 (2) Send to each existing life insurer a written  
 20 communication advising of the replacement or proposed  
 21 replacement and the identification information obtained  
 22 pursuant to this section and a policy summary, contract  
 23 summary, or ledger statement containing policy data on  
 24 the proposed life insurance or annuity. Cost indices and  
 25 equivalent level annual dividend figures need not be  
 26 included in the policy summary or ledger statement. This  
 27 written communication shall be made within three  
 28 working days of the date the application is received in the  
 29 replacing insurer's home or regional office, or the date  
 30 the proposed policy or contract is issued, whichever is  
 31 sooner.  
 32 (3) Every existing life insurer or the insurer's agent  
 33 that undertakes a conservation shall, within 20 days from  
 34 the date the written communication plus the materials  
 35 required in subdivisions (1) and (2) are received by the



1 existing insurer, furnish the policyowner with a policy  
2 summary for the existing life insurance or ledger  
3 statement containing policy data on the existing policy or  
4 annuity. Information relating to premiums, cash values,  
5 death benefits, and dividends, if any, shall be computed  
6 from the current policy year of the existing life insurance.  
7 The policy summary or ledger statement shall include the  
8 amount of any outstanding indebtedness, the sum of any  
9 dividend accumulations or additions, and may include  
10 any other information that is not in violation of any  
11 regulation or statute. Cost indices and equivalent level  
12 annual dividend figures need not be included. When  
13 annuities are involved, the disclosure information shall be  
14 that in the contract summary.

15 The replacing insurer may request the existing insurer  
16 to furnish it with a copy of the summaries or ledger  
17 statement, which shall be within five working days of the  
18 receipt of the request.

19 (c) The replacing insurer shall maintain evidence of  
20 the “notice regarding replacement,” the policy summary,  
21 the contract summary, and any ledger statements used,  
22 and a replacement register, cross-indexed by replacing  
23 agent and existing insurer to be replaced. The existing  
24 insurer shall maintain evidence of policy summaries,  
25 contract summaries, or ledger statements used in any  
26 conservation. Evidence that all requirements were met  
27 shall be maintained for at least three years.

28 (d) The replacing insurer shall provide in its policy or  
29 in a separate written notice which is delivered with the  
30 policy that the applicant has a right to an unconditional  
31 refund of all premiums paid which right may be exercised  
32 within a period of 30 days commencing from the date of  
33 delivery of the policy. In the case of variable annuity  
34 contracts, variable life insurance contracts, and modified  
35 guaranteed contracts, return of the contract during the  
36 cancellation period shall entitle the owner to a refund of  
37 account value and any policy fee paid for the policy. The  
38 account value and policy fee shall be refunded by the  
39 insurer to the owner within 30 days from the date that the  
40 insurer is notified that the owner has canceled the policy.



1 SEC. 2. Section 10541 of the Insurance Code is  
2 amended to read:

3 10541. (a) Insurers authorized to deliver or issue for  
4 delivery life insurance policies in this state may deliver or  
5 issue for delivery one or more funding agreements, but  
6 the issuance or delivery of those funding agreements shall  
7 not be deemed to be doing the insurance business  
8 described in Section 700, a class of business as provided in  
9 Section 100 or 101, a “security” as defined in Section 821,  
10 or receipt of “gross premiums” as defined in Section 12221  
11 or 12222 of the Revenue and Taxation Code.  
12 Notwithstanding the definition of “insurance” in Section  
13 22 or the definition of “life insurance” in Section 101, the  
14 issuance or delivery of a funding agreement by an  
15 admitted life insurer in this state shall constitute a lawful  
16 activity of that insurer ~~which~~ *that* is reasonably related to  
17 and incidental to its insurance activities as provided in  
18 this section. However, this section shall not authorize any  
19 insurer to transact, under the guise of funding  
20 agreements, any class of insurance not authorized by its  
21 certificate of authority.

22 (b) As used in this section, the term “funding  
23 agreement” means an agreement ~~which~~ *that* authorizes  
24 an admitted life insurer to accept funds and ~~which~~ *that*  
25 provides for an accumulation of those funds for the  
26 purpose of making one or more payments at future dates  
27 in amounts that are not based on mortality or morbidity  
28 contingencies. However, the term “funding agreement”  
29 does not include any agreement in connection with the  
30 funding of one or more payments ~~which~~ *that* are  
31 excludable from the gross income of the recipient under  
32 Section 104(a)(2) of the United States Internal Revenue  
33 Code, as it may be amended or renumbered from time to  
34 time.

35 (c) No amounts shall be guaranteed or credited under  
36 any funding agreement except upon reasonable  
37 assumptions as to investment income and expenses and  
38 on a basis equitable to all holders of funding agreements  
39 of a given class.



1 (d) Amounts paid to the insurer, and proceeds applied  
2 under optional modes of settlement, under those funding  
3 agreements may be allocated by the insurer to one or  
4 more separate accounts pursuant to Section 10506.

5 (e) The commissioner may establish reasonable  
6 conditions or adopt reasonable regulations relating to (1)  
7 the reserves to be maintained by insurers issuing those  
8 funding agreements, (2) the accounting and reporting of  
9 funds credited under those funding agreements, (3) the  
10 disclosure of information to be given to holders and  
11 prospective holders of those funding agreements, (4) the  
12 qualification of persons selling those funding agreements  
13 on behalf of insurers, and (5) ~~such~~ *any* other matters  
14 relating to funding agreements ~~as~~ *that* the commissioner  
15 considers necessary, proper, and advisable.

16 (f) Notwithstanding any other provision of law, the  
17 commissioner shall have sole authority to regulate the  
18 issuance and sale of those funding agreements, including  
19 the persons selling those funding agreements on behalf of  
20 insurers.

21 (g) Nothing in this section is intended to affect the  
22 order in which allowed claims shall be given preference  
23 under Section 1033. Holders of funding agreements shall  
24 retain the priority in allowance of claims described in  
25 paragraph ~~(5)~~ (2) of subdivision (a) of Section 1033.

