S T A T E   O F   N E W   Y O R K

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February 10, 2009

Introduced by Sens. KLEIN, ADDABBO, DIAZ, HASSELL-THOMPSON, HUNTLEY, C. JOHNSON, KRUEGER, ONORATO, SAMPSON, SAVINO, SCHNEIDERMAN, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Insurance in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the insurance law, in relation to an accelerated payment of the death benefit rider under a life insurance policy

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Paragraph 1 of subsection (a) of section 1113 of the insurance law, as amended by chapter 130 of the laws of 2003, is amended to read as follows:

(1) "Life Insurance," means every insurance upon the lives of human beings, and every insurance appertaining thereto, including the granting of endowment benefits, additional benefits in the event of death by accident, additional benefits to safeguard the contract from lapse, accelerated payments of part or all of the death benefit or a special surrender value upon (A) diagnosis of terminal illness defined as a life expectancy of twelve months or less, (B) diagnosis of a medical condition requiring extraordinary medical care or treatment regardless of life expectancy, (C) certification by a licensed health care practitioner of any condition which requires continuous care for the remainder of the insured's life in an eligible facility or at home when the insured is chronically ill as defined by Section 7702(B) of the Internal Revenue Code and regulations thereunder, provided the accelerated payments qualify under Section 101(g)(3) of the Internal Revenue Code and all other applicable sections of federal law in order to maintain favorable tax treatment, [or] (D) certification by a licensed health care practitioner

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

that the insured is chronically ill as defined by Section 7702 (B) of the Internal Revenue Code and regulations thereunder, provided the accelerated payments qualify under Section 101(g)(3) of the Internal Revenue Code and all other applicable sections of federal law in order to maintain favorable tax treatment and the insurer that issues such policy is a qualified long term care insurance carrier under Section 4980c of the Internal Revenue Code or provide a special surrender value, upon total and permanent disability of the insured, and optional modes of settlement of proceeds, OR (E) THE INSURED'S HAVING BEEN A RESIDENT OF A NURSING HOME, AS DEFINED IN SECTION TWENTY-EIGHT HUNDRED ONE OF THE PUBLIC HEALTH LAW, FOR A PERIOD OF THREE MONTHS OR MORE. "Life insurance" also includes additional benefits to safeguard the contract against lapse in the event of unemployment of the insured or in the event the insured is a resident of a nursing home. Amounts paid the insurer for life insurance and proceeds applied under optional modes of settlement or under dividend options may be allocated by the insurer to one or more separate accounts pursuant to section four thousand two hundred forty of this chapter.

S 2. Subparagraph (A) of paragraph 11 of subsection (c) of section 3201 of the insurance law, as amended by chapter 537 of the laws of 2000, such paragraph as renumbered by chapter 389 of the laws of 2001, is amended to read as follows:

(A) The superintendent shall not approve a life insurance policy which provides for accelerated payment of death benefits or special surrender values pursuant to subparagraph (B) [or subparagraph], (C) [or subparagraph], (D) OR (E) of paragraph one of subsection (a) of section one thousand one hundred thirteen of this chapter unless it also provides for such accelerated payments or special surrender values pursuant to subparagraph (A) of paragraph one of subsection (a) of such section.

S 3. Section 3230 of the insurance law is amended by adding a new subsection (h) to read as follows:

(H)(1) AN INSURED WHO HOLDS AN ACCELERATED PAYMENT RIDER SHALL BE ENTITLED TO AN ACCELERATED PAYMENT OF A DEATH BENEFIT IF IT IS SHOWN THAT SUCH INSURED HAS MET ONE OF THE CONDITIONS STATED IN SUBPARAGRAPH (C), (D) OR (E) OF PARAGRAPH ONE OF SUBSECTION (A) OF SECTION ONE THOUSAND ONE HUNDRED THIRTEEN OF THIS CHAPTER.

(2) THE AMOUNT OF THE BENEFIT TO WHICH THE INSURED IS ENTITLED SHALL BE DETERMINED IN AN ACTUARIALLY APPROPRIATE MANNER BY CONSIDERING THE LENGTH THE POLICY HAS BEEN IN EFFECT, THE AMOUNT THAT HAS BEEN PAID UPON THE POLICY, THE CASH VALUE OF THE POLICY, AND THE AMOUNT OF THE DEATH BENEFIT.

(3) THE SUPERINTENDENT SHALL ESTABLISH, THROUGH GUIDELINES, AN ACTUARIALLY APPROPRIATE METHOD FOR CALCULATING THE AMOUNT OF BENEFIT TO WHICH AN INSURED HOLDING AN ACCELERATED BENEFIT RIDER SHALL BE ENTITLED. THE SUPERINTENDENT SHALL ALSO ESTABLISH A MINIMUM LENGTH OF TIME FOR WHICH THE POLICY HAD TO HAVE BEEN IN EFFECT IN ORDER FOR THE POLICY HOLDER TO RECEIVE A BENEFIT PURSUANT TO THIS SUBSECTION.

(4) IF A POLICY HOLDER HAS PAID A MINIMUM OF TWO HUNDRED FIFTY THOUSAND DOLLARS OF A DEATH BENEFIT FOR LONG-TERM CARE SERVICES, THEN ANY BENEFIT RECEIVED PURSUANT TO THIS SUBSECTION SHALL NOT BE CONSIDERED AN ASSET FOR PURPOSES OF MEDICAL ASSISTANCE ELIGIBILITY PURSUANT TO TITLE ELEVEN OF ARTICLE FIVE OF THE SOCIAL SERVICES LAW.

(5) EVERY INSURER PROVIDING LIFE INSURANCE IN THIS STATE SHALL OFFER A RIDER ENTITLING THE INSURED TO ACCELERATED PAYMENT OF A DEATH BENEFIT PURSUANT TO THIS SUBSECTION. WITHIN ONE YEAR OF THE EFFECTIVE DATE OF THIS SUBSECTION, EACH INSURER SHALL OFFER EVERY INSURED OF A LIFE INSUR-

ANCE POLICY, IN EFFECT BEFORE THE EFFECTIVE DATE OF THIS SUBSECTION, A WRITTEN OFFERING FOR THE ACCELERATED PAYMENT OF A DEATH BENEFIT RIDER BY MAIL.

S 4. Subsection (f) of section 3230 of the insurance law, as added by chapter 537 of the laws of 2000, is amended to read as follows:

(f) This section shall apply to all life insurance policies or policy riders or provisions thereof that provide for accelerated payment of death benefits or a special surrender value pursuant to subparagraph (A), (B) [or], (C) OR (E) of paragraph one of subsection (a) of section one thousand one hundred thirteen of this chapter.

S 5. This act shall take effect on the two hundred seventieth day after it shall have become a law and shall apply to life insurance policies issued, altered, amended or renewed on or after such date; provided, that, effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of the provisions of this act on its effective date are authorized and directed to be made and completed on or before such date.