

Case No. S259215

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

BLAKELY MCHUGH AND TRYSTA M. HENSELMEIER

Plaintiffs, Appellants, and Petitioners,

vs.

PROTECTIVE LIFE INSURANCE COMPANY

Defendant and Respondent.

AFTER DECISION BY THE COURT OF APPEAL OF THE STATE OF CALIFORNIA,
FOURTH DISTRICT, DIVISION ONE, CASE No. D072863

(ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO
THE HONORABLE JUDITH M. HAYES
CASE No. 37-2014-00019212-CU-IC-CTL)

**RESPONDENT'S MOTION FOR JUDICIAL NOTICE; DECLARATION;
[PROPOSED] ORDER**

GRIGNON LAW FIRM LLP
Margaret M. Grignon
6621 E Pacific Coast Hwy. Ste. 200
Long Beach, California 90803
Telephone: (562) 285-3171
mgrignon@grignonlawfirm.com

MAYNARD COOPER & GALE P.C.
*John C. Neiman, Jr.
(admitted *pro hac vice*)
1901 Sixth Avenue North Ste. 2400
Birmingham, Alabama 35203
Telephone: (205) 254-1228
jneiman@maynardcooper.com

NOONAN LANCE BOYER & BANACH LLP
David J. Noonan
701 Island Avenue, Ste. 400
San Diego, California 92101
Telephone: (619) 780-0080
dnoonan@noonanlance.com

Attorneys for Defendant and Respondent Protective Life Insurance Company

**RESPONDENT’S MOTION FOR JUDICIAL NOTICE IN
SUPPORT OF ANSWER BRIEF ON THE MERITS**

Pursuant to California Rules of Court, rules 8.54 and 8.252(a), and Evidence Code sections 452, subdivisions (c) and (h), and 459, subdivision (d), Respondent Protective Life Insurance Company respectfully moves that this Court take judicial notice of the documents listed below.

- Exhibit A: California Department of Insurance’s “SERFF Instructions for Complying with AB1747.” (RA 110-111.)
- Exhibit B: October 11, 2012 email from Nancy Hom to J. Lucas (RA 113.)
- Exhibit C: March 6, 2013 email from Leslie Tick to Jeff Gerber. (RA 108.)
- Exhibit D: July 14, 2016 email from Leslie Tick to Robert Cerny. (RA 116.)
- Exhibit E: March 23, 2015 letter from Lisa Hastings to David Klevatt [attached as exhibit 1 to the Amicus Curiae Brief of American Council of Life Insurers, filed Feb. 22, 2019 in the Court of Appeal.]

Exhibits A, B, C and D already appear in the record on appeal, and Exhibit E was submitted to the Court of Appeal. Protective has nevertheless attached them as exhibits to this Motion for the Court’s convenience. (See Cal. R. Ct., rule 8.252(a)(3) [requiring party to attach to motion a copy of the matter to be judicially noticed if the matter is not in the record].)

Protective is also attaching Exhibits F and G to this Motion, but it is not asking that the Court take judicial notice of these documents.

DATED: July 29, 2020

Respectfully submitted,

MAYNARD, COOPER & GALE,
P.C.
GRIGNON LAW FIRM LLP
NOONAN LANCE BOYER & BA-
NACH LLP

s/ John C. Neiman, Jr. _____
John C. Neiman, Jr. (admitted *pro*
hac vice)

*Counsel for Defendant and Respondent Protective Life Insurance
Company*

MEMORANDUM OF POINTS AND AUTHORITIES

Under California Rules of Court, rule 8.252(a)(1), the Court may take judicial notice of certain documents upon motion by a party. (Cal. R. Ct., rule 8.252(a)(1).) The motion must explain “(A) Why the matter to be noticed is relevant to the appeal; (B) Whether the matter to be noticed was presented to the trial court and, if so, whether judicial notice was taken by that court; (C) If judicial notice of the matter was not taken by the trial court, why the matter is subject to judicial notice under Evidence Code section 451, 452, or 453; and (D) Whether the matter to be noticed relates to proceedings occurring after the order or judgment that is the subject of the appeal.” (*Id.* at rule 8.252(a)(2)(A)-(D).)

Protective asks that this Court take judicial notice of a document issued by the California Department of Insurance providing instructions to insurers on how to comply with Assembly Bill 1747 (Exhibit A), as well certain letters and emails sent by senior Department officials, also regarding Assembly Bill 1747 (Exhibits B—E). Each of these documents reflect the California Department of Insurance’s interpretation on the statutory question at hand: whether Assembly Bill 1747 applies to life insurance policies like McHugh’s that were issued and delivered before the statute’s effective date. For the reasons set forth below, the Court can take judicial notice of them.

I. The Department’s SERFF Instructions (Exhibit A)

Factor 1: Relevance of the Matter to be Noticed. Exhibit A—the Department’s “SERFF Instructions for Complying with AB1747”—is central to one of Plaintiffs’ arguments, and accordingly, “relevant to this appeal.” (Cal. R. Ct., rule 8.252(a)(1)(A).)

“SERFF,” which stands for “System for Electronic Rates & Forms Filing,” is an “internet-based system” through which the Department of Insurance provides insurers guidance on how to comply with the Insurance Code, and through which insurers submit forms and other filings for the agency’s approval. (Opn. 5.) The Department issued the instructions set forth in Exhibit A through SERFF on November 1, 2012, shortly after Assembly Bill 1747 passed. (See Exh. A, RA 110-111 [dated “11/01/2012”].) In the instructions, the agency announced to insurers that the statute required life insurance policies issued on or after the statute’s January 1, 2013 effective date to contain provisions for a 60-day grace period. (*Ibid.*) The Court of Appeal referenced these same SERFF instructions in its Opinion. (Opn. 5-7.)

Plaintiffs are now challenging the Court of Appeal’s ruling, and specifically the extent to which the Court of Appeal could rely on the SERFF instructions. (See OBOM 69-77; see also OBOM 72 [arguing that “the policy form SERFF Notices” do not “constitute official positions taken by the DOI itself concerning the interpretation and application of the statutes in question”].) The instructions’ relevance is thus patent.

At Plaintiffs’ request and without objection from Respondent, this Court previously took judicial notice of a motion filed by the Department in another case that specifically addressed the SERFF instructions. In the motion of which this Court took judicial notice, the Department represented that the SERFF instructions contained its “positions and guidance related to the statutes.” (Plaintiffs’ RJN 21.) Moreover, the Department attached the

SERFF instructions as an exhibit to that motion, though they are omitted from the version of the motion Plaintiffs submitted in this case. (See Plaintiffs' RJN 0014 [reflecting that the SERFF instructions were attached to the motion as exhibit 2].) The copy of the SERFF instructions that the Department attached to that motion is attached here as Exhibit F. So, there is no real dispute that the SERFF instructions, which set forth the position of the government agency charged with enforcing statutes like Assembly Bill 1747, on the very question that is the subject of one of Plaintiffs' arguments, is relevant to this appeal.

Factor 2: Notice by the Trial Court. Protective asked the trial court to take judicial notice of the SERFF instructions on several occasions, but the trial court never ultimately ruled on that request. Protective first filed a request for judicial notice of the instructions in connecting with its motion for reconsideration of the trial court's order denying Protective's motion for summary adjudication. (Exh. G, Protective's Request for Judicial Notice; *id.* at Decl. of J. Wang, at exhibit B at pp.20-21 [containing SERFF instructions], filed Feb. 24, 2017.) Protective later attached the SERFF instructions as an exhibit its Motion for Nonsuit filed at the beginning of trial. (RA 23, 29 fn.2; 44-46.) At oral argument on that motion, Protective repeated its request that the Court take notice of the instructions. (7 RT 1443:17-21 ["So we are making the record and at least asking the court to have the evidence in front of it. We have made additional notice for the SERFF instruction, for the court to consider the evidence presented by the DOI as persuasive evidence that the statute is to be applied prospectively and

not retroactively.”].) The trial court denied the Motion for Nonsuit without formally granting or denying judicial notice of the SERFF instructions, though it did comment that the instructions may be entitled to “persuasive” effect. (7 RT 1445:18-19; 1446-1447.) Then, at the close of evidence at trial, Protective attached the SERFF instructions to its Motion for Directed Verdict, and again called the trial court’s attention to its request for notice. (RA 89, 93 fn.2; 110-111.) The trial court denied that motion without ruling on the notice request. (10 RT 1764-1768.)

In the Court of Appeal, Protective cited the SERFF instructions in its opening brief and included them in its Respondent’s Appendix. (RB 18, 34; RA 110-111.) The Court of Appeal referenced them multiple times in its Opinion. (Opn. 5-7.)

Factor 3: Is the Matter the Proper Subject of Judicial Notice. The SERFF instructions are subject to judicial notice by the Court for several reasons. A reviewing court may take judicial notice of any matter specified in Evidence Code section 452. (Evid. Code, § 459, subd. (a) [“The reviewing court may take judicial notice of any matter specified in [Evidence Code] Section 452.”].) Under Evidence Code section 452, “Judicial notice may be taken of...(c) Official acts of the legislative, executive, and judicial departments of the United States or any state of the United States.” (Evid. Code, § 452, subd. (c).) The California Department of Insurance is an executive department of the State of California. When the Department acts in furtherance of its regulatory function, as it did here when guiding insurers on how to comply with Insurance Code and interpreting the statute it is charged with enforcing, such “official

acts” are subject to judicial notice pursuant to Evidence Code section 452, subdivision (c). (See *Super. Dispatch, Inc. v. Insurance Corp. of NY* (2010) 181 Cal. App. 4th 175, 189, fn.6 [granting judicial notice of an “Initial Statement of Reasons” contained in the Department of Insurance’s rulemaking file].)

The SERFF instructions can also be judicially noticed under Evidence Code section 452, subdivision (h), since they consist of “[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.” (Evid. Code, § 452, subd. (h).) While Plaintiffs contend the SERFF instructions do not constitute the agency’s “official position” as to Assembly Bill’s effect (OBOM 77), they do not deny the instructions’ authenticity.

It is worth noting that, in arguing the instructions do not deserve deference, Plaintiffs rely on an opinion by a federal district court that itself took judicial notice of the same SERFF instructions. (See OBOM 73.) That federal court did so on the basis that the SERFF instructions “are available on the SERFF website where the DOI, a governmental agency, places instructions for any insurance company seeking DOI approval.” (*Bentley v. United of Omaha Life Ins. Co.* (C.D. Cal. Sept. 14, 2016) No. CV157870DMGAJWX, 2016 WL 7443190, at p.*1 [reproduced at RA 75-77]; see also *Kilroy v. State* (2004) 119 Cal. App. 4th 140, 145 [court may take judicial notice of an order in federal case “to prove the truth of the fact that such order was issued” but not the

truth of the facts found in the order].) The Court should do so here too.

Factor 4: Timing of Matter to be Noticed. As the SERFF instructions were issued in November 2012, Protective is not asking the Court to notice a matter that “relates to proceedings occurring after the order or judgment that is the subject of the appeal.” (Cal. R. Ct., rule 8.252(a)(2)(D).)

II. Department Communications (Exhibits B—E)

The Court can also take judicial notice of the letters and emails from Department officials that, consistent with the SERFF instructions, set forth the agency’s view that Assembly Bill 1747 does not apply to life insurance policies issued and delivered before the statute’s effective date. (See Exh. B, RA 113 [October 11, 2012 email from Nancy Hom to J. Lucas]; Exh. C, RA 108 [March 6, 2013 email from Leslie Tick to Jeff Gerber]; Exh. D, RA 116 [July 14, 2016 email from Leslie Tick to Robert Cerny]; Exh. E, Exhibit 1 to Amicus Curiae Brief of American Council of Life Insurers, filed Feb. 22, 2019 in the Court of Appeal [March 23, 2015 letter from Lisa Hastings to David Klevatt].)

Factor 1: Relevance of the Matter to be Noticed. Like the SERFF instructions, these communications are relevant to this appeal because they reflect the Department’s position on the statutory question this Court must decide. As with the SERFF instructions, Plaintiffs are challenging the Court of Appeal’s decision to consider these documents, arguing they are “informal communications” that do not reflect the agency’s “official position.” (OBOM 72.)

Factor 2: Notice by the Trial Court. With the exception of Exhibit E, Protective asked the trial court to take judicial notice of these communications. (See Exh. G at Decl. of J. Wang, at exhibit B at pp.63-64 [Exhibit B]; pp.14-15 [Exhibit C]; p. 22-23 [Exhibit D].) Protective also subpoenaed these same documents from the Department before trial, and then arranged to have the Department mail copies of the documents in a sealed envelope to the trial court, along with a declaration by the Department's custodian of records. (See RA 94, fn.3.) Protective then attached these documents to its Motion for Nonsuit and the Motion for Directed Verdict that it filed before and at the close of evidence at trial. (See RA 23-77; 89-143.) However, the trial court does not appear to have formally ruled on Protective's request for judicial notice of them.

The Court of Appeal referenced these communications in its Opinion. (See Opn. 6 [citing Exh. C, March 2013 letter]; *id.* at p. 7 [citing Exh. B, October 2012 email]; *ibid.* [citing Exh. D, July 2016 email].) Exhibit E—the March 2015 letter—was not cited by the Court of Appeal but it was attached as an exhibit to an amicus brief submitted there. (See Exh. E.)

Factor 3: Is the Matter the Proper Subject of Judicial Notice. These letters and emails can be judicially noticed under Evidence Code sections 452, subdivisions (c) and (h). They were all written and sent by "Department personnel" in their official capacities and, as the Court of Appeal observed, they were all "consistent[]" with one another. (Opn. 6.) Accordingly, under Evidence Code section 452, subdivision (c), they qualify as "official acts" of the Department, notwithstanding the fact that they were not issued

through notice-and-comment rulemaking. (See, e.g., *In re Soc. Servs. Payment Cases* (2008) 166 Cal.App.4th 1249, 1271-1272 (letters issued by state Department of Social Services stating agency's statutory interpretation were properly judicial noticed "even though the letters were not rendered in accordance with the Administrative Procedure Act".)])

Factor 4: Timing of Matter to be Noticed. Finally, since these letters and communications were sent by Department officials between 2012 and 2016, they relate to proceedings occurring prior to the Court of Appeal's decision.

Based on the foregoing legal authority, and for the foregoing reasons, Protective respectfully requests this Court to grant its Motion for Judicial Notice.

DATED: July 29, 2020

Respectfully submitted,

MAYNARD, COOPER & GALE,
P.C.
GRIGNON LAW FIRM LLP
NOONAN LANCE BOYER & B
NACH LLP

s/ John C. Neiman, Jr.
John C. Neiman, Jr. (admitted *pro*
hac vice)

*Counsel for Defendant and Respondent Protective Life Insurance
Company*

DECLARATION

I, John C. Neiman, Jr., declare:

1. I am lead appellate counsel for Respondent Protective Life Insurance Company in this matter. I submit this declaration in support of Respondent's Motion for Judicial Notice.

2. The facts set forth herein are true and correct of my own personal knowledge. If called upon to do so as a witness, I could and would competently testify thereto.

3. The document attached to this motion as Exhibit A is a true and correct copy of the Department of Insurance's "SERFF Instructions for Complying with AB1747," which appears in the record on appeal in the Respondent's Appendix at pages 110-111.

4. The document attached to this motion as Exhibit B is a true and correct copy of an October 11, 2012 email from Nancy Hom to J. Lucas, which appears in the record on appeal in the Respondent's Appendix at pages 113-114.

5. The document attached to this motion as Exhibit C is a true and correct copy of a March 6, 2013 email from Leslie Tick to Jeff Gerber, which appears in the record on appeal in the Respondent's Appendix at page 108.

6. The document attached to this motion as Exhibit D is a true and correct copy of a July 14, 2016 email from Leslie Tick to Robert Cerny, which appears in the record on appeal in the Respondent's Appendix at page 116.

7. The document attached to this motion as Exhibit E is a true and correct copy of a March 23, 2015 letter from Lisa Hastings to David Klevatt, and is attached as exhibit 1 to the Amicus

Curiae Brief of the American Council of Life Insurers, filed in the Court of Appeal on February 22, 2019.

8. The document attached to this motion as Exhibit F is a true and correct copy of exhibit 2 that was attached to the California Department of Insurance's Notice of Motion and Motion to Quash Subpoenas and Motion for Protective Order; Declarations of Michael J. Levy and Charles Tsai, previously filed in the federal district court (N.D. Cal.) on December 18, 2018, in the matter of *Moriarty v. Am. Gen. Life Ins. Co.*, Case No. 17-cv-01709 BTM-BGS (S.D. Cal.).

9. The document attached to this motion as Exhibit G is a true and correct copy of the Request for Judicial Notice and the attachments thereto filed by Respondent in the trial court in this case on February 24, 2017.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 29th day of July, 2020 in Birmingham, Alabama

By /s/ John C. Neiman, Jr.

John C. Neiman, Jr.

[PROPOSED] ORDER

Respondent Protective Life Insurance Company's Motion for Judicial Notice is granted. The Court takes judicial notice of Exhibit A through Exhibit E attached to the Motion.

IT IS SO ORDERED:

Dated: _____

CHIEF JUSTICE

PROOF OF SERVICE

I am a citizen of the United States. I am over the age of 18 and not a party to this action. My business address is 1901 Sixth Avenue North, Birmingham, Alabama 35203.

On July 29, 2020, I filed this document through the True-Filing system, which will serve an electronic copy of this document on all registered True-Filing participants, including the attorneys for the Petitioners.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: July 29, 2020

s/ John C. Neiman, Jr.
John C. Neiman, Jr.

Exhibit A

**California Department of Insurance's "SERFF
Instructions for Complying with AB 1747"**

SERFF Instructions for Complying with AB1747

The following instructions will assist filers in complying with the requirements of AB 1747, effective 1/1/13:

1. 60-DAY GRACE PERIOD. All life insurance policies issued or delivered in California on or after 1/1/2013 must contain a grace period of at least 60 days. Cal. Ins. Code § 10113.71.

a. For life insurance subject to prior approval (variable life and group life, including blanket life):

Life insurance policy forms filed for approval after 1/1/13 must contain a grace period of at least 60 days.

Life insurance policy forms approved by the Department before 1/1/13 must be revised to contain a grace period of at least 60 days before they are used to issue or deliver a new policy on or after 1/1/13.

If the grace period is the only change being made, instead of revising and refiling the entire policy form, the Department encourages insurers to revise these policy forms by: endorsement, rider, insert page, text cell insert, or (if the grace period was previously marked as a variable) a statement of variability that specifies the new grace period for policies issued or delivered on or after 1/1/13. The endorsement, rider, insert page, text cell insert, or statement of variability must have its own unique form number. Cal. Code Regs. tit. 10, § 2211.

Under existing law (Bulletin 87-3) all flexible premium variable life insurance policies must contain a 61-day grace period. Assuming that these policies are already in compliance with the 61-day grace period requirement, they need not be amended by endorsement, rider, etc., to comply with AB 1747.

b. For life insurance not subject to prior approval but required to be filed by California's standard nonforfeiture laws (Cal. Ins. Code § 10159.1 et seq.):

Life insurance policy forms filed after 1/1/13 pursuant to California's nonforfeiture laws must contain a grace period of at least 60 days.

Life insurance policy forms filed pursuant to California's nonforfeiture laws and acknowledged by the Department before 1/1/13 must be revised to contain a grace period of at least 60 days before those forms are used to issue or deliver a new policy in California on or after 1/1/13.

- The Department encourages insurers to revise these policy forms by endorsement, rider, insert page, text cell insert, or (if the grace period was previously marked as a variable) a statement of variability that specifies the new grace period for policies issued or delivered on or after 1/1/13, instead of revising and refiling the entire policy when only the grace period is being changed.

Court's Ex. 150
Case #
Rec'd
Dept. Clk.

11/1/2012

Protective000210

- *If the revised grace period does not affect or impact the policy's nonforfeiture provisions, the form containing the revised grace period should not be filed with the Department.*
- If the revised grace period affects or impacts the policy's nonforfeiture provisions, both the policy and the form containing the revised grace period (or a revised policy form containing the revised grace period) must be filed with the Department's Actuarial Office for review. The endorsement, rider, insert page, text cell insert, statement of variability, or revised policy must have its own unique form number. Cal. Code Regs. tit. 10, § 2211.

c. For life insurance not subject to any California filing requirements:

Life insurance policy forms that are not required to be filed with the Department must be revised to contain at least a 60-day grace period before they are used to issue or deliver a policy on or after 1/1/13. Grace period revisions to these forms are not required to be filed with the Department, and the forms are not required to have form numbers because they are not required to be filed with the Department. Cal. Code Regs. tit. 10, § 2211.

2. NOTICE OF LAPSE DESIGNEE. An individual life insurance policy shall not be issued or delivered in California on or after 1/1/13 until the applicant has been given the right to designate at least one person in addition to himself/herself to receive notice of lapse or termination of a policy for nonpayment of premium. The insurer shall provide the applicant with a form to make the designation. Cal. Ins. Code § 10113.72(a).

The form required by § 10113.72(a) ("designation form") may be included in an application or it may be a stand-alone document. If the designation form is included in an application, the revised application is subject to any prior approval or filing requirements in existing law. If the application is required to be filed with the Department it must have a new form number. Cal. Code Regs. tit. 10, § 2211. If the designation form is a stand-alone document it does not need to be filed with the Department before it is used, and it is not required to have a form number. Cal. Code Regs. tit. 10, § 2211.

3. RIGHT TO CHANGE DESIGNEE. The insurer must notify the policy owner at least annually of his right to change the designee. Cal. Ins. Code § 10113.72(b).

The notification may be made in a notice mailed separately or in a notice that accompanies an annual premium bill or statement of policy. The notice should not be filed with the Department. The notification may not be made electronically. Cal. Ins. Code §§ 38.5, 1851(b).

4. SERFF's General Information/Filing Description.

To expedite the processing of form filings made *solely* to comply with AB 1747, please type "AB 1747 amendment and no other changes" in the General Information/ Filing Description section of SERFF.

#750405v1

Exhibit B

**October 11, 2012 email from Nancy Hom to J.
Luas**

Hom, Nancy

From: Hom, Nancy
Sent: Thursday, October 11, 2012 5:34 PM
To: 'JALucas@aaalife.com'
Cc: Kupferman, Perry; Samra, Sarjit; Tick, Leslie
Subject: Questions regarding AB 1747

Dear Ms. Lucas,

Thank you for your inquiry with regard to AB 1747. I have been asked to respond to your questions. I hope the following will be helpful to you:

Can you provide any guidance on the implementation of the new grace period, specifically in regards to policy language?

Answer: For a policy that is required to be filed and approved we suggest that you amend the policy by filing a redlined copy of an amended grace period. An endorsement or text cell is acceptable if that is sufficient to make the contract comply with the new statutory requirements.

a) I am looking to find out if we have to file amendments to our current policies to amend the language to the new grace period time frame?

Answer: The new grace period applies to policies issued or delivered on or after January 1, 2013. Those policies will have to contain the new grace period. If the policy is subject to prior approval then the amendment is subject to prior approval as well.

b) does this apply to newly issued after the effective date of the bill, or any policy that we have in force business on but may not be necessarily selling new business on?

Answer: The new grace period applies to policies issued or delivered on or after January 1, 2013.

c) will there be a special category for the filings on SERFF to expedite the review process?

Answer: We don't know at this time. CDI expects to put instructions on SERFF at some point.

d) if this applies to existing policies, do we need to send the amendment to all policyholders at once? Our current block of business in CA is rather large and a mass mailing would cause a substantial amount.

Answer: The requirements of the bill are not retroactive. The bill applies to policies issued or delivered on or after January 1, 2013, not before.

Please let me know if you have any additional questions.

Sincerely,

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RA113

Nancy Hom
Attorney III
California Department of Insurance
(415) 538-4144
homn@insurance.ca.gov

Exhibit C

**March 6, 2013 email from Leslie Tick to Jeff
Gerber**

Tick, Leslie

From: Tick, Leslie
Sent: Wednesday, March 06, 2013 2:44 PM
To: 'Jeff Gerber'
Subject: RE: Section 10173.2 10113.71 10113.72 Insurance Code

Mr. Gerber:
Thank you for your inquiry.

The statutory changes brought by AB1747 (revisions to CIC 10173.2 and new statutes CIC 10113.71 and CIC 10113.72) is January 1, 2013. Under California law, unless another effective date is specified in the statute, a statute takes effect on January 1 of the year following its passage by the Legislature. Since none of these statutes states that it takes effect on another date, the effective date is January 1, 2013.

In general, new laws take effect on a going forward basis so that everyone knows what the law is when they enter into an agreement, such as an insurance policy. If the statutes had retroactive effect they would effect actions which have already occurred, and which were lawful at the time, making them retroactively unlawful. Parties to a contract would have no certainty as to the terms of their agreement if the Legislature could change those terms retroactively.

Generally a policy is "issued or delivered" just once - when it is new. A statutes would have to say "and renewed" in order to apply to renewals, because presumably those renewed policies were issued or delivered before the Jan. 1, 2013 effective date.

For these reasons the statutory changes brought by AB1747, eff. 1/1/2013, apply on a going forward basis - that is, the changes apply to policies issued or delivered on or after 1/1/2013. AB1747 does not require insurers to extend the grace period for policies that are already in force and does not require insurers to extend the grace period when policies that were issued prior to 1/1/13, are renewed.

I hope this is helpful.

Leslie Tick
Assistant Chief Counsel
Policy Approval Bureau
California Department of Insurance
415-538-4190

From: Jeff Gerber [mailto:jeff@gerberinsurance.net]
Sent: Wednesday, March 06, 2013 10:01 AM

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Exhibit D

**July 14, 2016 email from Leslie Tick to Robert
Cerny**

Robert J. Cerny

Hinshaw & Culbertson LLP
633 West 5th Street, Forty-Seventh Floor, Los Angeles, CA 90071
Dir: 213.614.7333 | Main: 213.680.2800 | Cell: 818.636.9691
E-mail: rcerny@mail.hinshawlaw.com

HINSHAW

A CULBERTSON LLP

Building on the Berger Tradition

From: Tick, Leslie [<mailto:Leslie.Tick@insurance.ca.gov>]
Sent: Thursday, July 14, 2016 5:03 PM
To: Cerny, Robert J.
Subject: RE: Ins. Code Sections 10113.71 and .72 - Guidance on Retroactive Effect

Robert:

The Department issued a SERFF instruction on this issue when AB1747 took effect. See <https://login.serff.com/serff/viewGeneralInstruction.do?id=125000321>
See Filing Instructions for Life – AB1747.

The short answer is no – AB1747 applies to new policies issued on or after 1/1/2013. It does not apply to policies renewed on or after 1/1/2013.

Leslie Tick

Assistant Chief Counsel
California Department of Insurance
Policy Approval Bureau
45 Fremont Street, 21st Floor
San Francisco, California 94105
415-538-4190

From: Cerny, Robert J. [<mailto:rcerny@mail.hinshawlaw.com>]
Sent: Tuesday, July 12, 2016 11:16 AM
To: Tick, Leslie <Leslie.Tick@insurance.ca.gov>
Subject: Ins. Code Sections 10113.71 and .72 - Guidance on Retroactive Effect

Dear Leslie – my partner Marty Rosen and I would be grateful for your guidance on a question pertaining to Code sections 10113.71 and 10113.72 [AB 1747], which took effect January 1, 2013. Those statutes require:

- that insurers give applicants for life insurance policies the opportunity to designate third persons to receive notices of lapse;
- that insurers provide notice to such persons in the event of an impending lapse; and
- that each policy "shall contain a provision for a grace period of not less than 60 days from the premium due date."

Exhibit E

**March 23, 2015 letter from Lisa Hastings to David
Klevatt**

STATE OF CALIFORNIA

Dave Jones, Insurance Commissioner

DEPARTMENT OF INSURANCE
CONSUMER SERVICES AND MARKET CONDUCT BRANCH
RATING AND UNDERWRITING SERVICES BUREAU
300 SOUTH SPRING STREET
LOS ANGELES, CA 90013
www.insurance.ca.gov



March 23, 2015

David Klevatt
33 North La Salle St., #2100
Chicago, IL 60602

Our File Number: RUS-8996583
Regarding: United Of Omaha Life Insurance Company
Insured: Eric Bentley (Deceased)

Dear Mr. Klevatt:

We have received your request for the Department's assistance in resolving your client's insurance dispute.

Your correspondence indicates that you are an attorney and that you are seeking a resolution with the licensee on behalf of your client. As you know, California Insurance Code Section 12921.4 authorizes the Department to mediate disputes when it is appropriate to do so. Because your client has retained you to represent her interests and engage the licensee in discussions and negotiations, the Department has determined that it would be inappropriate to intervene as a mediator in your client's dispute.

The Department is not authorized to adjudicate. The Insurance Commissioner is authorized by the California Insurance Code to investigate allegations of unlawful activities by licensees. In order to initiate an investigation into your client's complaint to determine if the licensee has violated the California Insurance Code, we need evidence from you of unlawful activity which would include the following documentation:

- Proof that all required premiums were paid prior to the termination of the policy and prior to the death of the insured, including a clear accounting as to which coverage periods the payments applied.
- A copy of the claim denial letter issued by the company or its claims administrator.
- Any other documentation which refutes the company's position that the required premiums were not paid.

Should you provide us with this documentation, the Department's regulatory investigation would be separate from, and will not include, the mediation or negotiation of your client's complaint. However, if the Department determines from its investigation that your client's dispute resulted from the licensee's failure to comply with the applicable sections of the Insurance Code, the Department can request that the licensee take corrective action to achieve compliance.

We have the following additional information to offer regarding your inquiry:

You asserted that the company was required to provide a notice of lapse pursuant to California Insurance Code Section 10113.71, and that this legislation applies retroactively.

The Department's position is that California Insurance Code Section 10113.71 applies only to policies issued or delivered on or after January 1, 2013. It does not apply to any in force policies issued prior to this date.

BENTLEY_000006

David Klevatt
RUS-6996583
March 23, 2015

Page 2

Also, based on the policy document you provided to us, the policy was designed to continuously remain in force, provided all required premiums were paid. The policy was not re-issued every year as a new policy, as you have asserted.

Therefore, based on the prospective applicability of the California Insurance Code Section 10113.71 and based on the policy language which indicates that the policy was designed to continuously remain in force, provided the required premiums were paid, California Insurance Code Section 10113.71 does not apply to this policy.

While we appreciate the information and documentation you have provided, please be advised that the Department is an administrative agency and does not engage in debates with consumers or their attorneys regarding legal interpretations of insurance laws.

In regard to the premium payment issue mentioned in your complaint, the policy indicates that the annual premium for the February 28, 2014 to February 28, 2015 policy period was \$1,290.00. You stated that the company converted the policy to a six month term policy and that a premium payment in the amount of \$670.80 was made on May 1, 2014. You also indicated that this payment carried the policy to February 28, 2015.

According to the policy you provided, the information you provided about the premium is not correct. It appears that the \$670.80 payment made on May 1, 2014 was a semiannual payment, with a possible service charge added for making a partial payment for the policy year. Based on the documentation you provided, this carried the policy coverage only to August 31, 2014.

You have not provided us with documentation that evidences that the company unlawfully cancelled the coverage after all required premiums were paid on this policy. If you have proof of payment of all required premiums prior to the date of death and prior to the termination of the policy, which would evidence that the company's cancellation was unlawful, please provide it to us within 20 calendar days of the date of this letter, along with a copy of the claim denial letter and any other correspondence you have received from the company regarding this matter.

If I do not receive the requested documentation within 20 calendar days of the date of this letter, I will assume that your request for our review of this insurance matter has been withdrawn and I will close your file.

The information provided in this correspondence is not intended to discourage you from taking further action that you deem appropriate. Nor does it constitute legal advice.

Thank you for contacting the Department of Insurance with your concerns.

Sincerely,

LISA HASTINGS
Senior Insurance Compliance Officer
Phone: (213) 348-6672

Please refer to our file number when corresponding with us.

BENTLEY_000007

Exhibit F

**Exhibit 2 to California Department of Insurance's
Notice of Motion and Motion to Quash Subpoenas
and Motion for Protective Order; Declarations of
Michael J. Levy and Charles Tsai. *Moriarty v. Am.
Gen. Life Ins. Co.*, Case No. 17-cv-01709 BTM-BGS
(S.D. Cal.)**

SERFF Instructions for Complying with AB1747

The following instructions will assist filers in complying with the requirements of AB 1747, effective 1/1/13:

1. 60-DAY GRACE PERIOD. All life insurance policies issued or delivered in California on or after 1/1/2013 must contain a grace period of at least 60 days. Cal. Ins. Code § 10113.71.

a. For life insurance subject to prior approval (variable life and group life, including blanket life):

Life insurance policy forms filed for approval after 1/1/13 must contain a grace period of at least 60 days.

Life insurance policy forms approved by the Department before 1/1/13 must be revised to contain a grace period of at least 60 days before they are used to issue or deliver a new policy on or after 1/1/13.

If the grace period is the only change being made, instead of revising and refiling the entire policy form, the Department encourages insurers to revise these policy forms by: endorsement, rider, insert page, text cell insert, or (if the grace period was previously marked as a variable) a statement of variability that specifies the new grace period for policies issued or delivered on or after 1/1/13. The endorsement, rider, insert page, text cell insert, or statement of variability must have its own unique form number. Cal. Code Regs. tit. 10, § 2211.

Under existing law (Bulletin 87-3) all flexible premium variable life insurance policies must contain a 61-day grace period. Assuming that these policies are already in compliance with the 61-day grace period requirement, they need not be amended by endorsement, rider, etc., to comply with AB 1747.

b. For life insurance not subject to prior approval but required to be filed by California's standard nonforfeiture laws (Cal. Ins. Code § 10159.1 et seq.):

Life insurance policy forms filed after 1/1/13 pursuant to California's nonforfeiture laws must contain a grace period of at least 60 days.

Life insurance policy forms filed pursuant to California's nonforfeiture laws and acknowledged by the Department before 1/1/13 must be revised to contain a grace period of at least 60 days before those forms are used to issue or deliver a new policy in California on or after 1/1/13.

- The Department encourages insurers to revise these policy forms by endorsement, rider, insert page, text cell insert, or (if the grace period was previously marked as a variable) a statement of variability that specifies the new grace period for policies issued or delivered on or after 1/1/13, instead of revising and refiling the entire policy when only the grace period is being changed.

- *If the revised grace period does not affect or impact the policy's nonforfeiture provisions, the form containing the revised grace period should not be filed with the Department.*
- If the revised grace period affects or impacts the policy's nonforfeiture provisions, both the policy and the form containing the revised grace period (or a revised policy form containing the revised grace period) must be filed with the Department's Actuarial Office for review. The endorsement, rider, insert page, text cell insert, statement of variability, or revised policy must have its own unique form number. Cal. Code Regs. tit. 10, § 2211.

c. For life insurance not subject to any California filing requirements:

Life insurance policy forms that are not required to be filed with the Department must be revised to contain at least a 60-day grace period before they are used to issue or deliver a policy on or after 1/1/13. Grace period revisions to these forms are not required to be filed with the Department, and the forms are not required to have form numbers because they are not required to be filed with the Department. Cal. Code Regs. tit. 10, § 2211.

2. NOTICE OF LAPSE DESIGNEE. An individual life insurance policy shall not be issued or delivered in California on or after 1/1/13 until the applicant has been given the right to designate at least one person in addition to himself/herself to receive notice of lapse or termination of a policy for nonpayment of premium. The insurer shall provide the applicant with a form to make the designation. Cal. Ins. Code § 10113.72(a).

The form required by § 10113.72(a) ("designation form") may be included in an application or it may be a stand-alone document. If the designation form is included in an application, the revised application is subject to any prior approval or filing requirements in existing law. If the application is required to be filed with the Department it must have a new form number. Cal. Code Regs. tit. 10, § 2211. If the designation form is a stand-alone document it does not need to be filed with the Department before it is used, and it is not required to have a form number. Cal. Code Regs. tit. 10, § 2211.

3. RIGHT TO CHANGE DESIGNEE. The insurer must notify the policy owner at least annually of his right to change the designee. Cal. Ins. Code § 10113.72(b).

The notification may be made in a notice mailed separately or in a notice that accompanies an annual premium bill or statement of policy. The notice should not be filed with the Department. The notification may not be made electronically. Cal. Ins. Code §§ 38.5, 1851(b).

4. SERFF's General Information/Filing Description.

To expedite the processing of form filings made *solely* to comply with AB 1747, please type "AB 1747 amendment and no other changes" in the General Information/ Filing Description section of SERFF.

#750405v1

Exhibit G

Respondent's Request for Judicial Notice

1 **C. ANDREW KITCHEN (SBN 292609)**
2 **ALEXANDRA V. DRURY (SBN 291920)**
3 **MAYNARD, COOPER AND GALE, LLP**
4 600 Montgomery Street, Suite 2600
5 San Francisco, California 94111
6 Telephone: (415) 704-7433
7 Facsimile: (205) 254-1999
8 E-mail: dkitchen@maynardcooper.com

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

02/24/2017 at 01:22:00 PM

Clerk of the Superior Court
By E- Filing, Deputy Clerk

6 **DAVID J. NOONAN (SBN55966)**
7 **NOONAN LANCE BOYER & BANACH LLP**
8 701 Island Avenue, Suite 400
9 San Diego, California 92101
10 Telephone: (619) 780-0080
11 Facsimile: (619) 780-0877
12 E-mail: dnoonan@noonanlance.com

11 Attorneys for Defendant
12 PROTECTIVE LIFE INSURANCE COMPANY

13 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
14 **COUNTY OF SAN DIEGO – CENTRAL DIVISION**

14 BLAKELY MCHUGH, et al.,

15 Plaintiffs,

16 vs.

17 PROTECTIVE LIFE INSURANCE
18 COMPANY, et al.,

19 Defendants.

) Case No.: 37-2014-00019212-CU-IC-CTL

) Honorable Judith F. Hayes, Dept. 68

) **DEFENDANT PROTECTIVE LIFE INSURANCE**
) **COMPANY'S REQUEST FOR JUDICIAL**
) **NOTICE IN SUPPORT OF ITS REPLY IN**
) **SUPPORT OF ITS MOTION FOR PARTIAL**
) **RECONSIDERATION**

) [Reply in Support of Its Motion for *Partial*
) Reconsideration; Memorandum of Points and
) Authorities filed concurrently herewith]

) Date: March 3, 2017

) Time: 10:30 a.m.

) Location: Department 68

) Filing Date: June 13, 2014

) Trial Date: April 28, 2017

1 Pursuant to California Evidence Code Section 450 *et seq.*, Defendant Protective Life Insurance
2 Company (“Protective”) requests that the Court take judicial notice of the following:

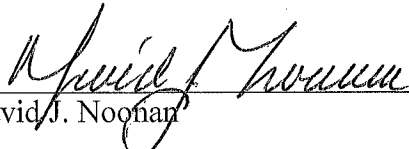
3 1. Declaration of Jenny H. Wang and supporting exhibits (ECF Doc. No. 78-3) in the
4 case of *Jennifer Bentley v. United of Omaha Life Ins. Co.*, Case No. 2:15-cv-07870-DMG-AJW (C.D.
5 Cal.). Pursuant to California Evidence Code Section 452(d), judicial notice may be taken of records
6 of “any court of this state” or “any court of record of the United States or of any state of the United
7 States.” Attached hereto as Exhibit A is a true and correct copy of the Declaration of Jenny H. Wang
8 and supporting exhibits (ECF Doc. No. 78-3).

9 Pursuant to California Evidence Code Section 453, judicial notice shall be taken on any matter
10 set forth in California Evidence Code Section 452 as long it is requested and each adverse party is
11 given sufficient notice of the request to allow the adverse party to prepare to meet the request and
12 provides the court with sufficient information in order to take judicial notice of the matter. *See also*
13 Justice Mark Simons, *Converting Permissive to Mandatory Notice – Sufficient Information*, SIMONS
14 CALIFORNIA EVIDENCE MANUAL § 7:18 (Jan. 2017 ed.) (recognizing that California Evidence Code
15 Section 453 “applies to judicial notice of court records: when a request to take notice of the record is
16 made, judicial notice is mandatory if the party requesting it supplies the court with sufficient, reliable
17 and trustworthy sources of information about the matter”). Protective has complied with these
18 requirements and therefore respectfully requests that the Court take judicial notice of the foregoing.

19 DATED: February 24, 2017

NOONAN LANCE BOYER & BANACH LLP

20
21
22 By:



David J. Noonan

23
24 Attorneys for Defendant
25 PROTECTIVE LIFE INSURANCE COMPANY
26
27
28

Exhibit A

to

Request for Judicial Notice

1 Martin E. Rosen (SBN 108998)
2 mrosen@mail.hinshawlaw.com
3 LARRY M. GOLUB (SBN 110545)
4 lgolub@mail.hinshawlaw.com
5 HINSHAW & CULBERTSON LLP
6 633 West Fifth Street, 47th Floor
7 Los Angeles, CA 90071
8 Telephone: 213-680-2800
9 Facsimile: 213-614-7399

6 Jenny H. Wang (SBN 191643)
7 jwang@mail.hinshawlaw.com
8 HINSHAW & CULBERTSON LLP
9 19800 MacArthur Blvd., Suite 800
10 Irvine, CA 92612
11 Telephone: 949-757-2800
12 Facsimile: 949-752-6313

10 Attorneys for Defendant
11 United of Omaha Life Insurance Company

12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**

14 JENNIFER BENTLEY, as trustee of the
15 2001 Bentley Family Trust,

16 Plaintiff,

17 vs.

18 UNITED OF OMAHA LIFE
19 INSURANCE COMPANY,

20 Defendant.

Case No. 2:15-cv-07870-DMG-AJW

DECLARATION OF JENNY H. WANG IN SUPPORT OF MOTION TO DISMISS PLAINTIFFS' SECOND AMENDED CLASS ACTION COMPLAINT PURSUANT TO F.R.C.P. 12(B)(6) OR IN THE ALTERNATIVE, MOTION TO STRIKE PURSUANT TO F.R.C.P. 12(F)

Hearing:

Date: January 27, 2017
Time: 9:30 a.m.
Ctm: 8C

[Filed Concurrently With:

- Notice of Motion;
- Memorandum of Points and Authorities;
- Request for Judicial Notice; and
- [Proposed] Order]

Complaint Filed: August 27, 2015

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DECLARATION OF JENNY H. WANG

I, Jenny H. Wang hereby declare as follows:

1. I am an attorney licensed to practice in all the courts in the State of California and a member of Hinshaw & Culbertson LLP, attorneys for Defendant United of Omaha Life Insurance Company (“United”). I am one of the attorneys primarily responsible for the handling of this matter. I make this declaration in support of United’s Motion to Dismiss Plaintiff’s Second Amended Class Action Complaint pursuant to FRCP 12(b)(6), or in the alternative, Motion to Strike Pursuant to FRCP 12(f). I have personal knowledge of the facts declared herein and if called upon to testify can and will testify competently thereto.

2. Attached hereto as Exhibit “A” is a true and correct copy of my November 11, 2016 letter to the California Department of Insurance (“DOI”) requesting records pursuant to the Public Records Act for documents relating to the DOI’s position whether Insurance Code Section 10113.71 and 10113.72 apply retroactively to insurance policies issued and/or delivered before January 1, 2013 and renewed after that date.

3. On November 15, 2016, I received an email from Belinda M. Charters of the DOI in response to my request. Attached hereto collectively as Exhibit “B” are true and correct copies of Ms. Charters’ email, along with all of the documents given to me by Ms. Charters on behalf of the DOI in response to my Public Records Act request.

I declare under penalty of perjury under the laws of the United States that the foregoing statements are true and correct.

Executed on December 21, 2016, in Irvine, California.

/s/ Jenny H. Wang

JENNY H. WANG

EXHIBIT A

HINSHAW

& CULBERTSON LLP

Jenny H. Wang
jwang@mail.hinshawlaw.com

ATTORNEYS AT LAW

19800 MacArthur Boulevard
Suite 800
Irvine, CA 92612-2427

949-757-2800
949-752-6313 (fax)
www.hinshawlaw.com

November 11, 2016

Via Email and Regular Mail

Attention: Chao Lor, Esq.
California Department of Insurance
Custodian of Records
300 Capitol Mall, Ste. 1700
Sacramento, CA 95814
Email: CustodianOfRecords@insurance.ca.gov

Re: *Public Records Request*

Dear Counsel:

Per the California Public Records Act (Govt. Code sections 6250-6270), we are writing to request copies of the following documents:

- Documents reflecting, evidencing or referring to the Department of Insurance and/or the Commissioner's position on whether Insurance Code §§ 10113.71 and 10113.72 (the "Statutes") apply retroactively to life insurance policies issued and/or delivered before January 1, 2013 (the effective date of the Statutes);
- Documents reflecting, evidencing or referring to the Department of Insurance and/or the Commissioner's position on whether the Statutes apply to life insurance policies issued and/or delivered before January 1, 2013 but renewed after January 1, 2013;
- Documents reflecting, evidencing or referring to the Department of Insurance and/or the Commissioner's position on whether the Statutes apply prospectively to life insurance policies issued and/or delivered on or after January 1, 2013;
- Communications between the Department of Insurance and trade organizations or insurers as to whether the Statutes apply prospectively to life insurance policies issued and/or delivered on or after January 1, 2013;
- Documents reflecting, evidencing or referring to the Department of Insurance and/or the Commissioner's position on whether the Statutes apply to policies that were not issued or delivered in California.

Building on the Barger Tradition

Arizona California Florida Illinois Indiana Massachusetts Minnesota Missouri New York Rhode Island Wisconsin ♦ London

Chao Lor
November 11, 2016
Page 2

Our office, of course, will cover the statutory costs incurred in providing these documents to us. If you have any questions regarding this request, as always, do not hesitate to contact me directly at the number above. Thank you for your attention to this request.

Very truly yours,

HINSHAW & CULBERTSON LLP

A handwritten signature in black ink, appearing to be 'Jenny H. Wang', written in a cursive style.

Jenny H. Wang

JHW:ah

EXHIBIT B

Golub, Larry M.

From: Charters, Belinda <Belinda.Charters@insurance.ca.gov>
Sent: Tuesday, November 15, 2016 1:51 PM
To: Wang, Jenny H.
Cc: Golub, Larry M.; Lor, Chao; Wise, Lynell; Ezroj, Aaron
Subject: PRA-2016-01109
Attachments: sac_scan@insurance.ca.gov_20161115_131636.pdf

Ms. Wang:

On November 14, 2016, the California Department of Insurance Custodian of Records received your request for information on the above-referenced matter, which has been treated as a request pursuant to the California Public Records Act (Gov. Code § 6250 et. Seq).

Specifically, your request seeks information regarding Insurance Code Sections 10113.71 and 10113.72.

Please see the attached documents. The communications are largely email communications between the Department, ACLHIC, ACLI, and other members of the public relating to AB 1747. In the event there is any confusion, we have intentionally placed a blank page between each email or communication. Certain personal information has been redacted pursuant to California Civil Code 1798.24.

The Department is entitled to charge \$2.50 for each set of electronic records produced pursuant to the California Public Records Act. Accordingly, please remit a check payable to the Department of Insurance in the amount of Two Dollars and Fifty Cents (\$2.50) payable to the Department of Insurance, Attn: Belinda Charters, 300 Capitol Mall, 17th Floor, Sacramento, CA 95814. The Department will not be sending a separate invoice.

Please put the Department's file number PRA-2016-01109 in the memorandum portion of the check. Unfortunately, the Department is not set up to accept credit card payments.

Belinda M. Charters
Senior Legal Analyst
Government Law Bureau
300 Capitol Mall, Suite 1700
Sacramento, CA 95814
Ph: 916-492-3334

From: Ted Angelo [<mailto:tangelo@aclhic.com>]
Sent: Thursday, October 11, 2012 01:34 PM
To: Martinez, Michael
Cc: John Mangan <JohnMangan@acli.com>
Subject: AB 1747 compliance questions

Michael, attached is a list of questions and comments we promised to share in advance of our discussion tomorrow at 3:30 pm PST.

We did our best to identify and consolidate many questions from our members, but there may be other issues we did not anticipate.

Please feel free to let us know if there are any matters you would like us to consider before the call tomorrow.

John Mangan will be on the call for ACLI, and I will be on the call for ACLHIC.

Thanks for your patience, and we look forward to our discussion.

Best Regards,

Ted (and John)

Ted M. Angelo
Legislative and Regulatory Counsel
Association of California Life & Health Insurance Companies
(916) 442-3648 phone
(916) 442-1730 fax
tangelo@aclhic.com

October 11, 2012

ACLHIC/ACLI AB 1747 compliance questions and concerns to discuss with CDI

We would like to discuss the best ways to apply the requirements of the new statute. We look forward to our discussion on Friday, 10/12, so we can advise our members regarding their compliance questions.

Here is how our members are reading the requirements of AB 1747, effective 1/1/2013.

1. We understand that section 10113.71 will require insurers to offer a grace period of at least 60 days for policies issued or delivered after 1/1/2013. Because this requirement applies only to new policies issued beginning 1/1/13, will the Department be requiring those new or amended forms to be filed and approved before 1/1/13? Or will the Department allow our companies to simply add the 60-day grace period to their currently filed and approved policy forms and then begin issuing these revised forms on 1/1/13? If so, can companies file an endorsement for the 60-day grace period to use with existing forms either on an informational basis, or with expedited review and approval?
2. Regarding the lapse notification: In section 10113.71(b)(1), a notice of pending lapse and termination must be mailed to the named policy owner, a designee, a known assignee or other person having an interest in the individual life insurance policy. For timely implementation, it would benefit consumers, companies and the Department if a flexible means was available to inform consumers of their right to name an additional contact in the event of a pending lapse. Obviously, at application, it will not be difficult to either add it to an application or include it as a separate page. However, the right of existing policy owners to designate an additional contact each year could be facilitated in many ways (e.g., monthly/quarterly/semi-annual billing notice; with an annual statement; electronically if policyholder consents and CIC allows; or possibly as a stand-alone mailing). Is CDI considering issuing a Bulletin for guidance in this area, or possibly a regulation?
3. Section 10113.72.(a) provides that "An individual life insurance policy shall not be issued or delivered in this state until the applicant has been given the right to designate at least one person..." Does the term "issue" refer to the point at which an insurer communicates a coverage decision or the point at which the insurer accepts payment and converts the policy into an active status?
4. Section 10113.72 (a) further provides that "The insurer shall provide each applicant with a form to make the designation". Can this form be provided as part of the application or incorporated into another form the Insurer provides at the time of application? (This relates to the procedural options outlined in question #2 above)
5. Can the annual notice required under the bill be sent with another mailing (such as a periodic billing, an annual report or other existing mailing)?
6. Will companies be required to re-file applications to include the secondary addressee designation, or can this be done with a separate administrative form that does not have to be filed and approved?

7. May we assume the Insurer does not need to receive the form specified in 10113.72 back from the applicant (completed or blank if it is a stand-alone form) before issuing or delivering the policy, given that we are only required to offer the applicant the right to designate another person for receipt of notices? This scenario would happen more often with existing policyholders, as most folks will either choose (or not choose) to designate the optional additional contact while applying for coverage.
8. Can the insurer require that any third party so designated under section 10113.72 receive notice of all billings in addition to the notice of lapse or termination of a policy for nonpayment of premium? Including the designee in billings may help prevent a future lapse.
9. Would the Department be willing to consider an extension of the time period for implementation to accommodate the extensive programming changes necessary to comply? Could this be done by Bulletin?

From: rhonda.pierson@assurant.com [<mailto:rhonda.pierson@assurant.com>]
Sent: Monday, October 22, 2012 6:53 AM
To: Tick, Leslie <Leslie.Tick@insurance.ca.gov>
Cc: Hom, Nancy <Nancy.Hom@insurance.ca.gov>
Subject: RE: AB 1747 - Filing of Whole Life contract

Thank you very much for your response. Since our interest rate (4%) is still under the new maximum of 4.5% for nonforfeiture, we were not planning to re-file at this time.

Best Regards,

Rhonda L. Pierson

Rhonda L. Pierson
Senior Contract Compliance Analyst
rhonda.pierson@assurant.com
Assurant Employee Benefits
T (816) 881.8658 | F (816) 881.8508

Products and services marketed by Assurant Employee Benefits are underwritten and/or provided by Union Security Insurance Company, Union Security Life Insurance Company of New York, or an affiliated prepaid dental company.

From: "Tick, Leslie" <Leslie.Tick@insurance.ca.gov>
To: "rhonda.pierson@assurant.com" <rhonda.pierson@assurant.com>
Cc: "Hom, Nancy" <Nancy.Hom@insurance.ca.gov>
Date: 10/18/2012 05:07 PM
Subject: RE: AB 1747 - Filing of Whole Life contract

No, you would not need to file a whole life pol if the grace period is the only change. If you'd also be making changes to the nonforfeiture provisions, then you'd need to file.

Leslie Tick
Assistant Chief Counsel
Policy Approval Bureau
California Department of Insurance
415-538-4190

From: rhonda.pierson@assurant.com [<mailto:rhonda.pierson@assurant.com>]
Sent: Thursday, October 18, 2012 6:51 AM
To: Tick, Leslie

Subject: AB 1747 - Filing of Whole Life contract

Dear Ms. Tick,

I am hoping that you can give me guidance on AB 1747. We have a whole life policy that we use for our Life Conversions. Currently our whole life contract has a grace period of 31 days and the form was not filed with variability to change this number of days. I had planned to re-file; however, in an email received from Ted Angelo, Association of California Life & Health Insurance Companies, Mr. Angelo indicated that you may not require a whole life contract to be re-filed for this change.

Could you please confirm whether our whole life contract form should be re-filed to amend the change in grace period?

Sincerely,

Rhonda L. Pierson

Rhonda L. Pierson
Senior Contract Compliance Analyst
rhonda.pierson@assurant.com
Assurant Employee Benefits
T (816) 881.8658 | F (816) 881.8508

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Tick, Leslie

From: Tick, Leslie
Sent: Wednesday, March 06, 2013 2:44 PM
To: 'Jeff Gerber'
Subject: RE: Section 10173.2 10113.71 10113.72 Insurance Code

Mr. Gerber:
Thank you for your inquiry.

The statutory changes brought by AB1747 (revisions to CIC 10173.2 and new statutes CIC 10113.71 and CIC 10113.72) is January 1, 2013. Under California law, unless another effective date is specified in the statute, a statute takes effect on January 1 of the year following its passage by the Legislature. Since none of these statutes states that it takes effect on another date, the effective date is January 1, 2013.

In general, new laws take effect on a going forward basis so that everyone knows what the law is when they enter into an agreement, such as an insurance policy. If the statutes had retroactive effect they would effect actions which have already occurred, and which were lawful at the time, making them retroactively unlawful. Parties to a contract would have no certainty as to the terms of their agreement if the Legislature could change those terms retroactively.

Generally a policy is "issued or delivered" just once - when it is new. A statutes would have to say "and renewed" in order to apply to renewals, because presumably those renewed policies were issued or delivered before the Jan. 1, 2013 effective date.

For these reasons the statutory changes brought by AB1747, eff. 1/1/2013, apply on a going forward basis - that is, the changes apply to policies issued or delivered on or after 1/1/2013. AB1747 does not require insurers to extend the grace period for policies that are already in force and does not require insurers to extend the grace period when policies that were issued prior to 1/1/13, are renewed.

I hope this is helpful.

Leslie Tick

Assistant Chief Counsel
Policy Approval Bureau
California Department of Insurance
415-538-4190

From: Jeff Gerber [mailto:jeff@gerberinsurance.net]
Sent: Wednesday, March 06, 2013 10:01 AM

Ms. Tick,

Thank you for reviewing my concern. There is language in these sections that do not state clearly whether the code is meant to act on a going forward basis or retroactive to all existing life insurance policies. As a consumer I choose to interrupt the language in the broadest possible terms. That is to say "issued or delivered" is meant as "in the past tense to include all life insurance policies currently in effect". Otherwise the language should have included, going forward, from this point on, from this date, etc. which it does not.

The objective of the section(s) is to provide protection to all but is especially important to our aging population. This population is often effected by memory issues. It would be sad to think that a "moving forward" interpretation would exclude protection for this important growing segment of Californians.

Sincerely,

Jeffrey A. Gerber
1880 Century Park East
Suite 925
Los Angeles, Ca. 90067

Lic.0632685
Direct 310-772-0116
Fax 310-772-0118
Cell 310-488-6753

PLEASE NOTE THAT MY NEW EMAIL ADDRESS IS JEFF@GERBERINSURANCE.NET. PLEASE UPDATE YOUR RECORDS ACCORDINGLY.

Tick, Leslie

From: Tick, Leslie
Sent: Monday, August 26, 2013 5:15 PM
To: 'Jamie.Mieth@wolterskluwer.com'
Subject: Your inquiry about CIC 10113.71, 72.

Ms. Mieth:

I apologize for the delay in getting back to you on your inquiry to Commissioner Jones of late July.

The provisions of AB1747, codified at CIC 10113.71 and .72 apply to all policies issued and delivered in California.

Generally, therefore, these statutes apply only if the master policy has been issued in California.

CIC 10113.71 applies to both individual and group (60 day grace period), but contains some requirements that apply to individual policies only (notice of lapse must also be sent to additional designee).

CIC 10113.72 applies to individual policies only - individual policies issued delivered in California must give the insured an opportunity to name a designee to receive lapse notice, insurer must re-notify once a year, insured may re-designate whenever s/he wants, etc.

Note, that there is no specific requirement that the notice of ability to name a designee may be part of the application, or may be contained in a separate notice.

Regarding group policies, CIC 10113.71 applies to only those policies issued or delivered to a California master policy holder.

If a group master policy is issued in another state, with a certificate issued to a California resident, that policy does not need to comply w/ the statute.

EXCEPT, per CIC 10506(j), *variable* group life master policies must be approved by the Commissioner, regardless of whether the master policy was issued inside or outside of California, if certificates on such policies are issued to California residents.

Please let me know if you have further questions.

Leslie Tick

Assistant Chief Counsel
Policy Approval Bureau
California Department of Insurance
415-538-4190

Hello--

I am a researcher for Wolters Kluwer Financial Services, a regulatory/compliance publishing company for insurance companies and other organizations. We have the following question related to California statutes 10113.71 and .72.

2012, AB 1747, as codified, clearly provides for a 60 day grace period applicable to policies "issued or delivered" in the state of California. It is also clear that policies "issued or delivered" in California must, at application, give the applicant the option to designate a secondary lapse notice designee. It isn't entirely clear whether the additional provisions (such as the annual notification of the right to designate a secondary addressee) is applicable only to those same policies (issued or delivered in the state of California after the effective date of the law, 1-1-13). Can you please clarify whether this additional notification requirement applies to any policy owned by a California resident, including those issued or delivered in another state?

I appreciate your assistance on this matter. If I have contacted you in error please forward the correct department/individual.

Tick, Leslie

From: Tick, Leslie
Sent: Friday, July 15, 2016 12:09 PM
To: 'Cerny, Robert J.'
Subject: RE: Ins. Code Sections 10113.71 and .72 - Guidance on Retroactive Effect

Robert:
Here's the SERFF instruction.

SERFF Instructions for Complying with AB1747

The following instructions will assist filers in complying with the requirements of AB 1747, effective 1/1/13:

1. 60-DAY GRACE PERIOD. All life insurance policies issued or delivered in California on or after 1/1/2013 must contain a grace period of at least 60 days. Cal. Ins. Code § 10113.71.

a. For life insurance subject to prior approval (variable life and group life, including blanket life):

Life insurance policy forms filed for approval after 1/1/13 must contain a grace period of at least 60 days.

Life insurance policy forms approved by the Department before 1/1/13 must be revised to contain a grace period of at least 60 days before they are used to issue or deliver a new policy on or after 1/1/13.

If the grace period is the only change being made, instead of revising and refiling the entire policy form, the Department encourages insurers to revise these policy forms by: endorsement, rider, insert page, text cell insert, or (if the grace period was previously marked as a variable) a statement of variability that specifies the new grace period for policies issued or delivered on or after 1/1/13. The endorsement, rider, insert page, text cell insert, or statement of variability must have its own unique form number. Cal. Code Regs. tit. 10, § 2211.

Under existing law (Bulletin 87-3) all flexible premium variable life insurance policies must contain a 61-day grace period. Assuming that these policies are already in compliance with the 61-day grace period requirement, they need not be amended by endorsement, rider, etc., to comply with AB 1747.

b. For life insurance not subject to prior approval but required to be filed by California's standard nonforfeiture laws (Cal. Ins. Code § 10159.1 et seq.):

Life insurance policy forms filed after 1/1/13 pursuant to California's nonforfeiture laws must contain a grace period of at least 60 days.

Life insurance policy forms filed pursuant to California's nonforfeiture laws and acknowledged by the Department before 1/1/13 must be revised to contain a grace period of at least 60 days before those forms are used to issue or deliver a new policy in California on or after 1/1/13.

The Department encourages insurers to revise these policy forms by endorsement, rider, insert page, text cell insert, or (if the grace period was previously marked as a variable) a statement of variability that specifies the new grace period for policies issued or delivered on or after 1/1/13, instead of revising and refiling the entire policy when only the grace period is being changed.

11/1/2012 2

If the revised grace period does not affect or impact the policy's nonforfeiture provisions, the form containing the revised grace period should not be filed with the Department.

If the revised grace period affects or impacts the policy's nonforfeiture provisions, both the policy and the form containing the revised grace period (or a revised policy form containing the revised grace period) must be filed with the Department's Actuarial Office for review. The endorsement, rider, insert page, text cell insert, statement of variability, or revised policy must have its own unique form number. Cal. Code Regs. tit. 10, § 2211.

c. For life insurance not subject to any California filing requirements:

Life insurance policy forms that are not required to be filed with the Department must be revised to contain at least a 60-day grace period before they are used to issue or deliver a policy on or after 1/1/13. Grace period revisions to these forms are not required to be filed with the Department, and the forms are not required to have form numbers because they are not required to be filed with the Department. Cal. Code Regs. tit. 10, § 2211.

2. NOTICE OF LAPSE DESIGNEE. An individual life insurance policy shall not be issued or delivered in California on or after 1/1/13 until the applicant has been given the right to designate at least one person in addition to himself/herself to receive notice of lapse or termination of a policy for nonpayment of premium. The insurer shall provide the applicant with a form to make the designation. Cal. Ins. Code § 10113.72(a).

The form required by § 10113.72(a) ("designation form") may be included in an application or it may be a stand-alone document. If the designation form is included in an application, the revised application is subject to any prior approval or filing requirements in existing law. If the application is required to be filed with the Department it must have a new form number. Cal. Code Regs. tit. 10, § 2211. If the designation form is a stand-alone document it does not need to be filed with the Department before it is used, and it is not required to have a form number. Cal. Code Regs. tit. 10, § 2211.

3. RIGHT TO CHANGE DESIGNEE. The insurer must notify the policy owner at least annually of his right to change the designee. Cal. Ins. Code § 10113.72(b).

The notification may be made in a notice mailed separately or in a notice that accompanies an annual premium bill or statement of policy. The notice should not be filed with the Department. The notification may not be made electronically. Cal. Ins. Code §§ 38.5, 1851(b).

4. SERFF's General Information/Filing Description.

To expedite the processing of form filings made *solely* to comply with AB 1747, please type "AB 1747 amendment and no other changes" in the General Information/ Filing Description section of SERFF.

#750405v1

Leslie

From: Cerny, Robert J. [mailto:rcerny@mail.hinshawlaw.com]
Sent: Friday, July 15, 2016 11:23 AM
To: Tick, Leslie <Leslie.Tick@insurance.ca.gov>
Subject: RE: Ins. Code Sections 10113.71 and .72 - Guidance on Retroactive Effect

Leslie -- we apparently cannot get this instruction without a SERFF login -- would you mind emailing me a pdf or printout of the rule? I would greatly appreciate it. Rob

Robert J. Cerny
Hinshaw & Culbertson LLP
633 West 5th Street, Forty-Seventh Floor, Los Angeles, CA 90071
Dir: 213.614.7333 | Main: 213.680.2800 | Cell: 818.636.9691
E-mail: rcerny@mail.hinshawlaw.com



From: Tick, Leslie [<mailto:Leslie.Tick@insurance.ca.gov>]
Sent: Thursday, July 14, 2016 5:03 PM
To: Cerny, Robert J.
Subject: RE: Ins. Code Sections 10113.71 and .72 - Guidance on Retroactive Effect

Robert:
The Department issued a SERFF instruction on this issue when AB1747 took effect. See <https://login.serff.com/serff/viewGeneralInstruction.do?id=125000321>
See Filing Instructions for Life – AB1747.

The short answer is no – AB1747 applies to new policies issued on or after 1/1/2013. It does not apply to policies renewed on or after 1/1/2013.

Leslie Tick
Assistant Chief Counsel
California Department of Insurance
Policy Approval Bureau
45 Fremont Street, 21st Floor
San Francisco, California 94105
415-538-4190

From: Cerny, Robert J. [<mailto:rcerny@mail.hinshawlaw.com>]
Sent: Tuesday, July 12, 2016 11:16 AM
To: Tick, Leslie <Leslie.Tick@insurance.ca.gov>
Subject: Ins. Code Sections 10113.71 and .72 - Guidance on Retroactive Effect

Dear Leslie – my partner Marty Rosen and I would be grateful for your guidance on a question pertaining to Code sections 10113.71 and 10113.72 [AB 1747], which took effect January 1, 2013. Those statutes require:

- that insurers give applicants for life insurance policies the opportunity to designate third persons to receive notices of lapse;
- that insurers provide notice to such persons in the event of an impending lapse; and
- that each policy “shall contain a provision for a grace period of not less than 60 days from the premium due date.”

Apparently, ACLHIC informally brought this issue to the CDI in 2012, as reviewed in the attached Bulletin dated 10/29/12. At pages 4-5, the Bulletin notes that ACHLIC discussed the pending bill with you and several other key staff, concluding that the statutes are not retroactive, but the Bulletin was not conclusive about policy renewals.

In that regard, one of our insurer clients is interested in the CDI's opinion whether the requirement that policies contain a 60-day lapse notice provision applies to renewable term life policies issued prior to January 1, 2013. Although such term policies are "renewable" each year (including, after 1/1/13), the insurer has no choice whether or not to renew. Rather, renewal is solely at the discretion of the policyholder. Thus, we do not believe the statutes should be interpreted to change the provisions of a previously-issued policy. Would you be available for a short call sometime this week to discuss? Much appreciated. Rob

Robert J. Cerny

Hinshaw & Culbertson LLP

633 West 5th Street, Forty-Seventh Floor, Los Angeles, CA 90071

Dir: 213.614.7333 | Main: 213.680.2800 | Cell: 818.636.9691

E-mail: rcerny@mail.hinshawlaw.com



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Tick, Leslie

From: Tick, Leslie
Sent: Wednesday, January 06, 2016 4:16 PM
To: 'Tyson Burns'
Subject: RE: guidance on CIC 10113.72

Tyson:
The formatting is a little messed up, but here it is.
You want to look at section 3.

Leslie

SERFF Instructions for Complying with AB1747

The following instructions will assist filers in complying with the requirements of AB 1747, effective 1/1/13:

1. **60-DAY GRACE PERIOD.** *All life insurance policies issued or delivered in California on or after 1/1/2013 must contain a grace period of at least 60 days. Cal. Ins. Code § 10113.71.*

a. For life insurance subject to prior approval (variable life and group life, including blanket life):

Life insurance policy forms filed for approval after 1/1/13 must contain a grace period of at least 60 days.

Life insurance policy forms approved by the Department before 1/1/13 must be revised to contain a grace period of at least 60 days before they are used to issue or deliver a new policy on or after 1/1/13.

If the grace period is the only change being made, instead of revising and refileing the entire policy form, the Department encourages insurers to revise these policy forms by: endorsement, rider, insert page, text cell insert, or (if the grace period was previously marked as a variable) a statement of variability that specifies the new grace period for policies issued or delivered on or after 1/1/13. The endorsement, rider, insert page, text cell insert, or statement of variability must have its own unique form number. Cal. Code Regs. tit. 10, § 2211.

Under existing law (Bulletin 87-3) all flexible premium variable life insurance policies must contain a 61-day grace period. Assuming that these policies are already in compliance with the 61-day grace period requirement, they need not be amended by endorsement, rider, etc., to comply with AB 1747.

b. For life insurance not subject to prior approval but required to be filed by California's standard nonforfeiture laws (Cal. Ins. Code § 10159.1 et seq.):

Life insurance policy forms filed after 1/1/13 pursuant to California's nonforfeiture laws must contain a grace period of at least 60 days.

Life insurance policy forms filed pursuant to California's nonforfeiture laws and acknowledged by the Department before 1/1/13 must be revised to contain a grace period of at least 60 days before those forms are used to issue or deliver a new policy in California on or after 1/1/13.

- The Department encourages insurers to revise these policy forms by endorsement, rider, insert page, text cell insert, or (if the grace period was previously marked as a variable) a statement

11/1/2012

- *If the revised grace period does not affect or impact the policy's nonforfeiture provisions, the form containing the revised grace period should not be filed with the Department.*
- If the revised grace period affects or impacts the policy's nonforfeiture provisions, both the policy and the form containing the revised grace period (or a revised policy form containing the revised grace period) must be filed with the Department's Actuarial Office for review. The endorsement, rider, insert page, text cell insert, statement of variability, or revised policy must have its own unique form number. Cal. Code Regs. tit. 10, § 2211.

c. For life insurance not subject to any California filing requirements:

Life insurance policy forms that are not required to be filed with the Department must be revised to contain at least a 60-day grace period before they are used to issue or deliver a policy on or after 1/1/13. Grace period revisions to these forms are not required to be filed with the Department, and the forms are not required to have form numbers because they are not required to be filed with the Department. Cal. Code Regs. tit. 10, § 2211.

2. **NOTICE OF LAPSE DESIGNEE.** An individual life insurance policy shall not be issued or delivered in California on or after 1/1/13 until the applicant has been given the right to designate at least one person in addition to himself/herself to receive notice of lapse or termination of a policy for nonpayment of premium. The insurer shall provide the applicant with a form to make the designation. Cal. Ins. Code § 10113.72(a).

The form required by § 10113.72(a) ("designation form") may be included in an application or it may be a stand-alone document. If the designation form is included in an application, the revised application is subject to any prior approval or filing requirements in existing law. If the application is required to be filed with the Department it must have a new form number. Cal. Code Regs. tit. 10, § 2211. If the designation form is a stand-alone document it does not need to be filed with the Department before it is used, and it is not required to have a form number. Cal. Code Regs. tit. 10, § 2211.

3. **RIGHT TO CHANGE DESIGNEE.** The insurer must notify the policy owner at least annually of his right to change the designee. Cal. Ins. Code § 10113.72(b).

The notification may be made in a notice mailed separately or in a notice that accompanies an annual premium bill or statement of policy. The notice should not be filed with the Department. The notification may not be made electronically. Cal. Ins. Code §§ 38.5, 1851(b).

4. **SERFF's General Information/Filing Description.**

To expedite the processing of form filings made *solely* to comply with AB 1747, please type "AB 1747 amendment and no other changes" in the General Information/ Filing Description section of SERFF.

Leslie

From: Tyson Burns [mailto:tyson.burns@emhllp.com]
Sent: Wednesday, January 06, 2016 4:13 PM
To: Tick, Leslie <Leslie.Tick@insurance.ca.gov>
Subject: RE: guidance on CIC 10113.72

Thanks again,
Tyson

Tyson A. Burns
P: 510-879-3436 F: 510-628-2146

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From: Tick, Leslie [mailto:Leslie.Tick@insurance.ca.gov]
Sent: Wednesday, January 06, 2016 4:08 PM
To: Tyson Burns
Subject: guidance on CIC 10113.72

Per our conversation.

<https://login.serff.com/serff/viewFilingRulesAttachment.do?attachId=125025288>

Please let me know if I can be of further assistance.

Leslie Tick
Assistant Chief Counsel
California Department of Insurance
Policy Approval Bureau
45 Fremont Street, 21st Floor
San Francisco, California 94105
415-538-4190

-----Original Message-----

From: JOSEPH.BONFITTO@phoenixwm.com [mailto:JOSEPH.BONFITTO@phoenixwm.com]

Sent: Friday, November 02, 2012 11:37 AM

To: Samra, Sarvjit

Subject: PHL Variable Life Insurance Company Question regarding compliance with the revisions to Section 10113.71 of the Insurance Code (effective January 1, 2013)

Good Afternoon Mr. Samra,

I am currently in the process of reviewing our life policies for compliance

with the revision to Section 10113.71 of the Insurance Code (effective

January 1, 2013) and have found that one of our policies does not include

the required 60 day grace period from the premium due date. This policy is

a single premium whole life policy and no premiums are required after the

initial premium is paid so there are no future premium due dates. It does

include a 31 day grace period. It also has no specific language addressing

notice requirements upon a premium default since no further premiums may

be paid. The only way that the policy could go into the grace period is for

excessive loans. This being the case we thought this regulation may not

apply to this product. However we did want to confirm with the Department

that our understanding is correct. We want to be sure that if a change is

required that we make the filing with the Department that is required in

order to bring the policy into compliance. Any guidance you could provide

us would be greatly appreciated.

I realize that you may not be the person to ask a question of regarding the

above referenced bulletin but I saw you were the contact for the valuation

interest change so I thought I would take a chance. If you are not the

Department representative that we should contact regarding this question we

would greatly appreciate it if you could either forward our inquiry to the appropriate person in the Department or let us know who that person is so that we can contact them directly.

Thank you for your time and attention to this matter and have a great weekend.

Joe Bonfitto

(860) 403-6308

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From: Mary Gardner [<mailto:mgardner@lifebase.com>]
Sent: Tuesday, October 30, 2012 8:21 AM
To: Tick, Leslie
Cc: Hom, Nancy; Mary Taylor
Subject: RE: CA Assembly Bill 1747 - Life Insurance Nonpayment Premium Lapse - Notice

Leslie Tick:

Does the 60 day grace period change apply to FRATERNAL societies?

Thank you.

Mary E. Gardner
Griffith, Ballard and Company
Consulting Actuaries
100 First Avenue N.E., Suite 117
Cedar Rapids, IA 52401
319-896-5960
mgardner@lifebase.com

From: Tick, Leslie [<mailto:Leslie.Tick@insurance.ca.gov>]
Sent: Thursday, October 18, 2012 5:52 PM
To: Mary Gardner
Cc: Hom, Nancy
Subject: RE: CA Assembly Bill 1747 - Life Insurance Nonpayment Premium Lapse - Notice

With regard to CA Assembly Bill 1747 noted above, will it be necessary to submit revised forms to be filed via SERFF per the 60 day grace period change and also the notice of pending lapse and termination issue (Items 1 and 4 of Bill 1747)? Yes. Revised forms must be approved before they can issued on or after 1/1/13. Best practice for a quick review would be to revise via rider, or to revise only per 1747 changes and note that clearly in the cover letter and redline all changes.

Items 2 and 3, it looks as if we are to prepare a designation form? Again, would this need to be filed? If designation is part of the application, then it must be filed. If designation is a stand alone form, no filing requirement.

Leslie Tick
Assistant Chief Counsel
Policy Approval Bureau
California Department of Insurance
415-538-4190

From: Mary Gardner [<mailto:mgardner@lifebase.com>]
Sent: Wednesday, October 17, 2012 6:40 AM
To: Tick, Leslie
Subject: CA Assembly Bill 1747 - Life Insurance Nonpayment Premium Lapse - Notice

RE: California - Assembly Bill 1747
Life Insurance: Nonpayment Premium Lapse - Notice

This bill enacts new California Insurance Code § 10113.71; new California Insurance Code § 10113.72 and amends California Insurance Code § 10173.2 to:

- require that every life insurance policy issued or delivered in California contain a provision for a grace period of not less than 60 days from the premium due date and that the policy remains in force during the 60-day grace period;
- require an insurer to give the applicant for an individual life insurance policy the right to designate at least one person, in addition to the applicant, to receive notice of lapse or termination of a policy for nonpayment of premium;
- require an insurer to provide each applicant with a form, as specified, to make the designation and to notify the policy owner annually of the right to change the designation;
- prohibit a notice of pending lapse and termination from being effective unless mailed by the insurer to the named policy owner, a named designee for an individual life insurance policy, and a known assignee or other person having an interest in the individual life insurance policy at least 30 days prior to the effective date of termination if termination is for nonpayment of premium.

Enacted: 9/14/2012 (Chapter 315, Statutes of 2012)
Effective: 1/1/2013

With regard to CA Assembly Bill 1747 noted above, will it be necessary to submit revised forms to be filed via SERFF per the 60 day grace period change and also the notice of pending lapse and termination issue (items 1 and 4 of Bill 1747)?

Items 2 and 3, it looks as if we are to prepare a designation form? Again, would this need to be filed?

Please forward this email to the proper contact.

Thank you in advance for any information you can give me regarding the above.

Mary E. Gardner
Griffith, Ballard and Company
Consulting Actuaries
100 First Avenue N.E., Suite 117
Cedar Rapids, IA 52401
319-896-5960
mgardner@lifecycle.com

From: Hom, Nancy
Sent: Thursday, October 25, 2012 10:01 AM
To: 'McGrath, Kathleen' <Kathleen.McGrath@wolterskluwer.com>
Subject: RE: AB 1747 - Filing Requirements

You're very welcome.

Nancy Hom
Attorney III
California Department of Insurance
(415) 538-4144
homn@insurance.ca.gov

From: McGrath, Kathleen [<mailto:Kathleen.McGrath@wolterskluwer.com>]
Sent: Thursday, October 25, 2012 9:53 AM
To: Hom, Nancy
Subject: RE: AB 1747 - Filing Requirements

Thanks so much for this. After sending my prior inquiry I started to come to the conclusion that group annuities were out of scope, but it's helpful to have your confirmation.

We very much appreciate the assistance provided by the Department!

Regards,

Kathleen McGrath
*Senior Insurance Compliance Analyst, Insurance Compliance Solutions
Walters Kluwer Financial Services*

130 Turner Street
Waltham, MA
781-907-6659 tel
781-907-6678 fax
800-481-1522 Customer Care

Kathleen.McGrath@wolterskluwer.com
www.insurance.wolterskluwerFS.com

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From: Hom, Nancy [<mailto:Nancy.Hom@insurance.ca.gov>]
Sent: Thursday, October 25, 2012 12:49 PM
To: McGrath, Kathleen
Subject: FW: AB 1747 - Filing Requirements

Dear Ms. McGrath,

I have been asked to provide you with additional information with regard to AB 1747. All of the types of group life insurance you mentioned are subject to filing and approval. The grace period must be at least 60 days. Note that for flexible premium variable life insurance the grace period is already 61 days, per Bulletin 87-3, so no change is required.

Group annuities are outside the scope of AB 1747.

Nancy Hom
Attorney III
California Department of Insurance
(415) 538-4144
homn@insurance.ca.gov

From: McGrath, Kathleen [<mailto:Kathleen.McGrath@wolterskluwer.com>]
Sent: Tuesday, October 23, 2012 10:26 AM
To: Tick, Leslie
Subject: RE: AB 1747 - Filing Requirements

Thanks very much for this helpful information. We just want to be sure which sublines are included in your mention of group life. We cover the following in our State Filing product, and in some states and contexts, annuities are defined as being life insurance, while not in others. We would want to be sure that all these sublines are included, and if not, which to exclude:

Group Blanket, Credit, Industrial, Term, Universal, Variable, Whole

Group Fixed and Variable Annuities

Thanks again for your help...

Regards,

Kathleen McGrath

From: Tick, Leslie [<mailto:Leslie.Tick@insurance.ca.gov>]
Sent: Thursday, October 18, 2012 6:47 PM
To: McGrath, Kathleen
Cc: Hom, Nancy
Subject: RE: AB 1747 - Filing Requirements

Life policy forms that already need to be approved (basically group life and variable life) would need to be amended to reflect the changes required in AB1747, and approved by us before the policy can be issued to a new person on or after 1/1/13.

If a notice as required by AB1747 is included in an application, then we would approve the application together w/ the policy form. If the notice is sent as a stand alone notice, then approval is not required.

Leslie Tick
Assistant Chief Counsel
Policy Approval Bureau
California Department of Insurance
415-538-4190

From: McGrath, Kathleen [<mailto:Kathleen.McGrath@wolterskluwer.com>]
Sent: Wednesday, October 17, 2012 1:57 PM
To: Tick, Leslie
Subject: AB 1747 - Filing Requirements

Good afternoon, Ms. Tick:

In our AuthenticWeb for State Filing™ product, we publish summaries of form and rate filing requirements in all US jurisdictions for our insurance industry customers, covering a number of filing-related topics.

Can you tell us if there are any specific requirements relating to recently approved AB 1747? We are unable to find any requirements pertaining to re-filing of previously existing forms in the statutes affected by the bill. For example, if re-filing is needed, or if the notices required must be filed with the Department, we would want to include details on that information in our Filing Law and Policyholder Notices summaries.

Thanks very much in advance for any help you can provide us with on this...

Regards,

Kathleen McGrath
Senior Insurance Compliance Analyst, Insurance Compliance Solutions
Wolters Kluwer Financial Services

130 Turner Street
Waltham, MA
781-907-6659 tel
781-907-6678 fax
800-481-1522 Customer Care

Kathleen.McGrath@wolterskluwer.com
www.Insurance.WoltersKluwerFS.com

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believe you have received this message in error, please delete it and all copies of it from your system and notify the sender immediately by reply email. Thank you.

From: Martinez, Michael
Sent: Wednesday, September 26, 2012 5:21 PM
To: 'Ted Angelo'
Cc: Hoge, Nettie; Brad Wenger; John Mangan
Subject: RE: Following Up on AB 1747

Wonderful -- thanks so much, Ted! I appreciate that very much. I will wait to hear back from you then on ACLHIC/ACL's combined questions/issues from your membership. And, yes, Nettie, John, Janice, and I really enjoyed your conference and thank you for the invitation to attend...chat soon! --Mike

Michael R. O. Martinez
Deputy Commissioner
Legislative Director

CALIFORNIA DEPARTMENT OF INSURANCE

Hon. Dave Jones, Insurance Commissioner

300 CAPITOL MALL, SUITE 1700

SACRAMENTO, CA 95814

MAIN LINE (916) 492-3500

FACSIMILE (916) 322-7294

www.insurance.ca.gov

Michael.Martinez@insurance.ca.gov

From: Ted Angelo [<mailto:tangelo@aclhic.com>]
Sent: Wednesday, September 26, 2012 5:16 PM
To: Martinez, Michael; Brad Wenger; John Mangan
Cc: Hoge, Nettie
Subject: RE: Following Up on AB 1747

That sounds good Michael.

I am beginning to gather comments and questions from my folks and plan to have a brief call with my folks early next week.

I will coordinate with John and get back to you with our questions.

Best,

Ted

p.s. thanks again to you, Nettie and John for your participation at our conference. Our members greatly appreciated all of CDI's comments and feedback.

Ted M. Angelo
Legislative and Regulatory Counsel
Association of California Life & Health Insurance Companies
(916) 442-3648 phone
(916) 442-1730 fax
tangelo@aclhic.com

From: Martinez, Michael [<mailto:Michael.Martinez@insurance.ca.gov>]
Sent: Wednesday, September 26, 2012 5:02 PM
To: Brad Wenger; Ted Angelo; John Mangan
Cc: Hoge, Nettie
Subject: Following Up on AB 1747

Hi Brad, Ted, and John,

I just wanted to touch base with you on chaptered AB 1747 and subsequent implementation questions/issues that your members might have on it. Would it work best that you three coordinate questions from within your membership companies and then forward a list of questions/issues to me so that I can get the right folks here at CDI to help address them? Please kindly advise.

Thanks!
--Michael

Michael R. O. Martinez
Deputy Commissioner
Legislative Director

CALIFORNIA DEPARTMENT OF INSURANCE

Hon. Dave Jones, *Insurance Commissioner*

300 CAPITOL MALL, SUITE 1700

SACRAMENTO, CA 95814

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Michael.Martinez@insurance.ca.gov

From: Tick, Leslie
Sent: Wednesday, October 24, 2012 12:03 PM
To: Toth, Andrea; 'tangelo@Aclhic.com'; 'bwenger@aclhic.com'; Samra, Sarvjit; Hom, Nancy; Toth, Andrea; 'John Mangan'
Subject: RE: AB1747 questions

Note: for our 12:30 call today, the correct call in number is :

██████████ passcode ██████████

Leslie Tick
Assistant Chief Counsel
Policy Approval Bureau
California Department of Insurance
415-538-4190

From: Toth, Andrea
Sent: Wednesday, October 24, 2012 11:34 AM
To: Tick, Leslie
Subject: RE: AB1747 questions

Leslie – Is the passcode below correct? On our Outlook Calendar it ends in 95, not 35 as you show in the email below. Just want to make sure I'm using the right one and that Ted, Brad and John got the right code.

From: Tick, Leslie
Sent: Tuesday, October 23, 2012 10:20 AM
To: 'John Mangan'; 'tangelo@Aclhic.com'
Cc: 'bwenger@aclhic.com'; Samra, Sarvjit; Hom, Nancy; Toth, Andrea
Subject: RE: AB1747 questions

Great -
Meeting on 1747 questions changed to Wed. 10/24 at 12:30 pst.
Call in is ██████████ passcode ██████████

I'll change in Outlook for CDI people.

Leslie

Leslie Tick
Assistant Chief Counsel
Policy Approval Bureau
California Department of Insurance

415-538-4190

From: John Mangan [<mailto:JohnMangan@acli.com>]
Sent: Tuesday, October 23, 2012 8:12 AM
To: Tick, Leslie; 'tangelo@Aclhic.com'
Cc: 'bwenger@acli.com'
Subject: Re: AB1747 questions

Leslie,

Brad and I can do tomorrow at 12:30.

Thanks,

John

Sent from my BlackBerry Wireless Handheld

From: Tick, Leslie [<mailto:Leslie.Tick@insurance.ca.gov>]
Sent: Monday, October 22, 2012 06:00 PM
To: Tick, Leslie <Leslie.Tick@insurance.ca.gov>; John Mangan; 'tangelo@Aclhic.com' <tangelo@Aclhic.com>; 'tangelo@acli.com' <tangelo@acli.com>
Subject: RE: AB1747 questions

Nope, wrong again (sorry for all of this confusion)-
Wed 12:30?
Friday at 2?

Leslie Tick
Assistant Chief Counsel
Policy Approval Bureau
California Department of Insurance
415-538-4190

From: Tick, Leslie
Sent: Monday, October 22, 2012 2:57 PM
To: Tick, Leslie; 'John Mangan'; 'tangelo@Aclhic.com'; 'tangelo@acli.com'
Subject: RE: AB1747 questions

Can we move this to Wed 9:30?

Ted, I know that you said that you're tied up till Friday, but that's quite a ways away. Can Brad do it Wed 9:30 for you guys?

If that won't work the only other time our people can do it is Fri. at 2.

Leslie Tick
Assistant Chief Counsel
Policy Approval Bureau
California Department of Insurance
415-538-4190

From: Tick, Leslie
Sent: Monday, October 22, 2012 11:18 AM
To: 'John Mangan'; 'tangelo@Aclhic.com'; 'tangelo@aclhic.com'
Cc: Martinez, Michael
Subject: RE: AB1747 questions

OK, good - we'll have the call tomorrow, Tuesday 10/23/12 at 12:30pm pst.

code

thanks!

Leslie Tick
Assistant Chief Counsel
Policy Approval Bureau
California Department of Insurance
415-538-4190

From: John Mangan [<mailto:JohnMangan@acl.com>]
Sent: Monday, October 22, 2012 11:07 AM
To: Tick, Leslie; 'tangelo@Aclhic.com'
Subject: Re: AB1747 questions

12:30 is good, thanks.

John

Sent from my BlackBerry Wireless Handheld

From: Tick, Leslie [<mailto:Leslie.Tick@insurance.ca.gov>]
Sent: Monday, October 22, 2012 01:54 PM
To: John Mangan; 'tangelo@aclhic.com' <tangelo@aclhic.com>
Subject: RE: AB1747 questions

John:
Looks like 12:30 or 1 Tues, 10/23 will work for us.

Does that work on your end?

If so, I'll set it up.

Thanks.

Leslie Tick

Assistant Chief Counsel

Policy Approval Bureau

California Department of Insurance

415-538-4190

From: John Mangan [<mailto:JohnMangan@aci.com>]

Sent: Sunday, October 21, 2012 1:31 PM

To: Tick, Leslie; 'tangelo@aclhic.com'

Cc: Toth, Andrea; Hill, Ken; Kupferman, Perry; Samra, Sarvjit; Hom, Nancy; Martinez, Michael

Subject: RE: AB1747 questions

Thanks Leslie. I cannot make that time as I will be on a plane, but could do something earlier that day or the 24th in the morning. But if Tuesday at 2:00 works for everyone perhaps Ted can cover it for us.

John

From: Tick, Leslie [<mailto:Leslie.Tick@insurance.ca.gov>]

Sent: Friday, October 19, 2012 9:15 PM

To: 'tangelo@aclhic.com'; John Mangan

Cc: Toth, Andrea; Hill, Ken; Kupferman, Perry; Samra, Sarvjit; Hom, Nancy; Martinez, Michael

Subject: AB1747 questions

Hi -

To follow up on our telephone conf. of 10/12, we would like to schedule another meeting to give you responses to the questions that we needed to look into further.

Would you be available for a call on Tuesday 10/23 at 2 or 3?

Thank you.

Leslie Tick

Leslie Tick

Assistant Chief Counsel

Policy Approval Bureau

California Department of Insurance

415-538-4190

From: Jeff Gerber [<mailto:jeff@gerberinsurance.net>]
Sent: Wednesday, March 06, 2013 10:01 AM
To: Tick, Leslie
Subject: Section 10173.2 10113.71 10113.72 Insurance Code

Ms. Tick,

Thank you for reviewing my concern. There is language in these sections that do not state clearly whether the code is meant to act on a going forward basis or retroactive to all existing life insurance policies.

As a consumer I choose to interrupt the language in the broadest possible terms. That is to say "issued or delivered" is meant as "in the past tense to include all life insurance policies currently in effect". Otherwise the language should have included, going forward, from this point on, from this date, etc. which it does not.

The objective of the section(s) is to provide protection to all but is especially important to our aging population. This population is often effected by memory issues. It would be sad to think that a "moving forward" interpretation would exclude protection for this important growing segment of Californians.

Sincerely,

Jeffrey A. Gerber
1880 Century Park East
Suite 925
Los Angeles, Ca. 90067

Llc.0632685
Direct 310-772-0116
Fax 310-772-0118
Cell 310-488-6753

PLEASE NOTE THAT MY NEW EMAIL ADDRESS IS JEFF@GERBERINSURANCE.NET. PLEASE UPDATE YOUR RECORDS ACCORDINGLY.

Hom, Nancy

To: Groom, Peter
Cc: 'John Sebastinelli (SF Office)'
Subject: RE: AB 1747

We are speaking with ACLHIC on Friday and we will address their questions as well as yours all together at some point after the call.

I can say that the new statutes apply to policies issued or delivered on or after January 1, 2013, and not to policies issued or delivered before that date.

-----Original Message-----

From: Groom, Peter
Sent: Wednesday, October 10, 2012 4:03 PM
To: Hom, Nancy
Cc: 'John Sebastinelli (SF Office)'
Subject: FW: AB 1747

Nancy: Another one for your list of 1747 questions.

John: Nancy Hom is running the clearing house for 1747 questions. Whatever else, certainly, policies and certs can be required to comply.

peter

From: John Sebastinelli (SF Office) [jsebastinelli@mrlp.com]
Sent: Wednesday, October 10, 2012 8:21 AM
To: Groom, Peter
Subject: AB 1747

Hi Peter:

In connection with Assembly Bill 1747, which goes into effective January 1, 2013, can a life insurer update the Grace Period to 60 days and include a 30 day Lapse Notice via an endorsement to the existing contract or does the contract need to be re-filled with PAB?

Many thanks,

John.

John A. Sebastinelli
Partner
[cid:image13bcc.JPG@1a8726e0.4488b039]<<http://www.mrlp.com>>
Los Angeles | Orange County | Sacramento | San Francisco | New York

455 Market Street, Suite 1420, San Francisco, CA 94105

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Please consider the environment before printing this email.

to submit the changes to some of our older contracts that used to provide a 61 day grace period. According to the regulations listed above, requirements are at least a 60 day grace period. Most of our newer contracts approved in CA now provide 61 days for the grace period. We are trying to determine the best way to make the revisions to our contracts and get them approved so that we can implement the forms by the required January 1, 2013 date.

It might be possible for us to do an amendment to each contract and state that we are amending the previous wording in the grace period section to be 61 days. If we were to actually want to make a change to each contract, would we need to re-file the whole contract or could we just send the corrected, previously approved page showing the change from 31 days to 61 days for your approval?

The California A1747 does not mention filing requirements for these changes or the form to designate a third party having interest in the policy, but since this is a change to our previously approved forms, and should be filed, I was trying to find out the best way to get this filed and approved, since previously CA has been behind in their filing and approval of forms.

If you do want to give me a call, I can also be reached at 206-275-8131.

Sincerely,

Pete Lindstrom
Contract Specialist
Farmers New World Life Insurance Co.

[Redacted signature and contact information]

Tick, Leslie

From: Tick, Leslie
Sent: Wednesday, January 06, 2016 4:08 PM
To: 'tyson.burns@emhilp.com'
Subject: guidance on CIC 10113.72

Per our conversation.

<https://login.serff.com/serff/viewFilingRulesAttachment.do?attachId=125025288>

Please let me know if I can be of further assistance.

Leslie Tick

Assistant Chief Counsel
California Department of Insurance
Policy Approval Bureau
45 Fremont Street, 21st Floor
San Francisco, California 94105
415-538-4190

-----Original Message-----
From: Paul.D.Sedgwick@healthnet.com [mailto:Paul.D.Sedgwick@healthnet.com]
Sent: Wednesday, October 24, 2012 10:29 AM
To: Nguyen, Tan

Subject: AB 1747 Grace period for life insurance

Good morning, Mr. Nguyen,

AB 1747, effective 1/1/13, increases the grace period provision in Individual and group life insurance policies, from 31 days to 60 days, and also requires some operational notice requirements that don't affect the filed documents.

Does the CDI want insurers to submit amendments to increase the grace period from 31 days, or can I just revise the grace period provisions in the current approved documents to change the grace period to 60 days, effective 1/1/13.

Please feel free to call me if you want to discuss.

Thanks for your time.

Respectfully,

Paul Sedgwick
Health Net Life Insurance Company
(916) 935-6623

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Begin forwarded message:

From: "Shirley.Grossman@londen-insurance.com" <Shirley.Grossman@londen-insurance.com>
Date: October 4, 2012 10:04:33 AM PDT
To: "Tick, Leslie" <Leslie.Tick@insurance.ca.gov>
Subject: Assembly Bill 1747

Good morning Ms. Tick,

Lincoln Heritage Life Insurance Company recently filed a new policy form under SERFF tracking number LHLI-128606223 which received a status of Closed-Acknowledged for Filing on 8/1/2012. We have not started to market this policy form and would like to be able to just change the Grace Period provision to read 60 days instead of 31 days to comply with the recently adopted Assembly Bill 1747 and Section 10113.71. Will we be able to do this without submitting a new filing?

How should we handle policy forms that were previously approved and issued? Is the 60 day grace period retroactive to previously approved policy forms? If so would we need to send an endorsement to all in force policyholders that were issued policies in CA even if they no longer are CA residents? Would this endorsement need to be filed with your department?

Does the requirement in Section 10113.72 to give the right to designate at least one person in addition to the applicant to receive notice of lapse or termination of policy for non payment of premium apply to all CA residents with in force policies or only policies that were issued in CA? Do you expect insurance companies to provide the notice of this right by January 1, 2013 or is there a time period to implement this process? Does this notice need to be filed with your department?

Thank you for your assistance so that we comply with these new Insurance Codes. I can be contacted by email at shirley.grossman@londen-insurance.com or by phone at 800-433-8181.

Shirley Grossman
Vice President
Lincoln Heritage Life Insurance Company
800-433-8181

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Hom, Nancy

From: Hom, Nancy
Sent: Thursday, October 11, 2012 5:34 PM
To: 'JALucas@aaalife.com'
Cc: Kupferman, Perry; Samra, Sarvjit; Tick, Leslie
Subject: Questions regarding AB 1747

Dear Ms. Lucas,

Thank you for your inquiry with regard to AB 1747. I have been asked to respond to your questions. I hope the following will be helpful to you:

Can you provide any guidance on the implementation of the new grace period, specifically in regards to policy language?

Answer: For a policy that is required to be filed and approved we suggest that you amend the policy by filing a redlined copy of an amended grace period. An endorsement or text cell is acceptable if that is sufficient to make the contract comply with the new statutory requirements.

a) I am looking to find out if we have to file amendments to our current policies to amend the language to the new grace period time frame?

Answer: The new grace period applies to policies issued or delivered on or after January 1, 2013. Those policies will have to contain the new grace period. If the policy is subject to prior approval then the amendment is subject to prior approval as well.

b) does this apply to newly issued after the effective date of the bill, or any policy that we have in force business on but may not be necessarily selling new business on?

Answer: The new grace period applies to policies issued or delivered on or after January 1, 2013.

c) will there be a special category for the filings on SERFF to expedite the review process?

Answer: We don't know at this time. CDI expects to put instructions on SERFF at some point.

d) if this applies to existing policies, do we need to send the amendment to all policyholders at once? Our current block of business in CA is rather large and a mass mailing would cause a substantial amount.

Answer: The requirements of the bill are not retroactive. The bill applies to policies issued or delivered on or after January 1, 2013, not before.

Please let me know if you have any additional questions.

Sincerely,

Nancy Hom
Attorney III
California Department of Insurance
(415) 538-4144
homn@insurance.ca.gov

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **McHUGH v. PROTECTIVE LIFE
INSURANCE**

Case Number: **S259215**

Lower Court Case Number: **D072863**

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2. My email address used to e-serve: **jneiman@maynardcooper.com**
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Service Recipients:

Person Served	Email Address	Type	Date / Time
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Margaret Grignon Grignon Law Firm LLP 76621	mgrignon@grignonlawfirm.com	e-Serve	7/29/2020 7:42:34 PM
Jack Winters Winters & Associates 82998	jackbwinters@earthlink.net	e-Serve	7/29/2020 7:42:34 PM
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John Neiman Maynard, Cooper & Gale, P.C. 8093-O68N	jneiman@maynardcooper.com	e-Serve	7/29/2020 7:42:34 PM
Neil Granger	ngranger51@earthlink.net	e-Serve	7/29/2020 7:42:34 PM
David Noonan Noonan Lance Boyer & Banach LLP 55966	dnoonan@noonanlance.com	e-Serve	7/29/2020 7:42:34 PM

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

7/29/2020

Date

/s/John Neiman

Signature

Neiman, John (pro hac)

Last Name, First Name (PNum)

Maynard, Cooper & Gale, P.C.

Law Firm