



Life Insurance Consumer Advocacy Center

April 13, 2022

TO: SENATOR BRIAN JONES

FR: CONSUMER ATTORNEYS OF CALIFORNIA
CALIFORNIA ADVOCATES FOR NURSING HOME REFORM
CALIFORNIA ALLIANCE OF RETIRED AMERICANS
CONSUMER FEDERATION OF CALIFORNIA
LIFE INSURANCE CONSUMER ADVOCACY CENTER
CONSUMER WATCHDOG

RE: SB 1320 (Jones) – Oppose

The above signed groups must oppose SB 1320, which will be heard before the Senate Insurance Committee on April 20, 2022. SB 1320, sponsored by the Association of California Life and Health Insurance Companies (ACLHIC), seeks to overturn a California Supreme Court decision in *McHugh v. Protective Life*, (2021) 12 Cal. 5th 213.a victory for life insurance policyholders in California.

Insurance Code §10113.71 & 10113.71

In 2013, AB 1747 (Feuer) was signed into law to protect consumers from losing life insurance coverage because of a missed premium payment. The protections were codified in Cal. Ins. Code 10113.71 and 10113.72. The bill was strongly supported by then Insurance Commissioner Dave Jones and the California Department of Insurance along with a coalition of senior groups including the California Alliance of Retired Americans, California Advocates for Nursing Home Reform, Congress of California Seniors, and others with no opposition. The legislation required 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. The law also required an insurer to give the applicant the right to designate at least one person, in addition to the applicant, to receive notice of a lapse or termination of a policy for nonpayment of premium.

These statutes provide necessary consumer safeguards for people who have purchased life insurance coverage, especially seniors. Individuals can easily lose the critical protection of life insurance if a single premium is accidentally missed (even if they have been paying premiums on time for many years). If an insured individual loses coverage and wants it reinstated, they may have to undergo a new physical exam and be underwritten again, risking a significantly more expensive, possibly unaffordable

premium if their health has changed in the years since purchasing the policy. Therefore, the protections provided by Insurance Code §§ 10113.71 and 10113.72 are necessary to make sure that policyholders have sufficient warning that their premium may lapse due to nonpayment.

McHugh v. Protective Life

SB 1320 seeks to overturn *McHugh v. Protective Life.*, a key consumer protection case decided by the California Supreme Court last year. The insurers attempted to interpret these new statutes to apply only to policies issued after 2013. In *McHugh*, the California Supreme Court ruled against the insurance companies' interpretation; holding that the above law “apply to all life insurance policies in force when these two sections went into effect, regardless of when the policies were originally issued.” The Court provided that this interpretation “fits the provisions’ language, legislative history, and uniform notice scheme, and it protects policy owners – including elderly, hospitalized, or incapacitated ones who may be particularly vulnerable to missing a premium payment – from losing coverage, consistent with the provisions’ purpose.”

SB 1320 as proposed to be amended

AUTHOR’S PROPOSED NEW § 10113.73

(a) No insurer shall be liable for failure to meet any requirement of Sections 10113.71 or 10113.72 unless an alleged policy lapse occurred as a result of such failure.

(b) The provisions in this section shall apply to all policies to which Sections 10113.71 or 10113.72 are applicable.

The above proposed amendments, provided by the sponsor and author on April 11th, retain the same problems as the bill as introduced – gutting the protections of Insurance Code sections 10113.71 and 10113.72 and *McHugh v. Protective Life*.

This language would impose a causation requirement on consumers before they are entitled to receive the protections of the statutes. As currently written and interpreted by both the Ninth Circuit and Supreme Court, the IC §§ 10113.71 and 10113.72 require insurers to meet various notice requirements before they can terminate a life insurance policy for non-payment of premiums. Specifically, they must (1) extend the grace period on all policies from 30 to 60 days; (2) invite policyholders every year to designate a third-party to receive a copy of all lapse notifications; (3) send a written notice of impending lapse at least 30 days before coverage is terminated. If they don’t meet these requirements, they cannot terminate coverage. This language shifts the burden on to consumers to prove that a carrier’s failure to follow the notice requirements caused their policy to lapse. The Ninth Circuit court already rejected this approach and held in *Flynn-Thomas v. State Farm*, No. 20-55231 (9th Cir. 2021) that causation *cannot* be considered when determining whether a carrier violated 10113.71 and 10113.72.

AB 1320 would incentivize insurers to disregard the law because it will be nearly impossible for consumers to prove causation. How can a consumer prove that their life insurance policy would not have lapsed if their carrier had invited them to designate someone else to receive notifications? Would that person have received the notifications? Would that person have acted on them? This proposal guts the purpose of the statutes by making it impossible for policyholders to hold insurers accountable. For these reasons, we must oppose SB 1320.

cc: Senate Insurance Committee