Massachusetts House of Representatives
Bill Summary
2007-2008

Bill No.: S 633

Title: An Act Ensuring Consumer Protection in Life Insurance Contracts.

Sponsor: Sen. Spilka

Committee: Financial Services

Hearing Date: October 10, 2007

Similar Matters: H939; H1072

Prior History: none

Current Law: Section 186 of chapter 175 of the MGL provides that misrepresentations made in negotiation of an insurance policy do not defeat or affect the policy unless that misrepresentation was made with actual intent to deceive or it increases the risk of loss.

Summary: Section 1 amends chapter 175 of the MGL by creating two new sections entitled 125A and 125B.

Section 125A provides that in court actions where issue arises as to the good health of the insured at the time a life insurance policy was issued there will be a presumption that good health existed. The presumption may be rebutted only by clear and convincing evidence of a §186 defined misrepresentation or evidence that the insured should have known of a serious health condition. In effect the §186 requirement of intent to defraud or deceive would not need to be proven when the good health of the insurer is at issue.

Section 125B provides that if the insurer has knowledge that an insured or policy applicant has or is at risk of a serious health condition, said insurer is required to notify the insured regardless of the information's effect on the policy.

A Brief Explanation of Senate Bill 633 – An Act Ensuring Consumer Protection in Life Insurance Contracts

I. Summary of the legal issues of "Good Health" clauses

- **The Law Today**: The way Massachusetts law is currently written, insurance companies can deny benefits to any applicant if the insurance company suspects that the applicant was not in good health before the policy was issued.
- **Basic Problem with Current Law**: The law is not specific enough. There is no law that prevents insurance companies from denying benefits even if the applicant was checked by a doctor and all medical facts show that the applicant was in perfect health prior to the policy being issued.
- **How insurance companies use this rule to their advantage**: Insurance Companies include "good health" provisions in their contracts, which give the insurance company the right to essentially "tear up" the contract, and deny the insured of their benefits if the company suspects the insured had significant health risks before the date that the policy was issued.
- **How "good health" provisions work in a court of law**: Unlike criminal cases where a defendant is innocent until proven guilty, if an insurance company claims that an applicant was not in "good health" (had significant health risks prior to the issuance of the policy) the insured is presumed to be "guilty"/in poor health until the insured themselves prove that they were in good health.[1]
- **Reason for this rule**: The laws were written a century ago when medical technology was unrefined. Applicants could easily defraud insurance companies because medical testing could not produce accurate diagnoses. Thus, policies were issued under uncertain circumstances and in fairness to insurance companies it was necessary to provide a legal escape hatch from their contracts if it was later discovered that an insured was not in good health before signing the contract.

[1] NOTE: This is far from a perfect analogy. Basic explanation of burden shifting: In criminal court, to prove someone is guilty of a crime the prosecutor has the "burden" of showing that they are guilty *beyond a reasonable doubt*. In other words if there is any reasonable doubt whatsoever of a defendant's guilt, they cannot be found guilty. In civil court (lawsuits concerned with money and NOT resulting in prison time) a party bringing suit against a defendant shall prevail if that party overcomes the burden of a *preponderance of the evidence* i.e. a defendant may be found legally liable if the party bringing suit convinces a jury that it is more likely than not, or a 51% chance or better, that the defendant violated a given law.

II. How the law applies to John Crowley's case

- **This situation is particularly unfair to cancer patients**: Since it is very difficult to detect tumors in the early stages of cancer, it is presumed by medical experts, and the law accepts their conclusions, that tumors must exist in a dormant state prior to their physical discovery. Under this theory, it is almost impossible for John to show that his wife did not have a latent tumor or was in "good health" because no amount of medical evidence can disprove a claim based on improvable assumptions.
- **Our Bill**: We want to 1) clarify the law and 2) prevent insurance companies from denying benefits to people like John who clearly deserve them.
- **How does our bill accomplish this technically?:** Our bill adds two sections (labeled section 125A and 125B) to Ch. 175, Sec. 125, that *shift the burden of proof to the insurance company* to show that the insured was not in good health prior to the issuance of the policy.
    - In other words, when an insurance company issues a policy:
        - It is immediately presumed that the person being insured is in good health, and this claim can only be disproved by evidence of symptoms of a serious health risk that the insured knew or should have known about.
        - More importantly, the insurance company must produce this evidence. Thus, the burden is on the insurance company (not the insured or their beneficiary) to prove that that the insured was not in good health.
- **This presumption of good health is not absolute. Benefits can still be denied if:**

1. An insurance company finds evidence of fraud
2. The insurance company meets their burden of proof. In other words, they prove in a court of law (most likely by producing expert medical testimony) that it is more likely than not, that an insured had serious health risks that they knew about or should have known about prior to the issuance of the policy.

- **Other Technicalities of our bill:**
    - Symptoms of a serious health risk are defined by a federal law.[2]
    - If an insurance company tries to deny an insured or their beneficiary and they lose the case, the insurance company pays for any costs that the insured incurred securing a legal defense (attorney fees).
    - The second section of bill (125B) deals with a different issue. If, in cooperating with the requirements of the first section (125A), the insurance company conducts medical tests on an applicant and they discover a serious

[2] *The Family and Medial Leave Act*, 29 CFR 825.114

health risk, they are required by law to notify the applicant of that diagnosis within 14 days.

(WARNING: The following arguments are speculative. The statements below are not fully researched nor supported by evidence and may be untrue)

III. Anticipated Arguments from the Insurance Companies

- This will put us out of business. The bill will make it much harder for insurance companies to deny benefits once a policy has been issued. As a result, insurance companies will have to be much more certain, if not absolutely sure, that someone is in good health before a policy is issued. This will make it much more expensive for insurance companies and customers and because:
    - Insurance companies will have to conduct much more thorough examinations of applicants, costing time and money.
    - This will drive up their costs and force them to charge a higher premium to make it cost effective for the insurance companies.
    - Because it is more expensive for customers, less people will buy insurance
        - Hurting insurance companies profit margins
        - Less people will be insured, especially people of low income.
- This sets a bad legal precedent.
    - Once this MA state law is changed, insurance companies will leave the state and focus their business efforts in states with "friendlier" laws, to the detriment of MA customers.
    - Other states may follow Massachusetts lead, which will threaten the vitality of the entire life insurance industry and put them out of business.

IV. Our Rebuttals to insurance companies arguments

- **The bill doesn't create an "absolute liability"** (Regardless of facts and circumstances, a person or a company is liable if x happens)[3]
- **This bill doesn't dramatically alter the law. It simply shifts the burden of proof** or the presumption away from the insured and onto the insurance company (see legal issues section). Thus, insurance companies are not rendered helpless simply because a policy was issued. If there is medical evidence that an insured was in poor health, then benefits can be denied. This bill only makes the insurance companies produce the evidence necessary to convince a court that an insured was in not in "good health" and prevents the unjust situation where an insurance companies can deny benefits based solely on the company's unsupported allegations.

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[3] Absolute liability law is usually used to regulate mass produced consumer products. A harmed consumer only has to show that their injury was caused by that manufacturer's product to prevail in a lawsuit for money. For example, if a child chokes on a toy and dies, the responsibility or actions of the child or parents, no matter how ludicrous, are irrelevant. As long as the product caused or even partially caused the injury, the manufacture is absolutely liable and pays for any damages suffered by the victim.

- There is already legal precedent of similar law (see legal research memo), and states haven't changed their laws nor has this had a significant effect on the life insurance industry.
- The increase in cost to insurance companies and customers will be negligible compared to the fairness that this bill will bring to consumers and MA law.
    - Insurance companies already require extensive medical proof of good health and this law will not significantly increase the amount of necessary testing.
    - The clarity that this law will bring to insured/insurer relationship will cut down on the amount of disputes that are litigated which will actually save money for both customers and insurance companies.

A Brief Explanation of Senate Bill 2640 – An Act Ensuring Consumer Protection in Life Insurance Contracts

I. Summary of the legal issues of "Good Health" clauses

- **The Law Today**: The way Massachusetts law is currently written, insurance companies can deny benefits to any applicant if the insurance company suspects that the applicant was not in good health before the policy was issued.
- **Basic Problem with Current Law**: The law is not specific enough. There is no law that prevents insurance companies from denying benefits even if the applicant was checked by a doctor and all medical facts show that the applicant was in perfect health prior to the policy being issued.
- **How insurance companies use this rule to their advantage**: Insurance Companies include "good health" provisions in their contracts, which give the insurance company the right to essentially "tear up" the contract, and deny the insured of their benefits if the company suspects the insured had significant health risks before the date that the policy was issued.
- **How "good health" provisions work**: If an insured dies within two years of taking out a life insurance policy the company looks at the cause of death – if it was related to the health of the insured then they ask the insured to prove that whatever the condition was it did not exist on the day the insurance policy was delivered. Essentially the presumption is that the person seeking insurance was not in "good health" (had significant health risks prior to the issuance of the policy). The insured is presumed to have been in poor health until the insured's beneficiaries prove that the person was in good health.[1]
- **This rule is unfair**: The insurance company has the right to look at medical records, require a medical examination and ask questions about symptoms and general health. Once the decision to insure is made it should be binding – unless the applicant has not been honest..

II. How the law applies to John Crowley's case

- **This situation is particularly unfair to cancer patients**: Since it is very difficult to detect tumors in the early stages of cancer, it is presumed by medical experts, and the law accepts their conclusions, that tumors must exist in a dormant state prior to their physical discovery. Under this theory, it is almost impossible for John to show that his wife did not have a latent tumor or was in "good health" because no amount of medical evidence can disprove a claim based on improvable assumptions.
- **Our Bill**: We want to 1) clarify the law and 2) prevent insurance companies from denying benefits to people like John who clearly deserve them.
- **How does our bill accomplish this technically?:** Our bill amends two sections (labeled section 186 and 186A) to Ch. 175, that make it clear that once a policy is delivered the presumption is that the insured was in good health. The burden of proof is on the insurance company to show that the insured was not in good health prior to the issuance of the policy if it wants to refuse payment.
    - In other words, when an insurance company delivers a policy:
        - It is immediately presumed that the person being insured is in good health, and this claim can only be disproved by evidence that the insured made misstatements with the intent to defraud the insurance company.
        - More importantly, the insurance company must produce this evidence. Thus, the burden is on the insurance company (not the insured or their beneficiary) to prove that that the insured was not in good health.

Massachusetts House of Representatives
Bill Summary
2007-2008

Bill No.: H 1072

Title: An Act Relative to the Rights of Life Insurance Holders.

Sponsor: Rep. Sannicandro

Committee: Financial Services

Hearing Date: October 10, 2007

Similar Matters: H939; S633

Prior History: none

Current Law: Section 186 of chapter 175 of the MGL provides that misrepresentations made during negotiation of an insurance policy will only effect the validity of the policy if made with intent to deceive or in effect increase the risk of loss.

Summary: Section 1 creates a new section in chapter 175 titled 186C which provides that life insurance holders cannot be deemed to be in violation of §186 for misrepresentation if they are determined to be in "good health" at the time the policy is issued.

Senator Spilka did agree to the text of the House amendment in July.

We believe that the change Section 2 of the bill makes to ch 175, section 186A places the burden of proof regarding the good health of the insured on the insurance company. By stating that there is a presumption of good health, we are reversing Patore v. John Hancock 335 Mass 632 (1957) which states that sound health of the insured is a condition precedent and must be proved by the insured's beneficiary.Even thought the plain language of the existing 186A states that payment of premium should be the only condition precedent - since it is being interpreted otherwise we thought the amendment to this section was necessary.

The change made by Section 1 of the bill to ch 175, section 186 adds a new paragraph (b) to codify the requirement that a misrepresentation can only defeat a policy if it is "material". That interpretation is found in Employers' Liability Assurance Corp, Ltd. v. Vella 366 Mass 651 (1975). Again the language of the existing statute suggests something different than the case law - i.e. that materiality is not necessarily required. We used the language of that case to construct a definition of material.