

August 30, 2011

The Honorable Jerry Brown  
Governor of California  
State Capitol Building, First Floor  
Sacramento, California 95814

Re: SB 621 (Sen. Ron Calderon) REQUEST FOR SIGNATURE

**Board of Directors**

**Amy Bach**  
Executive Director

**Alice J. Wolfson**  
Chair, Board of Directors

**Hon. Stanley G. Feldman**  
Chief Justice (RET)  
Arizona Supreme Court

**Larry P. Ginsburg, CFP®**  
Ginsburg Financial Advisors, Inc.

**William H. Hedden**  
Consolidated Adjusting, Inc.

**Jim Jones**  
Scale Venture Partners

**E. Gerard Mannion**  
Mannion & Lowe

**Shirley Roberson**  
Non-Profit Consultant

**Deborah Senn**  
Insurance Commissioner (1993-2001)  
Washington State

**William M. Shernoff**  
Shernoff, Bidart, Darras & Echeverria LLP

Dear Governor Brown,

We are writing to urge you to sign SB 621 into law. This bill pertains to life insurance, disability insurance and disability income protection policies. It prohibits insurers engaging in the unfair practice of inserting language in their products that give themselves authority to override a treating doctor's views and interpret their own policy terms as to whether or not an insured is entitled to benefits.

California's Commissioner currently has authority to challenge such clauses on a case by case basis and while they are disfavored, they are not clearly banned under California law. The National Association of Insurance Commissioners issued a model law (MDL-42) banning such clauses in 2002, and many states have acted to adopt it since that time. California should adopt the ban by enacting SB 621.

A discretionary clause allows the insurer to override an insured's own doctor's certification of disability or cause of death when considering whether or not to grant benefits. Discretionary Clauses render the contract "fraudulent or unsound insurance" within the meaning of CIC section 1029.5 because it makes payments under the contract contingent on the unfettered discretion of the insurer.

Moreover, discretionary clauses have great legal significance because they act to nullify the bargained for contract provisions and create an illusory contract. They place an unfair burden on insureds and insurers use them as a legal shield to avoid liability for denying meritorious claims.

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United Policyholders, ("UP") is a non-profit 501(c)3 organization founded in 1991 that is a voice and an information resource for insurance consumers in all 50 states. Through an *Advocacy and Action* program, UP advocates for policyholders legal rights by filing amicus curiae briefs and working with elected officials in legislative and regulatory proceedings. Through the *Roadmap to Recovery™* program, UP gives individuals and businesses free tools and resources to help solve insurance problems that can arise after a disaster, accident, loss, illness, or other adverse event. Through the *Roadmap to Preparedness* program, UP promotes disaster preparedness and insurance literacy through outreach and education in partnership with civic, faith based, business and other non-profit associations.

United Policyholders strongly urges you to sign Senate Bill 621 into law.

Sincerely,

A handwritten signature in black ink that reads "Amy Bach". The signature is written in a cursive style with a long, sweeping underline.

Amy Bach, Esq.  
Executive Director